

EXHIBIT 14

EXHIBIT 14


CLERK OF THE COURT

1 **ANS / CNTR**
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6 **DISTRICT COURT**

7 **CLARK COUNTY, NEVADA**

8
9 GB SCIENCES NEVADA, LLC, a Nevada limited
liability company,

10 Plaintiff,

11 vs.

12 STATE OF NEVADA, DIVISION OF PUBLIC
AND BEHAVIORAL HEALTH OF THE
DEPARTMENT OF HEALTH AND HUMAN
13 SERVICES; NULEAF CLV DISPENSARY, LLC,
a Nevada limited liability company; DOES 1-10, and
14 ROE ENTITIES 1-100, inclusive,

15 Defendants.

16 ACRES MEDICAL, LLC,

17 Plaintiff in Intervention,

18 vs.

19 STATE OF NEVADA, DIVISION OF PUBLIC
AND BEHAVIORAL HEALTH OF THE
20 DEPARTMENT OF HEALTH AND HUMAN
SERVICES; CITY OF LAS VEGAS, a municipal
21 corporation and political subdivision of the State of
Nevada; NULEAF CLV DISPENSARY, LLC, a
22 Nevada limited liability company; GB SCIENCES
NEVADA, LLC, a Nevada limited liability
23 company,

24 Defendants in Intervention.

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Case No. A-14-710597-C
Dept. No. XX

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1 GB SCIENCES NEVADA, LLC, a Nevada limited
2 liability company,

3 Counterclaimant in Intervention,

4 vs.

5 ACRES MEDICAL, LLC, a Nevada limited
6 liability company, and STATE OF NEVADA,
7 DIVISION OF PUBLIC AND BEHAVIORAL
8 HEALTH OF THE DEPARTMENT OF HEALTH
9 AND HUMAN SERVICES,

10 Counterdefendants in Intervention.

Date: N/A
Time: N/A

11 **ANSWER TO COMPLAINT IN INTERVENTION AND**
12 **COUNTERCLAIM**

13 COMES NOW Plaintiff/Defendant in Intervention/Counterclaimant in Intervention, GB
14 SCIENCES NEVADA, LLC, a Nevada limited liability company ("**GB Sciences**"), by and through its
15 attorneys of record, SMITH & SHAPIRO, PLLC, and for its Answer to Complaint in Intervention (the
16 "**Complaint**"), admits, denies, defends, and affirmatively states as follows:

17 **THE PARTIES**

18 1. Answering Paragraphs No. 1, 2, 3, and 4 of the Parties Section of the Complaint, GB
19 Sciences is without information sufficient to form a reasonable belief as to the truth or falsity of the
20 allegations contained in said paragraphs, and, therefore, denies the same in their entirety.

21 2. Answering Paragraph No. 5 of the Parties Section of the Complaint, GB Sciences admits
22 the allegations contained therein.

23 **JURISDICTION**

24 3. Answering Paragraph No. 6 of the Jurisdiction Section of the Complaint, said paragraph
25 contains a legal conclusion and requires no response thereto; otherwise, GB Sciences admits the
26 allegations contained therein.

27 **GENERAL STATUTORY AND REGULATORY FRAMEWORK**

28 4. Answering Paragraphs No. 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 19, and 20 of the
General Statutory and Regulatory Framework Section of the Complaint, GB Sciences admits the
allegations contained therein.

1 5. Answering Paragraph No. 18 of the General Statutory and Regulatory Framework
2 Section of the Complaint, GB Sciences admits that the City of Las Vegas granted a special use permit
3 to twenty-seven (27) applicants, but is without information sufficient to form a reasonable belief as to
4 the truth or falsity of the remaining allegations contained in said paragraph, and, therefore, denies the
5 same in their entirety.

6 THE DIVISION'S APPLICATION AND APPROVAL PROCESS

7 6. Answering Paragraphs No. 21, 22, 23, 26, and 27 of the Division's Application and
8 Approval Process Section of the Complaint, said paragraph contains a legal conclusion and requires
9 no response thereto; otherwise, GB Sciences admits the allegations contained therein.

10 7. Answering Paragraphs No. 24 and 25 of the Division's Application and Approval
11 Process Section of the Complaint, said paragraph contains a legal conclusion and requires no response
12 thereto; otherwise, GB Sciences is without information sufficient to form a reasonable belief as to the
13 truth or falsity of the allegations contained in said paragraphs but admits the allegations contained
14 therein upon information and belief.

15 THE DIVISION'S ISSUANCE OF PROVISIONAL CERTIFICATES

16 8. Answering Paragraphs No. 28, 29, 30, 32, and 35 of the Division's Issuance of
17 Provisional Certificates Section of the Complaint, said paragraph contains a legal conclusion and
18 requires no response thereto; otherwise, GB Sciences admits the allegations contained therein.

19 9. Answering Paragraphs No. 31, 33, 34, 40, 41, 42, and 43 of the Division's Issuance of
20 Provisional Certificates Section of the Complaint, said paragraph contains a legal conclusion and
21 requires no response thereto; otherwise, GB Sciences is without information sufficient to form a
22 reasonable belief as to the truth or falsity of the allegations contained in said paragraphs, and, therefore,
23 denies the same in their entirety.

24 10. Answering Paragraphs No. 36, 37, 38, 39, 44, 45, 46, 47, and 48 of the Division's
25 Issuance of Provisional Certificates Section of the Complaint, said paragraph contains a legal
26 conclusion and requires no response thereto; otherwise, GB Sciences is without information sufficient
27 to form a reasonable belief as to the truth or falsity of the allegations contained in said paragraphs, and,
28 therefore, denies the same in their entirety.

DEFENDANT NULEAF'S APPLICATION

11. Answering Paragraphs No. 49, 53 and 54 of the Defendant Nuleaf's Application Section of the Complaint, GB Sciences is without information sufficient to form a reasonable belief as to the truth or falsity of the remaining allegations contained in said paragraph, and, therefore, denies the same in their entirety.

12. Answering Paragraphs No. 50, 51, 52, 57, 58, and 59 of the Defendant Nuleaf's Application Section of the Complaint, GB Sciences admits the allegations contained therein.

13. Answering Paragraph No. 55 of the Defendant Nuleaf's Application Section of the Complaint, GB Sciences is without information sufficient to form a reasonable belief as to the truth or falsity of the allegation "which included Plaintiff in Intervention" but admits the remaining allegations contained in said paragraph.

14. Answering Paragraph No. 56 of the Defendant Nuleaf's Application Section of the Complaint, GB Sciences admits the allegation that "Nuleaf did not meet those requirements" but is without information sufficient to form a reasonable belief as to the truth or falsity of the remaining allegations contained in said paragraph, and, therefore, denies the same in their entirety.

THE PLAINTIFF IN INTERVENTION'S APPLICATION AND
DISTRICT COURT ORDER IN CASE

15. Answering Paragraphs No. 60, 61, 62, 64, 65, 66, 67, 68, 69, 70, 71, 72, 76, and 77 of the Plaintiff in Intervention's Application and District Court Order in Case Section of the Complaint, GB Sciences is without information sufficient to form a reasonable belief as to the truth or falsity of the remaining allegations contained in said paragraph, and, therefore, denies the same in their entirety.

16. Answering Paragraphs No. 63, 74, and 75 of the Plaintiff in Intervention's Application and District Court Order in Case Section of the Complaint, GB Sciences admits the allegations contained in said paragraphs.

17. Answering Paragraph No. 73 of the Plaintiff in Intervention's Application and District Court Order in Case Section of the Complaint, the Order speaks for itself; otherwise, GB Sciences is without information sufficient to form a reasonable belief as to the truth or falsity of the allegations contained in said paragraph, and, therefore, denies the same in their entirety.

18. Answering Paragraph No. 78 of the Plaintiff in Intervention’s Application and District Court Order in Case Section of the Complaint, GB Sciences denies the allegations that “Plaintiff in Intervention is the 13th ranked applicant,” and “[t]hat error was corrected when Plaintiff in Intervention obtained an order of mandamus directing the Division to rescore and re-rank the Application. As such, Plaintiff in Intervention should receive the first Provisional License should one become available,” and otherwise is without information sufficient to form a reasonable belief as to the truth or falsity of the remaining allegations contained in said paragraph, and, therefore, denies the same in their entirety.

DIVISION’S REFUSAL TO IDENTIFY NEXT HIGHEST RANKED APPLICANT

19. Answering Paragraphs No. 79, 80, and 81 of the Division’s Refusal to Identify the Next Highest Ranked Applicant Section of the Complaint, GB Sciences is without information sufficient to form a reasonable belief as to the truth or falsity of the allegations contained in said paragraphs, and, therefore, denies the same in their entirety.

THE CITY OF LAS VEGAS’ SUBSEQUENT PROCESSING OF NULEAF’S APPLICATION

20. Answering Paragraphs No. 82, 86, 87, 88, and 89 of the City of Las Vegas’ Subsequent Processing of Nuleaf’s Application Section of the Complaint, GB Sciences is without information sufficient to form a reasonable belief as to the truth or falsity of the allegations contained in said paragraphs, and, therefore, denies the same in their entirety.

21. Answering Paragraphs No. 83, 84, and 85 of the City of Las Vegas’ Subsequent Processing of Nuleaf’s Application Section of the Complaint, GB Sciences admits the allegations contained in said paragraphs.

FIRST CAUSE OF ACTION
(Declaratory Relief)

22. Answering Paragraph No. 90 of the First Cause of Action set forth in the Complaint, GB Sciences repeats its responses to Paragraphs No. 1 through 89 of the Complaint as if more fully set forth herein.

23. Answering Paragraphs No. 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, and 104 of the First Cause of Action set forth in the Complaint, GB Sciences is without information

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1 sufficient to form a reasonable belief as to the truth or falsity of the allegations contained in said
2 paragraphs, and, therefore, denies the same in their entirety.

3 SECOND CAUSE OF ACTION
4 (Injunctive Relief Against the Division and the City of Las Vegas)

5 24. Answering Paragraph No. 105 of the Second Cause of Action set forth in the Complaint,
6 GB Sciences repeats its responses to Paragraphs No. 1 through 104 of the Complaint as if more fully
7 set forth herein.

8 25. Answering Paragraphs No. 106, 107, 108, 109, 110, 111, 112, 113 (a through e,
9 inclusive), 114 (a through b, inclusive), and 115 of the Second Cause of Action set forth in the
10 Complaint, GB Sciences is without information sufficient to form a reasonable belief as to the truth or
11 falsity of the allegations contained in said paragraphs, and, therefore, denies the same in their entirety.

12 PETITION FOR WRIT OF MANDAMUS

13 26. Answering Paragraph No. 116 of the Petition for Writ of Mandamus set forth in the
14 Complaint, GB Sciences repeats its responses to Paragraphs No. 1 through 115 of the Complaint as if
15 more fully set forth herein.

16 27. Answering Paragraphs No. 117, 120, 122, and 123 of the Petition for Writ of Mandamus
17 set forth in the Complaint, GB Sciences is without information sufficient to form a reasonable belief
18 as to the truth or falsity of the allegations contained in said paragraphs, and, therefore, denies the same
19 in their entirety.

20 28. Answering Paragraphs No. 118 and 119 of the Petition for Writ of Mandamus set forth
21 in the Complaint, GB Sciences admits the allegations contained in said paragraphs.

22 29. Answering Paragraph No. 121 of the Petition for Writ of Mandamus set forth in the
23 Complaint, GB Sciences admits that the Division failed to perform the acts described in Paragraphs 118
24 and 119 of the Petition for Writ of Mandamus that Nevada law compelled the Division to perform, but
25 is otherwise without information sufficient to form a reasonable belief as to the truth or falsity of the
26 allegations contained in said paragraphs, and, therefore, denies the same in their entirety.

27 AFFIRMATIVE DEFENSES

28 1. The Complaint in Intervention fails to state a claim upon which relief may be granted.

2. ACRES MEDICAL, LLC's claims are barred by the doctrine of laches.
3. ACRES MEDICAL, LLC's claims are barred by the doctrine of waiver.
4. ACRES MEDICAL, LLC's claims are barred by the doctrines of estoppel, estoppel by fraud, and equitable estoppel.
5. The Complaint in Intervention is barred by the statute of frauds.
6. Plaintiff in Intervention failed to fulfill the requirements of NRS Chapter 453A, NAC 453A, and/or the requirements of the City of Las Vegas for issuance of a provisional registration certificate for an MME license.
7. The re-scoring of Plaintiff in Intervention's was void, against public policy, and inequitable.
8. The Order issued by Judge Cadish violates GB Sciences' due process rights, enshrined in the United States Constitution and Nevada State Constitution.
9. The Order issued by Judge Cadish has no *res judicata* effect upon GB Sciences.
10. Plaintiffs in Intervention's own conduct, and that of its own principals, is the proximate cause of Plaintiffs in Intervention's damages or other grievances, if any.
11. Plaintiffs in Intervention have acted in bad faith.
12. Plaintiffs in Intervention have unclean hands.
13. GB Sciences denies each and every allegation of the Complaint in Intervention not specifically admitted or otherwise pleaded to herein.
14. It has been necessary to employ the services of an attorney to defend this action and a reasonable sum should be allowed GB Sciences as and for attorney's fees, together with their costs expended in this action.
15. GB Sciences incorporates by reference those affirmative defenses enumerated in N.R.C.P. 8 as if fully set forth herein. If further investigation or discovery reveals the applicability of any such defenses, GB Sciences reserves the right to seek leave of Court to amend this answer to complaint in intervention to specifically assert any such defense. Such defenses are herein incorporated by reference for the specific purpose of not waiving any such defenses.

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16. Pursuant to N.R.C.P. Rule 11, as amended, all possible affirmative defenses may not have been alleged herein insofar as sufficient facts were not available after reasonable inquiry upon the filing of the Answer to Complaint in Intervention and, therefore, GB Sciences reserves the right to amend its Answer to Complaint in Intervention to allege additional affirmative defenses.

WHEREFORE, Plaintiff/Defendant in Intervention/Counterclaimant in Intervention GB Sciences prays for relief as follows:

1. That Acres Medical take nothing by way of its Complaint in Intervention,
2. That GB Sciences be awarded its attorneys' fees and costs incurred in defendant against the Complaint in Intervention; and
3. That GB Sciences be awarded such other and further relief as the Court deems appropriate in the premises.

COUNTERCLAIM

COMES NOW Plaintiff/Counterclaimant in Intervention, GB SCIENCES NEVADA, LLC, a Nevada limited liability company, by and through its attorneys of record, SMITH & SHAPIRO, PLLC, and for its Counterclaim in Intervention, alleges and avers as follows:

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

2. Upon information and belief, Counterdefendant ACRES MEDICAL, LLC ("**Acres Medical**") is a Nevada limited liability company doing business 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. Venue is proper in this Court pursuant to N.R.S. § 13.020(3) and N.R.S. § 233N.130(2)(b), in that this is the county where the cause, or some part thereof, arose and the aggrieved party resides.

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GENERAL ALLEGATIONS

5. In 2013, the Nevada Legislature passed Senate Bill 374, which, in part, provided for the registration of medical marijuana establishments authorized to cultivate and dispense marijuana and marijuana infused products to those persons authorized to use medicinal marijuana.

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

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

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

9. 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.

10. The City of Las Vegas was allotted twelve (12) MME registration certificates (the "Registration Certificates") by the Division.

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

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

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

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

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

3 16. Counterclaimant, Nuleaf CLV Dispensary, LLC ("Nuleaf"), and Counterdefendant
4 Acres Medical were three (3) of the applicants.

5 17. On October 28, 2014, the City Council of the City of Las Vegas held a special meeting
6 to consider each applicant for a special use permit for a proposed medical marijuana dispensary.

7 18. The City of Las Vegas granted a special use permit to twenty-seven (27) applicants,
8 including Counterclaimant.

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

11 20. Upon information and belief, the City of Las Vegas thereafter informed the Division of
12 those applicants granted a special use permit and those applicants denied a special use permit by the
13 City of Las Vegas.

14 21. NRS Chapter 453A.322(2) requires any person who wished to operate a medical
15 marijuana establishment in Nevada to submit to the Division an application on a form prescribed by
16 the Division.

17 22. While the Division was allowed to *accept* all applications submitted, under N.R.S. §
18 453A.322, the Division could only issue a Provisional Certificate if the applicant's application included
19 six (6) specific items and if the applicant otherwise met the requirements established by N.R.S. Chapter
20 453A.

21 23. NRS 453A.322(3)(a)(2) through (5) provided a list of items that every application for
22 a medical marijuana establishment must have submitted to the Division.

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

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

4 26. Supposedly in accordance with these and many other statutory and regulatory
5 requirements, the Division issued an application packet on May 30, 2014.

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

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

15 29. However, the requirements of NRS 453A.322(3) and the Division's ability to issue a
16 medical marijuana registration certificate were subject expressly to the exceptions set forth in NRS
17 453A.326.

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

21 31. The City of Las Vegas is a Nevada city that enacted ordinances for the zoning and
22 business licensing of medical marijuana establishments.

23 32. As such, the Division was required to ensure compliance with NRS 453A.326(3)(5).

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

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

4 35. Counterclaimant, Nuleaf, and Acres were among these applicants to the Division.

5 36. Prior to submitting an application to the Division, Counterclaimant, Nuleaf, and Acres
6 each submitted an application to the City of Las Vegas for a Special Use Permit and a Business License
7 as required by the City of Las Vegas' newly enacted ordinances.

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

10 38. To the contrary, Counterclaimant received a Special Use Permit for the operation of
11 medical marijuana dispensary from the City of Las Vegas and further, its application for Business
12 License was recommended for approval.

13 39. In addition, Counterclaimant submitted as part of its application to the Division the City
14 of Las Vegas' certification that Counterclaimant complied with the City of Las Vegas's ordinances and
15 building requirements concerning the operation of a medical marijuana establishment in the City of Las
16 Vegas.

17 40. Upon information and belief, the City of Las Vegas informed the Division of those
18 applicants that it approved for a Special Use Permit, which included Counterclaimant, and those
19 applicants that it denied a Special Use Permit, which included Nuleaf.

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

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

27 43. As a result, the Division improperly ranked the application of Nuleaf against the
28 acceptable criteria.

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

4 45. Counterclaimant had been ranked number 13 based upon a score of 166.86.

5 46. Acres had received a score of 126 and was ranked only 36 or 37 by the Division.

6 47. At the same time, Counterclaimant discovered that the Division ranked and issued
7 provisional registration certificate to Nuleaf (ranked #3 even though it was denied the required Special
8 Use Permit and Business License from the City of Las Vegas).

9 48. Had the Division complied with the express requirements of NRS 453A.322(3), NAC
10 453A.310, NAC 453A.312, and NAC 453A.332, and the Division' previous public statements regarding
11 the correct application procedure, Nuleaf should not have received a ranking let alone a provisional
12 registration certificate.

13 49. More importantly, Counterclaimant's score (166.86) would have and should been high
14 enough to rank within the top 12 spots (# 11) allotted for the City of Las Vegas and therefore,
15 Counterclaimant should have received a provisional registration certificate from the Division within
16 the 90-day evaluation period.

17 50. Consequently, Counterclaimant, in actuality being ranked #11, would have received
18 provisional registration certificate from the Division in accordance with Nevada law and as approved
19 by the City of Las Vegas.

20 51. On or about June 9, 2015, Counterdefendant Acres filed an action against the Division
21 with the Eighth Judicial District Court, being Case No. A-15-719637-W, to have its MME application
22 with the Division re-scored based upon a purported math error (the "Acres Case").

23 52. Counterdefendant did not include Counterclaimant as a party to the Acres Case.

24 53. On or about October 8, 2015, the Court in the Acres Case granted Counterdefendant's
25 Petition for Writ of Mandamus, compelling the Division to re-score Counterdefendant's application for
26 a Provisional Certificate by adding 41.3 to the score, thus raising the score to 167.3 and making
27 Counterdefendant's application rank number 13 for the 12 Registration Certificates allotted to the City
28 of Las Vegas (the "Order").

1 54. On or about November 9, 2015, the Court granted Counterdefendant's motion to
2 intervene in this case.

3 55. On or about November 13, 2015, the Court entered a minute order in this case revoking
4 Nuleaf's Provisional Certificate, but granting it to Counterdefendant, applying the re-coring set forth
5 in the Order and moving Counterdefendant to #12 in rank with the removal of Nuleaf, even though
6 Counterclaimant was never a party to the Acres Case or able to litigate the re-scoring.

7 56. On or about November 17, 2015, Acres Medical filed its Complaint in Intervention,
8 seeking to impose the effect of the Order upon Counterclaimant and jump ahead of Counterclaimant
9 in line for the 12 Registration Certificates allotted to the City of Las Vegas.

10 **FIRST CAUSE OF ACTION**
11 **(Declaratory Relief, Pursuant to N.R.S. § 30.010 *et seq.*)**

12 57. Counterclaimant repeats and realleges the allegations contained in Paragraphs 1 through
13 56 of the Counterclaim in Intervention, and incorporates the same by this reference as if more fully set
14 forth herein.

15 58. Under Nevada law, the Order does not bind Counterclaimant and has no *res judicata*
16 effect upon Counterclaimant's right to seek the revoked Provisional Certificate originally issued to
17 Nuleaf.

18 59. Under Nevada law, the Court in the Acres Case had no jurisdiction to determine the
19 relative position of Acres *vis-a-vis* Counterclaimant as Counterclaimant was not a party to the Acres
20 Case.

21 60. The rescoring of Acres Medical's MME application by the court in the Acres Case was
22 void as against Counterclaimant because Acres Medical failed to include Counterclaimant as a party
23 in the case, which was a necessary and indispensable party.

24 61. Counterclaimant was denied its due process right to contest the scoring of MME
25 applications by the Division and to contest entitlement to Nuleaf's revoked Provisional Certificate.

26 62. The re-scoring of Acres Medical's MME application with the Division was void, against
27 public policy, and inequitable.

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63. Under the doctrines laches, waiver and/or estoppel, as well as general equitable principles, and notwithstanding the Order, Acres Medical should not have priority over Counterclaimant.

64. There exists a justiciable controversy between Counterclaimant, on the one hand, and Acres Medical on the other hand regarding the scoring of applications and the issuance of provisional certificates for MME dispensaries under NRS Chapter 453A.

65. The interests of Counterclaimant are adverse to the interests of Acres Medical.

66. Counterclaimant has a legally protectable interest in the controversy.

67. The issue involved in the controversy is ripe for judicial determination with respect to the construction, interpretation, and implementation of NRS Chapter 453A, NAC 453A, and other Nevada laws and regulations as to the Counterclaimant.

68. Counterclaimant is entitled to a declaration, pursuant to N.R.S. § 30.010 *et seq.*, that while the Order from the Acres Case may have required to Division to rerank Acres Medical's application, the Acres Court Order lacks any prejudicial or precedential value when it comes to the relative positions of Acres Medical and Counterclaimant; that the Order has no force or effect upon Counterclaimant; that under the doctrines laches, waiver and/or estoppel, as well as general equitable principles, Counterclaimant should have priority over Acres Medical when it comes to any available provisional certificates; that the Provisional Certificate issued to Nuleaf and subsequently revoked by the Court should be issued to Counterclaimant (not Acres Medical); that Acres Medical is behind and below Counterclaimant in rank; that Acres Medical should not be issued an actual provisional certificate until this dispute is resolved; and that the deadlines and requirements for issuance of licenses for MME Dispensaries should be tolled for the benefit of the Counterclaimant until after the Counterclaimant's claims are determined in this case so that Counterclaimant will not suffer detriment due to the fact that it should have been issued a provisional certificate on November 3, 2014.

69. Counterclaimant has been required to retain the services of an attorney to prosecute this matter, and Counterclaimant is, therefore, entitled to its reasonable attorneys' fees and costs incurred in prosecuting this matter.

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SECOND CAUSE OF ACTION
(Injunctive Relief)

70. Counterclaimant repeats and realleges the allegations contained in Paragraphs 1 through 69 of the Counterclaim in Intervention, and incorporates the same by this reference as if more fully set forth herein.

71. Counterclaimant has already asserted claims against the Division in this case for injunctive relief regarding the issuance of provisional certificates to Nuleaf and Desert Aire.

72. However, to the extent necessary to ensure this remedy is still available, Counterclaimant is likewise entitled to a permanent mandatory injunction against the Division, enjoining the Division:

- (a) from issuing actual Registration Certificates to Nuleaf and Acres Medical;
- (b) to revoke the provisional certificates issued to Nuleaf and Acres Medical;
- (c) to identify Counterclaimant as the next highest ranking applicant for one of the Provisional Certificates allocated to the City of Las Vegas; and
- (d) to issue a provisional certificates to the Counterclaimant.

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

74. Alternatively, Counterclaimant is entitled to a permanent mandatory injunction that the one revoked provisional certificates be issued to the Counterclaimant, and not to Acres Medical because the re-scoring and re-ranking of Acres Medical was void, and/or that due to public policy and/or equitable principles, Acres Medical should not receive the one available provisional certificate, which should instead be issued to Counterclaimant.

75. Counterclaimant has been required to retain the services of an attorney to prosecute this matter, and Counterclaimant is, therefore, entitled to its reasonable attorneys' fees and costs incurred in prosecuting this matter.

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PETITION FOR WRIT OF MANDAMUS

76. Counterclaimant repeats and realleges the allegations contained in Paragraphs 1 through 74 of the Counterclaim in Intervention, and incorporates the same by this reference as if more fully set forth herein.

77. Counterclaimant has already petition for a writ of mandamus against the Division in its original Complaint.

78. To the extent required, that petition is repeated and reasserted herein in its entirety.

WHEREFORE, Counterclaimant in Intervention prays for relief as follows:

1. For declaratory relief in the manner set forth in Counterclaimant's First Cause of Action;
2. For injunctive relief, specifically a preliminary and permanent mandatory injunction, enjoining the Division:

- (a) from issuing actual Registration Certificates to Nuleaf and Acres Medical;
- (b) to revoke the Provisional Certificates issued to Nuleaf and Acres Medical;
- (c) to identify Counterclaimant as the next highest ranking applicant for one of the Provisional Certificates allocated to the City of Las Vegas; and
- (d) to issue a Provisional Certificate to Counterclaimant.

3. For injunctive relief, specifically a preliminary and permanent mandatory injunction, requiring the City to toll all deadlines which would have been required of the Counterclaimant until after the Court rules on Counterclaimants claims in this case, by virtue of the fact that Counterclaimant should have received a Provisional Certificate on November 3, 2014.

4. Alternatively, for a permanent mandatory injunction that the one revoked provisional certificates be issued to the Counterclaimant, and not to Acres Medical because the re-scoring and re-ranking of Acres Medical was void, and/or that due to public policy and/or equitable principles, Acres Medical should not receive the one available provisional certificate, which should instead be issued to Counterclaimant.

5. For reasonable attorneys' fees and costs of suit; and

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SMITH & SHAPIRO, PLLC
2520 St. Rose Parkway, Suite 220
Henderson, Nevada 89074
(702) 318-5033

1 6. For such other and further relief as the Court deems appropriate in the premises.
2 DATED this 3rd day of December, 2015.

3 **SMITH & SHAPIRO, PLLC**

4 /s/ James E. Shapiro
5 James E. Shapiro, Esq.
6 Nevada Bar No. 7907
7 Sheldon A. Herbert, Esq.
8 Nevada Bar No. 5988
9 2520 St. Rose Parkway, Suite 220
10 Henderson, NV 89074
11 Attorneys for Plaintiff/Defendant
12 in Intervention/Counter-
13 claimant in Intervention
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SMITH & SHAPIRO, PLLC
2520 St. Rose Parkway, Suite 220
Henderson, Nevada 89074
(702) 318-5033

CERTIFICATE OF SERVICE

I hereby certify that I am an employee of SMITH & SHAPIRO, PLLC, and that on the 3rd day of December, 2015, I served a true and correct copy of the forgoing **ANSWER TO COMPLAINT IN INTERVENTION AND COUNTERCLAIM**, by e-serving a copy on all parties registered and listed as Service Recipients in Wiznet, the Court's on-line, electronic filing website, pursuant to Administrative Order 14-2, entered by the Chief Judge, Jennifer Togliatti, on May 9, 2014.

/s/ Jill M. Berghammer
An employee of SMITH & SHAPIRO, PLLC

EXHIBIT 13

EXHIBIT 13


CLERK OF THE COURT

1 **COMP**
2 MARK E. FERRARIO, ESQ. (NV Bar #1625)
3 MOOREA L. KATZ, ESQ. (NV Bar #12007)
4 GREENBERG TRAUIG, LLP
5 3773 Howard Hughes Parkway, Suite 400 North
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10 katzmo@gtlaw.com
11 *Counsel for Plaintiff in Intervention Acres Medical, LLC*

12 **DISTRICT COURT**
13 **CLARK COUNTY, NEVADA**

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

16 Plaintiff,

17 v.

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

Defendants.

ACRES MEDICAL, LLC,

Plaintiff in Intervention,

v.

STATE OF NEVADA, DIVISION OF
PUBLIC AND BEHAVIORAL HEALTH OF
THE DEPARTMENT OF HEALTH AND
HUMAN SERVICES; CITY OF LAS VEGAS,
a municipal corporation and political
subdivision of the State of Nevada; NULEAF

Case No.: A710597
Dept. No.: XX

**COMPLAINT IN INTERVENTION FOR
DECLARATORY AND INJUNCTIVE
RELIEF AND/OR PETITION FOR WRIT OF
MANDAMUS OR PROHIBITION**

GREENBERG TRAUIG, LLP
3773 Howard Hughes Parkway
Suite 400 North
Las Vegas, Nevada 89169
Telephone: (702) 792-3773
Facsimile: (702) 792-9002

CLV DISPENSARY, LLC, a Nevada limited liability company; GB SCIENCES NEVADA, LLC, a Nevada limited liability company,

Defendants in Intervention

COMES NOW, Plaintiff in Intervention, Acres Medical, LLC, by and through its counsel, the law firm GREENBERG TRAURIG, LLP, and hereby brings its Complaint in Intervention for Declaratory and Injunctive Relief and/or Petition for Writ of Mandamus or Prohibition ("Complaint in Intervention"), and alleges as follows:

THE PARTIES

1. Plaintiff in Intervention Acres Medical, LLC ("Acres Medical") is a Nevada limited liability company, duly authorized to conduct business in the State of Nevada.

2. Defendant in Intervention Nevada Department of Health and Human Services, Division of Public and Behavioral Health (the "Division") is an agency of the State of Nevada, and was the recipient of the applications submitted by Plaintiffs in Intervention.

3. Defendant in Intervention City of Las Vegas ("City") is a municipal corporation and political subdivision of the State of Nevada.

4. Defendant in Intervention/Real Party in Interest Nuleaf CLV Dispensary, LLC ("Nuleaf") is a Nevada limited liability company conducting business, or planning to conduct business, in Clark County, Nevada.

5. Defendant in Intervention/Real Party in Interest GB Sciences Nevada, LLC ("GB") is a Nevada limited liability company, duly authorized to conduct business in the State of Nevada.

JURISDICTION

6. Venue is proper in this Court pursuant to NRS 13.020(3) and NRS 233B.130(2)(b), in that this is the county where the cause, or some part thereof, arose and the aggrieved party resides.

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GENERAL STATUTORY AND REGULATORY FRAMEWORK

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

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

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

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

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

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

13. In accordance with such responsibilities, the City Council of the City of Las Vegas enacted Ordinance no. 6321 to establish zoning regulations and standards for medical marijuana establishments.

14. The City Council of the City of Las Vegas also enacted Ordinance no. 6324 to establish licensing regulations and standards for medical marijuana establishments.

1 15. In addition, the City of Las Vegas prepared and issued a separate application packet
2 for any person wishing to obtain the required special use permit and business licensing for the
3 operation of a medical marijuana establishment in the City of Las Vegas.

4 16. Forty-three (43) applicants filed applications seeking the City of Las Vegas'
5 approval for zoning and licensing of a medical marijuana establishment to dispense medical
6 marijuana.

7 17. On October 28, 2014, the City Council of the City of Las Vegas held a special
8 meeting to consider each applicant for a special use permit for a proposed medical marijuana
9 dispensary.

10 18. The City of Las Vegas granted a special use permit to twenty-seven (27) applicants,
11 including Plaintiffs in Intervention.

12 19. The City of Las Vegas denied ten (10) applicants, including Nuleaf, a Special Use
13 Permit.

14 20. Upon information and belief, the City of Las Vegas thereafter informed the Division
15 of those applicants granted a special use permit and those applicants denied a special use permit by
16 the City of Las Vegas.

17 **THE DIVISION'S APPLICATION AND APPROVAL PROCESS**

18 21. NRS 453A.322(2) requires any person who wished to operate a medical marijuana
19 establishment in Nevada to submit to the Division an application on a form prescribed by the
20 Division.

21 22. In addition, NRS 453A.322(3)(a)(2) through (5) provided a list of items that every
22 application for a medical marihuana establishment must have submitted to the Division as part of an
23 application.

24 23. NRS 453A.322(3)(a)(5) expressly required that any application for a medical
25 marihuana establishment within a city, town, or county that has enacted zoning restrictions must
26 include proof of the applicable city, town, or county's prior licensure of the applicant or a letter
27 from that city, town, or county certifying that the applicant's proposed medical marijuana
28

1 establishment was in compliance with the city, town, or county's zoning restrictions and satisfies all
2 applicable building requirements.

3 24. To assist the Division in implementing the required statutory application process, the
4 Division adopted NAC 453A.310(1), which obligated the Division upon receiving more than one
5 application for a medical marijuana establishment to determine first that each application was
6 complete and in compliance with NRS Chapter 453A and NAC Chapter 453A.

7 25. Upon determining that each application was complete and in compliance, NAC
8 453A.310(1) then obligated the Division to rank from first to last the completed applications within
9 a particular jurisdiction based on the content of each application as it relates to the criteria for
10 evaluation determined by the Division and provided by NRS Chapter 453A.

11 26. Supposedly in accordance with these and many other statutory and regulatory
12 requirements, the Division issued an application packet on May 30, 2014.

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

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

17 28. NRS 453A.322(3) required the Division to register a medical marijuana
18 establishment applicant, issue a medical marijuana establishment registration certificate, and issue a
19 random 20-digit alphanumeric identification number not later than 90 days from the Division's
20 receipt of an application only if such an application for a medical marihuana establishment
21 contained the specific items required by NRS 453A.322(3)(a), which among other items, included
22 the necessary prior zoning approvals from the applicable local jurisdiction identified in NRS
23 453A.322(3)(a)(5).

24 29. However, the requirements of NRS 453A.322(3) and the Division's ability to issue a
25 medical marijuana registration certificate were subject expressly to the exceptions set forth in NRS
26 453A.326.

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1 30. NRS 453A.326(3) required that any medical marihuana establishment registration
2 certificate issued by the Division be deemed “provisional” in any city, town, or county that issues
3 business licenses.

4 31. NRS 453A.326(3) further required that this “provisional” status shall remain until
5 such time as the recipient of this “provisional” medical marihuana registration certificate is in
6 compliance with the applicable city, town, or county’s ordinances and rules and obtains a business
7 license for the operation of a medical marijuana establishment from the applicable city, town or
8 county.

9 32. The City of Las Vegas is a Nevada city that enacted ordinances for the zoning and
10 business licensing of medical marijuana establishments.

11 33. As such, NRS 453A.326(3) required that any medical marihuana establishment
12 registration certificate issued for the operation of a medical marihuana establishment in the City of
13 Las Vegas be deemed “provisional” until such applicant complies with the City of Las Vegas’
14 ordinances and rules and obtains a business license from the City of Las Vegas.

15 34. The Nevada Legislature anticipated that a recipient of a required “provisional”
16 registration certificate from the Division might not comply with the City of Las Vegas’ ordinances
17 or obtain the required licensing.

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

24 36. The Division also anticipated the likelihood that a recipient of a “provisional”
25 registration certificate for the operation of a medical marihuana establishment in the City of Las
26 Vegas’ or any other Nevada city, town, or county’s ordinances or otherwise obtain the required
27 zoning and business licensing for the operation of a medical marijuana establishment.

28 ///

1 37. Accordingly, the Division adopted NAC 453A.310, which required the Division to
2 make an initial determination that each application filed with the Division was complete, including
3 proof of evidence that each applicant had obtained the required zoning and licensing from the City
4 of Las Vegas, before ranking any applications.

5 38. The Division also adopted NAC 453A.332, which obligated the Division to deny any
6 application for a medical marijuana establishment remigration certificate if the application was not
7 in compliance with any provision of NRS Chapter 453A, which indisputably includes the proof of
8 the City of Las Vegas' approval for zoning and licensing required by NRS 453.322(3)(a)(5).

9 39. Further, the Division adopted NAC 453A.312, which required the Division to issue
10 "provisional" medical marijuana establishment registration certificates to the highest ranked
11 applicants until the Division issued the number of actual medical marijuana establishment
12 registration certificates designated by the Division, which in the case of the City of Las Vegas was
13 twelve (12) allotted actual registration certificates for medical marijuana dispensaries.

14 40. Together, these regulations adopted by the Division contemplated and provided a
15 regulatory solution of the Division for any situation where a recipient of a "provisional" registration
16 certificate failed to obtain the necessary zoning and licensing approvals from the City of Las Vegas,
17 or any similar Nevada city, town, or county, as required by Nevada law.

18 41. Pursuant to the regulatory framework, the Division was first to ensure that each
19 applicant had the necessary City of Las Vegas zoning and licensing approvals before accepting the
20 application as complete and ranking the application against the Division's criteria.

21 42. In the event that an applicant was issued a "provisional" registration certificate but
22 was denied the required City of Las Vegas zoning or licensing approvals, then the Division was
23 required to then issue additional "provisional" registration certificates to the next ranked applicant
24 until the twelve (12) actual registration certificates allotted the City of Las Vegas were issued by the
25 Division.

26 43. The Division's regulatory scheme plainly adopted and endorsed this "next highest
27 ranked applicant" process as a resolution for situations where an applicant or a recipient of a
28

1 “provisional” registration certificate was denied a special use permit or a business license by the
2 City of Las Vegas, and any other Nevada city, town, or county requiring such approval.

3 44. After implementing these regulations on April 1, 2014, the Division’s staff identified
4 this “next highest ranked applicant” process as the correct procedure for resolving instances where
5 an applicant or a recipient of a “provisional” registration certificate was denied or unable to obtain
6 the required zoning and licensing at the local level.

7 45. During a July 9, 2014 meeting of the Advisory Commission on the Administration of
8 Justice’s Subcommittee on the Medical Use of Marijuana, Chad Westom, Bureau Chief of the
9 Division, was questioned about the Division’s procedure if an applicant to which the Division
10 issued a “provisional” registration certificate was unsuccessful in obtaining local approval.

11 46. In response to this question, Mr. Westom stated, “it was part of the process for the
12 applicants to provide evidence of local zoning and business license approval.”

13 47. Mr. Westom also stated that any jurisdiction where the Division issued “provisional”
14 registration certificates that jurisdiction would have the option of denying these businesses at the
15 local level; whereupon the Division would then deny those same businesses and notify the local
16 jurisdiction of the next ranked applicant.

17 48. When asked specifically what would happen if the Division approved different
18 applicants than those approved by the local jurisdiction, Mr. Westom stated that the Division would
19 deny any applicant denied by the local jurisdiction and then inform the local jurisdiction who was
20 the next ranked applicant.

21 **DEFENDANT NULEAF’S APPLICATION**

22 49. On or before the Division’s August 18, 2014 deadline, the Division received
23 approximately forty-nine (49) applications for the City of Las Vegas’ twelve (12) allotted medical
24 marihuana establishment registration certificates for the operation of a medical marihuana
25 dispensary in the City of Las Vegas.

26 50. Plaintiff in Intervention, Nuleaf, and GB Sciences were among these 49 applicants to
27 the Division.

28 ///

1 51. Prior to submitting an application to the Division, Plaintiff in Intervention, Nuleaf
2 and GB Sciences, also each submitted an application to the City of Las Vegas for a Special Use
3 Permit and a Business License as required by the City of Las Vegas' newly enacted ordinances.

4 52. After an October 29, 2014 special meeting, the City Council of the City of Las Vegas
5 denied Nuleaf's application for a Special Use Permit and Compliance Permit.

6 53. To the contrary, Plaintiff in Intervention received a Special Use Permit for the
7 operation of a medical marijuana dispensary from the City of Las Vegas and further, Plaintiff in
8 Intervention received a Compliance Permit.

9 54. In addition, Plaintiff in Intervention submitted as part of its application to the
10 Division the City of Las Vegas' certification that Plaintiff in Intervention complied with the City of
11 Las Vegas' ordinances and building requirements concerning the operation of a medical marijuana
12 establishment in the City of Las Vegas.

13 55. The City of Las Vegas informed the Division of those applicants that it approved for
14 a Special Use Permit, which included Plaintiff in Intervention, and those applicants that it denied a
15 Special Use Permit, which included Nuleaf.

16 56. Accordingly, Plaintiff in Intervention met the requirements of NRS 453A.322(3)(a),
17 but Nuleaf did not meet those requirements.

18 57. Upon information and belief, the Division, upon receipt of the 49 application for the
19 operation of a medical marihuana 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 as required by NAC 453A.310(1).

22 58. Also upon information and belief, the Division never determined 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' restrictions and building requirements as prescribed by NRS
26 453A.322(3)(a)(5).

27 59. As a result, the Division improperly accepted the application of Nuleaf and ranked
28 its applications against the acceptable criteria.

**PLAINTIFF IN INTERVENTION'S APPLICATION AND DISTRICT COURT
ORDER IN CASE**

60. On or about August 14, 2014, Plaintiff in Intervention along with Acres Cultivation, LLC, submitted to the Division multiple applications to operate Medical Marijuana Establishments ("MME"), including Plaintiff in Intervention's Application D011 to operate a medical marijuana dispensary in the City of Las Vegas (the "Application").

61. The Division was required to rank applications based upon certain criteria. Organizational Structure was one of the criteria considered by the Division.

62. Plaintiff in Intervention submitted the same information on every application for Organizational Structure. On or about January 9, 2015, Plaintiff in Intervention, along with Acres Cultivation, LLC received scores on their applications. Plaintiff in Intervention received a score of 0 for Organizational Structure on the Application despite receiving a score of 41.3 on its other concurrently submitted applications containing the exact same information for the Organizational Structure criteria.

63. The Division was obligated to score and rank accurately all MME applications submitted to the Division.

64. One of the categories considered by the Division in scoring applications was Organizational Structure.

65. Plaintiff in Intervention submitted the same information on all of its applications, including the Application, for the Organizational Structure category.

66. Despite having information indicating that the Application should have received a score of 41.3 in the Organizational Structure category, the Division gave the Application a score of 0 in the Organizational Structure category.

67. The Division gave Plaintiff in Intervention's other applications with the exact same information in the Organizational Structure category a score of 41.3 for the Organizational Structure category.

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

1 69. Had the Division performed properly its official duties in scoring the Application, it
2 would have included an additional 41.3 points for the Organizational Structure category.

3 70. Had the Division performed properly its official duties in scoring the Application, the
4 Application would have received a score of 167.3.

5 71. Had the Division performed properly its official duties in scoring the Applications, the
6 Application would have been ranked number 11.

7 72. Plaintiff in Intervention was forced to retain counsel and file a lawsuit, case number
8 A-15-719637-W, and petition the Court for mandamus to compel the Division to correct the error.

9 73. On October 8, 2015, District Court Judge Cadish granted Plaintiff in Intervention's
10 Petition for Mandamus in Case No. A-15-719637-W. See **Exhibit A**, attached hereto. Judge
11 Cadish's Order Granting Petition for Mandamus directs the Division to rescore Plaintiff in
12 Intervention's Application and assign it a score of 167.3. The Order also requires the Division to
13 officially re-rank Plaintiff in Intervention's Application based on this new score.

14 74. The Division ranked and issued a "provisional" registration certificate to Desert Aire
15 Wellness, LLC ("Desert Aire") (ranked #10) and Nuleaf (ranked #3) even though each were denied
16 and/or failed to obtain the required Special Use Permit and Business License from the City of Las
17 Vegas.

18 75. Had the Division complied with the express requirements of NRS 453A.322(3),
19 NAC 453A.310, NAC 453A.312, and NAC 453A.332, and the Division's previous public
20 statements regarding the correct application procedure, neither Desert Aire (ranked #10) nor Nuleaf
21 should have received a ranking let alone a "provisional" registration certificate.

22 76. More importantly, Plaintiff in Intervention's score (167.3) would have and should
23 have been high enough to rank within the top 12 spots (#11) allotted for the City of Las Vegas and
24 therefore, Plaintiff in Intervention should have received a "provisional" registration certificate from
25 the Division within the 90-day evaluation period.

26 77. Consequently, Plaintiff in Intervention, in actuality being ranked #11, would have
27 received a "provisional" registration certificate from the Division in accordance with Nevada law
28 and as approved by the City of Las Vegas.

78. Plaintiff in Intervention is the 13th ranked applicant for a Provisional License to operate a medical marijuana dispensary in the City of Las Vegas and therefore next in line. Plaintiff in Intervention was ranked improperly by the Division due to an error in scoring Plaintiff in Intervention's Application D011 to operate a medical marijuana dispensary in the City of Las Vegas. That error was corrected when Plaintiff in Intervention obtained an order of mandamus directing the Division to rescore and re-rank the Application. As such, Plaintiff in Intervention should receive the first Provisional License should one become available.

DIVISION'S REFUSAL TO IDENTIFY NEXT HIGHEST RANKED APPLICANT

79. After the Division provided notice of those applicants who were issued a "provisional" registration certificate for the operation of a medical marijuana establishment in the City of Las Vegas, the City of Las Vegas, upon information and belief, inquired and/or requested that the Division identify the next highest ranked applicant(s) since Desert Aire (ranked #10) and Nuleaf (ranked #3) were denied and/or failed to obtain the require Special Use Permit and Business License from the City of Las Vegas.

80. Despite the Division's adoption of NAC 453A.312(1) requiring the Division to issue "provisional" registration certificates to the next highest ranked applicants until the City of Las Vegas' allotment of actual registration certificates was filled and contrary to the express statements made by the Division's representative, the Division, upon information and belief, informed the City of Las Vegas that it would not identify the next highest ranked applicant.

81. Upon information and belief, the Division further informed the City of Las Vegas that it would and could not issue any further "provisional" registration certificates since the Division only was authorized by Nevada law to issue registration certificate within a 90-day period that expired on November 3, 2014.

THE CITY OF LAS VEGAS' SUBSEQUENT PROCESSING OF NULEAF'S APPLICATION

82. Nuleaf applied to the City of Las Vegas for a Special Use Permit and Compliance Permit for the operation of a medical marijuana establishment in the City of Las Vegas.

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1 83. The City of Las Vegas' Planning Commission, on September 23, 2014 recommended
2 denial (4-0-2 vote) of Nuleaf's request for Special Use Permit.

3 84. Thereafter, the City Council for the City of Las Vegas, on October 28-29, 2014,
4 denied (4-2-1 vote) Nuleaf's request for a Special Use Permit and Compliance Permit; with 70
5 separate protests having been lodged against Nuleaf's requests.

6 85. Despite the City of Las Vegas' denial of Nuleaf's requests, the Division unlawfully
7 issued Nuleaf a "provisional" registration certificate for the operation of a medical marijuana
8 establishment in the City of Las Vegas, when in truth, Nuleaf's application should have been
9 deemed incomplete, disqualified, and denied pursuant to NRS Chapter 453A and NAC Chapter
10 453A.

11 86. On December 3, 2014 the City Council for the City of Las Vegas convened its
12 regular meeting to hear its regular Agenda, which included a request from Nuleaf to rescind and
13 rehear its previous denial of its requests for a Special Use Permit and Compliance Permit (Agenda
14 Items #76-79).

15 87. After discussion by the City Council for the City of Las Vegas, the Agenda items
16 (#76-79) concerning Nuleaf's request for reconsideration were stricken by the City Council.

17 88. However, upon information and belief, Nuleaf intends to seek a text amendment to
18 the City of Las Vegas' Municipal Code authorizing the "resubmittal" of Nuleaf's applications and
19 requests for Special Use Permit and Compliance Permit.

20 89. Upon information and belief, Nuleaf, upon the City Council for the City of Las
21 Vegas' approval of this text amendment, intends to seek relocation of its proposed medical
22 marijuana establishment, in direct violation of NRS Chapter 453A and NAC Chapter 453A, and
23 despite the fact that Nuleaf's application to the Division was incomplete and should have been
24 disqualified and denied, per se, pursuant to NRS Chapter 453A and NAC Chapter 453A.

25 **FIRST CAUSE OF ACTION**
26 **(Declaratory Relief)**

27 90. Plaintiff in Intervention re-alleges and incorporates by reference the allegations
28 contained in paragraphs 1-89.

///

1 91. The Division's unlawful acceptance and ranking of Nuleaf's application for a
2 medical marijuana establishment registration certificate for the operation of a medical marijuana
3 establishment in the City of Las Vegas and the Division's subsequent, unlawful issuance of a
4 "provisional" registration certificate also affects the rights of Plaintiff in Intervention afforded it by
5 NRS Chapter 453A, NAC Chapter 453A, and other Nevada laws and regulations.

6 92. The Division's actions and/or inactions also have created an actual justiciable
7 controversy ripe for judicial determination between Plaintiff in Intervention, Nuleaf, the Division,
8 and the City of Las Vegas with respect to the construction, interpretation, and implementation of
9 NRS Chapter 453A and NAC Chapter 453A as to Plaintiff in Intervention.

10 93. Accordingly, Plaintiff in Intervention seeks a declaration from this Court that the
11 Division improperly accepted and ranked Nuleaf's application for a medical marijuana
12 establishment registration certificate for the operation of a medical marijuana establishment in the
13 City of Las Vegas.

14 94. Plaintiff in Intervention also seeks a declaration from this Court that the Division
15 improperly ranked and subsequently issued Nuleaf a "provisional" registration certificate for the
16 operation of a medical marijuana establishment in the City of Las Vegas as Nuleaf failed to submit
17 a complete application for a registration certificate for the operation of a medical marijuana
18 establishment as required by NRS 453A.322.

19 95. Plaintiff in Intervention also seeks a declaration from this Court that Nuleaf's
20 application for a medical marijuana establishment registration certificate for the operation of a
21 medical marijuana establishment in the City of Las Vegas must be denied by the Division since
22 Nuleaf failed to submit proof to the Division of its licensure by the City of Las Vegas or a letter
23 from the City of Las Vegas certifying compliance with the City of Las Vegas' restrictions regarding
24 proposed medical marijuana establishments and had satisfied all applicable building requirements of
25 the City of Las Vegas as expressly required by NRS 453A.322(3)(a)(5).

26 96. Plaintiff in Intervention also seeks a declaration from this Court that the Division
27 cannot issue Nuleaf an actual registration certificate for the operation of a medical marijuana
28

1 establishment in the City of Las Vegas since Nuleaf was denied a Special Use Permit and Business
2 License from the City of Las Vegas for the operation a medical marijuana establishment.

3 97. Plaintiff in Intervention also seeks a declaration from this Court that the Division
4 improperly denied Plaintiff in Intervention a “provisional” registration certificate for the operation
5 of a medical marijuana dispensary in the City of Las Vegas.

6 98. Plaintiff in Intervention also seeks a declaration from this Court that the Division
7 improperly refused to identify Plaintiff in Intervention as the next available applicant in accordance
8 with applicable Nevada law upon notification that Desert Aire and Nuleaf failed to obtain and/or
9 were denied a Special Use Permit and Business Licenses from the City of Las Vegas for the
10 operation a medical marijuana establishment.

11 99. Plaintiff in Intervention also seeks a declaration from this Court that the Division
12 must issue Plaintiff in Intervention a “provisional” registration certificate for the operation of a
13 medical marijuana establishment in the City of Las Vegas since Plaintiff in Intervention’s score
14 issued by the Division would have ranked high enough (#11) to be within the top 12 had the
15 Division properly applied the provisions of NRS Chapter 453A and NAC Chapter 453A.

16 100. Plaintiff in Intervention also seeks a declaration from this Court that the Division
17 must issue Plaintiff in Intervention a “provisional” registration certificate for the operation of a
18 medical marijuana establishment in the City of Las Vegas since Plaintiff in Intervention is the next
19 highest ranked applicant ranked by the Division and the City of Las Vegas’ allotment of twelve (12)
20 actual registration certificates have not been filled.

21 101. Plaintiff in Intervention also seeks a declaration from this Court that the Division is
22 not prohibited by NRS Chapter 453A, NAC Chapter 453A, or any other applicable Nevada law or
23 regulation from issuing Plaintiff in Intervention at any time, a “provisional” registration certificate
24 for the operation of a medical marijuana establishment in the City of Las Vegas since the City
25 of Las Vegas’ allotment of twelve (12) actual registration certificates have not been filled.

26 102. Plaintiff in Intervention also seeks a declaration from this Court that the City of Las
27 Vegas is prohibited from reconsidering the City of Las Vegas’ previous denial of Nuleaf’s
28

1 application for a Special Use Permit after the Division and the City of Las Vegas' period for
2 submitting and considering applications has closed.

3 103. Plaintiff in Intervention also seeks a declaration from this Court that the Division is
4 prohibited from issuing Nuleaf an actual registration certificate for the operation of a medical
5 marijuana establishment in the City of Las Vegas since Nuleaf failed to comply with the express
6 requirements of NRS 453A.322(3)(a)(5) at the time it submitted its applications to the Division and
7 at any time during the Division's application period that ended on November 3, 2014.

8 104. It has also become necessary for Plaintiff in Intervention to retain the services of an
9 attorney to commence this action, and Plaintiff in Intervention is therefore entitled to reasonable
10 attorney's fees and the costs of this suit.

11 **SECOND CAUSE OF ACTION**
12 **(Injunctive Relief Against the Division and the City of Las Vegas)**

13 105. Plaintiff in Intervention re-alleges and incorporates by reference the allegations
14 contained in paragraphs 1-104.

15 106. The Division's unlawful acceptance and ranking of Nuleaf's incomplete and
16 unqualified application for a medical marijuana establishment registration certificate has and
17 continues to irreparably harm Plaintiff in Intervention and Plaintiff in Intervention, as a
18 consequence of the Division's unlawful actions, has been denied the issuance of a "provisional"
19 registration certificate from the Division that Plaintiff in Intervention is entitled to receive under the
20 proper application of the provisions of NRS Chapter 453A and NAC Chapter 453A.

21 107. The Division's unlawful issuance to Nuleaf of a "provisional" registration certificate
22 for the operation of a medical marijuana establishment in the City of Las Vegas has and continues
23 to irreparably harm Plaintiff in Intervention as Plaintiff in Intervention, as a consequence of the
24 Division's unlawful actions, has been denied the issuance of a "provisional" registration certificate
25 from the Division that Plaintiff in Intervention is entitled to receive under the proper application of
26 the provisions of NRS Chapter 453A and NAC Chapter 453A.

27 108. The Division's continued refusal to issue Plaintiff in Intervention a "provisional"
28 registration certificate for the operation of a medical marijuana establishment in the City of Las
Vegas has and continues to irreparably harm Plaintiff in Intervention as Plaintiff in Intervention

1 otherwise would have received a “provisional” registration certificate for the operation of a medical
2 marijuana establishment in the City of Las Vegas had the Division complied with the actual
3 requirements of NRS Chapter 453A and NAC 453A.

4 109. The Division’s continued refusal to comply with the requirements of NRS Chapter
5 453A and NAC Chapter 453A in declaring Plaintiff in Intervention as the next available qualified
6 applicant has and continues to harm Plaintiff in Intervention as Plaintiff in Intervention has not
7 received a “provisional” registration certificate for the operation of a medical marijuana
8 establishment in the City of Las Vegas that Plaintiff in Intervention otherwise is entitled to receive
9 pursuant to NRS Chapter 453A and NAC Chapter 453A.

10 110. The Division’s continued refusal to issue any further “provisional” registration
11 certificates for the operation of a medical marijuana establishment in the City of Las Vegas even
12 though the City of Las Vegas’ allotment of twelve (12) actual registration certificates has not been
13 filed has and continues to irreparably harm Plaintiff in Intervention since Plaintiff in Intervention is
14 the next available qualified applicant to receive a “provisional” registration certificate from the
15 Division under the proper application of the provisions of NRS Chapter 453A and NAC Chapter
16 453A.

17 111. The plain language of the applicable provisions of NRS Chapter 453A and NAC
18 Chapter 453A requires the Division to issue Plaintiff in Intervention a “provisional” registration
19 certificate for the operation of a medical marijuana establishment in the City of Las Vegas either as
20 a qualified applicant whose score issued by the Division is within the top 12 required for applicants
21 within the City of Las Vegas, or Plaintiff in Intervention is the next highest ranked applicant to
22 receive a “provisional” registration certificate since Nuleaf was denied the required Special Use
23 Permit and Business License by the City of Las Vegas.

24 112. Plaintiff in Intervention has no adequate remedy at law and compensatory relief is
25 inadequate.

26 113. Accordingly, Plaintiff in Intervention is entitled to injunctive relief enjoining the
27 Division:

28 ///

- a. From issuing an actual registration certificates to Nuleaf for the operation of a medical marijuana establishment in the City of Las Vegas;
- b. To issue Plaintiff in Intervention a “provisional” registration certificate for the operation of a medical marijuana establishment in the City of Las Vegas as an applicant whose score was within the top 12 positions allotted for the City of Las Vegas;
- c. To identify Plaintiff in Intervention as the next highest ranked applicant to receive a “provisional” registration certificate for the operation of a medical marijuana establishment in the City of Las Vegas;
- d. To issue Plaintiff in Intervention a “provisional” registration certificate for the operation of a medical marijuana establishment in the City of Las Vegas as the next highest ranked applicant eligible to receive a “provisional” registration certificate since Nuleaf failed to obtain the required Special Use Permit and Business License required by the City of Las Vegas; and
- e. To continue to issue “provisional” registration certificates to the next highest ranked applicants as required by NAC 453A.312(1) until the Division has issued the number of actual registration certificates allotted the City of Las Vegas.

114. In addition, Plaintiff in Intervention is entitled to Injunctive Relief enjoining the City of Las Vegas from:

- a. Reconsidering Nuleaf s application and/or Nuleaf s denial of its application for a Special Use Permit at any time; and
- b. Issuing Nuleaf a Special Use Permit or a Business License for the operation of a medical marijuana establishment in the City of Las Vegas.

115. It has also become necessary for Plaintiff in Intervention to retain the services of an attorney to commence this action, and Plaintiff in Intervention is therefore entitled to reasonable attorney's fees and the costs of this suit.

///

///

1 In addition, or in the alternative to Plaintiff in Intervention's allegations and Claims for
2 Relief asserted above, Plaintiff in Intervention also alleges the following and petitions this Court
3 for a writ of mandamus.

4 PETITION FOR WRIT OF MANDAMUS

5 116. The allegations of paragraphs 1 through 115 of this Complaint are incorporated by
6 reference herein with the same force and effect as set forth in full below.

7 117. Petitioner, Acres Medical, LLC, a Nevada limited liability company (hereinafter
8 "Petitioner") is an applicant to the Division for the Division's issuance of a registration certificate for
9 the operation of a medical marijuana establishment in the City of Las Vegas.

10 118. The Division was required to solicit applications, review, score, rank, and issue
11 "provisional" registration certificates for the operation of a medical marijuana establishment in the
12 City of Las Vegas in compliance with NRS Chapter 453A, NAC 453A, and other Nevada laws and
13 regulations.

14 119. The Division failed to comply with the requirements of NRS Chapter 453A, NAC
15 453A, and other Nevada laws and regulations when it unlawfully issued a "provisional" registration
16 certificate for the operation of a medical marijuana establishment in the City of Las Vegas to Nuleaf.

17 120. The Division further failed to comply with the requirements of NRS Chapter 453A,
18 NAC 453A, and other Nevada laws and regulations when it unlawfully denied Petitioner a
19 "provisional" registration certificate for the operation of a medical marijuana establishment in the City
20 of Las Vegas.

21 121. Accordingly, the Division has failed to perform acts that Nevada law compelled the
22 Division to perform.

23 122. Petitioner has no plain, speedy, and adequate remedy in the ordinary course of law to
24 correct the Division's failure to perform as required by Nevada law or compel the Division to perform,
25 as it is required by Nevada law.

26 123. Petitioner, therefore, petitions this Court for a Writ of Mandamus as alleged and in a
27 formal Application for Writ of Mandamus to be filed separately, to compel the Division to issue
28 Petitioner the "provisional" registration certificate for the operation of a medical marijuana

1 establishment in the City of Las Vegas that Petitioner was entitled to receive had the Division
2 complied with the requirements of NRS Chapter 453A, NAC 453A, and other Nevada laws and
3 regulations.

4 WHEREFORE, Plaintiff in Intervention prays for the following:

5 1. For Declaratory Judgment(s) in the manner set forth in Plaintiff in Intervention's First
6 Claim for Relief;

7 2. For injunctive relief, specifically a preliminary and permanent injunction enjoining the
8 Division:

9 a. From issuing an actual registration certificate to Nuleaf for the operation of a
10 medical marijuana establishment in the City of Las Vegas;

11 b. To issue Plaintiff in Intervention a "provisional" registration certificate for the
12 operation of a medical marijuana establishment in the City of Las Vegas as an applicant
13 whose score was within the top 12 positions allotted for the City of Las Vegas;

14 c. To identify Plaintiff in Intervention as the next highest ranked applicant to
15 receive a "provisional" registration certificate for the operation of a medical marijuana
16 establishment in the City of Las Vegas;

17 d. To issue Plaintiff in Intervention a "provisional" registration certificate for the
18 operation of a medical marijuana establishment in the City of Las Vegas as the next highest
19 ranked applicant eligible to receive a "provisional" registration certificate since
20 Nuleaf was denied the required Special Use Permit and Business License required by the City
21 of Las Vegas; and

22 e. To continue to issue "provisional" registration certificates to the next
23 highest ranked applicants as required by NAC 453A.312(1) until the Division has issued the
24 number of actual registration certificates allotted the City of Las Vegas.

25 3. For injunctive relief, specifically a preliminary and permanent injunction enjoining the
26 City of Las Vegas from:

27 a. Reconsidering Nuleaf's application and/or Nuleaf's denial of its application
28 for a Special Use Permit at any time; and

b. Issuing Nuleaf a Special Use Permit or a Business License for the operation of a medical marijuana establishment in the City of Las Vegas.

4. For reasonable attorney's fees and costs of suit; and

5. For any other such relief as this Court deems just and proper.

In addition, or in the alternative, Petitioner also petitions this Court to issue a Writ of Mandamus compelling the Division to comply with the requirements of NRS Chapter 453A, NAC 453A, and other Nevada laws and regulations and issue Petitioner a "provisional" registration certificate for the operation of a medical marijuana establishment in the City of Las Vegas.

DATED this 17th day of November, 2015.

GREENBERG TRAURIG, LLP

By: /s/ Moorea L. Katz

MARK E. FERRARIO (NV Bar No. 1625)

MOOREA L. KATZ (NV Bar No. 12007)

3773 Howard Hughes Parkway, Suite 400 North
Las Vegas, Nevada 89169

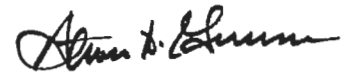
Counsel for Plaintiff in Intervention Acres Medical, LLC

CERTIFICATE OF SERVICE

Pursuant to Nev. R. Civ. P. 5(b)(2)(D) and E.D.C.R. 8.05, I certify that on this 17th day of November, 2015, I caused a true and correct copy of the foregoing **COMPLAINT IN INTERVENTION FOR DECLARATORY AND INJUNCTIVE RELIEF AND/OR PETITION FOR WRIT OF MANDAMUS OR PROHIBITION** to be filed and served via the Court's Wiznet E-Filing system. The date and time of the electronic proof of service is in place of the date and place of deposit in the mail.

/s/ Joyce Heilich
An employee of GREENBERG TRAURIG, LLP

EXHIBIT A


CLERK OF THE COURT

1 **ORDG**

2 MARK E. FERRARIO (NV Bar #1625)
3 LONDON LERNER (NV Bar #13368)
4 GREENBERG TRAURIG, 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: ferrario@gtlaw.com
10 lernerl@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 ~ vs. ~

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 CLV 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; THC
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**

☐ Non-Jury
Disposed After Trial Start
☐ Non-Jury
Judgment Reached
☐ Transferred before Trial

☐ Jury
Disposed After Trial Start
☐ Jury
Verdict Reached
☒ Other -

GREENBERG TRAURIG, LLP
3773 Howard Hughes Parkway
Suite 400 North
Las Vegas, Nevada 89169
Telephone: (702) 792-3773
Facsimile: (702) 792-9002

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 ///

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 8 day of October, 2015.


DISTRICT COURT JUDGE

Respectfully submitted by:

GREENBERG TRAURIG, LLP


By:


MARK E. FERRARIO (NV Bar #1625)
LANDON 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*

10
11
12
13 GREENBERG TRAURIG, LLP
14 3773 Howard Hughes Parkway
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Form **SS-4**

(Rev. January 2010)

Department of the Treasury
Internal Revenue Service**Application for Employer Identification Number**

(For use by employers, corporations, partnerships, trusts, estates, churches, government agencies, Indian tribal entities, certain individuals, and others.)

▶ See separate instructions for each line. ▶ Keep a copy for your records.

OMB No. 1545-0003

EIN

Type or print clearly.	1 Legal name of entity (or individual) for whom the EIN is being requested CONNECTORS PLUS, LLC	
	2 Trade name of business (if different from name on line 1)	3 Executor, administrator, trustee, "care of" name MARIZA M. BELTRAN
	4a Mailing address (room, apt., suite no. and street, or P.O. box) 4162 ABERNETHY FOREST PL.	5a Street address (if different) (Do not enter a P.O. box.)
	4b City, state, and ZIP code (if foreign, see instructions) LAS VEGAS, NV 89141	5b City, state, and ZIP code (if foreign, see instructions)
	6 County and state where principal business is located CLARK, NEVADA	
	7a Name of responsible party RICARDO L. BELTRAN	7b SSN, ITIN, or EIN 182-84-8536
8a Is this application for a limited liability company (LLC) (or a foreign equivalent)? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No		8b If 8a is "Yes," enter the number of LLC members 1
8c If 8a is "Yes," was the LLC organized in the United States? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No		
9a Type of entity (check only one box). Caution. If 8a is "Yes," see the instructions for the correct box to check.		
<div style="display: flex; justify-content: space-between;"> <div style="width: 48%;"> <input type="checkbox"/> Sole proprietor (SSN) _____ <input type="checkbox"/> Partnership <input type="checkbox"/> Corporation (enter form number to be filed) ▶ _____ <input type="checkbox"/> Personal service corporation <input type="checkbox"/> Church or church-controlled organization <input type="checkbox"/> Other nonprofit organization (specify) ▶ _____ <input checked="" type="checkbox"/> Other (specify) ▶ DISREGARDED </div> <div style="width: 48%;"> <input type="checkbox"/> Estate (SSN of decedent) _____ <input type="checkbox"/> Plan administrator (TIN) _____ <input type="checkbox"/> Trust (TIN of grantor) _____ <input type="checkbox"/> National Guard <input type="checkbox"/> State/local government <input type="checkbox"/> Farmers' cooperative <input type="checkbox"/> Federal government/military <input type="checkbox"/> REMIC <input type="checkbox"/> Indian tribal governments/enterprises Group Exemption Number (GEN) if any ▶ _____ </div> </div>		
9b If a corporation, name the state or foreign country (if applicable) where incorporated		State _____ Foreign country _____
10 Reason for applying (check only one box)		
<input type="checkbox"/> Started new business (specify type) ▶ _____ <input type="checkbox"/> Hired employees (Check the box and see line 13.) <input type="checkbox"/> Compliance with IRS withholding regulations <input type="checkbox"/> Other (specify) ▶ _____		
<input checked="" type="checkbox"/> Banking purpose (specify purpose) ▶ _____ <input type="checkbox"/> Changed type of organization (specify new type) ▶ _____ <input type="checkbox"/> Purchased going business <input type="checkbox"/> Created a trust (specify type) ▶ _____ <input type="checkbox"/> Created a pension plan (specify type) ▶ _____		
11 Date business started or acquired (month, day, year). See instructions.		12 Closing month of accounting year DECEMBER
13 Highest number of employees expected in the next 12 months (enter -0- if none). If no employees expected, skip line 14.		14 If you expect your employment tax liability to be \$1,000 or less in a full calendar year and want to file Form 944 annually instead of Forms 941 quarterly, check here. (Your employment tax liability generally will be \$1,000 or less if you expect to pay \$4,000 or less in total wages.) If you do not check this box, you must file Form 941 for every quarter. <input type="checkbox"/>
<div style="display: flex; justify-content: space-around;"> <div style="text-align: center;">Agricultural -0-</div> <div style="text-align: center;">Household -0-</div> <div style="text-align: center;">Other -0-</div> </div>		
15 First date wages or annuities were paid (month, day, year). Note. If applicant is a withholding agent, enter date income will first be paid to nonresident alien (month, day, year) ▶ _____		
16 Check one box that best describes the principal activity of your business.		
<div style="display: flex; flex-wrap: wrap;"> <div style="width: 33%;"><input type="checkbox"/> Construction</div> <div style="width: 33%;"><input type="checkbox"/> Rental & leasing</div> <div style="width: 33%;"><input type="checkbox"/> Transportation & warehousing</div> <div style="width: 33%;"><input type="checkbox"/> Health care & social assistance</div> <div style="width: 33%;"><input type="checkbox"/> Accommodation & food service</div> <div style="width: 33%;"><input type="checkbox"/> Wholesale-agent/broker</div> <div style="width: 33%;"><input type="checkbox"/> Real estate</div> <div style="width: 33%;"><input type="checkbox"/> Manufacturing</div> <div style="width: 33%;"><input type="checkbox"/> Finance & insurance</div> <div style="width: 33%;"><input type="checkbox"/> Other (specify)</div> <div style="width: 33%;"><input type="checkbox"/> Wholesale-other</div> <div style="width: 33%;"><input type="checkbox"/> Retail</div> </div>		
17 Indicate principal line of merchandise sold, specific construction work done, products produced, or services provided.		
18 Has the applicant entity shown on line 1 ever applied for and received an EIN? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		
If "Yes," write previous EIN here ▶ _____		
Third Party Designee	Complete this section only if you want to authorize the named individual to receive the entity's EIN and answer questions about the completion of this form.	
	Designee's name SMITH & SHAPIRO, PLLC (GREGORY S. SMITH, ESQ.)	Designee's telephone number (include area code) (702) 318-5033
	Address and ZIP code 2520 St. Rose Parkway, Ste. 220, Henderson, NV 89074	Designee's fax number (include area code) (702) 318-5034
Under penalties of perjury, I declare that I have examined this application, and to the best of my knowledge and belief, it is true, correct, and complete.		Applicant's telephone number (include area code)
Name and title (type or print clearly) ▶ MARIZA M. BELTRAN, MEMBER		(702) 851-7600
Signature ▶ _____ Date ▶ _____		Applicant's fax number (include area code) (702) 318-5034

EXHIBIT 12

EXHIBIT 12


CLERK OF THE COURT

COMP
JEFFERY A. BENDAVID, ESQ.
Nevada Bar No. 6220
JOHN T. MORAN, III, ESQ.
Nevada Bar No. 7453
MORAN BRANDON BENDAVID MORAN
630 South 4th Street
Las Vegas, Nevada 89101
(702) 384-8424
Attorneys for Plaintiff

**DISTRICT COURT
CLARK COUNTY, NEVADA**

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

Plaintiff,

v.

STATE OF NEVADA, DIVISION OF
PUBLIC AND BEHAVIORAL HEALTH
OF THE DEPARTMENT OF HEALTH
AND HUMAN SERVICES; CITY OF LAS
VEGAS, a municipal corporation and
political subdivision of the State of Nevada;
DESERT AIRE WELLNESS, LLC, a
Nevada limited liability company; NULEAF
CLV DISPENSARY, LLC, a Nevada limited
liability company; DOES 1 through 100; and
ROE ENTITIES 1 through 100,

Defendants.

CASE NO: A710597
DEPT. NO: XX

**EXEMPTION FROM
ARBITRATION REQUESTED:**

**(ACTION SEEKING
EQUITABLE RELIEF,
DECLARATORY JUDGMENT,
JUDICIAL REVIEW OF
ADMINISTRATIVE
PROCEEDING, AND
EXTRAORDINARY RELIEF)**

**FIRST AMENDED COMPLAINT AND IN ADDITION, OR IN THE
ALTERNATIVE, FIRST AMENDED PETITION FOR JUDICIAL REVIEW AND
WRIT OF MANDAMUS**

COMES NOW, Plaintiff, GB SCIENCES NEVADA, LLC, a Nevada limited
liability company, by and through its attorneys of record, JEFFERY A. BENDAVID, ESQ.,
and JOHN T. MORAN, III, ESQ., of MORAN BRANDON BENDAVID MORAN, and
hereby submits its First Amended Complaint, and in addition, or in the alternative, First
Amended Petition for Judicial Review and Writ of Mandamus against Defendants, STATE



MORAN BRANDON
BENDAVID MORAN
ATTORNEYS AT LAW

630 SOUTH 4TH STREET
LAS VEGAS, NEVADA 89101
PHONE: (702) 384-8424
FAX: (702) 384-8424

1 OF NEVADA, DIVISION OF PUBLIC AND BEHAVIORAL HEALTH OF THE
2 DEPARTMENT OF HEALTH AND HUMAN SERVICES; CITY OF LAS VEGAS, a
3 municipal corporation and political subdivision of the State of Nevada; DESERT AIRE
4 WELLNESS, LLC, a Nevada limited liability company; NULEAF CLV DISPENSARY,
5 LLC, a Nevada limited liability company; DOES 1 through 100; and ROE ENTITIES 1
6 through 100 (collectively, the "Defendants"), and alleges as follows:
7

8 **I. PARTIES**

9 1. Plaintiff, GB SCIENCES NEVADA, LLC (the "Plaintiff"), is a Nevada
10 limited liability company business in Clark County, Nevada.
11

12 2. Defendant, STATE OF NEVADA, DIVISION OF PUBLIC AND
13 BEHAVIORAL HEALTH OF THE DEPARTMENT OF HEALTH AND HUMAN
14 SERVICES (the "Division") is an agency of the State of Nevada.
15

16 3. Defendant, CITY OF LAS VEGAS ("City of Las Vegas"), a municipal
17 corporation and political subdivision of the State of Nevada.
18

19 4. Upon Plaintiff's information and belief, Defendant, DESERT AIRE
20 WELLNESS, LLC ("Desert Aire"), is a Nevada limited liability company conducting
21 business in Clark County, Nevada.
22

23 5. Upon Plaintiff's information and belief, Defendant, NULEAF CLV
24 DISPENSARY, LLC ("Nuleaf"), is a Nevada limited liability company conducting
25 business in Clark County, Nevada.
26

27 6. The true names and capacities whether individual, corporate, associate or
28 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 Plaintiff who



MORAN BRANDON
BENJAMIN MORAN
ATTORNEYS AT LAW

630 SOUTH 4TH STREET
LAS VEGAS, NEVADA 89101
PHONE: 702.394.0826
FAX: 702.394.0828

1 therefore sues those Defendants by such fictitious names. Plaintiff is informed, believes,
2 and thereon alleges that each of the Defendants designated herein as a DOE or ROE
3 ENTITY are one or more of the applicants improperly or unlawfully issued a provisional
4 registration certificate for the operation of a medical marijuana establishment in the City of
5 Las Vegas by the Division. In addition, or in the alternative, Plaintiff is informed, believes,
6 and thereon alleges that each of the Defendants designated herein as a DOE or ROE
7 ENTITY are one or more of the parties to the Division's proceeding challenged by Plaintiff
8 as part of Plaintiff's Petition for Judicial Review asserted herein. The Division's
9 anonymous application, scoring, and ranking process for the issuance of registration
10 certificate for the operation of a medical marijuana establishment in the City of Las Vegas
11 prevents Plaintiff from knowing the identities of DOE 1 through 100 or ROE ENTITIES 1
12 through 100 at this time. Plaintiff prays for leave to amend this Complaint to insert the true
13 names or identities along with appropriate allegations when same become known.
14

15
16 7. Venue is proper in this Court pursuant to *NRS 13.020(3) and NRS*
17 *233B.130(2)(b)*, in that this is the county where the cause, or some part thereof, arose and
18 the aggrieved party resides.
19

20 **II. GENERAL ALLEGATIONS**

21 8. The allegations of paragraphs 1 through 7 of this Complaint are incorporated
22 by reference herein with the same force and effect as set forth in full below.
23

24 **GENERAL STATUTORY AND REGULATORY FRAMEWORK**

25 9. In 2013, the Nevada Legislature passed Senate Bill 374, which, in part,
26 provided for the registration of medical marijuana establishments authorized to cultivate
27
28



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1 and dispense marijuana and marijuana infused products to those persons authorized to use
2 medicinal marijuana.

3 10. The Nevada Legislature codified Senate Bill 374 in NRS Chapter 453A, *et*
4 *seq.*

5 11. As part of *NRS Chapter 453A*, the Nevada Legislature tasked the Division
6 with protecting the people of Nevada's general welfare, health, and safety through the
7 registration of medical marijuana establishments and medical marijuana establishment
8 agents.
9

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

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

20 CITY OF LAS VEGAS' APPROVAL PROCESS

21 14. In addition to the responsibilities of the Division, the City of Las Vegas, like
22 several other Nevada cities, towns, and counties, was tasked with the responsibility of
23 considering and approving "local" issues related to the registration of a Medical Marijuana
24 Establishment such as "site plans, project descriptions, zoning, and proximity to other
25 business or facilities," as well as business licensing.
26



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1 15. In accordance with such responsibilities, the City Council of the City of Las
2 Vegas enacted Ordinance No. 6321 to establish zoning regulations and standards for
3 medical marijuana establishments.

4 16. The City Council of the City of Las Vegas also enacted Ordinance No. 6324
5 to establish licensing regulations and standards for medical marijuana establishments.
6

7 17. In addition, the City of Las Vegas prepared and issued a separate application
8 packet for any person wishing to obtain the required special use permit and business
9 licensing for the operation of a medical marijuana establishment in the City of Las Vegas.

10 18. Accordingly, forty-three (43) applicants filed applications seeking the City
11 of Las Vegas' approval for zoning and licensing of a medical marijuana establishment to
12 dispense medical marijuana.
13

14 19. On October 28, 2014, the City Council of the City of Las Vegas held a
15 special meeting to consider each applicant for a special use permit for a proposed medical
16 marijuana dispensary.
17

18 20. The City of Las Vegas granted a special use permit to twenty-seven (27)
19 applicants, including Plaintiff.

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

22 22. Six applicants, including Desert Aire withdrew their applications prior to the
23 City Council's October 28, 2014 special meeting.
24

25 23. Upon information and belief, the City of Las Vegas thereafter informed the
26 Division of those applicants granted a special use permit and those applicants denied a
27 special use permit by the City of Las Vegas.
28



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1 **THE DIVISION'S APPLICATION AND APPROVAL PROCESS**

2 24. *NRS Chapter 453A.322(2)* requires any person who wished to operate a
3 medical marijuana establishment in Nevada to submit to the Division an application on a
4 form prescribed by the Division.
5

6 25. In addition, *NRS 453A.322(3)(a)(2)* through (5) provided a list of items that
7 every application for a medical marijuana establishment must have submitted to the
8 Division as part of an application.

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

16 27. To assist the Division in implementing the required statutory application
17 process, the Division adopted *NAC 453A.310(1)*, which obligated the Division upon
18 receiving more than one application for a medical marijuana establishment to determine
19 first that each application was complete and in compliance with NRS Chapter 453A and
20 NAC Chapter 453A.
21

22 28. Upon determining that each application was complete and in compliance,
23 *NAC 453A.310(1)* then obligated the Division to rank from first to last the completed
24 applications within a particular jurisdiction based on the content of each application as it
25 relates to the criteria for evaluation determined by the Division and provided by NRS
26 Chapter 453A.
27
28



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1 29. Supposedly in accordance with these and many other statutory and
2 regulatory requirements, the Division issued an application packet on May 30, 2014.

3 30. Thereafter, the Division set an August 18, 2014 deadline for submitting an
4 application to the Division for the registration of a medical marijuana establishment and
5 began accepting applications on August 5, 2014.
6

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

8 31. *NRS 453A.322(3)* required the Division to register a medical marijuana
9 establishment applicant, issue a medical marijuana establishment registration certificate,
10 and issue a random 20-digit alphanumeric identification number not later than 90 days from
11 the Division's receipt of an application only if such an application for a medical marijuana
12 establishment contained the specific items required by *NRS 453A.322(3)(a)*, which among
13 other items, included the necessary prior zoning approvals from the applicable local
14 jurisdiction identified in *NRS 453A.322(3)(a)(5)*.
15

16 32. However, the requirements of *NRS 453A.322(3)* and the Division's ability to
17 issue a medical marijuana registration certificate were subject expressly to the exceptions
18 set forth in *NRS 453A.326*.
19

20 33. *NRS 453A.326(3)* required that any medical marijuana establishment
21 registration certificate issued by the Division be deemed "provisional" in any city, town, or
22 county that issues business licenses.
23

24 34. *NRS 453A.326(3)* further required that this "provisional" status shall remain
25 until such time as the recipient of this "provisional" medical marijuana registration
26 certificate is in compliance with the applicable city, town, or county's ordinances and rules
27
28



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1 and obtains a business license for the operation of a medical marijuana establishment from
2 the applicable city, town, or county.

3 35. The City of Las Vegas is a Nevada city that enacted ordinances for the
4 zoning and business licensing of medical marijuana establishments.

5 36. As such, *NRS 453A.326(3)* required that any medical marijuana
6 establishment registration certificate issued for the operation of a medical marijuana
7 establishment in the City of Las Vegas be deemed “provisional” until such applicant
8 complies with the City of Las Vegas’ ordinances and rules and obtains a business license
9 from the City of Las Vegas.
10

11 37. The Nevada Legislature anticipated that a recipient of a required
12 “provisional” registration certificate from the Division might not comply with the City of
13 Las Vegas’ ordinances or obtain the required licensing.
14

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

22 39. The Division also anticipated the likelihood that a recipient of a “provisional”
23 registration certificate for the operation of a medical marijuana establishment in the City of
24 Las Vegas could not comply with the City of Las Vegas’ or any other Nevada city, town, or
25 county’s ordinances or otherwise obtain the required zoning and business licensing for the
26 operation of a medical marijuana establishment.
27



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1 40. Accordingly, the Division adopted *NAC 453A.310*, which required the
2 Division to make an initial determination that each application filed with the Division was
3 complete, including proof of evidence that each applicant had obtained the required zoning
4 and licensing from the City of Las Vegas, before ranking any applications.

5
6 41. The Division also adopted *NAC 453A.332*, which obligated the Division to
7 deny any application for a medical marijuana establishment registration certificate if the
8 application was not in compliance with any provision of *NRS Chapter 453A*, which
9 indisputably includes the proof of the City of Las Vegas' approval for zoning and licensing
10 required by *NRS 453.322(3)(a)(5)*.

11
12 42. Further, the Division adopted *NAC 453A.312*, which required the Division to
13 issue "provisional" medical marijuana establishment registration certificates to the highest
14 ranked applicants until the Division issued the number of actual medical marijuana
15 establishment registration certificates designated by the Division, which in the case of the
16 City of Las Vegas was twelve (12) allotted actual registration certificates for medical
17 marijuana dispensaries.

18
19 43. Together, these regulations adopted by the Division contemplated and
20 provided a regulatory solution to the Division for any situation where a recipient of a
21 "provisional" registration certificate failed to obtain the necessary zoning and licensing
22 approvals from the City of Las Vegas, or any similar Nevada city, town, or county, as
23 required by Nevada law.

24
25 44. Pursuant to the regulatory framework, the Division was first to ensure that
26 each applicant had the necessary City of Las Vegas zoning and licensing approvals before
27
28



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1 accepting the application as complete and ranking the application against the Division's
2 criteria.

3 45. In the event that an applicant was issued a "provisional" registration
4 certificate but was denied the required City of Las Vegas zoning or licensing approvals, then
5 the Division was required to then issue additional "provisional" registration certificates to
6 the next ranked applicant until the twelve (12) actual registration certificates allotted the
7 City of Las Vegas were issued by the Division.
8

9 46. The Division's regulatory scheme plainly adopted and endorsed this "next
10 highest ranked applicant" process as a resolution for situations where an applicant or a
11 recipient of a "provisional" registration certificate were denied a special use permit or a
12 business license by the City of Las Vegas, and any other Nevada city, town, or county
13 requiring such approval.
14

15 47. After implementing these regulations on April 1, 2014, the Division's staff
16 identified this "next highest ranked applicant" process as the correct procedure for resolving
17 instances where an applicant or a recipient of a "provisional" registration certificate was
18 denied or unable to obtain the required zoning and licensing at the local level.
19

20 48. During a July 9, 2014 meeting of the Advisory Commission on the
21 Administration of Justice's Subcommittee on the Medical Use of Marijuana, Chad Westom,
22 Bureau Chief of the Division, was questioned about the Division's procedure if an applicant
23 to which the Division issued a "provisional" registration certificate was unsuccessful in
24 obtaining local approval.
25

26 49. In response to this question, Mr. Westom stated, "it was part of the process
27 for the applicants to provide evidence of local zoning and business license approval."
28



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1 50. Mr. Westom also stated that any jurisdiction where the Division issued
2 “provisional” registration certificates that jurisdiction would have the option of denying
3 these businesses at the local level; whereupon the Division would then deny those same
4 businesses and notify the local jurisdiction of the next ranked applicant.

5
6 51. When asked specifically what would happen if the Division approved
7 different applicants than those approved by the local jurisdiction, Mr. Westom stated that the
8 Division would deny any applicant denied by the local jurisdiction and then inform the local
9 jurisdiction who was the next ranked applicant.

10 **PLAINTIFF AND DEFENDANTS’ APPLICATIONS**

11
12 52. On or before the Division’s August 18, 2014 deadline, the Division received
13 approximately forty-nine (49) applications for the City of Las Vegas’ twelve (12) allotted
14 medical marijuana establishment registration certificates for the operation of a medical
15 marijuana dispensary in the City of Las Vegas.

16 53. Plaintiff, Desert Aire, and Nuleaf were among these 49 applicants to the
17 Division.

18
19 54. Prior to submitting an application to the Division, Plaintiff, Desert Aire, and
20 Nuleaf, also each submitted an application to the City of Las Vegas for a Special Use Permit
21 and a Business License as required by the City of Las Vegas’ newly enacted ordinances.

22 55. However, Desert Aire subsequently withdrew its application before the City
23 of Las Vegas and never obtained the required the Special Use Permit or Business License
24 from the City of Las Vegas.

25
26 56. After an October 29, 2014 special meeting, the City Council of the City of
27 Las Vegas denied Nuleaf’s application for a Special Use Permit and Compliance Permit.



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1 57. To the contrary, Plaintiff received a Special Use Permit for the operation of a
2 medical marijuana dispensary from the City of Las Vegas and further, Plaintiff received a
3 Compliance Permit and its application for a Business License was recommended for
4 approval.

5
6 58. In addition, Plaintiff submitted as part of its application to the Division the
7 City of Las Vegas' certification that Plaintiff complied with the City of Las Vegas'
8 ordinances and building requirements concerning the operation of a medical marijuana
9 establishment in the City of Las Vegas.

10
11 59. Upon information and belief, the City of Las Vegas informed the Division of
12 those applicants that it approved for a Special Use Permit, which included Plaintiff, and
13 those applicants that it denied a Special Use Permit, which included Nuleaf, or otherwise
14 had withdrawn their applications, which included Desert Aire.

15 60. Accordingly, only Plaintiff met the requirements of *NRS 453A.322(3)(a)*.

16
17 61. Upon information and belief, the Division, upon receipt of the 49
18 applications for the operation of a medical marijuana dispensary in the City of Las Vegas,
19 never made the required initial determination that each application for the operation of a
20 medical marijuana dispensary was complete as required by *NAC 453A.310(1)*.

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



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1 63. As a result, the Division improperly accepted the applications of Desert Aire
2 and Nuleaf and ranked their applications against the acceptable criteria.

3 64. On or about November 3, 2014, Plaintiff received notification from the
4 Division that it was not issued a “provisional” registration certificate due to the fact that its
5 score was not high enough to rank within the top 12 spots allotted for the City of Las Vegas.
6

7 65. At the same time, Plaintiff discovered that the Division ranked and issued a
8 “provisional” registration certificate to Desert Aire (ranked #10) and Nuleaf (ranked #3)
9 even though each were denied and/or failed to obtain the required Special Use Permit and
10 Business License from the City of Las Vegas.
11

12 66. Had the Division complied with the express requirements of *NRS*
13 *453A.322(3)*, *NAC 453A.310*, *NAC 453A.312*, and *NAC 453A.332*, and the Division’s
14 previous public statements regarding the correct application procedure, neither Desert Aire
15 (ranked #10) nor Nuleaf should have received a ranking let alone a “provisional” registration
16 certificate.
17

18 67. More importantly, Plaintiff’s score (166.86) would have and should been
19 high enough to rank within the top 12 spots (#11) allotted for the City of Las Vegas and
20 therefore, Plaintiff should have received a “provisional” registration certificate from the
21 Division within the 90-day evaluation period.

22 68. Consequently, Plaintiff, in actuality being ranked #11, would have received a
23 “provisional” registration certificate from the Division in accordance with Nevada law and
24 as approved by the City of Las Vegas.
25



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1 **DIVISION'S REFUSAL TO IDENTIFY NEXT HIGHEST RANKED APPLICANT**

2 69. After the Division provided notice of those applicants who were issued a
3 "provisional" registration certificate for the operation of a medical marijuana establishment
4 in the City of Las Vegas, the City of Las Vegas, upon information and belief, inquired
5 and/or requested that the Division identify the next highest ranked applicant(s) since Desert
6 Aire (ranked #10) and Nuleaf (ranked #3) were denied and/or failed to obtain the required
7 Special Use Permit and Business License from the City of Las Vegas.
8

9 70. Despite the Division's adoption of *NAC 453A.312(1)* requiring the Division
10 to issue "provisional" registration certificates to the next highest ranked applicants until the
11 City of Las Vegas' allotment of actual registration certificates was filled and contrary to the
12 express statements made by the Division's representative, the Division, upon information
13 and belief, informed the City of Las Vegas and Plaintiff that it would not identify the next
14 highest ranked applicant.
15

16 71. Upon information and belief, the Division further informed the City of Las
17 Vegas that it would and could not issue any further "provisional" registration certificates
18 since the Division only was authorized by Nevada law to issue registration certificates
19 within a 90-day period that expired on November 3, 2014.
20

21 72. The Division's procedural reversal now results in the City of Las Vegas being
22 unable to fill two (2) of its twelve (12) allotted slots for medical marijuana dispensaries and
23 Plaintiff being unlawfully denied a "provisional" registration certificate that it should have
24 been issued had the Division complied with the provisions of NRS Chapter 453A and NAC
25 Chapter 453A.
26



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1 **THE CITY OF LAS VEGAS' SUBSEQUENT PROCESSING OF DESERT AIRE**
2 **AND NULEAF'S APPLICATIONS**

3 73. Previous to Desert Aire's unlawful receipt of a "provisional" registration
4 certificate from the Division, Desert Aire applied to the City of Las Vegas for a Special Use
5 Permit and Compliance Permit for the operation of a medical marijuana establishment in the
6 City of Las Vegas.

7 74. The Planning Commission for the City of Las Vegas recommended denial (4-
8 1-2 vote) of Desert Aire's request for Special Use Permit and Compliance Permit, with 68
9 protests having been lodged against Desert Aire's requests.

11 75. Prior to the City Council's consideration of Desert Aire's request for Special
12 Use Permit and Compliance Permit on October 28-29, 2014, Desert asked for and was
13 granted the withdrawal of its applications before the City of Las Vegas.

14 76. Despite Desert Aire's withdrawal, the Division unlawfully issued Desert Aire
15 a "provisional" registration certificate for the operation of a medical marijuana
16 establishment when in truth, Desert Aire's application should have been deemed incomplete,
17 disqualified, and denied pursuant to NRS Chapter 453A and NAC Chapter 453A.

18 77. The City Council for the City of Las Vegas, nonetheless, convened on
19 December 3, 2014 to hear Desert Aire's requests for rescission and rehearing of Special Use
20 Permit and Compliance Permit (Agenda Items #72-75).
21

22 78. On December 3, 2014 the City Council for the City of Las Vegas convened
23 its regular meeting to hear its regular Agenda, which included Desert Aire's requests.
24

25 79. After discussion on the Agenda Items (#72-75) concerning Desert Aire's
26 requests, the City Council for the City of Las Vegas approved Desert Aire's requests and
27 scheduled a Hearing on December 17, 2014.
28



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1 80. Nuleaf also applied to the City of Las Vegas for a Special Use Permit and
2 Compliance Permit for the operation of a medical marijuana establishment in the City of Las
3 Vegas.

4 81. The City of Las Vegas' Planning Commission, on September 23, 2014,
5 recommended denial (4-0-2 vote) of Nuleaf's request for Special Use Permit.
6

7 82. Thereafter, the City Council for the City of Las Vegas, on October 28-29,
8 2014, denied (4-2-1 vote) Nuleaf's request for a Special Use Permit and Compliance Permit;
9 with 70 separate protests having been lodged against Nuleaf's requests.

10 83. Despite the City of Las Vegas' denial of Nuleaf's requests, the Division
11 unlawfully issued Nuleaf a "provisional" registration certificate for the operation of a
12 medical marijuana establishment in the City of Las Vegas, when in truth, Nuleaf's
13 application should have been deemed incomplete, disqualified, and denied pursuant to NRS
14 Chapter 453A and NAC Chapter 453A.
15

16 84. On December 3, 2014 the City Council for the City of Las Vegas convened
17 its regular meeting to hear its regular Agenda, which included a request from Nuleaf to
18 rescind and rehear its previous denial of its requests for a Special Use Permit and
19 Compliance Permit (Agenda Items #76-79).
20

21 85. After discussion by the City Council for the City of Las Vegas, the Agenda
22 items (#76-79) concerning Nuleaf's request for reconsideration were stricken by the City
23 Council.
24

25 86. However, upon information and belief, Nuleaf intends to seek a text
26 amendment to the City of Las Vegas' Municipal Code authorizing the "resubmittal" of
27 Nuleaf's applications and requests for Special Use Permit and Compliance Permit.
28



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1 87. Upon information and belief, Nuleaf, upon the City Council for the City of
2 Las Vegas' approval of this text amendment, intends to seek relocation of its proposed
3 medical marijuana establishment, in direct violation of NRS Chapter 453A and NAC
4 Chapter 453A, and despite the fact that Nuleaf's application to the Division was incomplete
5 and should have been disqualified and denied, *per se*, pursuant to NRS Chapter 453A and
6 NAC Chapter 453A.
7

8 **III. FIRST CLAIM FOR RELIEF**
9 **(Declaratory Judgment)**

10 88. The allegations of paragraphs 1 through 87 of this Complaint are
11 incorporated by reference herein with the same force and effect as set forth in full below.

12 89. The Division's refusal to issue Plaintiff a "provisional" registration
13 certificate affects Plaintiff's rights afforded it by NRS Chapter 453A, NAC Chapter 453A,
14 and other Nevada laws and regulations.
15

16 90. Further, the Division's unlawful acceptance and ranking of Desert Aire and
17 Nuleaf's applications for a medical marijuana establishment registration certificate for the
18 operation of a medical marijuana establishment in the City of Las Vegas and the Division's
19 subsequent, unlawful issuance to each of a "provisional" registration certificate also affects
20 the rights of Plaintiff afforded it by NRS Chapter 453A, NAC Chapter 453A, and other
21 Nevada laws and regulations.
22

23 91. The Division's actions and/or inactions also have created an actual
24 justiciable controversy ripe for judicial determination between Plaintiff, Desert Aire,
25 Nuleaf, and the Division with respect to the construction, interpretation, and
26 implementation of NRS Chapter 453A and NAC Chapter 453A as to Plaintiff.
27
28



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1 92. Accordingly, Plaintiff seeks a declaration from this Court that the Division
2 improperly accepted and ranked Desert Aire and Nuleaf's application for a medical
3 marijuana establishment registration certificate for the operation of a medical marijuana
4 establishment in the City of Las Vegas.

5
6 93. Plaintiff also seeks a declaration from this Court that the Division
7 improperly ranked and subsequently issued Desert Aire and Nuleaf a "provisional"
8 registration certificate for the operation of a medical marijuana establishment in the City of
9 Las Vegas as each failed to submit a complete application for a registration certificate for
10 the operation of a medical marijuana establishment as required by *NRS 453A.322*.

11
12 94. Plaintiff also seeks a declaration from this Court that Desert Aire and
13 Nuleaf's application for a medical marijuana establishment registration certificate for the
14 operation of a medical marijuana establishment in the City of Las Vegas must be denied by
15 the Division since each failed to submit proof to the Division of their licensure by the City
16 of Las Vegas or a letter from the City of Las Vegas certifying compliance with the City of
17 Las Vegas' restrictions regarding proposed medical marijuana establishments and had
18 satisfied all applicable building requirements of the City of Las Vegas as expressly required
19 by *NRS 453A.322(3)(a)(5)*.

20
21 95. Plaintiff also seeks a declaration from this Court that the Division cannot
22 issue Desert Aire and Nuleaf an actual registration certificate for the operation of a medical
23 marijuana establishment in the City of Las Vegas since each failed to obtain and/or were
24 denied a Special Use Permit and Business Licenses from the City of Las Vegas for the
25 operation a medical marijuana establishment.
26



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1 96. Plaintiff also seeks a declaration from this Court that the Division
2 improperly denied Plaintiff a “provisional” registration certificate for the operation of a
3 medical marijuana dispensary in the City of Las Vegas.

4 97. Plaintiff also seeks a declaration from this Court that the Division
5 improperly refused to identify Plaintiff as the next available applicant in accordance with
6 applicable Nevada law upon notification that Desert Aire and Nuleaf failed to obtain and/or
7 were denied a Special Use Permit and Business Licenses from the City of Las Vegas for the
8 operation a medical marijuana establishment.

9
10 98. Plaintiff also seeks a declaration from this Court that the Division must issue
11 Plaintiff a “provisional” registration certificate for the operation of a medical marijuana
12 establishment in the City of Las Vegas since Plaintiff’s score issued by the Division would
13 have ranked high enough (#11) to be within the top 12 had the Division properly applied
14 the provisions of NRS Chapter 453A and NAC Chapter 453A.

15
16 99. Plaintiff also seeks a declaration from this Court that the Division must issue
17 Plaintiff a “provisional” registration certificate for the operation of a medical marijuana
18 establishment in the City of Las Vegas since Plaintiff is the next highest ranked applicant
19 ranked by the Division and the City of Las Vegas’ allotment of twelve (12) actual
20 registration certificates have not been filled.

21
22 100. Plaintiff also seeks a declaration from this Court that the Division is not
23 prohibited by NRS Chapter 453A, NAC Chapter 453A, or any other applicable Nevada law
24 or regulation from issuing Plaintiff at any time, a “provisional” registration certificate for
25 the operation of a medical marijuana establishment in the City of Las Vegas since the City
26 of Las Vegas’ allotment of twelve (12) actual registration certificates have not been filled.



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1 101. Plaintiff also seeks a declaration from this Court that the City of Las Vegas
2 is prohibited from considering Desert Aire's application for a Special Use Permit after the
3 Division and the City of Las Vegas' period for submitting and considering applications has
4 closed.

5
6 102. Plaintiff also seeks a declaration from this Court that the City of Las Vegas
7 is prohibited from reconsidering the City of Las Vegas' previous denial of Nuleaf's
8 application for a Special Use Permit after the Division and the City of Las Vegas' period
9 for submitting and considering applications has closed.

10 103. Plaintiff also seeks a declaration from this Court that the Division is
11 prohibited from issuing Desert Aire and Nuleaf an actual registration certificate for the
12 operation of a medical marijuana establishment in the City of Las Vegas since both failed
13 to comply with the express requirements of *NRS 453A.322(3)(a)(5)* at the time they
14 submitted their applications to the Division and at any time during the Division's
15 application period that ended on November 3, 2014.

16
17 104. It has also become necessary for Plaintiff to retain the services of an
18 attorney to commence this action, and Plaintiff is therefore entitled to reasonable attorney's
19 fees and the costs of this suit.
20

21 **IV. SECOND CLAIM FOR RELIEF**
22 **(Injunctive Relief)**

23 105. The allegations of paragraphs 1 through 103 of this Complaint are
24 incorporated by reference herein with the same force and effect as set forth in full below.

25 106. The Division's unlawful acceptance and ranking of Desert Aire and Nuleaf's
26 incomplete and unqualified applications for a medical marijuana establishment registration
27 certificate has and continues to irreparably harm Plaintiff as Plaintiff, as a consequence of
28



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1 the Division's unlawful actions, has been denied the issuance of a "provisional" registration
2 certificate from the Division that Plaintiff is entitled to receive under the proper application
3 of the provisions of NRS Chapter 453A and NAC Chapter 453A.

4 107. The Division's unlawful issuance to Desert Aire and Nuleaf of a
5 "provisional" registration certificate for the operation of a medical marijuana establishment
6 in the City of Las Vegas has and continues to irreparably harm Plaintiff as Plaintiff, as a
7 consequence of the Division's unlawful actions, has been denied the issuance of a
8 "provisional" registration certificate from the Division that Plaintiff is entitled to receive
9 under the proper application of the provisions of NRS Chapter 453A and NAC Chapter
10 453A.
11

12 108. The Division's continued refusal to issue Plaintiff a "provisional"
13 registration certificate for the operation of a medical marijuana establishment in the City of
14 Las Vegas has and continues to irreparably harm Plaintiff as Plaintiff otherwise would have
15 received a "provisional" registration certificate for the operation of a medical marijuana
16 establishment in the City of Las Vegas had the Division complied with the actual
17 requirements of NRS Chapter 453A and NAC 453A.
18

19 109. The Division's continued refusal to comply with the requirements of NRS
20 Chapter 453A and NAC Chapter 453A in declaring Plaintiff as the next available qualified
21 applicant has and continues to harm Plaintiff as Plaintiff has not received a "provisional"
22 registration certificate for the operation of a medical marijuana establishment in the City of
23 Las Vegas that Plaintiff otherwise is entitled to receive pursuant to NRS Chapter 453A and
24 NAC Chapter 453A.
25
26
27
28



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1 110. The Division's continued refusal to issue any further "provisional"
2 registration certificates for the operation of a medical marijuana establishment in the City
3 of Las Vegas even though the City of Las Vegas' allotment of twelve (12) actual
4 registration certificates has not been filed has and continues to irreparably harm Plaintiff
5 since Plaintiff is the next available qualified applicant to receive a "provisional" registration
6 certificate from the Division under the proper application of the provisions of NRS Chapter
7 453A and NAC Chapter 453A.
8

9 111. Further, Plaintiff will likely succeed on the merits since the plain language
10 of the applicable provisions of NRS Chapter 453A and NAC Chapter 453A require the
11 Division to issue Plaintiff a "provisional" registration certificate for the operation of a
12 medical marijuana establishment in the City of Las Vegas either as a qualified applicant
13 whose score issued by the Division is within the top 12 required for applicants within the
14 City of Las Vegas, or Plaintiff is the next highest ranked applicant to receive a
15 "provisional" registration certificate since Desert Aire and Nuleaf have failed or otherwise
16 been denied the required Special Use Permit and Business License by the City of Las
17 Vegas.
18
19

20 112. Plaintiff has no adequate remedy at law and compensatory relief is
21 inadequate.
22

23 113. Accordingly, Plaintiff is entitled to injunctive relief enjoining the Division:

24 a. From issuing an actual registration certificates to Desert Aire and Nuleaf for
25 the operation of a medical marijuana establishment in the City of Las Vegas;
26
27
28



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1 b. To issue Plaintiff a “provisional” registration certificate for the operation of
2 a medical marijuana establishment in the City of Las Vegas as an applicant whose score
3 was within the top 12 positions allotted for the City of Las Vegas;

4 c. To identify Plaintiff as the next highest ranked applicant to receive a
5 “provisional” registration certificate for the operation of a medical marijuana establishment
6 in the City of Las Vegas;

7 d. To issue Plaintiff a “provisional” registration certificate for the operation of
8 a medical marijuana establishment in the City of Las Vegas as the next highest ranked
9 applicant eligible to receive a “provisional” registration certificate since Desert Aire and
10 Nuleaf have failed or otherwise been denied the required Special Use Permit and Business
11 License required by the City of Las Vegas; and
12

13 e. To continue to issue “provisional” registration certificates to the next
14 highest ranked applicants as required by *NAC 453A.312(1)* until the Division has issued the
15 number of actual registration certificates allotted the City of Las Vegas.
16

17 114. In addition, Plaintiff is entitled to Injunctive Relief enjoining the City of Las
18 Vegas from:
19

20 a. Considering Desert Aire’s application for a Special Use Permit at any time,
21 including, but not limited to the City Council for the City of Las Vegas’ meeting scheduled
22 for December 17, 2014; and
23

24 b. Reconsidering Nuleaf’s application and/or Nuleaf’s denial of its application
25 for a Special Use Permit at any time, including, but not limited to the City Council for the
26 City of Las Vegas’ meeting scheduled for December 17, 2014; and
27



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1 c. Issuing Desert Aire or Nuleaf a Special Use Permit or a Business License for
2 the operation of a medical marijuana establishment in the City of Las Vegas.

3 115. It has also become necessary for Plaintiff to retain the services of an attorney
4 to commence this action, and Plaintiff is therefore entitled to reasonable attorney's fees and
5 the costs of this suit.
6

7 **In addition, or in the alternative to Plaintiff's allegations and Claims for Relief**
8 **asserted above, Plaintiff also alleges the following and petitions this Court for Judicial**
9 **Review in the manner prescribed by *NRS 233B.010, et seq.***

10 **PETITION FOR JUDICIAL REVIEW**

11 116. The allegations of paragraphs 1 through 115 of this Complaint are
12 incorporated by reference herein with the same force and effect as set forth in full below.
13

14 117. Petitioner, GB Sciences Nevada, LLC, a Nevada limited liability company
15 (hereinafter "Petitioner") is an applicant to the Division for the Division's issuance of a
16 registration certificate for the operation of a medical marijuana establishment in the City of
17 Las Vegas.
18

19 118. Through the Division's application process and the Division's review,
20 scoring, and ranking of Petitioner's application for a medical marijuana registration
21 certificate, the Division has determined the legal rights, duties, or privileges of Petitioner as
22 to the issuance of a registration certificate for the operation of a medical marijuana facility
23 in the City of Las Vegas.
24

25 119. Accordingly, Petitioner is a party of record to proceedings at the Division in
26 a contested matter.
27



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1 120. On or about November 3, 2014, the Division sent out a letter informing
2 Petitioner that the Division had not issued a “provisional” registration certificate to
3 Petitioner because Petitioner did not achieve a score high enough to rank it in the top 12
4 applicants within the City of Las Vegas.

5 121. On or about November 20, 2014, Petitioner sent correspondence to the
6 Division requesting a hearing regarding Petitioner’s application to the Division for a
7 registration certification for the operation of a medical marijuana facility in the City of Las
8 Vegas.

9 122. On November 25, 2014, the Division sent out a letter informing Petitioner
10 that Petitioner’s request for a hearing was denied since the Nevada Legislature allegedly
11 did not provide Petitioner hearing rights concerning its application for a registration
12 certificate.

13 123. As such, the Division’s November 3, 2014 notification to Petitioner refusing
14 to issue Petitioner a “provisional” registration certificate for the operation of a medical
15 marijuana establishment in the City of Las Vegas is the Division’s final decision on the
16 matter.

17 124. As such, Petitioner has been aggrieved by the Division’s “final” refusal to
18 issue Petitioner a “provisional” registration certificate for the operation of a medical
19 marijuana establishment in the City of Las Vegas in accordance with NRS Chapter 453A
20 and NAC Chapter 453A.

21 125. Pursuant to *NRS 233B.130*, Petitioner is entitled to Judicial Review of the
22 Division’s “final decision” denying Petitioner’s application and refusing to issue Petitioner
23 a “provisional” registration certificate for the operation of a medical marijuana
24



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1 establishment in the City of Las Vegas in accordance with NRS Chapter 453A and NAC
2 Chapter 453A.

3 126. Petitioner, therefore, petitions this Court for Judicial Review of the
4 proceeding at the Division, including, but not limited to, Petitioner's submission, review,
5 scoring, and ranking of its application for registration certificate for the operation of a
6 medical marijuana establishment in the City of Las Vegas.

7
8 127. Petitioner further demands that the entire record of the proceeding at the
9 Division be transmitted by the Division in the manner required by *NRS 233B.131*.

10 **PETITION FOR WRIT OF MANDAMUS**

11
12 128. The allegations of paragraphs 1 through 127 of this Complaint are
13 incorporated by reference herein with the same force and effect as set forth in full below.

14 129. The Division was required to solicit applications, review, score, rank, and
15 issue "provisional" registration certificates for the operation of a medical marijuana
16 establishment in the City of Las Vegas in compliance with NRS Chapter 453A, NAC 453A,
17 and other Nevada laws and regulations.

18
19 130. The Division failed to comply with the requirements of NRS Chapter 453A,
20 NAC 453A, and other Nevada laws and regulations when it unlawfully issued "provisional"
21 registration certificates for the operation of a medical marijuana establishment in the City
22 of Las Vegas to Desert Aire and Nuleaf.

23
24 131. The Division further failed to comply with the requirements of NRS Chapter
25 453A, NAC 453A, and other Nevada laws and regulations when it unlawfully denied
26 Petitioner a "provisional" registration certificate for the operation of a medical marijuana
27 establishment in the City of Las Vegas.



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1 132. Accordingly, the Division has failed to perform acts that Nevada law
2 compelled the Division to perform.

3 133. Petitioner has no plain, speedy, and adequate remedy in the ordinary course
4 of law to correct the Division's failure to perform as required by Nevada law or compel the
5 Division to perform, as it is required by Nevada law.
6

7 134. Petitioner, therefore, petitions this Court for a Writ of Mandamus as alleged
8 and in a formal Application for Writ of Mandamus to be filed separately, to compel the
9 Division to issue Petitioner the "provisional" registration certificate for the operation of a
10 medical marijuana establishment in the City of Las Vegas that Petitioner was entitled to
11 receive had the Division complied with the requirements of NRS Chapter 453A, NAC
12 453A, and other Nevada laws and regulations.
13

14 **WHEREFORE**, Plaintiff prays for the following:

15 1. For Declaratory Judgment(s) in the manner set forth in Plaintiff's First
16 Claim for Relief;

17 2. For injunctive relief, specifically a preliminary and permanent injunction
18 enjoining the Division:
19

20 a. From issuing an actual registration certificates to Desert Aire and
21 Nuleaf for the operation of a medical marijuana establishment in the City of Las Vegas;

22 b. To issue Plaintiff a "provisional" registration certificate for the
23 operation of a medical marijuana establishment in the City of Las Vegas as an applicant
24 whose score was within the top 12 positions allotted for the City of Las Vegas;
25
26



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1 c. To identify Plaintiff as the next highest ranked applicant to receive a
2 “provisional” registration certificate for the operation of a medical marijuana establishment
3 in the City of Las Vegas;

4 d. To issue Plaintiff a “provisional” registration certificate for the
5 operation of a medical marijuana establishment in the City of Las Vegas as the next highest
6 ranked applicant eligible to receive a “provisional” registration certificate since Desert Aire
7 and Nuleaf failed to obtain or otherwise were denied the required Special Use Permit and
8 Business License required by the City of Las Vegas; and

9 e. To continue to issue “provisional” registration certificates to the next
10 highest ranked applicants as required by *NAC 453A.312(1)* until the Division has issued the
11 number of actual registration certificates allotted the City of Las Vegas.

12 3. For injunctive relief, specifically a preliminary and permanent injunction
13 enjoining the City of Las Vegas from:

14 a. Considering Desert Aire’s application for a Special Use Permit at any time,
15 including, but not limited to the City Council for the City of Las Vegas’ meeting scheduled
16 for December 17, 2014;

17 b. Reconsidering Nuleaf’s application and/or Nuleaf’s denial of its application
18 for a Special Use Permit at any time, including, but not limited to the City Council for the
19 City of Las Vegas’ meeting scheduled for December 17, 2014; and

20 c. Issuing Desert Aire or Nuleaf a Special Use Permit or a Business License for
21 the operation of a medical marijuana establishment in the City of Las Vegas.

22 4. For reasonable attorney’s fees and costs of suit; and

23 5. For any other such relief as this Court deems just and proper.



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1 In addition, or in the alternative, Plaintiff also petitions this Court for Judicial Review
2 of the Division's "final decision" denying Petitioner's application and refusing to issue
3 Petitioner a "provisional" registration certificate for the operation of a medical marijuana
4 establishment in the City of Las Vegas in accordance with NRS Chapter 453A and NAC
5 Chapter 453A.
6

7 In addition, or in the alternative, Petitioner also petitions this Court to issue a Writ of
8 Mandamus compelling the Division to comply with the requirements of NRS Chapter
9 453A, NAC 453A, and other Nevada laws and regulations and issue Petitioner a
10 "provisional" registration certificate for the operation of a medical marijuana establishment
11 in the City of Las Vegas.
12

13 DATED this 5th day of December, 2014

14 **MORAN BRANDON BENDAVID MORAN**

15 /s/: Jeffery A. Bendavid, Esq.

16 **JEFFERY A. BENDAVID, ESQ.**

17 Nevada Bar No. 6220

18 **JOHN T. MORAN, III, ESQ.**

19 Nevada Bar No. 7453

20 630 South 4th Street

21 Las Vegas, Nevada 89101

22 (702) 384-8424

23 *Attorneys for Plaintiff*
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EXHIBIT 11

EXHIBIT 11



CLERK OF THE COURT

VDSM
JEFFERY A. BENDAVID, ESQ.
Nevada Bar No. 6220
JOHN T. MORAN, III, ESQ.
Nevada Bar No. 7453
MORAN BRANDON BENDAVID MORAN
630 South 4th Street
Las Vegas, Nevada 89101
(702) 384-8424
Attorneys for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

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

Plaintiff,

v.

STATE OF NEVADA, DIVISION OF
PUBLIC AND BEHAVIORAL HEALTH
OF THE DEPARTMENT OF HEALTH
AND HUMAN SERVICES; CITY OF
LAS VEGAS, a municipal corporation and
political subdivision of the State of
Nevada; DESERT AIRE WELLNESS,
LLC, a Nevada limited liability
company; NULEAF CLV DISPENSARY,
LLC, a Nevada limited liability company;
DOES 1 through 100; and ROE
ENTITIES 1 through 100,

Defendants.

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

**NOTICE OF VOLUNTARY
DISMISSAL WITHOUT
PREJUDICE OF DEFENDANT
DESERT AIRE WELLNESS, LLC,
ONLY**

Comes now Plaintiff, by and through its attorney of record, JEFFERY BENDAVID,
ESQ. of MORAN BRANDON BENDAVID MORAN, and pursuant to N.R.C.P. 41(a)(1)(i),
voluntarily dismisses, without prejudice, the above-captioned matter against Defendant,

/ / /

/ / /



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ATTORNEY AT LAW

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1 DESERT AIRE WELLNESS, LLC, *only*, a Nevada limited liability company.

2 DATED this 1st day of April, 2015.

3
4 MORAN BRANDON BENDAVID MORAN

5
6 /s/: Jeffery A. Bendavid, Esq.

7 JEFFERY A. BENDAVID, ESQ.

8 Nevada Bar No. 6220

9 JOHN T. MORAN, III, ESQ.

10 Nevada Bar No. 7453

11 630 South 4th Street

12 Las Vegas, Nevada 89101

13 Attorneys for Plaintiff



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EXHIBIT 10

EXHIBIT 10



CLERK OF THE COURT

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Attorneys for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

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

Plaintiff,

v.

STATE OF NEVADA, DIVISION OF
PUBLIC AND BEHAVIORAL HEALTH
OF THE DEPARTMENT OF HEALTH
AND HUMAN SERVICES; CITY OF
LAS VEGAS, a municipal corporation and
political subdivision of the State of
Nevada; DESERT AIRE WELLNESS,
LLC, a Nevada limited liability
company; NULEAF CLV DISPENSARY,
LLC, a Nevada limited liability company;
DOES 1 through 100; and ROE
ENTITIES 1 through 100,

Defendants.

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

**NOTICE OF VOLUNTARY
DISMISSAL WITHOUT
PREJUDICE OF DEFENDANT
CITY OF LAS VEGAS ONLY**

Comes now Plaintiff, by and through its attorney of record, JEFFERY BENDAVID,
ESQ. of MORAN BRANDON BENDAVID MORAN, and pursuant to N.R.C.P. 41(a)(1)(i),
voluntarily dismisses, without prejudice, the above-captioned matter against Defendant, CITY
OF LAS VEGAS *only*, a municipal corporation and political subdivision of the State of Nevada.



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1 CITY OF LAS VEGAS has not yet entered an appearance or filed an Answer to Plaintiff's
2 Complaint.

3 DATED this 23rd day of January, 2015.
4

5 **MORAN BRANDON BENDAVID MORAN**

6
7 /s/: Jeffery A. Bendavid, Esq.

8 **JEFFERY A. BENDAVID, ESQ.**

9 Nevada Bar No. 6220

10 **JOHN T. MORAN, III, ESQ.**

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14 *Attorneys for Plaintiff*
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EXHIBIT 9

Electronically Filed
Apr 20 2016 08:32 a.m.
Tracie K. Lindeman
Clerk of Supreme Court

EXHIBIT 9


CLERK OF THE COURT

MOT
James E. Shapiro, Esq.
Nevada Bar No. 7907
Sheldon A. Herbert, Esq.
Nevada Bar No. 5988
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Attorneys for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

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

Plaintiff,

vs.

Case No. **A-14-710597-C**
Dept. No. XX

STATE OF NEVADA, DIVISION OF PUBLIC AND BEHAVIORAL HEALTH OF THE DEPARTMENT OF HEALTH AND 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,

Defendants.

PLAINTIFF'S MOTION TO ALTER OR AMEND JUDGMENT; OR, IN THE ALTERNATIVE MOTION FOR PARTIAL RECONSIDERATION

COMES NOW Plaintiff GB SCIENCES NEVADA, LLC, a Nevada limited liability company ("GB Sciences"), by and through its attorneys of record, SMITH & SHAPIRO, PLLC, and files its Motion to Alter or Amend Judgment; or, in the Alternative, Motion for Partial Reconsideration of the Court's Order entered on December 14, 2015 (the "Motion").

\\
\\
\\

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(702) 318-5033

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1 This Motion is made and based upon the pleadings and papers on file herein, the attached
2 Exhibits, and the following points and authorities submitted in support hereof.

3 DATED this 23rd day of December, 2015.

4 SMITH & SHAPIRO, PLLC

5 /s/ James E. Shapiro, Esq.
6 James E. Shapiro, Esq.
7 Nevada Bar No. 7907
8 Sheldon A. Herbert, Esq.
9 Nevada Bar No. 5988
10 2520 St. Rose Parkway, Suite 220
11 Henderson, NV 89074
12 *Attorneys for Plaintiff*

13 **NOTICE OF MOTION**

14 TO: ALL PARTIES OF INTEREST:

15 PLEASE TAKE NOTICE that the undersigned will bring the above and foregoing
16 PLAINTIFF'S MOTION TO ALTER OR AMEND JUDGMENT; OR, IN THE ALTERNATIVE
17 MOTION FOR PARTIAL RECONSIDERATION before Department No. XX of the EIGHTH
18 JUDICIAL DISTRICT COURT on the 3 day of Feb., 2016, at 8:30 am.m. or as soon
19 thereafter as counsel can be heard.

20 DATED this 23rd day of December, 2015.

21 SMITH & SHAPIRO, PLLC

22 /s/ James E. Shapiro, Esq.
23 James E. Shapiro, Esq.
24 Nevada Bar No. 7907
25 Sheldon A. Herbert, Esq.
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27 2520 St. Rose Parkway, Suite 220
28 Henderson, NV 89074
Attorneys for Plaintiff

MEMORANDUM OF POINTS AND AUTHORITIES

I.

PREFATORY STATEMENT

Over the past couple of months, numerous motions have been filed. While the Court has been very efficient in handling the different motions, in the recent blur of events, the Court issued a premature ruling in violation of GB Sciences' due process rights.

Specifically, on December 14, 2015, this Court entered an Order (the "MSJ Order") wherein the Court took "judicial notice that pursuant to District Court order dated October 8, 2015, in Acres Medical, LLC v. Department of Health and Human Services, Division of Public and Behavioral Health, et al., Case Number A-15-719637-W, Acres should have been the thirteenth ranked applicant on November 3, 2014." See page 6:1-7 of the Order entered by the Court on December 14, 2015, a true and correct copy of which is attached hereto as Exhibit "1" and incorporated herein by this reference. Based upon this judicial notice/finding, the Court ordered the Department of Health and Human Services, Division of Public and Behavioral Health, et al. (the "Division") to issue the now available registration certificate to Acres Medical, LLC ("Acres"). See Exhibit "1", page 9:1-2.

While at first blush there is nothing wrong with the Court taking judicial notice of the November 3, 2014 Order (the "Acres Order") in Acres Medical, LLC v. Department of Health and Human Services, Division of Public and Behavioral Health, et al., Case Number A-15-719637-W (the "Acres Lawsuit"), the ultimate ruling of the Court was based upon the false assumption that the Acres Order is binding upon GB Sciences and/or that GB Sciences has no valid claims against Acres that would alter the respective priority between Acres and GB Sciences. Further, the Court's ruling deprives GB Sciences of its right to be heard and to present evidence and arguments in its behalf.

Under the same equitable powers by which this Court revoked NuLeafCLV Dispensary, LLC's ("NuLeaf") registration certificate and ordered the Division to issue it to Acres, this Court has the power, indeed the duty, to consider GB Sciences argument that as between Acres and GB Sciences, the registration certificate should be issued to GB Sciences. However, by issuing the MSJ Order without giving GB Sciences any opportunity to be heard on its counterclaims against Acres, the Court has deprived GB Sciences of its due process rights.

1 Unless and until this Court provides GB Sciences with a full and fair opportunity to flush out
2 its counterclaims against Acres and to make such arguments as GB Sciences feels are appropriate under
3 the circumstances, that portion of the MSJ Order that addresses the relative positions of GB Sciences
4 and Acres should be stricken and removed.

5 **II.**

6 **STATEMENT OF FACTS**

7 **A. FACTUAL BACKGROUND.**

8 This Court is very familiar with the factual background of this case, which background is set
9 forth in detail in the Court's December 14, 2015 MSJ Order. For this reason, and because the basis of
10 the present motion is procedural instead of factual, the factual background will not be restated here.

11 **B. PROCEDURAL BACKGROUND.**

12 **1. GB Sciences' Motion for Summary Judgment.**

13 On September 18, 2015, GB Sciences filed its Motion for Summary Judgment (the
14 "MSJ"). At the time the MSJ was filed, Acres was not a party to this lawsuit. In fact, the Acres Order
15 upon which this Court relied had not yet been entered.

16 On October 5, 2015, NuLeaf filed its Opposition to the MSJ and Countermotion for Summary
17 Judgment. Again, when NuLeaf filed its Opposition and Countermotion, Acres was not a party to this
18 lawsuit and the Acres Order had not yet been entered.

19 On October 14, 2015, GB Sciences filed its Reply to NuLeaf's Opposition and Opposition to
20 NuLeaf's Countermotion. By this point, the Acres Order had been entered (only six days prior), but
21 Acres was still not a party to this lawsuit, nor had they filed their Motion to Intervene.

22 **2. Acres Motion to Intervene.**

23 On October 19, 2015, after GB Sciences Motion had been fully briefed¹, Acres filed its
24 Motion to Intervene. Thus, none of the parties addressed in their briefs how Acres' recent involvement
25 affected the pending motions.

26
27 ¹ The only brief which had not been filed by the time that Acres filed its Motion to Intervene was NuLeaf's Reply
28 in Support of its Countermotion for Summary Judgment, which was filed on November 3, 2015. However, NuLeaf raises
no arguments relating to Acres in that brief (outside of mentioning Acres in a footnote), nor would it have been
appropriate for NuLeaf to do so due to the limitations of what can be included in reply briefs.

1 3. The November 9, 2015 Hearing.

2 On November 9, 2015 a hearing was held both on GB Sciences Motion for Summary
3 Judgment and on Acres Motion to Intervene. At that hearing, Acres Motion to Intervene was granted.
4 However, the Court took GB Sciences' MSJ under advisement for further consideration. Importantly,
5 none of the parties made any arguments to the Court relating to Acres involvement. In fact, upon
6 inquiry, counsel for GB Sciences noted to the Court that there would be future pleadings and arguments
7 to determine the relative positions of GB Sciences and Acres. Outside of this comment, no arguments
8 were raised by any parties relative to Acres, primarily because the issue was not properly in front of the
9 Court (as it had not been briefed), as well as because none of the parties were prepared to make any such
10 arguments at that time (as Acres' Motion to Intervene had been granted just moments before).

11 4. Acres Complaint in Intervention.

12 On November 17, 2015, Acres filed its Complaint in Intervention ("Acres Complaint").
13 a true and correct copy which is attached hereto as Exhibit "2" and incorporated herein by this reference.
14 In Acres Complaint, it asserted *for the first time* claims against GB Sciences and sought an Order from
15 this Court that it was in a senior position *vis-a-vis* GB Sciences.

16 Specifically, Acres asserted the following (among other things) in the Acres Complaint:

17 5. Defendant in Intervention/Real Party in Interest GB Sciences Nevada,
18 LLC ("GB") is a Nevada limited liability company, duly authorized to conduct business
19 in the State of Nevada.

19 * * *

20 98. Plaintiff in Intervention also seeks a declaration from this Court that the
21 Division improperly refused to identify Plaintiff in Intervention as the next available
22 applicant in accordance with applicable Nevada law upon notification that Desert Aire
and Nuleaf failed to obtain and/or were denied a Special Use Permit and Business
Licenses from the City of Las Vegas for the operation a medical marijuana
establishment.

23 99. Plaintiff in Intervention also seeks a declaration from this Court that the
24 Division must issue Plaintiff in Intervention a "provisional" registration certificate for
25 the operation of a medical marijuana establishment in the City of Las Vegas since
26 Plaintiff in Intervention's score issued by the Division would have ranked high enough
(#11) to be within the top 12 had the Division properly applied the provisions of NRS
Chapter 453A and NAC Chapter 453A.

27 100. Plaintiff in Intervention also seeks a declaration from this Court that the
28 Division must issue Plaintiff in Intervention a "provisional" registration certificate for
the operation of a medical marijuana establishment in the City of Las Vegas since
Plaintiff in Intervention is the next highest ranked applicant ranked by the Division and

1 the City of Las Vegas' allotment of twelve (12) actual registration certificates have not
2 been filled.

3 See pages 2:20-22 and 15:11-20 of Exhibit "2".

4 **5. GB Sciences' Counterclaim.**

5 On December 3, 2015, GB Sciences filed its Answer to Acres Complaint and
6 Counterclaim ("GB Sciences' Counterclaim"), a true and correct copy which is attached hereto as
7 Exhibit "3" and incorporated herein by this reference. In GB Sciences Counterclaim, it sought a
8 declaration that the Acres Order was not binding upon GB Sciences and that due to equitable and other
9 doctrines, GB Sciences should be awarded the now available registration certificate. See Exhibit "3".

10 Specifically, GB Sciences asserted the following:

11 51. On or about June 9, 2015, Counterdefendant Acres filed an action against
12 the Division with the Eighth Judicial District Court, being Case No. A-15-719637-W,
13 to have its MME application with the Division re-scored based upon a purported math
14 error (the "Acres Case").

15 52. Counterdefendant did not include Counterclaimant as a party to the Acres
16 Case.

17 53. On or about October 8, 2015, the Court in the Acres Case granted
18 Counterdefendant's Petition for Writ of Mandamus, compelling the Division to re-score
19 Counterdefendant's application for a Provisional Certificate by adding 41.3 to the score,
20 thus raising the score to 167.3 and making Counterdefendant's application rank number
21 13 for the 12 Registration Certificates allotted to the City of Las Vegas (the "Order").

22 54. On or about November 9, 2015, the Court granted Counterdefendant's
23 motion to intervene in this case.

24 55. On or about November 13, 2015, the Court entered a minute order in this
25 case revoking Nuleaf's Provisional Certificate, but granting it to Counterdefendant,
26 applying the re-coring set forth in the Order and moving Counterdefendant to #12 in
27 rank with the removal of Nuleaf, even though Counterclaimant was never a party to the
28 Acres Case or able to litigate the re-scoring.

56. On or about November 17, 2015, Acres Medical filed its Complaint in
Intervention, seeking to impose the effect of the Order upon Counterclaimant and jump
ahead of Counterclaimant in line for the 12 Registration Certificates allotted to the City
of Las Vegas.

FIRST CAUSE OF ACTION

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

57. Counterclaimant repeats and realleges the allegations contained in
Paragraphs 1 through 56 of the Counterclaim in Intervention, and incorporates the same
by this reference as if more fully set forth herein.

1 58. Under Nevada law, the Order does not bind Counterclaimant and has no
2 *res judicata* effect upon Counterclaimant's right to seek the revoked Provisional
Certificate originally issued to Nuleaf.

3 59. Under Nevada law, the Court in the Acres Case had no jurisdiction to
4 determine the relative position of Acres vis-a-vis Counterclaimant as Counterclaimant
was not a party to the Acres Case.

5 60. The re-scoring of Acres Medical's MME application by the court in the
6 Acres Case was void as against Counterclaimant because Acres Medical failed to
7 include Counterclaimant as a party in the case, which was a necessary and indispensable
party.

8 61. Counterclaimant was denied its due process right to contest the scoring
9 of MME applications by the Division and to contest entitlement to Nuleaf's revoked
Provisional Certificate.

10 62. The re-scoring of Acres Medical's MME application with the Division
was void, against public policy, and inequitable.

11 63. Under the doctrines laches, waiver and/or estoppel, as well as general
12 equitable principles, and notwithstanding the Order, Acres Medical should not have
priority over Counterclaimant.

13 64. There exists a justiciable controversy between Counterclaimant, on the
14 one hand, and Acres Medical on the other hand regarding the scoring of applications and
the issuance of provisional certificates for MME dispensaries under NRS Chapter 453A.

15 65. The interests of Counterclaimant are adverse to the interests of Acres
16 Medical.

17 66. Counterclaimant has a legally protectable interest in the controversy.

18 67. The issue involved in the controversy is ripe for judicial determination
19 with respect to the construction, interpretation, and implementation of NRS Chapter
453A, NAC 453A, and other Nevada laws and regulations as to the Counterclaimant.

20 68. Counterclaimant is entitled to a declaration, pursuant to N.R.S. § 30.010
21 et seq., that while the Order from the Acres Case may have required to Division to
22 rerank Acres Medical's application, the Acres Court Order lacks any prejudicial or
23 precedential value when it comes to the relative positions of Acres Medical and
24 Counterclaimant; that the Order has no force or effect upon Counterclaimant; that under
25 the doctrines laches, waiver and/or estoppel, as well as general equitable principles,
26 Counterclaimant should have priority over Acres Medical when it comes to any
27 available provisional certificates; that the Provisional Certificate issued to Nuleaf and
28 subsequently revoked by the Court should be issued to Counterclaimant (not Acres
Medical); that Acres Medical is behind and below Counterclaimant in rank; that Acres
Medical should not be issued an actual provisional certificate until this dispute is
resolved; and that the deadlines and requirements for issuance of licenses for MME
Dispensaries should be tolled for the benefit of the Counterclaimant until after the
Counterclaimant's claims are determined in this case so that Counterclaimant will not
suffer detriment due to the fact that it should have been issued a provisional certificate
on November 3, 2014.

69. Counterclaimant has been required to retain the services of an attorney to prosecute this matter, and Counterclaimant is, therefore, entitled to its reasonable attorneys' fees and costs incurred in prosecuting this matter.

See pages 13:20-15:27 of Exhibit "3".

As the foregoing makes clear, there are numerous issues that still need to be fully discovered, briefed and argued regarding the relative positions of Acres and GB Sciences.

6. This Court's December 14, 2015 Order.

Notwithstanding the fact that: (i) Acres was not a party to this lawsuit until after GB Sciences MSJ was fully briefed, (ii) no arguments were raised regarding Acres involvement at the hearing on GB Sciences' Motion for Summary Judgment; (iii) GB Sciences had filed counterclaims against Acres just eleven (11) days prior to the MSJ Order being entered, which claims if granted, would result in the now available registration certificate being issued to GB Sciences instead of Acres, and (iv) the Court had not heard nor considered any of GB Sciences counterclaims or arguments relating to the relative priority between GB Sciences and Acres as it related to the now available registration certificate, on December 14, 2015, this Court entered the MSJ Order wherein it found that "Acres should have been the thirteenth ranked applicant" and wherein it ordered "that Plaintiff's Motion is DENIED to the extent Plaintiff seeks the re-issue of Nuleaf's registration to Plaintiff" and wherein it further ordered "that the Division register intervenor Acres and issue Acres a registration certificate." See pages 6:1-7, 8:22-23, and 9:1-2 of Exhibit "1".

For the reasons set forth below, GB Sciences is asking this Court to reconsider its findings and rulings relating to Acres, to amend the MSJ Order to remove all such findings and rulings, and to allow GB Sciences to proceed forward with its claims against Acres in the ordinary course.

III.

MEMORANDUM OF POINTS AND AUTHORITIES

A. LEGAL STANDARDS.

1. Legal Standard on a Motion to Amend a Judgment.

According to Nevada Rule of Civil Procedure 59(a), a Judgment may be amended if there are grounds materially affecting the substantial rights of an aggrieved party through irregularity in the proceedings of the court, based upon accident or surprise which ordinary prudence could not have

1 guarded against, or if an error in law occurred. Under NRCP 59(e), such a motion must be brought “no
2 later than 10 days after service of written notice of entry of the judgment.”

3 **2. Legal Standard on a Motion for Reconsideration.**

4 Eighth Judicial District Court Rule 2.24 provides that a party may seek reconsideration
5 of an order by filing “a motion for such relief within 10 days after service of written notice of the order
6 or judgment.” EDCR 2.24(b). Further, according to EDCR 2.24(c), “[i]f a motion for rehearing is
7 granted, the court may make a final disposition of the cause without reargument or may reset it for
8 reargument or resubmission or may make such other orders as are deemed appropriate under the
9 circumstances of the particular case.”

10 The Nevada Supreme Court has held that a district court may reconsider a previously decided
11 issue if substantially different evidence is subsequently introduced *or the decision is clearly erroneous.*
12 Masonry and Tile Contractors Ass’n of Southern Nevada v. Jolley, Urga & Wirth, Ltd., 941 P.2d 486,
13 113 Nev. 737 (Nev. 1997)(emphasis added).

14 **3. The Present Motion Was Timely Filed.**

15 Under both NRCP 59 and EDCR 2.24, any such motion must be filed within 10 days
16 after service of written notice of the order or judgment. According to NRCP 6(a), “[w]hen the period
17 of time prescribed or allowed is less than 11 days, intermediate Saturdays, Sundays, and nonjudicial
18 days shall be excluded in the computation.” Further, according to EDCR 1.14(c), when a motion or
19 notice is filed electronically, “three (3) days must be added to the prescribed period.”

20 In this case, the Court entered the Order on December 14, 2015, with written notice of entry
21 being served electronically on December 15, 2015. Thus, after applying NRCP 6(a) and EDCR 1.14(c),
22 the deadline to file a motion under NRCP 59 and EDCR 2.24 is January 4, 2015. Because the present
23 Motion was filed well before January 4, 2015, it has been timely filed.

24 For the reasons set forth below, this Court should reconsider its prior findings and rulings as it
25 relates to Acres and should alter or amend the MSJ Order to remove the portions of the Order whereby
26 the Court denied NuLeaf’s revoked registration certificate to GB Sciences and granted the same to
27 Acres. Further, the Court should reserve any decision on this matter until such time as the claims and
28 counterclaims between GB Sciences and Acres have been fully flushed out and heard by the Court.

1 **B. THE MSJ ORDER VIOLATES THE PLAINTIFF'S DUE PROCESS RIGHTS.**

2 Section 8, Subsection 5, of Article I of the Nevada State Constitution provides:

3 5. No person shall be deprived of life, liberty, or property, without due process of
4 law.

5 Nev. Art. I, § 8. The Nevada Supreme Court has made it clear that the Nevada Constitution imposes
6 a "mandate of due process of law that no person be deprived of personal or property rights by a
7 judgment *without notice and an opportunity to be heard.*" Paradise Palms Community Ass'n v.
8 Paradise Homes, 89 Nev. 27, 30, 505 P.2d 596, 598 (Nev., 1973) (emphasis added); See also
9 Anastassatos v. Anastassatos, 112 Nev. 317, 319, 913 P.2d 652, 653 (Nev., 1996) (notice and an
10 opportunity to be heard are the twin hallmarks of due process.).

11 The case of Nicoladze v. First Nat. Bank of Nevada, 94 Nev. 377, 580 P.2d 1391 (Nev., 1978)
12 is instructive. In Nicoladze, First National Bank of Nevada ("FNBN") obtained a judgment against
13 Lawler Cattle Company. Id., at 377. After the Judgment had been obtained, FNBN filed a motion to
14 add George G. Nicoladze as a party on the theory that he was the alter ego of the Lawler Cattle
15 Company. Id. "Without conducting a hearing on the matter or making any findings, the district court
16 granted the motion." Id. at 377-378. In reversing the district court's ruling, the Nevada Supreme Court
17 held that "*Fundamental due process requires that a person against whom a claim is asserted in a*
18 *judicial proceeding have an opportunity to be heard and present his defenses.*" Id. at 378 (emphasis
19 added).

20 In this case, GB Sciences filed their Motion for Summary Judgment as well as their Replies to
21 the Division and NuLeaf's Oppositions, all before Acres even filed their Motion to Intervene. Nothing
22 in GB Sciences Motion for Summary Judgment, in the Division's Opposition², in NuLeaf's Opposition
23 and Countermotion¹, and in GB Sciences' Reply briefs addressed Acres and/or Acres claim that they
24 should be put ahead of GB Sciences. In fact, prior to December 14, 2015, when this Court entered the
25 MSJ Order, there was simply no notice to any party that the Court would be deciding the issue of
26 priority between Acres and GB Sciences.

27
28 ² The Division did mention Acres in a footnote in their Opposition, but that is the only reference and none of their arguments were directed towards or addressed Acres.

1 It wasn't until the day of the hearing on GB Sciences' MSJ (November 9, 2015) that Acres'
2 Motion to Intervene was granted. By that time, GB Sciences MSJ and NuLeaf's Countermotion had
3 been fully briefed and none of the parties were prepared to argue anything relating to Acres. This is
4 emphasized by the fact that Acres did not file their Complaint in Intervention until November 17, 2015,
5 more than a week after the hearing on GB Sciences MSJ had concluded.

6 To compound the problem, when the Court entered its December 14, 2015 MSJ Order, it
7 essentially granted summary judgment in favor of Acres and against GB Sciences on all of Acres claims
8 against GB Sciences (filed less than one month prior) and all of GB Sciences counterclaims against
9 Acres (filed just 11 days prior), all without any advance notice to any of the parties, without holding a
10 hearing on the matter, and without providing GB Sciences with an opportunity to be heard.

11 This is the very scenario which the Nevada Supreme Court rejected in Nicoladze, 94 Nev. 377.
12 Under the due process rights guaranteed by the Nevada Constitution, GB Sciences is guaranteed the
13 opportunity to be heard in its defense against the claims asserted by Acres and in favor of its claims
14 asserted against Acres. The Court's December 14, 2015 MSJ Order deprives GB Sciences of this right.

15 Because GB Sciences has not had any opportunity to be heard in its defense of Acres' claims
16 against it and in favor of its counterclaims against Acres, the December 14, 2015 MSJ Order is
17 unquestionably erroneous and should be amended to correct this clear violation. Therefore, GB
18 Sciences is asking the Court to alter or amend the MSJ Order to remove Paragraphs 21, 37, 40, and 41
19 which award Nuleaf's Provisional Certificate to Acres Medical. Doing so will then allow GB Sciences
20 its due process right to litigate with Acres over the issues surrounding the scoring of the MME
21 applications by the Division, and ultimately which entities should legitimately be among the "top-12"
22 applicants for the City of Las Vegas and entitled to the Provisional Certificates.

23 Alternatively, the Court should reconsider its decision to award the Provisional Certificate to
24 Acres Medical because the decision was clearly erroneous in light of the fact that GB Sciences' due
25 process rights were violated in the process. The Court should enter a new order on Plaintiff's Motion
26 for Summary Judgment which contains no remedies for Acres Medical which was not even a party to
27 the motion before the Court at the time, and which leaves open the issue of entitlement to Nuleaf's
28 revoked Provisional Certificate.

C. ACRES MEDICAL SHOULD NOT BE PERMITTED TO JUMP AHEAD OF THE PLAINTIFF WITHOUT ANY CONSIDERATION OF GB SCIENCES' CLAIMS AND ARGUMENTS.

1. The Order Improperly Precludes Non-Parties to the Acres Lawsuit From Litigating Issues Raised in the Acres Lawsuit.

By ordering the Division to re-issue Nuleaf's revoked Provisional Certificate to Acres Medical, the Court effectively permitted Acres Medical to jump ahead of GB Sciences in line for one of the 12 Provisional Certificates allotted to the City of Las Vegas. The Division had originally scored GB Science's application higher than Acres Medical (i.e. Plaintiff: 166.86 and Acres Medical: 126).

While the court in the Acres Lawsuit ordered a re-scoring to give Acres Medical a higher position, the Plaintiff was not a party to the Acres Lawsuit and therefore, the Acres Order has no *res judicata* and/or issue preclusion effect on GB Sciences. See University of Nevada v. Tarkanian, 110 Nev. 581, 598, 879 P.2d 1180, 1191 (1994). Consequently, the Acres Order should not preclude GB Sciences from raising any of its arguments as to why Acres should not be placed ahead of GB Sciences, notwithstanding the Acres Order.

Before a party can be bound by an order regarding any issue, the following elements must be met:

(1) the issue decided in the prior litigation must be identical to the issue presented in the current action; (2) the initial ruling must have been on the merits and have become final; and (3) *the party against whom the judgment is asserted must have been a party or in privity with a party to the prior litigation.*

Tarkanian, 110 Nev. at 598 (emphasis added). By Acres' own doing, GB Sciences was not a party in the Acres Lawsuit, nor in privity with any party to that case. Thus, the Acres Order has no binding effect on GB Sciences.

The problem is that by this Court including in the MSJ Order the portion of the Acres Order that compels the Division to re-issue Nuleaf's revoked Provisional Certificate to Acres Medical, the Court effectively applied preclusive effect of a ruling from the Acres Lawsuit against GB Sciences in violation of Nevada law.

\\

\\

1 Because GB Sciences was not a party or in privity with a party in the Acres Lawsuit, GB
2 Sciences should be permitted to litigate the issue of whether the Division properly scored Acres'
3 application and/or whether or not Acres should be placed ahead of GB Sciences. However, the MSJ
4 Order precludes GB Sciences from doing so in violation of its rights.

5 2. **It Is Inequitable to Allow Acres to Benefit from GB Sciences Efforts and at the**
6 **Same Time Prohibit GB Sciences from Prosecuting its Claims Against Acres.**

7 If the MSJ Order is allowed to stand, the very equitable principles by which this Court
8 entered the MSJ Order will have been violated.

9 The Nevada Supreme Court has repeatedly reaffirmed the equitable maxim that "equity regards
10 as done what in good conscience ought to be done." Woods v. Bromley, 69 Nev. 96, 241 P.2d 1103,
11 1108 (Nev., 1952); Stoltz v. Grimm, 100 Nev. 529, 533, 689 P.2d 927, 930 (Nev., 1984); First Federal
12 Sav. and Loan Ass'n of Nevada v. Racquet Club Condominiums, 106 Nev. 758, 752, 801 P.2d 1360,
13 1363 (Nev., 1990).

14 In this case, GB Sciences petitioned this Court to exercise its equitable powers and put the
15 parties in the position they should have been in on November 3, 2014. However, in exercising its
16 equitable powers, this Court should have allowed GB Sciences to raise its claims and defenses relative
17 to Acres' claim of priority. By issuing the MSJ Order as written, the Court will have effectively
18 prohibited GB Sciences from defending against Acres' claims (which had not yet been asserted at the
19 time of the hearing), from prosecuting its own claims against Acres (which likewise had not yet been
20 asserted at the time of the hearing), and from raising important arguments which the Court should
21 consider prior to making a determination of whether Acres has priority over GB Sciences for the
22 coveted 13th position.

23 For example, the same equitable principles under which this Court stripped NuLeaf of its
24 registration certificate will rightfully intervene to estop a party from asserting certain rights. Equitable
25 estoppel operates to prevent a party from asserting legal rights that, in equity and good conscience, they
26 should not be allowed to assert because of their conduct. Breliant v. Preferred Equities Corp., 112 Nev.
27 663, 673, 918 P.2d 314, 321 (1996)(quoting United Brotherhood v. Dahnke, 102 Nev. 20, 22, 714 P.2d
28 177, 178-79 (1986)). In this case, even though this matter was pending and was public information,

1 Acres chose to sit on the sidelines, rather than intervene until the revocation of Nuleaf's Provisional
2 Certificate was imminent. At the same time, Acres chose to pursue its own action without including
3 GB Sciences. Under these facts, there is a strong equitable argument that Acres should not be allowed
4 to step ahead of GB Sciences. However, unless the MSJ Order is amended, GB Sciences will be
5 precluded from making this argument.

6 For the forgoing reasons, the Court should alter or amend the offending provision of the MSJ
7 Order by removing them from the MSJ Order. Alternatively, the Court should reconsider the MSJ
8 Order and enter a new order which does not violate GB Sciences' rights.

9 IV.

10 CONCLUSION

11 Based upon the foregoing points and authorities, the Plaintiff respectfully requests that the Court
12 alter or amend the Judgment to remove Paragraphs 21, 37, 40, and 41 which grant Nuleaf's revoked
13 Provisional Certificate to Acres. In the alternative, the Plaintiff respectfully requests that the Court
14 reconsider the portion of the Order which grants Nuleaf's revoked Provisional Certificate to Acres.

15 DATED this 23rd day of December, 2015.

16 SMITH & SHAPIRO, PLLC

17 /s/ James E. Shapiro, Esq.
18 James E. Shapiro, Esq.
19 Nevada Bar No. 7907
20 Sheldon A. Herbert, Esq.
21 Nevada Bar No. 5988
22 2520 St. Rose Parkway, Suite 220
23 Henderson, NV 89074
24 *Attorneys for Plaintiff*
25
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27
28

SMITH & SHAPIRO, PLLC
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CERTIFICATE OF SERVICE

I hereby certify that I am an employee of SMITH & SHAPIRO, PLLC, and that on the 23rd day of December, 2015, I served a true and correct copy of the forgoing **PLAINTIFF'S MOTION TO ALTER OR AMEND JUDGMENT; OR, IN THE ALTERNATIVE MOTION FOR PARTIAL RECONSIDERATION**, by e-serving a copy on all parties registered and listed as Service Recipients in Wiznet, the Court's on-line, electronic filing website, pursuant to Administrative Order 14-2, entered by the Chief Judge, Jennifer Togliatti, on May 9, 2014.

/s/ Jill M. Berghammer
An employee of SMITH & SHAPIRO, PLLC

EXHIBIT 1

EXHIBIT 1


CLERK OF THE COURT

1 **NEOJ**
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11 *Counsel for Plaintiff in Intervention*
12 *Acres Medical, LLC*

13 **DISTRICT COURT**
14 **CLARK COUNTY, NEVADA**

15 GB SCIENCES NEVADA, LLC, a Nevada
16 limited liability company,

Case No.: A710597
Dept. No.: XX

17 Plaintiff,

18 v.

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

Defendants.

ACRES MEDICAL, LLC,

Plaintiff in Intervention,

v.

STATE OF NEVADA, DIVISION OF
PUBLIC AND BEHAVIORAL HEALTH OF
THE DEPARTMENT OF HEALTH AND
HUMAN SERVICES; CITY OF LAS VEGAS,

**NOTICE OF ENTRY OF ORDER ON
PLAINTIFF GB SCIENCES NEVADA,
LLC'S MOTION FOR SUMMARY
JUDGMENT AND ON DEFENDANT
NULEAF CLV DISPENSARY, LLC'S
COUNTERMOTION FOR SUMMARY
JUDGMENT**

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1 a municipal corporation and political
2 subdivision of the State of Nevada; NULEAF
3 CLV DISPENSARY, LLC, a Nevada limited
liability company; GB SCIENCES NEVADA,
LLC, a Nevada limited liability company,

4 Defendants in Intervention

5
6 YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE that an ORDER ON
7 PLAINTIFF GB SCIENCES NEVADA, LLC'S MOTION FOR SUMMARY JUDGMENT
8 AND ON DEFENDANT NULEAF CLV DISPENSARY, LLC'S COUNTERMOTION FOR
9 SUMMARY JUDGMENT was entered in the above-captioned matter on the 14th day of
10 December, 2015.

11 DATED this 15th day of December, 2015.

12 GREENBERG TRAURIG, LLP

13 By: /s/ Moorea L. Katz

14 MARK E. FERRARIO (NV Bar No. 1625)

15 MOOREA L. KATZ (NV Bar No. 12007)

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17 Las Vegas, Nevada 89169

18 Counsel for Plaintiff in Intervention

19 Acres Medical, LLC
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CERTIFICATE OF SERVICE

Pursuant to Nev. R. Civ. P. 5(b)(2)(D) and E.D.C.R. 8.05, I certify that on this 15th day of December, 2015, I caused a true and correct copy of the foregoing **NOTICE OF ENTRY OF ORDER ON PLAINTIFF GB SCIENCES NEVADA, LLC'S MOTION FOR SUMMARY JUDGMENT AND ON DEFENDANT NULEAF CLV DISPENSARY, LLC'S COUNTERMOTION FOR SUMMARY JUDGMENT** to be filed and served via the Court's Wiznet E-Filing system. The date and time of the electronic proof of service is in place of the date and place of deposit in the mail.

/s/ Joyce Heilich
An employee of GREENBERG TRAURIG, LLP

1 ORDR

2 EIGHTH JUDICIAL DISTRICT COURT

3 CLARK COUNTY, NEVADA

4 GB SCIENCES NEVADA, LLC, a Nevada
5 limited liability company,

6 Plaintiff,

7 vs.

8 STATE OF NEVADA, DIVISION OF PUBLIC
9 AND BEHAVIORAL HEALTH OF THE
10 DEPARTMENT OF HEALTH AND HUMAN
11 SERVICES; CITY OF LAS VEGAS, a
12 municipal corporation and political subdivision
13 of the State of Nevada; DESERT AIRE
14 WELLNESS, LLC, a Nevada limited liability
15 company; NULEAF CLV DISPENSARY,
16 LLC, a Nevada limited liability company;
17 DOES 1 through 100; and ROE ENTITIES 1
18 through 100,

19 Defendants.

20 ACRES MEDICAL, LLC,

21 Plaintiff in Intervention,

22 vs.

23 STATE OF NEVADA, DIVISION OF PUBLIC
24 AND BEHAVIORAL HEALTH OF THE
25 DEPARTMENT OF HEALTH AND HUMAN
26 SERVICES; CITY OF LAS VEGAS, a
27 municipal corporation and political subdivision
28 of the State of Nevada; NULEAF CLV
29 DISPENSARY, LLC, a Nevada limited liability
30 company; GB SCIENCES NEVADA, LLC, a
31 Nevada limited liability company,

32 Defendants in Intervention.

Case No. A-14-710597-C

Dept. No. XX

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ORDER

THIS MATTER having come before the Court on GB SCIENCES NEVADA, LLC's ("Plaintiff") Motion for Summary Judgment (the "Motion") and on Defendant NULEAF CLV DISPENSARY, LLC ("NuLeaf") Countermotion for Summary Judgment ("Countermotion"); Plaintiff, having appeared by and through its attorneys of record, SMITH & SHAPIRO, PLLC; Defendant STATE OF NEVADA, DEPARTMENT OF HEALTH AND HUMAN SERVICES (the "State" or "Division"), having appeared by and through ADAM PAUL LAXALT, Attorney General, through his Chief Deputy Attorney General, LINDA C. ANDERSON; Defendant NuLeaf, having appeared by and through its attorneys of record, PISANELLI BICE, PLLC; Intervenor ACRES MEDICAL, LLC ("Acres"), having appeared by and through its attorneys of record, GREENBERG TRAURIG, LLP, the Court having reviewed the papers and pleadings on file herein, having heard the arguments of counsel, and good cause appearing, THE COURT FINDS AND CONCLUDES:

FINDINGS OF FACTS

1. In 2013, Senate Bill 374 was passed which provided for the registration of medical marijuana establishments authorized to cultivate or dispense marijuana or manufacture edible marijuana products or marijuana-infused products for sale to persons authorized to engage in the medical use of marijuana. Senate Bill 374 was codified into N.R.S. Chapter 453A.

2. Under N.R.S. § 453A.320 et seq., the Division was tasked with processing and ranking applications for Medical Marijuana Establishments ("MMEs") for each local jurisdiction in Nevada.

3. There were five types of MME's, including Dispensaries, Cultivation Facilities, and Production Facilities. The MME at issue in this lawsuit is a Dispensary.

4. The City of Las Vegas was allocated twelve Dispensary provisional certificates.

1 5. The Division, as well as the local jurisdiction, played a role in the ultimate licensing
2 of MMEs. Specifically, the local jurisdiction was tasked with considering issues such as site plans,
3 zoning and proximity to other business or facilities (the "Local Application Process") while the
4 Division focused on public health, public safety, and marijuana as a medicine (the "Division
5 Application Process").

6 6. In accordance with its responsibilities, the City of Las Vegas enacted Ordinance No.
7 6321 and 6324 to establish zoning regulations, licensing regulations, and standards for MME
8 locations.

9 7. The Division issued its application packet (the "Division Application").

10 8. While the Division was allowed to accept all applications submitted, under N.R.S. §
11 453A.322, the Division could only issue a medical marijuana establishment registration certificate (a
12 "Provisional Certificate") if the applicant's application included six (6) specific items and if the
13 applicant otherwise met the requirements established by N.R.S. Chapter 453A.

14 9. One of the six (6) items required by law before the Division could issue a Provisional
15 Certificate is found in N.R.S. § 453A.322(3)(a)(5), which states:

16 (5) If the city, town or county in which the proposed medical marijuana establishment
17 will be located has enacted zoning restrictions, proof of licensure with the applicable
18 local governmental authority or a letter from the applicable local governmental
19 authority certifying that the proposed medical marijuana establishment is in
20 compliance with those restrictions and satisfies all applicable building requirements.
21 (NRS § 453A.322(3)(a)(5)).

22 10. Plaintiff, Acres, and Nuleaf were three of the 49 applicants for a Dispensary License
23 in the City of Las Vegas.

24 11. On October 28-29, 2014, the Las Vegas City Council held a special meeting to
consider each applicant for a special use permit and compliance permit for an MME Dispensary.

1 12. The City of Las Vegas denied special use permits and compliance permits to ten (10)
2 applicants, including Nuleaf.

3 13. On October 30, 2014, the City of Las Vegas sent a letter to the Division notifying the
4 Division that Nuleaf's application for a special use permit and compliance permit from the City of
5 Las Vegas had been denied as not in compliance with land use restrictions and city code and
6 ineligible for a business license.

7 14. The City of Las Vegas letter was intended to comply, and did comply, with NRS
8 453A.322(3)(a)(5).

9 15. Specifically, pursuant to Las Vegas Municipal Code Section 6.95.080, the letter was
10 to give notice to the Division, as intended in subsection 3(a)(5), as to those medical marijuana
11 applicants which the City of Las Vegas had found to be or not to be in conformance with land use
12 and zoning restrictions, and eligible for consideration for a business license. This letter described the
13 applicable building requirements and zoning restrictions as outlined in the statute.

14 16. Notwithstanding, on or about November 3, 2014, the Division registered Nuleaf as a
15 medical marijuana establishment and issued a provisional registration certificate for an MME
16 Dispensary (the "Provisional License").

17 17. At the time the Department registered Nuleaf and issued a Provisional License,
18 Nuleaf did not meet the requirements of N.R.S. § 453A.322, which specifically permitted the
19 Division to register a medical marijuana establishment and issue a registration certificate if the
20 business seeking to register had completed all of the requirements of subsection 3(a), including
21 providing a letter from the applicable local authority certifying that the proposed medical marijuana
22 establishment is in "compliance with [zoning] restrictions and satisfies all applicable building
23 requirements."
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1 18. The Nevada Department of Health and Human Services should have registered and
2 issued the registration certificate to the medical marijuana establishment to the top twelve ranked
3 applicants which met all the requirements of the statute.

4 19. Pursuant to the plain terms of the statute, the Division should not have registered
5 Nuleaf and issued it a registration certificate as Nuleaf had not met all the requirements of the
6 statute. The Court's reading of the statute is consistent with the apparent goal of the statute and the
7 legislature to quickly move the opening and operation of dispensaries in the state. This goal can best
8 be achieved through the Division registering certificates for the most qualified applicants who have
9 obtained preliminary approval that they are in "compliance with [zoning] restrictions and satisfies all
10 applicable building requirements" of the municipality. In view of the time limitations the statute sets
11 for when the Division may register certificates, the legislature clearly sought to avoid the situation
12 where the Division approved an applicant but the applicant then failed to obtain zoning or business
13 licensing from the municipality, resulting in a delay in the opening of the desired number of
14 dispensaries.

15 20. On November 9, 2015, the Court heard oral argument on intervenor Acres Medical,
16 LLC's ("Acres") Motion to Intervene as a Matter of Right Pursuant to NRCP 24 on Order
17 Shortening Time ("Motion to Intervene"). Acres' Motion to Intervene argued that Acres, not
18 Plaintiff GB Sciences, was next in line to receive a provisional registration certificate, should one
19 become available. Acres argued that pursuant to District Court order dated October 8, 2015, in *Acres*
20 *Medical, LLC v. Department of Health and Human Services, Division of Public and Behavioral*
21 *Health, et al.*, Case Number A-15-719637-W, Acres should have been the thirteenth ranked
22 applicant on November 3, 2014. The premise for Acres' intervention was that Acres was entitled to
23 the relief sought by GB Sciences in this action and Acres was adopting the arguments asserted by
24 GB Sciences. The Court granted Acres' Motion to Intervene at the November 9, 2015 hearing.

21. The Court may take judicial notice, whether requested or not, of facts capable of verification from a reliable source. See NRS 47.150(1). The Court takes judicial notice that pursuant to District Court order dated October 8, 2015, in *Acres Medical, LLC v. Department of Health and Human Services, Division of Public and Behavioral Health, et al.*, Case Number A-15-719637-W, Acres should have been the thirteenth ranked applicant on November 3, 2014. Accordingly, Acres, not Plaintiff GB Sciences, is the next applicant in line to receive a registration certificate should one become available.

22. If any of the forgoing findings of fact are properly conclusions of law, they shall be treated as if appropriately identified and designated.

CONCLUSIONS OF LAW

23. Summary judgment is appropriate where the pleadings, depositions, answers to interrogatories, admissions and affidavits on file, show that there exists no genuine issue as to any material fact, and that the moving party is entitled to judgment as a matter of law. Bird v. Casa Royale W., 97 Nev. 67, 624 P.2d 17 (1981).

24. The Nevada Supreme Court has noted that "Rule 56 should not be regarded as a 'disfavored procedural shortcut'" but instead as an integral part of the rules of procedure as a whole, which are designed "to secure the just, speedy and inexpensive determination of every action." *Wood v. Safeway, Inc.*, 121 Nev. 724, 730, 121 P.3d 1026, 1030 (2005).

25. NRS § 30.040 gives this Court the ability to make certain declarations regarding the rights, status or other legal relations of parties to a lawsuit.

26. Further, this Court has the authority to issue mandatory injunctions "to restore the status quo, to undo wrongful conditions." Leonard v. Stoebling, 102 Nev. 543, 728 P.2d 1358 (1986); Memory Gardens of Las Vegas, Inc. v. Pet Ponderosa Memorial Gardens, Inc., 492 P.2d 123, 88 Nev. 1 (Nev., 1972).

1 27. One of the stated purposes of mandatory injunctions is "compelling the undoing of
2 acts that had been illegally done." City of Reno v. Matley, 378 P.2d 256, 79 Nev. 49 (Nev., 1963).

3 28. The Division has acknowledged that a complaint for declaratory and injunctive relief
4 is appropriate.

5 29. The issuance of the Provisional Certificate to Nuleaf was in error and contrary to
6 NRS § 453A.322(3).

7 30. Nuleaf should have been disqualified due to their non-compliance with NRS §
8 453A.322(3)(a)(5).

9 31. The Plaintiff and Acres have an inadequate remedy at law.

10 32. To require the Plaintiff or Acres to simply apply again as part of a new application
11 period is to deny the Plaintiff and Acres all of their remedies, not only because it delays their ability
12 to proceed forward with the initial applicants, but also because there is no guarantee that the Plaintiff
13 or Acres would even qualify for a Provisional License the second time around when comparing the
14 Plaintiff or Acres to the second, new set of applicants.

15 33. It would be inequitable and inappropriate to deprive the City of Las Vegas of one of
16 the twelve Provisional Certificates allocated to it due to an error by the Division.

17 34. At the hearing on the motions on November 9, 2015, counsel for the Division raised
18 the fact the City of Las Vegas sent its letter on October 30, 2014, four days before and only one
19 business day before the Division's planned issuance of registration certificates on November 3,
20 2014. The Division was not aware of the letter and those entities in conformance with City of Las
21 Vegas land use, zoning and building requirements at the time it issued registration certificates.
22 However, counsel stated the Division in issuing certificates looked at submitted applications without
23 considering the local approval requirement of the statute or whether any of the applicants in
24 municipalities throughout the state had received a letter of approval from the municipality where

1 they were located. Consequently, the Court finds the timing of the letter and whether the Division
2 should have been aware of it presents no excuse for the Division failing to comply with the
3 provisions of the statute. The Division was not looking for, inquiring, following up or even
4 considering whether applicants had complied with the statutory requirement of an approval letter
5 from the municipality where the applicant's business would be located.

6 35. The Court further finds no evidence presented suggests the City of Las Vegas sought
7 to use the zoning or land use process as a subterfuge for the City to determine the most qualified
8 applicants in place of the Division. The City made a determination as to applicants' compliance
9 with its zoning restrictions and satisfaction of applicable building requirements as it was specifically
10 expected to do pursuant to the statute before the registering of certificates.

11 36. If any of the forgoing conclusions of law are properly findings of fact, they shall be
12 treated as if appropriately identified and designated.

13 **NOW THEREFORE:**

14 37. **IT IS HEREBY ORDERED** Plaintiff's Motion for Summary Judgment is
15 **GRANTED** in part and **DENIED** in part.

16 38. **IT IS FURTHER ORDERED** that Plaintiff's Motion is **GRANTED** to the extent
17 Plaintiff is entitled to a declaration that Nuleaf should not have been registered or issued a
18 certification of registration as a medical marijuana establishment because it had not met all the
19 necessary requirements of 453A.322(3)(a).


20 39. **IT IS FURTHER ORDERED** that the Division shall rescind or withdraw the
21 registration of Nuleaf as a medical marijuana establishment.

22 40. **IT IS FURTHER ORDERED** that Plaintiff's Motion is **DENIED** to the extent
23 Plaintiff seeks the re-issue of Nuleaf's registration to Plaintiff.
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1 41. **IT IS FURTHER ORDERED** that the Division register intervenor Acres and issue
2 Acres a registration certificate.

3 42. **IT IS FURTHER ORDERED** Defendant Nuleaf's Countermotion for Summary
4 Judgment is **DENIED**.

5 DATED this 11 th day of December, 2015.



ERIC JOHNSON
DISTRICT COURT JUDGE

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CERTIFICATE OF SERVICE

I hereby certify that I caused the foregoing Order to be served as indicated below:

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/s/Kelly Muranaka

Kelly Muranaka

Judicial Executive Assistant

EXHIBIT 2

EXHIBIT 2



CLERK OF THE COURT

COMP

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DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiff,

v.

STATE OF NEVADA, DIVISION OF
PUBLIC AND BEHAVIORAL HEALTH OF
THE DEPARTMENT OF HEALTH AND
HUMAN SERVICES; CITY OF LAS VEGAS,
a municipal corporation and political
subdivision of the State of Nevada; DESERT
AIRE WELLNESS, LLC, a Nevada limited
liability company; NULEAF CLV
DISPENSARY, LLC, a Nevada limited
liability company; DOES 1 through 100; and
ROE ENTITIES 1 through 100,

Defendants.

ACRES MEDICAL, LLC,

Plaintiff in Intervention,

v.

STATE OF NEVADA, DIVISION OF
PUBLIC AND BEHAVIORAL HEALTH OF
THE DEPARTMENT OF HEALTH AND
HUMAN SERVICES; CITY OF LAS VEGAS,
a municipal corporation and political
subdivision of the State of Nevada; NULEAF

Case No.: A710597

Dept. No.: XX

**COMPLAINT IN INTERVENTION FOR
DECLARATORY AND INJUNCTIVE
RELIEF AND/OR PETITION FOR WRIT OF
MANDAMUS OR PROHIBITION**

GREENBERG TRAURIG, LLP
3773 Howard Hughes Parkway
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CLV DISPENSARY, LLC, a Nevada limited liability company; GB SCIENCES NEVADA, LLC, a Nevada limited liability company,

Defendants in Intervention

COMES NOW, Plaintiff in Intervention, Acres Medical, LLC, by and through its counsel, the law firm GREENBERG TRAURIG, LLP, and hereby brings its Complaint in Intervention for Declaratory and Injunctive Relief and/or Petition for Writ of Mandamus or Prohibition ("Complaint in Intervention"), and alleges as follows:

THE PARTIES

1. Plaintiff in Intervention Acres Medical, LLC ("Acres Medical") is a Nevada limited liability company, duly authorized to conduct business in the State of Nevada.

2. Defendant in Intervention Nevada Department of Health and Human Services, Division of Public and Behavioral Health (the "Division") is an agency of the State of Nevada, and was the recipient of the applications submitted by Plaintiffs in Intervention.

3. Defendant in Intervention City of Las Vegas ("City") is a municipal corporation and political subdivision of the State of Nevada.

4. Defendant in Intervention/Real Party in Interest Nuleaf CLV Dispensary, LLC ("Nuleaf") is a Nevada limited liability company conducting business, or planning to conduct business, in Clark County, Nevada.

5. Defendant in Intervention/Real Party in Interest GB Sciences Nevada, LLC ("GB") is a Nevada limited liability company, duly authorized to conduct business in the State of Nevada.

JURISDICTION

6. Venue is proper in this Court pursuant to NRS 13.020(3) and NRS 233B.130(2)(b), in that this is the county where the cause, or some part thereof, arose and the aggrieved party resides.

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GENERAL STATUTORY AND REGULATORY FRAMEWORK

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

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

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

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

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

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

13. In accordance with such responsibilities, the City Council of the City of Las Vegas enacted Ordinance no. 6321 to establish zoning regulations and standards for medical marijuana establishments.

14. The City Council of the City of Las Vegas also enacted Ordinance no. 6324 to establish licensing regulations and standards for medical marijuana establishments.

1 15. In addition, the City of Las Vegas prepared and issued a separate application packet
2 for any person wishing to obtain the required special use permit and business licensing for the
3 operation of a medical marijuana establishment in the City of Las Vegas.

4 16. Forty-three (43) applicants filed applications seeking the City of Las Vegas'
5 approval for zoning and licensing of a medical marijuana establishment to dispense medical
6 marijuana.

7 17. On October 28, 2014, the City Council of the City of Las Vegas held a special
8 meeting to consider each applicant for a special use permit for a proposed medical marijuana
9 dispensary.

10 18. The City of Las Vegas granted a special use permit to twenty-seven (27) applicants,
11 including Plaintiffs in Intervention.

12 19. The City of Las Vegas denied ten (10) applicants, including Nuleaf, a Special Use
13 Permit.

14 20. Upon information and belief, the City of Las Vegas thereafter informed the Division
15 of those applicants granted a special use permit and those applicants denied a special use permit by
16 the City of Las Vegas.

17 **THE DIVISION'S APPLICATION AND APPROVAL PROCESS**

18 21. NRS 453A.322(2) requires any person who wished to operate a medical marijuana
19 establishment in Nevada to submit to the Division an application on a form prescribed by the
20 Division.

21 22. In addition, NRS 453A.322(3)(a)(2) through (5) provided a list of items that every
22 application for a medical marihuana establishment must have submitted to the Division as part of an
23 application.

24 23. NRS 453A.322(3)(a)(5) expressly required that any application for a medical
25 marihuana establishment within a city, town, or county that has enacted zoning restrictions must
26 include proof of the applicable city, town, or county's prior licensure of the applicant or a letter
27 from that city, town, or county certifying that the applicant's proposed medical marijuana
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1 establishment was in compliance with the city, town, or county's zoning restrictions and satisfies all
2 applicable building requirements.

3 24. To assist the Division in implementing the required statutory application process, the
4 Division adopted NAC 453A.310(1), which obligated the Division upon receiving more than one
5 application for a medical marijuana establishment to determine first that each application was
6 complete and in compliance with NRS Chapter 453A and NAC Chapter 453A.

7 25. Upon determining that each application was complete and in compliance, NAC
8 453A.310(1) then obligated the Division to rank from first to last the completed applications within
9 a particular jurisdiction based on the content of each application as it relates to the criteria for
10 evaluation determined by the Division and provided by NRS Chapter 453A.

11 26. Supposedly in accordance with these and many other statutory and regulatory
12 requirements, the Division issued an application packet on May 30, 2014.

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

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

17 28. NRS 453A.322(3) required the Division to register a medical marijuana
18 establishment applicant, issue a medical marijuana establishment registration certificate, and issue a
19 random 20-digit alphanumeric identification number not later than 90 days from the Division's
20 receipt of an application only if such an application for a medical marijuana establishment
21 contained the specific items required by NRS 453A.322(3)(a), which among other items, included
22 the necessary prior zoning approvals from the applicable local jurisdiction identified in NRS
23 453A.322(3)(a)(5).

24 29. However, the requirements of NRS 453A.322(3) and the Division's ability to issue a
25 medical marijuana registration certificate were subject expressly to the exceptions set forth in NRS
26 453A.326.

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1 30. NRS 453A.326(3) required that any medical marihuana establishment registration
2 certificate issued by the Division be deemed "provisional" in any city, town, or county that issues
3 business licenses.

4 31. NRS 453A.326(3) further required that this "provisional" status shall remain until
5 such time as the recipient of this "provisional" medical marihuana registration certificate is in
6 compliance with the applicable city, town, or county's ordinances and rules and obtains a business
7 license for the operation of a medical marijuana establishment from the applicable city, town or
8 county.

9 32. The City of Las Vegas is a Nevada city that enacted ordinances for the zoning and
10 business licensing of medical marijuana establishments.

11 33. As such, NRS 453A.326(3) required that any medical marihuana establishment
12 registration certificate issued for the operation of a medical marihuana establishment in the City of
13 Las Vegas be deemed "provisional" until such applicant complies with the City of Las Vegas'
14 ordinances and rules and obtains a business license from the City of Las Vegas.

15 34. The Nevada Legislature anticipated that a recipient of a required "provisional"
16 registration certificate from the Division might not comply with the City of Las Vegas' ordinances
17 or obtain the required licensing.

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

24 36. The Division also anticipated the likelihood that a recipient of a "provisional"
25 registration certificate for the operation of a medical marihuana establishment in the City of Las
26 Vegas' or any other Nevada city, town, or county's ordinances or otherwise obtain the required
27 zoning and business licensing for the operation of a medical marijuana establishment.

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1 37. Accordingly, the Division adopted NAC 453A.310, which required the Division to
2 make an initial determination that each application filed with the Division was complete, including
3 proof of evidence that each applicant had obtained the required zoning and licensing from the City
4 of Las Vegas, before ranking any applications.

5 38. The Division also adopted NAC 453A.332, which obligated the Division to deny any
6 application for a medical marijuana establishment remigration certificate if the application was not
7 in compliance with any provision of NRS Chapter 453A, which indisputably includes the proof of
8 the City of Las Vegas' approval for zoning and licensing required by NRS 453.322(3)(a)(5).

9 39. Further, the Division adopted NAC 453A.312, which required the Division to issue
10 "provisional" medical marijuana establishment registration certificates to the highest ranked
11 applicants until the Division issued the number of actual medical marijuana establishment
12 registration certificates designated by the Division, which in the case of the City of Las Vegas was
13 twelve (12) allotted actual registration certificates for medical marijuana dispensaries.

14 40. Together, these regulations adopted by the Division contemplated and provided a
15 regulatory solution of the Division for any situation where a recipient of a "provisional" registration
16 certificate failed to obtain the necessary zoning and licensing approvals from the City of Las Vegas,
17 or any similar Nevada city, town, or county, as required by Nevada law.

18 41. Pursuant to the regulatory framework, the Division was first to ensure that each
19 applicant had the necessary City of Las Vegas zoning and licensing approvals before accepting the
20 application as complete and ranking the application against the Division's criteria.

21 42. In the event that an applicant was issued a "provisional" registration certificate but
22 was denied the required City of Las Vegas zoning or licensing approvals, then the Division was
23 required to then issue additional "provisional" registration certificates to the next ranked applicant
24 until the twelve (12) actual registration certificates allotted the City of Las Vegas were issued by the
25 Division.

26 43. The Division's regulatory scheme plainly adopted and endorsed this "next highest
27 ranked applicant" process as a resolution for situations where an applicant or a recipient of a
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1 "provisional" registration certificate was denied a special use permit or a business license by the
2 City of Las Vegas, and any other Nevada city, town, or county requiring such approval.

3 44. After implementing these regulations on April 1, 2014, the Division's staff identified
4 this "next highest ranked applicant" process as the correct procedure for resolving instances where
5 an applicant or a recipient of a "provisional" registration certificate was denied or unable to obtain
6 the required zoning and licensing at the local level.

7 45. During a July 9, 2014 meeting of the Advisory Commission on the Administration of
8 Justice's Subcommittee on the Medical Use of Marijuana, Chad Westom, Bureau Chief of the
9 Division, was questioned about the Division's procedure if an applicant to which the Division
10 issued a "provisional" registration certificate was unsuccessful in obtaining local approval.

11 46. In response to this question, Mr. Westom stated, "it was part of the process for the
12 applicants to provide evidence of local zoning and business license approval."

13 47. Mr. Westom also stated that any jurisdiction where the Division issued "provisional"
14 registration certificates that jurisdiction would have the option of denying these businesses at the
15 local level; whereupon the Division would then deny those same businesses and notify the local
16 jurisdiction of the next ranked applicant.

17 48. When asked specifically what would happen if the Division approved different
18 applicants than those approved by the local jurisdiction, Mr. Westom stated that the Division would
19 deny any applicant denied by the local jurisdiction and then inform the local jurisdiction who was
20 the next ranked applicant.

21 **DEFENDANT NULEAF'S APPLICATION**

22 49. On or before the Division's August 18, 2014 deadline, the Division received
23 approximately forty-nine (49) applications for the City of Las Vegas' twelve (12) allotted medical
24 marihuana establishment registration certificates for the operation of a medical marihuana
25 dispensary in the City of Las Vegas.

26 50. Plaintiff in Intervention, Nuleaf, and GB Sciences were among these 49 applicants to
27 the Division.

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1 51. Prior to submitting an application to the Division, Plaintiff in Intervention, Nuleaf
2 and GB Sciences, also each submitted an application to the City of Las Vegas for a Special Use
3 Permit and a Business License as required by the City of Las Vegas' newly enacted ordinances.

4 52. After an October 29, 2014 special meeting, the City Council of the City of Las Vegas
5 denied Nuleaf's application for a Special Use Permit and Compliance Permit.

6 53. To the contrary, Plaintiff in Intervention received a Special Use Permit for the
7 operation of a medical marijuana dispensary from the City of Las Vegas and further, Plaintiff in
8 Intervention received a Compliance Permit.

9 54. In addition, Plaintiff in Intervention submitted as part of its application to the
10 Division the City of Las Vegas' certification that Plaintiff in Intervention complied with the City of
11 Las Vegas' ordinances and building requirements concerning the operation of a medical marijuana
12 establishment in the City of Las Vegas.

13 55. The City of Las Vegas informed the Division of those applicants that it approved for
14 a Special Use Permit, which included Plaintiff in Intervention, and those applicants that it denied a
15 Special Use Permit, which included Nuleaf.

16 56. Accordingly, Plaintiff in Intervention met the requirements of NRS 453A.322(3)(a),
17 but Nuleaf did not meet those requirements.

18 57. Upon information and belief, the Division, upon receipt of the 49 application for the
19 operation of a medical marihuana 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 as required by NAC 453A.310(1).

22 58. Also upon information and belief, the Division never determined 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' restrictions and building requirements as prescribed by NRS
26 453A.322(3)(a)(5).

27 59. As a result, the Division improperly accepted the application of Nuleaf and ranked
28 its applications against the acceptable criteria.

**PLAINTIFF IN INTERVENTION'S APPLICATION AND DISTRICT COURT
ORDER IN CASE**

60. On or about August 14, 2014, Plaintiff in Intervention along with Acres Cultivation, LLC, submitted to the Division multiple applications to operate Medical Marijuana Establishments ("MME"), including Plaintiff in Intervention's Application D011 to operate a medical marijuana dispensary in the City of Las Vegas (the "Application").

61. The Division was required to rank applications based upon certain criteria. Organizational Structure was one of the criteria considered by the Division.

62. Plaintiff in Intervention submitted the same information on every application for Organizational Structure. On or about January 9, 2015, Plaintiff in Intervention, along with Acres Cultivation, LLC received scores on their applications. Plaintiff in Intervention received a score of 0 for Organizational Structure on the Application despite receiving a score of 41.3 on its other concurrently submitted applications containing the exact same information for the Organizational Structure criteria.

63. The Division was obligated to score and rank accurately all MME applications submitted to the Division.

64. One of the categories considered by the Division in scoring applications was Organizational Structure.

65. Plaintiff in Intervention submitted the same information on all of its applications, including the Application, for the Organizational Structure category.

66. Despite having information indicating that the Application should have received a score of 41.3 in the Organizational Structure category, the Division gave the Application a score of 0 in the Organizational Structure category.

67. The Division gave Plaintiff in Intervention's other applications with the exact same information in the Organizational Structure category a score of 41.3 for the Organizational Structure category.

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

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

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

71. Had the Division performed properly its official duties in scoring the Applications, the Application would have been ranked number 11.

72. Plaintiff in Intervention was forced to retain counsel and file a lawsuit, case number A-15-719637-W, and petition the Court for mandamus to compel the Division to correct the error.

73. On October 8, 2015, District Court Judge Cadish granted Plaintiff in Intervention's Petition for Mandamus in Case No. A-15-719637-W. See **Exhibit A**, attached hereto. Judge Cadish's Order Granting Petition for Mandamus directs the Division to rescore Plaintiff in Intervention's Application and assign it a score of 167.3. The Order also requires the Division to officially re-rank Plaintiff in Intervention's Application based on this new score.

74. The Division ranked and issued a "provisional" registration certificate to Desert Aire Wellness, LLC ("Desert Aire") (ranked #10) and Nuleaf (ranked #3) even though each were denied and/or failed to obtain the required Special Use Permit and Business License from the City of Las Vegas.

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

76. More importantly, Plaintiff in Intervention's score (167.3) would have and should have been high enough to rank within the top 12 spots (#11) allotted for the City of Las Vegas and therefore, Plaintiff in Intervention should have received a "provisional" registration certificate from the Division within the 90-day evaluation period.

77. Consequently, Plaintiff in Intervention, in actuality being ranked #11, would have received a "provisional" registration certificate from the Division in accordance with Nevada law and as approved by the City of Las Vegas.

1 78. Plaintiff in Intervention is the 13th ranked applicant for a Provisional License to
2 operate a medical marijuana dispensary in the City of Las Vegas and therefore next in line. Plaintiff
3 in Intervention was ranked improperly by the Division due to an error in scoring Plaintiff in
4 Intervention's Application D011 to operate a medical marijuana dispensary in the City of Las Vegas.
5 That error was corrected when Plaintiff in Intervention obtained an order of mandamus directing the
6 Division to rescore and re-rank the Application. As such, Plaintiff in Intervention should receive
7 the first Provisional License should one become available.

8 **DIVISION'S REFUSAL TO IDENTIFY NEXT HIGHEST RANKED APPLICANT**

9 79. After the Division provided notice of those applicants who were issued a
10 "provisional" registration certificate for the operation of a medical marijuana establishment in the
11 City of Las Vegas, the City of Las Vegas, upon information and belief, inquired and/or requested
12 that the Division identify the next highest ranked applicant(s) since Desert Aire (ranked #10) and
13 Nuleaf (ranked #3) were denied and/or failed to obtain the require Special Use Permit and Business
14 License from the City of Las Vegas.

15 80. Despite the Division's adoption of NAC 453A.312(1) requiring the Division to issue
16 "provisional" registration certificates to the next highest ranked applicants until the City of Las
17 Vegas' allotment of actual registration certificates was filled and contrary to the express statements
18 made by the Division's representative, the Division, upon information and belief, informed the City
19 of Las Vegas that it would not identify the next highest ranked applicant.

20 81. Upon information and belief, the Division further informed the City of Las Vegas
21 that it would and could not issue any further "provisional" registration certificates since the
22 Division only was authorized by Nevada law to issue registration certificate within a 90-day period
23 that expired on November 3, 2014.

24 **THE CITY OF LAS VEGAS' SUBSEQUENT PROCESSING OF NULEAF'S**
25 **APPLICATION**

26 82. Nuleaf applied to the City of Las Vegas for a Special Use Permit and Compliance
27 Permit for the operation of a medical marijuana establishment in the City of Las Vegas.

28 ///

1 83. The City of Las Vegas' Planning Commission, on September 23, 2014 recommended
2 denial (4-0-2 vote) of Nuleaf's request for Special Use Permit.

3 84. Thereafter, the City Council for the City of Las Vegas, on October 28-29, 2014,
4 denied (4-2-1 vote) Nuleaf's request for a Special Use Permit and Compliance Permit; with 70
5 separate protests having been lodged against Nuleaf's requests.

6 85. Despite the City of Las Vegas' denial of Nuleaf's requests, the Division unlawfully
7 issued Nuleaf a "provisional" registration certificate for the operation of a medical marijuana
8 establishment in the City of Las Vegas, when in truth, Nuleaf's application should have been
9 deemed incomplete, disqualified, and denied pursuant to NRS Chapter 453A and NAC Chapter
10 453A.

11 86. On December 3, 2014 the City Council for the City of Las Vegas convened its
12 regular meeting to hear its regular Agenda, which included a request from Nuleaf to rescind and
13 rehear its previous denial of its requests for a Special Use Permit and Compliance Permit (Agenda
14 Items #76-79).

15 87. After discussion by the City Council for the City of Las Vegas, the Agenda items
16 (#76-79) concerning Nuleaf's request for reconsideration were stricken by the City Council.

17 88. However, upon information and belief, Nuleaf intends to seek a text amendment to
18 the City of Las Vegas' Municipal Code authorizing the "resubmittal" of Nuleaf's applications and
19 requests for Special Use Permit and Compliance Permit.

20 89. Upon information and belief, Nuleaf, upon the City Council for the City of Las
21 Vegas' approval of this text amendment, intends to seek relocation of its proposed medical
22 marijuana establishment, in direct violation of NRS Chapter 453A and NAC Chapter 453A, and
23 despite the fact that Nuleaf's application to the Division was incomplete and should have been
24 disqualified and denied, per se, pursuant to NRS Chapter 453A and NAC Chapter 453A.

25 **FIRST CAUSE OF ACTION**
26 **(Declaratory Relief)**

27 90. Plaintiff in Intervention re-alleges and incorporates by reference the allegations
28 contained in paragraphs 1-89.

///

1 91. The Division's unlawful acceptance and ranking of Nuleaf's application for a
2 medical marijuana establishment registration certificate for the operation of a medical marijuana
3 establishment in the City of Las Vegas and the Division's subsequent, unlawful issuance of a
4 "provisional" registration certificate also affects the rights of Plaintiff in Intervention afforded it by
5 NRS Chapter 453A, NAC Chapter 453A, and other Nevada laws and regulations.

6 92. The Division's actions and/or inactions also have created an actual justiciable
7 controversy ripe for judicial determination between Plaintiff in Intervention, Nuleaf, the Division,
8 and the City of Las Vegas with respect to the construction, interpretation, and implementation of
9 NRS Chapter 453A and NAC Chapter 453A as to Plaintiff in Intervention.

10 93. Accordingly, Plaintiff in Intervention seeks a declaration from this Court that the
11 Division improperly accepted and ranked Nuleaf's application for a medical marijuana
12 establishment registration certificate for the operation of a medical marijuana establishment in the
13 City of Las Vegas.

14 94. Plaintiff in Intervention also seeks a declaration from this Court that the Division
15 improperly ranked and subsequently issued Nuleaf a "provisional" registration certificate for the
16 operation of a medical marijuana establishment in the City of Las Vegas as Nuleaf failed to submit
17 a complete application for a registration certificate for the operation of a medical marijuana
18 establishment as required by NRS 453A.322.

19 95. Plaintiff in Intervention also seeks a declaration from this Court that Nuleaf's
20 application for a medical marijuana establishment registration certificate for the operation of a
21 medical marijuana establishment in the City of Las Vegas must be denied by the Division since
22 Nuleaf failed to submit proof to the Division of its licensure by the City of Las Vegas or a letter
23 from the City of Las Vegas certifying compliance with the City of Las Vegas' restrictions regarding
24 proposed medical marijuana establishments and had satisfied all applicable building requirements of
25 the City of Las Vegas as expressly required by NRS 453A.322(3)(a)(5).

26 96. Plaintiff in Intervention also seeks a declaration from this Court that the Division
27 cannot issue Nuleaf an actual registration certificate for the operation of a medical marijuana
28

1 establishment in the City of Las Vegas since Nuleaf was denied a Special Use Permit and Business
2 License from the City of Las Vegas for the operation a medical marijuana establishment.

3 97. Plaintiff in Intervention also seeks a declaration from this Court that the Division
4 improperly denied Plaintiff in Intervention a "provisional" registration certificate for the operation
5 of a medical marijuana dispensary in the City of Las Vegas.

6 98. Plaintiff in Intervention also seeks a declaration from this Court that the Division
7 improperly refused to identify Plaintiff in Intervention as the next available applicant in accordance
8 with applicable Nevada law upon notification that Desert Aire and Nuleaf failed to obtain and/or
9 were denied a Special Use Permit and Business Licenses from the City of Las Vegas for the
10 operation a medical marijuana establishment.

11 99. Plaintiff in Intervention also seeks a declaration from this Court that the Division
12 must issue Plaintiff in Intervention a "provisional" registration certificate for the operation of a
13 medical marijuana establishment in the City of Las Vegas since Plaintiff in Intervention's score
14 issued by the Division would have ranked high enough (#11) to be within the top 12 had the
15 Division properly applied the provisions of NRS Chapter 453A and NAC Chapter 453A.

16 100. Plaintiff in Intervention also seeks a declaration from this Court that the Division
17 must issue Plaintiff in Intervention a "provisional" registration certificate for the operation of a
18 medical marijuana establishment in the City of Las Vegas since Plaintiff in Intervention is the next
19 highest ranked applicant ranked by the Division and the City of Las Vegas' allotment of twelve (12)
20 actual registration certificates have not been filled.

21 101. Plaintiff in Intervention also seeks a declaration from this Court that the Division is
22 not prohibited by NRS Chapter 453A, NAC Chapter 453A, or any other applicable Nevada law or
23 regulation from issuing Plaintiff in Intervention at any time, a "provisional" registration certificate
24 for the operation of a medical marijuana establishment in the City of Las Vegas since the City
25 of Las Vegas' allotment of twelve (12) actual registration certificates have not been filled.

26 102. Plaintiff in Intervention also seeks a declaration from this Court that the City of Las
27 Vegas is prohibited from reconsidering the City of Las Vegas' previous denial of Nuleaf's
28

1 application for a Special Use Permit after the Division and the City of Las Vegas' period for
2 submitting and considering applications has closed.

3 103. Plaintiff in Intervention also seeks a declaration from this Court that the Division is
4 prohibited from issuing Nuleaf an actual registration certificate for the operation of a medical
5 marijuana establishment in the City of Las Vegas since Nuleaf failed to comply with the express
6 requirements of NRS 453A.322(3)(a)(5) at the time it submitted its applications to the Division and
7 at any time during the Division's application period that ended on November 3, 2014.

8 104. It has also become necessary for Plaintiff in Intervention to retain the services of an
9 attorney to commence this action, and Plaintiff in Intervention is therefore entitled to reasonable
10 attorney's fees and the costs of this suit.

11 **SECOND CAUSE OF ACTION**
12 **(Injunctive Relief Against the Division and the City of Las Vegas)**

13 105. Plaintiff in Intervention re-alleges and incorporates by reference the allegations
14 contained in paragraphs 1-104.

15 106. The Division's unlawful acceptance and ranking of Nuleaf's incomplete and
16 unqualified application for a medical marijuana establishment registration certificate has and
17 continues to irreparably harm Plaintiff in Intervention and Plaintiff in Intervention, as a
18 consequence of the Division's unlawful actions, has been denied the issuance of a "provisional"
19 registration certificate from the Division that Plaintiff in Intervention is entitled to receive under the
20 proper application of the provisions of NRS Chapter 453A and NAC Chapter 453A.

21 107. The Division's unlawful issuance to Nuleaf of a "provisional" registration certificate
22 for the operation of a medical marijuana establishment in the City of Las Vegas has and continues
23 to irreparably harm Plaintiff in Intervention as Plaintiff in Intervention, as a consequence of the
24 Division's unlawful actions, has been denied the issuance of a "provisional" registration certificate
25 from the Division that Plaintiff in Intervention is entitled to receive under the proper application of
26 the provisions of NRS Chapter 453A and NAC Chapter 453A.

27 108. The Division's continued refusal to issue Plaintiff in Intervention a "provisional"
28 registration certificate for the operation of a medical marijuana establishment in the City of Las
Vegas has and continues to irreparably harm Plaintiff in Intervention as Plaintiff in Intervention

1 otherwise would have received a "provisional" registration certificate for the operation of a medical
2 marijuana establishment in the City of Las Vegas had the Division complied with the actual
3 requirements of NRS Chapter 453A and NAC 453A.

4 109. The Division's continued refusal to comply with the requirements of NRS Chapter
5 453A and NAC Chapter 453A in declaring Plaintiff in Intervention as the next available qualified
6 applicant has and continues to harm Plaintiff in Intervention as Plaintiff in Intervention has not
7 received a "provisional" registration certificate for the operation of a medical marijuana
8 establishment in the City of Las Vegas that Plaintiff in Intervention otherwise is entitled to receive
9 pursuant to NRS Chapter 453A and NAC Chapter 453A.

10 110. The Division's continued refusal to issue any further "provisional" registration
11 certificates for the operation of a medical marijuana establishment in the City of Las Vegas even
12 though the City of Las Vegas' allotment of twelve (12) actual registration certificates has not been
13 filed has and continues to irreparably harm Plaintiff in Intervention since Plaintiff in Intervention is
14 the next available qualified applicant to receive a "provisional" registration certificate from the
15 Division under the proper application of the provisions of NRS Chapter 453A and NAC Chapter
16 453A.

17 111. The plain language of the applicable provisions of NRS Chapter 453A and NAC
18 Chapter 453A requires the Division to issue Plaintiff in Intervention a "provisional" registration
19 certificate for the operation of a medical marijuana establishment in the City of Las Vegas either as
20 a qualified applicant whose score issued by the Division is within the top 12 required for applicants
21 within the City of Las Vegas, or Plaintiff in Intervention is the next highest ranked applicant to
22 receive a "provisional" registration certificate since Nulcaf was denied the required Special Use
23 Permit and Business License by the City of Las Vegas.

24 112. Plaintiff in Intervention has no adequate remedy at law and compensatory relief is
25 inadequate.

26 113. Accordingly, Plaintiff in Intervention is entitled to injunctive relief enjoining the
27 Division:

28 ///

- a. From issuing an actual registration certificates to Nuleaf for the operation of a medical marijuana establishment in the City of Las Vegas;
- b. To issue Plaintiff in Intervention a "provisional" registration certificate for the operation of a medical marijuana establishment in the City of Las Vegas as an applicant whose score was within the top 12 positions allotted for the City of Las Vegas;
- c. To identify Plaintiff in Intervention as the next highest ranked applicant to receive a "provisional" registration certificate for the operation of a medical marijuana establishment in the City of Las Vegas;
- d. To issue Plaintiff in Intervention a "provisional" registration certificate for the operation of a medical marijuana establishment in the City of Las Vegas as the next highest ranked applicant eligible to receive a "provisional" registration certificate since Nuleaf failed to obtain the required Special Use Permit and Business License required by the City of Las Vegas; and
- e. To continue to issue "provisional" registration certificates to the next highest ranked applicants as required by NAC 453A.312(1) until the Division has issued the number of actual registration certificates allotted the City of Las Vegas.

114. In addition, Plaintiff in Intervention is entitled to Injunctive Relief enjoining the City of Las Vegas from:

- a. Reconsidering Nuleaf's application and/or Nuleaf's denial of its application for a Special Use Permit at any time; and
- b. Issuing Nuleaf a Special Use Permit or a Business License for the operation of a medical marijuana establishment in the City of Las Vegas.

115. It has also become necessary for Plaintiff in Intervention to retain the services of an attorney to commence this action, and Plaintiff in Intervention is therefore entitled to reasonable attorney's fees and the costs of this suit.

///

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1 In addition, or in the alternative to Plaintiff in Intervention's allegations and Claims for
2 Relief asserted above, Plaintiff in Intervention also alleges the following and petitions this Court
3 for a writ of mandamus.

4 PETITION FOR WRIT OF MANDAMUS

5 116. The allegations of paragraphs 1 through 115 of this Complaint are incorporated by
6 reference herein with the same force and effect as set forth in full below.

7 117. Petitioner, Acres Medical, LLC, a Nevada limited liability company (hereinafter
8 "Petitioner") is an applicant to the Division for the Division's issuance of a registration certificate for
9 the operation of a medical marijuana establishment in the City of Las Vegas.

10 118. The Division was required to solicit applications, review, score, rank, and issue
11 "provisional" registration certificates for the operation of a medical marijuana establishment in the
12 City of Las Vegas in compliance with NRS Chapter 453A, NAC 453A, and other Nevada laws and
13 regulations.

14 119. The Division failed to comply with the requirements of NRS Chapter 453A, NAC
15 453A, and other Nevada laws and regulations when it unlawfully issued a "provisional" registration
16 certificate for the operation of a medical marijuana establishment in the City of Las Vegas to Nulcaif.

17 120. The Division further failed to comply with the requirements of NRS Chapter 453A,
18 NAC 453A, and other Nevada laws and regulations when it unlawfully denied Petitioner a
19 "provisional" registration certificate for the operation of a medical marijuana establishment in the City
20 of Las Vegas.

21 121. Accordingly, the Division has failed to perform acts that Nevada law compelled the
22 Division to perform.

23 122. Petitioner has no plain, speedy, and adequate remedy in the ordinary course of law to
24 correct the Division's failure to perform as required by Nevada law or compel the Division to perform,
25 as it is required by Nevada law.

26 123. Petitioner, therefore, petitions this Court for a Writ of Mandamus as alleged and in a
27 formal Application for Writ of Mandamus to be filed separately, to compel the Division to issue
28 Petitioner the "provisional" registration certificate for the operation of a medical marijuana

1 establishment in the City of Las Vegas that Petitioner was entitled to receive had the Division
2 complied with the requirements of NRS Chapter 453A, NAC 453A, and other Nevada laws and
3 regulations.

4 WHEREFORE, Plaintiff in Intervention prays for the following:

5 1. For Declaratory Judgment(s) in the manner set forth in Plaintiff in Intervention's First
6 Claim for Relief;

7 2. For injunctive relief, specifically a preliminary and permanent injunction enjoining the
8 Division:

9 a. From issuing an actual registration certificate to Nuleaf for the operation of a
10 medical marijuana establishment in the City of Las Vegas;

11 b. To issue Plaintiff in Intervention a "provisional" registration certificate for the
12 operation of a medical marijuana establishment in the City of Las Vegas as an applicant
13 whose score was within the top 12 positions allotted for the City of Las Vegas;

14 c. To identify Plaintiff in Intervention as the next highest ranked applicant to
15 receive a "provisional" registration certificate for the operation of a medical marijuana
16 establishment in the City of Las Vegas;

17 d. To issue Plaintiff in Intervention a "provisional" registration certificate for the
18 operation of a medical marijuana establishment in the City of Las Vegas as the next highest
19 ranked applicant eligible to receive a "provisional" registration certificate since
20 Nuleaf was denied the required Special Use Permit and Business License required by the City
21 of Las Vegas; and

22 e. To continue to issue "provisional" registration certificates to the next
23 highest ranked applicants as required by NAC 453A.312(1) until the Division has issued the
24 number of actual registration certificates allotted the City of Las Vegas.

25 3. For injunctive relief, specifically a preliminary and permanent injunction enjoining the
26 City of Las Vegas from:

27 a. Reconsidering Nuleaf's application and/or Nuleaf's denial of its application
28 for a Special Use Permit at any time; and

b. Issuing Nuleaf a Special Use Permit or a Business License for the operation of a medical marijuana establishment in the City of Las Vegas.

4. For reasonable attorney's fees and costs of suit; and

5. For any other such relief as this Court deems just and proper.

In addition, or in the alternative, Petitioner also petitions this Court to issue a Writ of Mandamus compelling the Division to comply with the requirements of NRS Chapter 453A, NAC 453A, and other Nevada laws and regulations and issue Petitioner a "provisional" registration certificate for the operation of a medical marijuana establishment in the City of Las Vegas.

DATED this 17th day of November, 2015.

GREENBERG TRAURIG, LLP

By: /s/ Moorea L. Katz
MARK E. FERRARIO (NV Bar No. 1625)
MOOREA L. KATZ (NV Bar No. 12007)
3773 Howard Hughes Parkway, Suite 400 North
Las Vegas, Nevada 89169
Counsel for Plaintiff in Intervention Acres Medical, LLC

1 **CERTIFICATE OF SERVICE**

2 Pursuant to Nev. R. Civ. P. 5(b)(2)(D) and E.D.C.R. 8.05, I certify that on this 17th day of
3 November, 2015, I caused a true and correct copy of the foregoing **COMPLAINT IN**
4 **INTERVENTION FOR DECLARATORY AND INJUNCTIVE RELIEF AND/OR**
5 **PETITION FOR WRIT OF MANDAMUS OR PROHIBITION** to be filed and served via the
6 Court's Wiznet E-Filing system. The date and time of the electronic proof of service is in place of the
7 date and place of deposit in the mail.

8
9 /s/ Joyce Heilich

10 An employee of GREENBERG TRAUIG, LLP
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EXHIBIT A


CLERK OF THE COURT

ORDG

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

DISTRICT COURT

CLARK COUNTY, NEVADA

ACRES MEDICAL, LLC, a Nevada limited
liability company; and ACRES
CULTIVATION, LLC, a Nevada limited
liability company,

Plaintiffs/Petitioners,

vs.

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

Defendant/ Respondent,

And

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

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

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

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

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

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

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

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

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

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

///

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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 8 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: Linda C Anderson

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6 Chief Deputy Attorney General

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EXHIBIT 3

EXHIBIT 3



CLERK OF THE COURT

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(702) 318-5033

Attorneys for GB SCIENCES NEVADA, LLC

DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiff,

vs.

STATE OF NEVADA, DIVISION OF PUBLIC AND BEHAVIORAL HEALTH OF THE DEPARTMENT OF HEALTH AND HUMAN SERVICES; NULEAF CLV DISPENSARY, LLC, a Nevada limited liability company; DOES 1-10, and ROE ENTITIES 1-100, inclusive,

Defendants.

ACRES MEDICAL, LLC,

Plaintiff in Intervention,

vs.

STATE OF NEVADA, DIVISION OF PUBLIC AND BEHAVIORAL HEALTH OF THE DEPARTMENT OF HEALTH AND 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; GB SCIENCES NEVADA, LLC, a Nevada limited liability company,

Defendants in Intervention.

Case No. A-14-710597-C
Dept. No. XX

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26 \\\

27 \\\

28 \\\

1 GB SCIENCES NEVADA, LLC, a Nevada limited
2 liability company,

3 Counterclaimant in Intervention,

4 vs.

5 ACRES MEDICAL, LLC, a Nevada limited
6 liability company, and STATE OF NEVADA,
7 DIVISION OF PUBLIC AND BEHAVIORAL
8 HEALTH OF THE DEPARTMENT OF HEALTH
9 AND HUMAN SERVICES,

10 Counterdefendants in Intervention.

Date: N/A
Time: N/A

11 ANSWER TO COMPLAINT IN INTERVENTION AND
12 COUNTERCLAIM

13 COMES NOW Plaintiff/Defendant in Intervention/Counterclaimant in Intervention, GB
14 SCIENCES NEVADA, LLC, a Nevada limited liability company ("GB Sciences"), by and through its
15 attorneys of record, SMITH & SHAPIRO, PLLC, and for its Answer to Complaint in Intervention (the
16 "Complaint"), admits, denies, defends, and affirmatively states as follows:

17 THE PARTIES

18 1. Answering Paragraphs No. 1, 2, 3, and 4 of the Parties Section of the Complaint, GB
19 Sciences is without information sufficient to form a reasonable belief as to the truth or falsity of the
20 allegations contained in said paragraphs, and, therefore, denies the same in their entirety.

21 2. Answering Paragraph No. 5 of the Parties Section of the Complaint, GB Sciences admits
22 the allegations contained therein.

23 JURISDICTION

24 3. Answering Paragraph No. 6 of the Jurisdiction Section of the Complaint, said paragraph
25 contains a legal conclusion and requires no response thereto; otherwise, GB Sciences admits the
26 allegations contained therein.

27 GENERAL STATUTORY AND REGULATORY FRAMEWORK

28 4. Answering Paragraphs No. 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 19, and 20 of the
General Statutory and Regulatory Framework Section of the Complaint, GB Sciences admits the
allegations contained therein.

1 5. Answering Paragraph No. 18 of the General Statutory and Regulatory Framework
2 Section of the Complaint, GB Sciences admits that the City of Las Vegas granted a special use permit
3 to twenty-seven (27) applicants, but is without information sufficient to form a reasonable belief as to
4 the truth or falsity of the remaining allegations contained in said paragraph, and, therefore, denies the
5 same in their entirety.

6 THE DIVISION'S APPLICATION AND APPROVAL PROCESS

7 6. Answering Paragraphs No. 21, 22, 23, 26, and 27 of the Division's Application and
8 Approval Process Section of the Complaint, said paragraph contains a legal conclusion and requires
9 no response thereto; otherwise, GB Sciences admits the allegations contained therein.

10 7. Answering Paragraphs No. 24 and 25 of the Division's Application and Approval
11 Process Section of the Complaint, said paragraph contains a legal conclusion and requires no response
12 thereto; otherwise, GB Sciences is without information sufficient to form a reasonable belief as to the
13 truth or falsity of the allegations contained in said paragraphs but admits the allegations contained
14 therein upon information and belief.

15 THE DIVISION'S ISSUANCE OF PROVISIONAL CERTIFICATES

16 8. Answering Paragraphs No. 28, 29, 30, 32, and 35 of the Division's Issuance of
17 Provisional Certificates Section of the Complaint, said paragraph contains a legal conclusion and
18 requires no response thereto; otherwise, GB Sciences admits the allegations contained therein.

19 9. Answering Paragraphs No. 31, 33, 34, 40, 41, 42, and 43 of the Division's Issuance of
20 Provisional Certificates Section of the Complaint, said paragraph contains a legal conclusion and
21 requires no response thereto; otherwise, GB Sciences is without information sufficient to form a
22 reasonable belief as to the truth or falsity of the allegations contained in said paragraphs, and, therefore,
23 denies the same in their entirety.

24 10. Answering Paragraphs No. 36, 37, 38, 39, 44, 45, 46, 47, and 48 of the Division's
25 Issuance of Provisional Certificates Section of the Complaint, said paragraph contains a legal
26 conclusion and requires no response thereto; otherwise, GB Sciences is without information sufficient
27 to form a reasonable belief as to the truth or falsity of the allegations contained in said paragraphs, and,
28 therefore, denies the same in their entirety.

DEFENDANT NULEAF'S APPLICATION

11. Answering Paragraphs No. 49, 53 and 54 of the Defendant Nuleaf's Application Section of the Complaint, GB Sciences is without information sufficient to form a reasonable belief as to the truth or falsity of the remaining allegations contained in said paragraph, and, therefore, denies the same in their entirety.

12. Answering Paragraphs No. 50, 51, 52, 57, 58, and 59 of the Defendant Nuleaf's Application Section of the Complaint, GB Sciences admits the allegations contained therein.

13. Answering Paragraph No. 55 of the Defendant Nuleaf's Application Section of the Complaint, GB Sciences is without information sufficient to form a reasonable belief as to the truth or falsity of the allegation "which included Plaintiff in Intervention" but admits the remaining allegations contained in said paragraph.

14. Answering Paragraph No. 56 of the Defendant Nuleaf's Application Section of the Complaint, GB Sciences admits the allegation that "Nuleaf did not meet those requirements" but is without information sufficient to form a reasonable belief as to the truth or falsity of the remaining allegations contained in said paragraph, and, therefore, denies the same in their entirety.

THE PLAINTIFF IN INTERVENTION'S APPLICATION AND
DISTRICT COURT ORDER IN CASE

15. Answering Paragraphs No. 60, 61, 62, 64, 65, 66, 67, 68, 69, 70, 71, 72, 76, and 77 of the Plaintiff in Intervention's Application and District Court Order in Case Section of the Complaint, GB Sciences is without information sufficient to form a reasonable belief as to the truth or falsity of the remaining allegations contained in said paragraph, and, therefore, denies the same in their entirety.

16. Answering Paragraphs No. 63, 74, and 75 of the Plaintiff in Intervention's Application and District Court Order in Case Section of the Complaint, GB Sciences admits the allegations contained in said paragraphs.

17. Answering Paragraph No. 73 of the Plaintiff in Intervention's Application and District Court Order in Case Section of the Complaint, the Order speaks for itself; otherwise, GB Sciences is without information sufficient to form a reasonable belief as to the truth or falsity of the allegations contained in said paragraph, and, therefore, denies the same in their entirety.

18. Answering Paragraph No. 78 of the Plaintiff in Intervention's Application and District Court Order in Case Section of the Complaint, GB Sciences denies the allegations that "Plaintiff in Intervention is the 13th ranked applicant," and "[t]hat error was corrected when Plaintiff in Intervention obtained an order of mandamus directing the Division to rescore and re-rank the Application. As such, Plaintiff in Intervention should receive the first Provisional License should one become available," and otherwise is without information sufficient to form a reasonable belief as to the truth or falsity of the remaining allegations contained in said paragraph, and, therefore, denies the same in their entirety.

DIVISION'S REFUSAL TO IDENTIFY NEXT HIGHEST RANKED APPLICANT

19. Answering Paragraphs No. 79, 80, and 81 of the Division's Refusal to Identify the Next Highest Ranked Applicant Section of the Complaint, GB Sciences is without information sufficient to form a reasonable belief as to the truth or falsity of the allegations contained in said paragraphs, and, therefore, denies the same in their entirety.

THE CITY OF LAS VEGAS' SUBSEQUENT PROCESSING OF NULEAF'S APPLICATION

20. Answering Paragraphs No. 82, 86, 87, 88, and 89 of the City of Las Vegas' Subsequent Processing of Nuleaf's Application Section of the Complaint, GB Sciences is without information sufficient to form a reasonable belief as to the truth or falsity of the allegations contained in said paragraphs, and, therefore, denies the same in their entirety.

21. Answering Paragraphs No. 83, 84, and 85 of the City of Las Vegas' Subsequent Processing of Nuleaf's Application Section of the Complaint, GB Sciences admits the allegations contained in said paragraphs.

FIRST CAUSE OF ACTION
(Declaratory Relief)

22. Answering Paragraph No. 90 of the First Cause of Action set forth in the Complaint, GB Sciences repeats its responses to Paragraphs No. 1 through 89 of the Complaint as if more fully set forth herein.

23. Answering Paragraphs No. 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, and 104 of the First Cause of Action set forth in the Complaint, GB Sciences is without information

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1 sufficient to form a reasonable belief as to the truth or falsity of the allegations contained in said
2 paragraphs, and, therefore, denies the same in their entirety.

3 SECOND CAUSE OF ACTION
4 (Injunctive Relief Against the Division and the City of Las Vegas)

5 24. Answering Paragraph No. 105 of the Second Cause of Action set forth in the Complaint,
6 GB Sciences repeats its responses to Paragraphs No. 1 through 104 of the Complaint as if more fully
7 set forth herein.

8 25. Answering Paragraphs No. 106, 107, 108, 109, 110, 111, 112, 113 (a through e,
9 inclusive), 114 (a through b, inclusive), and 115 of the Second Cause of Action set forth in the
10 Complaint, GB Sciences is without information sufficient to form a reasonable belief as to the truth or
11 falsity of the allegations contained in said paragraphs, and, therefore, denies the same in their entirety.

12 PETITION FOR WRIT OF MANDAMUS

13 26. Answering Paragraph No. 116 of the Petition for Writ of Mandamus set forth in the
14 Complaint, GB Sciences repeats its responses to Paragraphs No. 1 through 115 of the Complaint as if
15 more fully set forth herein.

16 27. Answering Paragraphs No. 117, 120, 122, and 123 of the Petition for Writ of Mandamus
17 set forth in the Complaint, GB Sciences is without information sufficient to form a reasonable belief
18 as to the truth or falsity of the allegations contained in said paragraphs, and, therefore, denies the same
19 in their entirety.

20 28. Answering Paragraphs No. 118 and 119 of the Petition for Writ of Mandamus set forth
21 in the Complaint, GB Sciences admits the allegations contained in said paragraphs.

22 29. Answering Paragraph No. 121 of the Petition for Writ of Mandamus set forth in the
23 Complaint, GB Sciences admits that the Division failed to perform the acts described in Paragraphs 118
24 and 119 of the Petition for Writ of Mandamus that Nevada law compelled the Division to perform, but
25 is otherwise without information sufficient to form a reasonable belief as to the truth or falsity of the
26 allegations contained in said paragraphs, and, therefore, denies the same in their entirety.

27 AFFIRMATIVE DEFENSES

28 1. The Complaint in Intervention fails to state a claim upon which relief may be granted.

2. ACRES MEDICAL, LLC's claims are barred by the doctrine of laches.
3. ACRES MEDICAL, LLC's claims are barred by the doctrine of waiver.
4. ACRES MEDICAL, LLC's claims are barred by the doctrines of estoppel, estoppel by fraud, and equitable estoppel.
5. The Complaint in Intervention is barred by the statute of frauds.
6. Plaintiff in Intervention failed to fulfill the requirements of NRS Chapter 453A, NAC 453A, and/or the requirements of the City of Las Vegas for issuance of a provisional registration certificate for an MME license.
7. The re-scoring of Plaintiff in Intervention's was void, against public policy, and inequitable.
8. The Order issued by Judge Cadish violates GB Sciences' due process rights, enshrined in the United States Constitution and Nevada State Constitution.
9. The Order issued by Judge Cadish has no *res judicata* effect upon GB Sciences.
10. Plaintiffs in Intervention's own conduct, and that of its own principals, is the proximate cause of Plaintiffs in Intervention's damages or other grievances, if any.
11. Plaintiffs in Intervention have acted in bad faith.
12. Plaintiffs in Intervention have unclean hands.
13. GB Sciences denies each and every allegation of the Complaint in Intervention not specifically admitted or otherwise pleaded to herein.
14. It has been necessary to employ the services of an attorney to defend this action and a reasonable sum should be allowed GB Sciences as and for attorney's fees, together with their costs expended in this action.
15. GB Sciences incorporates by reference those affirmative defenses enumerated in N.R.C.P. 8 as if fully set forth herein. If further investigation or discovery reveals the applicability of any such defenses, GB Sciences reserves the right to seek leave of Court to amend this answer to complaint in intervention to specifically assert any such defense. Such defenses are herein incorporated by reference for the specific purpose of not waiving any such defenses.

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1 16. Pursuant to N.R.C.P. Rule 11, as amended, all possible affirmative defenses may not
2 have been alleged herein insofar as sufficient facts were not available after reasonable inquiry upon the
3 filing of the Answer to Complaint in Intervention and, therefore, GB Sciences reserves the right to
4 amend its Answer to Complaint in Intervention to allege additional affirmative defenses.

5 WHEREFORE, Plaintiff/Defendant in Intervention/Counterclaimant in Intervention GB
6 Sciences prays for relief as follows:

- 7 1. That Acres Medical take nothing by way of its Complaint in Intervention,
8 2. That GB Sciences be awarded its attorneys' fees and costs incurred in defendant against
9 the Complaint in Intervention; and
10 3. That GB Sciences be awarded such other and further relief as the Court deems
11 appropriate in the premises.

12
13 COUNTERCLAIM

14 COMES NOW Plaintiff/Counterclaimant in Intervention, GB SCIENCES NEVADA, LLC, a
15 Nevada limited liability company, by and through its attorneys of record, SMITH & SHAPIRO, PLLC,
16 and for its Counterclaim in Intervention, alleges and avers as follows:

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

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

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

24 4. Venue is proper in this Court pursuant to N.R.S. § 13.020(3) and N.R.S. §
25 233N.130(2)(b), in that this is the county where the cause, or some part thereof, arose and the aggrieved
26 party resides.

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GENERAL ALLEGATIONS

5. In 2013, the Nevada Legislature passed Senate Bill 374, which, in part, provided for the registration of medical marijuana establishments authorized to cultivate and dispense marijuana and marijuana infused products to those persons authorized to use medicinal marijuana.

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

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

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

9. 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.

10. The City of Las Vegas was allotted twelve (12) MME registration certificates (the "Registration Certificates") by the Division.

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

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

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

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

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

3 16. Counterclaimant, Nuleaf CLV Dispensary, LLC ("Nuleaf"), and Counterdefendant
4 Acres Medical were three (3) of the applicants.

5 17. On October 28, 2014, the City Council of the City of Las Vegas held a special meeting
6 to consider each applicant for a special use permit for a proposed medical marijuana dispensary.

7 18. The City of Las Vegas granted a special use permit to twenty-seven (27) applicants,
8 including Counterclaimant.

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

11 20. Upon information and belief, the City of Las Vegas thereafter informed the Division of
12 those applicants granted a special use permit and those applicants denied a special use permit by the
13 City of Las Vegas.

14 21. NRS Chapter 453A.322(2) requires any person who wished to operate a medical
15 marijuana establishment in Nevada to submit to the Division an application on a form prescribed by
16 the Division.

17 22. While the Division was allowed to *accept* all applications submitted, under N.R.S. §
18 453A.322, the Division could only issue a Provisional Certificate if the applicant's application included
19 six (6) specific items and if the applicant otherwise met the requirements established by N.R.S. Chapter
20 453A.

21 23. NRS 453A.322(3)(a)(2) through (5) provided a list of items that every application for
22 a medical marijuana establishment must have submitted to the Division.

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

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

4 26. Supposedly in accordance with these and many other statutory and regulatory
5 requirements, the Division issued an application packet on May 30, 2014.

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

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

15 29. However, the requirements of NRS 453A.322(3) and the Division's ability to issue a
16 medical marijuana registration certificate were subject expressly to the exceptions set forth in NRS
17 453A.326.

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

21 31. The City of Las Vegas is a Nevada city that enacted ordinances for the zoning and
22 business licensing of medical marijuana establishments.

23 32. As such, the Division was required to ensure compliance with NRS 453A.326(3)(5).

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

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

4 35. Counterclaimant, Nuleaf, and Acres were among these applicants to the Division.

5 36. Prior to submitting an application to the Division, Counterclaimant, Nuleaf, and Acres
6 each submitted an application to the City of Las Vegas for a Special Use Permit and a Business License
7 as required by the City of Las Vegas' newly enacted ordinances.

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

10 38. To the contrary, Counterclaimant received a Special Use Permit for the operation of
11 medical marijuana dispensary from the City of Las Vegas and further, its application for Business
12 License was recommended for approval.

13 39. In addition, Counterclaimant submitted as part of its application to the Division the City
14 of Las Vegas' certification that Counterclaimant complied with the City of Las Vegas's ordinances and
15 building requirements concerning the operation of a medical marijuana establishment in the City of Las
16 Vegas.

17 40. Upon information and belief, the City of Las Vegas informed the Division of those
18 applicants that it approved for a Special Use Permit, which included Counterclaimant, and those
19 applicants that it denied a Special Use Permit, which included Nuleaf.

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

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

27 43. As a result, the Division improperly ranked the application of Nuleaf against the
28 acceptable criteria.

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

4 45. Counterclaimant had been ranked number 13 based upon a score of 166.86.

5 46. Acres had received a score of 126 and was ranked only 36 or 37 by the Division.

6 47. At the same time, Counterclaimant discovered that the Division ranked and issued
7 provisional registration certificate to Nuleaf (ranked #3 even though it was denied the required Special
8 Use Permit and Business License from the City of Las Vegas).

9 48. Had the Division complied with the express requirements of NRS 453A.322(3), NAC
10 453A.310, NAC 453A.312, and NAC 453A.332, and the Division' previous public statements regarding
11 the correct application procedure, Nuleaf should not have received a ranking let alone a provisional
12 registration certificate.

13 49. More importantly, Counterclaimant's score (166.86) would have and should been high
14 enough to rank within the top 12 spots (# 11) allotted for the City of Las Vegas and therefore,
15 Counterclaimant should have received a provisional registration certificate from the Division within
16 the 90-day evaluation period.

17 50. Consequently, Counterclaimant, in actuality being ranked #11, would have received
18 provisional registration certificate from the Division in accordance with Nevada law and as approved
19 by the City of Las Vegas.

20 51. On or about June 9, 2015, Counterdefendant Acres filed an action against the Division
21 with the Eighth Judicial District Court, being Case No. A-15-719637-W, to have its MME application
22 with the Division re-scored based upon a purported math error (the "Acres Case").

23 52. Counterdefendant did not include Counterclaimant as a party to the Acres Case.

24 53. On or about October 8, 2015, the Court in the Acres Case granted Counterdefendant's
25 Petition for Writ of Mandamus, compelling the Division to re-score Counterdefendant's application for
26 a Provisional Certificate by adding 41.3 to the score, thus raising the score to 167.3 and making
27 Counterdefendant's application rank number 13 for the 12 Registration Certificates allotted to the City
28 of Las Vegas (the "Order").

1 54. On or about November 9, 2015, the Court granted Counterdefendant's motion to
2 intervene in this case.

3 55. On or about November 13, 2015, the Court entered a minute order in this case revoking
4 Nuleaf's Provisional Certificate, but granting it to Counterdefendant, applying the re-coring set forth
5 in the Order and moving Counterdefendant to #12 in rank with the removal of Nuleaf, even though
6 Counterclaimant was never a party to the Acres Case or able to litigate the re-scoring.

7 56. On or about November 17, 2015, Acres Medical filed its Complaint in Intervention,
8 seeking to impose the effect of the Order upon Counterclaimant and jump ahead of Counterclaimant
9 in line for the 12 Registration Certificates allotted to the City of Las Vegas.

10 **FIRST CAUSE OF ACTION**
11 **(Declaratory Relief, Pursuant to N.R.S. § 30.010 et seq.)**

12 57. Counterclaimant repeats and realleges the allegations contained in Paragraphs 1 through
13 56 of the Counterclaim in Intervention, and incorporates the same by this reference as if more fully set
14 forth herein.

15 58. Under Nevada law, the Order does not bind Counterclaimant and has no *res judicata*
16 effect upon Counterclaimant's right to seek the revoked Provisional Certificate originally issued to
17 Nuleaf.

18 59. Under Nevada law, the Court in the Acres Case had no jurisdiction to determine the
19 relative position of Acres *vis-a-vis* Counterclaimant as Counterclaimant was not a party to the Acres
20 Case.

21 60. The rescoring of Acres Medical's MME application by the court in the Acres Case was
22 void as against Counterclaimant because Acres Medical failed to include Counterclaimant as a party
23 in the case, which was a necessary and indispensable party.

24 61. Counterclaimant was denied its due process right to contest the scoring of MME
25 applications by the Division and to contest entitlement to Nuleaf's revoked Provisional Certificate.

26 62. The re-scoring of Acres Medical's MME application with the Division was void, against
27 public policy, and inequitable.

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63. Under the doctrines laches, waiver and/or estoppel, as well as general equitable principles, and notwithstanding the Order, Acres Medical should not have priority over Counterclaimant.

64. There exists a justiciable controversy between Counterclaimant, on the one hand, and Acres Medical on the other hand regarding the scoring of applications and the issuance of provisional certificates for MME dispensaries under NRS Chapter 453A.

65. The interests of Counterclaimant are adverse to the interests of Acres Medical.

66. Counterclaimant has a legally protectable interest in the controversy.

67. The issue involved in the controversy is ripe for judicial determination with respect to the construction, interpretation, and implementation of NRS Chapter 453A, NAC 453A, and other Nevada laws and regulations as to the Counterclaimant.

68. Counterclaimant is entitled to a declaration, pursuant to N.R.S. § 30.010 *et seq.*, that while the Order from the Acres Case may have required to Division to rerank Acres Medical's application, the Acres Court Order lacks any prejudicial or precedential value when it comes to the relative positions of Acres Medical and Counterclaimant; that the Order has no force or effect upon Counterclaimant; that under the doctrines laches, waiver and/or estoppel, as well as general equitable principles, Counterclaimant should have priority over Acres Medical when it comes to any available provisional certificates; that the Provisional Certificate issued to Nuleaf and subsequently revoked by the Court should be issued to Counterclaimant (not Acres Medical); that Acres Medical is behind and below Counterclaimant in rank; that Acres Medical should not be issued an actual provisional certificate until this dispute is resolved; and that the deadlines and requirements for issuance of licenses for MME Dispensaries should be tolled for the benefit of the Counterclaimant until after the Counterclaimant's claims are determined in this case so that Counterclaimant will not suffer detriment due to the fact that it should have been issued a provisional certificate on November 3, 2014.

69. Counterclaimant has been required to retain the services of an attorney to prosecute this matter, and Counterclaimant is, therefore, entitled to its reasonable attorneys' fees and costs incurred in prosecuting this matter.

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SECOND CAUSE OF ACTION
(Injunctive Relief)

70. Counterclaimant repeats and realleges the allegations contained in Paragraphs 1 through 69 of the Counterclaim in Intervention, and incorporates the same by this reference as if more fully set forth herein.

71. Counterclaimant has already asserted claims against the Division in this case for injunctive relief regarding the issuance of provisional certificates to Nuleaf and Desert Aire.

72. However, to the extent necessary to ensure this remedy is still available, Counterclaimant is likewise entitled to a permanent mandatory injunction against the Division, enjoining the Division:

- (a) from issuing actual Registration Certificates to Nuleaf and Acres Medical;
- (b) to revoke the provisional certificates issued to Nuleaf and Acres Medical;
- (c) to identify Counterclaimant as the next highest ranking applicant for one of the Provisional Certificates allocated to the City of Las Vegas; and
- (d) to issue a provisional certificates to the Counterclaimant.

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

74. Alternatively, Counterclaimant is entitled to a permanent mandatory injunction that the one revoked provisional certificates be issued to the Counterclaimant, and not to Acres Medical because the re-scoring and re-ranking of Acres Medical was void, and/or that due to public policy and/or equitable principles, Acres Medical should not receive the one available provisional certificate, which should instead be issued to Counterclaimant.

75. Counterclaimant has been required to retain the services of an attorney to prosecute this matter, and Counterclaimant is, therefore, entitled to its reasonable attorneys' fees and costs incurred in prosecuting this matter.

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PETITION FOR WRIT OF MANDAMUS

76. Counterclaimant repeats and realleges the allegations contained in Paragraphs 1 through 74 of the Counterclaim in Intervention, and incorporates the same by this reference as if more fully set forth herein.

77. Counterclaimant has already petition for a writ of mandamus against the Division in its original Complaint.

78. To the extent required, that petition is repeated and reasserted herein in its entirety.

WHEREFORE, Counterclaimant in Intervention prays for relief as follows:

1. For declaratory relief in the manner set forth in Counterclaimant's First Cause of Action;
2. For injunctive relief, specifically a preliminary and permanent mandatory injunction, enjoining the Division:

- (a) from issuing actual Registration Certificates to Nuleaf and Acres Medical;
- (b) to revoke the Provisional Certificates issued to Nuleaf and Acres Medical;
- (c) to identify Counterclaimant as the next highest ranking applicant for one of the Provisional Certificates allocated to the City of Las Vegas; and
- (d) to issue a Provisional Certificate to Counterclaimant.

3. For injunctive relief, specifically a preliminary and permanent mandatory injunction, requiring the City to toll all deadlines which would have been required of the Counterclaimant until after the Court rules on Counterclaimants claims in this case, by virtue of the fact that Counterclaimant should have received a Provisional Certificate on November 3, 2014.

4. Alternatively, for a permanent mandatory injunction that the one revoked provisional certificates be issued to the Counterclaimant, and not to Acres Medical because the re-scoring and re-ranking of Acres Medical was void, and/or that due to public policy and/or equitable principles, Acres Medical should not receive the one available provisional certificate, which should instead be issued to Counterclaimant.

5. For reasonable attorneys' fees and costs of suit; and

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SMITH & SHAPIRO, PLLC
2520 St. Rose Parkway, Suite 220
Henderson, Nevada 89074
(702) 318-5033

1 6. For such other and further relief as the Court deems appropriate in the premises.

2 DATED this 3rd day of December, 2015.

3 SMITH & SHAPIRO, PLLC

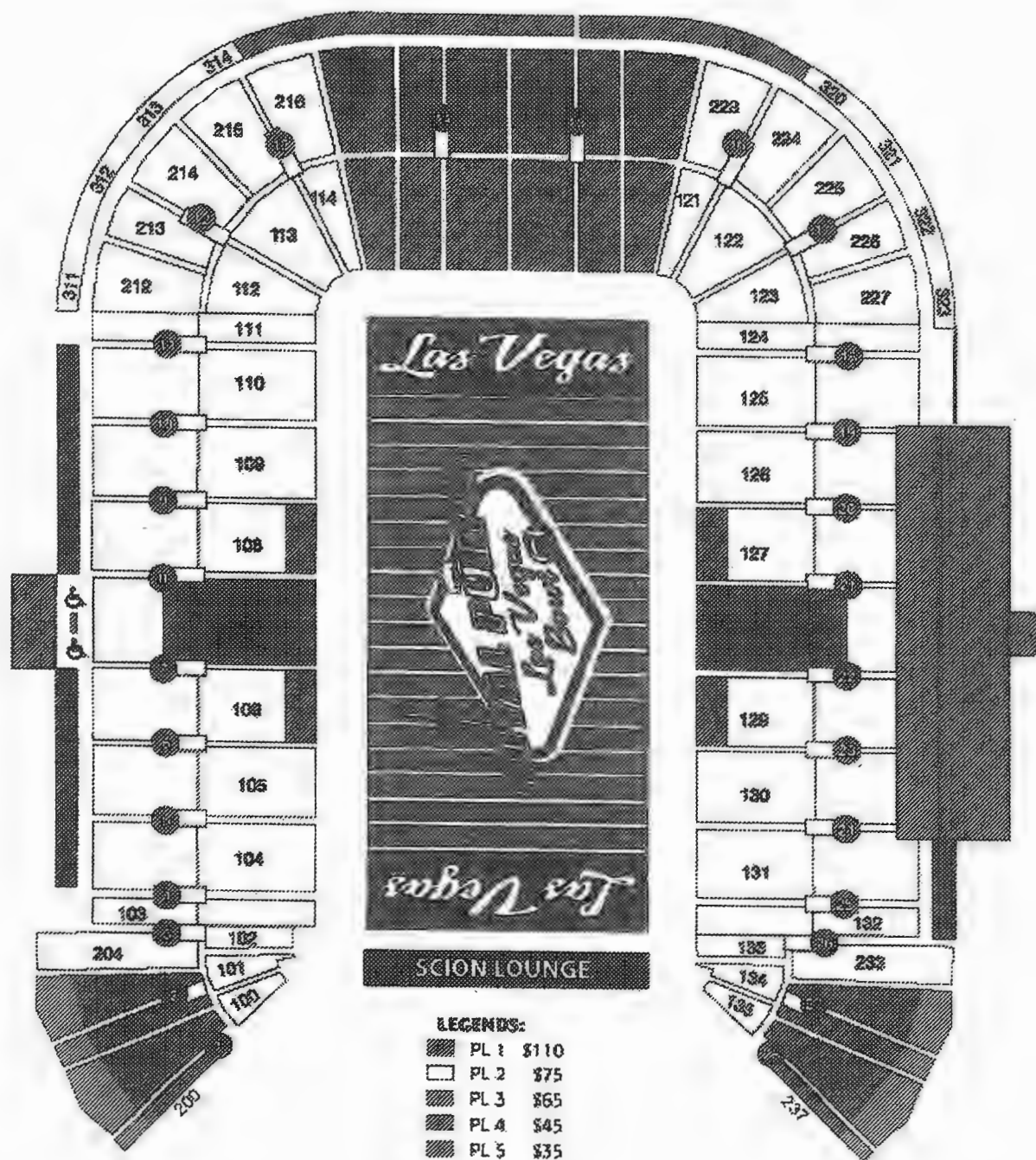
4 /s/ James E. Shapiro
5 James E. Shapiro, Esq.
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12 *in Intervention/Counter-*
13 *claimant in Intervention*
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SMITH & SHAPIRO, PLLC
2520 St. Rose Parkway, Suite 220
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(702) 318-5033

CERTIFICATE OF SERVICE

I hereby certify that I am an employee of SMITH & SHAPIRO, PLLC, and that on the 3rd day of December, 2015, I served a true and correct copy of the forgoing **ANSWER TO COMPLAINT IN INTERVENTION AND COUNTERCLAIM**, by e-serving a copy on all parties registered and listed as Service Recipients in Wiznet, the Court's on-line, electronic filing website, pursuant to Administrative Order 14-2, entered by the Chief Judge, Jennifer Togliatti, on May 9, 2014.

/s/ Jill M. Berghammer
An employee of SMITH & SHAPIRO, PLLC





CLERK OF THE COURT

1 ANS / CNTR
James E. Shapiro, Esq.
2 Nevada Bar No. 7907
Sheldon A. Herbert, Esq.
3 Nevada Bar No. 5988
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5 (702) 318-5033
Attorneys for GB SCIENCES NEVADA, LLC

6 **DISTRICT COURT**

7 **CLARK COUNTY, NEVADA**

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

10 Plaintiff,

11 vs.

12 STATE OF NEVADA, DIVISION OF PUBLIC
AND BEHAVIORAL HEALTH OF THE
13 DEPARTMENT OF HEALTH AND HUMAN
SERVICES; NULEAF CLV DISPENSARY, LLC,
14 a Nevada limited liability company; DOES 1-10, and
ROE ENTITIES 1-100, inclusive,

15 Defendants.

16 ACRES MEDICAL, LLC,

17 Plaintiff in Intervention,

18 vs.

19 STATE OF NEVADA, DIVISION OF PUBLIC
AND BEHAVIORAL HEALTH OF THE
20 DEPARTMENT OF HEALTH AND HUMAN
SERVICES; CITY OF LAS VEGAS, a municipal
21 corporation and political subdivision of the State of
Nevada; NULEAF CLV DISPENSARY, LLC, a
22 Nevada limited liability company; GB SCIENCES
NEVADA, LLC, a Nevada limited liability
23 company,

24 Defendants in Intervention.

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Case No. A-14-710597-C
Dept. No. XX

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1 GB SCIENCES NEVADA, LLC, a Nevada limited
2 liability company,

3 Counterclaimant in Intervention,

4 vs.

5 ACRES MEDICAL, LLC, a Nevada limited
6 liability company, and STATE OF NEVADA,
7 DIVISION OF PUBLIC AND BEHAVIORAL
8 HEALTH OF THE DEPARTMENT OF HEALTH
9 AND HUMAN SERVICES,

10 Counterdefendants in Intervention.

Date: N/A
Time: N/A

11 ANSWER TO COMPLAINT IN INTERVENTION AND
12 COUNTERCLAIM

13 COMES NOW Plaintiff/Defendant in Intervention/Counterclaimant in Intervention, GB
14 SCIENCES NEVADA, LLC, a Nevada limited liability company ("GB Sciences"), by and through its
15 attorneys of record, SMITH & SHAPIRO, PLLC, and for its Answer to Complaint in Intervention (the
16 "Complaint"), admits, denies, defends, and affirmatively states as follows:

17 THE PARTIES

18 1. Answering Paragraphs No. 1, 2, 3, and 4 of the Parties Section of the Complaint, GB
19 Sciences is without information sufficient to form a reasonable belief as to the truth or falsity of the
20 allegations contained in said paragraphs, and, therefore, denies the same in their entirety.

21 2. Answering Paragraph No. 5 of the Parties Section of the Complaint, GB Sciences admits
22 the allegations contained therein.

23 JURISDICTION

24 3. Answering Paragraph No. 6 of the Jurisdiction Section of the Complaint, said paragraph
25 contains a legal conclusion and requires no response thereto; otherwise, GB Sciences admits the
26 allegations contained therein.

27 GENERAL STATUTORY AND REGULATORY FRAMEWORK

28 4. Answering Paragraphs No. 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 19, and 20 of the
General Statutory and Regulatory Framework Section of the Complaint, GB Sciences admits the
allegations contained therein.

1 5. Answering Paragraph No. 18 of the General Statutory and Regulatory Framework
2 Section of the Complaint, GB Sciences admits that the City of Las Vegas granted a special use permit
3 to twenty-seven (27) applicants, but is without information sufficient to form a reasonable belief as to
4 the truth or falsity of the remaining allegations contained in said paragraph, and, therefore, denies the
5 same in their entirety.

6 THE DIVISION'S APPLICATION AND APPROVAL PROCESS

7 6. Answering Paragraphs No. 21, 22, 23, 26, and 27 of the Division's Application and
8 Approval Process Section of the Complaint, said paragraph contains a legal conclusion and requires
9 no response thereto; otherwise, GB Sciences admits the allegations contained therein.

10 7. Answering Paragraphs No. 24 and 25 of the Division's Application and Approval
11 Process Section of the Complaint, said paragraph contains a legal conclusion and requires no response
12 thereto; otherwise, GB Sciences is without information sufficient to form a reasonable belief as to the
13 truth or falsity of the allegations contained in said paragraphs but admits the allegations contained
14 therein upon information and belief.

15 THE DIVISION'S ISSUANCE OF PROVISIONAL CERTIFICATES

16 8. Answering Paragraphs No. 28, 29, 30, 32, and 35 of the Division's Issuance of
17 Provisional Certificates Section of the Complaint, said paragraph contains a legal conclusion and
18 requires no response thereto; otherwise, GB Sciences admits the allegations contained therein.

19 9. Answering Paragraphs No. 31, 33, 34, 40, 41, 42, and 43 of the Division's Issuance of
20 Provisional Certificates Section of the Complaint, said paragraph contains a legal conclusion and
21 requires no response thereto; otherwise, GB Sciences is without information sufficient to form a
22 reasonable belief as to the truth or falsity of the allegations contained in said paragraphs, and, therefore,
23 denies the same in their entirety.

24 10. Answering Paragraphs No. 36, 37, 38, 39, 44, 45, 46, 47, and 48 of the Division's
25 Issuance of Provisional Certificates Section of the Complaint, said paragraph contains a legal
26 conclusion and requires no response thereto; otherwise, GB Sciences is without information sufficient
27 to form a reasonable belief as to the truth or falsity of the allegations contained in said paragraphs, and,
28 therefore, denies the same in their entirety.

DEFENDANT NULEAF'S APPLICATION

11. Answering Paragraphs No. 49, 53 and 54 of the Defendant Nuleaf's Application Section of the Complaint, GB Sciences is without information sufficient to form a reasonable belief as to the truth or falsity of the remaining allegations contained in said paragraph, and, therefore, denies the same in their entirety.

12. Answering Paragraphs No. 50, 51, 52, 57, 58, and 59 of the Defendant Nuleaf's Application Section of the Complaint, GB Sciences admits the allegations contained therein.

13. Answering Paragraph No. 55 of the Defendant Nuleaf's Application Section of the Complaint, GB Sciences is without information sufficient to form a reasonable belief as to the truth or falsity of the allegation "which included Plaintiff in Intervention" but admits the remaining allegations contained in said paragraph.

14. Answering Paragraph No. 56 of the Defendant Nuleaf's Application Section of the Complaint, GB Sciences admits the allegation that "Nuleaf did not meet those requirements" but is without information sufficient to form a reasonable belief as to the truth or falsity of the remaining allegations contained in said paragraph, and, therefore, denies the same in their entirety.

THE PLAINTIFF IN INTERVENTION'S APPLICATION AND
DISTRICT COURT ORDER IN CASE

15. Answering Paragraphs No. 60, 61, 62, 64, 65, 66, 67, 68, 69, 70, 71, 72, 76, and 77 of the Plaintiff in Intervention's Application and District Court Order in Case Section of the Complaint, GB Sciences is without information sufficient to form a reasonable belief as to the truth or falsity of the remaining allegations contained in said paragraph, and, therefore, denies the same in their entirety.

16. Answering Paragraphs No. 63, 74, and 75 of the Plaintiff in Intervention's Application and District Court Order in Case Section of the Complaint, GB Sciences admits the allegations contained in said paragraphs.

17. Answering Paragraph No. 73 of the Plaintiff in Intervention's Application and District Court Order in Case Section of the Complaint, the Order speaks for itself; otherwise, GB Sciences is without information sufficient to form a reasonable belief as to the truth or falsity of the allegations contained in said paragraph, and, therefore, denies the same in their entirety.

1 18. Answering Paragraph No. 78 of the Plaintiff in Intervention's Application and District
2 Court Order in Case Section of the Complaint, GB Sciences denies the allegations that "Plaintiff in
3 Intervention is the 13th ranked applicant," and "[t]hat error was corrected when Plaintiff in Intervention
4 obtained an order of mandamus directing the Division to rescore and re-rank the Application. As such,
5 Plaintiff in Intervention should receive the first Provisional License should one become available," and
6 otherwise is without information sufficient to form a reasonable belief as to the truth or falsity of the
7 remaining allegations contained in said paragraph, and, therefore, denies the same in their entirety.

8 DIVISION'S REFUSAL TO IDENTIFY NEXT HIGHEST RANKED APPLICANT

9 19. Answering Paragraphs No. 79, 80, and 81 of the Division's Refusal to Identify the Next
10 Highest Ranked Applicant Section of the Complaint, GB Sciences is without information sufficient to
11 form a reasonable belief as to the truth or falsity of the allegations contained in said paragraphs, and,
12 therefore, denies the same in their entirety.

13 THE CITY OF LAS VEGAS' SUBSEQUENT PROCESSING OF NULEAF'S APPLICATION

14 20. Answering Paragraphs No. 82, 86, 87, 88, and 89 of the City of Las Vegas' Subsequent
15 Processing of Nuleaf's Application Section of the Complaint, GB Sciences is without information
16 sufficient to form a reasonable belief as to the truth or falsity of the allegations contained in said
17 paragraphs, and, therefore, denies the same in their entirety.

18 21. Answering Paragraphs No. 83, 84, and 85 of the City of Las Vegas' Subsequent
19 Processing of Nuleaf's Application Section of the Complaint, GB Sciences admits the allegations
20 contained in said paragraphs.

21 FIRST CAUSE OF ACTION
22 (Declaratory Relief)

23 22. Answering Paragraph No. 90 of the First Cause of Action set forth in the Complaint, GB
24 Sciences repeats its responses to Paragraphs No. 1 through 89 of the Complaint as if more fully set forth
25 herein.

26 23. Answering Paragraphs No. 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, and
27 104 of the First Cause of Action set forth in the Complaint, GB Sciences is without information

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1 sufficient to form a reasonable belief as to the truth or falsity of the allegations contained in said
2 paragraphs, and, therefore, denies the same in their entirety.

3 SECOND CAUSE OF ACTION
4 (Injunctive Relief Against the Division and the City of Las Vegas)

5 24. Answering Paragraph No. 105 of the Second Cause of Action set forth in the Complaint,
6 GB Sciences repeats its responses to Paragraphs No. 1 through 104 of the Complaint as if more fully
7 set forth herein.

8 25. Answering Paragraphs No. 106, 107, 108, 109, 110, 111, 112, 113 (a through e,
9 inclusive), 114 (a through b, inclusive), and 115 of the Second Cause of Action set forth in the
10 Complaint, GB Sciences is without information sufficient to form a reasonable belief as to the truth or
11 falsity of the allegations contained in said paragraphs, and, therefore, denies the same in their entirety.

12 PETITION FOR WRIT OF MANDAMUS

13 26. Answering Paragraph No. 116 of the Petition for Writ of Mandamus set forth in the
14 Complaint, GB Sciences repeats its responses to Paragraphs No. 1 through 115 of the Complaint as if
15 more fully set forth herein.

16 27. Answering Paragraphs No. 117, 120, 122, and 123 of the Petition for Writ of Mandamus
17 set forth in the Complaint, GB Sciences is without information sufficient to form a reasonable belief
18 as to the truth or falsity of the allegations contained in said paragraphs, and, therefore, denies the same
19 in their entirety.

20 28. Answering Paragraphs No. 118 and 119 of the Petition for Writ of Mandamus set forth
21 in the Complaint, GB Sciences admits the allegations contained in said paragraphs.

22 29. Answering Paragraph No. 121 of the Petition for Writ of Mandamus set forth in the
23 Complaint, GB Sciences admits that the Division failed to perform the acts described in Paragraphs 118
24 and 119 of the Petition for Writ of Mandamus that Nevada law compelled the Division to perform, but
25 is otherwise without information sufficient to form a reasonable belief as to the truth or falsity of the
26 allegations contained in said paragraphs, and, therefore, denies the same in their entirety.

27 AFFIRMATIVE DEFENSES

28 1. The Complaint in Intervention fails to state a claim upon which relief may be granted.

2. ACRES MEDICAL, LLC's claims are barred by the doctrine of laches.
3. ACRES MEDICAL, LLC's claims are barred by the doctrine of waiver.
4. ACRES MEDICAL, LLC's claims are barred by the doctrines of estoppel, estoppel by fraud, and equitable estoppel.
5. The Complaint in Intervention is barred by the statute of frauds.
6. Plaintiff in Intervention failed to fulfill the requirements of NRS Chapter 453A, NAC 453A, and/or the requirements of the City of Las Vegas for issuance of a provisional registration certificate for an MME license.
7. The re-scoring of Plaintiff in Intervention's was void, against public policy, and inequitable.
8. The Order issued by Judge Cadish violates GB Sciences' due process rights, enshrined in the United States Constitution and Nevada State Constitution.
9. The Order issued by Judge Cadish has no *res judicata* effect upon GB Sciences.
10. Plaintiffs in Intervention's own conduct, and that of its own principals, is the proximate cause of Plaintiffs in Intervention's damages or other grievances, if any.
11. Plaintiffs in Intervention have acted in bad faith.
12. Plaintiffs in Intervention have unclean hands.
13. GB Sciences denies each and every allegation of the Complaint in Intervention not specifically admitted or otherwise pleaded to herein.
14. It has been necessary to employ the services of an attorney to defend this action and a reasonable sum should be allowed GB Sciences as and for attorney's fees, together with their costs expended in this action.
15. GB Sciences incorporates by reference those affirmative defenses enumerated in N.R.C.P. 8 as if fully set forth herein. If further investigation or discovery reveals the applicability of any such defenses, GB Sciences reserves the right to seek leave of Court to amend this answer to complaint in intervention to specifically assert any such defense. Such defenses are herein incorporated by reference for the specific purpose of not waiving any such defenses.

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16. Pursuant to N.R.C.P. Rule 11, as amended, all possible affirmative defenses may not have been alleged herein insofar as sufficient facts were not available after reasonable inquiry upon the filing of the Answer to Complaint in Intervention and, therefore, GB Sciences reserves the right to amend its Answer to Complaint in Intervention to allege additional affirmative defenses.

WHEREFORE, Plaintiff/Defendant in Intervention/Counterclaimant in Intervention GB Sciences prays for relief as follows:

1. That Acres Medical take nothing by way of its Complaint in Intervention,
2. That GB Sciences be awarded its attorneys' fees and costs incurred in defendant against the Complaint in Intervention; and
3. That GB Sciences be awarded such other and further relief as the Court deems appropriate in the premises.

COMES NOW Plaintiff/Counterclaimant in Intervention, GB SCIENCES NEVADA, LLC, a Nevada limited liability company, by and through its attorneys of record, SMITH & SHAPIRO, PLLC, and for its Counterclaim in Intervention, alleges and avers as follows:

1. Counterclaimant, GB SCIENCES NEVADA, LLC ("GB Sciences") is a Nevada limited liability company located in Clark County, Nevada.
2. Upon information and belief, Counterdefendant ACRES MEDICAL, LLC ("Acres Medical") is a Nevada limited liability company doing business 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. Venue is proper in this Court pursuant to N.R.S. § 13.020(3) and N.R.S. § 233N.130(2)(b), in that this is the county where the cause, or some part thereof, arose and the aggrieved party resides.

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GENERAL ALLEGATIONS

5. In 2013, the Nevada Legislature passed Senate Bill 374, which, in part, provided for the registration of medical marijuana establishments authorized to cultivate and dispense marijuana and marijuana infused products to those persons authorized to use medicinal marijuana.

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

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

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

9. 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.

10. The City of Las Vegas was allotted twelve (12) MME registration certificates (the "Registration Certificates") by the Division.

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

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

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

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

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

3 16. Counterclaimant, Nuleaf CLV Dispensary, LLC ("Nuleaf"), and Counterdefendant
4 Acres Medical were three (3) of the applicants.

5 17. On October 28, 2014, the City Council of the City of Las Vegas held a special meeting
6 to consider each applicant for a special use permit for a proposed medical marijuana dispensary.

7 18. The City of Las Vegas granted a special use permit to twenty-seven (27) applicants,
8 including Counterclaimant.

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

11 20. Upon information and belief, the City of Las Vegas thereafter informed the Division of
12 those applicants granted a special use permit and those applicants denied a special use permit by the
13 City of Las Vegas.

14 21. NRS Chapter 453A.322(2) requires any person who wished to operate a medical
15 marijuana establishment in Nevada to submit to the Division an application on a form prescribed by
16 the Division.

17 22. While the Division was allowed to *accept* all applications submitted, under N.R.S. §
18 453A.322, the Division could only issue a Provisional Certificate if the applicant's application included
19 six (6) specific items and if the applicant otherwise met the requirements established by N.R.S. Chapter
20 453A.

21 23. NRS 453A.322(3)(a)(2) through (5) provided a list of items that every application for
22 a medical marijuana establishment must have submitted to the Division.

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

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

4 26. Supposedly in accordance with these and many other statutory and regulatory
5 requirements, the Division issued an application packet on May 30, 2014.

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

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

15 29. However, the requirements of NRS 453A.322(3) and the Division's ability to issue a
16 medical marijuana registration certificate were subject expressly to the exceptions set forth in NRS
17 453A.326.

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

21 31. The City of Las Vegas is a Nevada city that enacted ordinances for the zoning and
22 business licensing of medical marijuana establishments.

23 32. As such, the Division was required to ensure compliance with NRS 453A.326(3)(5).

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

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

4 35. Counterclaimant, Nuleaf, and Acres were among these applicants to the Division.

5 36. Prior to submitting an application to the Division, Counterclaimant, Nuleaf, and Acres
6 each submitted an application to the City of Las Vegas for a Special Use Permit and a Business License
7 as required by the City of Las Vegas' newly enacted ordinances.

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

10 38. To the contrary, Counterclaimant received a Special Use Permit for the operation of
11 medical marijuana dispensary from the City of Las Vegas and further, its application for Business
12 License was recommended for approval.

13 39. In addition, Counterclaimant submitted as part of its application to the Division the City
14 of Las Vegas' certification that Counterclaimant complied with the City of Las Vegas's ordinances and
15 building requirements concerning the operation of a medical marijuana establishment in the City of Las
16 Vegas.

17 40. Upon information and belief, the City of Las Vegas informed the Division of those
18 applicants that it approved for a Special Use Permit, which included Counterclaimant, and those
19 applicants that it denied a Special Use Permit, which included Nuleaf.

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

23 42. Also upon information and belief, the Division never determined whether each applicant
24 had submitted the required proof of licensure from the City of Las Vegas or a letter from the City of
25 Las Vegas certifying that each applicant's proposed medical marijuana dispensary complied with the
26 City of Las Vegas' restrictions and building requirements as prescribed by NRS 455A.322(3)(a)(5).

27 43. As a result, the Division improperly ranked the application of Nuleaf against the
28 acceptable criteria.

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

4 45. Counterclaimant had been ranked number 13 based upon a score of 166.86.

5 46. Acres had received a score of 126 and was ranked only 36 or 37 by the Division.

6 47. At the same time, Counterclaimant discovered that the Division ranked and issued
7 provisional registration certificate to Nuleaf (ranked #3 even though it was denied the required Special
8 Use Permit and Business License from the City of Las Vegas).

9 48. Had the Division complied with the express requirements of NRS 453A.322(3), NAC
10 453A.310, NAC 453A.312, and NAC 453A.332, and the Division's previous public statements regarding
11 the correct application procedure, Nuleaf should not have received a ranking let alone a provisional
12 registration certificate.

13 49. More importantly, Counterclaimant's score (166.86) would have and should been high
14 enough to rank within the top 12 spots (# 11) allotted for the City of Las Vegas and therefore,
15 Counterclaimant should have received a provisional registration certificate from the Division within
16 the 90-day evaluation period.

17 50. Consequently, Counterclaimant, in actuality being ranked #11, would have received
18 provisional registration certificate from the Division in accordance with Nevada law and as approved
19 by the City of Las Vegas.

20 51. On or about June 9, 2015, Counterdefendant Acres filed an action against the Division
21 with the Eighth Judicial District Court, being Case No. A-15-719637-W, to have its MME application
22 with the Division re-scored based upon a purported math error (the "Acres Case").

23 52. Counterdefendant did not include Counterclaimant as a party to the Acres Case.

24 53. On or about October 8, 2015, the Court in the Acres Case granted Counterdefendant's
25 Petition for Writ of Mandamus, compelling the Division to re-score Counterdefendant's application for
26 a Provisional Certificate by adding 41.3 to the score, thus raising the score to 167.3 and making
27 Counterdefendant's application rank number 13 for the 12 Registration Certificates allotted to the City
28 of Las Vegas (the "Order").

1 54. On or about November 9, 2015, the Court granted Counterdefendant's motion to
2 intervene in this case.

3 55. On or about November 13, 2015, the Court entered a minute order in this case revoking
4 Nuleaf's Provisional Certificate, but granting it to Counterdefendant, applying the re-coring set forth
5 in the Order and moving Counterdefendant to #12 in rank with the removal of Nuleaf, even though
6 Counterclaimant was never a party to the Acres Case or able to litigate the re-scoring.

7 56. On or about November 17, 2015, Acres Medical filed its Complaint in Intervention,
8 seeking to impose the effect of the Order upon Counterclaimant and jump ahead of Counterclaimant
9 in line for the 12 Registration Certificates allotted to the City of Las Vegas.

10 **FIRST CAUSE OF ACTION**
11 **(Declaratory Relief, Pursuant to N.R.S. § 30.010 et seq.)**

12 57. Counterclaimant repeats and realleges the allegations contained in Paragraphs 1 through
13 56 of the Counterclaim in Intervention, and incorporates the same by this reference as if more fully set
14 forth herein.

15 58. Under Nevada law, the Order does not bind Counterclaimant and has no *res judicata*
16 effect upon Counterclaimant's right to seek the revoked Provisional Certificate originally issued to
17 Nuleaf.

18 59. Under Nevada law, the Court in the Acres Case had no jurisdiction to determine the
19 relative position of Acres *vis-a-vis* Counterclaimant as Counterclaimant was not a party to the Acres
20 Case.

21 60. The rescoring of Acres Medical's MME application by the court in the Acres Case was
22 void as against Counterclaimant because Acres Medical failed to include Counterclaimant as a party
23 in the case, which was a necessary and indispensable party.

24 61. Counterclaimant was denied its due process right to contest the scoring of MME
25 applications by the Division and to contest entitlement to Nuleaf's revoked Provisional Certificate.

26 62. The re-scoring of Acres Medical's MME application with the Division was void, against
27 public policy, and inequitable.

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1 63. Under the doctrines laches, waiver and/or estoppel, as well as general equitable
2 principles, and notwithstanding the Order, Acres Medical should not have priority over
3 Counterclaimant.

4 64. There exists a justiciable controversy between Counterclaimant, on the one hand, and
5 Acres Medical on the other hand regarding the scoring of applications and the issuance of provisional
6 certificates for MME dispensaries under NRS Chapter 453A.

7 65. The interests of Counterclaimant are adverse to the interests of Acres Medical.

8 66. Counterclaimant has a legally protectable interest in the controversy.

9 67. The issue involved in the controversy is ripe for judicial determination with respect to
10 the construction, interpretation, and implementation of NRS Chapter 453A, NAC 453A, and other
11 Nevada laws and regulations as to the Counterclaimant.

12 68. Counterclaimant is entitled to a declaration, pursuant to N.R.S. § 30.010 *et seq.*, that
13 while the Order from the Acres Case may have required to Division to rerank Acres Medical's
14 application, the Acres Court Order lacks any prejudicial or precedential value when it comes to the
15 relative positions of Acres Medical and Counterclaimant; that the Order has no force or effect upon
16 Counterclaimant; that under the doctrines laches, waiver and/or estoppel, as well as general equitable
17 principles, Counterclaimant should have priority over Acres Medical when it comes to any available
18 provisional certificates; that the Provisional Certificate issued to Nuleaf and subsequently revoked by
19 the Court should be issued to Counterclaimant (not Acres Medical); that Acres Medical is behind and
20 below Counterclaimant in rank; that Acres Medical should not be issued an actual provisional
21 certificate until this dispute is resolved; and that the deadlines and requirements for issuance of licenses
22 for MME Dispensaries should be tolled for the benefit of the Counterclaimant until after the
23 Counterclaimant's claims are determined in this case so that Counterclaimant will not suffer detriment
24 due to the fact that it should have been issued a provisional certificate on November 3, 2014.

25 69. Counterclaimant has been required to retain the services of an attorney to prosecute this
26 matter, and Counterclaimant is, therefore, entitled to its reasonable attorneys' fees and costs incurred
27 in prosecuting this matter.

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SECOND CAUSE OF ACTION
(Injunctive Relief)

70. Counterclaimant repeats and realleges the allegations contained in Paragraphs 1 through 69 of the Counterclaim in Intervention, and incorporates the same by this reference as if more fully set forth herein.

71. Counterclaimant has already asserted claims against the Division in this case for injunctive relief regarding the issuance of provisional certificates to Nuleaf and Desert Aire.

72. However, to the extent necessary to ensure this remedy is still available, Counterclaimant is likewise entitled to a permanent mandatory injunction against the Division, enjoining the Division:

- (a) from issuing actual Registration Certificates to Nuleaf and Acres Medical;
- (b) to revoke the provisional certificates issued to Nuleaf and Acres Medical;
- (c) to identify Counterclaimant as the next highest ranking applicant for one of the Provisional Certificates allocated to the City of Las Vegas; and
- (d) to issue a provisional certificates to the Counterclaimant.

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

74. Alternatively, Counterclaimant is entitled to a permanent mandatory injunction that the one revoked provisional certificates be issued to the Counterclaimant, and not to Acres Medical because the re-scoring and re-ranking of Acres Medical was void, and/or that due to public policy and/or equitable principles, Acres Medical should not receive the one available provisional certificate, which should instead be issued to Counterclaimant.

75. Counterclaimant has been required to retain the services of an attorney to prosecute this matter, and Counterclaimant is, therefore, entitled to its reasonable attorneys' fees and costs incurred in prosecuting this matter.

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PETITION FOR WRIT OF MANDAMUS

76. Counterclaimant repeats and realleges the allegations contained in Paragraphs 1 through 74 of the Counterclaim in Intervention, and incorporates the same by this reference as if more fully set forth herein.

77. Counterclaimant has already petition for a writ of mandamus against the Division in its original Complaint.

78. To the extent required, that petition is repeated and reasserted herein in its entirety.

WHEREFORE, Counterclaimant in Intervention prays for relief as follows:

1. For declaratory relief in the manner set forth in Counterclaimant's First Cause of Action;
2. For injunctive relief, specifically a preliminary and permanent mandatory injunction, enjoining the Division:

- (a) from issuing actual Registration Certificates to Nuleaf and Acres Medical;
- (b) to revoke the Provisional Certificates issued to Nuleaf and Acres Medical;
- (c) to identify Counterclaimant as the next highest ranking applicant for one of the Provisional Certificates allocated to the City of Las Vegas; and
- (d) to issue a Provisional Certificate to Counterclaimant.

3. For injunctive relief, specifically a preliminary and permanent mandatory injunction, requiring the City to toll all deadlines which would have been required of the Counterclaimant until after the Court rules on Counterclaimants claims in this case, by virtue of the fact that Counterclaimant should have received a Provisional Certificate on November 3, 2014.

4. Alternatively, for a permanent mandatory injunction that the one revoked provisional certificates be issued to the Counterclaimant, and not to Acres Medical because the re-scoring and re-ranking of Acres Medical was void, and/or that due to public policy and/or equitable principles, Acres Medical should not receive the one available provisional certificate, which should instead be issued to Counterclaimant.

5. For reasonable attorneys' fees and costs of suit; and

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1 6. For such other and further relief as the Court deems appropriate in the premises.

2 DATED this 3rd day of December, 2015.

3 SMITH & SHAPIRO, PLLC

4 /s/ James E. Shapiro
5 James E. Shapiro, Esq.
6 Nevada Bar No. 7907
7 Sheldon A. Herbert, Esq.
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12 *in Intervention/Counter-*
13 *claimant in Intervention*
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CERTIFICATE OF SERVICE

I hereby certify that I am an employee of SMITH & SHAPIRO, PLLC, and that on the 3rd day of December, 2015, I served a true and correct copy of the forgoing **ANSWER TO COMPLAINT IN INTERVENTION AND COUNTERCLAIM**, by e-serving a copy on all parties registered and listed as Service Recipients in Wiznet, the Court's on-line, electronic filing website, pursuant to Administrative Order 14-2, entered by the Chief Judge, Jennifer Togliatti, on May 9, 2014.

/s/ Jill M. Berghammer
An employee of SMITH & SHAPIRO, PLLC