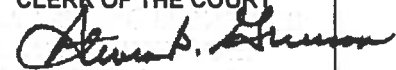


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Steven D. Grierson  
CLERK OF THE COURT



1 **NEOJ**  
2 Constance L. Akridge  
3 Nevada Bar No. 3353  
4 James M. DeVoy  
5 Nevada Bar No. 11950  
6 Brittany L. Walker  
7 Nevada Bar No. 14641  
8 HOLLAND & HART LLP  
9 9555 Hillwood Drive, 2nd Floor  
10 Las Vegas, NV 89134  
11 Phone: 702.669.4600  
12 Fax: 702.669.4650  
13 clakridge@hollandhart.com  
14 jmdevoy@hollandhart.com  
15 blwalker@hollandhart.com

16 *Attorneys for Plaintiffs*

17 **DISTRICT COURT**  
18 **CLARK COUNTY, NEVADA**

19 ACRX SPECIALTY PHARMACY, INC. a  
20 Nevada corporation; and EGHOMWARE  
21 IGBINOVIA, a/k/a JERRY IGBINOVIA, an  
22 individual,

23 Plaintiffs,

24 v.

25 NEVADA STATE BOARD OF PHARMACY;  
26 DOES I-X; and ROE CORPORATIONS XI-  
27 XX,

28 Defendants.

Case No. A-19-798928-C  
Dept. No. II

**NOTICE OF ENTRY OF ORDER  
GRANTING PLAINTIFFS' EX PARTE  
APPLICATION FOR TEMPORARY  
RESTRAINING ORDER AND  
PRELIMINARY INJUNCTION, AND  
SETTING HEARING ON  
PRELIMINARY INJUNCTION**

29 **YOU, AND EACH OF YOU**, will please take notice that an Order Granting Plaintiffs'  
30 Ex Parte Application for Temporary Restraining Order and Preliminary Injunction, and Setting  
31 Hearing on Preliminary Injunction was entered on the 8th day of August, 2019.

32 ///

33 ///

34 ///

35 ///

36 ///

HOLLAND & HART LLP  
9555 HILLWOOD DRIVE, 2ND FLOOR  
LAS VEGAS, NV 89134

HOLLAND & HART LLP  
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A copy of said Order is attached hereto.

DATED this 8th day of August, 2019.

HOLLAND & HART LLP

/s/ James M. DeVoy

Constance L. Akridge  
James M. DeVoy  
Brittany L. Walker  
9555 Hillwood Drive, 2nd Floor  
Las Vegas, NV 89134

*Attorneys for Plaintiffs*

HOLLAND & HART LLP  
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**CERTIFICATE OF SERVICE**

I hereby certify that on the 8th day of August, 2019, a true and correct copy of the foregoing **MASTER CAPTION** was served by the following method(s):

Electronic: by submitting electronically for filing and/or service with the Eighth Judicial District Court’s e-filing system and served on counsel electronically in accordance with the E-service list to the following email addresses:

U.S. Mail: by depositing same in the United States mail, first class postage fully prepaid to the persons and addresses listed below:

Brett Kandt, Esq.  
General Counsel  
Nevada State Board of Pharmacy  
985 Damonte Ranch Parkway  
#206  
Reno, NV 89521

Email: by electronically delivering a copy via email to the following e-mail address:

Facsimile: by faxing a copy to the following numbers referenced below:

Receipt of Copy:

/s/ Joyce Heilich  
An Employee of Holland & Hart LLP

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8/8/2019 11:50 AM  
Steven D. Grierson  
CLERK OF THE COURT



1 **ORDR**  
2 Constance L. Akridge  
3 Nevada Bar No. 3353  
4 J. Malcolm DeVoy  
5 Nevada Bar No. 11950  
6 Brittany L. Walker  
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13 clakridge@hollandhart.com  
14 jmdevoy@hollandhart.com  
15 blwalker@hollandhart.com

16 *Attorneys for Plaintiffs*

17 **DISTRICT COURT**  
18 **CLARK COUNTY, NEVADA**

19 ACRX SPECIALTY PHARMACY, INC. a  
20 Nevada corporation; and EGHOMWARE  
21 IGBINOVIA, a/k/a JERRY IGBINOVIA, an  
22 individual,

23 Plaintiffs,

24 v.

25 NEVADA STATE BOARD OF PHARMACY;  
26 DOES I-X; and ROE CORPORATIONS XI-  
27 XX,

28 Defendant.

Case No. A-19-798928-C  
Dept. No. II

**ORDER GRANTING PLAINTIFFS' EX  
PARTE APPLICATION FOR  
TEMPORARY RESTRAINING ORDER  
AND PRELIMINARY INJUNCTION,  
AND SETTING HEARING ON  
PRELIMINARY INJUNCTION**

Hearing Date: July 26, 2019  
Hearing Time: 9:00 a.m.

29 On July 26, 2019 at 9:00 a.m., the matter of Plaintiffs' Ex Parte Motion for Temporary  
30 Restraining Order and Preliminary Injunction, submitted to the Court on July 22, 2019 on an Order  
31 Shortening Time by Plaintiffs ACRX Specialty Pharmacy Inc. ("ACRX") and Eghomware  
32 Igbinovia, a/k/a Jerry Igbinovia ("Igbinovia"), collectively the "Plaintiffs," came on for hearing  
33 and was argued by Constance L. Akridge, Esq. and J. Malcolm DeVoy, Esq. of Holland & Hart  
34 LLP for Plaintiffs, and Brett Kandt, Esq. of the Nevada State Board of Pharmacy ("Board," or the  
35 "Defendant") for Defendant.

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LAS VEGAS, NV 89134

AUG 02 2019

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LAS VEGAS, NV 89134

1 This Court, having reviewed Plaintiffs’ Motion and all attachments, the Complaint filed  
2 herein, considered the arguments of counsel for both Plaintiffs and Defendant, counsel for  
3 Plaintiffs having provided copies of the Motion and Complaint to general counsel for Defendant,  
4 and good cause appearing, hereby finds that this is a proper instance for a temporary restraining  
5 order to be issued because if Defendant is not restrained and enjoined by order of this Court,  
6 Plaintiffs will suffer immediate and irreparable injury through deprivation of their valid business  
7 interests and damage to their property interests in their professional licenses issued and governed  
8 by the Board. In addition to the declarations supporting the Motion pursuant to Nev. R. Civ. P.  
9 65(b)(2), the Court makes the following findings of fact and conclusions of law as a basis for this  
10 Order as required by Nev. R. Civ. P. 65(d)(1)(A)-(C):

11 **I. FINDINGS OF FACT**

12 1. On June 20, 2019, the Nevada State Board of Pharmacy (“Board”) involuntarily  
13 closed ACRX when law federal enforcement agencies seized nine (9) computers from ACRX and  
14 arrested Igbinovia. Despite these events, Igbinovia was processed and released from custody on  
15 his own recognizance that very same day, without the requirement to post any bond.

16 2. Igbinovia submitted evidence to the Court that he had maintained a backup of all  
17 data found on the nine (9) computers seized from ACRX by law enforcement officers.

18 3. Neither the Board nor any other governmental entity has obtained any order or other  
19 form of relief requiring ACRX to close.

20 4. The Board neither complied with NRS 233B.127(3) nor intended that its actions  
21 constitute a summary suspension of ACRX’s pharmacy license under this provision.

22 5. Before the hearing, the Board had refused to re-open ACRX.

23 6. Patients who are not parties to this action have been affected by the Board’s actions,  
24 and have had their access to medication disrupted by the Board’s closure of ACRX; the Court finds  
25 that those affected patients’ needs for prescribed, necessary, and life-saving medications is the  
26 most relevant measure of the public’s interest in any injunctive relief.

27 7. Plaintiffs and Defendant have represented and stipulated through their above-  
28 identified counsel that any Temporary Restraining Order shall be converted into a Preliminary

1 Injunction and remain in effect through the date of the Preliminary Injunction hearing specified  
2 within this Order.

3 **II. CONCLUSIONS OF LAW**

4 1. The provisions of NAC 639.570 and NRS 639.070 do not permit the Board to close  
5 ACRX and exclude Plaintiffs from the pharmacy's location without adequate notice and hearing  
6 required under NRS 233B.121 and 233B.127. Instead, NAC 639.570 merely prescribes  
7 procedures for the Board to follow in the event of an involuntary closure of a pharmacy as a result  
8 of governmental action, which has not happened in this case. *See* NAC 639.570(5).

9 2. Plaintiffs have shown a reasonable probability of success on the merits of their  
10 claims against Defendant.

11 3. Plaintiffs have shown a reasonable probability of demonstrating they are suffering  
12 and will continue to suffer irreparable harm if this Court does not issue an injunction.

13 4. The public interest, balancing both the need to constrain governmental action  
14 according to the terms of the Nevada Revised Statutes and the Nevada Administrative Code, and  
15 the public's interest in enforcing laws regarding the distribution of regulated drugs, weigh in favor  
16 of this Court granting the Plaintiffs' motion and allowing ACRX to re-open, restoring the status  
17 quo that existed before the Board's June 20, 2019 closure of the pharmacy.

18 5. The Court finds that the circumstances and conditions presented by Plaintiffs are  
19 exigent and, due to the threatened harm to Plaintiffs' business, warrants immediate relief in the  
20 form of the temporary restraining order granted herein.

21 Accordingly, for all the foregoing reasons:

22 IT IS HEREBY ORDERED that a Temporary Restraining Order shall be issued pursuant  
23 to Nev. R. Civ. P. 65(b) restraining Defendant from further restricting Plaintiffs from operating  
24 their pharmacy pursuant to the Board's June 21, 2019 Notice of Involuntary Closure;

25 IT IS FURTHER ORDERED that, pursuant to the stipulation of Plaintiffs and Defendant  
26 made on the record before this Court, the Temporary Restraining Order shall be converted into a  
27 Preliminary Injunction under Nev. R. Civ. P. 65(d), and continue in effect through the date of the  
28 hearing specified within this Order;

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1 IT IS FURTHER ORDERED that the Board is hereby ENJOINED from any continued  
2 enforcement of its June 21, 2019 Notice of Involuntary Closure against Plaintiffs, including the  
3 denial of access to ACRX and cessation of its operations pursuant to that notice;

4 IT IS FURTHER ORDERED that the Board is hereby ENJOINED from denying Plaintiffs  
5 access to their place of business pursuant to its June 21, 2019 Notice of Involuntary Closure;

6 IT IS FURTHER ORDERED that the foregoing provisions of this Order, and the Court's  
7 purpose and intent in entering this Order, shall not be construed to impair or limit the Board's  
8 authority to regulate Plaintiffs in conformity with Nevada law;

9 IT IS FURTHER ORDERED that the Board shall allow Plaintiffs to reopen ACRX *forthwith*  
10 and without delay, including conducting all necessary reviews and inspections prior to ACRX re-  
11 opening, and the Board shall take all steps necessary to restore Plaintiffs' access to ACRX's  
12 facilities immediately upon receipt of this Order;

13 IT IS FURTHER ORDERED that, pursuant to Nev. R. Civ. P. 65(c), Plaintiffs shall file a  
14 bond for costs and damages that may be incurred by any party who may be found to be wrongfully  
15 restrained or enjoined from this Order in the total sum of \$500.00;

16 IT IS FURTHER ORDERED that an evidentiary hearing on Plaintiffs' motion for a  
17 preliminary injunction shall be held on the 5th day of September, 2019, at 10:00 a.m. in  
18 Department II of the above-entitled Court;

19 IT IS FURTHER ORDERED that two weeks prior to the September 5, 2019 evidentiary  
20 hearing, the parties shall exchange lists identifying their proposed witnesses and the documents  
21 they intend to rely upon at that hearing, provided further that each party must provide immediate  
22 notice to opposing counsel identifying any witnesses presented at the Board's September 4, 2019  
23 hearing regarding Plaintiffs that could not have been previously disclosed; and

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IT IS FURTHER ORDERED that this Preliminary Injunction shall be in effect and enjoin the conduct of the Board until the September 5, 2019 hearing specified above, unless further extended, or modified by order of this Court or stipulation of the parties.

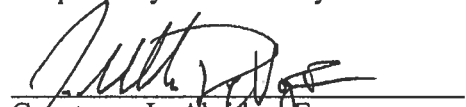
DATED this \_\_\_\_ day of August, 2019.

DISTRICT COURT JUDGE

A 798 928

Respectfully submitted by:

Approved as to form:



Brett Kandt, Esq.  
General Counsel  
Nevada State Board of Pharmacy  
985 Damonte Ranch parkway # 206  
Reno, NV 89521

Constance L. Akridge, Esq.  
J. Malcolm DeVoy, Esq.  
Brittany L. Walker, Esq.  
HOLLAND & HART LLP  
9555 Hillwood Drive, 2nd Floor  
Las Vegas, NV 89134

*Attorneys for Plaintiffs*


*Attorney for Defendant*

HOLLAND & HART LLP  
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LAS VEGAS, NV 89134

13357853\_v4

1 IT IS FURTHER ORDERED that this Preliminary Injunction shall be in effect and enjoined  
2 the conduct of the Board until the September 5, 2019 hearing specified above, unless further  
3 extended, or modified by order of this Court or stipulation of the parties.


4  
5 DATED this 2nd day of August, 2019.

6  
7  
8   
9 DISTRICT COURT JUDGE  
TM

10 Respectfully submitted by:

Approved as to form:

11  
12 \_\_\_\_\_  
13 Constance L. Akridge, Esq.  
14 J. Malcolm DeVoy, Esq.  
15 Brittany L. Walker, Esq.  
16 HOLLAND & HART LLP  
17 9555 Hillwood Drive, 2nd Floor  
18 Las Vegas, NV 89134

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12 \_\_\_\_\_  
13   
14 Brett Kang, Esq.  
15 General Counsel  
16 Nevada State Board of Pharmacy  
17 985 Damonte Ranch parkway # 206  
18 Reno, NV 89521

15 *Attorneys for Plaintiffs*

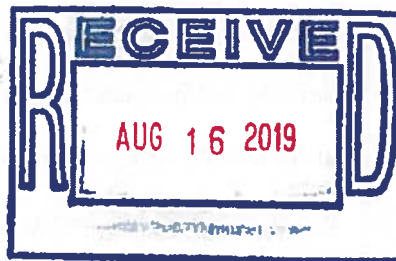
15 *Attorney for Defendant*

17 13357853\_v4

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LAS VEGAS, NV 89134

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1 **SUMM**  
2 Constance L. Akridge  
3 Nevada Bar No. 3353  
4 James M. DeVoy  
5 Nevada Bar No. 11950  
6 Brittany L. Walker  
7 Nevada Bar No. 14641  
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13 clakridge@hollandhart.com  
14 jmdevoy@hollandhart.com  
15 blwalker@hollandhart.com



9 *Attorneys for Plaintiffs*

10 **DISTRICT COURT**  
11 **CLARK COUNTY, NEVADA**

12 ACRX SPECIALTY PHARMACY, INC. a  
13 Nevada corporation; and EGHOMWARE  
14 IGBINOVIA, a/k/a JERRY IGBINOVIA, an  
15 individual,

15 Plaintiffs,

16 v.

17 NEVADA STATE BOARD OF PHARMACY;  
18 DOES I-X; and ROE CORPORATIONS XI-  
19 XX,

19 Defendants.

Case No. A-19-798928-C  
Dept. No. 2

**SUMMONS – CIVIL**

**(NEVADA STATE BOARD OF  
PHARMACY, C/O JASON PENROD,  
PRESIDENT OF THE BOARD  
OF PHARMACY)**

20  
21 **NOTICE! YOU HAVE BEEN SUED. THE COURT MAY DECIDE AGAINST YOU**  
22 **WITHOUT YOUR BEING HEARD UNLESS YOU RESPOND WITHIN 21 DAYS. READ**  
23 **THE INFORMATION BELOW.**

24 **TO THE DEFENDANT, NEVADA STATE BOARD OF PHARMACY, C/O JASON**  
25 **PENROD, PRESIDENT OF THE BOARD OF PHARMACY.** A civil First Amended  
26 Complaint has been filed by the Plaintiff(s) against you for the relief set forth in the First Amended  
27 Complaint. If you intend to defend this lawsuit, within 21 days after this Summons is served on  
28 you, exclusive of the day of service, you must do the following: File with the Clerk of this Court.

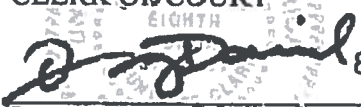
HOLLAND & HART LLP  
9555 HILLWOOD DRIVE, 2ND FLOOR  
LAS VEGAS, NV 89134

1 whose address is shown below, a formal written response to the First Amended Complaint in  
2 accordance with the rules of the Court, with the appropriate filing fee. Serve a copy of your  
3 response upon the attorney whose name and address is shown below. Unless you respond, your  
4 default will be entered upon application of the Plaintiff(s) and failure to so respond will result in a  
5 judgment of default against you for the relief demanded in the First Amended Complaint, which  
6 could result in the taking of money or property or other relief requested in the First Amended  
7 Complaint. If you intend to seek the advice of an attorney in this matter, you should do so promptly  
8 so that your response may be filed on time. The State of Nevada, its political subdivisions,  
9 agencies, officers, employees, board members, commission members and legislators each have 45  
10 days after service of this Summons within which to file an Answer or other responsive pleading to  
11 the First Amended Complaint.

12 Submitted by:  
13 HOLLAND & HART LLP

16 /s/ Constance L. Akridge  
17 Constance L. Akridge  
18 James M. DeVoy  
19 Brittany L. Walker  
9555 Hillwood Drive, 2nd Floor  
Las Vegas, NV 89134

20 *Attorneys for Plaintiffs*

STEVEN D. GRIERSON  
CLERK OF COURT  
EIGHTH  
  
8/16/2019  
Deputy Clerk Ofelia David Date  
Regional Justice Center  
200 Lewis Avenue  
Las Vegas, NV 89155

21  
22 **NOTE: When service is by publication, add a brief statement of the object of the action.**  
23 **See Nevada Rules of Civil Procedure 4(b).**  
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**AFFIDAVIT OF SERVICE**

STATE OF NEVADA         )  
  ) ss:  
COUNTY OF CLARK         )

\_\_\_\_\_, being duly sworn, says: That at all times herein affiant was and is over 18 years of age, not a party to nor interested in the proceeding in which this affidavit is made. That affiant received \_\_\_\_\_ copy(ies) of the Summons and First Amended Complaint, \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_, 2019, and served the same on the \_\_\_\_\_ day of \_\_\_\_\_, 2019 by: **(Affiant must complete the appropriate paragraph)**

Delivering and leaving a copy with the Defendant, **NEVADA STATE BOARD OF PHARMACY**, care of Jason Penrod, President at (state address)

\_\_\_\_\_. Serving the Defendant, **NEVADA STATE BOARD OF PHARMACY**, by personally delivering and leaving a copy with \_\_\_\_\_, a person of suitable age and discretion residing at the Defendant's usual place of abode located at (state address) \_\_\_\_\_

**[Use paragraph 3 for service upon agent, completing (a) or (b)]** Serving the Defendant, **NEVADA STATE BOARD OF PHARMACY**, by personally delivering and leaving a copy at (state address) \_\_\_\_\_.

With \_\_\_\_\_ as \_\_\_\_\_, an agent lawfully designated by statute to accept service of process; With \_\_\_\_\_, pursuant to NRS 14.020 as a person of suitable age and discretion at the above address, which address is the address of the resident agent as shown on the current certificate of designation filed with the Secretary of State.

Personally depositing a copy in a mail box of the United States Post Office, enclosed in a sealed envelope, postage prepaid (Check appropriate method):  Ordinary mail  Certified mail, return receipt requested  Registered mail, return receipt requested addressed to the Defendant,

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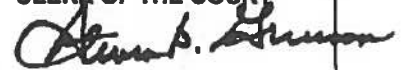
NEVADA STATE BOARD OF PHARMACY, at Defendant's last known address which is (state address) \_\_\_\_\_ . I declare under penalty of perjury under the law of the State of Nevada that the foregoing is true and correct.

EXECUTED this \_\_\_\_ day of \_\_\_\_\_, 2019.

\_\_\_\_\_  
Signature of person making service

HOLLAND & HART LLP  
9555 HILLWOOD DRIVE, 2ND FLOOR  
LAS VEGAS, NV 89134

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Steven D. Grierson  
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1 ACOM  
2 Constance L. Akridge  
3 Nevada Bar No. 3353  
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5 Nevada Bar No. 11950  
6 Brittany L. Walker  
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14 jmdevoy@hollandhart.com  
15 blwalker@hollandhart.com

16 *Attorneys for Plaintiffs*

17 **DISTRICT COURT**  
18 **CLARK COUNTY, NEVADA**

19 ACRX SPECIALTY PHARMACY, INC. a  
20 Nevada corporation; and EGHOMWARE  
21 IGBINOVIA, a/k/a JERRY IGBINOVIA, an  
22 individual,

23 **Plaintiffs,**

24 v.

25 NEVADA STATE BOARD OF PHARMACY;  
26 DOES I-X; and ROE CORPORATIONS XI-  
27 XX,

28 **Defendants.**

Case No. A-19-798928-C  
Dept. No. II

**FIRST AMENDED COMPLAINT**

**ARBITRATION EXEMPTION CLAIMED:  
Action for Declaratory Relief**

**JURY TRIAL DEMANDED**

Plaintiffs ACRX Specialty Pharmacy Inc. ("ACRX") and Eghomware Igbinovia, a/k/a Jerry Igbinovia ("Igbinovia"), collectively the "Plaintiffs," by and through their attorneys of the law firm of Holland & Hart LLP, file this First Amended Complaint against the Nevada State Board of Pharmacy (the "Board"), alleging as follows:

**THE PARTIES**

1. Plaintiff ACRX is a corporation created pursuant to the laws of the State of Nevada and is authorized to do business in Clark County, Nevada.
2. Plaintiff Igbinovia is a resident of Clark County, Nevada.
3. Defendant Board is an agency of the State of Nevada.

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1           11.     Since June 20, 2019, when the Board instituted an “involuntary closure” of ACRX,  
2 Plaintiffs have been unable to continue their regular business activities despite being legally  
3 entitled to do so.

4     **A. The Board’s Purported Involuntary Closure of ACRX.**

5           12.     On June 20, 2019, the Board purported to effect an involuntary closure of ACRX.

6           13.     In a Notice of Involuntary Closure of Pharmacy dated June 21, 2019 (the  
7 “Involuntary Closure Notice”), the Board’s Office of the General Counsel cited NAC 639.570 as  
8 its sole basis for closing ACRX, and stated that “involuntary closure was necessary after federal  
9 law enforcement agents arrested [Igbinovia] and seized ACRX Specialty Pharmacy’s computer  
10 system on June 20, 2019, rendering the pharmacy unable to operate in conformance with  
11 applicable law.”

12          14.     NAC 639.570 does not, as a matter of law, empower the Board to shut down ACRX  
13 or any other pharmacy.

14          15.     Despite the limitations of NAC 639.570, the Board falsely stated to at least one  
15 agent of the FBI that ACRX’s pharmacy license had been revoked. Despite this false statement to  
16 the FBI, a Board representative told an ACRX employee on the evening of June 20, 2019, that  
17 despite what the Board had said that day—including, presumably, to the FBI—ACRX’s license  
18 was still valid, active, and in good standing in the State of Nevada.

19          16.     The Involuntary Closure Notice did not specify what provisions of “applicable law”  
20 applied to Plaintiffs, and did not specify whether and how Plaintiffs had violated any law.

21          17.     Since June 20, 2019, the conditions that the Board identified as “necessary” for  
22 ACRX’s involuntary closure have abated.

23          18.     On June 20, 2019, Igbinovia was released from custody on his personal  
24 recognizance. The United States District Court for the District of Nevada did not impose any  
25 restrictions on his ability to operate ACRX, or to otherwise engage in pharmaceutical practice, as  
26 conditions of his release.

27          19.     In fact, no department or agency of the United States has obtained any order or  
28 taken any action to close ACRX (or prohibit it from operating under the management of any

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1 pharmacist other than Igbinovia) or to stop, enjoin, or otherwise prohibit Igbinovia from practicing  
2 as a pharmacist or operating ACRX.

3 20. Specifically, the United States Department of Justice and the Drug Enforcement  
4 Administration have not suspended or revoked Plaintiffs’ DEA Registration under 21 U.S.C. § 824  
5 or 21 C.F.R. § 1301.36, and have not commenced any proceedings to do so under those authorities,  
6 which specifically allow the United States to cease the Plaintiffs’ pharmacy operations.

7 21. Additionally, Igbinovia retained and has access to a full, complete, and secure  
8 backup of all data seized from ACRX on June 20, 2019, and is capable of re-installing this data on  
9 a new computer, or computer system, to be used in ACRX’s operations.

10 22. As all the conditions the Board deemed necessary to involuntarily close ACRX  
11 under NAC 639.570 had been abated, Plaintiffs sought to re-open their pharmacy and resume  
12 business. Nonetheless, the Board refused—and refuses to this day—to re-open ACRX, or to grant  
13 Igbinovia access to ACRX for any purpose.

14 **B. The Board’s Ad Hoc Rationales for Refusing to Re-Open the Pharmacy.**

15 23. Plaintiffs attempted to engage the board and re-open the pharmacy on the basis that  
16 the limited grounds for the Board’s involuntary closure of ACRX on June 20, 2019 under NAC  
17 639.570 had ceased to be in effect. The Board, however, refused to allow Plaintiffs to re-open  
18 their pharmacy for varied and constantly changing reasons.

19 24. During telephonic conversations with Plaintiffs’ counsel, the Board represented  
20 that it would allow ACRX to re-open if it ceased any distribution of controlled substances, as  
21 defined under the Controlled Substances Act, 21 U.S.C. § 802(6), and NRS Chapter 453, and  
22 turned over any controlled substances in ACRX’s possession to the Board.

23 25. Plaintiffs’ counsel and the Board continued to discuss this proposal and its  
24 feasibility based on ACRX’s business model. Plaintiffs considered this proposal until the Board  
25 suddenly changed its position and demanded new conditions and restrictions on ACRX’s activities  
26 as a condition of re-opening.

27 26. On or about July 10, 2019, the Board informed Plaintiffs’ counsel that if they were  
28 to allow ACRX to resume operations, an additional requirement—beyond the cessation and

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1 surrender of ACRX’s controlled substances—was necessary: Plaintiffs would have to cease all  
2 compounding activities as well.

3 27. Plaintiffs believe and therefore allege that these sudden new conditions sought by  
4 the Board, before ever filing an accusation against them, are evidence of the Board’s dilatory  
5 conduct, and show the Board never intended to allow ACRX to re-open.

6 28. The Board’s rationale for this demand was based upon two complaints the Board  
7 purported to have received, and which were subject to the Board’s investigation. Plaintiffs were  
8 not aware of either complaint or investigation prior to the July 10, 2019 telephone call between  
9 their counsel and the Board.

10 29. Upon further inquiry by Plaintiffs’ counsel, the Board confirmed that it had not  
11 filed an Accusation against either of the Plaintiffs in connection with these complaints. The Board  
12 refused to identify any details regarding these complaints, including the alleged conduct at issue  
13 and what, if any, public harm was implicated by the undisclosed conduct.

14 30. As the Board is created by statute and has its powers defined by the legislature, its  
15 jurisdiction is limited to oversight of pharmacies and pharmacist licenses, and the Board is further  
16 constrained by the due process requirements contained within Chapters 233B and 639 of the  
17 Nevada Revised Statutes.

18 31. The Board has already closed ACRX citing NAC 639.570 as its authority for doing  
19 so, despite NAC 639.570 being a regulation which provides the Board no authority to close ACRX,  
20 and the Board has maintained its actions based on causes that have been resolved since the Board’s  
21 involuntary closure of ACRX. The Board’s continued closure of ACRX is unauthorized and  
22 directly affects ACRX’s business, depriving Plaintiffs the use of their respective Board-issued  
23 licenses without any opportunity for notice and hearing.

24 32. Moreover, without any hearing or proper notice, the Board has, through its General  
25 Counsel, engaged in apparent negotiations to limit the scope of ACRX’s operations if it were to  
26 re-open.

27 33. Like the Board’s closure of ACRX itself, such negotiations are unauthorized and  
28 appear to be conducted in bad faith, as the Board’s conditions for ACRX’s re-opening change

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1 frequently and are increasingly more restrictive regarding the kind of license conduct in which  
2 ACRX may engage once re-opened.

3 34. Illustrating the Board’s arbitrary and capricious conduct, the Board’s latest  
4 justification for its requirement that Plaintiffs not engage in compounding as a condition of re-  
5 opening is the undisclosed content of complaints the Board claims to have received against one or  
6 both Plaintiffs. Yet, the Board has not filed any formal Accusation against either Plaintiff to which  
7 he or it may respond and be heard.

8 **C. The Board’s Deficient Attempt to Provide ACRX with Notice of an Opportunity to**  
9 **Defend Itself Against Unspecified Claims.**

10 35. On July 11, 2019, the Board issued ACRX (but not Igbinovia) a Statement to the  
11 Respondent and Notice of Hearing (the “Statement”) regarding its involuntary closure of the  
12 pharmacy.

13 36. The Statement reiterated that due to the seizure of the pharmacy’s computers and  
14 arrest of Igbinovia, “the pharmacy was left unable to operate in conformance with applicable law,”  
15 but does not specify what “applicable law” applied or could not be complied with by Plaintiffs.

16 37. The Statement advised ACRX that on July 18, 2019, the Board would hold a  
17 hearing regarding its involuntary closure of ACRX, and that “ACRX will have the opportunity to  
18 show the Board that the pharmacy is now able to operate in conformance with Nevada law.” Like  
19 the Notice of Involuntary Closure, the Statement also failed to provide ACRX with any notice of  
20 the laws, regulations, or other authorities allegedly violated, and deprived ACRX of notice of the  
21 allegations against it and an opportunity to meaningfully defend itself.

22 **D. The Board’s Ongoing Irreparable Harm Inflicted Upon the Plaintiffs.**

23 38. Due to the Board’s unauthorized and unlawful actions, Plaintiffs are prevented from  
24 conducting any business, including the distribution of controlled substances and engagement of  
25 any compounding activities, which has caused irreparable harm and threatens to totally destroy  
26 Plaintiffs’ business.

27 39. The Board’s unlawful closure of ACRX has caused other harm in the form of  
28 patients being unable to receive their medication. Because the Board completely shut Igbinovia

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1 and other employees out of ACRX, Plaintiffs have been unable to take desired steps to aid patients  
2 in finding other sources to fill their prescriptions.

3 40. Additionally, the Board's closure of ACRX has led to a slew of other harms,  
4 ranging from wholesalers cancelling their agreements with ACRX and debtors not paying ACRX,  
5 to the pharmacy being unable to receive and deposit payments necessary for ACRX's bills and  
6 utilities. ACRX's eight (8) employees also are affected by the Board's unjustified closure of the  
7 pharmacy. In short, the Board's closure and refusal to re-open ACRX has harmed, and is  
8 continuing to harm, every aspect of its operations.

9 41. The Board's continued closure of the Plaintiffs' business and refusal to allow  
10 Plaintiffs to conduct their business currently is causing irreparable harm; additionally, the Board's  
11 actions in prohibiting Plaintiffs to operate have adversely affected and harmed Plaintiffs'  
12 customers, some of whom include hospice and palliative care patients who rely on ACRX and  
13 Igbinovia to receive their life-saving prescription medication, including prescription refills.

14 42. The Board's unlawful closure of ACRX and disruption of Plaintiffs' business will  
15 force their customers to seek the services of other pharmacies to full their prescriptions and seek  
16 replacement services, and those customers will be lost indefinitely—not merely for the time ACRX  
17 is unlawfully closed based upon the Board's conduct.

18 43. Plaintiffs' loss of business, loss of commercial goodwill, and loss of customers to  
19 competing pharmacies constitutes irreparable harm, and one caused solely and proximately by the  
20 Board's failure to respect Plaintiffs' due process rights to notice and hearing before taking  
21 Plaintiffs' property rights.

22 44. Based on the Board's ad hoc treatment of Plaintiffs' right to conduct business and  
23 potential conditions for ACRX's reopening, any further proceedings prior to seeking judicial relief  
24 would be futile in the face of the irreparable harm caused by the Board's misconduct, which require  
25 emergency intervention by this Court.

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**FIRST CLAIM FOR RELIEF**

**(Declaratory Relief)**

45. Plaintiffs hereby repeat, reallege, and incorporate all of the allegations contained in the preceding paragraphs as though fully set forth herein.

46. A true and ripe controversy exists between Plaintiffs and the Board as to whether the Board may continue to force the closure of Plaintiffs' business.

47. Specifically, a true and ripe controversy exists between Plaintiffs and the Board as to whether the Board is acting in excess of its authority and in violation of Nevada law in (a) effecting an involuntary closure of ACRX; (b) refusing to re-open ACRX without conditions or limitations based on the resolution of the circumstances the Board identified as requiring ACRX's involuntary closure; and (c) effecting a de facto taking of Plaintiffs' pharmacy licenses without proper notice or hearing under NRS 233B.121 and NRS 233B.127.

48. A true and ripe controversy exists between Plaintiffs and the Board as to whether the Board is entitled to "[c]losure as a result of action by the Federal Government" when the Government has not taken any action to suspend or revoke the ACRX's DEA Registration under 21 U.S.C. § 824 or 21 C.F.R. § 1301.36.

49. A true and ripe controversy exists between Plaintiffs and the Board as to whether the Board is entitled to deprive Plaintiffs from conducting their pharmacy business when neither Plaintiff has been convicted of any crime that would result in immediate suspension of their licenses under NRS 639.2121,<sup>1</sup> as neither Plaintiff has been convicted of any crime.

50. A true and ripe controversy exists between Plaintiffs and the Board as to whether the Board may close, and continue to keep closed, Plaintiffs' business without the filing of an Accusation to initiate suspension proceedings against either or both of them.

///

<sup>1</sup> "The conviction of any person who holds a certificate, license, registration or permit issued pursuant to this chapter of a felony for a violation of any federal law or law of any state concerning drugs or chemicals operates as an immediate suspension of the certificate, license, registration or permit." NRS 639.2121. "Conviction" is defined in NRS 639.006 as "a plea or verdict of guilty but mentally ill or a conviction following a plea of nolo contendere to a charge of felony, any offense involving moral turpitude or any violation of the provisions of this chapter or chapter 453 or 454 of NRS."

1 51. A true and ripe controversy exists between Plaintiffs and the Board as to whether  
 2 the Board may close, and continue to keep closed, Plaintiffs' business without providing proper  
 3 notice identifying the provisions of law allegedly violated by Plaintiffs in their pharmacy  
 4 operations.

5 52. Declaratory relief is necessary to declare whether the Board is acting in excess of  
 6 its authority and/or in violation of Nevada law in taking any of the actions described herein.

7 53. Declaratory relief is necessary to declare whether the Board's Notice of Involuntary  
 8 Closure provided adequate notice to Plaintiffs regarding what statutes, regulations, or other  
 9 authorities they purportedly were "unable to operate in conformance with" as alleged by the Board.

10 54. Declaratory relief is necessary to declare whether the Board is required to file a new  
 11 Accusation and hold a hearing before taking any of the actions described herein.

12 55. Plaintiffs seek a declaration that the Board is acting in excess of its authority and/or  
 13 in violation of Nevada law in taking the actions described herein, including (a) the closure of  
 14 ACRX, (b) its refusal to re-open ACRX, and (c) its ad hoc negotiations regarding limits to be  
 15 imposed on Plaintiffs as a condition of re-opening ACRX without notice or hearing.

16 56. Plaintiffs seek a declaration that the Board is required to file an Accusation and  
 17 hold a hearing before taking any of the actions described herein.

18 **SECOND CLAIM FOR RELIEF**

19 **(Intentional Interference with Contract)**

20 57. Plaintiffs hereby repeat, reallege, and incorporate all of the allegations contained in  
 21 the preceding paragraphs as though fully set forth herein.

22 58. At all relevant times, Plaintiffs possessed certain contractual rights that were  
 23 economically valuable and important to Plaintiffs, including long-term contracts with vendors and  
 24 product suppliers, and the lease for the real property where ACRX conducted business.

25 59. Upon information and belief, Defendant knew of these contractual relationships  
 26 and knew that the actions referenced within this Complaint would interfere with and damage those  
 27 contractual relationships.

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1           60. By improperly closing ACRX and depriving Plaintiffs the use of their State-issued  
2 licenses under NAC 639.570, without legal authority to do so and without following the procedures  
3 set forth in NRS 233B.121 and NRS 233B.127, Defendant took intentional and improper steps to  
4 harm Plaintiffs and interfere with these contractual relationships.

5           61. Defendant, through its employees and agents, took other steps to interfere with  
6 Plaintiffs' contractual relationships with third parties.

7           62. On June 20, 2019, an employee or agent of Defendant contacted Northcap  
8 Commercial, the management agent for ACRX's landlord, to inform the pharmacy's landlord that  
9 Igbinovia had been taken into federal custody and that ACRX had been closed.

10          63. Defendant had no legal obligation or duty to inform ACRX's landlord of the  
11 pharmacy's closure or Igbinovia's arrest, but did so gratuitously for the purpose of harming  
12 Plaintiffs' relationships with ACRX's landlord.

13          64. Additionally, Defendant's improper and unlawful closure of ACRX caused third  
14 party wholesalers and suppliers of pharmaceutical supplies to cancel their contracts with Plaintiffs.  
15 These wholesalers and suppliers would not have terminated these contracts but for Defendant's  
16 improper and unlawful closure of ACRX.

17          65. Defendant's conduct has damaged Plaintiffs' contractual relationships with third  
18 parties, including their wholesale suppliers and landlord, and Plaintiffs have suffered foreseeable  
19 harm as a result of Defendant's actions.

20          66. Defendant's improper conduct was not privileged or justified.

21          67. As a result of Defendant's conduct, Plaintiffs have been damaged in an amount  
22 exceeding \$15,000.00

23          68. Plaintiffs have been forced to retain the services of an attorney to prosecute this  
24 action, and are entitled to recover their attorneys' fees and costs.

**THIRD CLAIM FOR RELIEF**

**(Intentional Interference with Prospective Economic Advantage)**

25  
26  
27          69. Plaintiffs hereby repeat, reallege, and incorporate all of the allegations contained in  
28 the preceding paragraphs as though fully set forth herein.



1           70. At all relevant times, Plaintiffs possessed certain economically beneficial  
2 relationships and business expectancies with third parties, including relationships with ACRX's  
3 employees.

4           71. Upon information and belief, Defendant knew of these ongoing and prospective  
5 economic relationships and knew that the actions referenced within this Complaint would interfere  
6 with and damage those relationships.

7           72. By improperly closing ACRX and depriving Plaintiffs the use of their State-issued  
8 licenses under NAC 639.570, without legal authority to do so and without following the procedures  
9 set forth in NRS 233B.121 and NRS 233B.127, Defendant took intentional and improper steps to  
10 harm Plaintiffs and interfere with these relationships.

11           73. Defendant, through its employees and agents, took other steps to interfere with  
12 Plaintiffs' relationships with third parties. On June 20, 2019, an employee or agent of Defendant  
13 told an employee of ACRX to quit her job and find other work due to the pharmacy's closure.  
14 Defendant made this statement despite the improper nature in which it closed ACRX.

15           74. The ACRX employee to whom Defendant's agent or employee made this statement  
16 subsequently quit her employment with ACRX.

17           75. Defendant's closure of ACRX has damaged and destroyed ongoing economic  
18 relationships between ACRX and its patients, and also between both Plaintiffs and the health care  
19 facilities, physicians, and medical practices that would refer patients to Plaintiffs due to their  
20 compounding capabilities.

21           76. Plaintiffs have been informed by the physicians and facilities that have ceased  
22 referring patients to ACRX that the Board's closure of the pharmacy was the reason for the loss of  
23 such relationships.

24           77. Additionally, Defendant's improper and unlawful closure of ACRX caused third  
25 party wholesalers and suppliers of pharmaceutical supplies to cancel their contracts with Plaintiffs.  
26 These wholesalers and suppliers would not have terminated these contracts but for Defendant's  
27 improper and unlawful closure of ACRX.

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78. Defendant's conduct has damaged Plaintiffs' prospective economic relationships with third parties, including ACRX's now-former employees, and Plaintiffs have suffered foreseeable harm as a result of Defendant's actions.

79. Defendant's improper conduct was not privileged or justified.

80. As a result of Defendant's conduct, Plaintiffs have been damaged in an amount exceeding \$15,000.00

81. Plaintiffs have been forced to retain the services of an attorney to prosecute this action, and are entitled to recover their attorneys' fees and costs.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs demand judgment against the Defendant Board as follows:

82. For declaratory relief as described herein;

83. For compensatory, consequential, and incidental damages in excess of \$15,000.00 for the claims asserted herein;

84. For an award of Plaintiffs' reasonable attorney's fees and costs;

85. For a jury trial of all the issues so triable in the above-captioned matter;

86. For a temporary restraining order, preliminary injunctive relief, and permanent injunctive relief enjoining the Board from its continued closure of ACRX, and further from preventing Plaintiffs from operating ACRX, including the compounding of drugs and distribution of controlled substances, in compliance with Nevada law; and

87. For such other and further relief as the Court deems just and proper.

DATED this 14th day of August, 2019.

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*/s/ Constance L. Akridge*

Constance L. Akridge  
J. Malcolm DeVoy  
Brittany L. Walker  
9555 Hillwood Drive, 2nd Floor  
Las Vegas, NV 89134  
*Attorneys for Plaintiffs*

**CERTIFICATE OF SERVICE**

I hereby certify that on the 14th day of August, 2019, a true and correct copy of the foregoing **FIRST AMENDED COMPLAINT** was served by the following method(s):

**Electronic:** by submitting electronically for filing and/or service with the Eighth Judicial District Court's e-filing system and served on counsel electronically in accordance with the E-service list to the following email addresses:

**U.S. Mail:** by depositing same in the United States mail, first class postage fully prepaid to the persons and addresses listed below:

Brett Kandt, Esq.  
General Counsel  
Nevada State Board of Pharmacy  
985 Damonte Ranch Parkway  
#206  
Reno, NV 89521

**Email:** by electronically delivering a copy via email to the following e-mail address:

**Facsimile:** by faxing a copy to the following numbers referenced below:

**Receipt of Copy:**

/s/ Joyce Heilich  
An Employee of Holland & Hart LLP

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