

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

DEPARTMENT OF HEALTH AND  
HUMAN SERVICES, DIVISION OF  
PUBLIC AND BEHAVIORAL  
HEALTH,

Petitioners,

vs.

EIGHTH JUDICIAL DISTRICT  
COURT OF THE STATE OF  
NEVADA, IN AND FOR THE  
COUNTY OF CLARK and THE  
HONORABLE DOUGLAS SMITH,  
DISTRICT COURT JUDGE,

Respondents,

and

SAMANTHA INC. d/b/a SAMANTHA'S  
REMEDIES, a domestic Corporation,

Real Party in Interest.

Electronically Filed  
Dec 07 2015 08:45 a.m.  
Tracie K. Lindeman  
Clerk of Supreme Court

CASE NO: 67423

**MOTION FOR SUPPLEMENTAL BRIEFING**  
**PURSUANT TO NEV. R. APP. P. 27**

Comes now Real Party in Interest Samantha Inc. d/b/a Samantha's Remedies ("Samantha's Remedies"), by and through their attorney of record, Kimberly Maxson-Rushton of the law firm Cooper Levenson, P.A., and submits this Motion

for Supplemental Briefing pursuant to Rule 27 of the Nev. R. App. P.

Dated this 4<sup>th</sup> day of December, 2015.

Respectfully submitted,

Cooper Levenson, P.A.

/s/Kimberly Maxson-Rushton

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By: KIMBERLY MAXSON-RUSHTON

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*Attorney for Real Party in Interest*

*Samantha, Inc. d/b/a Samantha's*

*Remedies*

**POINTS AND AUTHORITIES IN SUPPORT OF  
MOTION FOR SUPPLEMENTAL BRIEFING**

Supplemental briefing is warranted where, as here, both prejudice and the potential for inconsistent results arise after original briefing has occurred, but before this Court has rendered a decision on the originally-briefed points. *See, Davidson v. Steffens*, 112 Nev. 136, 139911 P. 2d 855 (1996) (acknowledging appropriateness of supplemental briefing in case where appellant was forced to file motions to supplement points on appeal and file supplemental briefing after action by another party prejudiced appellant after appeal had been filed); *see also, McNelton v. State*, 115 Nev. 396, 416, 990 P.2d 1263, 1276 (1999) (Court would have allowed supplemental pleading and addressed claims that were raised for first time on appeal upon showing of good cause and prejudice); *Colwell v. State*, 118 Nev. 807, 59 P. 3d 463 (2002) (citing *McNelton* for same proposition).

Specifically, Real Party in Interest, Samantha's Remedies recently learned of three matters before the Eighth Judicial District which deal – as a matter of first impression – with the interpretation and review of the Department of Health and Human Services, Division of Health and Human Services' ("Division") implementation of Nev. Rev. Stat. § 453A.320, *et seq.* and the actions taken in

furtherance thereof.<sup>1</sup> The precise issue currently before this Honorable Court is whether the inconsistent pleadings filed in the GB Sciences I Litigation, the GB Sciences II Litigation, and the Acres Litigation, and the resulting rulings that have occurred, since oral argument in the instant matter, warrant further relief beyond what was originally requested yet consistent with the objective sought by Samantha's Remedies in filing the Petition for Judicial Review.

Indeed, after this Court heard oral argument in the instant matter on October 6, 2015, the plaintiff in the Acres litigation received a ruling from the Eighth Judicial District on October 8, 2015, which it then used as a means by which to intervene into the GB Sciences I litigation. The court in the GB Sciences I litigation then applied the Acres litigation ruling in such a way as to prejudice both Samantha's Remedies and confuse the interpretation of Nev. Rev. Stat. § 453A.320, *et seq.* Furthermore, this has created a potential for inconsistent results among the Eighth Judicial District itself. In response, on November 25, 2015, Samantha's Remedies moved to intervene in the GB

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<sup>1</sup> The three cases are: *GB Sciences Nevada, LLC v. State of Nevada, Division of Public and Behavioral Health of the Department of Health and Human Services, et al.*, Case No. A-14-710597-C ("GB Sciences I litigation") and *Acres Medical, LLC v. Nevada Department of Health and Human Services, Division of Public and Behavioral Health, et al.*, Case No. A-15-719637 ("Acres litigation"). The plaintiff in the GB Sciences I litigation actually filed another action on December 2, 2015, styled *GB Sciences Nevada, LLC v. State of Nevada, Division of Public and Behavioral Health of the Department of Health and Human Services, et al.*, Case No. A-15-728448-C ("GB Sciences II litigation"). All three cases were filed in the Eighth Judicial District in the District Court for Clark County, Nevada.



Sciences I litigation to preserve its rights, as well as to stay that litigation pending this Court's consideration of the issues. For this Court's review and consideration, Samantha's Remedies respectfully attaches its Motion to Intervene as Plaintiff Pursuant to Nev. R. Civ. P. 24 and Motion to Stay Proceedings Pending Resolution of Supreme Court Proceedings. This Motion, which remains currently pending, includes a briefing of the procedural facts, as well as a statement evidencing the impact of the GB Sciences I litigation and the Acres litigation on both the interests of Samantha's Remedies as well as judicial economy. (See Attachment 1).<sup>2</sup>

While Samantha's Remedies originally took the position – and still takes the position – that the Division is not entitled to the extraordinary relief that the Division seeks, the inconsistent treatment of Medical Marijuana Establishments in the GB Sciences I, GB Sciences II, and Acres litigations since this Court heard oral argument raises new issues which mandate separate extraordinary relief on behalf of Samantha's Remedies. Accordingly, Samantha's Remedies respectfully requests authority to file supplemental briefings to address the new issues raised by the lower court's inconsistent treatment of Medical Marijuana Establishment matters, and to request

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<sup>2</sup> It should be noted that the Motion to Intervene of Samantha's Remedies does not include reference to the GB Sciences II Litigation, which was not filed at the time Samantha's Remedies took action to intervene and stay the pending litigation. GB Sciences II Litigation was filed on December 2, 2015, but seeks the same remedies sought in the GB Sciences I Litigation.

additional extraordinary writ relief warranted by the same. Without question, Samantha's Remedies will be greatly prejudiced unless this Court takes action to consider not just the original points raised in the Writ, but also the new issues raised by the inconsistent treatment of Nev. Rev. Stat. § 453A.320, *et seq.* by the Eighth Judicial District in the GB Sciences litigation and Acres litigation. Unfortunately, a ruling without consideration of the additional inconsistent treatment at the lower court level will have the practical effect of creating the potential for duplicative litigation which will require consolidation at a later date, when either the affected parties or the Petitioner appeals, ultimately congesting the appellate system and prolonging the resolution of any matters dealing with the implementation of Nev. Rev. Stat. § 453A.320, *et seq.*

### **CONCLUSION**

For the reasons asserted above and based on the attached exhibit, Real Party in Interest, Samantha's Remedies respectfully requests that this Court order supplemental briefing on the inconsistent treatment by the Eighth Judicial District of Medical Marijuana Establishments and the implementation of Nev. Rev. Stat. § 453A.320, *et seq.*, as well as the additional extraordinary relief on behalf of Samantha's Remedies necessitated by the same.

Dated this 4<sup>th</sup> day of December 2015.

COOPER LEVENSON, P.A.

By /s/ Kimberly Maxson-Rushton  
KIMBERLY MAXSON-RUSHTON  
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*Attorney for Real Party in Interest*  
*Samantha, Inc. d/b/a Samantha's*  
*Remedies*

### CERTIFICATE OF SERVICE

I hereby certify and affirm that I am an employee of Cooper Levenson, P.A., and that on this 4<sup>th</sup> day of December, 2015, a true and correct copy of the foregoing Motion for Supplemental Briefing of Samantha Inc. d/b/a Samantha's Remedies was filed electronically with the Nevada Supreme Court. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

Adam Paul Laxalt, Attorney General  
Linda C. Anderson, Chief Deputy Attorney General  
555 E. Washington Avenue, #3900  
Las Vegas, NV 89101  
Attorney for Petitioners

Eighth Judicial District Court  
Douglas Smith, Judge  
200 Lewis Avenue  
Las Vegas, NV 89155

  
\_\_\_\_\_  
An employee of Cooper Levenson, P.A.

# **ATTACHMENT 1**

# **ATTACHMENT 1**

1 MINV  
2 KIMBERLY MAXSON-RUSHTON  
3 Nevada Bar No. 005065  
4 COOPER LEVENSON, P.A.  
5 6060 Elton Avenue, Suite A  
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9 Attorney for Petitioner-Intervenor  
10 [krushton@cooperlevenson.com](mailto:krushton@cooperlevenson.com)

  
CLERK OF THE COURT

DISTRICT COURT  
CLARK COUNTY, NEVADA

9 GB SCIENCES NEVADA, LLC, a Nevada  
10 limited liability company,

11 Plaintiff.

12 vs.

13 STATE OF NEVADA, DIVISION OF  
14 PUBLIC AND BEHAVIORAL HEALTH OF  
15 THE DEPARTMENT OF HEALTH AND  
16 HUMAN SERVICES; CITY OF LAS  
VEGAS, a municipal corporation and political  
subdivision of the State of Nevada; NULEAF  
CLV DISPENSARY, LLC, a Nevada limited  
liability company; DOES 1-10, and ROE  
ENTITIES 1-100, inclusive,

17 Defendants.

CASE NO. A-14-710597-C  
DEPT NO. XX

MOTION OF SAMANTHA INC. d/b/a  
SAMANTHA'S REMEDIES TO  
INTERVENE AS PLAINTIFF PURSUANT  
TO NRCP 24 AND MOTION TO STAY  
PROCEEDINGS PENDING  
RESOLUTION OF SUPREME COURT  
PROCEEDINGS.

Date of Hearing: \_\_\_\_\_  
Time of Hearing: \_\_\_\_\_

18  
19 COMES NOW, Petitioner-Intervenor SAMANTHA INC., d/b/a SAMANTHA'S  
20 REMEDIES, ("Samantha's Remedies") by and through its attorney of record, KIMBERLY  
21 MAXSON-RUSHTON of the law firm COOPER LEVENSON, P.A., and respectfully moves this  
22 Court for leave to intervene as of right in this matter pursuant to Nevada Rule of Civil Procedure 24  
23 in order to assert the claims as set forth in the attached Intervenor Complaint (attached as exhibit 4),  
24 and to stay the proceedings pending the resolution of a previously-pending petition for extraordinary  
25 writ relief before the Supreme Court of Nevada. This Motion is made necessary due to the fact that  
26 this Court recently granted intervention to another party, ACRES MEDICAL, LLC ("Acres") on  
27 November 9, 2015, and the Court granted Plaintiff GB Sciences Nevada, LLC's ("GB Sciences")  
28 Motion for Summary Judgment, in part, while awarding a Provisional Certificate to Acres Medical,

1 thereby prejudicing Samantha's Remedies' interest in a Provisional Certificate which is the subject  
2 of a currently-pending matter before the Nevada Supreme Court at Docket No. 67423, arising from  
3 Samantha Remedy's Petition for Judicial Review in this District, case no. A-14-710874-J.

4 This Motion is further made and based on the pleadings and papers on file herein, the  
5 Memorandum of Points and Authorities submitted herewith and any oral argument that may be had  
6 at the time of hearing of this matter.

7 Dated this 25th day of November 2015.

8 COOPER LEVENSON, P.A.

9  
10  
11 By /s/ Kimberly Maxson-Rushton  
12 KIMBERLY MAXSON-RUSHTON  
13 Nevada Bar No. 005065  
14 COOPER LEVENSON, P.A.  
15 6060 Elton Avenue, Suite A  
16 Las Vegas, Nevada 89107  
17 (702) 366-1125  
18 FAX: (702) 366-1857  
19 Attorney for Petitioner-Intervenor

20 NOTICE OF MOTION

21 **TO: ALL PARTIES OF INTEREST:**

22 **PLEASE TAKE NOTICE** that the undersigned will bring the above and foregoing  
23 **MOTION OF SAMANTHA INC. d/b/a SAMANTHA'S REMEDIES' TO INTERVENE AS**  
24 **PLAINTIFF PURSUANT TO NRCP 24 AND MOTION TO STAY PROCEEDINGS**

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26 ///

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1 PENDING RESOLUTION OF SUPREME COURT PROCEEDINGS before Department  
2 No. XX of the EIGHT JUDICIAL DISTRICT COURT on the 30 day of Dec, 2015, at  
3 8:30 a.m. or as soon thereafter as counsel can be heard.

4 Dated this 25th day of November 2015.

5 COOPER LEVENSON, P.A.

6  
7  
8 By /s/ Kimberly Maxson-Rushton  
9 KIMBERLY MAXSON-RUSHTON  
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16 Attorney for Petitioner-Intervenor

17 MEMORANDUM OF POINTS AND AUTHORITIES

18 I.

19 STATEMENT OF FACTS

20 In 2013, Senate Bill 374 was passed providing for the registration of medical marijuana  
21 establishments authorized to cultivate or dispense or manufacture edible marijuana products or  
22 marijuana-infused products for sale to persons authorized to engage in the medical use of  
23 marijuana. Senate Bill 374 was codified at NRS Chapter 453A. Under NRS § 453A.320, *et seq.*, the  
24 Department of Health and Human Services, Division of Public and Behavioral Health ("the  
25 Division") was tasked with processing and ranking applications for Medical Marijuana  
26 Establishments ("MMEs") for each local jurisdiction in Nevada. This included three types of  
27 MMEs: Dispensaries, Cultivation, and Production Facilities. The Division, as well as each local  
28 jurisdiction, played a role in the ultimate licensing of MMEs. Specifically, the local jurisdiction  
was tasked with considering issues such as site plans, zoning and proximity to other business or  
facilities, while the Division focused on public health, public safety, and marijuana as a medicine.



1 At or around the time NRS § 453A.322 was enacted, Senator Tick Segerblom called a  
2 meeting of the Advisory Commission on the Administration of Justice's Subcommittee on the  
3 Medical Use of Marijuana. During that meeting, Chad Westom of the Division stated that the  
4 Division "will receive all the applications of people who apply across the state. [The Division would  
5 come up with the highest . . . rankings in Clark County and issue provisional certificates." Mr.  
6 Westom went on to state that ". . . the State process was merit based and it followed the statutes and  
7 regulations." Mr. Westom made it clear that the intent behind the law was that if one of the highest  
8 ranked applicants was denied, the Division would issue a provisional registration certificate  
9 "Provisional Certificate" to the next ranked applicant.

10 In accordance with its responsibilities, Defendant CITY OF LAS VEGAS ("City of Las  
11 Vegas") enacted Ordinance No. 6321 and 6324 to establish zoning regulations, licensing regulations,  
12 and standards for MME locations. In addition, the City of Las Vegas issued a Medical Marijuana  
13 Business License Application Form (the "Las Vegas Application"). The Division issued its own  
14 application packet (the "Division Application"), which provided a detailed explanation as to what  
15 was required to be contained within each application. While the Division was allowed to accept all  
16 applications submitted, under NRS § 453A.322, the Division could only issue a Provisional  
17 Certificate if the applicant's application demonstrated compliance with the local jurisdictions zoning  
18 criteria and if the applicant otherwise met the requirements established by NRS/NAC Chapter  
19 453A. As applicable to the City of Las Vegas, provisional certificates were granted only to the top  
20 twelve ranked applicants.

21 Petitioner-intervenor SAMANTHA INC., doing business as SAMANTHA'S REMEDIES, a  
22 domestic corporation (hereinafter "SAMANTHA'S REMEDIES"), submitted an application with the  
23 Division and with the City of Las Vegas, as did GB Sciences, as well as many other entities, several  
24 of which are parties to the instant litigation. Following an application process and review period, the  
25 Division and the City of Las Vegas engaged in a ranking process whereby Samantha's Remedies,  
26 Inc., was not included as part of the top twelve applicants, nor was GB Sciences.

27 On December 2, 2014, GB Sciences initiated the instant litigation, styled GB Sciences  
28 Nevada, LLC v. State of Nevada, Division of Public and Behavioral Health of the Department of

1 Health and Human Services, et al., Case No. A-14-710597-C (“the instant litigation”), by filing a  
2 Complaint against the Division and two other applicants for declaratory and injunctive relief, a  
3 petition for judicial review, and a petition for writ of mandamus, to enjoin the Division from issuing  
4 actual Registration Certificates to NuLeaf and Desert Aire, who had been ranked higher than GB  
5 Sciences, on the grounds that those applicants had not complied with the requirements of NRS  
6 Chapter 453A and the subsequent applications issued by the Division and the City of Law  
7 Vegas. GB Sciences also requested that a Provisional Certificate be issued to GB Sciences, as the  
8 next highest ranking eligible candidate. On or about December 5, 2014, GB Sciences filed its First  
9 Amended Complaint to include the City of Las Vegas. On or about December 11, 2014, GB  
10 Sciences filed a Motion for Preliminary and Permanent Injunction, which as heard and denied on  
11 December 31, 2014.

12 On or about December 8, 2014, Samantha’s Remedies filed a Petition for Judicial Review of  
13 the “application decision” of the Division in the case styled Samantha Inc., d/b/a Samantha’s  
14 Remedies v. Department of Health and Human Services Nevada Division of Public and Behavioral  
15 Health, Medical Marijuana Establishment Program, No. A. 14-710874-J. (see Exhibit 1, Petition for  
16 Review). The petition was premised on the grounds that the Division’s review and ranking of the  
17 application was resulted in denial of its application for a Medical Marijuana Dispensary, challenged  
18 the Division’s actions as inconsistent with and exceeding the statutory and regulatory authority set  
19 forth in NRS 453A, and were arbitrary and capricious. Samantha’s Remedies also challenged the  
20 Division’s refusal to reconsider the previously submitted application after the 90-day application  
21 review period ended as set forth in NRS 453A.322.

22 On December 24, 2014, the Division filed a motion to dismiss Samantha’s  
23 Remedies’ petition for judicial review, which Samantha’s Remedies opposed on January 12,  
24 2015. The Court heard oral argument on the motion to dismiss on January 27, 2015, and on  
25 February 13, 2015, issued an Order denying the Division’s motion to dismiss. The Court agreed that  
26 “judicial review must be available for this administrative decision.” (Exhibit 2, February 13, 2015  
27 Order.) On February 18, 2014, the Division filed a Petition for Writ of Mandamus Or In The  
28 Alternative Prohibition, seeking extraordinary writ relief, before the Supreme Court of Nevada,

1 styled Department of Health and Human Services, Division of Public and Behavioral Health v. Eight  
2 Judicial District Court of the State of Nevada, et al., Docket No. 87423. Samantha's Remedies was  
3 named as a real party in interest. Samantha's Remedies filed an opposition on April 19, 2015, and  
4 the Supreme Court heard oral argument on the writ petition on October 6, 2015. As of the date of  
5 this filing, the Supreme Court has not issued a ruling on the issue.

6 Meanwhile, in the instant litigation, on or about April 1, 2015, Desert Aire was dismissed as  
7 a defendant in the instant litigation, without prejudice, on the grounds that GB Sciences had  
8 determined that Desert Aire was not a necessary party as GB Sciences would still be in the top 12  
9 applicants for the City of Las Vegas even if Desert Aire did not lose its Provisional Certificate, as  
10 long as NuLeaf was eliminated.

11 On or about October 9, 2015, the Honorable Judge Elissa Cadish of the Eighth Judicial  
12 District gave notice of an Order issued October 8, 2015 in the case styled Acres Medical, LLC v.  
13 Nevada Department of Health and Human Services, Division of Public and Behavioral Health, et al.,  
14 No. A-15-719637, a separate case initiated by ACRES MEDICAL, LLC ("Acres Medical") against  
15 the Division for largely the same reasons underlying the instant litigation, as well as Samantha's  
16 Remedies' petition for review. As part of the October 8, 2015 Order (attached hereto as Exhibit 3),  
17 Judge Cadish granted Acres Medical's petition for mandamus and ordered that Acres Medical be re-  
18 ranked to Number 13, thereby affording Acres Medical the status of being next in line if any of the  
19 top 12 dispensary applicants became ineligible to receive a Provisional Certificate. Though  
20 Samantha's Remedies was named in that matter and requested a stay of proceedings, the court  
21 declined to stay the proceedings.

22 On or about October 19, 2015, Acres Medical filed a Motion to Intervene in this case, having  
23 also applied for an MME Dispensary Provisional Certificate with the Division but having been  
24 ranked outside the top 12 applicants. On November 9, 2015, Acres' motion to intervene in the  
25 instant litigation was granted. Shortly thereafter, this Court issued an order granting partial summary  
26 judgment to GB Sciences, Nevada, LLC ("GB Sciences") which stripped Nuleaf of its eligibility for  
27 a Provisional Certificate, and as a result moved Acres Medical from Number 13 on the list, thereby  
28 awarding Acres Medical a Provisional Certificate to Acres Medical ahead of GB Sciences. On or

1 about November 16, 2015, GB Sciences moved this Court for leave to file a Second Amended  
2 Complaint to bring Desert Aire back into the instant litigation, because the November 9, 2015 Order  
3 once again made Desert Aire a party whose ranking affected GB Sciences.

4 Essentially, Judge Cadish's October 8, 2015 Order acted in concert with this Court's  
5 November 9, 2015 Order to allow Acres to jump in front of both GB Sciences and Samantha's  
6 Remedies, whose petition for review still remains pending before the Supreme Court on a pending  
7 writ petition. For these reasons, it is respectfully submitted that Samantha's Remedies be permitted  
8 to intervene in this matter, and that this Court grant a stay of the instant litigation's proceedings  
9 pending resolution of the Supreme Court's consideration of the pending writ petition.

## 10 II.

### 11 MOTION TO INTERVENE AS A PLAINTIFF - LEGAL AUTHORITY.

#### 12 A. LEGAL STANDARD FOR INTERVENTION

13 Intervention is governed by Nev. Rev. Stat. § 12.130 and N.R.C.P. 24(a). Nev. Rev. Stat. §  
14 12.130 allows, before a trial commences, any person who has an interest in the matter in litigation, in  
15 the success of either of the parties, or an interest against both to intervene in an action under the  
16 Nevada Rules of Civil Procedure. N.R.C.P. 24 governs those situations in which a party may  
17 intervene in an action as of right or permissively. Specifically, N.R.C.P. 24(a) states:

18 Upon timely application anyone shall be permitted to intervene in an action: (1)  
19 when a statute confers an unconditional right to intervene; or (2) when the  
20 applicant claims an interest relating to the property or transaction which is the  
21 subject of the action and the applicant is so situated that the disposition of the  
22 action may as a practical matter impair or impede the applicant's ability to  
23 protect that interest, unless the applicant's interest is adequately represented by  
24 existing parties.

23 N.R.C.P. 24(b), on the other hand, states that:

24 Upon timely application anyone may be permitted to intervene in an action: (1)  
25 when a statute confers a conditional right to intervene; or (2) when an  
26 applicant's claim or defense and the main action have a question of law or fact  
27 in common. In exercising its discretion the court shall consider whether the  
28 intervention will unduly delay or prejudice the adjudication of the rights of the  
original parties.

1 The Nevada Rules of Civil Procedure are largely based on the Federal Rules of Civil Procedure and  
2 thus, federal case law is “strong persuasive authority” regarding questions of their  
3 interpretation. Exce. Mgmt., Ltd. v. Tigor Title Ins. Co., 118 Nev. 46, 52 (Nev. 2002). It is not  
4 uncommon for Nevada courts to look to federal interpretations of Federal Rule of Civil Procedure  
5 24, governing intervention, when construing N.R.C.P. 24. Am. Home Assur. Co. v. Eighth Judicial  
6 Dist. Court, 122 Nev. 1229, 1241-42 (Nev. 2006).

7 Moreover, federal courts construe the intervention rules “broadly in favor of proposed  
8 intervenors.” Wilderness Soc’y v. U.S. Forest Services, 630 F.3d 1173, 1179 (9th Cir. 2011)  
9 (quoting United States v. City of Los Angeles, 288 F.3d 391, 397 (9th Cir. 2002)). This is done  
10 because a “liberal policy in favor of intervention serves both efficient resolution of issues and  
11 broadened access to the courts.” Id.

12 In considering an intervention as of right or permissive intervention, the threshold  
13 determination is whether the intervention was timely; “[t]imeliness is a determination that lies within  
14 the sound discretion of the trial court.” Lawler v. Ginochio, 94 Nev. 623, 626 (Nev. 1978); *see also*  
15 Cleland v. Eighth Judicial District Court, 92 Nev. 454, 456, 552 P.2d 488 (1976). Moreover, as our  
16 Supreme Court has recognized, “‘Timeliness’ is not a word of exactitude or of precisely measurable  
17 dimensions. The requirement of timeliness must have accommodating flexibility toward both the  
18 court and the litigants if it is to be successfully employed to regulate intervention in the interest of  
19 justice.” Lawler, 94 Nev. at 626 (quoting McDonald v. E. J. Lavino Co., 430 F.2d 1065, 1074 (5th  
20 Cir. 1970)). The most vital point in determining timeliness is the extent to which the existing  
21 parties’ rights will be prejudiced if there was any delay in filing the motion to intervene. The most  
22 important question to be resolved in the determination of the timeliness of an application for  
23 intervention is not the length of the delay by the intervenor but the extent of prejudice to the rights of  
24 existing parties resulting from the delay. Id. Generally, however, “intervention is timely if the  
25 procedural posture of the action will allow the intervenor to protect its interest.” LoMastro v. Am.  
26 Family Ins. Group (Estate of LoMastro), 124 Nev. 1060, 1070, n. 29 (Nev. 2008).

27 Once timeliness has been determined, to successfully intervene under N.R.C.P. 24(a)(2), an  
28 applicant must meet four requirements: “(1) that it has a sufficient interest in the litigation's subject

1 matter, (2) that it could suffer an impairment of its ability to protect that interest if it does not  
2 intervene, (3) that its interest is not adequately represented by existing parties, and (4) that its  
3 application is timely.” Am. Home Assur. Co., 122 Nev. at 1235. Put another way, the entity must  
4 have an interest in the matter in litigation that it would either gain or lose by direct legal operation  
5 and effect of the judgment which might be rendered in the action between the original  
6 parties. Harlan v. Eureka Mining Co., 10 Nev. 92, 1875 Nev. LEXIS 7 (Nev. 1875). (decision under  
7 former statute). Whether the petitioner has met those four requirements is within the district court's  
8 discretion. Id.

9 By intervening, the applicant becomes a party to the action in order to do one of the three  
10 following things: (1) join the plaintiff in the complaint's demand; (2) resist, with the defendant, the  
11 plaintiff's claims; or (3) make a demand adverse to both the plaintiff and the defendant. Am. Home  
12 Assur. Co., 122 Nev. at 1235, n. 12. As such, N.R.C.P. 24(c) also requires that “[a] person desiring  
13 to intervene shall serve a motion to intervene upon the parties as provided in Rule 5. The motion  
14 shall state the grounds therefor and shall be accompanied by a pleading setting forth the claim or  
15 defense for which intervention is sought.”

16 Permissive intervention pursuant to N.R.C.P. 24(b) requires that the Court determine, in its  
17 discretion, that (1) “an applicant’s claim or defense and the main action have a question of law or  
18 fact in common”; and (2) the intervention will not “unduly delay or prejudice the adjudication of the  
19 rights of the original parties.”

20 In exercising its discretion to determine whether intervention pursuant to N.R.C.P. 24 is  
21 appropriate, this Court is empowered to promote the “liberal policy in favor of intervention [which]  
22 serves both efficient resolution of issues and broadened access to the courts.” Because Samantha’s  
23 Remedies satisfies the criteria for both intervention as of right and permissive intervention, this  
24 Court should grant the instant motion in order to allow Samantha’s Remedies to protect its interests.  
25 See Am. Home Assur. Co., 122 Nev. at 1237-38 (once court establishes that intervention criteria are  
26 satisfied, intervention should be granted in order to allow it to protect its interests).

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28 ///



1       **B. SAMANTHA'S REMEDIES SHOULD BE PERMITTED TO INTERVENE.**

2       **1. Intervention As of Right Is Appropriate In This Case.**

3       Samantha's Remedies seeks intervention as of right because it has a significant interest in the

4       **a. The Motion to Intervene is Timely.**

5       Here, there is no question that the instant Motion to Intervene is both timely and satisfies the  
6 requirements espoused by the Am. Home. Assur. Co. court for intervention pursuant to N.R.C.P.  
7 24(a)(2). First, this intervention is timely, as this intervention is taken as a result of the prejudice to  
8 Samantha's Remedies arising out of the Order of this Court dated November 9, 2015. The prejudice  
9 is compounded due to the fact that the Nevada Supreme Court has yet to render a decision on the  
10 matter pending before it, leaving Samantha's Remedies in limbo, so to speak, without any means by  
11 which to protect its interest in a Provisional Certificate, while the instant litigation moves forward  
12 granting remedies to other intervening parties and effectively giving those parties an advantage over  
13 Samantha's Remedies. Indeed, Samantha's Remedies has in good faith awaited a decision in the  
14 Supreme Court; however, without one on the horizon, it has become clear that continued action in  
15 this instant litigation threatens to severely prejudice Samantha's Remedies. It is clear that the  
16 procedural posture of the action – only a small period of time after the Court's November 9, 2015  
17 Order and before trial – will allow Samantha's Remedies to protect its interest in a Provisional  
18 Certificate, thereby rendering this motion timely under LoMastro.

19       Moreover, none of the parties will be prejudiced by the filing of this motion, given that it has  
20 been filed as soon as possible after the real threat of prejudice arose as a result of this Court's  
21 November 9, 2015 Order, and prior to any trial in compliance with Nev. Rev. Stat. § 12.130. Indeed,  
22 intervention in this matter will not delay the resolution of this lawsuit; as an applicant itself,  
23 Samantha's Remedies has every interest in the expeditious and economic resolution to this case, so  
24 long as it is fair and addresses all of the relevant parties in interest. Accordingly, because  
25 Samantha's Remedies' motion to intervene is timely, this Court is well within its discretion to grant  
26 intervention.

27       ///

28       ///

1           **b. Samantha's Remedies Has a Strong Interest in the Outcome of this Case.**

2           Samantha's Remedies also satisfies the second prong for intervention of right, which requires  
3           the applicant to possess a "sufficient interest in the litigation's subject matter," or a "significantly  
4           protectable interest." Am. Home Assur. Co., 122 Nev. at 1235.

5           Here, there is no question that Samantha's Remedies has a "sufficient interest in the  
6           litigation's subject matter." The subject matter of this case is the Division's processing and ranking  
7           of applications from Medical Marijuana Establishments, and the provision of Registration  
8           Certificates and/or Provisional Certificates themselves. Samantha's Remedies, as an applicant for a  
9           Registration Certificate and/or Provisional Certificate, was ranked just below the cut-off point  
10          defined by the Division, and clearly has a "sufficient interest" in this subject matter, and has a  
11          personal stake in the outcome of this Court's handling of such. Indeed, any decision this Court  
12          makes will have a direct impact on Samantha's Remedies' position in line for a Registration  
13          Certificate and/or a Provisional Certificate. As such, the second criteria for intervention as of right is  
14          satisfied.

15           **c. Samantha's Remedies' Interest Could Be Impaired by the Outcome of this Case.**

16          The third element of N.R.C.P. 24(a)(2) requires that Samantha's Remedies demonstrate that  
17          it will "either gain or lose by the direct legal operation and effect of the judgment which might be  
18          rendered in the suit between the original parties." Stephens v. First Nat'l Bank of Nev., 64 Nev. 292,  
19          304-05 (Nev. 1947) (quoting Harlan v. Eureka Mining Co., 10 Nev. 92, 94-95 (Nev. 1875). Here, it  
20          is literally impossible for Plaintiffs to achieve the result they seek without harming Samantha's  
21          Remedies' interests. Samantha's Remedies is uniquely situated such that the piece-meal  
22          consideration of various entities' applications will run the risk of forcing Samantha's Remedies'  
23          ranking further down the list simply by virtue of its absence from this particular litigation, as is  
24          already the case after this Court's November 9, 2015 Order. Absent intervention, Samantha's  
25          Remedies lacks any ability to protect its interest, and the resulting prejudice will be  
26          significant. Indeed, while Samantha's Remedies awaits a decision on the pending Supreme Court  
27          matter to determine whether its petition for review may move forward – effectuating even more  
28          piece-meal litigation affecting the rights of multiple applicants – Samantha's Remedies has "no



1 alternative forum where [it] can mount a robust defense of” its interests. State v. Lockyer, 450 F.3d  
2 436, 442 (9th Cir. 2006). This “practical disadvantage to the protection of their interest . . . warrants  
3 their intervention as of right.” Saunders v. Superior Court in & for Maricopa Cnty., 510 P.2d  
4 740,742 (Ariz. 1973). Samantha’s Remedies clearly stands to gain or lose directly by the effect of  
5 any judgment in this action, and as such satisfies the third element for intervention as of right.

6 **d. Samantha’s Remedies’ Interests Are Not Adequately Represented by Existing**  
7 **Parties.**

8 Finally, the existing parties do not – and cannot – adequately represent the interests of  
9 Samantha’s Remedies. Plaintiff GB Sciences is in direct competition with Samantha’s Remedies for  
10 the same reason – both are applicants as MMEs seeking a Registration Certificate and/or a  
11 Provisional Certificate from the Division. It is the Division’s processing of Samantha’s Remedies’  
12 application and that of other applicants that has given rise to this litigation, and the other parties –  
13 such as Acres and NuLeaf – are similarly situated in direct competition with Samantha’s  
14 Remedies. Such factual circumstances are far beyond the minor showing required for the fourth  
15 prong, which requires only that an applicant show that the representation afforded by existing parties  
16 “may be” inadequate. Am. Home Assurance Co., 122 Nev. At 1231-32 (citing Trbovich v. United  
17 Mine Workers, 404 U.S. 528, 538 n.10, 92 S. Ct. 630, 30 L. Ed. 2d 686 (1972)).

18 Each of the applicants stands to gain or lose from a decision favorable to any one of the other  
19 applicants, and as such not a single existing party will have any stake in protecting Samantha’s  
20 Remedies’ interests; indeed, each of the existing parties stands to gain from a judgment that is  
21 unfavorable to Samantha’s Remedies’ interest. Accordingly, the fourth and final criteria for  
22 intervention as of right is satisfied, and intervention pursuant to N.R.C.P. 24(a)(2) is warranted.

23 **2. Permissive Intervention is Similarly Warranted.**

24 Even if this Court determines that Samantha’s Remedies has not satisfied the criteria for  
25 intervention as of right, Samantha’s Remedies alternatively seeks permissive intervention under  
26 N.R.C.P. 24(b)(2), which provides that intervention is appropriate upon timely intervention when (1)  
27 an applicant’s claim or defense and the main action have a question of law or fact in common; and  
28

1 (2) when the intervention will not “unduly delay or prejudice the adjudication of the rights of the  
2 original parties.”

3 As discussed in Section II.B.1.a above, Samantha’s Remedies’ motion is timely. The  
4 remaining two criteria are also satisfied.

5 **a. Samantha’s Remedies’ Claims Share Common Questions of Law and Fact.**

6 Samantha’s Remedies’ claims share a question of law or fact in common with the main  
7 action. Specifically, the central question of law asks this Court to determine the propriety of the  
8 Division’s review and processing of the applications from MMEs, as well as its implementation of  
9 the relevant statutory authority. As such, Samantha’s Remedies’ claims will involve only those legal  
10 issues which are already before this Court, seeking the same remedies and relief sought by the  
11 original plaintiff.

12 **b. Samantha’s Remedies’ Timely Motion will not Prejudice Existing Parties.**

13 Additionally, Samantha’s Remedies has acted expediently to ensure that there is no delay in  
14 this litigation. Indeed, allowing Samantha’s Remedies to intervene will not prejudice the existing  
15 parties, but do the exact opposite by aiding the Court in resolving the issues at stake by providing  
16 this Court a more complete factual base with which to assess the questions of law presented to it. As  
17 such, the Court will no longer be required to make determinations in a vacuum – and without  
18 consideration of other applicants’ positions – but will be able to make them with as many facts as  
19 possible, with consideration of all relevant parties’ interests.

20 **III.**

21 **MOTION TO STAY**

22 **LEGAL AUTHORITY**

23 **A. LEGAL STANDARD FOR GRANTING A STAY OF PROCEEDINGS**

24 Stays are governed by N.R.A.P. 8, which provides that an applicant must move a district  
25 court first for “a stay of the judgment or order of, or proceedings in, a district court pending appeal  
26 of resolution of a petition to the Supreme Court for an extraordinary writ[.]” N.R.A.P. 8(a)(1)(A).

27 As already stated, Samantha’s Remedies is a party to litigation which is currently pending  
28 before the Supreme Court on a petition for extraordinary writ relief filed by the Department of

1 Health and Human Services, Division of Public and Behavioral Health. The questions of law and  
2 underlying facts giving rise to that extraordinary writ relief petition are the same as those which  
3 underlie the instant litigation, and as such, a stay of the instant proceedings pending resolution of the  
4 Supreme Court proceedings is appropriate pursuant to N.R.A.P. 8(a)(1)(A).

5 Though N.R.A.P. 8(c) offers guidance to appellate courts in determining whether a stay  
6 pursuant to Rule 8 is appropriate, such guidance is instructive to this court. *See, e.g., Mikohn*  
7 *Gaming Corp. v. McCrea*, 120 Nev. 248, 250 (Nev. 2004) (holding that factors to be considered by  
8 appellate courts are applicable to other situations, such as arbitration, recognizing the unique nature  
9 of interlocutory appeals and the importance of stays on lower court proceedings pending  
10 resolution). Specifically, a court is to consider the following factors in deciding whether a stay is  
11 appropriate: (1) whether the object of the appeal or writ petition will be defeated if the stay or  
12 injunction is denied; (2) whether appellant/petitioner will suffer irreparable or serious injury if the  
13 stay or injunction is denied; (3) whether respondent/real party in interest will suffer irreparable or  
14 serious injury if the stay or injunction is granted; and (4) whether appellant/petitioner is likely to  
15 prevail on the merits in the appeal or writ petition. N.R.A.P. 8(c).

#### 16 **B. THE INSTANT PROCEEDINGS SHOULD BE STAYED.**

17 The unique facts underlying the instant litigation make for a situation in which each of the  
18 factors for a stay is well satisfied, and the Court is well within its discretion to grant a stay.

19 The threshold factor to be considered is what the object (or the purpose) of the pending writ  
20 petition is, and whether it will be defeated if this stay is denied. The *Mikohn* court explained that the  
21 “object of an appeal” is taken from the order giving rise to the appeal or writ petition. 120 Nev. at  
22 252. In the pending Supreme Court matter, the object of the pending writ petition is to determine the  
23 means by which a district court may review the actions of the Division in processing applications for  
24 MME’s. If the instant litigation were to proceed without a stay, it would necessarily defeat the  
25 object of the pending writ because it has the potential to reach a result that is at odds with the  
26 pending writ petition. As such, the first factor of N.R.A.P. 8(c) weighs in favor of granting a stay, so  
27 that this District Court may subsequently proceed with the benefit of the Supreme Court’s  
28 interpretation of the very proceedings that form the basis for this instant litigation.

1 The second and third factors -- whether either party will suffer irreparable or serious harm --  
2 generally do not play significant roles in the decision as to whether to issue a stay, because  
3 "[n]ormally, the only cognizant harm threatened to the parties is increased litigation costs and  
4 delay." Mikohn, 120 Nev. at 253. However, increased litigation costs, even if substantial, and delay  
5 do not constitute irreparable harm. Id. While none of the existing parties to this litigation will suffer  
6 any irreparable harm or prejudice as the result of a stay of proceedings, Samantha's Remedies *will*  
7 suffer irreparable and serious harm if a stay of proceedings is denied. It is for the same reasons  
8 discussed above in Sections I.B.1.b-d, Samantha's Remedies will be severely prejudiced and will  
9 suffer serious injury if these proceedings are permitted to proceed while the writ petition remains  
10 pending in the Supreme Court.

11 Indeed, Samantha's Remedies is uniquely situated such that the piece-meal consideration of  
12 various entities' applications will run the risk of forcing Samantha's Remedies' ranking further  
13 down the list simply by virtue of this particular litigation, as is already the case after this Court's  
14 November 9, 2015 Order. Absent a stay, the continued litigation of the instant case while  
15 Samantha's Remedies awaits a decision on the pending Supreme Court matter will only effectuate  
16 extremely uneven and piece-meal litigation affecting the rights of multiple applicants. Arguably,  
17 should these proceedings move forward without the benefit of a Supreme Court decision on the  
18 pending writ petition, even judicial economy will suffer significantly. Thus, in order to promote  
19 judicial economy and ease of administration, a stay is necessary to avoid the untenable situation in  
20 which various district courts will be required to assess the situations of various applicants without  
21 any way of knowing how entities are actually ranked, without guidance from the Supreme Court as  
22 to the issues, and without all of the relevant facts. As such, the third factor weighs heavily in favor  
23 of a stay.

24 Finally, the fourth factor -- the likelihood that the pending writ petition will prevail on the  
25 merits -- is a neutral factor. As the issue before the Supreme Court is a matter of first impression, it  
26 is difficult to assess the likelihood of success. Just as in the Mikohn case, in which the Court could  
27 not assess the likelihood of success on the merits, stay is warranted based on the fact that denial of a  
28 stay will defeat the object of the pending writ petition, will cause irreparable harm to Samantha's

1 Remedies, and will significantly reduce judicial economy, this Court should stay the instant  
2 proceedings until such time as the Supreme Court has resolved the pending writ petition.

3 IV.

4 CONCLUSION

5 Petitioner SAMANTHA INC., d/b/a SAMANTHA'S REMEDIES, respectfully asks the  
6 Court to grant its motion to intervene as plaintiff, and to stay the proceedings pending resolution of  
7 the matter currently pending before the Nevada Supreme Court.

8 Dated this 25th day of November 2015.

9 COOPER LEVENSON, P.A.

10  
11  
12 By /s/ Kimberly Maxson-Rushton  
13 KIMBERLY MAXSON-RUSHTON  
14 Nevada Bar No. 005065  
15 COOPER LEVENSON, P.A.  
16 6060 Elton Avenue, Suite A  
17 Las Vegas, Nevada 89107  
18 (702) 366-1125  
19 FAX: (702) 366-1857  
20 Attorney for Petitioner-Intervenor  
21  
22  
23  
24  
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27  
28

1 CERTIFICATE OF SERVICE

2 Pursuant to NRCP 5(b), I certify that I am an employee of COOPER LEVENSON, P.A., and  
3 that on this 25th day of November, 2015, I did cause a true copy of the foregoing MOTION OF  
4 SAMANTHA INC. d/b/a SAMANTHA'S REMEDIES TO INTERVENE AS PLAINTIFF  
5 PURSUANT TO NRCP 24 AND MOTION TO STAY PROCEEDINGS PENDING  
6 RESOLUTION OF SUPREME COURT PROCEEDINGS to be served by e-serving a copy on  
7 all parties registered and listed as Service Recipients in Wiznet, the Court's online, electronic filing  
8 website, pursuant to Administrative Order 14-2, entered by the Chief Judge, Jennifer Togliatti, on  
9 May 9, 2015.

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13 An employee of Cooper Levenson, P.A.  
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**EXHIBIT "1"**



CLERK OF THE COURT

1 PET  
2 KIMBERLY MAXSON-RUSHTON  
3 Nevada Bar No. 005065  
4 COOPER LEVENSON, P.A.  
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7 (702) 366-1125  
8 FAX: (702) 366-1857  
9 Attorney for Petitioner  
10 krushion@cooperlevenson.com

11 DISTRICT COURT  
12 CLARK COUNTY, NEVADA

13 Samantha Inc., d/b/a Samantha's Remedies, a  
14 Domestic Corporation,

15 Petitioner.

16 vs.

17 Department of Health and Human Services  
18 Nevada Division of Public and Behavioral Health,  
19 Medical Marijuana Establishment Program,

20 Respondent(s).

CASE NO. A-14-710874-J  
DEPT. NO. VIII

PETITION FOR JUDICIAL REVIEW

21 COMES NOW, Petitioner, SAMANTHA INC., d/b/a SAMANTHA'S REMEDIES,  
22 ("Samantha's Remedies") by and through its attorney, KIMBERLY MAXSON-RUSHTON, of the  
23 law firm of COOPER LEVENSON, P.A., and hereby petitions this Court for judicial review of the  
24 application decision of the DEPARTMENT OF HEALTH AND HUMAN SERVICES, NEVADA  
25 DIVISION OF PUBLIC AND BEHAVIORAL HEALTH, MEDICAL MARIJUANA MEDICAL  
26 MARIJUANA ESTABLISHMENT PROGRAM ("Division") in the administrative matter identified  
27 by the Division as Reference No. 98468144852415974273.

28 This Petition for Judicial Review is filed pursuant to Nevada Revised Statute ("NRS") 233B.  
130, which provides for judicial review of contested final decisions in Administrative Agency Cases.  
See, NRS 233B.032.



1       Petitioner submits that the Division's review and ranking of the subject Application resulted in  
2 the denial of a provisional approval of said Application. As such, Applicant is precluded from being  
3 issued a Medical Marijuana Establishment ("MME") registration certificate, necessary in order to  
4 operate a MME --- Dispensary in the City of Las Vegas. Accordingly, Petitioner submits that the  
5 Divisions actions in this instance are inconsistent with and have exceeded the statutory and regulatory  
6 authority set forth in NRS and NAC 453A, and are without question arbitrary and capricious.  
7 Furthermore, the Division's refusal to reconsider the previously submitted application<sup>1</sup> is contrary to  
8 the terms and provisions set forth in NRS 233B.130(4), as well as to the specific representations made  
9 by Division representative, Chad Westom at the July 9, 2014, meeting of the Advisory Commission  
10 on the Administration of Justice's Subcommittee on the Medical Use of Marijuana<sup>2</sup>. As a result of the  
11 notice from the Division on November 18, 2014, that there would be no further consideration of  
12 applications filed during the August 2014 filing period, Petitioner construes said letter as the agency's  
13 "final decision" therefore, this Petition is timely filed. *See*, NRS 233B.130(4).

14 ///

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25 <sup>1</sup> Please see attached Exhibit 1, letter to "All Affected Local Governmental Jurisdictions" from  
26 Division Administrator R. Whitley dated November 18, 2014.

27 <sup>2</sup> It should be noted that Mr. Westom's statement were made *prior to* the mandatory ten (10) day  
28 application filing period, August 5-18, 2014.

1 The glaring inconsistencies and unlawful acts enumerated herein are demonstrative of the  
2 Division's failure to provide Applicant with a fair and impartial review of its Application, consistent  
3 with the all applicable statutes and regulations. Accordingly, Petitioner, Samantha's Remedies  
4 submits that the Division's actions, relative to the review and ranking of its application, coupled with  
5 the failure to reconsider said Application, violate the statutory authority contained in both NRS  
6 453A.322 and NRS 233B.130. Therefore, Petitioner respectfully requests that this Honorable Court  
7 remand the matter back to the Department of Health and Human Services Nevada Division of Public  
8 and Behavioral Health, Medical Marijuana Establishment Program for further review on the  
9 underlying Application of Samantha's Remedies, Reference No. 98468144852415974273,  
10 Application Identifier: D003.

11 DATED this 8<sup>th</sup> day of December, 2014.

12  
13 Respectfully submitted,

14 COOPER LEVENS ON, P.A.

15   
16 KIMBERLY MAXSON-RUSHTON, ESQ.

17 Bar No. 005065

18 6060 Elton Avenue, Suite A

19 Las Vegas, Nevada 89107

20 Attorneys for Petitioner  
21  
22  
23  
24  
25  
26  
27  
28

1 CERTIFICATE OF SERVICE

2  
3 Pursuant to NRCP 5(b), I certify that I am employee of COOPER LEVENSON, P.A. and  
4 that on this 8<sup>th</sup> day of December, 2014, I did cause a true and correct copy of the foregoing  
5 SAMANTHA INC. d/b/a SAMANTHA'S REMEDIES PETITION FOR JUDICIAL REVIEW to  
6 be placed in the United States mail, with first class postage prepaid thereon and addressed as  
7 follows:

8 Department of Health and Human Services  
9 Nevada Division of Public and Behavioral Health.  
10 Medical Marijuana Establishment Program  
11 4150 Technology Way  
12 Carson City, Nevada 89706

Nevada Attorney General  
555 E. Washington Blvd., Suite 3900  
Las Vegas, Nevada 89101

13 By PK Kennedy  
14 Patricia Kennedy, an employee of  
15 COOPER LEVENSON, P.A.  
16  
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EXHIBIT "1"

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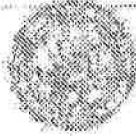
STATE OF NEVADA

BRIAN FANDROYAL

ROMAINE GRALLAND  
Director

BARBARA M. GIBBS, MS

LAUREN D. GREEN, PhD  
Chief Medical Officer



DEPARTMENT OF HEALTH AND HUMAN SERVICES  
DIVISION OF PUBLIC AND BEHAVIORAL HEALTH

November 18, 2014

To All Affected Local Governmental Jurisdictions:

The purpose of this letter is to provide clarification and additional information to the local governmental jurisdictions concerning whether the Division of Public and Behavioral Health (DPBH) application scoring process would include "moving down" the Medical Marijuana Establishment (MME) applicants ranking list. When DPBH staff represented that the Division would move to the next ranked applicant if a local jurisdiction did not provide zoning or business license approval, the DPBH staff had not considered the need for the full 90-day application review period for a complete review of all 519 establishment applications.

The Division objectively scored and ranked the MME applications for each jurisdiction. The Division's process focused on public health and public safety as it relates to the use of marijuana for medical purposes, per Nevada Revised Statutes (NRS) Chapter 453A. The regulatory criteria the Division evaluated included the following: the experience, education and backgrounds of the owners and operators; impact on the community; specifics regarding the labeling of products; the use of independent testing laboratories for product safety; transportation plans for moving the medical marijuana; appropriate building and product security; and plans for educating MME staff and the patients. The scoring and ranking process required the entire statutorily-defined application review period.

NRS 453A.324 limits the number of provisional dispensary registration certificates that the Division can issue in each county. Further, NRS 453A.322 requires the Division to issue all provisional certificates not later than 90 days after receiving an application. At this time, the Division does not have the authority to move down to the next ranked applicant if an applicant who received a provisional registration is disqualified, or to issue any additional provisional certificates, because the 90-day application review period (August 5 to November 3, 2014) has elapsed. Therefore, certain prior communications by DPBH staff only pertained to the application review period.

If the local governmental jurisdiction that issues business licenses does not issue a business license to the provisionally approved MME, the establishment cannot operate. According to NAC 453A.324, the Division may revoke the registration certificate if the establishment is not

operational within 18 months from November 3, 2014, and the applicant would be prohibited from reapplying for a certificate for at least 12 months after that revocation. Subject to any changes by the 2015 Nevada Legislature, the Division will open up a new ten-day application period next calendar year if additional dispensaries are needed to fill the allotted dispensary quantity in local jurisdictions per NRS 453A.324.

Sincerely,



Richard Whitley MS, Administrator  
Division of Public & Behavioral Health

**EXHIBIT "2"**



CLERK OF THE COURT

1 ODM  
2 KIMBERLY MAXSON-RUSHTON  
3 Nevada Bar No. 005065  
4 COOPER LEVENSON, P.A.  
5 6060 Elton Avenue, Suite A  
6 Las Vegas, Nevada 89107  
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9 Attorney for Petitioner  
10 krushton@cooperlevenson.com

DISTRICT COURT

CLARK COUNTY, NEVADA

11 Samantha Inc., d/b/a Samantha's Remedies, a  
12 Domestic Corporation,

13 Petitioner.

14 vs.

15 Department of Health and Human Services,  
16 Nevada Division of Public and Behavioral  
17 Health, Medical Marijuana Establishment  
18 Program,

19 Respondent(s).

CASE NO. A-14-710874-J  
DEPT NO. VIII

ORDER DENYING DEFENDANT'S  
MOTION TO DISMISS

20 Respondent, STATE OF NEVADA and the DEPARTMENT OF HEALTH AND HUMAN  
21 SERVICES, DIVISION OF PUBLIC AND BEHAVIORAL HEALTH'S (hereinafter "Division")  
22 having filed a Motion To Dismiss Petitioner's Petition for Judicial Review pursuant to Nevada Rules  
23 of Civil Procedure ("NRCPP") 12(B), and the matter having come before the Court for oral argument  
24 on January 27, 2015, Kimberly Maxson-Rushton of the law firm Cooper Levenson P.A. appearing  
25 on behalf of Petitioner SAMANTHA INC., d/b/a SAMANTHA'S REMEDIES, ("Samantha  
26 Remedies") and Chief Deputy Attorney General, Linda Anderson appearing on behalf of  
27 Respondent, the Court finds as follows:

28 THAT Petitioner filed a Petition for Judicial Review of an administrative decision denying  
its application for a medical marijuana establishment registration certificate.

THAT Petitioner seeks review of the application review and ranking process, claiming the



1 administrative denial, which allows no opportunity for a hearing, was arbitrary and capricious rather  
2 than fair and impartial.

3 THAT Respondent's motion seeking dismissal of the petition is based on the claim that  
4 administrative decisions like this one are not subject to judicial review because judicial review is  
5 reserved for contested cases, cases in which legal rights, duties, or privileges are determined after an  
6 opportunity for a hearing. Furthermore, Respondent asserts that registration certificates for medical  
7 marijuana establishments involve revocable privileges, not legal rights, for which no opportunity for  
8 hearing has been established, and therefore judicial review is not available.

10 THEREFORE having heard arguments from both parties, and after reviewing the record, the  
11 Court finds that judicial review must be available for this administrative decision.

12 THEREFORE, the COURT ORDERS, Respondent's Motion to Dismiss is hereby DENIED.  
13 The parties may proceed with the Petition for Judicial Review.

15 IT IS HEREBY ORDERED that Defendant's Motion to Dismiss is DENIED.

16 DATED this 11 day of February 2015.

18  
19   
20 DISTRICT COURT JUDGE 


21 Submitted By:

22 COOPER LEVENSON, P.A.

23   
24 KIMBERLY MAXSON-RUSHTON

25 Nevada Bar No. 005065  
26 COOPER LEVENSON, P.A.  
27 6060 Elton Avenue, Suite A  
28 Las Vegas, Nevada 89107  
(702) 366-1125  
FAX: (702) 366-1857  
Attorney for Petitioner  
krushton@cooperlevenson.com

**EXHIBIT "3"**

  
CLERK OF THE COURT

1 **ORDG**

2 MARK E. FERRARIO (NV Bar #1625)  
3 LONDON LERNER (NV Bar #13368)  
4 GREENBERG TRAUBIG, LLP  
5 3773 Howard Hughes Parkway, Suite 400 North  
6 Las Vegas, NV 89169  
7 Telephone: (702) 792-3773  
8 Facsimile: (702) 792-9002  
9 E-mail: ferrario1@gtlaw.com  
10 lerner1@gtlaw.com

11 *Counsel for Plaintiffs/Petitioners*  
12 *Acres Medical, LLC and Acres Cultivation, LLC*

13 **DISTRICT COURT**

14 **CLARK COUNTY, NEVADA**

15 ACRES MEDICAL, LLC, a Nevada limited  
16 liability company; and ACRES  
17 CULTIVATION, LLC, a Nevada limited  
18 liability company,

19 Plaintiffs/Petitioners,

20 *v. s.*

21 NEVADA DEPARTMENT OF HEALTH  
22 AND HUMAN SERVICES, DIVISION OF  
23 PUBLIC AND BEHAVIORAL HEALTH,

24 Defendant/ Respondent,

25 And

26 NLVG, LLC; NULEAF CLY CULTIVATION,  
27 LLC; THE MEDMEN OF NEVADA 2, LLC;  
28 CANNABIS RENAISSANCE GROUP, LLC;  
M M DEVELOPMENT, LLC; NYE  
NATURAL MEDICINAL SOLUTIONS, LLC;  
GREEN LIFE PRODUCTIONS, LLC; GWGA,  
LLC; NEVADA NATURAL MEDICINES,  
LLC; WELLNESS ORCHARDS OF  
NEVADA, LLC; NCMM, LLC; ACC  
INDUSTRIES, INC.; SAMANTHA'S  
REMEDIES; NEVADA CARES, LLC; THE  
NEVADA, LLC; RED ROCK WELLNESS,  
LLC; QUALCAN OF LAS VEGAS, LLC;  
PHYSIS ONE, LLC; BUFFALO CENTER  
MEDICAL ADVOCATES, L.L.C.; PRIMO  
DISPENSARY; DOE ENTITIES 1-5; ROE  
ENTITIES 1-4, POE ENTITIES 1-16.

Defendants/  
Real Parties In Interest.

Case No.: A-15-719637-W  
Dept. No.: VI

**ORDER GRANTING PLAINTIFFS'  
PETITION FOR MANDAMUS**

<input type="checkbox"/> Non-Jury Disposed After Trial Start	<input type="checkbox"/> Jury Disposed After Trial Start
<input type="checkbox"/> Non-Jury Judgment Reached	<input type="checkbox"/> Jury Verdict Reached
<input type="checkbox"/> Transferred Before Trial	<input checked="" type="checkbox"/> Other

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1 On September 29, 2015, at 8:30 a.m., Plaintiffs' Petition for Mandamus ("Petition") came on  
2 before the Honorable Judge Elissa F. Cadish in Department 6 of the above-captioned Court. Mark  
3 Ferrario, Esq. and Landon Lerner, Esq. appeared for Plaintiffs, and Linda Anderson, Esq. appeared for  
4 the Nevada Department Of Health And Human Services, Division Of Public And Behavioral Health  
5 (the "Division"). After reviewing the pleadings and papers on file in this Action, hearing argument at  
6 the time of the hearing, and good cause appearing therefore, the Court made the following findings:

7 1. Plaintiffs submitted to the Division multiple applications to operate Medical Marijuana  
8 Establishments ("MME"), including Application D011 to operate a medical marijuana dispensary in  
9 the City of Las Vegas (the "Application");

10 2. The Division was obligated to score and rank accurately all MME applications  
11 submitted to the Division;

12 3. One of the categories considered by the Division in scoring applications was  
13 Organizational Structure;

14 4. Plaintiffs submitted the same information on all of its applications, including the  
15 Application, for the Organizational Structure category;

16 5. Despite having information indicating that the Application should have received a  
17 score of 41.3 in the Organizational Structure category, the Division gave the Application a score of  
18 0 in the Organizational Structure category;

19 6. The Division gave Plaintiffs' other applications with the exact same information in the  
20 Organizational Structure category a score of 41.3 for the Organizational Structure category;

21 7. The Division's failure to review all of the information in its possession that would  
22 have resulted in the Division giving the Application a score of 41.3 in the Organizational Structure  
23 category was an arbitrary and capricious exercise of the Division's official duties;

24 8. Had the Division performed properly its official duties in scoring the Application, it  
25 would have included an additional 41.3 points for the Organizational Structure category;

26 9. Had the Division performed properly its official duties in scoring the Application, the  
27 Application would have received a score of 167.3;

28 ///

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10. Had the Division performed properly its official duties in scoring the Application, the Application would have been ranked number 13;

11. Additional dispensary registrations from the State of Nevada and licenses from the City of Las Vegas may become available to Plaintiffs to operate a medical marijuana dispensary in the City of Las Vegas such that a failure to grant mandamus would result in prejudice and a substantial likelihood of significant harm to Plaintiffs;

12. Plaintiffs withdrew their Petition regarding their cultivation applications.

**NOW, THEREFORE, IT IS HEREBY ORDERED** that Plaintiffs' Petition is **GRANTED**.

**IT IS FURTHER ORDERED** that:

1. The Division will rescore the Application and include 41.3 points for the Organizational Structure category;


2. The Division will rescore the Application and assign it a score of 167.3;

3. The Division will re-rank officially the Application at number 13; and

4. Plaintiffs' alternative relief is now moot and mandamus is the final judgment in this action.

**IT IS SO ORDERED.**


DATED this 4 day of October, 2015.

  
DISTRICT COURT JUDGE

Respectfully submitted by:

GREENBERG TRAURIG, LLP

By:

  
MARK E. FERRARIO (NV Bar #1625)  
LONDON LERNER (NV Bar #13368)  
3773 Howard Hughes Parkway, Suite 400N  
Las Vegas, NV 89169  
Counsel for Plaintiffs

*[signatures continued on following page]*

1 Approved as to form:

2 OFFICE OF THE ATTORNEY GENERAL  
3 ADAM PAUL LAXALT

4 By: 

5 LINDA C. ANDERSON (NV Bar #4090)

6 Chief Deputy Attorney General  
7 555 E. Washington Avenue, #3900  
8 Las Vegas, NV 89101  
9 Counsel for the Division

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**EXHIBIT "4"**

1 **COMP**

2 KIMBERLY MAXSON-RUSHTON

3 Nevada Bar No. 005065

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11 **DISTRICT COURT**

12 **CLARK COUNTY, NEVADA**

13 GB SCIENCES NEVADA, LLC, a Nevada  
14 limited liability company,

15 Plaintiff.

16 vs.

17 SAMANTHA INC., d/b/a SAMANTHA'S  
18 REMEDIES, a Nevada limited liability  
19 company,

20 Intervenor-Plaintiff,

21 vs.

22 STATE OF NEVADA, DIVISION OF  
23 PUBLIC AND BEHAVIORAL HEALTH OF  
24 THE DEPARTMENT OF HEALTH AND  
25 HUMAN SERVICES; CITY OF LAS  
26 VEGAS, a municipal corporation and political  
27 subdivision of the State of Nevada; NULEAF  
28 CLV DISPENSARY, LLC, a Nevada limited  
liability company; DOES 1-10, and ROE  
ENTITIES 1-100, inclusive,

Defendants.

CASE NO. A-14-710597-C  
DEPT NO. XX

**COMPLAINT OF SAMANTHA INC. d/b/a  
SAMANTHA'S REMEDIES AS  
INTERVENOR**

COMES NOW, Intervenor as Plaintiff SAMANTHA INC., d/b/a SAMANTHA'S  
REMEDIES, ("Samantha's Remedies"), a Nevada limited liability company, by and through its  
attorney of record, KIMBERLY MAXSON-RUSHTON of the law firm COOPER LEVENSON,  
P.A., and brings this Intervenor Complaint, and alleges and avers as follows:

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**PARTIES**

1. Plaintiff, GB SCIENCES NEVADA, LLC ("GB Sciences") is a Nevada limited liability company located in Clark County, Nevada.

2. Intervenor Plaintiff, SAMANTHA INC., d/b/a SAMANTHA'S REMEDIES ("Samantha's Remedies") is a Nevada limited liability company located in Clark County, Nevada.

3. Defendant, STATE OF NEVADA, DIVISION OF PUBLIC AND BEHAVIORAL HEALTH OF THE DEPARTMENT OF HEALTH AND HUMAN SERVICES, (the "Division") is an agency of the State of Nevada.

4. Upon information and belief, Defendant DESERT AIRE WELLNESS, LLC ("Desert Aire") is a Nevada limited liability company doing business in Clark County, Nevada.

5. Upon information and belief, Defendant NULEAF CLV DISPENSARY, LLC ("Nuleaf") is a Nevada limited liability company doing business in Clark County, Nevada.

6. Upon information and belief, Defendant ACRES MEDICAL, LLC ("Acres Medical") is a Nevada limited liability company doing business in Clark County, Nevada.

7. Upon information and belief, Defendant CITY OF LAS VEGAS ("City") is a municipal corporation and political subdivision of the State of Nevada.

8. The true names and capacities whether individual, corporate, associate or otherwise of Defendants named herein as DOES 1 through 100 inclusive, and ROE ENTITIES 1 through 100, inclusive, and each of them, are unknown to Intervenor-Plaintiff who therefore sues those Defendants by such fictitious names. Intervenor-Plaintiff is informed, believes, and thereon alleges that each of the Defendants designated herein as a DOE or ROE ENTITY are one or more of the applicants improperly or unlawfully issued a provisional registration certificate for the operation of a medical marijuana establishment in the City of Law Vegas by the Division. In addition, or in the alternative, Intervenor-Plaintiff is informed, believes, and thereon alleges that each of the Defendants designated herein as a DOE or ROE ENTITY are one or more of the parties to the Division's proceeding challenged by Intervenor-Plaintiff's Petition for Review asserted in the case styled Samantha Inc., d/b/a Samantha's Remedies v. Department of Health and Human Services Nevada Division of Public and Behavioral Health, Medical Marijuana Establishment Program, No.

1 A. 14-710874-J.

2 9. Venue is proper in this Court pursuant to N.R.S. § 13.020(3) and N.R.S. §  
3 233N.130(2)(b), in that this is the county where the case, or some part thereof, arose and the  
4 aggrieved party resides.

5 **GENERAL ALLEGATIONS**

6 10. In 2013, the Nevada Legislature passed Senate Bill 374, which, in part, provided for  
7 the registration of medical marijuana establishments ("MMEs") authorized to cultivate and dispense  
8 marijuana and marijuana infused products to those persons authorized to use medicinal marijuana.

9 11. The Nevada Legislature codified Senate Bill 374 in NRS Chapter 453, *et seq.*

10 12. As part of NRS Chapter 453A, the Nevada Legislature tasked the division with  
11 protecting the people of Nevada's general welfare, health and safety through the registration of  
12 medical marijuana establishments and medical marijuana establishment agents.

13 13. The Division, as well as the local jurisdiction, played a role in the ultimate licensing  
14 of MMEs.

15 14. In order to achieve this purpose, the Division, in conjunction with various Nevada  
16 counties, municipalities, interested parties, and Nevada citizens, worked extensively to create a  
17 regulatory framework for implementing and enforcing NRS Chapter 453A, *et seq.*, in a fair and  
18 balanced manner.

19 15. This effort resulted in the passage and implementation as of April 1, 2014, of NAC  
20 453A.010, *et seq.*, which provided the necessary regulations for the application, review, approval,  
21 and ultimate registration of a medical marijuana establishment in accordance with the requirements  
22 of NRS Chapter 453A.

23 16. Specifically, the local jurisdiction was tasked with considering issues such as site  
24 plans, zoning and proximity to other business or facilities while the Division focused on public  
25 health, public safety, and marijuana as medicine.

26 **CITY OF LAS VEGAS' APPROVAL PROCESS**

27 17. The City of Las Vegas was allotted twelve (12) MME Dispensaries and  
28 correspondingly twelve (12) provisional certificates of registration (the "Registration Certificates")

1 were issued by the Division.

2 18. In addition to the responsibilities of the Division, the City of Las Vegas, like several  
3 other Nevada cities, towns, and counties, was tasked with the responsibility of considering and  
4 approving "local" issues relating to the registration of a Medical Marijuana Establishment such as  
5 "site plans, project descriptions, zoning, and proximity to other business or facilities," as well as  
6 business licensing.

7 19. In accordance with such responsibilities, the City Council of the City of Las Vegas  
8 enacted Ordinance No. 6321 to establish zoning regulations and standards for medical marijuana  
9 establishments.

10 20. The City Council of the City of Las Vegas also enacted Ordinance No. 6324 to  
11 establish licensing regulations and standards for medical marijuana establishments.

12 21. In addition, the City of Las Vegas prepared and issued a separate application packet  
13 for any person wishing to obtain the required special use permit and business licensing for the  
14 operation of a medical marijuana establishment in the City of Las Vegas ("Las Vegas Application").

15 22. Accordingly, forty-three (43) applicants filed applications seeking the City of Las  
16 Vegas' approval for zoning and licensing of a medical marijuana establishment to dispense medical  
17 marijuana.

18 23. Plaintiff, Intervenor-Plaintiff, and Defendants Nuleaf, Desert Aire, and Acres Medical  
19 were five (5) of the applicants.

20 24. On October 28, 2014, the City Council of the City of Las Vegas held a special  
21 meeting to consider each applicant for a special use permit for a proposed medical marijuana  
22 dispensary.

23 25. The City of Las Vegas granted a special use permit to twenty-seven (27) applicants,  
24 including Plaintiff.

25 26. The City of Las Vegas denied ten (10) applicants, including Nuleaf, a Special Use  
26 Permit.

27 27. Six applicants, including Desert Aire, withdrew their applications prior to the City  
28 Council's October 28, 2014 special meeting.

1        28.    Upon information and belief, the City of Las Vegas thereafter informed the Division  
2 of those applicants granted a special use permit and those applicants denied a special use permit by  
3 the City of Las Vegas.

4                    THE DIVISION'S APPLICATION AND APPROVAL PROCESS

5        29.    NRS Chapter 453A.322(2) requires any person who wishes to operate a MME in  
6 Nevada to submit to the Division an application on a form prescribed by the Division.

7        30.    While the Division was allowed to accept all applications submitted, under NRS §  
8 453A.322, the Division could only issue a Provisional Certificate if the applicant's application  
9 included specific items and if the applicant otherwise met the requirements established by NRS  
10 Chapter 453A. Provisional certificates of registration for MME-Dispensaries would be granted only  
11 to the top twelve ranked applicants in the City of Las Vegas.

12        31.    NRS 453A.322(3)(a)(2) through (5) provided a list of items that every application for  
13 a medical marijuana establishment must submit to the Division as part of an application.

14        32.    NRS 453A.322(3)(a)(5) expressly required that any application for a medical  
15 marijuana establishment within a city, town, county that has enacted zoning restrictions, must  
16 include proof of the applicable city, town, or county's prior licensure of the applicant or a letter from  
17 that city, town, or county certifying that the applicants proposed medical marijuana establishment  
18 was in compliance with the city, town, or county's zoning restrictions and satisfies all applicable  
19 building requirements.

20        33.    The Division was required to rank from first to last all completed applications within  
21 a particular jurisdiction based on the content of each application as it relates to the criteria for  
22 evaluation determined by the Division and provided by NRS Chapter 453A.

23        34.    Supposedly in accordance with these and many other statutory and regulatory  
24 requirements, the Division issued an application packet on May 30, 2014.

25        35.    Thereafter, the Division set an August 18, 2014 deadline for submitting an application  
26 to the Division for the registration of a medical marijuana establishment and began accepting  
27 applications on August 5, 2014.

28    ///

1                    **THE DIVISION'S ISSUANCE OF PROVISIONAL CERTIFICATES**

2            36.     NRS 453A.322(3) requires the Division to register a MME applicant, issue a MME  
3 registration certificate, and issue a random 20-digit alphanumeric identification number not later  
4 than 90 days from the Division's receipt of an application only if such an application for a medical  
5 marijuana establishment contained the specific items required by NRS 453A.322(3)(a), which  
6 among other items, included the necessary prior zoning approvals from the applicable local  
7 jurisdiction identified in NRS 453A.322(3)(a)(5).

8            37.     However, the requirements of NRS 453A.322(3) and the Division's ability to issue  
9 certificate were subject expressly to the exceptions set forth in NRS 453A.326.

10          38.     NRS 453A.326(3) required that any medical marijuana establishment registration  
11 certificate issued by the Division be deemed provisional in any city, town, or county that issues  
12 business licenses.

13          39.     The City of Las Vegas is a Nevada city that enacted ordinances for the zoning and  
14 business licensing of medical marijuana establishments.

15          40.     As such, NRS 453A.326(3) required that the Division ensure compliance with NRS  
16 453A.326(3)(5).

17          41.     The Nevada Legislature enacted NRS 453A.322(3)(a)(5), which expressly required  
18 all applicants for the operation of a medical marijuana establishment in the City of Las Vegas to  
19 submit proof of the City of Las Vegas' zoning approval or a letter from the City of Las Vegas  
20 acknowledging that the applicant's proposed medical marijuana establishment was in compliance  
21 with the City of Las Vegas' restrictions and applicable building requirements.

22                    **INTERVENOR-PLAINTIFF AND DEFENDANTS' APPLICATIONS**

23          42.     On or before the Division's August 18, 2014 deadline, the Division received multiple  
24 applications for the City of Las Vegas' twelve (12) allotted medical marijuana establishment  
25 registration certificates for the operation of a medical marijuana dispensary in the City of Las Vegas.

26          43.     Plaintiff, Intervenor-plaintiff, Desert Aire, Nuleaf, and Acres were among these  
27 applicants to the Division.

28     ///

1           44.     Prior to submitting an application to the Division, Intervenor-Plaintiff, Desert Aire,  
2 Nuleaf, and Acres each submitted an application to the City of Las Vegas for a Special Use Permit  
3 and a Business License as required by the City of Las Vegas' newly enacted ordinances.

4           45.     However, Desert Aire subsequently withdrew its application before the City of Las  
5 Vegas and never obtained the required Special Use Permit or Business License from the City of Las  
6 Vegas prior to November 3, 2014.

7           46.     After an October 29, 2014 special meeting, the City Council of the City of Las Vegas  
8 denied Nuleaf's application for a Special Use Permit.

9           47.     Intervenor-Plaintiff did receive a Special Use Permit for the operation of a MME-  
10 Dispensary from the City of Las Vegas.

11          48.     In addition, Intervenor-Plaintiff submitted, as part of its application to the Division,  
12 the City of Las Vegas' certification that Intervenor-Plaintiff complied with the City of Las Vegas'  
13 ordinances and building requirements concerning the operation of a MME in the City of Las Vegas.

14          49.     Upon information and belief, the City of Las Vegas informed the Division of those  
15 applicants that it approved for a Special Use Permit, which included Intervenor-Plaintiff, and those  
16 applicants denied a Special Use Permit, which included Nuleaf, or had otherwise withdrawn their  
17 applications, which included Desert Aire.

18          50.     Upon information and belief, the Division, upon receipt of the 49 applications for the  
19 operation of a medical marijuana dispensary in the City of Las Vegas, never made the required  
20 initial determination that each application for the operation of a medical marijuana dispensary was  
21 complete.

22          51.     Also upon information and belief, the Division never determine whether each  
23 applicant had submitted the required proof of licensure from the City of Las Vegas or a letter from  
24 the City of Las Vegas certifying that each applicant's proposed medical marijuana dispensary  
25 complied with the City of Las Vegas' zoning restrictions and building requirements as prescribed by  
26 NRS 453A.322(3)(a)(5).

27          52.     As a result, the Division improperly ranked the applications of Desert Air and Nuleaf  
28 against the acceptable criteria.

1           53.     The Division also improperly ranked the application of Intervenor-Plaintiff  
2 Samantha's Remedies through the use of an arbitrary and capricious methodology.

3           54.     On or about November 3, 2014, Intervenor-Plaintiff received notification from the  
4 Division that it was not issued a provisional registration certificate due to the fact that its score was  
5 not high enough to rank within the top 12 spots allotted for the City of Las Vegas.

6           55.     At the same time, the Division ranked and issued provisional registration certificates  
7 to Desert Aire (ranked #10) and Nuleaf (ranked #3) even though each were denied and/or failed to  
8 obtain the required Special Use Permit and Business License from the City of Las Vegas.

9           56.     Had the Division complied with the express requirements of NRS 453A.322(3),  
10 NAC.453A.310, NAC 453A.312, and NAC 453A.332, and the Division's previous public statements  
11 regarding the correct application, neither Desert Air (ranked #10) nor Nuleaf (ranked #3) should  
12 have received a ranking, let alone a provisional registration certificate.

13           57.     More importantly, Intervenor-Plaintiff's score should have been high enough to rank  
14 within the top 12 spots allotted for the City of Las Vegas but for the arbitrary and capricious acts of  
15 the Division. Specifically, in one section of the application pertaining to the building Plaintiff  
16 scored 16 out of 20 points and in another section of the application also related to the proposed  
17 location, Plaintiff score 6 out of 20 points. Had the scores been consistent Plaintiff would have  
18 scored 182; therefore, Plaintiff should have received a provisional registration certificate from the  
19 Division within the 90 day evaluation period.

20           58.     Consequently, had Intervenor-Plaintiff been properly ranked, it would have received a  
21 provisional registration certificate from the Division in accordance with Nevada law and as approved  
22 by the City of Las Vegas.

23                               **FIRST COUNT**

24                               **(Declaratory Relief Pursuant to N.R.S. § 30.010 *et seq.*)**

25           59.     Intervenor-Plaintiff repeats and realleges the allegations contained in Paragraphs 1  
26 through 59 of this Intervenor Complaint, and incorporates the same by reference as if fully set forth  
27 herein.

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1           60.     There exists a justiciable controversy between Intervenor-Plaintiff, on the one hand,  
2 and Plaintiff, the Division, City, Nuleaf, Desert Aire, and Acres Medical on the other hand regarding  
3 the issuance of provisional certificates for MME dispensaries under NRS Chapter 453A.

4           61.     The interests of Intervenor-Plaintiff are adverse to the interests of Plaintiff, the  
5 Division, City, Nuleaf, Desert Aire, and Acres Medical, if any.

6           62.     Intervenor-Plaintiff has a legally protectable interest in the controversy.

7           63.     The issues involved in the controversy are ripe for judicial determination with respect  
8 to the construction, interpretation, and implementation of NRS Chapter 453A, NAC 453A, and other  
9 Nevada laws and regulations as to the Intervenor-Plaintiff.

10          64.     Intervenor-Plaintiff is entitled to a declaration, pursuant to N.R.S. § 30.010 *et seq.*,  
11 that Nuleaf and Desert Aire failed to comply with the express provisions of N.R.S. §  
12 453A.322(3)(a)(5), that the Division improperly issued provisional certificates to Nuleaf and Desert  
13 Aire, that the Intervenor-Plaintiff did comply with the express provisions of N.R.S. §  
14 453A.322(3)(a)(5), that the Division improperly ranked Intervenor-Plaintiff, and improperly denied  
15 Intervenor-Plaintiff a provisional certificate, that the provisional certificates issued to Nuleaf and  
16 Desert Aire should be revoked, that a provisional certificate should be issued to Intervenor-Plaintiff ,  
17 that Nuleaf and Desert Aire should not be issued actual provisional certificates, and that the  
18 deadlines and the requirements of the City for issuance of licenses for MME-Dispensaries should be  
19 tolled for the benefit of Intervenor-Plaintiff until after Intervenor-Plaintiff's claims are determined in  
20 this case so that Intervenor-Plaintiff will not suffer detriment due to the fact that it should have been  
21 issued a provisional certificate on November 3, 2014.

22          65.     In the alternative, Intervenor-Plaintiff is entitled to a declaration pursuant to N.R.S. §  
23 30.010 *et seq.* that the re-scoring and re-ranking of Acres Medical should have been barred by  
24 laches. Accordingly, said re-scoring and re-ranking of Acres Medical, which might compete for the  
25 provisional certificate made available by the revocation of Nuleaf and/or Desert Aire, was void,  
26 and/or that due to public policy and/or equitable principles, Acres Medical should not receive any  
27 available provisional certificate unless and until such time as Intervenor-Plaintiff has been re-ranked  
28 and re-scored to determine who should properly be next in line for available provisional certificates.



66. Intervenor-Plaintiff has been required to retain the services of an attorney to prosecute this matter, and Intervenor-Plaintiff is, therefore, entitled to reasonable attorneys' fees and costs incurred in prosecuting this matter.

SECOND COUNT

**(Injunctive Relief)**

67. Intervenor-Plaintiff repeats and realleges the allegations contained in Paragraphs 1 through 66 of this Intervenor Complaint, and incorporates the same by reference as if fully set forth herein.

68. The Division's issuance of provisional certificates to Nuleaf and Desert Aire, and the re-ranking and re-scoring of Acres Medical, has caused irreparable harm to Intervenor-Plaintiff because there are only 12 Provisional Certificates allocated to the City of Las Vegas and Intervenor-Plaintiff was denied one of the 12 Provisional Certificates due to the improper issuance of provisional certificates to Nuleaf and Desert Aire, and the arbitrary, capricious, and improper ranking and scoring of Intervenor-Plaintiff by the Division.

69. If Acres Medical is issued a provisional certificate as a result of its intervention in this case, and Intervenor-Plaintiff is not, then Intervenor-Plaintiff will be irreparably harmed.

70. The Division's refusal to revoke the provisional certificates issued to Nuleaf and Desert Aire, or to reissue a provisional certificate based on re-ranking and re-scoring to the Intervenor-Plaintiff has caused Intervenor-Plaintiff to suffer irreparable harm and Intervenor-Plaintiff continues to suffer irreparable harm.

71. Nuleaf and Desert Aire failed to comply with the requirements of the City of Las Vegas or the provisions of N.R.S. Chapter 453A for issuance of provisional certificates.

72. Intervenor-Plaintiff complied with the requirements of the City of Las Vegas, and the provisions of N.R.S Chapter 453A, and should have been issued a provisional certificate.

73. The Intervenor-Plaintiff is likely to succeed on the merits of its case because the plain language of the applicable provisions of the N.R.S. Chapter 453A requires the Division to score applicants and issue a provisional certificate in order to rank, Intervenor-Plaintiff satisfied all provisions of NRS Chapter 453A, and had the Division properly ranked and scored applicants,

1 Intervenor-Plaintiff would have ranked in the top 12, or at least next in line with the elimination of  
2 Nuleaf and Desert Aire which did not comply with the provisions of NRS Chapter 453A.

3 74. Intervenor-Plaintiff has no adequate remedy at law and compensatory relief is  
4 inadequate.

5 75. Intervenor-Plaintiff is entitled to a permanent mandatory injunction against the  
6 Division, enjoining the Division:

7 (a) From issuing actual registration certificates to Nuleaf and Desert Aire;

8 (b) From issuing actual registration certificates to Acres Medical until such time as

9 Intervenor-Plaintiff is re-ranked and re-scored properly;

10 (c) To revoke the provisional certificates issued to Nuleaf and Desert Aire;

11 (d) To identify Intervenor-Plaintiff as the next highest ranking applicant for one of the

12 Provisional Certificates allocated to the City of Las Vegas; and

13 (e) to re-rank and re-score Intervenor-Plaintiff properly and issue a provisional certificate to  
14 Intervenor-Plaintiff.

15 76. Intervenor-Plaintiff is entitled to a permanent mandatory injunction against the City,  
16 requiring the City to toll all deadlines which would have been required of Intervenor-Plaintiff until  
17 after the Court rules on Intervenor-Plaintiff's claims in this case, by virtue of the fact that Intervenor-  
18 Plaintiff should have received a Provisional Certificate on November 3, 2014.

19 77. Alternatively, and in the event that the Court is not willing to enjoin the Division to  
20 revoke both the Provisional Certificates issued to Nuleaf and Desert Aire, then the Intervenor-  
21 Plaintiff is entitled to a mandatory permanent injunction that the one revoked provisional certificate  
22 be issued to Intervenor-Plaintiff upon re-ranking and re-scoring, and not to Acres Medical because  
23 the re-scoring and re-ranking of Acres Medical was void, and/or that due to public policy and/or  
24 equitable principles, Acres Medical should not receive the one available provisional certificate,  
25 which should instead be issued to Intervenor-Plaintiff upon re-ranking and re-scoring.

26 78. Intervenor-Plaintiff has been required to retain the services of an attorney to prosecute  
27 this matter, and Intervenor-Plaintiff is, therefore, entitled to reasonable attorneys' fees and costs  
28 incurred in prosecuting this matter.

1 WHEREFORE, Intervenor-Plaintiff prays for relief as follows:

- 2 1. For declaratory relief in the manner set forth in Intervenor-Plaintiff's First Count;  
3 2. For injunctive relief, specifically a preliminary and permanent mandatory injunction,  
4 enjoining the Division:

5 (a) From issuing actual registration certificates to Nuleaf and Desert Aire;

6 (b) From issuing actual registration certificates to Acres Medical until such time as  
7 Intervenor-Plaintiff is re-ranked and re-scored properly;

8 (c) To revoke the provisional certificates issued to Nuleaf and Desert Aire;

9 (d) To identify Intervenor-Plaintiff as the next highest ranking applicant for one of the  
10 Provisional Certificates allocated to the City of Las Vegas; and

11 (e) to re-rank and re-score Intervenor-Plaintiff properly and issue a provisional certificate  
12 to Intervenor-Plaintiff.

13 3. For injunctive relief, specifically a preliminary and permanent mandatory injunction,  
14 requiring the City to toll all deadlines which would have been required of Intervenor-Plaintiff until  
15 after the Court rules on Intervenor-Plaintiff's claims in this case, by virtue of the fact that Intervenor-  
16 Plaintiff should have received a Provisional Certificate on November 3, 2014;

17 4. Alternatively, and in the event that the Court is not willing to enjoin the Division to  
18 revoke both the Provisional Certificates issued to Nuleaf and Desert Aire, for a mandatory  
19 permanent injunction that the one revoked provisional certificate be issued to Intervenor-Plaintiff  
20 upon re-ranking and re-scoring, and not to Acres Medical because the re-scoring and re-ranking of  
21 Acres Medical was void, and/or that due to public policy and/or equitable principles, Acres Medical  
22 should not receive the one available provisional certificate, which should instead be issued to  
23 Intervenor-Plaintiff upon re-ranking and re-scoring

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- 1           5.     For reasonable attorneys' fees and costs of suit; and  
2           6.     For such other and further relief as the Court deems appropriate under the  
3 circumstances.

4           Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2015.

5                               COOPER LEVENSON, P.A.

6  
7                               By

8                               KIMBERLY MAXSON-RUSHTON

9                               Nevada Bar No. 005065

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