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*Attorneys for Appellant Wellness Connection of Nevada, LLC*

**IN THE SUPREME COURT OF THE STATE OF NEVADA**

In Re: D.O.T. Litigation,

\_\_\_\_\_  
WELLNESS CONNECTION OF  
NEVADA, LLC,

Appellant,

vs.

CLARK NATURAL MEDICINAL  
SOLUTIONS, LLC dba NUVEDA;  
NYE NATURAL MEDICINAL  
SOLUTIONS, LLC dba NUVEDA;  
CLARK NMSD, LLC dba NUVEDA;  
INYO FINE CANNABIS  
DISPENSARY LLC dba INYO FINE  
CANNABIS DISPENSARY; TGIG,  
LLC; NEVADA HOLISTIC  
MEDICINE, LLC; GBS NEVADA  
PARTNERS, LLC; FIDELIS  
HOLDINGS, LLC; GRAVITAS  
NEVADA, LLC; NEVADA PURE,  
LLC; MEDIFARM, LLC; MEDIFARM  
IV LLC; RURAL REMEDIES LLC;

**Supreme Court Case No.: 85314**

District Court Case No.:  
A-19-787004-B

CONSOLIDATED WITH:

A-18-785818-W  
A-18-786357-W  
A-19-786962-B  
A-19-787035-C  
A-19-787540-W  
A-19-787726-C  
A-19-801416-B

**MOTION FOR COURT TO  
TAKE JUDICIAL NOTICE OF  
ORDER OF AFFIRMANCE**

THC NEVADA LLC; HERBAL  
CHOICE INC.; TRYKE COMPANIES  
SO NV, LLC; NULEAF INCLINE  
DISPENSARY, LLC; GREEN LEAF  
FARMS HOLDINGS LLC; GREEN  
THERAPEUTICS LLC; NEVCANN  
LLC; RED EARTH LLC,

Respondents.

Appellant Wellness Connection of Nevada, LLC (“Wellness”) hereby moves for an order for the Court to take judicial notice of the Order of Affirmance on file in Nevada Supreme Court Case Number 82014 (the “TGIG Appeal”), which arose from the same district court proceedings. Wellness brings this motion pursuant to NRS 47.130 and 47.150.

By way of background, on April 2, 2024, Wellness filed a notice of errata requesting for the Order of Affirmance to be attached as an addendum to its Opening Brief, filed April 1, 2024. The Order of Affirmance is referenced in the Opening Brief but had inadvertently been omitted as an addendum to the Opening Brief.

On April 19, 2024, the Court denied the request and struck the Order of Affirmance as it was not part of the original district court record and should not be included in the appendix.

Based on the foregoing, Wellness should have filed a motion for this Court to take judicial notice of the Order of Affirmance instead of seeking to attach the Order of Affirmance as an addendum to its Opening Brief. Thus, Wellness now requests that this Court take judicial notice of the Order of Affirmance. Judicial notice is appropriate for several reasons.

*First*, the Court has issued an order to take judicial notice of the Trial Transcript in NSC Case No. 82014, the TGIG Appeal. That appeal and the Trial Transcript therefrom arose from a lengthy, one-month trial in the district court, spanning from July 17, 2020 to August 18, 2020. The Order of Affirmance contains this Court's ultimate disposition of and decision on the claims and issues from that month-long trial in district court.

*Second*, this current appeal, NSC Case No. 85314, also arose from the same, one-month long trial in the same district court proceedings. Because the Order of Affirmance in NSC Case No. 82014 pertains to the same claims and issues that gave rise to this appeal, the Order of Affirmance is informative and relevant to the issues presented in Wellness' appeal in regard to an award of attorneys' fees. Thus, judicial notice is appropriate.

*Third*, as explained in the Opening Brief, the Order of Affirmance shows that Plaintiffs had no need for or basis to name Wellness in the district court proceedings because they chose not to name Wellness as a party to the TGIG Appeal. If Wellness

were truly a necessary party to these proceedings, it would have had to have been named in both the district court proceedings and in the TGIG Appeal, which it was not.

*Fourth*, judicial notice is appropriate under NRS 47.130 because the Order of Affirmance is “[c]apable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned” such that the facts and events in the Order of Affirmance are “not subject to reasonable dispute.” Furthermore, NRS 47.150(2) states that “[a] judge or court shall take judicial notice if requested by a party and supplied with the necessary information.” Because the necessary information is on file with the Court in the TGIG Appeal, judicial notice is appropriate.

*Fifth*, and finally, no party will be prejudiced by judicial notice of the Order of Affirmance. Thus, for these reasons, Wellness respectfully submits that judicial notice is warranted and appropriate.

In the event the Court grants judicial notice, Wellness also respectfully requests permission to exchange pages 19, 26, and 36 of its Opening Brief filed April 1, 2024. Those original pages incorrectly reference that the Order of Affirmance was attached as an addendum, which by inadvertence it was not. The corrected pages would now accurately reflect that the Order of Affirmance is on file in the

TGIG Appeal, and include no other changes. The proposed substitute pages 19, 26, and 36 are attached hereto as Exhibit 1.

For all the reasons set forth herein, Wellness respectfully submits that judicial notice is appropriate and requests that the Court take judicial notice of the Order of Affirmance that is on file in the TGIG Appeal, NSC Case No. 82014.

DATED this 1st day of May, 2024.

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**CERTIFICATE OF SERVICE**

I hereby certify that on the 1st day of May 2024, I caused a true and correct copy of the **MOTION FOR COURT TO TAKE JUDICIAL NOTICE OF ORDER OF AFFIRMANCE** to be electronically filed and served with the Clerk of the Court for the Nevada Supreme Court by using the Nevada Supreme Court's E-Filing system.

*/s/ Kelly McGee*

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An employee of Howard & Howard Attorneys PLLC

# EXHIBIT 1

retax, and specifically finding that Wellness is the “prevailing party.” 13 App. 2025-42, *and specifically* 2028. The district court stated:

Wellness Connection is a prevailing party as against the TGIG Plaintiffs and the Joinder Plaintiffs. Wellness Connection prevailed on all claims and defenses to retain its licenses, which the Plaintiffs variously sought to revoke or impair through their requested forms of relief and arguments. Wellness Connection did not lose its license and its license was not affected by the Court’s injunction against the so-called Five-Percent Rule or by any other rulings of the Court. Wellness Connection’s license was not lost or impaired by the litigation. Wellness prevailed on all issues against all Plaintiffs and this makes Wellness Connection a prevailing party. See Golightly & Vannah, PLLC v. TJ Allen, LLC, 132 Nev. 416, 422, 373 P.3d 103, 107 (2016).

*Id.* (emphasis supplied).

#### **H. The Nevada Supreme Court Issues its Order of Affirmance, Ruling that Plaintiffs Had No Right or Standing to File their Claims.**

On September 8, 2023, the Nevada Supreme Court issued its Order of Affirmance in the TGIG Appeal. *See* Order of Affirmance, TGIG Appeal. In a brief, five-page order, the Nevada Supreme Court disposed of Plaintiffs’ claims, finding that Plaintiffs “[had] no right to judicial review and lack[ed] standing to assert a challenge to DOT’s license application process . . . .” *Id.* at 2.

As to judicial review, the Nevada Supreme Court found that Plaintiffs had no such right because they had no right to a hearing on the denial of their license applications and the applicable statutes and regulations provided no right to an appeal or judicial review. *See id.* at 3. On the remaining claims for declaratory or writ relief and damages, the Court found that Plaintiffs could not establish “any of

the lack of any legal basis for Plaintiffs' claims is not mere argument. It is a conclusive fact and finding as shown by the Nevada Supreme Court's Order of Affirmance rejecting the TGIG Appeal. *See* Order of Affirmance in the TGIG Appeal.

**a. Plaintiffs Never Had A Right to Assert Claims for Judicial Review and Should Have Known that Based on Long-Standing Case Law from the Nevada Supreme Court.**

As shown in this Court's Order of Affirmance in the TGIG Appeal, not only were Plaintiffs properly denied judicial review, but this Court found that *Plaintiffs did not even have a right to seek judicial review in the first place*. In its Order of Affirmance, this Court quoted NRS 233B.127(1), which states, "[t]he provisions of NRS 233B.121 to 233B.150 [for judicial review], inclusive, do not apply to the grant, denial or renewal of a license unless notice and opportunity for hearing are required by law to be provided to the applicant before the grant, denial or renewal of the license." NRS 233B.127(1) (emphasis supplied).<sup>12</sup>

In support of its above ruling, the Nevada Supreme Court cited *State Dep't of Health & Hum. Servs. v. Samantha Inc.*, 133 Nev. 809, 407 P.3d 327 (2017), another

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<sup>12</sup> This aligns with NRS 233B.130(1), which grants the right to judicial review only in a "contested case." A "[c]ontested case" is defined as "a proceeding, including but not restricted to rate making and licensing, in which the legal rights, duties or privileges of a party are required by law to be determined by an agency after an opportunity for hearing, or in which an administrative penalty may be imposed." NRS 233B.032.



A plaintiff cannot file suit over its denied application and claim that it should have been approved, on the one hand, and yet conceal its application from the district court by redacting the application in full, on the other hand. That is not bringing and maintaining a claim with reasonable ground. This conduct further justifies the attorneys' fees Wellness seeks here.

**C. The Law of the Case is that Plaintiffs Had No Basis to Seek Judicial Review or to Bring Their Other Claims Based On the Court's Order of Affirmance in the TGIG Appeal.**

“The doctrine of the law of the case provides that the law or ruling of a first appeal must be followed in all subsequent proceedings, both in the lower court and on any later appeal.” *Hsu v. County of Clark*, 123 Nev. 625, 629, 173 P.3d 724, 728 (2007); *see also Hall v. State*, 91 Nev. 314, 315, 535 P.2d 797, 798 (1975) (“The law of a first appeal is the law of the case on all subsequent appeals in which the facts are substantially the same.”).

Here, the fact that Plaintiffs had no reasonable basis for their claims against Wellness is not mere argument or conjecture. The Nevada Supreme Court's Order of Affirmance in the TGIG Appeal shows as much. The Court summarily disposed of Plaintiff's claims, never reaching the merits, finding that Plaintiffs “[had] no right to judicial review and lack[ed] standing to assert a challenge to DOT's license application process . . . .” Order of Affirmance, at 2, included in the TGIG Appeal. With no basis to seek either judicial review or to challenge the 2018 process,