

IN THE SUPREME COURT OF THE STATE OF NEVADA

IN RE: D.O.T. LITIGATION

TGIG, LLC; NEVADA HOLISITIC
MEDICINE, LLC; GBS NEVADA
PARTNERS, LLC; FIDELIS
HOLDINGS, LLC; GRAVITAS
NEVADA, LLC; NEVADA PURE,
LLC; MEDIFARM, LLC; MEDIFARM
IV LLC; THC NEVADA, LLC;
HERBAL CHOICE, INC.; RED
EARTH LLC; NEVCANN LLC,
GREEN THERAPEUTICS LLC; AND
GREAN LEAF FARMS HOLDINGS
LLC,

Appellants,

vs.

THE STATE OF NEVADA, ON
RELATION OF ITS DEPARTMENT
OF TAXATION,

Respondent.

Supreme Court Case No.: 86070
Electronically Filed
Feb 28 2023 09:17 AM
Elizabeth A. Brown
District Court Case No. A787004
Clerk of Supreme Court

**TGIG, LLC'S ERRATA TO
DOCKETING STATEMENT**

TGIG, LLC Appellants, by and through its undersigned attorneys of record, of the law firm of Clark Hill, PLLC, respectfully submits its Errata to their Docketing Statement filed on February 27, 2023. Counsel for the TGIG, LLC Appellants inadvertently did not include the "Attachment 1 through Attachment 4" to the

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Docketing Statement. Attached hereto as **Exhibit 1**, is Attachment 1 through 4, that was inadvertently excluded from their Docketing Statement.

Dated this 28th day of February 2023.

CLARK HILL PLLC

/s/ Dominic P. Gentile, Esq.
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that pursuant to NRAP 25(1(d) on the 28th day of February 2023, I did serve at Las Vegas, Nevada a true and correct copy of **TGIG, LLC'S ERRATA TO DOCKETING STATEMENT** on all parties to this action by Electronic Filing and by mailing it by first class mail with sufficient postage prepaid to the following address:

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/s/ Tanya Bain
An employee of Clark Hill PLLC

EXHIBIT 1

EXHIBIT 1

Attachment 1 – (re: question 3. Attorneys representing respondents – respondent, attorney’s name, firm, address, telephone)

STATE OF NEVADA, DEPARTMENT OF TAXATION (“DOT”)

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Attachment 2 – (re: question 8. Nature of the action. Briefly describe the nature of the action and the result below):

As the government agency charged with the implementation of the Nevada recreational marijuana program pursuant to NRS 453D.200, DOT accepted and graded applications for licenses to operate recreational retail marijuana dispensaries across the state of Nevada from approximately 463 applicants between September and December 2018 (the “September 2018 Application Period”). Because the DOT received more applications than there were licenses available in the various jurisdictions, the award of licenses was subject to “an impartial and numerically scored competitive bidding process to determine which application or applications among those competing will be approved.” See NRS 453D.210(6). Pursuant to the process developed and implemented by the DOT, on December 5, 2018, the DOT announced the results and awarded approximately 64 conditional licenses to successful applicants.

After the DOT announced the license winners, several of the non-winning applicants, including Appellants herein, brought multiple suits against the DOT asserting that the process the DOT used to award licenses violated various provisions of NRS Chapter 453D, violated the losing applicants constitutional rights under both the Federal and Nevada Constitutions, or was otherwise arbitrary and capricious for a multitude of reasons. The various plaintiffs sought to either set aside the application process in total or to obtain licenses under a number of different legal theories.

Appellants herein filed their initial Complaint on or about January 4, 2019 naming the DOT as the sole party defendant. Several winning applicants, believing that their interests were subject to the outcome of the litigation, sought to and were granted the right to intervene on the defendant DOT side. Following evidentiary hearings on Appellants’ Motion for Preliminary Injunction and various pre-trial motion proceedings, Appellants ultimately filed their operative Second Amended

Complaint on or about November 26, 2019 naming the DOT and the intervening successful applicants as party defendants.

On May 13, 2019, the District Court coordinated a number of the cases brought by non-winning applicants in Department 11 of the Eighth Judicial District Court in order to determine whether a preliminary injunction should issue against the DOT. After conducting a nearly four month evidentiary hearing on the matter, the District Court granted the preliminary injunction based on the failure of the DOT to conduct background checks of the applicants as required under the ballot initiative. As part of its impartial and numerically scored competitive bidding process, the DOT believed it was not required, pursuant to NAC 453D.255(1), to conduct background checks on owners with less than a five percent beneficial ownership interest in an applicant, the so-called “5% Rule.” The District Court found that the 5% rule set forth in NAC 453D.255(1) was an unreasonable limitation of NRS 453D.200(6) and the initiating Ballot Initiative, and, therefore, preliminarily enjoined the DOT from conducting final inspections of the license winners that the DOT determined had not listed owners with a less than 5% interest in their applications.

Because of the complexity of the cases and the diversity of the type of claims advanced by the various plaintiffs, the District Court adopted a Trial Protocol separating the trial into three (3) phases. PHASE 1 encompassed all of plaintiffs’ claims for judicial review. Appellants herein made such a claim in its Second Amended Complaint and participated fully in PHASE 1.¹ The District Court issued its “Findings of Fact and Conclusions of Law” for PHASE 1 on September 9, 2020. Notice of Entry of Order was served electronically on September 22, 2020.

PHASE 2 encompassed claims regarding the “(l)egality of the 2018 recreational marijuana application process (claims for Equal Protection, Due Process, Declaratory Relief, Intentional

¹ Because of issues related to Covid-19 and to accommodate briefing schedules, the trial of PHASE 2 actually occurred first. Trial of PHASE 1 followed completion of the trial on PHASE 2.

Interference with Prospective Economic Advantage, Intentional Interference with Contractual Relations and Permanent Injunction.” Again, Appellants made such claims and fully participated in PHASE 2 of the trial. The District Court issued its “Findings of Fact and Conclusions of Law” for PHASE 2 on September 3, 2020. Notice of Entry of Order was served electronically on September 22, 2020.

PHASE 3 encompassed a more narrowly limited claim for “Writ of Mandamus (Improper scoring of applications related to calculation errors on the 2018 recreational marijuana application.” Appellants were not parties to PHASE 3 of the trial.

Following the completion of PHASE 2 of the trial, the District Court issued a permanent injunction against the DOT enjoining it from conducting a final inspection of any of the conditional licenses issued in the September 2018 Application Period for any applicant who did not provide the identification of each prospective owner, officer or board member as required by NRS 453D.200(6). As to PHASE 1 of the trial, the District Court denied any relief to Appellants.

Appellants herein filed their Notice of Appeal respecting PHASE 1 and PHASE 2 on October 23, 2020 to preserve their right to appeal in the event their 30 days to file appeal started running on or about September 22, 2020 with service of a Notices of Entry of Order of the Findings of Fact and Conclusions of Law for PHASE 1 and PHASE 2.

On August 4, 2022, the District Court entered an order certifying as final the Orders on PHASE 1 and PHASE 2 pursuant to NRCP 54(b). With said certification, the parties’ time frames for filing Memorndums of Costs relative to PHASE 1 and PHASE 2 was triggered. Multiple parties filed Memorandums of Costs seeking an award of costs as “prevailing parties.” All such Memorandums were timely challenged by the filing of one or more Motions to Retax. Some of the District Court orders respecting an award of costs are now final and are the subject of this appeal.

Attachment 3 (re: question 22(a). List all parties involved in the action or consolidated actions in the district court:)

Nevada Wellness Center, LLC
ETW Management Group LLC
Global Harmony LLC
Herbal Choice Inc
Just Quality, LLC
Libra Wellness Center, LLC
Rombough Real Estate Inc. d/b/a Mother Herb
NevCann LLC
THC Nevada LLC
Zion Gardens LLC
MMOF Vegas Retail, Inc.
Qualcan LLC
Rural Remedies, LLC
TGIG, LLC
Nevada Holistic Medicine, LLC
GBS Nevada Partners, LLC
Fidelis Holdings, LLC
Gravitas Nevada, LLC
Nevada Pure, LLC
Medifarm, LLC
Medifarm IV, LLC
MM Development Company, Inc
LivFree Wellness LLC
Integral Associates LLC d/b/a Essence Cannabis Dispensaries, Essence Tropicana, LLC, Essence Henderson, LLC
CPCM Holdings, LLC d/b/a Thrive Cannabis Marketplace
Commerce Park Medical, LLC
Cheyenne Medical, LLC
Helping Hands Wellness Center, Inc.
Circle S Farms, LLC
Clark Natural Medicinal Solutions LLC
NYE Natural Medicinal Solutions LLC
Clark NMSD LLC
Deep Root Medical, LLC
THC Nevada, LLC
Herbal Choice, Inc.

Green Therapeutics, LLC
Eureka Newgen Farms, LLC
Polaris Wellness Center, LLC
TRNVP098F
Pure Tonic Concentrates, LLC
Wellness Connection of Nevada, LLC
Jorge Pupo
The State of Nevada, Department of Taxation

Attachment 4 (re: question 23. Give a brief description (3 to 5 words) of each party's separate claims, counterclaims, cross-claims, or third-party claims and the date of formal disposition of each claim.)

The issues subject to the underlying litigation are as follows:

D.H. Flamingo, Inc., d/b/a The Apothecary Shoppe; Clark Natural Medicinal Solutions, LLC, d/b/a NuVeda; Nye Natural Medicinal Solutions, LLC, d/b/a NuVeda; Clark NMSD, LLC, d/b/a NuVeda; and Inyo Fine Cannabis Dispensary, LLC, d/b/a Inyo Fine Cannabis Dispensary; and Surterra Holdings, Inc. (collectively the “D.H. Flamingo Plaintiffs”). The claims pled by D.H. Flamingo Plaintiffs in their First Amended Complaint filed on September 6, 2019 are: (1) Petition for Judicial Review; (2) Petition for Writ of Certiorari; (3) Petition for Writ of Mandamus; and (4) Petition for Writ of Prohibition.

The claims pled by the TGIG Plaintiffs’ in their Second Amended Complaint filed on November 26, 2019 are: (1) Violation of Civil Rights (Due Process: Deprivation of Property); (2) Violation of Civil Rights (Due Process: Deprivation of Liberty); (3) Violation of Civil Rights Equal Protection; (4) Petition for Judicial Review; (5) Petition for Writ of Mandamus; and (6) Declaratory Relief.

The claims pled by Nevada Wellness Center, LLC in its Second Amended Complaint filed on March 26, 2020 are: (1) Declaratory Relief; (2) Injunctive Relief; (3) Violation of Procedural Due Process; (4) Violation of Substantive Due Process; (5) Equal Protection Violation; (6) Petition for Judicial Review; (7) Petition for Writ of Mandamus; (8) Violation of 42 U.S.C. § 1983 by Jorge Pupo and the Department; and (9) Unjust Enrichment.

The claims pled by ETW Management Group et al. in their Third Amended Complaint filed on January 29, 2020 are: (1) Violation of Substantive Due Process - THE DOT; (2) Violation of Procedural Due Process - THE DOT; (3) Violation of Equal Protection - THE DOT; (4) Declaratory Judgment - All Defendants; (5) Petition for Judicial Review - All Defendants; and (6) Petition for Writ Mandamus – the DOT.

The claims pled by MM Development Company, Inc. & LivFree Wellness, LLC in their Second Amended Complaint filed on January 29, 2020 are: (1) Declaratory Relief; (2) Injunctive Relief; (3) Violation of Procedural Due Process; (4) Violation of Substantive Due Process; (5) Equal Protection Violation; (6) Petition for Judicial Review; and (7) Petition for Writ of Mandamus.

The claims pled by Natural Medicine, LLC in its Complaint in Intervention filed on February 7, 2020 are: (1) Declaratory Relief; (2) Petition for Judicial Review; (3) Petition for Writ of Certiorari; (4) Petition for Writ of Mandamus; and (5) Petition for Writ of Prohibition.

The claims pled by Strive Wellness of Nevada, LLC in its Complaint in Intervention filed on February 7, 2020 are: (1) Declaratory Relief; (2) Petition for Judicial Review; (3) Petition for Writ of Certiorari; (4) Petition for Writ of Mandamus; and (5) Petition for Writ of Prohibition.

The claims pled by Qualcan, LLC in its Second Amended Complaint filed on February 11, 2020 are: (1) Declaratory Relief; (2) Request for Injunctive Relief; (3) Intentional Interference with Prospective Economic Advantage; (4) Intentional Interference with Contractual Relations; (5) Petition for Judicial Review; (6) Petition for Writ of Mandamus; (7) Violation of Procedural Due Process; (8) Violation of Substantive Due Process; and (9) Equal Protection Violation.

The claims for relief pled by Rural Remedies, LLC in its Amended Complaint-in-Intervention are: (1) Declaratory Relief; (2) Permanent Injunction; (3) Violation of 42 U.S.C. § 1983; (4) Petition for Judicial Review; (5) Petition for Writ of Mandamus; and (6) Unjust Enrichment.

Nevada Wellness Center, LLC and Rural Remedies, LLC's claim for violation of 42 U.S.C. § 1983 was to be tried in PHASE THREE of trial against Jorge Pupo only.

As to the award of costs subject to this appeal, Appellants maintain that they are the "prevailing parties" in the underlying litigation and that none of the defendants/Respondents were "prevailing parties" such that they could be awarded costs. All defendants/Respondents maintain the contrary.

Dispositions: The District Court issued its "Findings of Fact and Conclusions of Law" for PHASE 1 on September 9, 2020. Notice of Entry of Order was served electronically on September 22, 2020. The District Court issued its "Findings of Fact and Conclusions of Law" for PHASE 2 on September 3, 2020. Notice of Entry of Order was served electronically on September 22, 2020. On August 4, 2022, the District Court entered an order certifying as final the Orders on PHASE 1 and PHASE 2 pursuant to NRCF 54(b).

Final dispositions related to the award of costs are as follows:

1. Order Denying TGIG Plaintiffs' Motion to Retax and Settle Costs and Awarding Costs to Lone Mountain Partners, LLC, entered on December 30, 2022, notice of entry of which was served electronically on January 3, 2023.
2. Order Regarding TGIG Plaintiffs' Motion to Retax Thrive's Costs, entered on December 30, 2022, notice of entry of which was served electronically on January 4, 2023.
3. Order Granting Motions to Retax TGIG Plaintiffs' Memorandum of Costs, entered on December 30, 2022, notice of entry of which was served electronically on January 20, 2023.
4. Order Denying in Part and Granting in Part the TGIG Plaintiffs' Motion to Retax and Settle Costs, and Awarding Costs to Deep Roots Harvest, Inc., entered on January 24, 2023, notice of entry of which was served electronically on January 24, 2023.
5. Order Denying in Part and Granting in Part TGIG Plaintiffs' Motion to Retax and Settle Costs Regarding Nevada Organic Remedies, LLC., notice of entry of which was served electronically on January 24, 2023.