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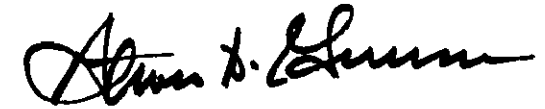
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CLERK OF THE COURT

11 **DISTRICT COURT**

12 **CLARK COUNTY, NEVADA**

13 NICHOLAS DIAZ,  
14 Plaintiff,

Case No.: A-11-660642

Dept. No.: XXXII

15 v.

16 NEVADA STATE ATHLETIC  
17 COMMISSION,  
18 Defendant.

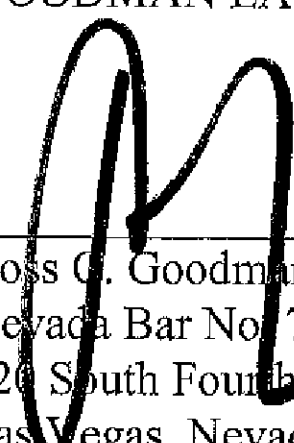
**MOTION FOR PRELIMINARY  
INJUNCTION ON ORDER  
SHORTENING TIME**

19 COMES NOW Plaintiff Nicholas Diaz, by and through his attorney, ROSS C.  
20 GOODMAN, ESQ., of the Goodman Law Group, and hereby requests this Honorable Court to  
21 grant his Motion for Preliminary Injunction.

22 This Motion is based upon the Points and Authorities and pleadings and papers on file  
23 herein.

24 DATED this 25 day of April, 2012.

25 GOODMAN LAW GROUP

26   
27 Ross C. Goodman, Esq.  
28 Nevada Bar No. 7722  
520 South Fourth Street  
Las Vegas, Nevada 89101  
Attorneys for Plaintiff


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**NOTICE OF MOTION**

You and each of you, will please take notice that the **PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION** will come on regularly for hearing on the \_\_\_\_\_ day of \_\_\_\_\_, 2012, at the hour of \_\_\_\_:00 \_\_\_\_m. or as soon thereafter as counsel may be heard, in Department 32 in the above-referenced Court.

Dated this 25 day of April, 2012.


  
\_\_\_\_\_  
Ross C. Goodman, Esq.  
GOODMAN LAW GROUP  
Nevada Bar No. 7722  
520 S. Fourth Street, Second Floor  
Las Vegas, NV 89101  
*Attorney for Plaintiff Nicholas Diaz*

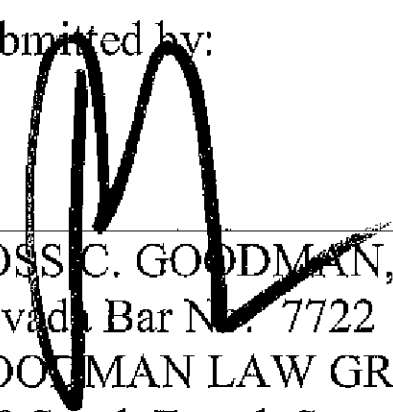
**ORDER SHORTENING TIME**

Upon the application of Defendant and good cause appearing therefore,

**IT IS HEREBY ORDERED** that the time for hearing of the above-entitled matter be, and the same will be heard on the 14<sup>th</sup> day of May, 2012, at the hour of 10:30 o'clock A.M. in Department 32. *This motion shall be served on the Defendant by May 1, 2012. Any opposition shall be filed by May 8, 2012 with a courtesy copy to chambers at the time of filing.*

DATED this 26 day of April, 2012. *May 8, 2012 with a courtesy copy to chambers at the time of filing.*

  
\_\_\_\_\_  
**DISTRICT COURT JUDGE**  
**ROB BARE**  
**JUDGE, DISTRICT COURT, DEPARTMENT 32**

Submitted by:  
  
\_\_\_\_\_  
ROSS C. GOODMAN, ESQ.  
Nevada Bar No. 7722  
GOODMAN LAW GROUP  
520 South Fourth St.  
Las Vegas, Nevada 89101  
(702) 384-5563  
*Attorney for Plaintiff Nicholas Diaz*

**DECLARATION OF COUNSEL IN SUPPORT OF ORDER SHORTENING TIME**

I, ROSS C. GOODMAN, declare as follows:

1. I have personal knowledge of the facts set forth below, except for those factual statements expressly made upon information and belief, and as to those facts, I believe them to be true, and I am competent to testify.

2. I make this declaration in support of Nicholas Diaz's Motion for Preliminary Injunction on Order Shortening Time.

3. I am counsel of record for Nicholas Diaz ("Diaz").

4. As established by the Affidavit of Nicholas Diaz, Diaz has been unable to participate in any professional mixed martial arts contest, and therefore to earn a livelihood, since proceedings were commenced against him by the Nevada State Athletic Commission (the "NSAC") on February 8, 2012 (the "Proceedings").

5. Diaz's position is that the Proceedings are entirely without merit, and Diaz has sought a hearing for the final determination of the Proceedings on the earliest possible date.

6. However, nearly three months have passed since the Proceedings were commenced and a summary suspension of Diaz's license to compete as a mixed martial artist was effected by the NSAC (the "Summary Suspension"). The NSAC has failed to set a date for a final determination of the Proceedings, despite repeated requests.

7. Because of the NSAC's delay in scheduling a prompt hearing for the final determination of the Proceedings, Diaz has already suffered irreparable injury, which injury is continuing.

8. Diaz stands to suffer further irreparable injury if Diaz's motion for preliminary injunctive relief is not heard immediately.

1           9.       Diaz's Claim alleges that the NSAC's continuation of the Summary Suspension,  
2 made without any findings, is an unlawful violation of applicable statutory provisions (including  
3 NRS 233B and NRS 467) and a violation of Diaz's due process rights.

4           10.      Any further delay, prior to the hearing of Diaz's motion for preliminary injunctive  
5 relief, further continues the harm complained of in the Complaint itself.

6           11.      On April 24, 2012, Diaz filed his Complaint against the NSAC seeking, amongst  
7 other things, preliminary injunctive relief.

8           12.      Pursuant to E.D.C.R. 2.26, good cause exists to justify shortening time for a  
9 hearing on Diaz's motion for preliminary injunction. This request is made in good faith and not  
10 for any delay.

11           I have executed this declaration under penalty of perjury under the laws of Nevada this  
12 25 day of April 2012.

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\_\_\_\_\_  
ROSS C. GOODMAN

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**MEMORANDUM OF POINTS AND AUTHORITIES**

**I. INTRODUCTION**

This is an application for a preliminary injunction staying the summary or temporary suspension of the plaintiff's fighter's license and staying the disciplinary proceedings commenced against him. The suspension, effected by the Nevada State Athletic Commission (the "NSAC") summarily and without a hearing to determine the merits of the complaints made against him, has been in place for nearly three months. Despite repeated requests for a prompt and speedy hearing to adjudicate the merits of the complaints made against him, the NSAC has refused to set the matter down for a hearing. During this time, the plaintiff has been unable to earn a livelihood as a professional mixed martial artist. Absent this Court's intervention, the plaintiff will continue to be deprived from the opportunity to earn a livelihood. This Court should issue a preliminary injunction in this case because, as set forth in further detail below, the plaintiff has demonstrated the requirements of a reasonable probability of success on the merits and proof of irreparable injury, and the relief sought is necessary to prevent the continuing violation of the plaintiff's statutory and due process rights.

**II. STATEMENT OF FACTS**

The plaintiff, Nicholas Diaz, is a professional mixed martial artist.

On or about February 4, 2012, Mr. Diaz participated in a professional mixed martial arts contest at the Mandalay Bay Events Center in Las Vegas, Nevada (the "Contest"). That Contest was conducted under the direction of the NSAC. Before the Contest, Mr. Diaz applied to the NSAC for a license as a mixed martial artist, which the NSAC duly issued and approved pursuant to NAC 467 before the Contest.

On February 8, 2012, Deputy Attorney Christopher Eccles sent a letter to Mr. Diaz. (Exhibit A.) That letter enclosed a complaint filed by the NSAC on that same date (the

1 “Complaint”) and Notice of Hearing on Temporary Suspension. (Exhibit B.)

2 The Complaint alleged that the urine sample provided by Mr. Diaz for urinalysis  
3 immediately following the Contest reflected a positive result for the presence of marijuana  
4 metabolites. The Complaint further alleged that marijuana metabolites are “prohibited by the  
5 regulations of the Commission” (Complaint, paras. 6 and 7). The Complaint sought relief  
6 including, *inter alia*, a monetary fine and disciplinary action “against Diaz’s license pursuant to  
7 the parameters defined at NAC 467.885”, which includes a potential suspension or revocation of  
8 a license.  
9

10 In his February 8, 2012 letter Mr. Eccles stated that the NSAC “will hold a hearing on the  
11 complaint ... in the near future” [emphasis added] and that the NSAC is “willing to work with  
12 you regarding the scheduling of that date”. Mr. Eccles also stated that the hearing shall be  
13 conducted “in accordance with Nevada Revised Statute (NRS) Chapter 233B”.  
14

15 The February 8, 2012 letter also enclosed a document entitled “Notice of Hearing on  
16 Temporary Suspension” that stated that an NSAC meeting was scheduled for February 22, 2012  
17 on which “the issue of temporary suspension” would be included as an agenda item.

18 On or about February 9, 2012, the NSAC’s Executive Director, Keith Kizer, suspended  
19 Mr. Diaz’s license under NRS 233B.127(3) and NRS 467.117(1) (the “Summary Suspension”).  
20

21 In reliance on Mr. Eccles’ representation that the hearing of the Complaint would be  
22 scheduled “in the near future”, Mr. Diaz elected not to appear at the February 22, 2012 interim  
23 hearing. (Affidavit of Nicholas Diaz, paras. 13-14.) Mr. Diaz instead elected to marshal his  
24 resources for defending the Complaint itself, which Complaint appeared to Mr. Diaz to have no  
25 merit.

26 It never entered Mr. Diaz’s mind that the NSAC would elect to effect a suspension of  
27 indefinite duration in the absence of any hearing on the merits of the Complaint – by indefinitely  
28

1 postponing the hearing of the Complaint itself. (Affidavit of Nicholas Diaz, para. 15-17)

2 On February 22, 2012, the NSAC proceeded with its regularly scheduled meeting and  
3 resolved to continue the Summary Suspension of Mr. Diaz's license pending a final  
4 determination of the complaint. (Exhibit C.)

5 On March 7, 2012, in response to the Complaint Mr. Diaz filed (i) his reply to the  
6 Complaint (the "Reply to Complaint"), (ii) his affidavit sworn March 6, 2012, and (iii) the  
7 affidavit of Dr. John Hiatt sworn March 2, 2012. (Exhibit D.)

8 The Reply to Complaint stated in Mr. Diaz's defense that, *inter alia*:

- 9
- 10 a) Mr. Diaz is an authorized medicinal marijuana patient for treatment of attention
  - 11 deficit hyperactivity disorder ("ADHD");
  - 12 b) marijuana metabolite is not a prohibited substance under NSAC's regulations;
  - 13 c) the NSAC and the World Anti-Doping Agency prohibit the consumption of
  - 14 marijuana only "in competition";
  - 15 d) Mr. Diaz's practice is to discontinue medical marijuana treatment eight days
  - 16 before any fight to eliminate the possibility of any behavioral and psychological
  - 17 effects associated with medicinal marijuana's active ingredient; and
  - 18 e) Mr. Diaz has committed no violation of the NSAC's regulations.
- 19

20 Dr. Hiatt's affidavit stated, *inter alia*:

- 21
- 22 a) Mr. Diaz did not test positive for marijuana (Hiatt Affidavit, para. 4);
  - 23 b) testing for inactive metabolites of THC is not a reliable indicator of "current or
  - 24 even recent use"; and
  - 25 c) presence of inactive metabolite in a post-fight urine sample is consistent with
  - 26 discontinuing medical marijuana use eight days before a fight, which would have
  - 27 no impact on a fighter's performance "in competition".
- 28

1 On March 14, 2012 Mr. Eccles wrote to Mr. Diaz's counsel and advised that the  
2 disciplinary hearing "will be in April". Mr. Eccles further promised to "contact you when I have  
3 a date/time certain". (Exhibit E.)

4 Two weeks later, having heard nothing from Mr. Eccles or Mr. Kizer about a hearing  
5 date, Mr. Diaz's counsel wrote to Mr. Eccles on March 28, 2012 requesting an update as to the  
6 hearing date. (Exhibit F.)

7  
8 On or about March 29, 2012, Mr. Kizer delivered to Mr. Diaz's counsel a revised  
9 complaint (the "First Amended Complaint"). (Exhibit G.) The First Amended Complaint made  
10 further allegations against Mr. Diaz including *inter alia*, allegations that Mr. Diaz provided false  
11 or misleading information to the NSAC by indicating on a 'Pre-Fight Questionnaire' that (i) he  
12 does not have any serious medical illnesses, (ii) he had not taken or received any prescribed  
13 medications in the last two weeks before the Contest, and (iii) he had not taken or received any  
14 over the counter medication or products in the last two weeks before the Contest.

15  
16 On March 29, 2012, Mr. Diaz sent further correspondence to Mr. Eccles requesting a firm  
17 date for the hearing. Neither Mr. Eccles nor Mr. Kizer provided a response. (Exhibit H.)

18 On April 2, 2012, Mr. Diaz's counsel sent further correspondence to Mr. Eccles and Mr.  
19 Kizer requesting an update as to timing. (Exhibit I.) Neither Mr. Eccles nor Mr. Kizer provided  
20 a response.

21  
22 On April 3, 2012, Mr. Diaz's counsel sent further correspondence to Mr. Eccles and Mr.  
23 Kizer requesting the reason for the delay. (Exhibit J.)

24 On April 4, 2012, Mr. Eccles wrote to Mr. Diaz demanding certain documents relating to  
25 Mr. Diaz's qualification to use medical marijuana pursuant and other documents. (Exhibit K.)

26 On April 11, 2012, counsel for Mr. Diaz provided to Mr. Eccles:  
27  
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- 1 a) the filed reply to the First Amended Complaint on behalf of Mr. Diaz (the “Reply
- 2 to FAC”) (see Exhibit L); and
- 3 b) correspondence (i) enclosing Physician’s Statements that constituted the requisite
- 4 written documentation that qualified Mr. Diaz to use medical marijuana pursuant
- 5 to California Health & Safety Code 11362.5, (ii) objecting to the production of
- 6 any further medical records on grounds of relevance and privilege, and (iii)
- 7 requesting confirmation that the disciplinary action against Mr. Diaz would be
- 8 formally added to the April 24, 2012 agenda. (Exhibit M.)

9  
10 In the Reply to FAC Mr. Diaz stated, *inter alia*:

- 11 a) the First Amended Complaint does not allege any facts supporting that he violated
- 12 any NSAC rule;
- 13 b) marijuana metabolite is not a drug or injection that has not been approved by the
- 14 NSAC under NAC 467.850;
- 15 c) all answers provided by Mr. Diaz on the Pre-Fight Questionnaire were “true and
- 16 accurate to the best of [Diaz’s] ability”, and therefore met the standard required
- 17 by the NSAC;
- 18 d) Mr. Diaz does not believe that ADHD is a “serious medical illness”;
- 19 e) Mr. Diaz does not believe that medical marijuana is a “prescribed medication”
- 20 and that this belief is consistent with federal law; and
- 21 f) Mr. Diaz does not believe that medical marijuana is an “over the counter”
- 22 medication.
- 23
- 24

25 On April 13, 2012, Mr. Diaz’s counsel delivered further correspondence to Mr. Eccles

26 demanding that Mr. Diaz’s hearing be set down for the April 24, 2012 NSAC meeting, or else

27 the complaint would be deemed to be abandoned. (Exhibit N.)

28

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

4 On April 18, 2012 the NSAC published the agenda for its April 24, 2012 meeting on its  
5 website at <http://boxing.nv.gov/Agenda/04-24-12AG.pdf>. The requested disciplinary hearing  
6 relating to Mr. Diaz's suspension is not on that agenda. (Exhibit P.)

7 Neither Mr. Diaz nor his counsel has received any further correspondence concerning the  
8 date on or by which the hearing of the NSAC's complaint will proceed.

9 In the present circumstances, Mr. Diaz's license has been suspended indefinitely, in the  
10 absence of any adverse findings having been made against him by the NSAC.

### 11 III. LEGAL ARGUMENT

#### 12 A. A Preliminary Injunction Is Warranted Because The Licensee Has A 13 Likelihood Of Success On The Merits And Will Suffer Irreparable Harm 14 Absent Injunctive Relief

##### 15 1. Preliminary Injunction Standard

16 A preliminary injunction is available upon a showing that the party seeking it enjoys a  
17 reasonable probability of success on the merits and that the non-movant's conduct, if allowed to  
18 continue, will result in irreparable harm for which compensatory damages are not an adequate  
19 remedy. *See, e.g., Labor Comm'r v. Littlefield*, 123 Nev. 35, 38-39, 153 P.3d 26, 28 (2007);  
20 *Clark County Sch. Dist. v. Buchanan*, 112 Nev. 1146, 1150, 924 P.2d 716, 719 (1996); *Camco,*  
21 *Inc. v. Baker*, 113 Nev. 512, 516, 936 P.2d 829, 831 (1997); *NRS 33.010*. Additionally,  
22 injunctive relief is to be granted in order to preserve the status quo until such time as the  
23 underlying action is resolved. *See Pickett v. Commanche Construction, Inc.*, 108 Nev. 422, 426,  
24 836 P.2d 42, 44 (1992); *GoTo.com, Inc. v. Walt Disney Co.*, 202 F.3d 1199, 1210 (9th Cir. 2000)  
25 ("The status quo ante litem refers not simply to any situation before the filing of a lawsuit, but  
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1 instead to ‘the last uncontested status which preceded the pending controversy’’).

2 As set forth more fully herein, Mr. Diaz has demonstrated a likelihood of success on the  
3 merits and that he will suffer irreparable harm if the Summary Suspension is permitted to  
4 continue. Thus, the Court should grant Mr. Diaz’s motion for a preliminary injunction.  
5

6 **2. Diaz Is Likely To Succeed On The Merits Of His Claims**

7 A preliminary injunction is warranted because Mr. Diaz is likely to succeed on the merits  
8 of his claims. In order to show a likelihood of success on the merits, movants are not required to  
9 prove that they will ultimately prevail in the lawsuit. Rather, movants are only required to  
10 establish “a reasonable probability of success on the merits.” *Clark County Sch. Dist. v.*  
11 *Buchanan*, 112 Nev. 1146, 1150, 924 P.2d 716, 719 (1996). Mr. Diaz will likely succeed on the  
12 merits of his claims against the NSAC. Injunctive relief is therefore appropriate.  
13

14 **i. Violation of the Prescribed Statutory 45-day Time Period**

15 NRS 233B.127 applies to all revocations, suspensions, annulments and withdrawals of  
16 licenses – including licenses issued by the NSAC. That statutory provision, which is a  
17 constituent part of the “minimum procedural requirements for the regulation-making and  
18 adjudication procedure of agencies of the Executive Department of the State Government”  
19 (under NRS 233B.020), is engaged by any “summary suspension of a license ... ordered pending  
20 proceedings for revocation or other action”. In any such case, “[p]roceedings relating to the  
21 order of summary suspension must be instituted and determined within 45 days after the date of  
22 the [suspension] unless the agency and the licensee mutually agree in writing to a longer period”  
23 (NRS 233B.127(3)).  
24

25 The intent of this statutory provision is to ensure that where an administrative agency  
26 suspends a license before a full hearing and adjudication of the merits of the underlying  
27 complaint, the agency proceeds to a final determination of the matter on a timely basis. Absent  
28

1 the stipulation as to time set out in 233B.127(3) (i.e. 45 days), licensees are at risk of having their  
2 licenses compromised for an indefinite period without any consideration of the merits of the  
3 complaint made against them.

4 Further procedural limitations on the NSAC's power to suspend a license, pending final  
5 determination of a disciplinary complaint, are set out in NRS 467.117. That section provides that  
6 (i) each member of the NSAC or its Executive Director may "suspend for a period not exceeding  
7 10 days any license or permit until final determination by the Commission if, in his or her  
8 opinion, the action is necessary to protect the public welfare and the best interests of the sports  
9 regulated pursuant to this chapter" (subsection (1)), and (ii) if such a suspension is made, then  
10 the Commission may upon written notice and after a hearing "continue the suspension until it  
11 makes a final determination of any disciplinary action to be taken against the licensee"  
12 (subsection (2)).

13  
14 NRS 467.117(1) makes clear that the power to suspend a license "until final  
15 determination by the Commission" does not imply the power to suspend indefinitely ("...suspend  
16 for a period not exceeding 10 days any license or permit until final determination by the  
17 Commission..."). NRS 467.117(2) provides for a power to continue a suspension "until final  
18 determination [by the Commission]" but does not expressly provide a time limitation. In the  
19 absence of any express stipulation as to a time limit in NRS 467.117(2), the general time limit set  
20 out in NRS 233B.127(3) applicable to suspensions made pending final determination must apply,  
21 given the legislative intent set out at NRS 233B.020.

22  
23  
24 Furthermore, the time limitation in NRS 233B.127(3) must be interpreted to apply to  
25 suspensions made under NRS 467.117(2) to ensure that the latter statutory provision does not, on  
26 its face, constitute an infringement of licensees' due process rights under the Fourteenth  
27 Amendment (as elaborated further below).  
28



1 The Summary Suspension of Mr. Diaz's license was a suspension made pending  
2 proceedings for revocation or other action. The Summary Suspension was continued "until [the  
3 Commission] makes a final determination" of the complaint, which must be within 45 days  
4 under NRS 233B.127(3). The Summary Suspension of Mr. Diaz's license was affected on  
5 February 9, 2012. The statutory 45-day time limit has already been violated by over four weeks.  
6 The NSAC has not even yet set the matter for hearing, and therefore evidences an intention to  
7 continue and in fact continues its violation of that statutory requirement. Accordingly, Mr. Diaz's  
8 suspension must now be set aside.  
9

10 **ii. No Finding of "Necessity to Protect the Public Welfare"**

11 Even absent the application of NRS 233B.127, Mr. Diaz's Summary Suspension was  
12 effected contrary to law and must be set aside.  
13

14 Under NRS 467.117(1) a summary or temporary suspension may be made only where  
15 "the action is "necessary to protect the public welfare and the best interests of the sports  
16 regulated" [emphasis added]. This statutory requirement is conjunctive, not disjunctive. A  
17 suspension made under NRS 467.117(1) is permitted only where it is necessary to protect the  
18 public welfare – i.e. where it is necessary for the protection of the community's health and  
19 safety.  
20

21 Where an administrative or governmental agency is required to make a decision based  
22 upon considerations of "public welfare", such considerations "demand both ... a focused  
23 attention and the exercise of a fair and enlightened discretion ... based upon substantial  
24 evidence". See *Nova Horizon, Inc., v. The City Council of the City of Reno*, 105 Nev. 92, 98, 769  
25 P.2d 721, 724. In this case, no "substantial evidence" was considered by the NSAC in  
26 connection with the Summary Suspension.  
27

28 NRS 467.117(1) does not license the NSAC to arbitrarily and capriciously effect

1 summary or temporary suspensions on the basis of no evidence at all (as in this case).

2 No reasonable person acting in good faith could suggest that Mr. Diaz's license  
3 constitutes a threat to the public welfare at large – such that failing to suspend Mr. Diaz's license  
4 immediately, prior to a determination of whether the complaint has any merit, may jeopardize the  
5 public welfare. It is even more untenable to suggest that such suspension is "necessary" to  
6 protect the public welfare.  
7

8 Accordingly, insofar as the Summary Suspension of Mr. Diaz's license was made on the  
9 basis of NRS 467.117, the suspension was affected wholly absent statutory jurisdiction, and will  
10 be set aside.

### 11 **iii. Violation of Mr. Diaz's Due Process Rights**

12 Because the consequences of even a summary suspension can be severe, the U.S.  
13 Supreme Court has held that the Due Process Clause requires that a statutory provision  
14 permitting a temporary suspension pending final determination requires a promptly convened  
15 final hearing to determine the merits of a disciplinary complaint. *See Barry, Chairman, Racing*  
16 *and Wagering Board of New York, et al. v. Barchi*, 443 U.S. 55; 99 S. Ct. 2642, 61 L. Ed. 2d 365.  
17

18 In *Barry, supra*, a regulatory authority had suspended a horse trainer's license after a  
19 post-race urinalysis revealed a prohibited substance in a horse for which the trainer was  
20 responsible. The suspension was affected without any hearing on the merits of the complaint,  
21 pursuant to a statutory provision that specified no time in which such hearing must be held. The  
22 Court held that such suspension did not affront the licensee's due process rights by permitting a  
23 suspension without a pre-suspension hearing, but that the licensee's due process rights were  
24 breached by the statute's failure to assure a sufficiently timely post-suspension hearing "that  
25 would definitely determine the issues" (at 2648-9). The Court held that: "Once suspension has  
26 been imposed, the trainer's interest in a speedy resolution of the controversy becomes  
27  
28

1 paramount” (at 2650) [emphasis added]. Because the statute “as applied in this case was  
2 deficient in this respect, the licensee’s suspension was constitutionally infirm under the Due  
3 Process Clause of the Fourteenth Amendment” (at 2650).

4 Over two months have transpired since the Summary Suspension of Mr. Diaz’s license  
5 was affected by the NSAC. The NSAC has still not convened a hearing. Nor has a hearing been  
6 scheduled. This is not a “speedy resolution of the controversy”, and hence the application of  
7 NRS 233B.127 and/or NRS 467.117 is an unconstitutional deprivation of Mr. Diaz’s due process  
8 rights.  
9

10 Furthermore, as set forth above, NRS 467.117(2) does not, on its face, provide for a  
11 timely hearing to definitely determine the merits of the complaint. That does not render NRS  
12 467.117(2) constitutionally infirm, in Mr. Diaz’s submission – as, in the absence of an express  
13 time limitation in that provision, the time limitation in NRS 233B.127(3) must be deemed to  
14 apply.  
15

16 However:

- 17 a) Because the NSAC has not complied with the 45-day time limitation in NRS  
18 233B.127(3) – the only statutory provision that could render the NSAC’s  
19 summary suspension regime constitutionally valid (by assuring a prompt hearing  
20 on the merits) – the NSAC’s refusal to promptly convene a hearing for a final  
21 determination of the complaint must be deemed to be an unconstitutional  
22 deprivation of Mr. Diaz’s due process rights; and  
23  
24 b) If this Court were to hold that NAC 233B.127(3) does not apply to a suspension  
25 putatively effected under NRS 467.117(2), then NRS 467.117(2) is  
26 constitutionally infirm on its face – as it permits a license suspension with no  
27 assurance of a prompt hearing to ensure a final determination of the complaint.  
28

**iv. NSAC February 22, 2012 Meeting Ineffective Under NRS 467.117**

The NSAC's action taken on February 22, 2012 was procedurally ineffective pursuant to the requirements of NRS 467.

A hearing at which the NSAC continues a suspension until it makes a final determination of any disciplinary action is itself a disciplinary hearing. Under NRS 467.113(4), in connection with the adjudication rendered at any such disciplinary hearing, the NSAC "shall file a written report of its findings, adjudication and order in the record of the proceedings and send a copy to the accused".

In connection with the February 22, 2012 NSAC meeting:

- a) The NSAC has filed no written report in connection with its findings (if any) including, *inter alia*, the finding that a continuation of Mr. Diaz's Summary Suspension pending final adjudication of the Complaint is necessary to protect the public welfare;
- b) The NSAC has filed no written report in connection with its adjudication of the request for a continuation of the suspension (e.g. written reasons justifying the basis for continuing the suspension of Mr. Diaz's license pending final determination of the Complaint, including *inter alia* its reasons for making any finding that a continuation of the Summary Suspension is necessary to protect the public welfare); and
- c) the NSAC has filed no written report of its order effecting a continuation of the suspension of Mr. Diaz's license pending final determination of the Complaint.

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.

v. **The NSAC has lost jurisdiction to proceed with the Complaints**

As set forth above, NRS 233B.127(3) provides that, *inter alia*:

Proceedings relating to the order of summary suspension must be instituted and determined within 45 days after the date of the order unless the agency and the licensee mutually agree in writing to a longer period. [emphasis added]

More than 45 days have elapsed since the suspension against Mr. Diaz was made. The disciplinary proceedings against Mr. Diaz have been instituted but have not been determined. Accordingly, NSAC has lost jurisdiction to proceed to a determination of the disciplinary proceedings. Those proceedings must be deemed abandoned by virtue of the passage of time, as the mandatory limit beyond which the NSAC must not proceed to a determination of such proceedings has elapsed.

The statutory language in NRS 233B.127(3) is mandatory (“must”). While providing this definitive limit on an administrative agency’s powers to proceed against a licensee, there is no statutory provision that empowers an agency to proceed with disciplinary proceedings after the prescribed time limitation has elapsed. In the absence of any such provision, an agency that violates the requirements of NRS 233B.127 has no jurisdiction to proceed with disciplinary proceedings after the conclusion of the prescribed time period.

This interpretation accords with the purpose of NRS 233B.127(3) – i.e. to ensure that administrative agencies do not delay in proceeding to a final determination of a disciplinary matter where interim suspensions have been imposed. This purpose would entirely undermined if agencies were free to proceed with disciplinary proceedings notwithstanding violations of the time limitation set out in the governing statute.

3. ***Mr. Diaz Will Be Irreparably Harmed In The Absence Of A Preliminary Injunction***

Mr. Diaz earns his livelihood solely in connection with his participation in professional mixed martial arts contests as a mixed martial arts combatant.

1 During the course of the Summary Suspension, over the past 76 days and continuing, the  
2 NSAC has prohibited Mr. Diaz from earning a livelihood by participating in mixed martial arts  
3 contests. Not only does the present suspension preclude Mr. Diaz from participating in mixed  
4 martial arts contests in the State of Nevada, but administrative agencies charged with the  
5 sanctioning and regulation of mixed martial arts contests in other jurisdictions will reciprocally  
6 enforce Nevada's suspension.  
7

8 Furthermore, the entity to which Mr. Diaz has granted exclusive rights to promote mixed  
9 martial arts contests in which he is a participant, Zuffa LLC dba The Ultimate Fighting  
10 Championship ("Zuffa"), is a licensed promoter in Nevada and is concomitantly prohibited by  
11 NAC 467.780 from having "any dealings related to unarmed combat with any person whose  
12 license has been suspended or revoked by the Commission". Mr. Diaz therefore is unable to  
13 compete at mixed martial arts events promoted by Zuffa anywhere in the world, so long as his  
14 suspension is continued.  
15

16 The Summary Suspension therefore prevents Mr. Diaz from participating in mixed  
17 martial arts contests, generally. This represents a substantial financial loss to Mr. Diaz that  
18 cannot be adequately compensated in damages. The NSAC has a statutory immunity from  
19 actions for damages for actions based upon the exercise or performance of a discretionary  
20 function or duty, whether or not the discretion involved is abused. *See NRS 41.032*. If Mr. Diaz is  
21 successful in setting aside the suspension, Mr. Diaz has no remedy in damages that could provide  
22 adequate compensation for the loss occasioned by his wrongful and unlawful suspension by the  
23 NSAC.  
24

25 It is well established a professional fighter suffers irreparable injury where regulatory  
26 action (or inaction) prevents him from professional competition. *See, e.g., Ali v. The Division of*  
27 *State Athletic Commission of the Department of State of the State of New York, 316 F. Supp.*  
28

1246 (S.D.N.Y. 1970) at 1253.

**B. Mr. Diaz Should Not Be Required to Post A Bond**

Mr. Diaz should not be required to post a bond, or should only be required to post a *de minimus* bond, pursuant to N.R.C.P. 65(c), as security for a preliminary injunction. The basis for the requirement of a bond is to provide some security for the enjoined party in respect of any loss that party might incur, in the event that the preliminary injunction should not have been made. There is no prospect of the NSAC incurring or suffering costs or damages if the NSAC's suspension and disciplinary proceedings are found to have been wrongfully stayed. Accordingly, there is no basis for a bond in the circumstances of this case.

**IV. Conclusion**

For the foregoing reasons, Mr. Diaz requests that the Court issue a preliminary injunction against the NSAC:

- a) staying the suspension made February 9, 2012 and February 22, 2012 on a preliminary basis pending the determination of the within claim;

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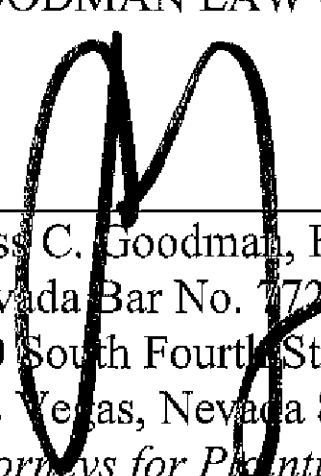
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b) staying the disciplinary proceedings commenced against Mr. Diaz pending the determination of the within claim or, in the alternative, enjoining the NSAC from issuing any further or other summary or temporary suspension of Mr. Diaz pending final determination of the matters alleged or referred to in the Complaint and First Amended Complaint.

DATED this 25 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*



ND

AFFIDAVIT OF NICHOLAS DIAZ

STATE OF CALIFORNIA     }  
COUNTY OF SAN JOAQUIN } ss:

COMES NOW, NICHOLAS DIAZ, and being first duly sworn, swears and deposes as follows:

1. I am a professional mixed martial artist.
2. Since August of 2001, I have earned my livelihood solely in connection with competition in professional mixed martial arts contests.
3. Since the summer of 2011, I have been contracted to Zuffa LLC dba The Ultimate Fighting Championship (the "UFC") for the purpose of competing in mixed martial arts contests.
4. Over the past year, I have earned in excess of \$475,000 in connection with my participation in mixed martial arts contests promoted by the UFC.
5. On February 4, 2012, I participated in a professional mixed martial arts contest at the Mandalay Bay Events Center in Las Vegas, Nevada, for the 'UFC Interim Welterweight Championship'.
6. That contest was held under the jurisdiction of the Nevada State Athletic Commission (the "NSAC") which regulates and sanctions professional mixed martial arts events in the State of Nevada. Prior to the contest, I applied for and was granted a license by the NSAC.
7. On or about February 9, 2012, learned that the NSAC had commenced a disciplinary proceeding against me in connection with the February 4, 2012 contest (the "Complaint"). It was my understanding that the NSAC believed that I had violated their rules by using marijuana in connection with the February 4, 2012 contest.
8. I received a copy of the NSAC's filed Complaint dated February 8, 2012, and correspondence from Christopher Eccles enclosing the Complaint on or about February 10, 2012. Mr. Eccles' letter also enclosed a 'Notice of Hearing on Temporary Suspension'.
9. It was my understanding, after having reviewed Mr. Eccles' correspondence and the materials enclosed therewith, that I was required to file an answer to the Complaint and to appear at a hearing on the merits of the Complaint.
10. It was my view at that time, and it is my view today, that the Complaint has no merit.

11. I was eager, at that time, to proceed to a hearing before the NSAC for a final determination of the Complaint.
12. I have been diagnosed with Attention Deficit Hyperactivity Disorder, and am in full compliance with the registry laws for medical marijuana treatment in California.
13. As part of my general practice, I discontinue using medical marijuana eight (8) days before any fight. Consistent with this general practice, I discontinued use of medical marijuana eight (8) days before the February 4, 2012 contest in Nevada. I do not believe that this is a violation of the NSAC's regulations.
14. Following receipt of the Complaint and related documents, I sought advice and assistance in responding to the Complaint. It was my expectation, based on the February 8, 2012 letter from Mr. Eccles, that the NSAC would work with me to schedule a hearing of the Complaint very shortly. I also expected that the matter would be very straight-forward to schedule and adjudicate because I was prepared to agree with the NSAC as to the facts, so there would be no factual controversy which could slow down the process.
15. Because Mr. Eccles committed to a hearing "in the near future", I did not take issue at the time with the NSAC's suspension of my license prior to the hearing. It is my understanding that the NSAC generally affects suspensions of fighters' licenses where disciplinary proceedings are commenced, pending a final hearing. I therefore did not object to a summary suspension at the NSAC's regular meeting on February 22, 2012.
16. Despite repeated requests, the NSAC has still not scheduled a hearing of the Complaint.
17. The NSAC's delay has surprised and disappointed me.
18. I am particularly disappointed that the NSAC would not proceed to schedule the hearing of an unmeritorious complaint where it has elected to affect a suspension pending the hearing, in the interim.
19. Because the NSAC has not yet scheduled a hearing, the suspension continues to be in effect. As long as my license is suspended by the NSAC, I will not be able to take a fight in any jurisdiction that recognizes and reciprocally enforces the NSAC's suspensions. It is my belief that the majority of athletic commissions in the United States and Canada reciprocally enforce suspensions affected by their peer commissions, such as the NSAC.
20. Also, it is my belief that the UFC is legally obligated under the NSAC's regulations to refrain from promoting any fight, in any jurisdiction around the world, in which I am a contestant as long as I am suspended by the NSAC.
21. The NSAC's suspension therefore renders it impossible for me to earn a livelihood.

22. The February 4, 2012 contest for the title of Interim Welterweight Champion was a controversial decision win for my opponent, Carlos Condit. That the NSAC's judges awarded the decision to Mr. Condit, rather than to me, polarized the mixed martial arts community.

23. On February 7, 2012, the UFC's President publicly announced that Mr. Condit agreed to an immediate re-match against me.

24. It is my understanding that the winner of that re-match will be offered a contest against Georges St. Pierre, the current UFC welterweight champion.

25. The summary suspension against me, made without any consideration of the merits of the Complaint, is the only reason I am aware of that a re-match against Mr. Condit has not been scheduled.

26. If the summary suspension is set aside, I would be prepared to compete against Mr. Condit or against any other opponent deemed suitable immediately.

FURTHER YOUR AFFLIANT SAYETH NAUGHT.

Dated this 24 day of April, 2012.

  
\_\_\_\_\_  
Nicholas Diaz

# Jurat

State of California

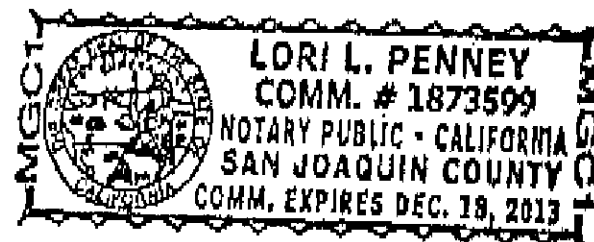
County of San Joaquin

Subscribed and sworn to (or affirmed) before me on this 24<sup>th</sup> day of April,  
2012 by Nick Diaz

proved to me on the basis of satisfactory evidence to be the person(s) who appeared before me.

Lori L. Penney  
Signature

(Notary seal)



## OPTIONAL INFORMATION

### DESCRIPTION OF THE ATTACHED DOCUMENT

Affidavit

(Title or description of attached document)

(Title or description of attached document continued)

Number of Pages 3 Document Date \_\_\_\_\_

(Additional Information)

### INSTRUCTIONS FOR COMPLETING THIS FORM

The wording of all Jurats completed in California after January 1, 2008 must be in the form as set forth within this Jurat. There are no exceptions. If a Jurat to be completed does not follow this form, the notary must correct the verbiage by using a Jurat stamp containing the correct wording or attaching a separate Jurat form such as this one which does contain proper wording. In addition, the notary must require an oath or affirmation from the document signer regarding the truthfulness of the contents of the document. The document must be signed AFTER the oath or affirmation. If the document was previously signed, it must be re-signed in front of the notary public during the Jurat process.

- State and County information must be the State and County where the document signer(s) personally appeared before the notary public.
- Date of notarization must be the date that the signer(s) personally appeared which must also be the date the Jurat process is completed.
- Print the name(s) of document signer(s) who personally appear at the time of notarization.
- Signature of the notary public must match the signature on file with the office of the county clerk.
- The notary seal impression must be clear and photographically reproducible. Impression must not cover text or lines. If seal impression smudges, re-seal if a sufficient area permits, otherwise complete a different Jurat form.
  - ❖ Additional information is not required but could help to ensure this Jurat is not misused or attached to a different document.
  - ❖ Indicate title or type of attached document, number of pages and date.
- Securely attach this document to the signed document

# CALIFORNIA ALL-PURPOSE CERTIFICATE OF ACKNOWLEDGMENT

State of California

County of San Joaquin

On April 24, 2012 before me, Lori L. Penney, Notary Public

(Here insert name and title of the officer)

personally appeared Nick Diaz

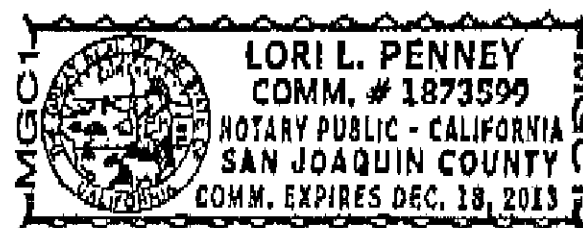
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) ~~is~~ are subscribed to the within instrument and acknowledged to me that ~~he~~ they executed the same in ~~his~~ her their authorized capacity(ies), and that by ~~his~~ her their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Lori L. Penney  
Signature of Notary Public

(Notary Seal)



## ADDITIONAL OPTIONAL INFORMATION

### DESCRIPTION OF THE ATTACHED DOCUMENT

Affidavit

(Title or description of attached document)

(Title or description of attached document continued)

Number of Pages 2 Document Date \_\_\_\_\_

(Additional information)

### CAPACITY CLAIMED BY THE SIGNER

- ☒ Individual (s)  
☐ Corporate Officer

(Title)

- ☐ Partner(s)  
☐ Attorney-in-Fact  
☐ Trustee(s)  
☐ Other \_\_\_\_\_

### INSTRUCTIONS FOR COMPLETING THIS FORM

Any acknowledgment completed in California must contain verbiage exactly as appears above in the notary section or a separate acknowledgment form must be properly completed and attached to that document. The only exception is if a document is to be recorded outside of California. In such instances, any alternative acknowledgment verbiage as may be printed on such a document so long as the verbiage does not require the notary to do something that is illegal for a notary in California (i.e. certifying the authorized capacity of the signer). Please check the document carefully for proper notarial wording and attach this form if required.

- State and County information must be the State and County where the document signer(s) personally appeared before the notary public for acknowledgment.
- Date of notarization must be the date that the signer(s) personally appeared which must also be the same date the acknowledgment is completed.
- The notary public must print his or her name as it appears within his or her commission followed by a comma and then your title (notary public).
- Print the name(s) of document signer(s) who personally appear at the time of notarization.
- Indicate the correct singular or plural forms by crossing off incorrect forms (i.e. ~~he~~/she/~~they~~, ~~is~~ /are) or circling the correct forms. Failure to correctly indicate this information may lead to rejection of document recording.
- The notary seal impression must be clear and photographically reproducible. Impression must not cover text or lines. If seal impression smudges, re-seal if a sufficient area permits, otherwise complete a different acknowledgment form.
- Signature of the notary public must match the signature on file with the office of the county clerk.
  - ✦ Additional information is not required but could help to ensure this acknowledgment is not misused or attached to a different document.
  - ✦ Indicate title or type of attached document, number of pages and date.
  - ✦ Indicate the capacity claimed by the signer. If the claimed capacity is a corporate officer, indicate the title (i.e. CEO, CFO, Secretary).
- Securely attach this document to the signed document

**AFFIDAVIT OF ROSS C. GOODMAN, ESQ.**

STATE OF NEVADA )  
COUNTY OF CLARK ) ss:

I, ROSS C. GOODMAN, declare as follows:

1. I have personal knowledge of the facts set forth below, except for those factual statements expressly made upon information and belief, and as to those facts, I believe them to be true, and I am competent to testify.

2. I make this declaration in support of Nicholas Diaz's Motion for Preliminary Injunction on Order Shortening Time.

3. I am counsel of record for Nicholas Diaz ("Diaz").

4. Attached hereto as Exhibit A is a true and correct copy of correspondence to Diaz from Christopher Eccles, Deputy Attorney General for the State of Nevada, dated February 8, 2012.

5. Attached hereto as Exhibit B is a true and correct copy of a Complaint for Disciplinary Action and Notice of Hearing signed by Keith Kizer, executive director of the Nevada State Athletic Commission, dated February 8, 2012, and Notice of Hearing On Temporary Suspension dated February 8, 2012.

6. Attached hereto as Exhibit C is a true and correct copy of the minutes from the NSAC's regularly scheduled meeting on February 22, 2012.

7. Attached hereto as Exhibit D is a true and correct copy of the Response to Complaint, Affidavit of Nick Diaz sworn March 6, 2012, and affidavit of Dr. John Hiatt sworn March 2, 2012.

8. Attached hereto as Exhibit E is a true and correct copy of an email from Mr. Eccles to me dated March 14, 2012.

1           9.       Attached hereto as Exhibit F is a true and correct copy of an email I sent to Mr.  
2 Eccles on March 28, 2012.

3           10.      Attached hereto as Exhibit G is a true and correct copy of the First Amended  
4 Complaint For Disciplinary Action and Notice of Hearing signed by Keith Kizer, dated March  
5 28, 2012.

6           11.      Attached hereto as Exhibit H is a true and correct copy of an email I sent to Mr.  
7 Eccles on March 29, 2012.

8           12.      Attached hereto as Exhibit I is a true and correct copy of an email I sent to Mr.  
9 Eccles and Mr. Kizer on April 2, 2012.

10          13.      Attached hereto as Exhibit J is a true and correct copy of an email I sent to Mr.  
11 Eccles and Mr. Kizer on April 3, 2012.

12          14.      Attached hereto as Exhibit K is a true and correct copy of correspondence from  
13 Mr. Eccles dated April 4, 2012.

14          15.      Attached hereto as Exhibit L is a true and correct copy of the filed reply to the  
15 First Amended Complaint filed April 11, 2012.

16          16.      Attached hereto as Exhibit M is a true and correct copy of correspondence to Mr.  
17 Eccles dated April 11, 2012 enclosing two (2) physician's statements.

18          17.      Attached hereto as Exhibit N is a true and correct copy of correspondence to Mr.  
19 Eccles dated April 13, 2012.

20          18.      Attached hereto as Exhibit O is a true and correct copy of correspondence from  
21 Mr. Eccles dated April 16, 2012.

22          19.      Attached hereto as Exhibit P is a true and correct copy of the NSAC's agenda for  
23 its April 24, 2012 meeting.

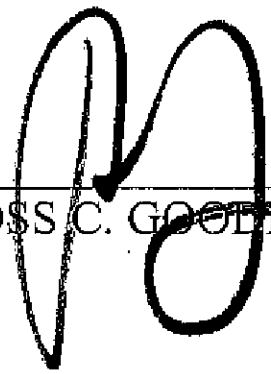
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GOODMAN LAW GROUP  
A Professional Corporation  
520 S. Fourth Street, 2nd Floor  
Las Vegas, Nevada 89101  
(702) 383-5088

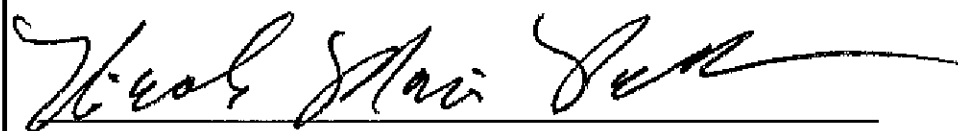
FURTHER YOUR AFFIANT SAYETH NAUGHT.

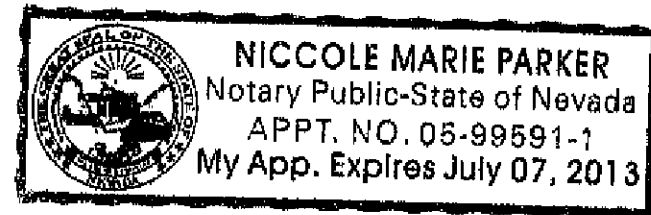
I have executed this declaration under penalty of perjury under the laws of Nevada this

25 day of April 2012.

  
ROSS C. GOODMAN

SUBSCRIBED and SWORN to before me  
this 25 day of April, 2012.

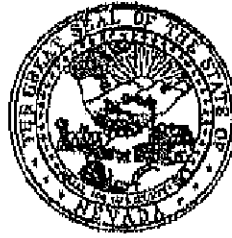
  
Notary Public





# EXHIBIT A

# EXHIBIT A



STATE OF NEVADA  
OFFICE OF THE ATTORNEY GENERAL

555 East Washington Ave., Suite 3900  
Las Vegas, Nevada 89101

CATHERINE CORTEZ MASTO  
*Attorney General*

KEITH G. MUNRO  
*Assistant Attorney General*

Gregory Smith  
*Chief of Staff*

February 8, 2012

NICK DIAZ  
3764 MASSIMO CIR.  
STOCKTON, CA 95212

Re: State v. Diaz, Notice of Complaint and Obligation to Answer Complaint

Mr. Diaz:


The purpose of this letter is to inform you that the Nevada State Athletic Commission ("Commission") filed a complaint against you seeking the relief set forth therein. A copy of the complaint and the laboratory report is enclosed.

The Commission will hold a hearing on the complaint at a regularly scheduled meeting in the near future, and is willing to work with you regarding the scheduling of that date. The hearing shall be conducted in accordance with Nevada Revised Statute (NRS) Chapter 233B, along with NRS Chapter 467 and Nevada Administrative Code (NAC) Chapter 467. Under NAC 467.924, you shall file an answer with the Commission not later than 20 days after the date the complaint is served on you. Failure to file an answer will be deemed an admission of all matters and facts contained in the complaint. You are required to personally appear at the hearing on the merits, unless this requirement is waived by the Chairman of the Commission. Please see NAC 467.920 through NAC 467.956 for information regarding disciplinary proceedings before the Commission.

Should you have any questions regarding this process, or wish to discuss testing of your "B" urine sample, please contact me immediately.

Sincerely,

CATHERINE CORTEZ MASTO  
ATTORNEY GENERAL OF NEVADA

By: 

CHRISTOPHER ECCLES  
Deputy Attorney General  
Telephone: (702) 486-3105  
Facsimile: (702) 486-3416  
E-Mail: [ceccles@ag.nv.gov](mailto:ceccles@ag.nv.gov)

# **EXHIBIT B**

# **EXHIBIT B**

1 CATHERINE CORTEZ MASTO  
 Attorney General of Nevada  
 2 CHRISTOPHER ECCLES  
 Deputy Attorney General  
 3 555 East Washington Avenue, Suite 3900  
 Las Vegas, Nevada 89101  
 4 Telephone: (702) 486-3105  
 5 Facsimile: (702) 486-3416  
 E-Mail: [ceccles@ag.nv.gov](mailto:ceccles@ag.nv.gov)

7 **BEFORE THE NEVADA STATE ATHLETIC COMMISSION**

8 \* \* \*

9 **IN THE MATTER OF:**

10 **NICK DIAZ**

) **COMPLAINT FOR**  
 ) **DISCIPLINARY ACTION**  
 ) **AND NOTICE OF HEARING**  
 )

12 KEITH KIZER, Executive Director for the ATHLETIC COMMISSION of the  
 13 DEPARTMENT OF BUSINESS AND INDUSTRY, STATE OF NEVADA, complains for  
 14 disciplinary action against NICK DIAZ (DIAZ), as follows:

15 **JURISDICTION**

- 16 1. DIAZ is now, and was at all pertinent times alleged herein, licensed in Nevada as a  
 17 professional mixed martial artist by the NEVADA STATE ATHLETIC COMMISSION  
 18 (Commission).
- 19 2. As the holder of a Nevada professional mixed martial artist's license, DIAZ is subject to  
 20 the provisions of Chapter 467 of the Nevada Revised Statutes (NRS), and of Chapter  
 21 467 of the Nevada Administrative Code (NAC).
- 22 3. Pursuant to NRS Chapter 467, the Commission is vested with the sole discretion,  
 23 management, control and jurisdiction over contests, exhibitions and licensees of  
 24 unarmed combat, which includes mixed martial arts.

25 **FACTUAL ALLEGATIONS**

- 26 4. On April 18, 2007, the Commission, by unanimous decision, suspended DIAZ's mixed  
 27 martial artist's license for a period of six months after the presence of Delta-9-THC  
 28 Carboxylic Acid, the major metabolite of Delta-9-THC (the active ingredient in

1 marijuana), was detected in DIAZ's urine following his February 24, 2007 mixed martial  
2 arts contest in Las Vegas, Nevada.

3 5. After serving the suspension and paying a fine, DIAZ participated in a professional  
4 mixed martial arts contest in Las Vegas, Nevada on February 4, 2012, which he lost by  
5 unanimous decision (the "Contest"). The Contest was conducted under the direction of  
6 the Commission.

7 6. Immediately after the Contest, on the same date, DIAZ voluntarily submitted to a  
8 urinalysis (the "Urinalysis") and provided a urine sample for testing.

9 7. The Urinalysis reflects a positive result for the presence of Marijuana Metabolites,  
10 which are prohibited by the regulations of the Commission. The results of the  
11 Urinalysis are reflected in the Laboratory Report, attached hereto as Exhibit 1.

12 8. The administration of or use of any drug that has not been approved by the  
13 Commission by a Nevada licensed mixed martial artist is prohibited by the regulations  
14 of the Commission.

### 15 ALLEGED VIOLATIONS

16 9. Based upon and incorporating by reference the foregoing Factual Allegations, the  
17 Executive Director alleges that DIAZ violated Nevada Administrative Code (NAC)  
18 467.850. NAC 467.850(1), (2), (5) and (6) provide as follows:

- 19 1. The administration of or use of any:  
20 (a) Alcohol;  
21 (b) Stimulant; or  
22 (c) Drug or Injection that has not been approved by the  
23 commission, including, but not limited to, the drugs or  
24 injections listed in subsection 2,  
25 In any part of the body, either before or during a contest or  
26 exhibition, to or by any unarmed combatant, is prohibited.

- 27 2. The following types of drugs, injections or stimulants are  
28 prohibited pursuant to subsection 1:

...  
(f) Any drug identified on the most current edition of the  
*Prohibited List* published by the World Anti-Doping Agency,  
which is hereby adopted by reference. The most current  
edition of the *Prohibited List* may be obtained, free of charge, at  
the Internet address [www.wada-ama.org](http://www.wada-ama.org).

5. A unarmed combatant shall submit to a urinalysis or chemical test before or after a contest if the commission or the commission's representative directs him to do so.

6. A licensee who violates any provision of this section is subject to disciplinary action by the commission. In addition to any other disciplinary action by the Commission, if an unarmed combatant who won or drew a contest or exhibition is found to have violated the provisions of this section, the Commission may, in its sole discretion, change the result of that contest or exhibition to a no decision.

10. Marijuana Metabolites are not drugs approved by the Commission.

11. NAC 467.886 provides in pertinent part as follows:

A person licensed by the commission shall not engage in any activity that will bring disrepute to unarmed combat ....

12. By testing positive for Marijuana Metabolites, DIAZ has violated NAC 467.850 and 467.886.

#### DISCIPLINE AUTHORIZED

13. NRS 467.157 provides that, "Any license issued under this chapter may be revoked for cause deemed sufficient by the commission upon a hearing provided for in NRS 467.113."

14. NRS 467.158(2)-(4) provide in full as follows:

2. If disciplinary action is taken against a person pursuant to this chapter, including, but not limited to, a hearing for the revocation of a license, and the disciplinary action relates to:

(a) The preparation for a contest or an exhibition of unarmed combat;

(b) The occurrence of a contest or an exhibition of unarmed combat; or

(c) Any other action taken in conjunction with a contest or an exhibition of unarmed combat, the commission may prescribe a penalty pursuant to subsection 3.

3. A penalty prescribed by the commission pursuant to subsection 2:

(a) Must not exceed \$250,000 or 100 percent of the share of the purse to which the holder of the license is entitled for the contest or exhibition, whichever amount is greater; and

(b) May be imposed in addition to or in lieu of any other disciplinary action that is taken against the person by the commission.

4. If disciplinary action is taken against a person pursuant to this chapter, the commission may require the person against whom

such action is taken to pay the costs of the proceeding, including investigative costs and attorney's fees.

15. NAC 467.885(2) and (5) provide in full as follows:

The commission may suspend or revoke the license of, or otherwise discipline or take any combination of such actions against a licensee who has, in the judgment of the commission:

2. Violated any provision of this chapter [467];

5. Conducted himself at any time or place in a manner which is deemed by the commission to reflect discredit to unarmed combat ....

#### RELIEF SOUGHT

16. Based upon the allegations contained herein which constitute sufficient cause for disciplinary action against the licensee pursuant to the provisions of NRS Chapter 467 and NAC Chapter 467, the Executive Director prays for relief as follows:

A. That DIAZ be fined a monetary sum pursuant to the parameters defined at NRS 467.158;

B. That the Commission take action against DIAZ's license pursuant to the parameters defined at NAC 467.885;

C. That DIAZ pay the costs of the proceeding, including investigative costs and attorney's fees;

D. That DIAZ provide the Commission with a negative urine test for prohibited substances upon filing his next application for an unarmed combatant's license; and

E. For such other and further relief as the Commission may deem just and proper.

1 NOTICE OF HEARING

2 THEREFORE, DIAZ is directed to answer in writing the Complaint for Disciplinary  
3 Action within 20 days from service. Thereafter a hearing into this matter will be scheduled at  
4 the offices of the Nevada Athletic Commission, 555 East Washington Avenue, Suite 3200, Las  
5 Vegas, Nevada 89101, or such other place as may be designated, in writing, by the  
6 Commission. The Commission will, at that time, take such action as may be just and proper  
7 pursuant to the proof and pertinent laws.

8 DIAZ is entitled to be represented by counsel of his choice at the hearing. Additionally,  
9 DIAZ is entitled to cross-examine witnesses, present evidence and argue on his behalf before  
10 a decision is made by the Commission. If DIAZ fails to appear at the hearing, a decision may  
11 be reached in his absence.

12 DATED this 8<sup>th</sup> day of February, 2012.

13 FOR THE NEVADA ATHLETIC COMMISSION,  
14 DEPARTMENT OF BUSINESS AND INDUSTRY,  
STATE OF NEVADA

15  
16 By: 

17 KEITH KIZER  
Executive Director

18  
19 SUBMITTED BY:

20 CATHERINE CORTEZ MASTO  
21 Attorney General of Nevada

22 By: 

23 CHRISTOPHER ECCLES  
24 Deputy Attorney General  
25  
26  
27  
28



**CERTIFICATE OF SERVICE**

I hereby certify that on the 8<sup>th</sup> day of February 2012, I served the foregoing COMPLAINT FOR DISCIPLINARY ACTION AND NOTICE OF HEARING, AND NOTICE OF COMPLAINT AND OBLIGATION TO ANSWER COMPLAINT by depositing a copy of the same in the United States mail, properly addressed, postage prepaid, REGULAR MAIL and CERTIFIED MAIL addressed as follows:

NICK DIAZ  
3764 MASSIMO CIR.  
STOCKTON, CA 95212

Certified Mail No. 7005 0390 0000 0411 8828

  
An Employee of the Nevada State Athletic Commission's Office

Attorney General's Office  
555 E. Washington, Suite 3900  
Las Vegas, NV 89101

7005 0390 0000 0411 8828

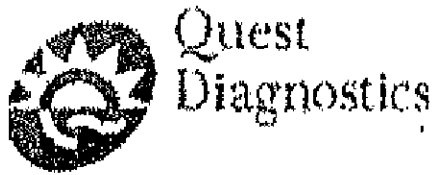
U.S. Postal Service  
**CERTIFIED MAIL™ RECEIPT**  
(Domestic Mail Only. No Insurance Coverage Provided)  
For delivery information visit our website at [www.usps.com](http://www.usps.com)

Postage	\$ 6.74	NO Complaint
Certified Fee	2.95	
Return Receipt Fee (Endorsement Required)	2.30	
Restricted Delivery Fee (Endorsement Required)	LL	
Total Postage & Fees	\$ 5.81	

Sent To: Nick Diaz  
Street, Apt. No., or PO Box No. 3764 Massimo Circle  
City, State, ZIP+4 Stockton, CA 95212

AS Form 3800, June 2002 See Reverse for Instructions

# EXHIBIT 1



2/7/2012 10:54:11 AM

## Drug Detail Report

### PATIENT INFORMATION

NICHOLAS DIAZ

Quest Diagnostics Employer Solutions  
Customer Care: 800-877-7484

Primary ID: 4101431

### SPECIMEN INFORMATION

REQUISITION: 4101431  
LAB REF NO: 261899X  
COLLECTED: 2/4/2012 23:59  
RECEIVED: 2/6/2012 04:46  
REPORTED: 2/7/2012 07:05  
DOCUMENT ID:

### CLIENT INFORMATION

42024347  
NV STATE ATHLETIC COMM  
555 E WASHINGTON  
LAS VEGAS, NV 89101

Reason: OTHER -- TITLE FIGHT

\*\*\* POSITIVE/ABNORMAL REPORT \*\*\*

Tests Ordered: 20756N

### Integrity Checks

### Acceptable Range

CREATININE	42.2 mg/dL	>= 20 mg/dL
pH	6.0	4.5-8.9
OXIDIZING ADULTERANTS	Negative	

### Substance Abuse Panel

Initial	GC/MS Confirm
Test Level	Test Level

AMPHETAMINES	Negative	1000 ng/mL	500 ng/mL
BARBITURATES	Negative	300 ng/mL	200 ng/mL
BENZODIAZEPINES	Negative	300 ng/mL	200 ng/mL
COCAINE METABOLITES	Negative	300 ng/mL	150 ng/mL
MARIJUANA METABOLITES	POSITIVE	50 ng/mL	15 ng/mL
METHADONE	Negative	300 ng/mL	200 ng/mL
OPIATES	Negative	300 ng/mL	300 ng/mL
OXYCODONES	Negative	100 ng/mL	100 ng/mL
PHENCYCLIDINE	Negative	25 ng/mL	25 ng/mL
PROPOXYPHENE	Negative	300 ng/mL	200 ng/mL

CERTIFYING SCIENTIST: KSJM08

SPECIMEN RECEIVED AND PROCESSED IN THE

LAB: Quest Diagnostics-Lenexa  
10101 Renner Blvd  
Lenexa KS 66219

### ADDITIONAL COMMENTS:

Test Type: TITLE FIGHT mapped to OTHR

1 CATHERINE CORTEZ MASTO  
Attorney General  
2 CHRISTOPHER ECCLES  
Deputy Attorney General  
3 Nevada Bar No. 9798  
4 555 East Washington Avenue, Suite 3900  
Las Vegas, Nevada 89101  
5 Telephone: (702) 486-3105  
Facsimile: (702) 486-3416  
6 E-mail: [ceccles@ag.nv.gov](mailto:ceccles@ag.nv.gov)

7 BEFORE THE NEVADA STATE ATHLETIC COMMISSION

\* \* \*

8 IN THE MATTER OF:

9 NICK DIAZ

)  
) NOTICE OF HEARING  
) ON TEMPORARY SUSPENSION

10  
11 NOTICE OF HEARING


12 A meeting of the Nevada State Athletic Commission (Commission) has been scheduled for  
13 Wednesday, February 22, 2012, at 9:30 a.m. Pacific Time, at the Grant Sawyer Building, 555 East  
14 Washington Avenue, Suite 3200, Las Vegas, Nevada 89101. The domestic call-in telephone  
15 number for the meeting is 1-877-873-8018, and the access code is 9001021#. International  
16 callers must call the Commission's conference telephone at (702) 486-2584. If you have difficulty  
17 accessing the meeting via the above telephone numbers, please call the Commission's office at  
18 (702) 486-2575 for assistance. This matter is included as an action item on the Commission's  
19 agenda. The Commission will, at that time, take action pursuant to the proof and pertinent laws,  
20 including Nevada Revised Statutes Chapter 467 and Nevada Administrative Code Chapter 467.

21 Diaz is entitled to be represented by counsel of his choice at the hearing. Diaz is entitled to  
22 cross-examine witnesses, present evidence, and argue on his behalf regarding the issue of  
23 temporary suspension before a decision is made by the Commission. If Diaz fails to appear at the  
24 hearing, a decision may be reached in his absence.

25 Dated: February 8, 2012.

26 Respectfully submitted by:

27 By:

  
28 Christopher Eccles  
Deputy Attorney General

**CERTIFICATE OF SERVICE**

I certify that on the 8<sup>th</sup> day of February 2012, I served the **NOTICE OF HEARING ON TEMPORARY SUSPENSION** by depositing a copy of the same in the United States mail, properly addressed, postage prepaid, **CERTIFIED MAIL**, and **REGULAR MAIL** addressed as follows:

NICK DIAZ  
3764 MASSIMO CIR.  
STOCKTON, CA 95212

Certified Mail No. 7005 0390 0000 0411 8828

  
An Employee of the Nevada State Athletic Commission's Office

# EXHIBIT C

# EXHIBIT C



Brian Sandoval  
**Governor**

STATE OF NEVADA  
DEPARTMENT OF BUSINESS AND INDUSTRY  
**ATHLETIC COMMISSION**

Keith Kizer  
**Executive Director**

**Chairman: Skip Avansino**  
**Members:** Francisco V. Aguilar, Bill Brady, T. J. Day, Pat Lundvall

**Minutes of February 22, 2012 Meeting:**

A duly authorized telephone meeting of the Nevada State Athletic Commission was held on **February 22, 2012**, at 9:00 a.m. at the Grant Sawyer State Office Building, 555 East Washington Avenue, Suite 3200, Third Floor, Las Vegas, Nevada 89101.

1. Call to order. Chairman Avansino called the meeting to order.
2. Roll Call. Keith Kizer called the roll. Those commissioners attending were Francisco Aguilar, T.J. Day, Pat Lundvall and Chairman Skip Avansino. Attending on behalf of the Attorney General's office were Deputy Attorneys General Christopher Eccles and Vivienne Rakowsky. Dr. Timothy Trainor, the Commission Consulting Research Physician, was on the telephone. The recording secretary was Olive Aure.
3. Public comment. None.
4. Adoption of the agenda for this meeting, *for possible action*. Mr. Kizer stated that New Business Item #3 is cancelled and New Business Item #6 is postponed until the next meeting due to a move of event venue. **Commissioner Lundvall made a motion for the adoption of the agenda as amended, seconded by Commissioner Aguilar and unanimously approved.**
5. Disclosures per NRS 281/281A. None.

**NEW BUSINESS:**

1. Request by boxer Lanardo Tyner for a license per NAC 467.017 (attained the age of 35 years or over), *for possible action*. (Record 25-6-2). Mr. Tyner was on the telephone. Mr. Kizer stated that the Commission has Mr. Tyner's application, record, and clearance letter from Dr. Trainor. Dr. Trainor said from a medical standpoint, everything checked out fine. Mr. Tyner said that his training regimen is normally 3 hours a day of shadow boxing, hitting the bag, and running. Commissioner Lundvall asked if he had been knocked out in any of his losses and Mr. Tyner said he had not. **Commissioner Lundvall made a motion for approval, seconded by Commissioner Day and unanimously approved.**
2. Request by Golden Boy Promotions for the date of February 24, 2012 to promote a professional boxing event at the Hard Rock Hotel in Las Vegas and to be shown on Showbox, *for possible action*. **Commissioner Day made a motion for approval, seconded by Commissioner Aguilar and unanimously approved.**
3. Request by Joey Gilbert Promotions dba Sports Entertainment Unlimited for the date of March 3, 2012 to promote a professional and amateur mixed martial event at the Reno Ballroom in Reno, *for possible action*. **CANCELLED.**

4. Request by Millennium Events for the date of April 13, 2012 to promote a professional boxing event at the Hard Rock Hotel in Las Vegas and to be shown on ESPN2, *for possible action*. **Commissioner Day made a motion for approval, seconded by Commissioner Aguilar and unanimously approved.**
5. Request by Top Rank for the date of April 14, 2012 to promote a professional boxing event at the Mandalay Bay Events Center in Las Vegas and to be shown on HBO, *for possible action*. **Commissioner Day made a motion for approval, seconded by Commissioner Aguilar and unanimously approved.**
6. Request by Golden Boy Promotions for the date of May 4, 2012 to promote a professional boxing event at the MGM Grand Ballroom in Las Vegas, *for possible action*. **Postponed to next meeting due to change of venue.**
7. Request by Golden Boy Promotions for the date of May 5, 2012 to promote a professional boxing event at the MGM Grand Garden Arena in Las Vegas and to be shown on PPV, *for possible action*. **Commissioner Day made a motion for approval, seconded by Commissioner Aguilar and unanimously approved.**
8. Request by Golden Boy Promotions for the date of May 19, 2012 to promote a professional boxing event at the Mandalay Bay Events Center in Las Vegas and to be shown on HBO, *for possible action*. **Commissioner Day made a motion for approval, seconded by Commissioner Aguilar and unanimously approved.**
9. Request by Zuffa, LLC for the date of May 26, 2012 to promote a professional mixed martial arts event at the MGM Grand Garden Arena in Las Vegas and to be shown on PPV, *for possible action*. **Commissioner Day made a motion for approval, seconded by Commissioner Aguilar and unanimously approved.**
10. Request by Top Rank for the date of June 8, 2012 to promote a professional boxing event at the Mandalay Bay Ballroom in Las Vegas, *for possible action*. **Commissioner Day made a motion for approval, seconded by Commissioner Aguilar and unanimously approved.**
11. Request by Top Rank for the date of June 9, 2012 to promote a professional boxing event at the Mandalay Bay Events Center in Las Vegas and to be shown on PPV, *for possible action*. **Commissioner Day made a motion for approval, seconded by Commissioner Aguilar and unanimously approved.**
12. Request by Zuffa, LLC for the date of July 7, 2012 to promote a professional mixed martial arts event at the MGM Grand Garden Arena in Las Vegas and to be shown on PPV, *for possible action*. **Commissioner Day made a motion for approval, seconded by Commissioner Aguilar and unanimously approved.**
13. Request by King of the Cage for the date of March 3 and June 2, 2012 to promote amateur mixed martial events at the Eastside Cannery in Las Vegas, *for possible action*. **Commissioner Day made a motion for approval, seconded by Commissioner Aguilar and unanimously approved.**
14. Request by Let's Get It On Promotions for the dates of March 16, 2012 to promote an amateur mixed martial event at Harrah's Reno, *for possible action*. **Commissioner Day made a motion for approval, seconded by Commissioner Aguilar and unanimously approved.**
15. Request by Ultimate Reno Combat for the date of March 23, 2012 to promote an amateur mixed martial event at the Knitting Factory Concert House in Reno, *for possible action*. **Commissioner Day made a motion for approval, seconded by Commissioner Aguilar and unanimously approved.**
16. Request by Arce Boxing for a grant from NRS 467.108 for travel to Las Vegas to participate in the Italian American Super Club Event on December 17-18, 2011 for 6 boxers and 1 coach for per diem of \$280 and mileage reimbursement of \$240, total of **\$520.00**, *for possible action*. **Commissioner Lundvall made a motion for approval, seconded by Commissioner Day and unanimously approved.**



17. Request by Mity Mites for a grant from NRS 467.108 for travel to Pacifica, CA to participate in the Beautiful Brawlers at Pacifica Moose Lodge on September 10, 2011 for 2 female boxers, 1 coach, and 1 chaperone for per diem of \$80, car rental of 59.41, and fuel reimbursement of \$67.45, total of **\$206.86**, *for possible action*. **Commissioner Lundvall made a motion for approval, seconded by Commissioner Day and unanimously approved.**
18. Request by Mity Mites for a grant from NRS 467.108 for travel to San Francisco, CA to participate in the Ring of Fire Boxing Club Invitational on October 01, 2011 for 3 boxers and 1 coach for per diem of \$80, mileage reimbursement of \$111.50, total of **\$191.50**, *for possible action*. **Commissioner Lundvall made a motion for approval, seconded by Commissioner Day and unanimously approved.**
19. Request by Richard Steele Boxing Club for a grant from NRS 467.108 for travel to Pasadena, CA to participate in the 2012 Regional Silver Gloves at Victory Park on January 5-8, 2012 for 3 boxers, 2 coaches, and 1 chaperone for per diem of \$480, hotel expenses of \$1,168.95, and fuel reimbursement of \$189.84, total of **\$1,838.79**, *for possible action*. **Commissioner Lundvall made a motion for approval, seconded by Commissioner Day and unanimously approved.**
20. Request by Mity Mites for a grant from NRS 467.108 for travel to Toledo, Ohio to participate in the 37<sup>th</sup> Annual National P.A.L. Tournament hosted by Toledo-Lucas County Police Athletic League on October 01-08, 2011 for 4 boxers and 1 coach for per diem of \$540, hotel expenses of \$754.24, car rental and fuel reimbursement of \$666.80, and airfare and bag fees of \$1,704, total of **\$3,665.04**, *for possible action*. Mr. Kizer recommended \$2,000 per Commission's guideline. **Commissioner Lundvall made a motion for approval of \$2,000, seconded by Commissioner Day and unanimously approved.**
21. Request for approval by Zuffa, LLC for permission to exceed the 4% limit per NAC 467.332 on 380 complimentary tickets on February 4, 2012 at Mandalay Bay Events Center in Las Vegas for donation, given to Nellis Air Force Base and Boys Town of Nevada, *for possible action*. **Commissioner Lundvall made a motion for approval, seconded by Commissioner Aguilar and unanimously approved.**
22. Request for approval by Tuff-N-Uff for permission to exceed the 4% limit per NAC 467.332 on 700 complimentary tickets on January 27, 2012 at the South Point Arena in Las Vegas for donation, given to Nellis Air Force Base, Las Vegas Metropolitan Police Department, and Clark County Fire Department, *for possible action*. **Commissioner Lundvall made a motion for approval, seconded by Commissioner Aguilar and unanimously approved.**
23. Request for temporary suspension against boxer Michael Ruiz, Jr., *for possible action*. Mr. Eccles said that Mr. Ruiz is a boxer licensed by the Commission and participated on January 20, 2012, where he lost by technical knockout. Before the bout, on the same day, Mr. Ruiz voluntarily submitted to a urinalysis for testing. The result of the urinalysis reflected a presence of the diuretic Furosemide. Mr. Eccles asked the Commission to grant the temporary suspension request. **Commissioner Lundvall made a motion for approval of Mr. Ruiz temporary suspension, seconded by Commissioner Aguilar and unanimously approved.**
24. Request for temporary suspension against mixed martial artist Nicholas Diaz, *for possible action*. Mr. Eccles stated that there was a prior disciplinary hearing and Diaz was fined and suspended by the Nevada Athletic Commission on April 18, 2007 after the presence of marijuana metabolite was detected after his February 2007 contest. Mr. Diaz is licensed by the Commission and he participated in a mixed martial arts contest on February 4, 2012 in Las Vegas, Nevada, which he lost by unanimous decision. Immediately after the contest, he voluntarily submitted to a urine test for testing. The result came back positive for marijuana metabolites. Mr. Eccles asked the Commission to grant the temporary suspension request. Commissioner Lundvall requested Mr. Diaz's full application, and Chairman Avansino asked for the minutes of the April, 2007 meeting. **Commissioner Lundvall made a motion for approval of temporary suspension of Mr. Diaz, seconded by Commissioner Day and unanimously approved.**

**PUBLIC COMMENT: None.**

**CHAIRMAN'S REPORT:** Chairman Avansino will work with Mr. Kizer on (1) additional training of officials, (2) an updated letter to go out to all licensed fighters regarding out-of-competition testing, and (3) the subject of testosterone testing.

**MATTERS FOR FUTURE AGENDAS:** Mr. Kizer said there are some unique medical issues that need to be referred to Medical Advisory Committee.

**ADJOURNMENT:** *For possible action.* Commissioner Aguilar made a motion for adjournment, seconded by Commissioner Day and unanimously approved. Chairman Avansino adjourned the meeting.

**RESPECTFULLY SUBMITTED:**

**KEITH KIZER, EXECUTIVE DIRECTOR**

**APPROVED BY:**

**SKIP AVANSINO, CHAIRMAN**

# **EXHIBIT D**

# **EXHIBIT D**

1 **RESP**  
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 Respondent Nick Diaz

**RECEIVED**

MAR 07 2012

**ATHLETIC COMM.**

8 **BEFORE THE NEVADA STATE ATHLETIC COMMISSION**

10 \*\*\*

11 **IN THE MATTER OF:**

12 **NICK DIAZ**

) **RESPONSE TO COMPLAINT FOR**  
) **DISCIPLINARY ACTION BASED ON THE**  
) **DETECTION OF CARBOXYLIC ACID**  
) **(A NON-PROHIBITED SUBSTANCE)**

13 \_\_\_\_\_  
14  
15 COMES NOW, Respondent NICK DIAZ, by and through its attorney of record, ROSS C.  
16 GOODMAN, ESQ., of the Goodman Law Group, P.C., and submits this Response and  
17 Memorandum of Points and Authorities for consideration before the Nevada State Athletic  
18 Commission ("NSAC").

19 **MEMORANDUM OF POINTS AND AUTHORITIES**

20 **I.**

21 **INTRODUCTION**

22  
23 Nick Diaz ("Diaz") is an authorized medical marijuana patient. As such, he did not test  
24 positive for marijuana (which is viewed as a prohibited substance if used without a medical  
25 marijuana license). Rather, Mr. Diaz tested for the presence of the *inactive* metabolite of  
26 marijuana known as THC-Carboxylic Acid ("Carboxylic Acid"). Under Nevada law and in Mr.  
27 Diaz's home state of California, however, neither marijuana nor marijuana metabolite is  
28

1 considered a prohibited substance for users of medical marijuana.

2 In addition, the World Anti-Doping Agency ("WADA") only prohibits marijuana "in-  
3 competition" but not "out-of-competition." In preparation of the fight at issue, Mr. Diaz  
4 followed his general practice of stopping the use of medical marijuana eight (8) days before a  
5 fight. In WADA's view, marijuana consumption "out-of-competition" and marijuana  
6 metabolites in general, such as the detection of Carboxylic Acid in Mr. Diaz's post-fight urine  
7 test, do not violate the policy prohibiting substances that are considered performance enhancing  
8 or potentially dangerous.  
9

10 As an authorized medical marijuana patient, Mr. Diaz's consumption is legal in both  
11 Nevada and California. Notably, WADA's limits on marijuana "in-competition", and the  
12 exclusion of marijuana metabolite in general, have been adopted by the NSAC. Accordingly, the  
13 presence of a marijuana metabolite is not a prohibited substance under NAC 487.850 and should  
14 not, therefore, serve as a basis for any disciplinary action.  
15

## 16 II.

### 17 ANALYSIS

#### 18 A. Marijuana Metabolite Is Not Defined As a Prohibited Substance For 19 Legal Users of Medical Marijuana.

20 In 2001, Nevada legalized the use of medical marijuana. See NRS 453A.200. This  
21 exempted persons possessing valid registry identification cards from state prosecution for using  
22 medical marijuana. Id. In 2009, Nevada moved in line with other states with medical marijuana  
23 laws by excluding marijuana and marijuana metabolites as a "prohibited substance":  
24

#### 25 484C.080. "Prohibited substance" defined

26 "Prohibited substance" means any of the following substances *if*  
27 *the person who uses the substance has not been issued a valid*  
28 *prescription* to use the substance and the substance is classified in  
schedule I or II pursuant to NRS 453.166 or 453.176 when it is  
used:

1                   5. *Marijuana or marijuana metabolite.*

2       See NRS 484C.080 (emphasis added).

3               This plain language makes clear that marijuana and marijuana metabolites found in the  
4       body as a result of legal consumption are not considered prohibited substances. Here, Mr. Diaz's  
5       physician approved the use of marijuana to treat Attention Deficit Hyperactivity Disorder  
6       ("ADHD").<sup>2</sup> See Affidavit by Nick Diaz attached as Exhibit "A." As a result, the presence of  
7       Carboxylic Acid (a non-prohibited substance) cannot serve as a basis for discipline.  
8

9               **B. The Legal Consumption of Marijuana Out-of-Competition Is Not Prohibited.**

10              1. *WADA Makes Two Important Limitations For Marijuana.*

11             WADA is an independent agency monitoring drug use in sports and has promulgated an  
12       International Standard. See WADA's Prohibited List attached as Exhibit "B." The NSAC, as  
13       well as other regulatory bodies, have adopted the International Standard classifying prohibited  
14       substances in categories of "in-competition," "out-of-competition" and "in particular sports." Id;  
15       See NAC 467.850 (2)(f) (any drug identified by WADA on its *Prohibited List* is "adopted by  
16       reference").  
17

18             Such substances as anabolic steroids, growth hormones (GH) and diuretics are  
19       prohibited "at all times" compared to marijuana which is prohibited only "in-competition." Id.  
20       In evaluating marijuana, WADA permits such use "out-of-competition" but prohibits such use  
21       "in-competition." The category for *Substances Prohibited In-Competition* includes:  
22

23               **S8. CANNABINOIDS**

24               Natural (e.g. cannabis, hashish, marijuana) or synthetic delta 9-  
25       tetrahydrocannabinol (THC) and cannabimimetics [e.g. "Spice"  
26       (containing JWH018, JWH073), HU-210] are prohibited.

27       <sup>2</sup> NSAC has permitted exemptions for many pharmaceutical drugs with longer-lasting and more serious  
28       effects than marijuana such as opioids and anti-depressants. Notably, DIAZ stopped using medical  
      marijuana eight (8) days before the fight and, therefore, did not seek an exemption.

1 Id.

2  
3 Notably, WADA's International Standard does not prohibit marijuana metabolite in *any*  
4 category. In part, WADA recognizes the long detection period associated with marijuana  
5 metabolites may extend weeks and even months after consumption.<sup>3</sup> See Affidavit of John Hiatt,  
6 Ph.D. and Curriculum Vitae attached as Exhibit "C." In addition, marijuana metabolite is not a  
7 psychoactive substance and not classified by the Pharmacy Board as a Schedule I or II substance.  
8 By way of adopting WADA's International Standard, the NSAC should similarly find that the  
9 presence of Carboxylic Acid is not a prohibited substance.  
10

11 2. *NSAC Adopts WADA's Limitations.*

12 The NSAC has adopted the two limitations promulgated by WADA: (1) marijuana is  
13 prohibited only "in-competition"; and (2) excluding marijuana metabolites as a prohibited  
14 substance. See NAC 467.850 (2)(f). The evaluation by WADA finds a substance prohibited  
15 only if it meets two of the three criteria:  
16

- 17 (1) It has the potential to enhance or enhances sport performance;  
18 (2) It represents an actual or potential health risk to the athlete;  
19 (3) It violates the spirit of sport

20 See Exh. "A."

21 Mr. Diaz's general practice of discontinuing medical marijuana eight (8) days before a  
22 fight eliminated the possibility of any behavioral and psychological effects associated with the  
23

24 <sup>3</sup> Edward J. Cone & Marilyn A. Huestis, Relating Blood Concentrations of Tetrahydrocannabinol and  
25 Metabolites to Pharmacologic Effects and Time of Marijuana Usage, 15 Therapeutic Drug Monitoring  
26 527 (1993); Marilyn A. Huestis & Edward J. Cone, Differentiating New Marijuana Use From Residual  
27 Drug Excretion in Occasional Marijuana Users, 22 J. Analytical Toxicology 445, 453 (1998); Marilyn A.  
28 Huestis et al., Blood Cannabinoids II: Models for Prediction of Time of Marijuana Exposure from Plasma  
Concentrations of <<DELTA>><sup>9</sup>-Tetrahydrocannabinol (THC) and 11-nor-9-carboxy-<<DELTA>><sup>9</sup>-  
tetrahydrocannabinol (THCCOOH), 16 J. Analytical Toxicology 283, 287-89 (1992); One study reported  
detection seventy-seven days after use at a cutoff level of 20ng/mL THCCOOH. Huestis et al., Detection  
Times, at 444.

1 active ingredient of marijuana (THC) which typically lasts a few hours.<sup>4</sup> See Exh. "A" and "C."  
2 As it relates to the marijuana metabolite at issue, there is no medical or scientific evidence to  
3 support that Carboxylic Acid is performance enhancing or unsafe. As such, there is no policy  
4 advanced by prohibiting marijuana metabolite resulting from legal consumption eight (8) day  
5 before the fight.  
6

7 3. *The Long Detection Window Makes Marijuana Different from*  
8 *Other Prohibited Substances.*

9 The active ingredient of marijuana (THC) upon ingestion is immediately circulated  
10 throughout the body where it is preferentially absorbed by fat tissues because of its chemical  
11 properties.<sup>5</sup> See Exh. "C". THC resulting from the regular use of medical marijuana is typically  
12 sequestered for long periods of time.<sup>6</sup> Id. In this post-fight urine test, the presence of Carboxylic  
13 Acid may have been elevated by two additional physiological factors not present in recent fights:  
14 (1) the increased physical exertion associated with five rounds compared to much shorter fights  
15 of 2011 e.g., Evangelista Santos (2 rounds), Paul Daley (1 round) and B.J. Penn (3 rounds); and  
16 (2) DIAZ's uncharacteristic ten pound weight loss compared to an average weight loss of two  
17 pounds the day before weigh-ins. Id. The interplay of these physiological factors together with  
18 the long detection time for medical marijuana users further explains why WADA (and by  
19 adoption NSAC) does not consider metabolites as a prohibited substance.  
20  
21  
22

---

23 <sup>4</sup> The behavioral and psychological effects of THC are perceptible within minutes of smoking marijuana;  
24 they achieve their peak within ten to thirty minutes, last roughly two hours, and are mostly gone within  
25 three to five hours. U.S. Dep't of Transp., Drugs and Human Performance Fact Sheets (2004);  
26 Metabolites Marilyn A. Huestis et al., Detection Times of Marijuana in Urine by Immunoassay and GC-  
27 MS, 19 J. Analytical Toxicology 443, 444 (1995) [hereinafter Huestis et al., Detection Times].

28 <sup>5</sup> See Huestis *et al.*, Blood Cannabinoids I at 276.

<sup>6</sup> See U.S. Dep't of Transp., at 91.



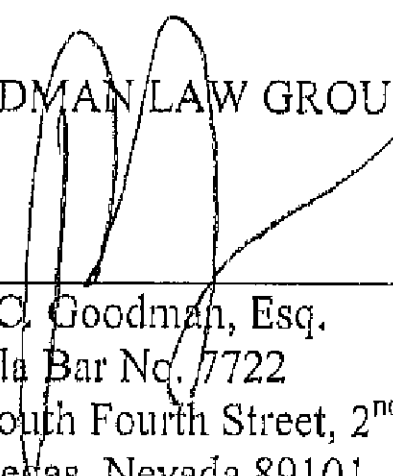
III.

CONCLUSION

In WADA's view, as adopted by the NSAC, marijuana consumption "out-of-competition" and marijuana metabolites in general, are not considered performance enhancing or unsafe. The policy reasons making such limitations is even more persuasive when detection of marijuana metabolites results from the legal use of medical marijuana eight (8) before the fight. As such, Mr. Diaz did not test positive for a prohibited substance under NAC 487.850 and it is submitted should not be subject to any discipline.

Dated this 5 day of March, 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 Respondent Nick Diaz

# **EXHIBIT “A”**

AFFIDAVIT OF NICK DIAZ

STATE OF CALIFORNIA                     )  
  : ss.  
COUNTY OF SAN JOAQUIN             )


COMES NOW, NICK DIAZ, and being first duly sworn, swears and deposes as follows:

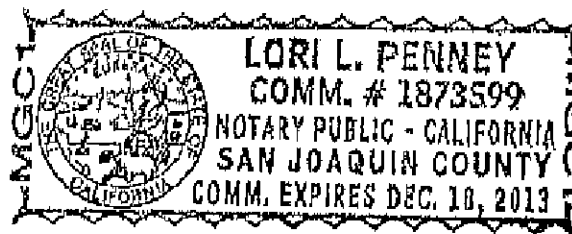
1. I have been diagnosed with Attention Deficit Hyperactivity Disorder ("ADHD").
2. My physician, Robert E. Sullivan, M.D., (CA License G31309), approved the use of medical marijuana to treat ADHD.
3. I am in full compliance with the registry laws for medical marijuana in California.
4. As part of my general practice, I discontinue using medical marijuana eight (8) days before a fight.
5. Consistent with this general practice, I discontinued use of medical marijuana eight (8) days before the fight which is the subject of this Complaint.
6. The day before weigh-ins, I had to lose a substantial amount of weight (10 pounds).
7. In addition, this five round fight required increased physical exertion compared to the three (3) shorter fights of 2011.

  
NICK DIAZ

SUBSCRIBED and SWORN TO before me

this 12<sup>th</sup> day March, 2012.

  
NOTARY PUBLIC in and for said  
County and State.



# **EXHIBIT “B”**



# The World Anti-Doping Code

# **THE 2012 PROHIBITED LIST INTERNATIONAL STANDARD**

The official text of the *Prohibited List* shall be maintained by WADA and shall be published in English and French. In the event of any conflict between the English and French versions, the English version shall prevail.

**This List shall come into effect on 1 January 2012**

# THE 2012 PROHIBITED LIST

## WORLD ANTI-DOPING CODE

Valid 1 January 2012

In accordance with Article 4.2.2 of the World Anti-Doping Code, all *Prohibited Substances* shall be considered as "Specified Substances" except Substances in classes S1, S2, S4.4, S4.5, S6.a, and *Prohibited Methods* M1, M2 and M3.

### SUBSTANCES AND METHODS PROHIBITED AT ALL TIMES (IN- AND OUT-OF-COMPETITION)

## PROHIBITED SUBSTANCES

### S0. NON-APPROVED SUBSTANCES

Any pharmacological substance which is not addressed by any of the subsequent sections of the List and with no current approval by any governmental regulatory health authority for human therapeutic use (e.g. drugs under pre-clinical or clinical development or discontinued, designer drugs, veterinary medicines) is prohibited at all times.

### S1. ANABOLIC AGENTS

Anabolic agents are prohibited.

#### 1. Anabolic Androgenic Steroids (AAS)

a. Exogenous\* AAS, including:

**1-androstenediol** (5 $\alpha$ -androst-1-ene-3 $\beta$ ,17 $\beta$ -diol ); **1-androstenedione** (5 $\alpha$ -androst-1-ene-3,17-dione); **bolandi**ol (estr-4-ene-3 $\beta$ ,17 $\beta$ -diol ); **bolasterone**; **boldenone**; **boldione** (androsta-1,4-diene-3,17-dione); **calusterone**; **clostebol**; **danazol** (17 $\alpha$ -ethynyl-17 $\beta$ -hydroxyandrost-4-eno[2,3-d]isoxazole); **dehydrochormethyltestosterone** (4-chloro-17 $\beta$ -hydroxy-17 $\alpha$ -methylandrosta-

1,4-dien-3-one); **desoxymethyltestosterone** (17 $\alpha$ -methyl-5 $\alpha$ -androst-2-en-17 $\beta$ -ol); **drostanolone**; **ethylestrenol** (19-nor-17 $\alpha$ -pregn-4-en-17-ol); **fluoxymesterone**; **formebolone**; **furazabol** (17 $\beta$ -hydroxy-17 $\alpha$ -methyl-5 $\alpha$ -androstano[2,3-c]-furazan); **gestrinone**; **4-hydroxytestosterone** (4,17 $\beta$ -dihydroxyandrost-4-en-3-one); **mestanolone**; **mesterolone**; **metenolone**; **methandienone** (17 $\beta$ -hydroxy-17 $\alpha$ -methylandrosta-1,4-dien-3-one); **methandriol**; **methasterone** (2 $\alpha$ , 17 $\alpha$ -dimethyl-5 $\alpha$ -androstane-3-one-17 $\beta$ -ol); **methyldienolone** (17 $\beta$ -hydroxy-17 $\alpha$ -methylestra-4,9-dien-3-one); **methyl-1-testosterone** (17 $\beta$ -hydroxy-17 $\alpha$ -methyl-5 $\alpha$ -androst-1-en-3-one); **methylnortestosterone** (17 $\beta$ -hydroxy-17 $\alpha$ -methylestr-4-en-3-one); **methyltestosterone**; **metribolone** (methyltrienolone, 17 $\beta$ -hydroxy-17 $\alpha$ -methylestra-4,9,11-trien-3-one); **mibolerone**; **nandrolone**; **19-norandrostenedione** (estr-4-ene-3,17-dione); **norboletone**; **norclostebol**; **norethandrolone**; **oxabolone**; **oxandrolone**; **oxymesterone**; **oxymetholone**; **prostanazol** (17 $\beta$ -hydroxy-5 $\alpha$ -androstano[3,2-c] pyrazole); **quinbolone**; **stanazolol**; **stenbolone**; **1-testosterone** (17 $\beta$ -hydroxy-5 $\alpha$ -androst-1-en-3-one); **tetrahydrogestrinone** (18 $\alpha$ -homo-pregna-4,9,11-trien-17 $\beta$ -ol-3-one); **trenbolone**; and other substances with a similar chemical structure or similar biological effect(s).

b. Endogenous\*\* AAS when administered exogenously:

**androstenediol** (androst-5-ene-3 $\beta$ ,17 $\beta$ -diol); **androstenedione** (androst-4-ene-3,17-dione); **dihydrotestosterone** (17 $\beta$ -hydroxy-5 $\alpha$ -androstan-3-one); **prasterone** (dehydroepiandrosterone, DHEA); **testosterone** and their metabolites and isomers, including but not limited to:

**5 $\alpha$ -androstane-3 $\alpha$ ,17 $\alpha$ -diol**; **5 $\alpha$ -androstane-3 $\alpha$ ,17 $\beta$ -diol**; **5 $\alpha$ -androstane-3 $\beta$ ,17 $\alpha$ -diol**; **5 $\alpha$ -androstane-3 $\beta$ ,17 $\beta$ -diol**; **androst-4-ene-3 $\alpha$ ,17 $\alpha$ -diol**; **androst-4-ene-3 $\alpha$ ,17 $\beta$ -diol**; **androst-4-ene-3 $\beta$ ,17 $\alpha$ -diol**; **androst-5-ene-3 $\alpha$ ,17 $\alpha$ -diol**; **androst-5-ene-3 $\alpha$ ,17 $\beta$ -diol**; **androst-5-ene-3 $\beta$ ,17 $\alpha$ -diol**; **4-androstenediol** (androst-4-ene-3 $\beta$ ,17 $\beta$ -diol); **5-androstenedione** (androst-5-ene-3,17-dione); **epi-dihydrotestosterone**; **epitestosterone**; **3 $\alpha$ -hydroxy-5 $\alpha$ -androstan-17-one**; **3 $\beta$ -hydroxy-5 $\alpha$ -androstan-17-one**; **7 $\alpha$ -hydroxy-DHEA**; **7 $\beta$ -hydroxy-DHEA**; **7-keto-DHEA**; **19-norandrosterone**; **19-noretiocholanolone**.

## 2. Other Anabolic Agents, including but not limited to:

**Clenbuterol**, **selective androgen receptor modulators (SARMs)**, **tibolone**, **zeranol**, **zilpaterol**.

*For purposes of this section:*

*\* "exogenous" refers to a substance which is not ordinarily capable of being produced by the body naturally.*

**\*\* "endogenous" refers to a substance which is capable of being produced by the body naturally.**

## **S2. PEPTIDE HORMONES, GROWTH FACTORS AND RELATED SUBSTANCES**

The following substances and their releasing factors are prohibited:

- 1. Erythropoiesis-Stimulating Agents [e.g. erythropoietin (EPO), darbepoetin (dEPO), hypoxia-inducible factor (HIF) stabilizers, methoxy polyethylene glycol-epoetin beta (CERA), peginesatide (Hematide)];**
- 2. Chorionic Gonadotrophin (CG) and Luteinizing Hormone (LH) in males;**
- 3. Insulins;**
- 4. Corticotrophins;**
- 5. Growth Hormone (GH), Insulin-like Growth Factor-1 (IGF-1), Fibroblast Growth Factors (FGFs), Hepatocyte Growth Factor (HGF), Mechano Growth Factors (MGFs), Platelet-Derived Growth Factor (PDGF), Vascular-Endothelial Growth Factor (VEGF) as well as any other growth factor affecting muscle, tendon or ligament protein synthesis/degradation, vascularisation, energy utilization, regenerative capacity or fibre type switching;**

and other substances with similar chemical structure or similar biological effect(s).

## **S3. BETA-2 AGONISTS**

All beta-2 agonists (including both optical isomers where relevant) are prohibited except salbutamol (maximum 1600 micrograms over 24 hours), formoterol (maximum 36 micrograms over 24 hours) and salmeterol when taken by inhalation in accordance with the manufacturers' recommended therapeutic regime.

The presence in urine of salbutamol in excess of 1000 ng/mL or formoterol in excess of 30 ng/mL is presumed not to be an intended therapeutic use of the substance and will be considered as an *Adverse Analytical Finding* unless the *Athlete* proves, through a controlled pharmacokinetic study, that the abnormal result was the consequence of the use of the therapeutic inhaled dose up to the maximum indicated above.



#### **S4. HORMONE AND METABOLIC MODULATORS**

The following are prohibited:

1. **Aromatase inhibitors** including, but not limited to: **aminoglutethimide, anastrozole, androsta-1,4,6-triene-3,17-dione (androstatrienedione), 4-androstene-3,6,17 trione (6-oxo), exemestane, formestane, letrozole, testolactone.**
2. **Selective estrogen receptor modulators (SERMs)** including, but not limited to: **raloxifene, tamoxifen, toremifene.**
3. **Other anti-estrogenic substances** including, but not limited to: **clomiphene, cyclofenil, fulvestrant.**
4. **Agents modifying myostatin function(s)** including, but not limited, to: **myostatin inhibitors.**
5. **Metabolic modulators: Peroxisome Proliferator Activated Receptor  $\delta$  (PPAR $\delta$ ) agonists (e.g. GW 1516), PPAR $\delta$ -AMP-activated protein kinase (AMPK) axis agonists (e.g. AICAR)**

#### **S5. DIURETICS AND OTHER MASKING AGENTS**

Masking agents are prohibited. They include:

**Diuretics, desmopressin, plasma expanders (e.g. glycerol; intravenous administration of albumin, dextran, hydroxyethyl starch and mannitol), probenecid;** and other substances with similar biological effect(s). Local application of felypressin in dental anaesthesia is not prohibited.

Diuretics include:

**Acetazolamide, amiloride, bumetanide, canrenone, chlorthalidone, etacrynic acid, furosemide, indapamide, metolazone, spironolactone, thiazides (e.g. bendroflumethiazide, chlorothiazide, hydrochlorothiazide), triamterene;** and other substances with a similar chemical structure or similar biological effect(s) (except drospirenone, pamabrom and topical dorzolamide and brinzolamide, which are not prohibited).

The use *In- and Out-of-Competition*, as applicable, of any quantity of a substance subject to threshold limits (i.e. formoterol, salbutamol, morphine, cathine, ephedrine, methylephedrine and pseudoephedrine) in conjunction with a diuretic or other masking agent requires the deliverance of a specific Therapeutic Use Exemption for that substance in addition to the one granted for the diuretic or other masking agent.

## PROHIBITED METHODS

### **M1. ENHANCEMENT OF OXYGEN TRANSFER**

The following are prohibited:

1. Blood doping, including the use of autologous, homologous or heterologous blood or red blood cell products of any origin.
2. Artificially enhancing the uptake, transport or delivery of oxygen, including, but not limited to, perfluorochemicals, efaproxiral (RSR13) and modified haemoglobin products (e.g. haemoglobin-based blood substitutes, microencapsulated haemoglobin products), excluding supplemental oxygen.

### **M2. CHEMICAL AND PHYSICAL MANIPULATION**

The following are prohibited:

1. *Tampering*, or attempting to tamper, in order to alter the integrity and validity of *Samples* collected during *Doping Control* is prohibited. These include but are not limited to urine substitution and/or adulteration (e.g. proteases).
2. Intravenous infusions and/or injections of more than 50 mL per 6 hour period are prohibited except for those legitimately received in the course of hospital admissions or clinical investigations.
3. Sequential withdrawal, manipulation and reintroduction of any quantity of whole blood into the circulatory system.

### **M3. GENE DOPING**

The following, with the potential to enhance sport performance, are prohibited:

1. The transfer of nucleic acids or nucleic acid sequences;
2. The use of normal or genetically modified cells.

## **SUBSTANCES AND METHODS PROHIBITED IN-COMPETITION**

In addition to the categories S0 to S5 and M1 to M3 defined above,  
the following categories are prohibited *In-Competition*:

### **PROHIBITED SUBSTANCES**

#### **S6. STIMULANTS**

All stimulants (including both optical isomers where relevant) are prohibited, except imidazole derivatives for topical use and those stimulants included in the 2012 Monitoring Program\*.

Stimulants include:

a: Non-Specified Stimulants:

**Adrafinil; amfepramone; amiphenazole; amphetamine; amphetaminil;  
benfluorex; benzphetamine; benzylpiperazine; bromantan; clobenzorex;  
cocaine; cropropamide; crotetamide; dimethylamphetamine;  
etilamphetamine; famprofazone; fencamine; fenetylline; fenfluramine;  
fenproporex; furfenorex; mefenorex; mephentermine; mesocarb;  
methamphetamine(*d*-); p-methylamphetamine;  
methylenedioxyamphetamine; methylenedioxymethamphetamine;  
modafinil; norfenfluramine; phendimetrazine; phenmetrazine;  
phentermine; 4-phenylpiracetam (carphedon); prenylamine; prolintane.**  
A stimulant not expressly listed in this section is a Specified Substance.

b: Specified Stimulants (examples):

**Adrenaline\*\*; cathine\*\*\*; ephedrine\*\*\*\*; etamivan; etilefrine; fenbutrazate;  
fencamfamin; heptaminol; isometheptene; levmetamfetamine;  
meclofenoxate; methylephedrine\*\*\*\*; methylhexanamine  
(dimethylpentylamine); methylphenidate; nikethamide; norfenefrine;  
octopamine; oxilofrine; parahydroxyamphetamine; pemoline;  
pentetrazol; phenpromethamine; propylhexedrine; pseudoephedrine\*\*\*\*;  
selegiline; sibutramine; strychnine; tuaminoheptane; and other substances  
with a similar chemical structure or similar biological effect(s).**

\* The following substances included in the 2012 Monitoring Program (bupropion, caffeine, nicotine, phenylephrine, phenylpropanolamine, piperadol, synephrine) are not considered as *Prohibited Substances*.

\*\* Local administration (e.g. nasal, ophthalmologic) of **Adrenaline** or co-administration with local anaesthetic agents is not prohibited.

\*\*\* **Cathine** is prohibited when its concentration in urine is greater than 5 micrograms per milliliter.

\*\*\*\* Each of **ephedrine** and **methylephedrine** is prohibited when its concentration in urine is greater than 10 micrograms per milliliter.

\*\*\*\*\* **Pseudoephedrine** is prohibited when its concentration in urine is greater than 150 micrograms per milliliter.

## **S7. NARCOTICS**

The following are prohibited:

**Buprenorphine, dextromoramide, diamorphine (heroin), fentanyl and its derivatives, hydromorphone, methadone, morphine, oxycodone, oxymorphone, pentazocine, pethidine.**

## **S8. CANNABINOIDS**

Natural (e.g. cannabis, hashish, marijuana) or synthetic delta 9-tetrahydrocannabinol (THC) and cannabimimetics [e.g. "Spice" (containing JWH018, JWH073), HU-210] are prohibited.

## **S9. GLUCOCORTICOSTEROIDS**

All glucocorticosteroids are prohibited when administered by oral, intravenous, intramuscular or rectal routes.

# SUBSTANCES PROHIBITED IN PARTICULAR SPORTS

## P1. ALCOHOL

Alcohol (ethanol) is prohibited *In-Competition* only, in the following sports. Detection will be conducted by analysis of breath and/or blood. The doping violation threshold (haematological values) is 0.10 g/L.

- Aeronautic (FAI)
- Archery (FITA)
- Automobile (FIA)
- Karate (WKF)
- Motorcycling (FIM)
- Powerboating (UIM)

## P2. BETA-BLOCKERS

Unless otherwise specified, beta-blockers are prohibited *In-Competition* only, in the following sports.

- Aeronautic (FAI)
- Archery (FITA) (also prohibited *Out-of-Competition*)
- Automobile (FIA)
- Billiards (all disciplines) (WCBS)
- Boules (CMSB)
- Bridge (FMB)
- Darts (WDF)
- Golf (IGF)
- Ninepin and Tenpin Bowling (FIQ)
- Powerboating (UIM)
- Shooting (ISSF, IPC) (also prohibited *Out-of-Competition*)
- Skiing/Snowboarding (FIS) in ski jumping, freestyle aerals/halfpipe and snowboard halfpipe/big air

Beta-blockers include, but are not limited to, the following:

**Acebutolol, alprenolol, atenolol, betaxolol, bisoprolol, bunolol, carteolol, carvedilol, celiprolol, esmolol, labetalol, levobunolol, metipranolol, metoprolol, nadolol, oxprenolol, pindolol, propranolol, sotalol, timolol.**

# **EXHIBIT “C”**

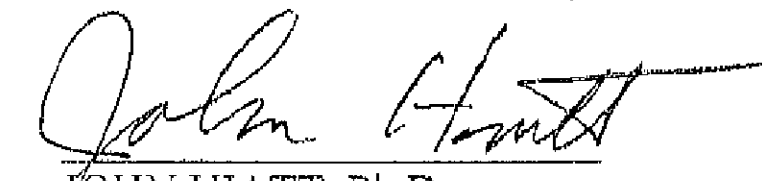
AFFIDAVIT OF JOHN HIATT, Ph.D.

STATE OF NEVADA            )  
                                      : ss.  
COUNTY OF CLARK         )

COMES NOW, JOHN HIATT, Ph.D., and being first duly sworn, swears and deposes as follows:

1. I received a Ph.D. from Yale University in the field of organic chemistry and have been qualified in state and military courts as an expert in organic chemistry to include the testing of bodily fluids for drugs and toxic substances (see attached CV).
2. The legalization of marijuana by several states in recent years, including Nevada, presents a challenge for both athletes and regulators in sporting contests that include urine drug tests.
3. The active compound in marijuana, Delta-9-Tetrahydrocannabinol (THC), is rather unique among pharmaceuticals in that it has quite limited solubility in aqueous solutions but is very soluble in oils and fats, including the fatty tissues of the human body.
4. DIAZ did not test positive for marijuana (Delta-9-Tetrahydrocannabinol (THC)).
5. Due to this unusual property (solubility in fatty tissues), the time interval between ingestion and elimination is prolonged and not easily predictable since it depends on multiple variables, including amount of drug ingested, frequency and duration of ingestion, body fat content and metabolic turnover of body fat stores.
6. DIAZ experienced two physiologic factors which were losing a substantial amount of weight prior to the fight and the increased physical exertion associated with a five round fight compared to previous shorter fights that may have contributed to the elevated presence of inactive metabolites.
7. The most common testing protocol for detecting illegal use of performance enhancing drugs by athletes is a pre and/or post-contest urine drug test. In the case of marijuana the compound detected by the testing procedure is Delta-9-THC-Carboxylic Acid, which is the pharmacologically inactive metabolite of THC.
8. Since the metabolite may be detectable in the urine for days or even weeks after cessation of use of THC it is not a reliable indicator of current or even recent use.

9. Prior to legalization this was not an issue since detection of the metabolite was an automatic rule violation with no valid excuse. The advent of the World Anti-Doping Association ("WADA") and the concept of "in-competition" and "out-of-competition" drug use has also complicated the issue of marijuana use since the metabolite is detectable in the urine for (in some cases) weeks after any pharmacologic effect of the parent drug has ceased.
10. A post-fight urine test for THC metabolite is not a sufficient or proper means of determining whether an individuals' prior use of THC is in any way affecting that individual at the time a urine sample is collected.
11. If an individual has a valid medical prescription for marijuana in some form, then in view of all the uncertainties associated with interpreting the meaning of the presence of THC metabolite in urine, it is not reasonable to reach any conclusion with regard to a persons ability to compete in an athletic contest.
12. The only logical way to make that determination would be to test a blood sample for the presence of THC. A positive blood test for THC would be an indication of pharmacologic effect at the time of sample collection.
13. In my opinion to a reasonable degree of scientific certainty, the presence of 25 ng/mL of inactive metabolite in DIAZ's post-fight urine sample is consistent with DIAZ's protocol of discontinuing medical marijuana use eight (8) days before a fight. Such a break in usage of marijuana would ensure that his normal usage would have no impact on DIAZ's performance "in-competition" or create a safety risk.

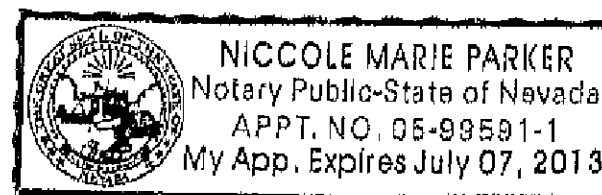
  
JOHN HIATT, Ph.D.

SUBSCRIBED and SWORN TO before me

this 2 day March, 2012.



NOTARY PUBLIC in and for said  
County and State.





**John E. Hiatt, Ph.D.**

8180 Placid Street  
Las Vegas, NV 89123  
(702) 361-1171

Biographical Information

**Education:**

1963 A.B., Occidental College, Los Angeles, California  
Major: Chemistry

1968 Ph.D., Yale University, New Haven, Connecticut  
Field: Organic Chemistry

1968-1970: Postdoctoral Fellow, Department of Chemistry,  
Stanford University, Stanford, California

1971-1973: Postdoctoral Trainee in Clinical Chemistry, University  
of California Medical Center, San Francisco, California

**Employment:**

1973-1976: Clinical Chemist, Valley Clinical Laboratory,  
Palm Desert, California

1976-2003: Technical Director, Associated Pathologists Laboratories  
Las Vegas, Nevada

2003-2007: Clinical and Forensic Chemist, Quest Diagnostics,  
Las Vegas, Nevada (Quest Diagnostics is successor  
Company to Associated Pathologists Laboratories)

2008-present: Partially retired, on-call employee at Quest Diagnostics,  
Las Vegas, Nevada

**Other Relevant Information:**

Qualified as an expert witness in the areas of analysis of drugs and  
poisons in materials of human origin and interpretation of data  
pertaining thereto in the District Courts of Clark, Douglas, Elko,  
Lyon, Mineral, Nye and Washoe Counties, Nevada, and Air  
Force Courts (Nellis Air Force Base, Luke Air Force Base and  
Los Angeles Air Force Base).

Independent Consultant: Forensic Chemistry

**AFFIDAVIT OF NICK DIAZ**

STATE OF CALIFORNIA                     )  
  : ss.  
COUNTY OF SAN JOAQUIN             )


COMES NOW, NICK DIAZ, and being first duly sworn, swears and deposes as follows:

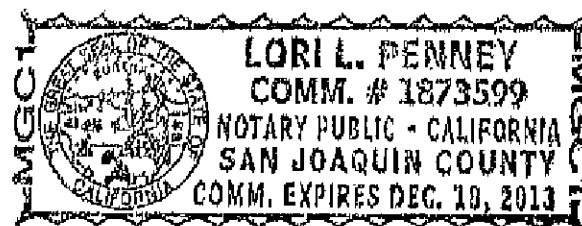
1. I have been diagnosed with Attention Deficit Hyperactivity Disorder ("ADHD").
2. My physician, Robert E. Sullivan, M.D., (CA License G31309), approved the use of medical marijuana to treat ADHD.
3. I am in full compliance with the registry laws for medical marijuana in California.
4. As part of my general practice, I discontinue using medical marijuana eight (8) days before a fight.
5. Consistent with this general practice, I discontinued use of medical marijuana eight (8) days before the fight which is the subject of this Complaint.
6. The day before weigh-ins, I had to lose a substantial amount of weight (10 pounds).
7. In addition, this five round fight required increased physical exertion compared to the three (3) shorter fights of 2011.

  
\_\_\_\_\_  
NICK DIAZ

SUBSCRIBED and SWORN TO before me

this 6<sup>th</sup> day March, 2012.

  
\_\_\_\_\_  
NOTARY PUBLIC in and for said  
County and State.



# **EXHIBIT E**

# **EXHIBIT E**

## Michelle Hall

---

**From:** Christopher A. Eccles <CEccles@ag.nv.gov>  
**Sent:** Wednesday, March 14, 2012 11:03 AM  
**To:** Ross Goodman  
**Cc:** Keith Kizer  
**Subject:** RE: Nick Diaz

Ross,

The hearing will be in April. I'll contact you when I have a date/time certain.

- Chris

This message and attachments are intended only for the addressee(s) and may contain information that is privileged and confidential. If the reader of the message is not the intended recipient or an authorized representative of the intended recipient, I did not intend to waive and do not waive any privileges or the confidentiality of the messages and attachments, and you are hereby notified that any dissemination of this communication is strictly prohibited. If you receive this communication in error, please notify me immediately by e-mail at [ceccles@ag.nv.gov](mailto:ceccles@ag.nv.gov) and delete the message and attachments from your computer and network. Thank you.

---

**From:** Ross Goodman [<mailto:ross@goodmanlawgroup.com>]  
**Sent:** Tuesday, March 13, 2012 8:58 AM  
**To:** [kkizer@boxing.nv.gov](mailto:kkizer@boxing.nv.gov)  
**Cc:** Christopher A. Eccles  
**Subject:** Re: Nick Diaz

Have you scheduled a hearing date?

----- Original Message -----

**From:** Keith Kizer <[kkizer@boxing.nv.gov](mailto:kkizer@boxing.nv.gov)>  
**To:** Ross Goodman  
**Cc:** Christopher A. Eccles <[CEccles@ag.nv.gov](mailto:CEccles@ag.nv.gov)>  
**Sent:** Wed Feb 15 13:29:25 2012  
**Subject:** RE: Nick Diaz

Chris Eccles was able to speak with Dr. Sample at Quest, and was able to get more information.

I am hopefully that Chris will communicate with you shortly.

His direct line is 702-486-3105.

Keith Kizer

Executive Director

Nevada Athletic Commission

---

From: Ross Goodman [<mailto:ross@goodmanlawgroup.com>]  
Sent: Wednesday, February 15, 2012 12:27 PM  
To: Keith Kizer  
Cc: Christopher A. Eccles  
Subject: RE: Nick Diaz

Keith – When we spoke on Friday you thought the Tox Rpt would come in by Monday. Any status on when we can get it. Thx

Ross C. Goodman Esq  
Goodman Law Group, P.C  
520 South Fourth Street  
Las Vegas, NV 89101-6593  
P: 702.383.5088 | F: 702.385.5088  
[www.goodmanlawgroup.com](http://www.goodmanlawgroup.com) <<http://www.goodmanlawgroup.com/>>

From: Ross Goodman  
Sent: Tuesday, February 14, 2012 7:59 AM  
To: 'Keith Kizer'  
Cc: Christopher A. Eccles  
Subject: RE: Nick Diaz

Keith – Just wondering if you got the GCMS test results yet. Thx

Ross C. Goodman Esq  
Goodman Law Group, P.C  
520 South Fourth Street  
Las Vegas, NV 89101-6593  
P: 702.383.5088 | F: 702.385.5088  
[www.goodmanlawgroup.com](http://www.goodmanlawgroup.com) <<http://www.goodmanlawgroup.com/>>

From: Keith Kizer [<mailto:kkizer@boxing.nv.gov>] <<mailto:%5bmailto:kkizer@boxing.nv.gov%5d>>  
Sent: Friday, February 10, 2012 4:16 PM  
To: Ross Goodman  
Cc: Christopher A. Eccles  
Subject: Nick Diaz

Please see the attachment.

Keith Kizer

Executive Director

Nevada Athletic Commission

# **EXHIBIT F**

# **EXHIBIT F**

## Michelle Hall

---

**From:** Ross Goodman  
**Sent:** Wednesday, March 28, 2012 12:00 PM  
**To:** Christopher A. Eccles  
**Cc:** Keith Kizer  
**Subject:** RE: Nick Diaz

Never got word about the date of the hearing. I would also like to discuss some of the issues with you before we have a pre-hearing conference. Thx

Ross C. Goodman Esq  
Goodman Law Group, P.C  
520 South Fourth Street  
Las Vegas, NV 89101-6593  
P: 702.383.5088 | F: 702.385.5088  
[www.goodmanlawgroup.com](http://www.goodmanlawgroup.com)



GOODMAN LAW GROUP P.C.

---

**From:** Christopher A. Eccles [<mailto:CEccles@ag.nv.gov>]  
**Sent:** Wednesday, March 14, 2012 11:31 AM  
**To:** Ross Goodman  
**Cc:** Keith Kizer  
**Subject:** RE: Nick Diaz

Together we can meet with the Chairman. I'll see if he is available for a meeting late this month or early next month.

---

**From:** Ross Goodman [<mailto:ross@goodmanlawgroup.com>]  
**Sent:** Wednesday, March 14, 2012 11:26 AM  
**To:** Christopher A. Eccles  
**Cc:** Keith Kizer  
**Subject:** RE: Nick Diaz

Whatever the Rules permit.

Ross C. Goodman Esq  
Goodman Law Group, P.C  
520 South Fourth Street  
Las Vegas, NV 89101-6593  
P: 702.383.5088 | F: 702.385.5088  
[www.goodmanlawgroup.com](http://www.goodmanlawgroup.com)



GOODMAN LAW GROUP P.C.

---

**From:** Christopher A. Eccles [<mailto:CEccles@ag.nv.gov>]  
**Sent:** Wednesday, March 14, 2012 11:24 AM  
**To:** Ross Goodman  
**Cc:** Keith Kizer  
**Subject:** RE: Nick Diaz



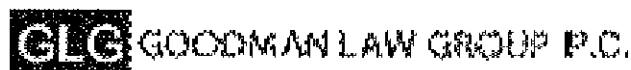
Do you mean a pre-hearing conference with the Chairman and you and me?

---

**From:** Ross Goodman [<mailto:ross@goodmanlawgroup.com>]  
**Sent:** Wednesday, March 14, 2012 11:20 AM  
**To:** Christopher A. Eccles  
**Cc:** Keith Kizer  
**Subject:** RE: Nick Diaz

Gents – Thx for the update. Also, do the rules permit me to discuss the issues raised in the Response with the Chairman?

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---

**From:** Christopher A. Eccles [<mailto:CEccles@ag.nv.gov>]  
**Sent:** Wednesday, March 14, 2012 11:03 AM  
**To:** Ross Goodman  
**Cc:** Keith Kizer  
**Subject:** RE: Nick Diaz

Ross,

The hearing will be in April. I'll contact you when I have a date/time certain.

- Chris

This message and attachments are intended only for the addressee(s) and may contain information that is privileged and confidential. If the reader of the message is not the intended recipient or an authorized representative of the intended recipient, I did not intend to waive and do not waive any privileges or the confidentiality of the messages and attachments, and you are hereby notified that any dissemination of this communication is strictly prohibited. If you receive this communication in error, please notify me immediately by e-mail at [ceccles@ag.nv.gov](mailto:ceccles@ag.nv.gov) and delete the message and attachments from your computer and network. Thank you.

---

**From:** Ross Goodman [<mailto:ross@goodmanlawgroup.com>]  
**Sent:** Tuesday, March 13, 2012 8:58 AM  
**To:** [kkizer@boxing.nv.gov](mailto:kkizer@boxing.nv.gov)  
**Cc:** Christopher A. Eccles  
**Subject:** Re: Nick Diaz

Have you scheduled a hearing date?

----- Original Message -----

From: Keith Kizer <[kkizer@boxing.nv.gov](mailto:kkizer@boxing.nv.gov)>  
To: Ross Goodman  
Cc: Christopher A. Eccles <[CEccles@ag.nv.gov](mailto:CEccles@ag.nv.gov)>  
Sent: Wed Feb 15 13:29:25 2012  
Subject: RE: Nick Diaz

Chris Eccles was able to speak with Dr. Sample at Quest, and was able to get more information.

I am hopefully that Chris will communicate with you shortly.

His direct line is 702-486-3105.

Keith Kizer

Executive Director

Nevada Athletic Commission

---

From: Ross Goodman [<mailto:ross@goodmanlawgroup.com>]

Sent: Wednesday, February 15, 2012 12:27 PM

To: Keith Kizer

Cc: Christopher A. Eccles

Subject: RE: Nick Diaz

Keith – When we spoke on Friday you thought the Tox Rpt would come in by Monday. Any status on when we can get it. Thx

Ross C. Goodman Esq  
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From: Ross Goodman  
Sent: Tuesday, February 14, 2012 7:59 AM  
To: 'Keith Kizer'  
Cc: Christopher A. Eccles  
Subject: RE: Nick Diaz

Keith – Just wondering if you got the GCMS test results yet. Thx

Ross C. Goodman Esq  
Goodman Law Group, P.C

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[www.goodmanlawgroup.com](http://www.goodmanlawgroup.com) <<http://www.goodmanlawgroup.com/>>

From: Keith Kizer [<mailto:kkizer@boxing.nv.gov>] <<mailto:%5bmailto:kkizer@boxing.nv.gov%5d>>  
Sent: Friday, February 10, 2012 4:16 PM  
To: Ross Goodman  
Cc: Christopher A. Eccles  
Subject: Nick Diaz

Please see the attachment.

Keith Kizer

Executive Director

Nevada Athletic Commission

# **EXHIBIT G**

# **EXHIBIT G**

CATHERINE CORTEZ MASTO  
Attorney General of Nevada  
CHRISTOPHER ECCLES  
Deputy Attorney General  
555 East Washington Avenue, Suite 3900  
Las Vegas, Nevada 89101  
Telephone: (702) 486-3105  
Facsimile: (702) 486-3416  
E-Mail: [cecceles@ag.nv.gov](mailto:cecceles@ag.nv.gov)

**BEFORE THE NEVADA STATE ATHLETIC COMMISSION**

\* \* \*

**IN THE MATTER OF:**

**NICK DIAZ**

**FIRST AMENDED COMPLAINT FOR  
DISCIPLINARY ACTION  
AND NOTICE OF HEARING**

KEITH KIZER, Executive Director for the ATHLETIC COMMISSION of the  
DEPARTMENT OF BUSINESS AND INDUSTRY, STATE OF NEVADA, complains for  
disciplinary action against NICK DIAZ (DIAZ), as follows:

**JURISDICTION**

1. DIAZ is now, and was at all pertinent times alleged herein, licensed in Nevada as a professional mixed martial artist by the NEVADA STATE ATHLETIC COMMISSION (Commission).
2. As the holder of a Nevada professional mixed martial artist's license, DIAZ is subject to the provisions of Chapter 467 of the Nevada Revised Statutes (NRS), and of Chapter 467 of the Nevada Administrative Code (NAC).
3. Pursuant to NRS Chapter 467, the Commission is vested with the sole discretion, management, control and jurisdiction over contests, exhibitions and licensees of unarmed combat, which includes mixed martial arts.

**FACTUAL ALLEGATIONS**

4. On April 18, 2007, the Commission, by unanimous decision, suspended DIAZ's mixed martial artist's license for a period of six months after the presence of Delta-9-THC Carboxylic Acid, the major metabolite of Delta-9-THC (the active ingredient in

1 marijuana), was detected in DIAZ's urine following his February 24, 2007 mixed martial  
2 arts contest in Las Vegas, Nevada.

3 5. After serving the suspension and paying a fine, DIAZ participated in a professional  
4 mixed martial arts contest in Las Vegas, Nevada on February 4, 2012, which he lost by  
5 unanimous decision (the "Contest"). The Contest was conducted under the direction of  
6 the Commission.

7 6. The day before the Contest, on February 3, 2012, DIAZ completed his Pre-Fight  
8 Questionnaire, attached hereto as Exhibit 1, wherein he answered "No" to each of the  
9 following questions:

10 Do you have any serious medical illnesses, conditions?

11 Have you taken / received any prescribed medications in the last two weeks?

12 Have you taken / received any over the counter medication / products in the last  
13 two weeks?

14 7. DIAZ signed his Pre-Fight Questionnaire directly below the statement: "I hereby attest  
15 that the above information is true and accurate to the best of my knowledge."

16 8. By answering "No" to one or more of the questions referenced in paragraph six, DIAZ  
17 provided false or misleading information to the Commission or a representative of the  
18 Commission.

19 9. On February 8, 2012, a Complaint for Disciplinary Action and Notice of Hearing was  
20 filed against DIAZ.

21 10. On March 7, 2012, the Commission received DIAZ's Response to Complaint for  
22 Disciplinary Action. Attached to DIAZ's Response as Exhibit "A" was his sworn and  
23 notarized affidavit, wherein DIAZ swears that he discontinued use of medical marijuana  
24 eight days before the fight.

25 11. DIAZ used marijuana within the two weeks prior to February 3, 2012.

26 12. In his affidavit, DIAZ swears that he is in full compliance with the registry laws for  
27 medical marijuana in California.

28 13. California's Medical Marijuana Program is codified in California's Health and Safety

Code, Article 2.5, Sections 11362.7 – 11362.83 ("Medical Marijuana Program").

14. Section 11362.7 (h) of the Medical Marijuana Program, attached hereto as Exhibit 2, defines the term "serious medical condition."

15. Section 11362.715 (a) (2) of the Medical Marijuana Program, attached hereto as Exhibit 2, requires a person who seeks an identification card to provide to the county health department, written documentation by the attending physician in the person's medical records stating that the person has been diagnosed with a serious medical condition.

16. Immediately after the Contest, on the same date, DIAZ voluntarily submitted to a urinalysis (the "Urinalysis") and provided a urine sample for testing.

17. The Urinalysis reflects a positive result for the presence of Marijuana Metabolites, which are prohibited by the regulations of the Commission. The results of the Urinalysis are reflected in the Laboratory Report, attached hereto as Exhibit 3.

18. The administration of or use of any drug that has not been approved by the Commission by a Nevada licensed mixed martial artist is prohibited by the regulations of the Commission.

### ALLEGED VIOLATIONS

19. Based upon and incorporating by reference the foregoing Factual Allegations, the Executive Director alleges that DIAZ violated Nevada Administrative Code (NAC) 467.850. NAC 467.850(1), (2), (5) and (6) provide as follows:

1. The administration of or use of any:

(a) Alcohol;

(b) Stimulant; or

(c) Drug or injection that has not been approved by the commission, including, but not limited to, the drugs or injections listed in subsection 2, in any part of the body, either before or during a contest or exhibition, to or by any unarmed combatant, is prohibited.

2. The following types of drugs, injections or stimulants are prohibited pursuant to subsection 1:

...

(f) Any drug identified on the most current edition of the *Prohibited List* published by the World Anti-Doping Agency,

which is hereby adopted by reference. The most current edition of the *Prohibited List* may be obtained, free of charge, at the Internet address [www.wada-ama.org](http://www.wada-ama.org).

....

5. A unarmed combatant shall submit to a urinalysis or chemical test before or after a contest if the commission or the commission's representative directs him to do so.

6. A licensee who violates any provision of this section is subject to disciplinary action by the commission. In addition to any

other disciplinary action by the Commission, if an unarmed combatant who won or drew a contest or exhibition is found to have violated the provisions of this section, the Commission may, in its sole discretion, change the result of that contest or exhibition to a no decision.

20. Marijuana Metabolites are not drugs approved by the Commission.

21. NAC 467.886 provides in pertinent part as follows:

1. A person licensed by the commission shall not engage in any activity that will bring disrepute to unarmed combat ....

22. By testing positive for Marijuana Metabolites, DIAZ has violated NAC 467.850 and 467.886.

23. By providing false or misleading information to one or more questions on his Pre-Fight Questionnaire, DIAZ has violated NAC 467.885 (3).

#### DISCIPLINE AUTHORIZED

24. NRS 467.157 provides that, "Any license issued under this chapter may be revoked for cause deemed sufficient by the commission upon a hearing provided for in NRS 467.113."

25. NRS 467.158(2)-(4) provide in full as follows:

2. If disciplinary action is taken against a person pursuant to this chapter, including, but not limited to, a hearing for the revocation of a license, and the disciplinary action relates to:
  - (a) The preparation for a contest or an exhibition of unarmed combat;
  - (b) The occurrence of a contest or an exhibition of unarmed combat; or
  - (c) Any other action taken in conjunction with a contest or an exhibition of unarmed combat, the commission may prescribe a penalty pursuant to subsection 3.



- 1 3. A penalty prescribed by the commission pursuant to subsection  
2:2:
  - 2 (a) Must not exceed \$250,000 or 100 percent of the share of  
3 the purse to which the holder of the license is entitled for  
4 the contest or exhibition, whichever amount is greater; and
  - 5 (b) May be imposed in addition to or in lieu of any other  
6 disciplinary action that is taken against the person by the  
7 commission.
- 8 4. If disciplinary action is taken against a person pursuant to this  
9 chapter, the commission may require the person against whom  
10 such action is taken to pay the costs of the proceeding,  
11 including investigative costs and attorney's fees.

12 26. NAC 467.885(2), (3), and (5) provide in full as follows:

13 The commission may suspend or revoke the license of, or  
14 otherwise discipline or take any combination of such actions  
15 against a licensee who has, in the judgment of the commission:

- 16 ...
- 17 2. Violated any provision of this chapter [467];
  - 18 3. Provided false or misleading information to the Commission or  
19 a representative of the Commission;
  - 20 ...
  - 21 5. Conducted himself at any time or place in a manner which is  
22 deemed by the commission to reflect discredit to unarmed  
23 combat ....

#### 24 RELIEF SOUGHT

25 27. Based upon the allegations contained herein which constitute sufficient cause for  
26 disciplinary action against the licensee pursuant to the provisions of NRS Chapter 467  
27 and NAC Chapter 467, the Executive Director prays for relief as follows:

- 28 A. That DIAZ be fined a monetary sum pursuant to the parameters defined at NRS  
467.158;
- B. That the Commission take action against DIAZ's license pursuant to the  
parameters defined at NAC 467.885;
- C. That DIAZ pay the costs of the proceeding, including investigative costs and  
attorney's fees;
- D. That DIAZ provide the Commission with a negative urine test for prohibited

substances upon filing his next application for an unarmed combatant's license;  
and

E. For such other and further relief as the Commission may deem just and proper.

**NOTICE OF HEARING**

THEREFORE, DIAZ is directed to answer in writing the First Amended Complaint for Disciplinary Action within 20 days from service. Thereafter a hearing into this matter will be scheduled at the offices of the Nevada Athletic Commission, 555 East Washington Avenue, Suite 3200, Las Vegas, Nevada 89101, or such other place as may be designated, in writing, by the Commission. The Commission will, at that time, take such action as may be just and proper pursuant to the proof and pertinent laws.

DIAZ is entitled to be represented by counsel of his choice at the hearing. Additionally, DIAZ is entitled to cross-examine witnesses, present evidence and argue on his behalf before a decision is made by the Commission. If DIAZ fails to appear at the hearing, a decision may be reached in his absence.

DATED this 28<sup>th</sup> day of March, 2012.

FOR THE NEVADA ATHLETIC COMMISSION,  
DEPARTMENT OF BUSINESS AND INDUSTRY,  
STATE OF NEVADA

By:

  
KEITH KIZER  
Executive Director

SUBMITTED BY:

CATHERINE CORTEZ MASTO  
Attorney General of Nevada

By:

  
CHRISTOPHER ECCLES  
Deputy Attorney General

Attorney General's Office  
555 E. Washington, Suite 3900  
Las Vegas, NV 89101

**CERTIFICATE OF SERVICE**

I hereby certify that on the 28<sup>th</sup> day of March 2012, I served the foregoing **FIRST AMENDED COMPLAINT FOR DISCIPLINARY ACTION AND NOTICE OF HEARING** by depositing a copy of the same in the United States mail, properly addressed, postage prepaid, **REGULAR MAIL and CERTIFIED MAIL** addressed as follows:

ROSS C. GOODMAN  
GOODMAN LAW GROUP, PC  
520 S. FOURTH ST., 2<sup>ND</sup> FLOOR  
LAS VEGAS, NV 89101

**Certified Mail No.** 7005 0390 0000 0411 8767

  
\_\_\_\_\_  
An Employee of the Nevada State Athletic Commission's Office

# EXHIBIT 1

## PRE-FIGHT MEDICAL QUESTIONNAIRE

Contestant's Name Nick Diaz Weight lb/Kg 170 Age 28

Yes ( ) No (☒) Have you had an MRI/MRA for any reason other than state licensing?  
Explain \_\_\_\_\_

Yes ( ) No (☒) Have you ever had any eye problems, surgery (e.g. Lasik, PRK), or  
special examinations? Explain \_\_\_\_\_

Yes ( ) No (☒) Have you had any eye problems since your yearly exam was done?  
Explain \_\_\_\_\_

Yes ( ) No (☒) Do you have any serious medical illnesses, conditions? Explain \_\_\_\_\_

Yes ( ) No (☒) Have you had any broken bones in last 6 months?  
Explain \_\_\_\_\_

Yes ( ) No (☒) Have you had any injury to your shoulders, elbows, or hands that needed  
special evaluation / exam? Explain \_\_\_\_\_

Yes ( ) No (☒) Have you had any injury to your knees, ankles, or feet that needed  
special evaluation / exam? Explain \_\_\_\_\_

Yes ( ) No (☒) Have you had any lacerations/cuts that required sutures/glue or repair?  
Explain \_\_\_\_\_

Yes ( ) No (☒) Have you had any surgeries? Explain \_\_\_\_\_

Yes ( ) No (☒) Have you taken/received any prescribed medications in the last 2 weeks?  
Explain \_\_\_\_\_

Yes ( ) No (☒) Have you taken/received any over the counter medication/products in the  
last 2 weeks? \_\_\_\_\_

Yes ( ) No (☒) Have you suffered a KO or TKO for any reason in the last 6 months?  
Explain \_\_\_\_\_

What was your weight 2 weeks ago? 176

Date of last fight? 10/2/2

Result of your last fight: (☒) Win ( ) Lose by ( ) KO ( ) TKO ( ) Submission (☒) Decision

I hereby attest that the above information is true and accurate to the best of my knowledge.

[Signature]  
Contestant's signature

[Signature]  
Second's signature

NSAC Physician [Signature]

Date 2/3/2

# EXHIBIT 2

C

Effective: January 1, 2004

West's Annotated California Codes Currentness  
Health and Safety Code (Refs & Annos)  
Division 10. Uniform Controlled Substances Act (Refs & Annos)  
    Chapter 6. Offenses and Penalties (Refs & Annos)  
        Article 2.5. Medical Marijuana Program (Refs & Annos)  
            →→ § 11362.7. Definitions

For purposes of this article, the following definitions shall apply:

- (a) "Attending physician" means an individual who possesses a license in good standing to practice medicine or osteopathy issued by the Medical Board of California or the Osteopathic Medical Board of California and who has taken responsibility for an aspect of the medical care, treatment, diagnosis, counseling, or referral of a patient and who has conducted a medical examination of that patient before recording in the patient's medical record the physician's assessment of whether the patient has a serious medical condition and whether the medical use of marijuana is appropriate.
- (b) "Department" means the State Department of Health Services.
- (c) "Person with an identification card" means an individual who is a qualified patient who has applied for and received a valid identification card pursuant to this article.
- (d) "Primary caregiver" means the individual, designated by a qualified patient or by a person with an identification card, who has consistently assumed responsibility for the housing, health, or safety of that patient or person, and may include any of the following:
- (1) In any case in which a qualified patient or person with an identification card receives medical care or supportive services, or both, from a clinic licensed pursuant to Chapter 1 (commencing with Section 1200) of Division 2, a health care facility licensed pursuant to Chapter 2 (commencing with Section 1250) of Division 2, a residential care facility for persons with chronic life-threatening illness licensed pursuant to Chapter 3.01 (commencing with Section 1568.01) of Division 2, a residential care facility for the elderly licensed pursuant to Chapter 3.2 (commencing with Section 1569) of Division 2, a hospice, or a home health agency licensed pursuant to Chapter 8 (commencing with Section 1725) of Division 2, the owner or operator, or no more than three employees who are designated by the owner or operator, of the clinic, facility, hospice, or home health agency, if designated as a primary caregiver by that qualified patient or person with an identification card.
  - (2) An individual who has been designated as a primary caregiver by more than one qualified patient or person with an identification card, if every qualified patient or person with an identification card who has designated that individual as a primary caregiver resides in the same city or county as the primary caregiver.
  - (3) An individual who has been designated as a primary caregiver by a qualified patient or person with an identification card who resides in a city or county other than that of the primary caregiver, if the individual has not been des-

ignated as a primary caregiver by any other qualified patient or person with an identification card.

(e) A primary caregiver shall be at least 18 years of age, unless the primary caregiver is the parent of a minor child who is a qualified patient or a person with an identification card or the primary caregiver is a person otherwise entitled to make medical decisions under state law pursuant to Sections 6922, 7002, 7050, or 7120 of the Family Code.

(f) "Qualified patient" means a person who is entitled to the protections of Section 11362.5, but who does not have an identification card issued pursuant to this article.

(g) "Identification card" means a document issued by the State Department of Health Services that document identifies a person authorized to engage in the medical use of marijuana and the person's designated primary caregiver, if any.

(h) "Serious medical condition" means all of the following medical conditions:

(1) Acquired immune deficiency syndrome (AIDS).

(2) Anorexia.

(3) Arthritis.

(4) Cachexia.

(5) Cancer.

(6) Chronic pain.

(7) Glaucoma.

(8) Migraine.

(9) Persistent muscle spasms, including, but not limited to, spasms associated with multiple sclerosis.

(10) Seizures, including, but not limited to, seizures associated with epilepsy.

(11) Severe nausea.

(12) Any other chronic or persistent medical symptom that either:

(A) Substantially limits the ability of the person to conduct one or more major life activities as defined in the Americans with Disabilities Act of 1990 (Public Law 101-336).

(B) If not alleviated, may cause serious harm to the patient's safety or physical or mental health.

(i) "Written documentation" means accurate reproductions of those portions of a patient's medical records that have been created by the attending physician, that contain the information required by paragraph (2) of subdivision (a) of Section 11362.715, and that the patient may submit to a county health department or the county's designee as part of an application for an identification card.



CREDIT(S)

(Added by Stats.2003, c. 875 (S.B.420), § 2.)

Current with urgency legislation through Ch. 8 of 2012 Reg.Sess.

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END OF DOCUMENT



Effective: January 1, 2004

West's Annotated California Codes Currentness

Health and Safety Code (Refs & Annos)

Division 10. Uniform Controlled Substances Act (Refs & Annos)

Chapter 6. Offenses and Penalties (Refs & Annos)

Article 2.5. Medical Marijuana Program (Refs & Annos)

**→→ § 11362.715. Fees for identification cards; application for identification cards; legal representatives**

(a) A person who seeks an identification card shall pay the fee, as provided in Section 11362.755, and provide all of the following to the county health department or the county's designee on a form developed and provided by the department:

- (1) The name of the person, and proof of his or her residency within the county.
- (2) Written documentation by the attending physician in the person's medical records stating that the person has been diagnosed with a serious medical condition and that the medical use of marijuana is appropriate.
- (3) The name, office address, office telephone number, and California medical license number of the person's attending physician.
- (4) The name and the duties of the primary caregiver.
- (5) A government-issued photo identification card of the person and of the designated primary caregiver, if any. If the applicant is a person under 18 years of age, a certified copy of a birth certificate shall be deemed sufficient proof of identity.

(b) If the person applying for an identification card lacks the capacity to make medical decisions, the application may be made by the person's legal representative, including, but not limited to, any of the following:

- (1) A conservator with authority to make medical decisions.
- (2) An attorney-in-fact under a durable power of attorney for health care or surrogate decisionmaker authorized under another advanced health care directive.
- (3) Any other individual authorized by statutory or decisional law to make medical decisions for the person.

(c) The legal representative described in subdivision (b) may also designate in the application an individual, including himself or herself, to serve as a primary caregiver for the person, provided that the individual meets the definition of a primary caregiver.

(d) The person or legal representative submitting the written information and documentation described in subdivision (a) shall retain a copy thereof.

CREDIT(S)

(Added by Stats.2003, c. 875 (S.B.420), § 2.)

Current with urgency legislation through Ch. 8 of 2012 Reg.Sess.

(C) 2012 Thomson Reuters. No Claim to Orig. US Gov. Works.

END OF DOCUMENT

# EXHIBIT 3



2/7/2012 10:54:11 AM

## Drug Detail Report

### PATIENT INFORMATION

NICHOLAS DIAZ

Quest Diagnostics Employer Solutions  
Customer Care: 800-877-7484

Primary ID: 4101431

### SPECIMEN INFORMATION

REQUISITION: 4101431  
LAB REF NO: 261899X  
COLLECTED: 2/4/2012 23:59  
RECEIVED: 2/6/2012 04:46  
REPORTED: 2/7/2012 07:05  
DOCUMENT ID:

### CLIENT INFORMATION

42024347  
NV STATE ATHLETIC COMM  
555 E WASHINGTON  
LAS VEGAS, NV 89101

Reason: OTHER -- TITLE FIGHT

\*\*\* POSITIVE/ABNORMAL REPORT \*\*\*

Tests Ordered: 20756N

### Integrity Checks

### Acceptable Range

CREATININE	42.2 mg/dL	>/= 20 mg/dL
pH	6.0	4.5-8.9
OXIDIZING ADULTERANTS	Negative	

### Substance Abuse Panel

	Initial Test Level	GC/MS Confirm Test Level
--	-----------------------	-----------------------------

AMPHETAMINES	Negative	1000 ng/mL	500 ng/mL
BARBITURATES	Negative	300 ng/mL	200 ng/mL
BENZODIAZEPINES	Negative	300 ng/mL	200 ng/mL
COCAINE METABOLITES	Negative	300 ng/mL	150 ng/mL
MARIJUANA METABOLITES	POSITIVE	50 ng/mL	15 ng/mL
METHADONE	Negative	300 ng/mL	200 ng/mL
OPIATES	Negative	300 ng/mL	300 ng/mL
OXYCODONES	Negative	100 ng/mL	100 ng/mL
PHENCYCLIDINE	Negative	25 ng/mL	25 ng/mL
PROPOXYPHENE	Negative	300 ng/mL	200 ng/mL

CERTIFYING SCIENTIST: KSJM08

SPECIMEN RECEIVED AND PROCESSED IN THE

LAB: Quest Diagnostics-Lenexa  
10101 Renner Blvd  
Lenexa KS 66219

### ADDITIONAL COMMENTS:

Test Type: TITLE FIGHT mapped to OTHR

2/7/2012 9:45 AM

# EXHIBIT H

# EXHIBIT H

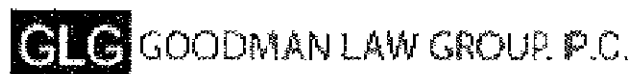
## Michelle Hall

---

**From:** Ross Goodman  
**Sent:** Thursday, March 29, 2012 6:45 PM  
**To:** Christopher A. Eccles  
**Subject:** RE: Nick Diaz

Thx. Also, it sounds like the hearing is going to be in 3 weeks so let me know a firm date so that I can make arrangements with my schedule including arrangements for Nick.

Ross C. Goodman Esq  
Goodman Law Group, P.C  
520 South Fourth Street  
Las Vegas, NV 89101-6593  
P: 702.383.5088 | F: 702.385.5088  
[www.goodmanlawgroup.com](http://www.goodmanlawgroup.com)



---

**From:** Christopher A. Eccles [mailto:CEccles@ag.nv.gov]  
**Sent:** Thursday, March 29, 2012 3:20 PM  
**To:** Ross Goodman  
**Subject:** RE: Nick Diaz

Ross,

The amended complaint is attached as you requested.

Please also see the below link to the WADA code, particularly article 2.1 on page 19: "Athletes are responsible for any Prohibited Substance **or its Metabolites or Markers** found to be present in their Samples." Thus, metabolites of marijuana are prohibited as well. Let me know what you think.

[http://www.wada-ama.org/Documents/World\\_Anti-Doping\\_Program/WADP-The-Code/WADA\\_Anti-Doping\\_CODE\\_2009\\_EN.pdf](http://www.wada-ama.org/Documents/World_Anti-Doping_Program/WADP-The-Code/WADA_Anti-Doping_CODE_2009_EN.pdf)

- Chris

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**From:** Ross Goodman [mailto:[ross@goodmanlawgroup.com](mailto:ross@goodmanlawgroup.com)]  
**Sent:** Wednesday, March 28, 2012 5:47 PM  
**To:** Christopher A. Eccles  
**Cc:** Keith Kizer  
**Subject:** RE: Nick Diaz

Are you guys there?

Ross C. Goodman Esq  
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520 South Fourth Street  
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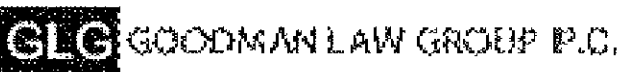
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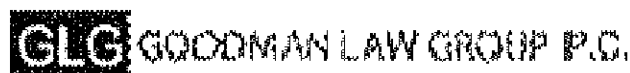
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**To:** [kkizer@boxing.nv.gov](mailto:kkizer@boxing.nv.gov)  
**Cc:** Christopher A. Eccles  
**Subject:** Re: Nick Diaz

Have you scheduled a hearing date?

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Cc: Christopher A. Eccles <[CEccles@ag.nv.gov](mailto:CEccles@ag.nv.gov)>  
Sent: Wed Feb 15 13:29:25 2012  
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His direct line is 702-486-3105.

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Nevada Athletic Commission

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Please see the attachment.

Keith Kizer

Executive Director

Nevada Athletic Commission

# EXHIBIT I

# EXHIBIT I

## Michelle Hall

---

**From:** Ross Goodman  
**Sent:** Monday, April 02, 2012 12:44 PM  
**To:** Christopher A. Eccles  
**Cc:** Keith Kizer (kkizer@boxing.nv.gov)  
**Subject:** RE: Nick Diaz

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 GOODMAN LAW GROUP P.C.

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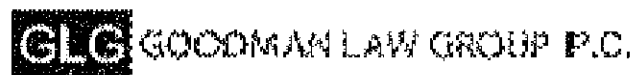
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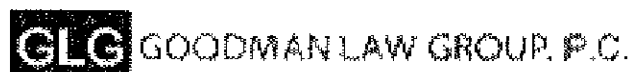
## Michelle Hall

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**From:** Ross Goodman  
**Sent:** Tuesday, April 03, 2012 6:14 AM  
**To:** Christopher A. Eccles  
**Cc:** Keith Kizer (kkizer@boxing.nv.gov)  
**Subject:** RE: Nick Diaz

Let me know what the delay is as I have been asking for over a month about the date of the hearing. As you know, I need to make accommodations and we're 3 weeks out now.

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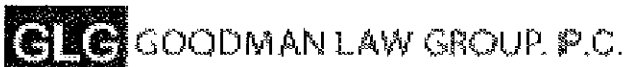


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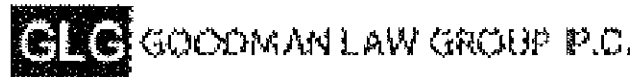


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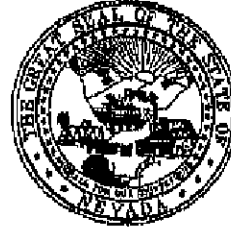
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# **EXHIBIT K**

# **EXHIBIT K**



STATE OF NEVADA  
OFFICE OF THE ATTORNEY GENERAL

555 East Washington Ave., Suite 3900  
Las Vegas, Nevada 89101

CATHERINE CORTEZ MASTO  
*Attorney General*

KEITH G. MUNRO  
*Assistant Attorney General*

GREGORY M. SMITH  
*Chief of Staff*

April 4, 2012

Nick Diaz  
c/o Ross C. Goodman, Esq.,  
GOODMAN LAW GROUP, PC  
520 S. Fourth St., 2<sup>nd</sup> Floor  
Las Vegas, NV 89101

**Re: State v. Diaz, Request for Production of Documents**

Dear Mr. Goodman:

The purpose of this letter is to request the production of documents related to Mr. Diaz's case before the Nevada State Athletic Commission. I'm still waiting to see Mr. Diaz's medical marijuana cards that we had previously discussed.

Furthermore, Mr. Diaz stated in his affidavit that he is in full compliance with the registry laws for medical marijuana in California. Because Mr. Diaz chose to make this statement, I'm requesting documents to see if this statement is accurate.

Thus, I'm requesting the below items and will require sufficient time to review the same prior to the disciplinary hearing in this matter. Please provide to me, within 30 days from April 4, 2012, the following items pursuant to Nevada Administrative Code 467.932(1)(c):

**REQUEST FOR PRODUCTION OF DOCUMENTS**

1. Please produce any and all medical marijuana cards or permits which entitle you, or previously entitled you, to legally acquire medical marijuana in any state or locality, including the State of Nevada, for any and all times since 2007.
2. Please produce the names, addresses, and contact information of any and all health care professionals that have ever diagnosed you with any condition or illness for

- which they have prescribed or recommended the use of medical marijuana since 2007.
3. Please produce the names of any and all medical conditions or illnesses diagnosed by the health care professionals named in your response to Request for Production (RFP) 2.
  4. Please produce any and all medical records for any and all conditions or illnesses named in your responses to RFP 2 and RFP 3.
  5. Please produce any and all diagnostic test results for any and all tests that you have undergone in order to diagnose any conditions or illnesses in your response to RFP 3.
  6. Please produce any and all applications, and any and all documents attached thereto, you provided to any State, locality, department, or designee thereof for the purpose of seeking a medical marijuana identification card.
  7. Please produce the names and addresses of any and all medical marijuana cooperatives, collectives, dispensaries, operators, establishments, or providers, from which you have acquired or purchased medical marijuana since 2007.

#### **DEFINITIONS AND INSTRUCTIONS**

1. As used in this Request for Production of Documents, the term "writing" includes without limiting the generality of its meaning, all originals, or copies where originals are unavailable and non-identical copies (whether different from originals by reason of notation made on such copies or otherwise) of all written, recorded, or graphic matter, however produced or reproduced, whether or not now in existence, of correspondence, telegrams, e-mails, notes, signs or sound recordings of any type of conversation(s), meeting(s) or conference(s), minutes of meeting memoranda, communications, studies, analyses, reports, summaries and results of investigations

and tests, reviews, contracts, agreements, working papers, statistical records, invoices, receipts, computer data, stenographers' notebooks, manuals, directives, bulletins, desk calendars, appointment books, diaries, charts, photographs, drawings or other graphic representation, logs, reports or papers similar of any of the foregoing, however denominated.

2. As used in this Request for Production of Documents identification of a writing includes stating:
  - a. The nature of the writing;
  - b. The date, if any, appearing thereon;
  - c. The date, if known, on which the writing was prepared;
  - d. The title of the writing;
  - e. The general subject matter of the writing;
  - f. The number of pages comprising the writing;
  - g. The identity of each person who wrote, dictated, or otherwise participated in the preparation of the writing;
  - h. The identity of each person who signed or initialed the writing;
  - i. The identity of each person to whom the writing was addressed;
  - j. The identity of each person who received the writing or reviewed it;
  - k. The location of the writing;
  - l. The identity of each person having custody of the writing;
  - m. Identification of a writing includes identifying all writings known or believed to exist, whether or not in your custody or in the custody of your attorney(s).
3. If you at any time had possession or control of a writing requested pursuant to this Request for Production of Documents, and if such writing has been lost, destroyed, purged, or is not presently in your possession or control, you shall describe:

- a. The writing;
  - b. The date of its loss, destruction, purge or separation from control; and
  - c. The circumstances surrounding its loss, destruction, purge or separation from possession or control.
4. As used in this Request for Production of Documents, the term "you" or "your" or any version thereof, is intended to, and shall embrace and include any and all of the following: NICK DIAZ and any of his agents, officers, directors, employees, representatives, and any others who are in possession of, or who may have obtained, information for or on behalf of NICK DIAZ.
5. As used in this Request for Production of Documents, the term "health care professional" or any version thereof, is intended to, and shall embrace and include any and all of the following: individuals, institutions, or agencies that provide health services to health care consumers. Any reference to a health care professional shall include the full name and contact information for that health care professional.
6. As used in this Request for Production of Documents, the term "person" or its plural or any synonym thereof, is intended to, and shall embrace and include any and all of the following: individual, partnership, corporation, or any other entity.
7. The identification of a person or entity includes stating: his or her full name; the most recent home address and telephone number; his, her, or its most recent business address and telephone number; his or her present position; and his or her prior connection or association with NICK DIAZ.
8. As used in this Request for Production of Documents, the term "communication," its plural and any synonym thereof, is intended to, and shall embrace and include: all written, oral, or electronic communications of any kind.

9. As used in this Request for Production of Documents, the term "employee," its plural and any synonym thereof, is intended to, and shall embrace and include all employees of any and all health care professionals.
10. As used in this Request for Production of Documents, the term "drug" or any synonym thereof, is intended to, and shall embrace and include: any and all chemical substances that affect the processes of the mind or body, as well as any chemical compound used in the diagnosis, treatment, or prevention of disease or other medical condition.
11. As used in this Request for Production of Documents, the term "medical marijuana" is intended to, and shall embrace and include the definition found in Nevada Revised Statute 453.096.
12. A request that you produce the source of information about certain facts includes a request that you:
  - a. If such source of information or facts is an oral communication: state the means by which such knowledge has been preserved, its date or origin, state the sender and recipient;
  - b. If such source of preservation is in writing, state: its date and origin, its nature, originator, recipient, and last known custodian.
13. If a request has more than one part, each part should be separated so that the answer is clearly understandable.
14. Each Request for Documents herein should be construed independently. No Request for Documents herein should be construed by reference to any other Request if the result is a limitation of the scope of the answer to such Request.
15. The words "and" and "or" shall construed conjunctively or disjunctively as necessary, in order to bring within the scope of the Request, all responses which might otherwise be construed outside of its scope.

Nick Diaz  
c/o Ross C. Goodman, Esq.,  
April 4, 2012  
Page 6

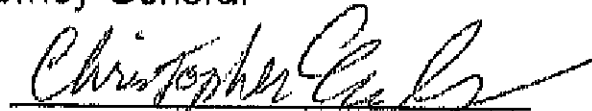
16. If a Request is objected to, in whole or in part, or if information responsive to a Request is withheld on the ground of privilege or otherwise, please: set forth full each objection, describe generally the information which is withheld, and set forth the facts upon which you rely on as the basis for each objection.
17. If you cannot produce any portion of any of the Request herein in full, after exercising diligence to secure the Request, please: so state and provide the production to the extent possible, specifying your inability to produce the remainder, and state whatever information or knowledge you have concerning the unproduced portion(s).
18. These Requests call for information (including information contained in writings) as is known or reasonably available to you, your attorney, any investigator or representative, or others acting on their behalf or under their direction or control, or any information in the actual or constructive possession, custody, care, or control of them.
19. These Requests shall be deemed to be continuing and in the event you discover information that has been requested, you are to supplement the Request by supplementing your production.

Should you have any questions or wish to discuss this matter, please contact me at your earliest convenience.

Sincerely,

CATHERINE CORTEZ MASTO  
Attorney General

By:



CHRISTOPHER ECCLES  
Deputy Attorney General  
Business & Taxation Division  
Telephone: (702) 486-3105  
Facsimile: (702) 486-3416  
E-Mail: [ceccles@ag.nv.gov](mailto:ceccles@ag.nv.gov)

# **EXHIBIT L**

# **EXHIBIT L**



1 **RESP**  
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 Respondent Nick Diaz

11 **BEFORE THE NEVADA STATE ATHLETIC COMMISSION**

12 \*\*\*

13 **IN THE MATTER OF:**

14 )  
15 ) **RESPONSE TO FIRST**  
16 ) **AMENDED COMPLAINT**  
17 )

18 **NICK DIAZ**

19 COMES NOW, Respondent NICK DIAZ, by and through its attorney of record, ROSS C.  
20 GOODMAN, ESQ., of the Goodman Law Group, P.C., and submits this Response to the First  
21 Amended Complaint ("FAC").

22 **I. THE FIRST AMENDED COMPLAINT DOES NOT ALLEGE ANY FACTS**  
23 **SUPPORTING THAT DIAZ VIOLATED A RULE**

24 *A. Marijuana Metabolite Is Not a Drug Prohibited by NAC 467.850.*

25 The after-the-fact allegations impugning Diaz's character serve to distract from the core  
26 issue that Nevada does not prohibit *inactive* marijuana metabolites. The applicable rule cited in  
27 ¶18 of the FAC provides against:

28 1. The **administration of or use of any:**

a. Alcohol;

b. Stimulant; or

c. Drug or injection that has not been approved by the

OFFICE OF THE ATTORNEY GENERAL  
LAS VEGAS, NEVADA

APR 11 2012

ADMINISTRATION

1           commission, including, but not limited to, the drugs or  
2           injection listed in subsection 2, in any part of the body, either  
3           before or during a contest or exhibition, to or by any  
4           unarmed combatant, is prohibited.

5           See NAC 467.850(1) (emphasis added).

6           NAC 467.850 prohibits the use of marijuana before or during a contest or exhibition  
7           where the psychoactive and/or physiological effects of the drug are active during the contest or  
8           exhibition. The FAC does not make any such allegation against Diaz and does not include  
9           reference to any evidence that could assist in proving such a violation against Diaz (of which  
10          there is none).

11          The FAC does not allege a violation of this rule by claiming Diaz "used" a drug, such as  
12          marijuana, but incorrectly relies on the false premise that "marijuana metabolite" is itself an  
13          unapproved "drug [or injection]".<sup>1</sup> (FAC ¶ 20). However, marijuana metabolite is clearly not a  
14          "drug or injection that has not been approved by the commission" under NAC 467.850(1) and  
15          neither is it included either expressly or by reference under NAC 467.850(2). Metabolite is not a  
16          "drug". Furthermore, metabolites are neither "administered" nor "used" (as required for a  
17          contravention of NAC 467.850(1)), and hence clearly fall outside the intended scope of the rule.  
18          Diaz neither "used" metabolites nor were metabolites "administered" to him either before or  
19          during a contest or exhibition. Furthermore, and independently from the preceding, interpreting  
20          inactive metabolite as an unapproved "drug" has no rational basis in the principles underlying  
21          Nevada's anti-doping regime.

22          Indeed, neither this Rule nor the *Prohibited List* published by the World-Anti Doping  
23          Agency ("WADA") and adopted by the NSAC, prohibit marijuana metabolite. The NSAC is not  
24          

25  
26          <sup>1</sup> If Diaz had tested for marijuana, which is not the case and which is not alleged in the FAC, the NSAC  
27          would be required to interpret its regulations in the absence of any regulations addressing the legal use of  
28          medical marijuana that reflect the intent of Nevada's legislators to exempt medical marijuana from the  
29          class of "prohibited substances". The issues engaged by such a hypothetical case do not arise here.

1 in the business of regulating *inactive* metabolized substances *legally* consumed outside of  
2 competition especially when such metabolites have no psychoactive ingredient that would  
3 represent a safety risk to a fighter during competition.<sup>2</sup> See Letter from Robert Sullivan, M.D.  
4 attached as Exhibit "A".

5  
6 In short, the NSAC does not have a Rule (or a rule incorporated by reference) which  
7 prohibits inactive marijuana metabolite. Consequently, the trace amounts of inactive metabolite  
8 detected after the fight cannot constitute a violation of NAC 467.850.<sup>3</sup>

9 *B. Marijuana Metabolite Is Also Not Prohibited by NSAC's Adoption of the*  
10 *Prohibited List Published by the World-Anti Doping Agency.*

11 Subsection 2 of the above Rule permits marijuana use outside of competition:

12 (f) Any drug identified on the most current edition of the  
13 *Prohibited List* published by the World Anti-Doping Agency,  
which is hereby adopted by reference.

14 See NAC 467.850(2)(f).

15 The *Prohibited List* separates marijuana use into two (2) categories, permitting such use  
16 "out-of-competition" while prohibiting such use "in-competition." See *Prohibited List*. The  
17 policy underlying this distinction recognizes that the psychoactive and physiological effects of  
18 marijuana ("THC") taken before competition subside within a couple hours and would have no  
19 impact on a fighter's safety at a later point in time. This policy is also consistent with NSAC's  
20 stated goal to ensure that each "fighter's health is not compromised." See Memorandum May  
21 24, 2008. In complying with Nevada's regulation, Diaz followed a pre-fight protocol of stopping  
22  
23

24 <sup>2</sup> In Dr. Sullivan's professional opinion, based upon review of medical records, patient history and an  
25 examination, Diaz is a qualified patient pursuant to the California Health & Safety Code to legally use  
medical marijuana.

26 <sup>3</sup> Dr. Hiatt explained that the trace amount of inactive metabolite (10 ng/mL above the cut off level) is  
27 consistent with marijuana use eight (8) days before competition. The new physiological factors resulting  
28 from a longer fight coupled with significant weight loss may have contributed to the elevated levels of  
inactive marijuana metabolites detected slightly above the cut-off levels.

1 use of medical marijuana eight (8) days before the competition. This general practice eliminated  
2 any possibility of a potential safety concern in-competition even though inactive metabolite may  
3 be stored in fat tissues for weeks to months after use.

4 The NSAC has not adopted any rule, effected any amendment to an existing rule, or  
5 adopted by reference any WADA regulation, that could arguably prohibit inactive metabolites  
6 resulting from marijuana use outside of competition.<sup>4</sup> As a result, a violation under the current  
7 regulation only applies where marijuana was used immediately prior to or during the fight.  
8 However, such claim is not even alleged in the FAC and had it been alleged, would be  
9 unsupported by any evidence, as Diaz did not test positive for the active ingredient of marijuana.  
10

11 **II. DIAZ MET THE REQUIRED STANDARD: REASONABLE**  
12 **INTERPRETATION OF COMMONLY UNDERSTOOD PHRASES TO**  
13 **THE BEST OF HIS KNOWLEDGE.**

14 The FAC alleges that "By answering "No" to one or more of the questions referenced in  
15 paragraph six, DIAZ provided false or misleading information to the Commission . . ." (FAC ¶  
16 8.)

17 All of the answers Diaz provided to the Commission on the Pre-Fight Questionnaire  
18 ("Questionnaire") were expressly qualified as "true and accurate to the best of [Diaz's]  
19 knowledge." In other words, in drafting the Questionnaire, the NSAC expressly imposes only a  
20 standard of good faith (and not, *e.g.*, a physician's standard) on unarmed combatants.

21 The FAC alleges no facts upon which a finding could be made that Diaz provided  
22

23  
24 <sup>4</sup> WADA also promulgates a Code – not adopted by the NSAC in whole or in part – pursuant to which a  
25 sample containing metabolites of a prohibited substance may be deemed an anti-doping violation under  
26 WADA's rules (at section 2.1.2). The Court of Arbitration for Sport has not had occasion to consider the  
27 argument that under WADA's Code, an in-competition sample containing *non-active* marijuana  
28 metabolite does not constitute a violation of the prohibition on *in-competition* marijuana use. The  
Commission may confront an analogous question if, in the future it elects to revise its regulations to  
include metabolites as a basis for disciplinary action (if, in fact, it has any jurisdiction to do so).  
However, this issue does not arise in this case as NAC 467.850 presently has no analogous provision to  
section 2.1.2 of the Code.

1 anything other than good faith responses to each of the questions on the Questionnaire. Absent a  
2 finding that Diaz intended to deceive the Commission in providing the answers he did, it is not  
3 open to the Commission to find that Diaz provided "false or misleading" information. Diaz  
4 makes no representation on the Questionnaire beyond the representation that each answer  
5 provided is true and accurate "to the best of his knowledge" – and hence it is only an attack of  
6 Diaz's *bona fides* that could form a potential basis for proceeding under this sub-rule (if there  
7 was some factual basis for doing so).  
8

9 Not only does the FAC allege no facts which could tend to establish Diaz's bad faith in  
10 filling out the Questionnaire, but the answers Diaz provided are precisely those that the NSAC  
11 should have expected where it elected not to provide definitions of any potential technical  
12 terminology on the Questionnaire.  
13

14 In the absence of prescribed definitions, Diaz relied on the general understanding of the  
15 terms "prescribed medications", "over the counter medication" and "serious medical illness."  
16 The lack of any other information or guidance from the NSAC makes it difficult to know what  
17 the NSAC actually intended especially if, in fact, the drafters of the Questionnaire intended to  
18 rely on specialized terms defined in out-of-state regulations (which is not conceded and is  
19 expressly denied).  
20

21 Before providing Diaz an opportunity to even respond to such allegations, the Attorney  
22 General's Office uncharacteristically attacked Diaz in the media:

23 Not only did Nick Diaz violate the law by testing positive for  
24 marijuana metabolites, but he also *lied* to the Commission on his  
25 Pre-Fight Questionnaire when he *swore* that he had not used any  
prescribed medications in two weeks before the fight.

26 See Sports.Yahoo.com, Nick Diaz's Attorney Doesn't Take Kindly to Calling His Client a Liar,  
27 by Kevin Iole, March 15, 2012 attached as Exhibit "B".

28 These after-the-fact allegations only surfaced after Diaz responded to the initial

1 Complaint pointing out that the NSAC does not prohibit marijuana use outside of competition (or  
2 inactive marijuana metabolites).

3 The Questionnaire at issue is a one page pre-printed form given at weigh-ins lacking any  
4 definitions, examples or other information suggesting a specific meaning of a phrase. In the  
5 absence of additional information, the Commission could have had no reasonable expectation  
6 other than that fighters interpret such phrases by their common meanings. While other  
7 interpretations may be possible, there is no evidence (or facts even alleged in the FAC) to  
8 suggest that Diaz *knowingly* provided false information. *See Barmettler v. Reno Air, Inc.*, 114  
9 Nev. 441, 956 P.2d 1382 (1998) (misrepresentation generally requires one to have  
10 communicated information knowing its falsity); *see also* BLACK'S LAW DICTIONARY 416 (6  
11 ed. 1992) ("false" is defined as "deliberately and knowingly false . . . willfully and intentionally  
12 untrue . . . a thing is called "false" when it is done, or made, with knowledge, actual or  
13 constructive, that it is untrue or illegal"). This is consistent with the Commission's admission  
14 that it expected nothing further from Diaz than for him to provide responses on the Questionnaire  
15 to the "best of [his] knowledge."  
16  
17

18 *A. Medical Marijuana Is Not a Prescription or Over-the-Counter Medication.*

19 Diaz is accused of knowingly providing false information by denying that medical  
20 marijuana is a "prescribed medication." However, Diaz interpreted this phrase with the  
21 commonly understood meaning for a "prescription" when a physician orders medication from a  
22 pharmacy. *See* NRS 453.128 (a prescription is "an order . . . directly from a physician . . . to a  
23 pharmacist). In Diaz's experience, marijuana is not legal to prescribe. *See* Calif. Health & Safety  
24 Code § 11362.5(b)(1)(A) (registration laws provide for a physician to "recommend" the use  
25 medical marijuana).  
26

27 Diaz's interpretation comports with state registration regulations for medical marijuana  
28

1 and federal law making it illegal for a physician to “prescribe” marijuana.

2 In the same way, Diaz commonly understands the term “over the counter medication or  
3 product” to mean medications typically sold or dispensed for sale at a retail store such as a CVS  
4 or Walgreens pharmacy. Diaz reasonably interpreted the phrase to mean products pharmacists  
5 commonly stock on shelves to treat symptoms for pain relief, allergies, cold/flu, etc. In absence  
6 of any interpretive guidance that the NSAC could have provided – but did not – or the specific  
7 question “Are you a medical marijuana user,” which the NSAC could have asked – but did not –  
8 Diaz responded by attributing the common meaning for “prescribed” and “over-the-counter”  
9 medications. At a minimum, there are no facts even alleged in the FAC to suggest Diaz  
10 *knowingly* provided false information.  
11

12 *B. Diaz Does Not Consider Attention Deficit Disorder Analogous to a “Serious”*  
13 *Medical Condition Such As AIDS, Cancer and Other Life-Threatening or*  
14 *Incapacitating Conditions.*

15 Diaz has lived with attention deficit disorder for the majority of his life and does not  
16 consider this condition “serious.” Diaz believes medical conditions are “serious” if they are  
17 incapacitating, life-threatening or results in emergency treatment or hospitalization. *See*  
18 *generally Perry v. Jaguar of Troy*, 353 F.3d 510 (6<sup>th</sup> Cir. 2003) (held that attention deficit  
19 disorder is not a serious medical condition because it is not incapacitating); *see also* NRS  
20 687B.450 (Nevada defines a medical conditions as serious if they are life threatening).  
21

22 However, to suggest that Diaz should have construed this phrase to mean “as defined by  
23 the California Health & Safety Code” on a Nevada form the day before competing in the welter-  
24 weight championship is unreasonable. Further, to impose a duty on Diaz to have construed the  
25 phrase to mean “as defined by the California Health & Safety Code” in such circumstances is an  
26 error of law. The statutory definition at issue (buried deep inside the Calif. Health & Safety  
27 Code) is *imputed to the physician*, not Diaz, based on the physician’s “professional opinion”.  
28

1 See Calif. Health & Safety Code § 11362.7(h); *see also* Exh. "A". The statutory definition lists  
2 ten conditions (including AIDS, cancers, migraines, and severe nausea) but does not specifically  
3 identify attention deficit disorder as a "serious medical condition."<sup>5</sup> *Id.*

4 Diaz reasonably believed from his physician that attention deficit disorder is an  
5 "approved condition" qualifying him to legally use medical marijuana.<sup>6</sup> *Id.* Diaz is a public  
6 advocate of medical marijuana and has given multiple public interviews about using medical  
7 marijuana. It is reasonable to assume that Diaz certainly would have acknowledged such use had  
8 he believed such information was contemplated. It is fundamentally unfair, arbitrary and  
9 capricious to suggest that Diaz "lied" on the form when the NSAC failed to define such phrases  
10 and only now assert that they intended a precise meaning pursuant to a California regulation  
11 intended for physicians. Diaz, in good faith, does not consider his persistent condition of  
12 attention deficit order as a "serious medical illness", especially in the context of responding to  
13 questions that a reasonable and objective person would see as relevant to one's fitness to  
14 compete in less than 24 hours for the UFC interim welter weight championship.

15  
16  
17 Absent proof that Diaz intended to deceive the Commission – *i.e.* by providing responses  
18 other than information that was true "to the best of his knowledge" – the Commission cannot  
19 find that Diaz violated NAC 467.885(3). Unless Diaz's interpretations of "serious medical  
20 illness", "prescribed medication", and "over the counter medication or product" are so clearly  
21 wrong as to constitute sufficient proof of a bad faith intent to deceive, the Commission must  
22

23  
24 <sup>5</sup> ADHD falls under the catch all provision which provides for "any other chronic or persistent medical  
25 symptom." *See* Calif. Health & Safety Code § 11362.7(h)(12). The medical marijuana laws plainly  
26 provides for "*any other illness* for which marijuana provides relief." *See* Calif. Health & Safety Code §  
27 11362.5(b)(1)(A).

28 <sup>6</sup> Under the Statute, Diaz's physician makes the determination whether his medical condition qualifies as  
an "approved condition." *See* Calif. Health & Safety Code § 11362.5(b)(1)(A). In order to comply with  
the medical marijuana laws, Diaz is only required to provide written documentation from his physician  
who determined that the use of medical marijuana was an appropriate treatment.

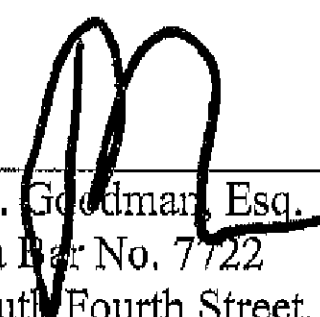


GOODMAN LAW GROUP  
A Professional Corporation  
520 S. Fourth Street, 2<sup>nd</sup> Floor  
Las Vegas, Nevada 89101  
(702) 383-5088

1 dismiss the allegations at paragraphs 8 and 23 of the FAC.

2 Dated this 11 day of April, 2012.

3 GOODMAN LAW GROUP, P.C.

4  
5  
6   
7 Ross C. Goodman, Esq.  
8 Nevada Bar No. 7722  
9 520 South Fourth Street, 2<sup>nd</sup> Floor  
10 Las Vegas, Nevada 89101  
11 Attorneys for Respondent Nick Diaz  
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# **EXHIBIT A**

# **EXHIBIT A**

Robert E. Sullivan, MD  
4441 Auburn Blvd. Suite F  
Sacramento, CA 95841  
916/978-9777 fx 916/978-9830

Date: April 6, 2012  
To: Nevada State Athletic Commission  
Re: Nickolas R. Diaz

Dear Sirs,

I am a board-certified physician in good standing continuously licensed to practice medicine in California for the past 40 years. During the previous nine (9) years I have primarily performed medical cannabis evaluations in accordance with the California Health & Safety Code 11362.5. After reviewing medical records, which reveal a diagnosis of attention deficit hyperactivity disorder ("ADHD"), taking a patient history and performing an examination, I have approved Mr. Diaz's use of medical marijuana. This approval to use medical marijuana is not a prescription. In addition, medical marijuana is not an "over the counter medication" or "over the counter product" in California.

Further, pursuant to the Code, I issued a Physician's Statement dated June 25, 2009, which states that "[Diaz] has a serious medical condition which in my professional opinion may benefit from the use of medical cannabis." The statutory definition of what constitutes a "serious medical condition" under this regulation is a physician's responsibility and not the patient's. The term is not part of my discussions with my patients. Instead, I focus on their particular medical problems, the benefits from use of medical marijuana, what effects a patient may experience, how to use it safely, etc. Even though the Physician's Statement does not expire, Mr. Diaz's ADHD remained unchanged and after my examination of Mr. Diaz I issued another Physician's Statement dated February 28, 2012.

As a physician, ADHD is a persistent condition that qualifies under the California statutory definition of "serious medical condition". I believe most lay people would consider "serious" medical conditions to include cancer, heart attacks, strokes, a broken neck, AIDS, etc, but would not include ADHD on that list.

Sincerely,



Robert E. Sullivan, MD

# **EXHIBIT B**

# **EXHIBIT B**

**Michelle Hall**

---

**Subject:** FW: Ross Goodman's response in the Nick Diaz case

**From:** "Jennifer M. Lopez" <[JLopez@ag.nv.gov](mailto:JLopez@ag.nv.gov)>  
**Subject:** RE: Ross Goodman's response in the Nick Diaz case  
**Date:** March 13, 2012 12:27:05 PM PDT  
**To:** Kevin Iole <[keviniole2@me.com](mailto:keviniole2@me.com)>

Here's a quote for your story.

"Not only did Nick Diaz violate the law by testing positive for marijuana metabolites, but he also lied to the Commission on his Pre-Fight Questionnaire when he swore that he had not used any prescribed medications in two weeks before the fight."

Can you please send me a URL when posted online?

Jennifer López  
Public Information Officer  
Nevada Attorney General's Office  
555 E. Washington Avenue, Suite 3900 • Las Vegas, NV 89101  
Desk: 702-486-3782 • Mobile: 702-279-3378

# **EXHIBIT M**

# **EXHIBIT M**



April 11, 2012

**Via Hand Delivery**

Christopher Eccles  
Deputy Attorney General  
OFFICE OF THE ATTORNEY GENERAL  
Business & Taxation Division  
555 East Washington Ave., Suite 3900  
Las Vegas, Nevada 89101

OFFICE OF THE ATTORNEY GENERAL  
LAS VEGAS, NEVADA

APR 11 2012

ADMINISTRATION

***Re: Nick Diaz's Response to Request for Production of Documents***

Dear Mr. Eccles:

In response to your April 4, 2012 letter requesting certain documents, enclosed are the following Physician's Statements dated June 25, 2009 and February 28, 2012. This is the "written documentation" that qualifies Mr. Diaz to use medical marijuana pursuant to California Health & Safety Code 11362.5. In addition, Dr. Sullivan has provided a Letter attached as Exhibit A to the Response to the First Amended Complaint explaining that he reviewed such medical records and performed an examination as required by the Code to render a professional opinion that Mr. Diaz was diagnosed with ADHD and that medical use of marijuana is appropriate. See Calif. Health & Safety Code 11362.715(a)(2). Dr. Sullivan's letter and the enclosed Physician's Statements provide a complete answer to your request for documentation "to see if [Mr. Diaz's statement that he is in full compliance with California law] is accurate."

However, the Requests to actually examine Mr. Diaz's medical records, including records underlying Dr. Sullivan's approval of Mr. Diaz's use of medical marijuana under California law, are not relevant to the detection of inactive marijuana metabolite after the fight or relevant to whether Mr. Diaz complied with the Code. Neither are they relevant to Mr. Diaz's statement that he is in compliance with California law, as Dr. Sullivan's letter and Physician's Statements are themselves dispositive of that fact.

In addition, the Requests for Mr. Diaz's medical records are protected by the physician-patient privilege and Health Insurance Portability and Accountability Act of 1996 ("HIPAA") Privacy Laws.

The general rule of doctor-patient privilege pursuant to NRS 49.255 states as follows:

A patient has a privilege to refuse to disclose and to prevent any other person from disclosing confidential communications among the patient, the patient's doctor or persons who are

participating in the diagnosis or treatment under the direction of the doctor, including members of the patient's family.

Moreover, HIPAA prohibits the wrongful disclosure of individually identifiable health information, defined as information that relates to the physical or mental health or condition of an individual, or the provision of health care to an individual, that identifies the individual. 42 U.S.C. § 1320d-6; 45 C.F.R. § 160.103.

Lastly, the Request seeking information regarding Mr. Diaz's purchase history of medical marijuana has no relevance to the allegations in the First Amended Complaint. The names and addresses of "any and all medical marijuana cooperatives, collective, dispensaries etc" have nothing to do with Mr. Diaz's approved use of medical marijuana.

In light of our conversation last week where I discussed these same objections, you advised that you would alternatively issue a subpoena for such medical records. However, as you should know NRS 233B.123 expressly stipulates that irrelevant and immaterial evidence must be excluded from these proceedings and that agencies, including the NSAC, "shall give effect to the rules of privilege recognized by law." The NSAC is therefore legally prohibited from issuing any subpoena pursuant to NRS 467.115 or NAC 467.932 that conflicts with NRS 233B.123.

Pursuant to our discussion since the temporary suspension, Mr. Kizer informed me and others that this matter will be placed on the April agenda. However, during our conversation last week Mr. Kizer stated that there was a delay given your recent Request for Production of Documents dated April 4, 2012. Accordingly, in light of this response objecting to producing medical records which are privileged and outside the scope of the FAC, we are seeking confirmation that the complaint for disciplinary action against Mr. Diaz is formally placed on the April 24, 2012 agenda.

Very truly yours,  
GOODMAN LAW GROUP

  
Ross C. Goodman, Esq.

RCG/mh



Robert E. Sullivan, M.D.  
4709 Engle Road #5  
Carmichael, CA 95608

**PHYSICIAN'S STATEMENT**

Today's date June 25, 2009

This certifies that Nickolas R. Diaz born on Aug 02, 1983  
was examined in my office. He/she has a serious medical condition which, in my professional  
opinion, may benefit from the use of medical cannabis. I have discussed the potential risks and  
benefits of medical cannabis use with the above named person. I approve his/her use of cannabis  
as medicine.

Use of this medication alone, with alcohol or other mind-altering medications, may produce  
physical or mental impairment affecting the performance of potentially dangerous tasks. Use  
caution until you know how this medication affects you. Use the least amount of medical  
cannabis needed to relieve symptoms.

I recommend that you not use tobacco. Please use discretion and respect the rights of others.  
I recommend that this approval be renewed within one year from the above date.

Robert E. Sullivan, M.D.  
CA License G31309  
4709 Engle Road #5  
Carmichael, CA 95608  
Phone 916-978-9777  
Facsimile 916-978-9830

RE Sullivan  
Physician Signature

6-25-09  
Date

**NOT VALID WITHOUT SIGNATURE AND EMBOSSING**

**Patient Declaration**

I, Nickolas R. Diaz, the undersigned, declare that all the  
information provided to the above physician is true and correct under penalty of perjury. I am a  
California resident.

Nickolas R. Diaz  
Patient Signature

6-25-09  
Date

Name Nickolas R. Diaz

Address 9631 Angelina Ct.

City Stockton State Ca Zip 95212

Robert E. Sullivan, M.D.  
4441 Auburn Blvd. Ste. P  
Sacramento, CA 95841

### PHYSICIAN'S STATEMENT

Today's date Feb 28, 2012

This certifies that Nickolas R. Diaz born on Aug 02, 1983  
was examined in my office. He/she has a serious medical condition which, in my professional  
opinion, may benefit from the use of medical cannabis. I have discussed the potential risks and  
benefits of medical cannabis use with the above named person. I approve his/her use of cannabis  
as medicine.

Use of this medication alone, with alcohol or other mind-altering medications may produce  
physical or mental impairment affecting the performance of potentially dangerous tasks. Use  
caution until you know how this medication affects you. Use the least amount of medical  
cannabis needed to relieve symptoms.

I recommend that you not use tobacco. Please use discretion and respect the rights of others.

I recommend that this approval be renewed within one year from the above date.

Robert E. Sullivan, M.D.  
CA License G31309  
4441 Auburn Blvd. Ste. P  
Sacramento, CA 95841  
Phone 916-978-9777  
Fax 916-978-9830

RE Sullivan 2-28-12  
Physician Signature Date

NOT VALID WITHOUT SIGNATURE AND EMBOSSING

#### Patient Declaration

I, Nickolas R. Diaz, the undersigned, declare that all the  
information provided to the above physician is true and correct under penalty of perjury. I am a  
California resident.

Nickolas R. Diaz 2-28-12  
Patient Signature Date  
Name Nickolas R. Diaz  
Address 3764 Massimo Cir  
City Stockton State Ca Zip 95212

For Verification of this document call the office (916)978-9777 during regular business hours.  
After hours please call (916)215-1978, dispensaries may call until 10:00P.M. and 24 hours for Law Enforcement.

**EXHIBIT N**

**EXHIBIT N**



April 13, 2012

Via Hand Delivery

Christopher Eccles  
Deputy Attorney General  
OFFICE OF THE ATTORNEY GENERAL  
Business & Taxation Division  
555 East Washington Ave., Suite 3900  
Las Vegas, Nevada 89101

OFFICE OF THE ATTORNEY GENERAL  
LAS VEGAS, NEVADA

APR 13 2012

ADMINISTRATION

*Re: Hearing of First Amended Complaint against Nick Diaz*

Dear Mr. Eccles:

We have received no response to our correspondence dated April 12, 2012, seeking confirmation that the NSAC's complaint against Mr. Diaz will be heard on April 24, 2012.

Our client's license is presently suspended on a summary basis until a final determination of any disciplinary action to be taken against him, under an order made by the NSAC pursuant to NRS 467.117(2) and NRS 233B.127(3) on February 22, 2012 (the "Summary Suspension Order").

The law does not permit the NSAC to suspend our client indefinitely pending a hearing and determination of the complaint, but imposes a reasonable and definite time limit within which the complaint must be heard and determined. By enactment effected May 22, 2009, Nevada's legislators amended NRS 233B.127(3) to provide that "[p]roceedings relating to the order of summary suspension must be instituted and determined within 45 days after the date of the order unless the agency and the licensee mutually agree in writing to a longer period." [emphasis added] (Prior to this amendment, the time limitation was that the proceedings be instituted and determined "promptly".) Requests for documents, including documents which are not relevant to the matters in dispute and which are protected by statutory and common law privilege, do not operate to extend the time limit within which a hearing must be held pursuant to the statutory limitation.

The final day for the hearing and determination of the NSAC's complaint against Mr. Diaz was therefore April 6, 2012 – 45 days after the date of the Summary Suspension Order. In discussions with Mr. Kizer, following the Summary Suspension Order, Mr. Kizer informed me and others that this matter would be placed on the NSAC's April agenda. Our client was and is confident that there is no basis for disciplinary action against him and therefore did not object to a delay beyond the required 45 day time limit as long as the matter was heard and determined in April.

However, our client objects to any further delay.



GOODMAN LAW GROUP, P.C.

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We presume that the NSAC will comply with its statutory obligation to have this matter heard on April 24, 2012. If not, my client takes the position that the NSAC has by virtue of its delay irrevocably elected to discontinue or abandon its complaint against Mr. Diaz. The NSAC has no authority to hear or determine the complaint at a later date, and any such purported hearing or determination of the complaint would be *ultra vires* the NSAC's statutory powers.

We expect your response no later than 4:00 p.m., Monday, April 16, 2012.

Very truly yours,

GOODMAN LAW GROUP, P.C.

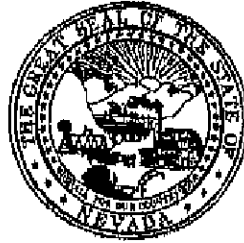
Ross C. Goodman, Esq.

A handwritten signature in black ink, appearing to be 'R. Goodman', written over the typed name.

RCG/mh

# EXHIBIT O

# EXHIBIT O



STATE OF NEVADA  
OFFICE OF THE ATTORNEY GENERAL

555 East Washington Ave., Suite 3900  
Las Vegas, Nevada 89101

CATHERINE CORTEZ MASTO  
*Attorney General*

KEITH G. MUNRO  
*Assistant Attorney General*

GREGORY M. SMITH  
*Chief of Staff*

April 16, 2012

**VIA U.S. MAIL AND E-MAIL AT [ross@goodmanlawgroup.com](mailto:ross@goodmanlawgroup.com)**

Nick Diaz  
c/o Ross C. Goodman, Esq.,  
GOODMAN LAW GROUP, PC  
520 S. Fourth St., 2<sup>nd</sup> Floor  
Las Vegas, NV 89101

**Re: State v. Diaz**

Dear Mr. Goodman:

I have reviewed your letter dated April 13, 2012 and respond as follows.

On several occasions you told me and Mr. Kizer that Mr. Diaz had a medical marijuana card and that you would produce it. On one of those occasions, you stated that Cesar Gracie was getting the card from Mr. Diaz and that you would produce the card shortly. In any event, you agreed to produce the card prior to the disciplinary hearing. I've waited for more than a month for the card. As a result, I issued a Request for Production for the card and other information regarding Mr. Diaz's case.

You have chosen not to provide the requested documents, including Mr. Diaz's card. If Mr. Diaz does not have the card, please simply confirm that in writing. As to the relevance of the documents I requested for production, it is the Commission that will ultimately determine what is relevant.

Regarding the date of the disciplinary hearing, Mr. Kizer and I both told you that the Chairman of the Commission determines the matters to be heard on each agenda. Mr. Kizer said that Mr. Diaz's case *could* be on the April agenda. Again, you have not produced Mr. Diaz's card as you repeatedly stated you would. The agenda for the April 24, 2012 meeting will be finalized on April 18, 2012, and at that time, we will both find out what is on the agenda.

Nick Diaz  
c/o Ross C. Goodman, Esq.,  
April 4, 2012  
Page 2

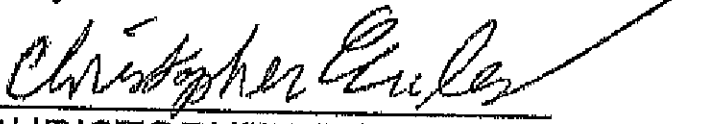
Furthermore, you erroneously stated that the Commission summarily suspended Mr. Diaz's pursuant to NRS 233B.127(3). A summary suspension occurs when an agency suspends a license, prior to a hearing before a board or commission, due to emergency circumstances which pose a risk to public welfare. NRS 233B.127(3) provides: "If the agency finds that the public health, safety, or welfare imperatively require emergency action, and incorporates a finding to that effect in its order, summary suspension of a license may be ordered pending proceedings for revocation or other action." No Notice of Summary Suspension was ever served on you client. In this matter, Mr. Diaz was properly served with a "Notice of Hearing on Temporary Suspension" and he failed to appear at the hearing. The Commission temporarily suspended Mr. Diaz's license at the hearing. Neither Mr. Diaz nor you objected in any manner to the temporary suspension.

Please be advised that we are moving forward with the First Amended Complaint. I will inform you of the date of the disciplinary hearing when I know it.

Should you have any questions or wish to discuss this matter, please contact me.

Sincerely,

CATHERINE CORTEZ MASTO  
Attorney General

By:   
CHRISTOPHER ECCLES  
Deputy Attorney General  
Business & Taxation Division  
Telephone: (702) 486-3105  
Facsimile: (702) 486-3416  
E-Mail: [ceccles@ag.nv.gov](mailto:ceccles@ag.nv.gov)

CE/dw



# **EXHIBIT P**

# **EXHIBIT P**



Brian Sandoval  
**Governor**

STATE OF NEVADA  
DEPARTMENT OF BUSINESS AND INDUSTRY  
**ATHLETIC COMMISSION**

Terry Johnson  
**Department Director**

Keith Kizer  
**Executive Director**

**Chairman:** Skip Avansino  
**Members:** Francisco V. Aguilar, Bill Brady, T. J. Day, Pat Lundvall

**TO THE COMMISSION AND THE PUBLIC:**

A duly authorized telephone meeting of the Nevada State Athletic Commission will be held on **April 24, 2012**, at **9:00 a.m.** at the Cleveland Clinic Lou Ruvo Center for Brain Health, KMA Event Center, 888 West Bonneville Avenue, Las Vegas, NV 89106.

**AGENDA**

1. Call to order.
2. Roll Call.
3. Public comment.
4. Approval of the minutes of the meetings of March 27, 2012, *for possible action*.
5. Adoption of the agenda for this meeting, *for possible action*.
6. Disclosures per NRS 281/281A.

**NEW BUSINESS:**

1. Request by boxer Carlos Quintana for a license per NAC 467.017 (attained the age of 35 years or over), *for possible action*. (Record 28-3).
2. Request by boxer Shane Mosley for a license per NAC 467.017 (attained the age of 35 years or over), *for possible action*. (Record 46-7-1).
3. Request by kickboxer Anthony Newman for a license per NAC 467.017 (attained the age of 35 years or over), *for possible action*. (Record 6-2-1).
4. Request by boxer Miguel Beltran, Jr. for a license per NAC 467.017(3) (prior serious head injury), *for possible action*. (Record 26-1-1).
5. Request by mixed martial artist Mike Thomas Brown for a license per NAC 467.017 (attained the age of 35 years or over), *for possible action*. (Record 25-8).
6. Request by mixed martial artist Mark Hunt for a license per NAC 467.017 (attained the age of 35 years or over), *for possible action*. (Record 8-7).

- 7.** Selection of officials and setting of fees to work May 4, 2012 at the Hard Rock Hotel in Las Vegas for the WBC USNBC Featherweight title bout between Daniel Ponce De Leon and Eduardo Lazcano, *for possible action.*
- 8.** Selection of officials and setting of fees to work May 5, 2012 at the MGM Grand Garden Arena in Las Vegas for the WBA Super Welterweight title bout between Floyd Mayweather, Jr and Miguel Cotto, *for possible action.*
- 9.** Selection of officials and setting of fees to work May 5, 2012 at the MGM Grand Garden Arena in Las Vegas for the WBC Super Welterweight title bout between Saul Alvarez and Shane Mosley, *for possible action.*
- 10.** Selection of officials and setting of fees to work May 19, 2012 at the Mandalay Bay Events Center in Las Vegas for the IBF/WBA 140 lbs. title bout between Lamont Peterson and Amir Khan, *for possible action.*
- 11.** Request by Warriors Boxing for the date of May 11, 2012 to promote a professional boxing event at the Texas Station in North Las Vegas and to be broadcast on ShoBox, *for possible action.*
- 12.** Request by Sampson Boxing for the date of May 11, 2012 to co-promote a professional boxing event at the Texas Station in North Las Vegas and to be broadcast on ShoBox, *for possible action.*
- 13.** Request by Gary Shaw Promotions for the date of May 11, 2012 to co-promote a professional boxing event at the Texas Station in North Las Vegas and to be broadcast on ShoBox, *for possible action.*
- 14.** Request by Sterling Promotions for the date of May 26, 2012 to promote a professional boxing event at the Palms Casino Resort in Las Vegas, *for possible action.*
- 15.** Request by Golden Boy Promotions for the date of June 2, 2012 to promote a professional boxing event at the Hard Rock Hotel in Las Vegas and to be broadcast on Fox Sports Net, *for possible action.*
- 16.** Request by KZ Event Productions for the date of June 2, 2012 to co-promote a professional boxing event at the Hard Rock Hotel in Las Vegas and to be broadcast on Fox Sports Net, *for possible action.*
- 17.** Request by Top Rank for the date of June 8, 2012 to promote a professional boxing event at the Hard Rock Hotel in Las Vegas and to be broadcast on ESPN, *for possible action.*
- 18.** Request by In Sync Productions for the date of June 16, 2012 to promote a professional mixed martial arts event at the Cannery Hotel and Casino in North Las Vegas, *for possible action.*
- 19.** Request by Let's Get It On Promotions for the date of May 11, 2012 to promote an amateur mixed martial event at Harrah's Reno, *for possible action.*
- 20.** Request by Sin City Fight Promotions for the date of May 11, 2012 to promote an amateur mixed martial events at the South Point Hotel in Las Vegas, *for possible action.*
- 21.** Request by King of the Cage for the date of May 19, 2012 to promote an amateur mixed martial events at the Edgewater Casino in Laughlin, *for possible action.*
- 22.** Request by Tuff-N-Uff Productions for the dates of July 6, 2012 and August 31, 2012 to promote an amateur mixed martial events at the South Point Hotel in Las Vegas, *for possible action.*

- 23.** Request by Arce Boxing Club for a grant from NRS 467.108 for travel to Fresno, CA to participate in the Aleman Boxing Show on February 17-18, 2012 for 5 boxers and 2 coaches for per diem of \$280, hotel expenses of \$85.92, and mileage reimbursement of \$152.50, total of **\$518.42**, *for possible action.*
- 24.** Request by Arce Boxing Club for a grant from NRS 467.108 for travel to Las Vegas, NV to participate in the Golden Gloves State Tournament on February 17-19, 2012 for 1 boxer and 1 coach for per diem of \$120.00, hotel expenses of \$170.00 and mileage reimbursement of \$225.50, total of **\$515.50**, *for possible action.*
- 25.** Request by Arce Boxing Club for a grant from NRS 467.108 for travel to Fresno, CA to participate in the Velarde Club Boxing Show on March 9-10, 2012 for 10 boxers, 1 chaperone and 4 coaches for per diem of \$600.00, hotel expenses of \$271.20 and mileage reimbursement of \$151.00, total of **\$1,022.20**, *for possible action.*
- 26.** Request by Arce Boxing Club for a grant from NRS 467.108 for travel to Salinas, CA to participate in the Club Invitational event on March 16-17, 2012 for 5 boxers and 2 coaches for per diem of \$280.00, hotel expenses of \$99.80 and mileage reimbursement of \$155.00, total of **\$534.80**, *for possible action.*
- 27.** Request by Barry's Boxing for a grant from NRS 467.108 for travel to Cottonwood, AZ to participate in the St. Paddy's Day on March 17, 2012 for 6 boxers and 2 coaches for per diem of \$160, and fuel reimbursement of \$138.00, total of **\$298.00**, *for possible action.*
- 28.** Request by Nevada LBC #49 for a grant from NRS 467.108 for travel to Fort Carson, CO, to participate in the 2012 USA Boxing National Championship on February 24 - March 4, 2012 for 1 boxer for hotel expenses of \$333.32, and airfare of \$179.04, total of **\$512.36**, *for possible action.*
- 29.** Request by Carson City Boxing Club for a grant from NRS 467.108 for travel to Reno, NV to participate in the St. Paddy's Day on March 17, 2012 for 6 boxers and 2 coaches for per diem of \$78.56, and fuel reimbursement of \$60.00, total of **\$138.56**, *for possible action.*
- 30.** Request by Mesquite Boxing Club for a grant from NRS 467.108 for travel to Las Vegas, NV to participate in the Golden gloves Regional Tournament on March 24-25, 2012 for 2 boxers and 2 coaches for per diem of \$240.00, hotel expenses of \$179.20, and fuel reimbursement of \$85.00, total of **\$504.20**, *for possible action.*
- 31.** Request by Richard Steele Promotions for a grant from NRS 467.108 for travel to Fresno, CA to participate in the Club Invitational hosted by Aleman Boxing Club on February 17-18, 2012 for 2 boxers, 1 coach, and 1 chaperone for per diem of \$160.00, hotel expenses of \$66.12, and fuel reimbursement of \$179.73, total of **\$405.85**, *for possible action.*
- 32.** Request for approval by Tuff-N-Uff to exceed the 4% limit per NAC 467.332 on 700 complimentary tickets on April 7, 2012 at the South Point Arena in Las Vegas for donation to Nellis Air Force Base, Las Vegas Metropolitan Police Department, and Clark County Fire Department, *for possible action.*
- 33.** Hearing of disciplinary complaint against mixed martial artist Shawn Fitzsimmons, *for possible action.*
- 34.** Hearing of disciplinary complaint against boxer Javier Flores, *for possible action.*
- 35.** Request by MMAWC, LLC dba World Series of Fighting for a promoter's license, *for possible action.*
- 36.** Request by mixed martial artist Alistair Overeem for a license, *for possible action.* (Record 36-11).

**PUBLIC COMMENT:**

**CHAIRMAN'S REPORT:**

**MATTERS FOR FUTURE AGENDAS:**

**ADJOURNMENT:** *For possible action.*

Note: We are pleased to make reasonable accommodations for members of the public who are disabled and wish to attend the meeting. If special arrangements are necessary, please email [oaure@boxing.nv.gov](mailto:oaure@boxing.nv.gov), fax your request to 702-486-2577 or notify 702-486-2575 as soon as possible.

**Items may be taken out of order. The Commission may combine two or more agenda items for consideration. The Commission may remove an item from the agenda or delay discussion relating to an item on the agenda at any time.**

**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 Commission may refuse to consider public comment. See NRS 233B.126.**

**THIS AGENDA HAS BEEN POSTED AT THE FOLLOWING LOCATIONS:**

**Posted on web site: [boxing.nv.gov](http://boxing.nv.gov)**

1. Grant Sawyer Office Building	555 E Washington Avenue	Las Vegas, NV 89101
2. Nevada State Athletic Commission	555 E Washington Ave, Suite 3200	Las Vegas, NV 89101
3. Department of Business & Industry	555 E Washington Ave, Suite 4900	Las Vegas, NV 89101
4. Department of Business & Industry	1830 College Parkway, Suite 100	Carson City, NV 89706