

IN THE SUPREME COURT OF THE STATE OF NEVADA

Supreme Court Case No. 69909
District Court Case No. A-14-710597-C

Electronically Filed
Sep 15 2016 09:56 a.m.
Tracie K. Lindeman
Clerk of Supreme Court

NULEAF CLV DISPENSARY, LLC, A NEVADA LIMITED LIABILITY
COMPANY

Appellant,

v.

THE STATE OF NEVADA DEPARTMENT OF HEALTH AND HUMAN
SERVICES, DIVISION OF PUBLIC AND BEHAVIORAL HEALTH; ACRES
MEDICAL, LLC; AND GB SCIENCES, LLC, A NEVADA LIMITED
LIABILITY COMPANY,

Respondents.

APPELLANT'S APPENDIX
VOUME 3 OF 3

Appeal from the Eighth Judicial District Court, Clark County
The Honorable Eric Johnson, Department XX
District Court Case No. A-14-710597-C

Todd L. Bice, Esq., Bar No. 4534
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Attorneys for Appellant

CHRONOLOGICAL INDEX			
DOCUMENT	DATE	VOL.	PAGE
First Amended Complaint and in Addition, or in the Alternative, First Amended Petition for Judicial Review and Writ of Mandamus	12/05/2014	1	APP00001-APP00029
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Transcript of Proceedings of Plaintiff's Motion for Preliminary and Permanent Injunction Against Defendants on Order Shortening Time, December 31, 2014	01/09/2015	1	APP00076-APP00153
State's Answer	02/02/2015	1	APP00154-APP00157
Notice of Voluntary Dismissal Without Prejudice of Defendant Desert Aire Wellness, LLC, Only	04/01/2015	1	APP00158-APP00159
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Defendant Nuleaf CLV Dispensary LLC's Answer to First Amended Complaint and in Addition, or in the Alternative, First Amended Petition for Judicial Review and Writ of Mandamus	10/05/2015	2	APP00364-APP00376
Defendant Nuleaf CLV Dispensary LLC's Opposition to Plaintiff GB Sciences Nevada, LLC's Motion for Summary Judgment and Countermotion for Summary Judgment	10/05/2015	2	APP00377-APP00419
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Defendant Nuleaf CLV Dispensary, LLC's Notice of Appeal	03/02/2016	3	APP00500-APP00516
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Complaint in Intervention for Declaratory and Injunctive Relief and/or Petition for Writ of Mandamus or Prohibition	11/17/2015	3	APP00458-APP00484
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Defendant Nuleaf CLV Dispensary, LLC's Notice of Appeal	03/02/2016	3	APP00500-APP00516
Defendant Nuleaf CLV Dispensary LLC's Opposition to Plaintiff GB Sciences Nevada, LLC's Motion For Preliminary Injunction	12/29/2014	1	APP00030-APP00075
Defendant Nuleaf CLV Dispensary LLC's Opposition to Plaintiff GB Sciences Nevada, LLC's Motion for Summary Judgment and Countermotion for Summary Judgment	10/05/2015	2	APP00377-APP00419
Defendant Nuleaf CLV Dispensary LLC's Reply in Support of Countermotion for Summary Judgment	11/03/15	3	APP00446-APP00457
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Motion for Summary Judgment	9/18/2015	1	APP00160-APP00176
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State Response to Motion for Summary Judgment	09/28/2015	2	APP00348-APP00363
Transcript of Proceedings of Plaintiff's Motion for Preliminary and Permanent Injunction Against Defendants on Order Shortening Time, December 31, 2014	01/09/2015	1	APP00076-APP00153

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of PISANELLI BICE PLLC, and that on this 14th day of September 2016, I electronically filed and served by electronic mail a true and correct copy of the above and foregoing **APPELLANT'S APPENDIX VOLUME 3 OF 3** properly addressed to the following:

James E. Shapiro, Esq., Bar No. 7907
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Attorneys for Intervener Acres

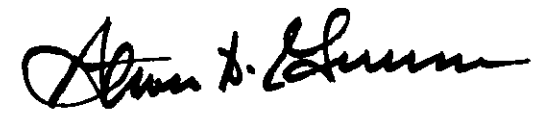
Adam P. Laxalt, Esq.
Attorney General
Linda C. Anderson, Esq.
Chief Deputy Attorney General
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Tel.: (702) 486-3420

Attorneys for The State of Nevada

SERVED VIA HAND-DELIVERY

The Honorable Eric Johnson
Eighth Judicial District Court
Dept. XX
200 Lewis Avenue
Las Vegas, Nevada 89155

/s/ Shannon Thomas
An employee of PISANELLI BICE PLLC



CLERK OF THE COURT

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DISTRICT COURT
CLARK COUNTY, NEVADA

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

Plaintiff,

vs.

STATE OF NEVADA, DEPARTMENT OF
HEALTH AND HUMAN SERVICES,
DIVISION OF PUBLIC AND BEHAVIORAL
HEALTH; et. al.

Defendants.

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

NOTICE OF ENTRY OF ORDER

Date of Hearing: October 21, 2015

Time of Hearing: 8:30 a.m.

COMES NOW Defendant STATE OF NEVADA on its relation to the DEPARTMENT OF
HEALTH AND HUMAN SERVICES, DIVISION OF PUBLIC AND BEHAVIORAL HEALTH
(hereinafter "DIVISION"), by and through ADAM PAUL LAXALT, Attorney General by Chief Deputy
Attorney General, LINDA C. ANDERSON, and files notice of the attached Entry of Order and Order in
another case *Acres Medical LLC v. Nevada Department of Health and Human Service, A-15-719637-W*
where the Honorable Judge Cadish ruled that Acres Medical is now ranked the 13th dispensary in the
City of Las Vegas.

///

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AFFIRMATION PURSUANT TO NRS 239B.030

The undersigned does hereby affirm that the preceding document does not contain the social security number of any person.

Dated: October 15, 2015.

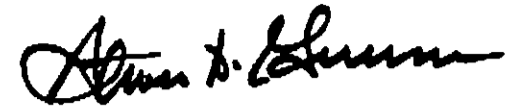
ADAM PAUL LAXALT
Attorney General

By: /s/ Linda C. Anderson
Linda C. Anderson
Chief Deputy Attorney General

CERTIFICATE OF SERVICE

I hereby certify that I am an employee of the Office of the Attorney General and that on October 15, 2015, I electronically served the foregoing by using the electronic filing system to e-serve a copy on all parties registered and listed as Service Recipients in Wiznet, the Court's on-line filing website, pursuant to Administrative Order 14-2, entered by the Chief Judge, Jennifer Togliatti on May 9, 2014.

/s/ Linda Aouste
An Employee of the Office of the Attorney General



CLERK OF THE COURT

1 NTSO
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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

**NOTICE OF ENTRY OF ORDER
GRANTING PLAINTIFFS' PETITION FOR
MANDAMUS**

GREENBERG TRAUIG, LLP
3773 Howard Hughes Parkway
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Telephone: (702) 792-3773
Facsimile: (702) 792-9002

YOU AND EACH OF YOU will please take notice that the Order Granting Plaintiffs' Petition for Mandamus was entered in the above-captioned matter on the 8th day of October, 2015. A copy of the **ORDER GRANTING PLAINTIFFS' PETITION FOR MANDAMUS** is attached hereto as Exhibit A.

DATED this 9th day of October, 2015.

GREENBERG TRAURIG, LLP

By: /s/ Landon Lerner
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 LANDON LERNER (NV Bar #13368)
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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 9th day of October, 2015, I caused a true and correct copy of the foregoing *Notice of Entry of Order Granting Plaintiffs' Petition for Mandamus* 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/ Andrea Lee Rosehill

An employee of GREENBERG TRAURIG, LLP

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

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

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

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

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

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

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

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

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

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

28 ///

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.

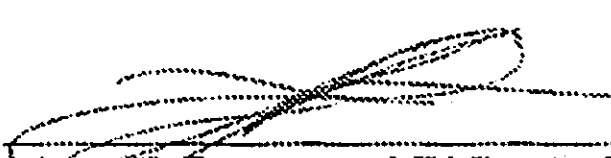
DATED this 8 day of October, 2015.


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]

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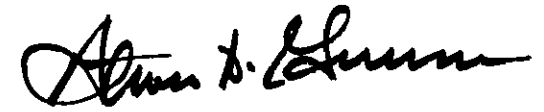
Approved as to form:

OFFICE OF THE ATTORNEY GENERAL
ADAM PAUL LAXALT

By: Linda C Anderson
LINDA C. ANDERSON (NV Bar #4090)
Chief Deputy Attorney General
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ORIGINAL



CLERK OF THE COURT

1 MINV
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11 *Counsel for Intervener 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.

Case No.: A710597
Dept. No.: XX

**ACRES MEDICAL, LLC'S MOTION TO
INTERVENE AS A MATTER OF RIGHT
PURSUANT TO NRCP 24 ON AN ORDER
SHORTENING TIME**

**Date of Hearing: See below
Time of Hearing: See below**

Pursuant to Rule 24 of the Nevada Rules of Civil Procedure, ACRES MEDICAL, LLC, by and through its counsel of record, the law firm of Greenberg Traurig, LLP, hereby brings this Motion to Intervene on an Order Shortening Time.

1 This Motion is made and based on the pleadings and papers on file herein, the
2 memorandum of points and authorities attached hereto, the declaration of Mark E. Ferrario in
3 support of the application for order shortening time, and such arguments of counsel as the Court
4 may allow at the time of hearing of this matter.

5 DATED this 15th day of October, 2015.

6 GREENBERG TRAURIG, LLP

7
8 By:


MARK E. FERRARIO (NV Bar #1625)

LONDON LERNER (NV Bar #13368)

3773 Howard Hughes Parkway, Suite 400 North
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Counsel for Intervener Acres Medical, LLC

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DECLARATION OF MARK E. FERRARIO
IN SUPPORT OF APPLICATION FOR ORDER SHORTENING TIME

STATE OF NEVADA)
) ss:
COUNTY OF CLARK)

I, Mark E. Ferrario, being first duly sworn, depose and say:

1. I am an attorney licensed to practice in the State of Nevada and a shareholder in the law firm of Greenberg Traurig, LLP, counsel of record for Acres Medical, LLC ("Acres").

2. Acres' Motion to Intervene ("Motion") should be heard on an order shortening time because GB Sciences Nevada, LLC ("GB Sciences") seeks a Provisional License¹ to operate a medical marijuana dispensary in the City of Las Vegas based upon its claim that it is ranked 13th, and therefore next in line.

3. In reality, Acres is ranked 13th, and therefore next in line. Acres was ranked improperly by the Division² due to an error in scoring Acres' Application D011 to operate a medical marijuana dispensary in the City of Las Vegas (the "Application"). That error was corrected when Acres obtained an order of mandamus directing the Division to rescore and re-rank the Application.

4. On or about August 14, 2014, Acres submitted to the Division the Application, along with several other applications for various medical marijuana facilities. The Division was required to rank applications based upon certain criteria. Organizational Structure was one of the criteria considered by the Division.

5. Acres submitted the same information on every application for Organizational Structure. On or about January 9, 2015, Acres received its scores on its applications. Acres 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.

¹ GB Sciences used the term "Provisional License" in its pleadings. In an effort to remain consistent, Acres uses the term Provisional License but intends that term to mean both a provisional registration from the State of Nevada to operate a medical marijuana establishment as well as the local license required from the City of Las Vegas. In other words, the term Provisional License is intended to cover all licensing required from all regulatory bodies to operate a medical marijuana dispensary in the City of Las Vegas.

² Nevada Department of Health and Human Services, Division of Public and Behavioral Health.

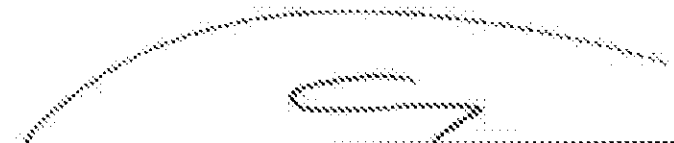
6. Acres was forced to retain counsel and file a lawsuit, case number A-15-719637-W, and petition the Court for mandamus to compel the Division to correct the error. In an effort to put on notice any party that might be affected by Acres' suit, Acres named as real parties in interest all applicants for medical marijuana registrations that were available publicly. GB Sciences did not consent to its score being published. Therefore, GB Sciences was not named in Acres' lawsuit. GB Sciences has been aware of the lawsuit, however, even sending its counsel to observe the mandamus hearing on September 29, 2015. Acres is informed that GB Sciences does not oppose the Motion or object to Acres' intervening in this action.

7. On or about October 8, 2015, the Court signed the Order Granting Plaintiffs' Petition for Mandamus directing the Division to rescore and re-rank the Application 13th. A true and correct copy of the Order is attached hereto as Exhibit A. Acres prepared and filed this Motion as soon as possible thereafter.

8. For the aforementioned reasons, Acres respectfully requests that this Motion be considered on shortened time.

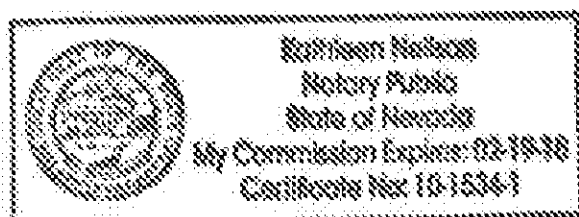
I declare under penalty of perjury under the laws of the State of Nevada that the foregoing is true and correct.

DATED this 15 day of October, 2015.


MARK E. FERRARIO, ESQ.

SUBSCRIBED and SWORN to before me
this 15 day of October, 2015.


NOTARY PUBLIC



GREENBERG TRAURIG, LLP
3773 Howard Hughes Parkway
Suite 400 North
Las Vegas, Nevada 89169
Telephone: (702) 792-3773
Facsimile: (702) 792-9302

ORDER SHORTENING TIME

Upon application of counsel, and good cause appearing therefore, IT IS HEREBY ORDERED that the time for the hearing on ACRES MEDICAL, LLC'S MOTION TO INTERVENE AS A MATTER OF RIGHT PURSUANT TO NRCP 24 ON AN ORDER SHORTENING TIME is hereby shortened, and the same shall be heard on the 21st day of OCTOBER, 2015, at the hour of 8: 00A.m., in Department XX of the above-entitled Court.

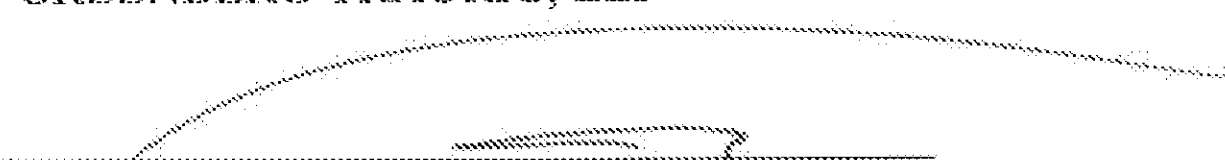
DATED this 19 day of October, 2015.


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 400 North
Las Vegas, NV 89169
Counsel for Intervener Acres Medical, LLC

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Acres Medical, LLC ("Acres") is the 13th ranked applicant for a Provisional License³ to operate a medical marijuana dispensary in the City of Las Vegas. As such, Acres should receive the first Provisional License should one become available.

Due to an error by the Division⁴ in scoring Acres' Application D011 to operate a medical marijuana dispensary in the City of Las Vegas (the "Application"), the Application was ranked incorrectly. Acres filed suit to correct the Division's error and on October 8, 2015, obtained an order of mandamus directing the Division to rescore and re-rank properly the Application at number 13.

GB Sciences asks this Court to direct the Division to revoke Nuleaf CLV Dispensary, LLC's ("Nuleaf") Provisional License and to re-issue that Provisional License to GB Sciences because, GB Sciences claims, it is ranked 13th. Acres does not dispute GB Sciences' arguments regarding the revocation and re-issuance of Provisional Licenses to the next highest-ranked applicant. Should this Court order the Division to revoke and re-issue any Provisional License (including Nuleaf's), the Court should order the Division to re-issue the first available Provisional License to Acres because Acres is next in line.

Acres must intervene in this action to protect its rights. Acres must step into the position that it rightfully should have been in but for the Division's arbitrary and capricious exercise of its official duties. Therefore, Acres should be permitted to intervene as a matter of right.

II. FACTUAL BACKGROUND

On or about August 14, 2014, Acres submitted to the Division the Application, along with several other applications for various medical marijuana facilities. Declaration of Mark Ferrario ("Ferrario Decl.") at ¶4. The Division was required to rank applications based upon certain criteria. Ferrario Decl. at ¶4. Organizational Structure was one of the criteria considered by the Division.

³ GB Sciences Nevada, LLC ("GB Sciences") used the term "Provisional License" in its pleadings. In an effort to remain consistent, Acres uses the term Provisional License but intends that term to mean both a provisional registration from the State of Nevada to operate a medical marijuana establishment as well as the local license required from the City of Las Vegas. In other words, the term Provisional License is intended to cover all licensing required from all regulatory bodies to operate a medical marijuana dispensary in the City of Las Vegas.

⁴ Nevada Department of Health and Human Services, Division of Public and Behavioral Health.

Ferrario Decl. at ¶4. Acres submitted the same information on every application for Organizational Structure. Ferrario Decl. at ¶5. On or about January 9, 2015, Acres received its scores on its applications. Ferrario Decl. at ¶5. Acres 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. Ferrario Decl. at ¶5.

Acres 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. Ferrario Decl. at ¶6. In an effort to put on notice any party that might be affected by Acres' suit, Acres named as real parties in interest all applicants for medical marijuana registrations that were available publicly. Ferrario Decl. at ¶6. GB Sciences did not consent to its score being published. Ferrario Decl. at ¶6. Therefore, GB Sciences was not named in Acres' lawsuit. Ferrario Decl. at ¶6. GB Sciences has been aware of the lawsuit, however, even sending its counsel to observe the mandamus hearing on September 29, 2015. Ferrario Decl. at ¶6. Acres is informed that GB Sciences does not oppose the Motion or object to Acres' intervening in this action. Ferrario Decl. at ¶6.

On or about October 8, 2015, the Court signed the Order Granting Plaintiffs' Petition For Mandamus ("Order") directing the Division to rescore and re-rank the Application 13th. Ferrario Decl. at ¶7. A true and correct copy of the Order is attached to the Declaration of Mark Ferrario as Exhibit A. Acres prepared and filed this Motion as soon as possible thereafter. Ferrario Decl. at ¶7.

III. LEGAL ARGUMENT

Intervention is proper under Nevada Rule of Civil Procedure ("NRCP") 24. Pursuant to NRCP 24:

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

Nev. R. Civ. P. 24.

///

///

A. Acres' Motion Is Timely Because It Was Filed As Soon As Possible After The Court
Granted Acres' Petition For Mandamus

On or about October 8, 2015, the Court signed the Order. Acres prepared and filed this Motion to Intervene to protect Acres' rights as soon as possible thereafter. "Timeliness is a determination that lies within the sound discretion of the trial court." *Lawler v. Ginochio*, 94 Nev. 623, 626 (1978). "Timeliness is not a word of exactitude or of precisely measurable dimensions. The requirement of timeliness must have accommodating flexibility toward both the court and the litigants if it is to be successfully employed to regulate intervention in the interest of justice." *Id.* (internal quotations omitted). "The most important question to be resolved in the determination of the timeliness of an application for intervention is not the length of the delay by the intervenor but the extent of prejudice to the rights of existing parties resulting from the delay." *Id.*

Here, there was no delay by Acres. Acres prepared and filed this Motion as soon as possible upon receiving the signed Order. The question, then, is whether there is prejudice to the other parties in this action. There is none. Therefore, Acres' Motion is timely.

But even if GB Sciences opposed the Motion, it could not claim prejudice. The only prejudice GB Sciences could claim is that Acres is ranked ahead of GB Sciences and, therefore, will receive the Provisional License GB Sciences seeks. But that is hardly a reason to preclude Acres from intervening in this action. Indeed, Acres has always been ranked 13th and therefore ahead of GB Sciences. But for the Division's arbitrary and capricious exercise of its duties, Acres would have been able to seek the Provisional License that GB Sciences seeks through legal action long ago. Precluding Acres' intervention would be a windfall to GB Sciences and highly prejudicial to Acres. GB Sciences was ranked improperly because of an error on the part of the Division and any prejudice resulting from that error is not due to Acres intervening in this action. The Division and Nuleaf will suffer no prejudice from Acres joining this action, because Acres and GB Sciences are seeking the exact same relief.

Once Acres realized that it would only obtain the relief it needed by filing suit, it did so. At that point, Acres was subject to Court schedules and orders to submit additional briefing. Acres did everything it could to obtain its proper score and rank as quickly as possible. It obtained the Order

1 just months after filing suit. It can hardly be said that Acres sat on its rights. As such, Acres'
2 request to intervene in this action is timely.

3 B. Acres' Claim To A Provisional License Is Senior To GB Sciences' And The Failure
4 To Add Acres Will Result In Irreparable Prejudice

5 Acres' claim to the Provisional License that is the subject of this action is superior to GB
6 Sciences'. To preclude Acres from intervening in this action to protect its rights would result in
7 irreparable prejudice because Acres is next in line to obtain a Provisional License. This is the
8 epitome of a situation where intervention is required.

9 As set forth above, Acres is ranked 13th and, therefore, next in line for a Provisional License
10 should one become available. The crux of GB Sciences' argument is that it is ranked 13th and next
11 in line. Therefore, the subject matter of this action is Acres' potential Provisional License, not GB
12 Sciences'.⁵ Intervention is appropriate, "when the applicant claims an interest relating to the
13 property or transaction which is the subject of the action and the applicant is so situated that the
14 disposition of the action may as a practical matter impair or impede the applicant's ability to protect
15 that interest, unless the applicant's interest is adequately represented by existing parties." Nev. R.
16 Civ. P. 24.

17 Acres claims an interest in the property that is the subject of this action because the
18 Provisional License sought by GB Sciences is rightfully Acres'. In other words, Acres seeks the
19 exact same thing sought by GB Sciences. Disposition of this action without Acres will irreparably
20 prejudice Acres because there are limited Provisional Licenses available and if Acres is prevented
21 from intervening and pursuing the next Provisional License that becomes available, it may never get
22 the chance to do so for any other Provisional License for at least three reasons. First, additional
23 Provisional Licenses may never become available. Second, if Acres is forced to file suit and pursue
24 the same arguments already pursued by GB Sciences, it is highly unlikely that Acres would be able
25 to litigate to conclusion in time to obtain a Provisional License. Third, Acres' interests are not
26 adequately represented by GB Sciences because GB Sciences seeks to obtain the Provisional
27

28 ⁵ Acres is informed that additional Provisional Licenses may become available to the 14th ranked applicant as well (i.e., GB Sciences). Acres does not dispute that GB Sciences is entitled to the next Provisional License after Acres.

1 License that rightfully belongs to Acres. Preventing Acres from intervening would undermine the
2 entire ranking system because it would permit GB Sciences to leapfrog Acres and judicially usurp
3 the Division's job of ranking by moving the 14th ranked applicant to the 13th position. Acres must
4 be permitted to protect its rights and pursue a Provisional License through this action.

5 **IV. CONCLUSION**

6 For the foregoing reasons, the Court should permit Acres to intervene in this action.

7 DATED this 15th day of October, 2015.

8 GREENBERG TRAURIG, LLP

9
10 By: 

11 MARK E. FERRARIO (NV Bar #1625)

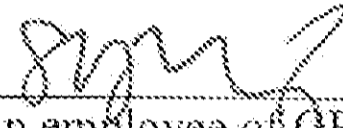
12 LANDON LERNER (NV Bar #13368)

13 3773 Howard Hughes Parkway, Suite 400 North
14 Las Vegas, NV 89169

15 *Counsel for Intervener Acres Medical, LLC*
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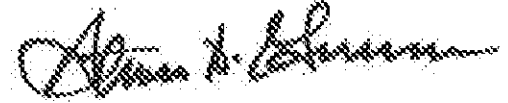
CERTIFICATE OF SERVICE

Pursuant to Nev. R. Civ. P. 5(b)(2)(D) and E.D.C.R. 8.05, I certify that on this 19 day of October, 2015, I caused a true and correct copy of the foregoing ACRES MEDICAL, LLC'S MOTION TO INTERVENE AS A MATTER OF RIGHT PURSUANT TO NRCP 24 ON AN ORDER SHORTENING TIME 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.


An employee of GREENBERG TRAURIG, LLP

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Telephone: (702) 792-3773
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EXHIBIT A


CLERK OF THE COURT

1 **ORDG**
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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; THE
NEVADA, LLC; RED ROCK WELLNESS,
LLC; QUALCAN OF LAS VEGAS, LLC;
PHYSIS ONE, LLC; BUFFALO CENTER
MEDICAL ADVOCATES, L.L.C.; PRIMO
DISPENSARY; DOE ENTITIES 1-5; ROE
ENTITIES 1-4, POE ENTITIES 1-16.

Defendants/
Real Parties In Interest.

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

**ORDER GRANTING PLAINTIFFS'
PETITION FOR MANDAMUS**

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

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

7 1. Plaintiffs submitted to the Division multiple applications to operate Medical Marijuana
8 Establishments ("MME"), including Application D0111 to operate a medical marijuana dispensary in
9 the City of Las Vegas (the "Application");

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

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

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

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

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

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

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

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

28 ///

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

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

12. Plaintiffs withdrew their Petition regarding their cultivation applications.

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

IT IS FURTHER ORDERED that:

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

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

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

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


IT IS SO ORDERED.

DATED this 9 day of October, 2015.


DISTRICT COURT JUDGE

Respectfully submitted by:

GREENBERG TRAURIG, LLP

By: 
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LONDON LERNER (NV Bar #13368)
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Counsel for Plaintiffs

[signatures continued on following page]

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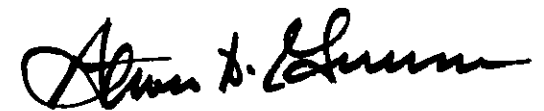
Approved as to form:

OFFICE OF THE ATTORNEY GENERAL
ADAM PAUL LAXALT

By 

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CLERK OF THE COURT

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Attorneys for Nuleaf CLV Dispensary LLC

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

**DEFENDANT NULEAF CLV
DISPENSARY LLC'S REPLY IN
SUPPORT OF COUNTERMOTION
FOR SUMMARY JUDGMENT**

Date: November 4, 2015

Time: 8:30 a.m.

A. The City of Las Vegas Employs Nuleaf's Reading of the Statutory Scheme

On October 7, 2015, the Las Vegas City Council adopted Nuleaf CLV Dispensary, LLC's ("Nuleaf") interpretation of the statutory scheme and reopened the application process for medical marijuana establishment compliance permits but only for those applicants — like Nuleaf — that currently possess a State provisional certificate. (*See* Ex. 1; Ex. 2.¹) The application process will be open from November 16 to November 17, 2015. (*Id.*) The City has made clear that "only applicants

¹ Available at http://www.lasvegasnevada.gov/faces/home/planning/medical-marijuana-establishment-information?_afLoop=92199321470529&_afWindowMode=0&_adf.ctrl-state=f0xk51h6a_4 (last visited Nov. 3, 2015).

1 holding a state provisional certificate can receive a business license to operate a medical marijuana
2 establishment." (Ex. 2.) "[A] business will not be allowed to apply for a City of Las Vegas Business
3 License without a State Provisional Registration Certificate from the Nevada Division of Public
4 and Behavioral Health (DPBH)." (Ex. 1.)

5 Once Nuleaf (or any other provisional certificate holder) submits an application to the City,
6 a pre-application conference will be held and then a "Special Use Permit will be scheduled for the
7 Downtown Design Review Committee meeting, a Planning Commission meeting, and a City
8 Council meeting. The Compliance Permit and SUP will be heard together at the required City
9 Council Meeting." (Ex. 1.)

10 By reopening the process, the Las Vegas City Council rejects GB Sciences Nevada LLC's
11 ("GB") argument that local approval was necessary to even apply for a state certificate. The City is
12 now affording Nuleaf the opportunity to become compliant with all applicable local governmental
13 ordinances, including a business license within 18 months of issuance of the provisional certificate.
14 *See* NRS 453A.326(3); NAC 453A.324. The Legislature confirmed this interpretation by
15 amending other provisions of statutory scheme but leaving the Division's current interpretation
16 undisturbed. *See Northern Nev. Ass'n Injured Workers v. SIIS*, 107 Nev. 108, 112, 807 P.2d 728,
17 730 (1991) (where the Legislature has amended a statute but did not change a provision's language
18 subsequent to the court's interpretation, it is presumed that the Legislature approves of the court's
19 interpretation of that statutory provision).

20 GB has previously recognized that it has no viable claim against a party that is allowed to
21 reapply for City authorizations. Indeed, GB voluntarily dismissed Desert Aire Wellness, LLC from
22 this action after Desert Aire was subsequently granted City approval after initially withdrawing its
23 application. (*See* Notice of Voluntary Dismissal Without Prejudice of Defendant Desert Aire
24 Wellness, LLC Only, Apr. 1, 2015, on file.) Likewise, Nuleaf is permitted to reapply and obtain all
25 necessary approvals to become operational within 18 months.

26 Acknowledging that it did not possess local approval when it applied for a state certificate,
27 GB attempts to shift the time at which local approval was necessary. For the first time, GB argues
28 that local approval was not required at the time of the application as long as approval was provided

1 sometime before the provisional certificates were issued. (Reply to Def.'s Opp. To Pl.'s Mot. Summ
2 Judg. & Opp. to Countermot. for Summ. Judg. at 2-3, 5-6 & n.1, n.3 Oct. 14, 2015, on file.)
3 However, this interpretation does not save GB. NRS 453A.322(a) provides that "[t]he *person who*
4 *wishes to operate . . . has submitted* to the Division all of the following" The City — not GB
5 — submitted this information to the Division. Therefore, GB would still not satisfy its own reading
6 of the statute because "the person who wishes to operate" did submit this information to the
7 Division. Moreover, GB tries to minimize the fact that the City did not notify the Division of those
8 applicants who had local approval "*until the last working day before the 90-day period ended on*
9 *November 3, 2014.*" (State Response to Mot. Summ. Judg. at 4:1-4, Sept. 28, 2015, on file
10 (emphasis added); Pl.'s Ex. 10.) The City did not leave sufficient time for the Division to account
11 for the City's letter and comply with its statutory duty to issue provisional certificates within 90
12 days. (See State Response to Mot. Summ. Judg. at 4:4-6.)

13 **B. GB Does Not Address the Impropriety of its Requested Relief.**

14 GB makes no effort to defend its improper request for declaratory or injunctive relief.
15 Declaratory relief is not available when the party asks the Court to take action on the requested
16 interpretation. *Baldonado v. Wynn Las Vegas, LLC*, 124 Nev. 951, 965, 194 P.3d 96, 105 (2008)
17 ("Thus, appellants sought more than a mere determination of their rights under a statute – they
18 sought to void the policy altogether and to obtain damages. Such issues are not appropriate for
19 declaratory relief actions"); see also *Prudential Ins. Co. v. Ins. Comm'r*, 82 Nev. 1, 4-5, 409
20 P.2d 248, 250 (1966) (declaratory relief is appropriate when a party requests a ruling on the meaning
21 of a statute but is inappropriate when an agency's discretionary decisions are required). Aside from
22 being wrong, the Court cannot adopt GB's interpretation and then employ it under the guise of
23 declaratory relief.

24 Similarly, GB's demand for a mandatory injunction fails as a matter of law. A mandatory
25 injunction sought against the government is subject to all of the common law requirements and
26 restrictions of mandamus. *Sodus Cent. Sch. Dist. v. Kreps*, 468 F. Supp. 884, 885 (W.D.N.Y. 1978)
27 (citing *Panama Canal Co. v. Grace Lines, Inc.*, 356 U.S. 309 (1958)); *Marchant v. New York City*
28

1 *Bd. of Elections*, 815 F. Supp. 2d 568, 577 (E.D.N.Y. 2011). GB does not address or satisfy the
2 requirements of mandamus. Consequently, its requested injunction must be denied.

3 **C. GB Lacks Standing Because The Division Cannot Issue a Certificate to GB**

4 GB ignores that it has no vested rights in a provisional certificate and does not have standing
5 to pursue this action. NRS 435A.320; (State Response to Mot. Summ. Judg. at 3:4-7, on file.)²
6 Instead, it asserts that the Division can act beyond the 90 day timeframe to issue a provisional
7 certificate established by NRS 453A.322(3) despite the clear language that "*not later than 90 days*
8 after receiving an application to operate a medical marijuana establishment, the Division *shall*
9 register the medical marijuana establishment and issue a medical marijuana establishment
10 registration certificate" (emphasis added).

11 Courts routinely find that statutes setting forth deadlines utilizing "not later than" language
12 are mandatory and jurisdictional. *See, e.g., Lee v. I.N.S.*, 685 F.2d 343, 343 (9th Cir. 1982) ("8
13 U.S.C. s 1105a(a) (1), which provides that a petition for review may be filed not later than six
14 months from the date of the final deportation order. This requirement is mandatory and
15 jurisdictional."); *Yousuf v. UHS of De La Ronde, Inc.*, No. CIV. A. 97-0614, 1999 WL 301701, at
16 *10 (E.D. La. May 10, 1999) ("Rule 54 is not couched in permissive language, but is mandatory,
17 i.e., "*the motion must be filed and served not later than 14 days after entry of judgment.*"); *see also*
18 *Friends of Aquifer, Inc. v. Mineta*, 150 F. Supp. 2d 1297 (N.D. Fla.) (plaintiff lacked standing and
19 failed to state a claim when asking court to order Secretary of State to issue certain standards under
20 pipeline safety laws after statute provided Secretary shall prescribe such standards "not later than
21 October 24, 1994. . . .").

22 The Nevada Supreme Court has rejected similar arguments that mandatory language can be
23 considered a "command" to "spur action." For example, in *Corbett v. Bradley*, 7 Nev. 106 (1871),
24

25 ² Interestingly, GB urges the Court to follow the rulings from other Departments. If this Court
26 does so, GB lacks standing for the additional reason that Judge Cadish has issued a writ of
27 mandamus ordering the Division to re-rank Acres as the 13th ranked applicant for the City of Las
28 Vegas. (Notice of Entry of Order, Oct. 15, 2015, on file.) Consequently, GB is not the 13th ranked
applicant and cannot benefit from any ruling that this Court may issue. *Gonzales v. Gorsuch*, 688
F.2d 1263, 1267 (9th Cir. 1982) ("[I]f the court is unable to grant the relief that relates to the harm,
the plaintiff lacks standing.").

1 a statute required certain claims related to the state capital to be brought within 30 days after the
2 passage of the act, which occurred on March 6, 1871. The claimants failed to timely bring their
3 claims and the Nevada Supreme Court affirmed rejection of the claims. The Court stated, "[w]e are
4 of the opinion that the limitation as to time is a material provision of the act, and therefore that it
5 must be complied with. . . . there is no power, in the courts or elsewhere, to dispense with the
6 condition imposed, or to hold that a thing which it deemed essential to be done at one time, may
7 nevertheless be done at another." There must be a clear indication that mandatory language was
8 meant to be directory. *Id.* "But if there be anything to indicate the contrary, a full compliance with
9 it must be enforced." *Id.* The Court reasoned that, if time was not thought essential, then it would
10 be curious to include the limitation in the first place. *See id.* at 109.

11 The Court found similarly in *State v. American Bankers Ins. Co.*, 106 Nev. 880, 802 P.2d
12 1276 (1990). There, a bail bondsman was not notified within 15 days that a defendant had failed to
13 appear and the bond would be forfeited as required by NRS 178.508. The state argued that NRS
14 178.508's notice provisions "must be construed as directory rather than mandatory. . . ." *Id.* at 882,
15 802 P.2d at 1278. The Court noted "'shall' is presumptively mandatory. . . ." *Id.* The Court
16 determined the Legislature created a specific time period "to draw a well-defined rule." Thus, literal
17 compliance was necessary to give force to the statute. *Id.* at 883, 802 P.2d at 1278.

18 The mandatory nature of deadlines is especially strong in the context of agency regulations.
19 It is well established that an agency's power to regulate must be grounded in a statutory grant of
20 authority from the Legislature. *See FDA v. Brown & Williamson Tobacco Corp.*, 529 U.S. 120
21 (2000). When the agency's power to act is conferred by statute for a limited period of time, the
22 automatic consequence of the expiration of the deadline is the expiration of the agency's power to
23 act.³

24 NRS 453A.322(3) is clearly mandatory and not a directory spur to action. The Legislature
25 only granted the Division the power to act for a period of 90 days. Once 90 days expired, it no
26 longer possessed the legal authority to act. GB's interpretation would allow the Division to disregard
27

28 ³ To the extent the Court considers *Barnhart v. Peabody Coal Co.*, 537 U.S. 149 (2003), the
dissents of Justices Scalia and Thomas are more persuasive and better reasoned.

1 its duty and act at will despite the language of the statute. Furthermore, the statutory scheme
2 demonstrates that the Legislature desired the public to have prompt access to medical marijuana.
3 For example, the Legislature provided for a short application period of only ten days. NRS
4 453A.324(4). A dispensary must be operational within 18 months. NAC 453A.324. Enforcing the
5 strict 90 day time period of NRS 453A.322(3) furthers these goals by requiring the Division to take
6 immediate action. If NRS 453A.322 was merely directory, the Division could delay issuing
7 provisional certificates indefinitely to the harm of the public. On the contrary, the Legislature set
8 forth a "well-defined rule," which if disregarded, results in the loss of provisional certificate holders.
9 There is no clear legislative or statutory indication that the deadline was directory and, thus, it must
10 be considered mandatory. *Corbett*, 7 Nev. at 109.

11 Contradictorily, GB also asserts that NRS 453A.322(3) is ambiguous. (Reply to Def.'s Opp.
12 to Pl.'s Mot. Summ. Judg. & Opp. to Countermot. Summ. Judg. at 15:11.) If so, summary judgment
13 must be granted in favor of Nuleaf. As explained previously, the Nevada Supreme Court "has held
14 that an agency's opinion on the application of an ambiguous statute should be given deference . . ."
15 *Dep't of Taxation v. DaimlerChrysler Servs. N. Am., LLC*, 121 Nev. 541, 548, 119 P.3d 135, 139
16 (2005). The Division has already interpreted NRS 453A.322(3) as setting forth a strict deadline
17 which precludes the Division from issuing additional provisional certificates.

18 . . .

19 . . .

20 . . .

D. Conclusion

The City of Las Vegas has reopened the application process to allow Nuleaf to obtain local approvals within the 18 month window provided by NAC 453A.324. The City's process supports Nuleaf interpretation of the statutory scheme that local approvals were not required to apply to the Division and were not required at the time that the Division issued its provisional certificates. Moreover, GB is without standing or a legal basis to pursue its requested relief. Therefore, summary judgment should be issued in favor of Nuleaf.

DATED this 3rd day of November 2015.

PISANELLI BICE PLLC

By: /s/ Todd L. Bice
Todd L. Bice, Esq., Bar No. 4534
Jordan T. Smith, Esq., Bar No. 12097
400 South 7th Street, Suite 300
Las Vegas, Nevada 89101

Attorneys for Nuleaf CLV Dispensary LLC

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of PISANELLI BICE PLLC, and that on this 3rd day of November, 2015, I caused to be served a true and correct copy of the above and foregoing **DEFENDANT NULEAF CLV DISPENSARY LLC'S REPLY IN SUPPORT OF COUNTERMOTION FOR SUMMARY JUDGMENT** to all parties via the Court's Wiznet e-filing system:

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An employee of PISANELLI BICE PLLC

EXHIBIT 1

CITY OF LAS VEGAS - MEDICAL MARIJUANA

ESTABLISHMENT APPLICATION FILING PERIOD WILL OPEN

NOVEMBER 16TH & 17TH.

The City of Las Vegas will accept applications for medical marijuana establishment Compliance Permits for the following types of medical marijuana facilities: Cultivation, Production, and Dispensaries.

Applications will be accepted for a two day period only, between 8:00 am and 5:00 pm on November 16, 2015, and 8:00 am to 3:00 pm on November 17, 2015.

Applications will be accepted at 333 N Rancho Dr. on the 6th floor only, and cannot be submitted after the 3:00 pm deadline on November 17, 2015. Applicants should plan accordingly.

In order to file an application, each location must have an approved Special Use Permit specific to the application **or** have submitted an application for a Special Use Permit (SUP) **prior** to 11/12/15 to be allowed to apply for a Compliance Permit on 11/16/15 or 11/17/15.

To apply for an SUP, an applicant must submit a request for a pre-application conference by clicking on the following: [REQUEST FOR PRE-APPLICATION CONFERENCE](#)

Once the pre-application conference is held and a complete application is submitted to the Department of Planning, the Special Use Permit will be scheduled for the Downtown Design Review Committee meeting, a Planning Commission meeting, and a City Council meeting.

The Compliance Permit and SUP will be heard together at the required City Council meeting.

Application materials for Compliance Permits can be found by clicking on the following: [COMPLIANCE PERMITS](#). All required forms must be completed and filed at the time of submittal to be accepted as an application.

Please note that a business will not be allowed to apply for a [City of Las Vegas Business License](#) without a State Provisional Registration Certificate from the Nevada Division of Public and Behavioral Health (DPBH).

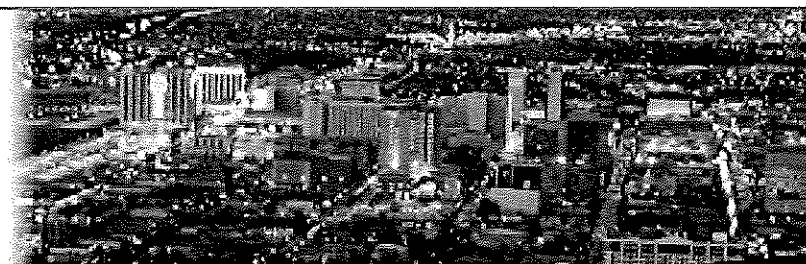
EXHIBIT 2

[Text Site](#)|[Mobile Site](#)

City of Las Vegas

LasVegasNevada.gov

Serving You Online Rather Than In Line

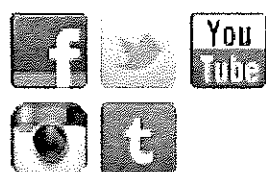
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Medical Marijuana Establishment Information

MME Educational Video



MEDICAL MARIJUANA ESTABLISHMENT COMPLIANCE

This educational video is provided as a resource for regulatory information as it pertains to Medical Marijuana Establishments licensed to conduct business within the City of Las Vegas jurisdiction.

MAPS

- [Medical Marijuana Establishments Map](#)
- [Medical Marijuana Initial Applicant Map](#)

STATE OF NEVADA

The Nevada Medical Marijuana Program is a state registry program within the Nevada Department of Health and Human Services, Nevada Division of Public and Behavioral Health. For more information click [here](#).

CITY OF LAS VEGAS

The Medical Marijuana Establishment application filing period will be open November 16th and 17th. The City of Las Vegas will accept applications for medical marijuana establishments for the following types of medical marijuana facilities: Cultivation, Production, and Dispensaries. Only applicants holding a state provisional certificate can receive a business license to operate a medical marijuana establishment. [Click here for more information.](#)

- [Medical Marijuana Compliance Checklist](#)
- [Cultivation Medical Marijuana Compliance Permit MM001](#)
- [Dispensary Medical Marijuana Compliance Permit MM002](#)
- [Production Medical Marijuana Compliance Permit MM003](#)
- [City of Las Vegas Medical Marijuana ADOPTED BUSINESS LICENSING REGULATIONS](#) – as adopted by City Council June 4, 2014
- [City of Las Vegas Medical Marijuana ADOPTED LAND USE REGULATIONS](#) – as adopted by City Council May 21, 2014
- [Frequently Asked Questions](#)
- [State vs Local Government Processes](#) - a message from the State Division of Public and Behavioral Health
- [Notice to Gaming Licensees – a message from the State of Nevada Gaming Control Board](#)
- [Notice for Business Owners Concerning Medical Marijuana](#)
- [Public Comments Received](#)

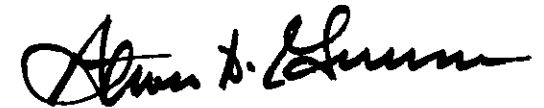
The Las Vegas City Council adopted land use regulations for Medical Marijuana Establishments at the May 21, 2014 meeting. The council also expanded the areas where dispensaries can be located to include commercial districts (C-1 and C-2) as well as industrial districts (C-M and M). Dispensaries will be allowed on Las Vegas Boulevard and Fremont Street east of Eighth Street. Clark County has allocated 12 dispensary licenses to the city of Las Vegas.

At the June 4, 2014 meeting, the City Council adopted licensing regulations for medical marijuana establishments. The City Council reduced the surety bond requirement from \$500,000 to \$250,000. Some of the other regulations include:

- * Dispensaries will be allowed to have operation hours of 6 a.m. to 10 p.m.
- * Delivery will be permitted to Nevada card holders at residential locations
- * If it is determined an inadequate supply of medical marijuana exists, products can be obtained from other parts of Nevada
- * Advertising cannot be appealing to minors, and must conform to an approved sign and advertising plan as a condition of the license
- * Licenses will be reviewed every two years by City Council

MEDICAL MARIJUANA SUPPORT BUSINESS

A business that provides goods or services to a medical marijuana cultivation, production, dispensing, or independent testing laboratory establishment is required to obtain and maintain a city of Las Vegas business license as a "Medical Marijuana Support Business" when at least 50% of the businesses annual revenue comes from a licensed medical marijuana establishments and/or the business is required by the State to obtain a medical marijuana establishment agent card.



CLERK OF THE COURT

COMP

MARK E. FERRARIO, ESQ. (NV Bar #1625)

MOOREA L. KATZ, ESQ. (NV Bar #12007)

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katzmo@gtlaw.com

Counsel for Plaintiff in Intervention Acres Medical, LLC

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
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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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.

27 ///

28 ///

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.

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.

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.

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.

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 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.

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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 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

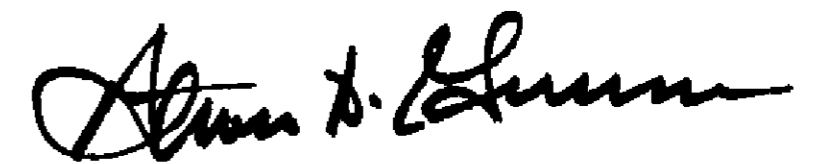
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CERTIFICATE OF SERVICE

Pursuant to Nev. R. Civ. P. 5(b)(2)(D) and E.D.C.R. 8.05, I certify that on this 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 LANDON LERNER (NV Bar #13368)

4 GREENBERG TRAUIG, LLP

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9 E-mail: ferrariom@gtlaw.com

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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 -

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)
LONDON LERNER (NV Bar #13368)
3773 Howard Hughes Parkway, Suite 400N
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Counsel for Plaintiffs

[signatures continued on following page]

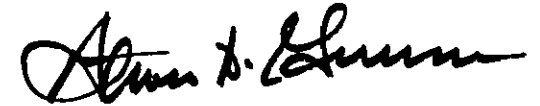
1 Approved as to form:

2 OFFICE OF THE ATTORNEY GENERAL
3 ADAM PAUL LAXALT

4 By: 
5 LINDA C. ANDERSON (NV Bar #4090)
6 Chief Deputy Attorney General
7 555 E. Washington Avenue, #3900
8 Las Vegas, NV 89101
9 *Counsel for the Division*

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CLERK OF THE COURT

OGM

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Counsel for Plaintiff in Intervention Acres Medical, LLC

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

Case No.: A710597

Dept. No.: XX

**ORDER GRANTING ACRES MEDICAL,
LLC'S MOTION TO INTERVENE ON
ORDER SHORTENING TIME**

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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

THIS MATTER having come before the Court on Intervenor Acres Medical, LLC's Motion to Intervene on Order Shortening Time; Intervenor Acres Medical, LLC, having appeared by and through its attorneys of record, GREENBERG TRAURIG, LLP; Defendant NuLeaf, having appeared by and through its attorneys of record, PISANELLI BICE, PLLC; GB Sciences Nevada, LLC having appeared by and through its attorneys of record, SMITH & SHAPIRO, PLLC; Defendant State of Nevada, Department of Health and Human Services, having appeared by and through ADAM PAUL LAXALT, Attorney General through his Chief Deputy Attorney General, LINDA C. ANDERSON; the Court having reviewed the papers and pleadings on file herein, having heard the arguments of counsel, and good cause appearing HEREBY GRANTS Acres Medical, LLC's Motion to Intervene.

IT IS SO ORDERED this 18 day of November, 2015.

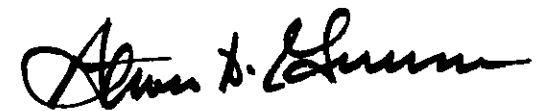
DISTRICT COURT JUDGE

ERIC JOHNSON

Respectfully Submitted by:

GREENBERG TRAURIG, LLP

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MOOREA L. KATZ (NV Bar No. 12007)
3773 Howard Hughes Parkway, Suite 400 North
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Counsel for Plaintiff in Intervention Acres Medical, LLC



CLERK OF THE COURT

1 **NEOJ**

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10 katzmo@gtlaw.com

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,

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,

Case No.: A710597

Dept. No.: XX

**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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Suite 400 North
Las Vegas, Nevada 89169
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Facsimile: (702) 792-9002

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

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.

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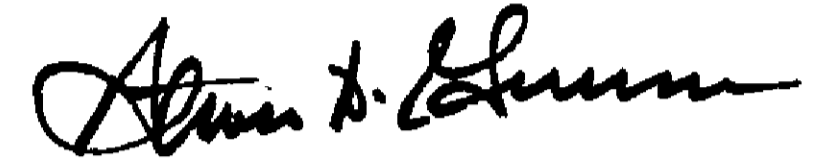
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Case No. A-14-710597-C

Dept. No. XX

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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."

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.

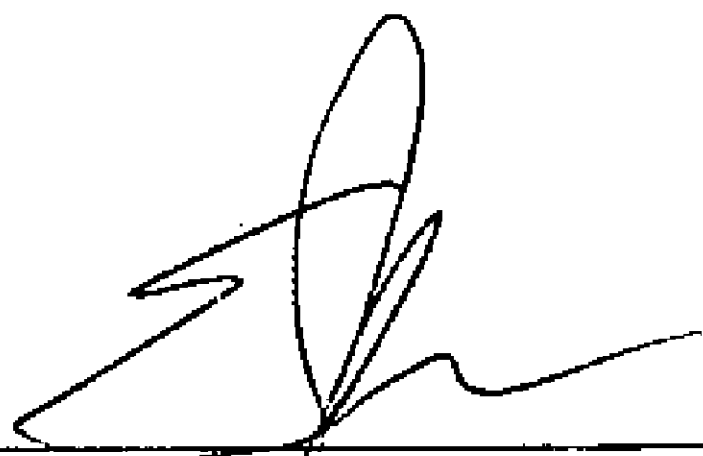
22 40. **IT IS FURTHER ORDERED** that Plaintiff's Motion is **DENIED** to the extent
23 Plaintiff seeks the re-issue of Nuleaf's registration to Plaintiff.

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41. **IT IS FURTHER ORDERED** that the Division register intervenor Acres and issue Acres a registration certificate.

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

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:

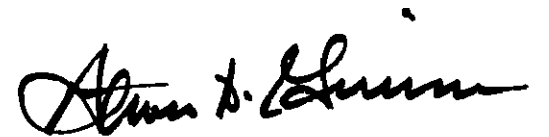
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Attorney for Plaintiff, Counter Claimant, Intervenor Defendant

TODD L. BICE, ESQ.
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Attorney for Defendant, Intervenor Defendant

MARK E. FERRARIO, ESQ.
lvlitdock@gtlaw.com
Attorney for Counter Defendant, Intervenor Plaintiff

/s/Kelly Muranaka

Kelly Muranaka
Judicial Executive Assistant



CLERK OF THE COURT

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Jordan T. Smith, Esq., Bar No. 12097

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Facsimile: (702) 214-2101

Attorneys for Nuleaf CLV Dispensary LLC

DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiff,

v.

STATE OF NEVADA, DIVISION OF
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ROE entities 1 through 100,

Defendants.

Case No.: A-14-710597-C

Dept. No.: XX

**DEFENDANT NULEAF CLV
DISPENSARY, LLC'S NOTICE OF
APPEAL**

Notice is hereby given that Nuleaf CLV Dispensary, LLC, defendant above named, appeals
to the Supreme Court of Nevada from the Order Denying Defendant's Countermotion for Summary

...

...

...

Judgment entered in this action on December 14, 2015, attached hereto as Exhibit 1, and all other orders or rulings made appealable thereby.

DATED this 2nd day of March, 2016.

PISANELLI BICE PLLC

By: /s/ Todd L. Bice
Todd L. Bice, Esq., Bar No. 4534
Jordan T. Smith, Esq., Bar No. 12097
Dustun H. Holmes, Esq., Bar No. 12776
400 South 7th Street, Suite 300
Las Vegas, Nevada 89101

Attorneys for Nuleaf CLV Dispensary LLC

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of PISANELLI BICE PLLC, and that on this 2nd day of March, 2016, I caused to be served a true and correct copy of the above and foregoing **DEFENDANT NULEAF CLV DISPENSARY, LLC'S NOTICE OF APPEAL** to all parties via the Court's Wiznet e-filing system:

Adam P. Laxalt, Esq.
Attorney General
Linda C. Anderson, Esq.
Chief Deputy Attorney General
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Las Vegas, NV 89101

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Dylan T. Ciciliano, Esq.
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Las Vegas, NV 89169

Attorneys for Desert Aire Wellness, LLC

James E. Shapiro, Esq.
Sheldon A. Herbert, Esq.
SMITH & SHAPIRO, PLLC
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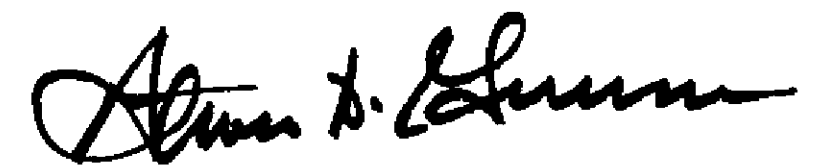
Attorney for GB Science Nevada LLC

Mark E. Ferrario, Esq.
Landon Lerner, Esq.
GREENBERG TRAURIG, LLP
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Las Vegas, NV 89169

Attorney for Intervener Acres Medical, LLC

/s/ Shannon Thomas
An employee of PISANELLI BICE PLLC

EXHIBIT 1



CLERK OF THE COURT

1 **NEOJ**

2 MARK E. FERRARIO, ESQ. (NV Bar #1625)

3 MOOREA L. KATZ, ESQ. (NV Bar #12007)

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8 Facsimile: (702) 792-9002

9 E-mail: ferrariom@gtlaw.com

10 katzmo@gtlaw.com

11 *Counsel for Plaintiff in Intervention*

12 *Acres Medical, LLC*

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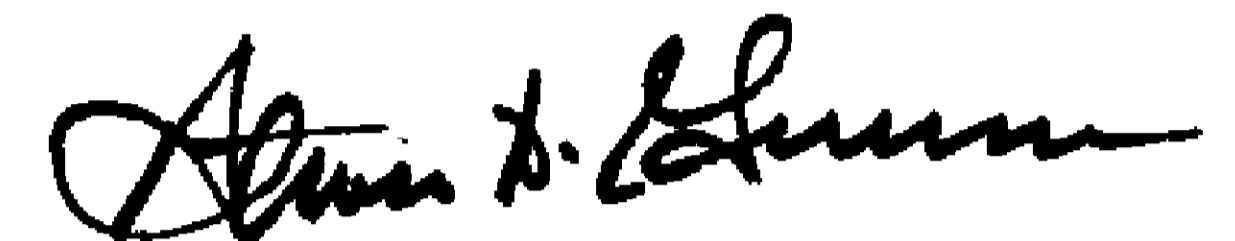
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Case No. A-14-710597-C

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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."

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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41. **IT IS FURTHER ORDERED** that the Division register intervenor Acres and issue Acres a registration certificate.

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

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:

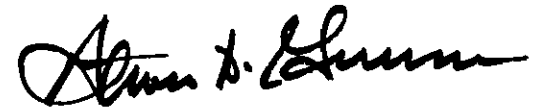
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Attorney for Plaintiff, Counter Claimant, Intervenor Defendant

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Attorney for Counter Defendant, Intervenor Plaintiff

/s/Kelly Muranaka

Kelly Muranaka
Judicial Executive Assistant



CLERK OF THE COURT

1 **NEOJ**

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10 katzmo@gtlaw.com

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,

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,

Case No.: A710597

Dept. No.: XX

**NOTICE OF ENTRY OF ORDER
GRANTING INTERVENOR ACRES
MEDICAL, LLC'S MOTION TO DISMISS
GB SCIENCES NEVADA, LLC'S
COUNTERCLAIMS AGAINST ACRES
MEDICAL, LLC**

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

6
7 Defendants in Intervention
8
9

10 **YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE** that an **ORDER**
11 **GRANTING INTERVENOR ACRES MEDICAL, LLC'S MOTION TO DISMISS GB**
12 **SCIENCES NEVADA, LLC'S COUNTERCLAIMS AGAINST ACRES MEDICAL, LLC ON**
13 **PLAINTIFF GB SCIENCES NEVADA, LLC'S MOTION FOR SUMMARY JUDGMENT**
14 **AND ON DEFENDANT NULEAF CLV DISPENSARY, LLC'S COUNTERMOTION FOR**
15 **SUMMARY JUDGMENT** was entered in the above-captioned matter on the 3rd day of March,
16 2016.

17 DATED this 4th day of March, 2016.

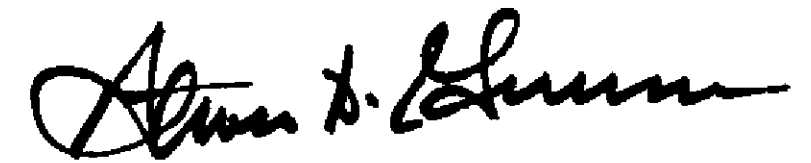
18 GREENBERG TRAURIG, LLP

19 By: /s/ Moorea L. Katz
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24 *Counsel for Plaintiff in Intervention*
25 *Acres Medical, LLC*
26
27
28

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 4th day of March, 2016, I caused a true and correct copy of the foregoing 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



CLERK OF THE COURT

1 **ORDR**

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Counsel for Plaintiff in Intervention Acres Medical, LLC

8 **DISTRICT COURT**

9 **CLARK COUNTY, NEVADA**

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

11 Plaintiff,

12 v.

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

20 Defendants.

21 ACRES MEDICAL, LLC,

22 Plaintiff in Intervention,

23 v.

24
25 STATE OF NEVADA, DIVISION OF
26 PUBLIC AND BEHAVIORAL HEALTH OF
THE DEPARTMENT OF HEALTH AND
27 HUMAN SERVICES; CITY OF LAS VEGAS,
a municipal corporation and political
28 subdivision of the State of Nevada; NULEAF

Case No.: A-14-710597-C

Dept. No.: XX

**ORDER GRANTING INTERVENOR ACRES
MEDICAL, LLC'S MOTION TO DISMISS
GB SCIENCES NEVADA, LLC'S
COUNTERCLAIMS AGAINST ACRES
MEDICAL, LLC**

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

Defendants in Intervention.

THIS MATTER, having come before the Court on January 26, 2016, on ACRES MEDICAL, LLC'S ("Acres" or "Intervenor") Motion to Dismiss GB Sciences Nevada, LLC's Counterclaim Against Acres Medical, LLC ("Motion"), 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 CLV Dispensary LLC, having appeared by and through its attorneys of record, PISANELLI BICE, PLLC; Intervenor 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, the Court having stated its conclusions on the record, the Court being fully advised in the premises, and good cause appearing, **NOW THEREFORE, THE COURT FINDS AND CONCLUDES:**

GB Sciences Nevada, LLC's ("GB Sciences") counterclaims for declaratory relief and equitable estoppel against Acres are subject to dismissal. GB Sciences cannot seek a provisional Medical Marijuana Establishment ("MME") certificate from the Division via a claim for declaratory relief or equitable estoppel against Acres. If GB Sciences wishes to challenge the score or rank its MME application received from the Division, counterclaims against Acres is not the proper method to do so. Acres is simply a fellow MME applicant in the City of Las Vegas with no legal or contractual relationship with GB Sciences.

Additionally, GB Sciences has failed to allege any facts sufficient to state a claim for equitable estoppel against Acres. GB Sciences bases its claim for equitable estoppel on its allegations that (1) Acres delayed to intervene in this action; and (2) Acres did not name GB Sciences as a party in separate writ proceedings against the Division seeking a correction of Acres'

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1 application score. However, the Court already reached the issue of the timeliness of Acres'
2 intervention and has already concluded that Acres' intervention was timely. The Court also notes
3 that GB Sciences never opposed Acres' intervention in these proceedings. Furthermore, counsel for
4 GB Sciences admits that he attended the hearing on Acres writ petition but made no effort to
5 participate or intervene in that action.
6

7 **IT IS HEREBY ORDERED** that Intervenor Acres's Motion to Dismiss GB Sciences
8 Nevada, LLC's Counterclaims Against Acres Medical, LLC is **GRANTED** and that GB Sciences'
9 Counterclaims against Acres are **DISMISSED WITH PREJUDICE**.


10 **IT IS SO ORDERED** this 29 day of February, 2016.

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DISTRICT COURT JUDGE
ERIC JOHNSON


Respectfully Submitted by:

GREENBERG TRAURIG, LLP


Mark E. Ferraro, Esq.
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Counsel for Plaintiff in Intervention Acres Medical, LLC

Approved/Disapproved as to Form and Content:

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Attorneys for Plaintiff GB Sciences Nevada, LLC

///

1 Approved/Disapproved as to Form and Content:

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8 *Attorneys for Nuleaf CLV Dispensary LLC*

9 Approved/Disapproved as to Form and Content:

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11 Attorney General

12 _____
13 Linda C. Anderson, Esq.
14 Chief Deputy Attorney General
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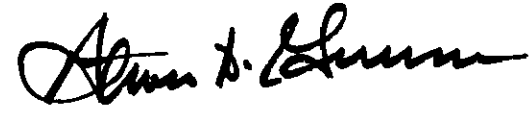
A-14-710597-C • 11/09/2015

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DISTRICT COURT

CLARK COUNTY, NEVADA



CLERK OF THE COURT

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; NULEAF CLV)
DISPENSARY, LLC, a Nevada)
limited liability company;)
DOES 1-10, and ROE ENTITIES)
1-100, inclusive,)

Defendants.)

AND ALL RELATED CROSS-CLAIMS.)

REPORTER'S TRANSCRIPT OF PROCEEDINGS

BEFORE THE HONORABLE JUDGE ERIC JOHNSON

DEPARTMENT XX

MONDAY, NOVEMBER 9, 2015

8:40 A.M.

REPORTED BY: AMBER M. RIGGIO, NV CCR No. 914

Amber M. Riggio, CCR No. 914
(702)927-1206 • amberriggio@gmail.com

APP00524

1 APPEARANCES:

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11 For NuLeaf CLV Dispensary LLC:

12 BY: TODD L. BICE, ESQ.

13 BY: JORDAN T. SMITH, ESQ.

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1 APPEARANCES CONTINUED:

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4 BY: MOOREA L. KATZ, ESQ.

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13 BY: LINDA CHRISTINE ANDERSON, ESQ.

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18 landerson@ag.nv.gov

19
20 * * * * *

1 LAS VEGAS, NEVADA; MONDAY, NOVEMBER 9, 2015
2 8:40 A.M.

3 * * * * *

4 P R O C E E D I N G S

5 * * * * *

6 THE COURT: All right. Thank you. Sorry for
7 that. I had hoped that I was going to quickly deal
8 with something, but that's just life.

9 All right, counsel. Calling GB Sciences
10 Nevada LLC versus State of Nevada Division of Public
11 and Behavioral Health of the Department of Health and
12 Human Services, et al. Case No. A710597.

13 Counsel, go ahead and make your appearances
14 for the record.

15 MR. SHAPIRO: Jim Shapiro on behalf of GB
16 Sciences.

17 MR. BICE: Todd Bice on behalf of NuLeaf.

18 MR. SMITH: Jordan Smith also on behalf of
19 NuLeaf.

20 MS. ANDERSON: Linda Anderson on behalf of
21 the State.

22 MR. LELEU: Good morning, Your Honor. Jon
23 Leleu, Bar No. 7422, here on behalf of what could be a
24 plaintiff intervention, Acres Medical.

25 THE COURT: That's -- I always forget.
Starts with an "A."

MR. LELEU: Acres Medical.

1 THE COURT: Acres, yeah.

2 MS. KATZ: Good morning, Your Honor. Morrea
3 Katz also on behalf of Acres Medical.

4 THE COURT: Okay. Go ahead and be seated.

5 We're here on the cross motions for summary
6 judgment, which -- and the motion to intervene, which
7 relate to this licensing issue.

8 It probably would make sense to deal first
9 with the motion to intervene.

10 Initially your paperwork indicated that there
11 was no opposition to your intervention. Then we
12 received a -- an opposition indicating that you were
13 untimely. And, you know, what is untimely in the
14 context of the rule is not, but it does require that
15 you make a timely application and it does sort of --
16 I'll have to admit, it does sort of give me the sense
17 of the general who waits down at the bottom of the hill
18 while battle's going on at the top, and then as things
19 start moving forward, suddenly he rushes up and claims
20 victory.

21 So let me -- let me know what your thoughts
22 are on their opposition.

23 MR. LELEU: Well, Your Honor, I -- I
24 certainly understand your -- your reticence in that
25 regard and your caution; however, I think what we need

1 to do is take a step back and look at this matter from
2 the top down, and look at this matter as if the --
3 the -- the potential intervenor, Acres Medical, did, in
4 fact, do as Mr. Bice asked and attempt to intervene
5 immediately.

6 What would happen at that point? Well, at
7 that point, Mr. Bice would have come back and said,
8 Well, they don't have standing because they're not
9 13th.

10 So I think what we -- what we're dealing with
11 here is a distinction without an inference. What we
12 had to do is we had --

13 THE COURT: Why didn't you get the order
14 putting --

15 MR. LELEU: I believe it was October 9th.
16 October 8th or 9th. And, you know, the -- the motion I
17 believe was filed on the 19th. So ten days I think is
18 well within the purview of the rule. I think that
19 that's more than timely and we're here.

20 You know, as soon as we had an order, they
21 granted us the standing that we would have been
22 required to show if we would have requested this relief
23 earlier. We came to court and asked, so here we are.

24 I think the briefs have been very, very
25 complete. I know Your Honor has -- has read them

1 because you've obviously asked a question that was --
2 that was getting to the heart of the briefs. So, you
3 know, to the extent that Your Honor has any further
4 questions, I'm happy to answer them. Otherwise, I
5 think the briefs pretty much speak for themselves.

6 THE COURT: All right. Thank you.

7 Any response by anybody?

8 MR. SHAPIRO: No opposition.

9 MR. BICE: Good morning, Your Honor. Todd
10 Bice on behalf of the defendant NuLeaf.

11 The reason that we have opposed this, Your
12 Honor, is I think very straightforward under the
13 statutory structure that the State has set up for these
14 licenses. Once we get the provisional license, which
15 we have obtained by the State, we have an 18-month
16 window in order to get all of our local land use
17 approvals and licensing completed, and we are in the
18 process of doing that.

19 This case now is nearly 12 months old. The
20 two parties to this dispute, being GB Science and
21 NuLeaf, have cross motions for summary judgment
22 pending, fully briefed in front of the Court.

23 What Acres is proposing, Your Honor, is to
24 allow them to come in now at the last moment, and then
25 they're going to claim that, Well, the Court shouldn't

1 proceed or the Court should somehow allow them to
2 oppose our motion for summary judgment. They aren't
3 telling you that now, but I have to assume that's what
4 they're going to do because, otherwise, why are they
5 here at this late date? That is extraordinarily
6 prejudicial to my client.

7 My client needs to proceed. The City of Las
8 Vegas has confirmed the licensing structure. It has
9 reopened it for those holding provisional certificates,
10 as we have pointed out in our reply brief in support of
11 our motion for summary judgment, and so we need to get
12 this issue resolved because this is the cloud that is
13 being hung over my client's head saying that, Well,
14 this ongoing litigation creates this controversy. You
15 can't get open after that 18-month window.

16 Now, I think we have a very good argument,
17 and I think that the State actually is going to agree
18 with us, but that 18-month window has been tolled in
19 part by the actions of the plaintiffs and some of these
20 other people challenging these licenses. But
21 nonetheless, Your Honor, my client shouldn't be
22 compelled to endure that risk any longer, and that's
23 the basis upon which we oppose it.

24 What you don't hear, and I --

25 THE COURT: I have no doubt they're going to

1 oppose your -- but, I mean --

2 MR. BICE: Exactly.

3 THE COURT: -- the issues are essentially the
4 same. I mean, they're claiming they're No. 13 -- lucky
5 13 --

6 MR. BICE: Right.

7 THE COURT: -- and GB Sciences is claiming
8 they're lucky 13. I mean, the issue is -- as I think
9 somebody noted in their briefing is one really of
10 statutory interpretation. I mean, I'm not sure --

11 MR. BICE: It is --

12 THE COURT: -- I see how their intervention
13 ultimately is going to delay this process much -- much
14 further.

15 MR. BICE: Well, that's the basis for our
16 opposition, Your Honor, is we just do not want it to be
17 used as a mechanism to delay this. And what Acres
18 doesn't address -- and I think this is the critical
19 failure -- is they don't tell you how long that they've
20 known about this litigation.

21 And I appreciate Mr. Leleu's argument that,
22 Well, they needed the order from Judge Cadish to have
23 standing in this action. I disagree with that. The
24 minute that they wanted to claim that they had
25 competing rights to this license, they were required to

1 intervene under the law in order to assert their
2 rights. If they wanted to tell you that you needed to
3 delay until Judge Cadish entered a ruling, that would
4 have been one thing. But to show up in this action for
5 the first time after cross motions for summary judgment
6 are pending and would have actually -- remember, Your
7 Honor, those would have been decided. They got
8 moved -- they filed I think the motion two days before
9 we had the hearing set on these cross motions for
10 summary judgment.

11 THE COURT: Let me just -- do you see any
12 reason that this is going to delay if we were to let
13 you to intervene?

14 I mean, like I said, I don't see any -- I see
15 the issues as being pretty well laid out, and I think
16 they've been pretty well laid out as they're going to
17 be by GB Sciences' counsel in this. I mean, are you
18 going to be asking for any delay here if -- or for
19 significant briefing time or something if we allow you
20 to intervene?

21 MR. LELEU: I do not anticipate that, Your
22 Honor.

23 THE COURT: Okay. All right. I mean, you
24 meet every qualification for an intervention in this
25 matter, and I'm going to go ahead and grant the motion

1 to intervene and move on to the substance of this,
2 which is the statutory interpretation issue.

3 And thank you.

4 MR. LELEU: Thank you, Your Honor.

5 THE COURT: Let me just start out with the
6 State of -- State of Nevada.

7 Looking at the paperwork, there seems to have
8 been an early interpretation by the Department, which
9 lends itself to GB Sciences' view, and then there was a
10 shift to away from that lending itself to Nu -- NuLeaf.

11 What -- what precipitated this and --

12 MS. ANDERSON: Your Honor, I guess I would
13 say the Division has no vested interest in any of these
14 applicants, which is why I appreciate the -- the nature
15 of these proceedings is for them to battle it out.
16 Because, in the end, we're going to issue a
17 registration to what we need to. What -- we have taken
18 the position -- and -- and this is unique from all the
19 other cases -- is that when the registration
20 application period came down, nobody, when they
21 applied, could show that they had local authority. So
22 if we took a very strict interpretation of the statute,
23 we would have had to deny everybody.

24 What happened was, at the final day before
25 the -- the long weekend, the City of Las Vegas came

1 down with some special use permit, some authorization
2 at that level, which we did not consider on anybody.
3 We went forward with our ranking, and that's why we had
4 issued to NuLeaf, who was ranked third in our -- in our
5 ranking.

6 And what has happened since, if you look
7 right now, none of these applicants have local
8 authorization. What the State's interest is is that we
9 get to resolution, and I know none of the parties have
10 put this Court in the best position because it's been
11 dragging on for a year and everybody has been dragging
12 their feet.

13 What we want to have is a resolution because
14 either NuLeaf is going to go forward, and Mr. Bice may
15 say we're going to give consideration to the 18 months.
16 No, we're going to look at them very strongly as to
17 whether they meet that criteria in a timely manner
18 because our interest is making sure that the card
19 holders have a dispensary that they can utilize and
20 that the City of Las Vegas citizens have their full
21 allotment that -- and if all of these -- if -- if
22 NuLeaf is unable to or the other applicants are unable
23 to get it in a timely manner, what we would do is
24 reopen the application period and let all these fine
25 applicants come in and apply again.

1 The problem is, Your Honor, the Legislature
2 gives us a one-shot, once-a-year, ten-day period. So
3 we really ask that this Court resolve this motion for
4 summary judgment today between these two parties so
5 that we know to go forward one way or another. And
6 that's what we would ask, if that answers some of your
7 questions.

8 We don't align with either party. We would
9 say right now, though, that NuLeaf has the
10 registration; that Acres is the 13th, not GB Science,
11 according to the Judge Cadish ruling. We have to make
12 a decision one way or another, but we don't have
13 grounds to deny NuLeaf at this point in time because
14 they still have the ability to get done within the
15 18-month period, but we are going to hold them to that
16 18-month period to the best that we can.

17 THE COURT: All right. So just so -- I'm
18 getting the sense from the -- the Department, your read
19 is that in terms of the provisions of Section 3A2, "an
20 application, which must include," that essentially all
21 of those elements, they've got 18 months to finish it
22 once you rate them?

23 MS. ANDERSON: What the regulation says is
24 that we can revoke after an 18-month period. And we've
25 put that provision in place because we wanted people to

1 move it along. It's still a -- it's -- as Mr. Bice
2 said, it's still an ability to revoke, but that's the
3 time line that we're looking at for this applicant.

4 And some things changed. They did have a
5 denial initially. The Legislature, this last time, is
6 allowing the facilities to move, to change ownership,
7 which has opened up this period. And we're hoping
8 they're going to pursue this with the City in a -- in a
9 timely manner. Obviously, if this litigation holds it
10 up, that's not going to get resolved and that's where
11 the concern is for the Department.

12 THE COURT: Well, let me just ask, in terms
13 of the other requirements that were set out that an
14 application must meet, such as the -- each applicant
15 control not less than \$250,000 of liquid assets --

16 MS. ANDERSON: All of these applicants --

17 THE COURT: -- that the applicants own the
18 property on which the --

19 MS. ANDERSON: All of these applicants were
20 qualified. Nobody was turned away. So all three of
21 these entities met those basic qualifications at the
22 time. That's why they were put in to the ranking.

23 THE COURT: Is the only thing that anybody
24 failed to meet out of the -- were there any ones who
25 was -- who was disqualified because they didn't have

1 \$250,000?

2 MS. ANDERSON: There were not.

3 THE COURT: Okay.

4 MS. ANDERSON: So these -- these applicants
5 meet the qualifications when they applied. There were
6 no approvals in place from the City of Las Vegas, so
7 they couldn't submit that with their application. So
8 we looked at all of -- and all things otherwise being
9 equal, we ranked the applicants as they came in and
10 this is where we stand.

11 THE COURT: I mean, was there any discussion
12 at the end of the game, when the 90 days was coming
13 up -- and you did have some that had the theoretical
14 letter requiring --

15 MS. ANDERSON: Actually, none of them -- none
16 of them did until -- and I -- and I apologize. You
17 know, it's a year ago. But the -- the decision made by
18 the City was made on the last possible day. So I'm not
19 even -- there actually wasn't even clearly a decision
20 not to decide it. It was just missed completely
21 because we looked at it with -- the Division looked at
22 it without even considering that local approval because
23 we didn't have that in place --

24 THE COURT: Okay.

25 MS. ANDERSON: -- as part of the application.

1 THE COURT: So that -- you didn't even -- the
2 Division didn't even realize that there had been any
3 sort of letter issued by the City of North Las Vegas?

4 MS. ANDERSON: We did not. And what we were
5 focused on is that we had to issue within that 90-day
6 period. So that was -- they went forward with the
7 rankings as they had done.

8 THE COURT: I mean, if -- let's say City of
9 Las Vegas had done it two days before and had called up
10 the Division and said, "Hey, I just want to make sure
11 you know, here's what we've issued today," how is
12 that --

13 MS. ANDERSON: We certainly would have
14 been -- been advising them differently if we had that
15 scenario. I -- but we just never even had even the
16 scenario when we were looking at what the City of Las
17 Vegas was doing because it wasn't part of that
18 application process.

19 THE COURT: Okay. So --

20 MS. ANDERSON: So it's very unique.

21 Clark County, Henderson we did make errors
22 there. They had actually made their decisions prior to
23 our application process. The City of Las Vegas stands
24 alone because it did not make a decision until . . .

25 THE COURT: Theoretically did make a decision

1 before; you just didn't know of it.

2 MS. ANDERSON: But not in a way that we could
3 act in a timely manner towards it --

4 THE COURT: Okay. All right.

5 MS. ANDERSON: -- is the best I can give you,
6 Your Honor.

7 THE COURT: In the case of Henderson and
8 Clark County, those zoning letters, did they influence
9 in terms of who got registration or not?

10 MS. ANDERSON: The -- the Division has been
11 very candid, that we did not even look at those but we
12 should have.

13 With the City of Henderson, there was
14 actually decisions in place prior, before.

15 Clark County is a little bit different.
16 There were people who had been granted it, but the rest
17 of the ones who we looked at had not been denied. So
18 we didn't -- we had kind of a split there, which the
19 Legislature resolved in this last session.

20 THE COURT: Okay. All right. That sort of
21 gives me --

22 MS. ANDERSON: That's a lot, Your Honor. I
23 apologize --

24 THE COURT: -- foundation to move forward
25 with the rest of this. All right.

1 MR. SHAPIRO: Thank you, Your Honor.

2 Jim Shapiro on behalf of GB Sciences.

3 Clearly you've read the briefing. I'm not going to
4 waste your time.

5 This does come down to a statutory
6 interpretation, and with all due respect to
7 Ms. Anderson -- this is the second case I've worked
8 with her on, she's been a pleasure to work with -- but
9 I disagree with her interpretation of one case, and it
10 -- it -- and I disagreed with her in the last case.
11 This was the Judge Israel case in Henderson Organic
12 Remedies.

13 When you look at the statute -- the operative
14 statute is NRS 453.322. When you look at that statute,
15 the Legislature clearly defined the divisions of
16 authority to issue a provisional license. And there's
17 been some discussion about how Nevada Administrative
18 Code 453A.322 affects NRS 453A.322. The reality is it
19 doesn't. An administrative or division of the State
20 can issue administrative code, but they can't amend the
21 statute. They can't change what the authority that the
22 Legislature gave them. So this argument that NAC
23 somehow trumps NRS is just -- it's -- it's wrong.
24 Because the administration can't give themselves
25 authority above and beyond that which the Legislature

1 gave them. So I think we can first dispense with any
2 arguments dealing with the administrative code because
3 you can't amend statute through administrative action.
4 It has to be the Legislature.

5 Plus, if you go and look at the
6 administrative code, it says nothing about the
7 requirement that's contained in NRS 453A.322 3A6 -- or,
8 excuse me, 3A5. That requirement is not addressed in
9 NAC 453A.324. 324, that administrative code, simply
10 gives them 18 months to open and begin operation. It
11 says nothing about zoning.

12 So really what we're left with is what's the
13 interpretation -- what's the proper interpretation of
14 NRS 320 -- or 453A.322? When you look at that statute,
15 it's clear. There's no ambiguity. The statute states,
16 "Not later than 90 days after receiving the
17 application, the Division shall register the medical
18 marijuana establishment and issue a medical marijuana
19 establishment registration certificate and a random
20 20-digit alphanumeric identification number if . . ."

21 Then you go to subparagraph A. "The person
22 who wishes to operate the proposed medical marijuana
23 establishment had submitted to the Division all of the
24 following . . ."

25 Those are not discretionary words. If

1 they've submitted all, it is not discretionary.

2 Now, there's an issue about timing, and I'm
3 going to address that in a second, but let's look at
4 the language right now. "The Division is authorized to
5 issue this provisional license only if the applicant
6 meets all of the requirements."

7 What were the requirements? Under Subsection
8 5, they had to produce a letter from the applicable
9 local governing authority, and this is beginning
10 halfway through that paragraph. It says, quote, "A
11 letter from the applicable local governmental authority
12 certifying that the proposed medical marijuana
13 establishment is in compliance with those restrictions
14 and satisfies all applicable building requirements."

15 Now, was that letter issued? Yes, it was.
16 On October 30th, which was before -- it was before the
17 deadline, it was before the licenses were issued, and
18 the State acknowledges it. They say it came too late;
19 they didn't do anything about it. But they received it
20 before. They received the letter. It's Exhibit 10 to
21 our motion. And that letter listed 27 applicants who
22 had received the approval that NRS 453A.322,
23 subparagraph A3 -- or 3A5 required. Included in that
24 27 applicants was GB Sciences. That letter also
25 notified the State that ten applicants had been denied.

1 Included in the denial was NuLeaf.

2 Now, because NuLeaf had been denied, the
3 letter, statutorily speaking, the Division lacked
4 authority to issue a provisional license. That's
5 according to the plain language of NRS 53 -- 453A.322,
6 subparagraph 3 because they didn't meet all of the
7 requirements.

8 Now, there's been a question raised: Well,
9 what do we do? Because that letter from the City of
10 Las Vegas admittedly came after the applications had
11 been submitted. Well, there's two ways to consider
12 that.

13 The first way is to say we're going to take
14 that whole requirement and we're going to chuck it.
15 It's gone. It doesn't -- it doesn't exist. I don't
16 think that's what the Legislature intended. In fact,
17 that goes contrary to legislative intent and statutory
18 interpretation.

19 The second way is to do what Judge Delaney
20 did in one of the cases that NuLeaf cited. She said:
21 Do they substantially comply? You're right. Nobody
22 submitted the letter at the time of the application,
23 but at the time the -- the license was issued by the
24 Division, that letter had been issued. The State did
25 have that information. So we don't throw everything

1 out the window just because, through no fault of any of
2 the applicants, the letter wasn't available. The State
3 did the right thing; they accepted all the
4 applications. But the State didn't do the right thing
5 by ignoring the letter from the City of Las Vegas.

6 The Legislature clearly intended that the
7 local jurisdictions would have a say in this process.
8 To throw out the requirement found in subparagraph 5 is
9 to eliminate the local jurisdictions' involvement and
10 to then vest total discretion to the State on the
11 issuance of a license. That's throwing out the baby
12 with the bath -- bathwater. The reality is the
13 Legislature intended that the local jurisdictions
14 should have a say via zoning and business and other
15 matters of concern to the local jurisdiction, and they
16 gave them that say by requiring a letter to be provided
17 to the State notifying the State whether they were
18 accepted or rejected.

19 And, in this case, the City of Las Vegas
20 issued that letter before -- they issued it on
21 October 30th. The provisional licenses were -- were
22 issued by the State on November 3rd. Statutorily
23 speaking, if you're going to interpret and enforce the
24 statute as written -- and in the most reasonable way --
25 the only interpretation is that the Division exceeded

1 its authority. Now, I'm not saying it was nefarious,
2 and they didn't have an axe to grind against my client,
3 and they didn't have anything, you know, in favor of
4 NuLeaf, but it was wrong. It's -- statutorily they
5 lacked the authority.

6 When they received the letter on
7 October 30th, at that moment they were under notice
8 that NuLeaf failed to comply with subparagraph 5. And
9 under the -- the statute that says that they can issue
10 it if the applicant has submitted all of the following,
11 they no longer had the authority to issue it to NuLeaf.
12 Because they lacked the authority to statutorily issue
13 it, Nu -- NuLeaf's registration is in violation of the
14 law and it should be revoked.

15 Now, the next question is: Can the Court do
16 anything about it? If the Court determines -- clearly
17 the Court can declare that the provisional license was
18 issued improperly; it violated the statute. NuLeaf
19 argues you can't do anything about that. Well, all you
20 have to do is look at Judge Israel's decision to know
21 that that's not true.

22 What did Judge Israel say? He said courts do
23 have the ability to issue a mandatory injunction --

24 THE COURT: Well, I don't really -- I
25 appreciate Judge -- I appreciate everybody sending me

1 the decisions from the various different courts, and
2 I -- and I do find it interesting always to look at
3 what another judge does --

4 MR. SHAPIRO: But you're going to make your
5 own decision.

6 THE COURT: If Judge Israel's wrong and I
7 follow Judge Israel, then -- then we're both wrong.

8 MR. SHAPIRO: Right.

9 THE COURT: And so two wrongs don't make a
10 right. But I will say, at this point, I do generally
11 feel comfortable that, if the statute is clear and the
12 Attorney General -- or not -- well, the State of
13 Nevada's Division's interpretation is not a reasonable
14 interpretation, that I do have authority to act. So --

15 MR. SHAPIRO: I don't need to go there.

16 THE COURT: -- I'll let counsel for the other
17 side argue it. But, I mean, you don't need to reaffirm
18 that thought in my mind at this point in time.

19 MR. SHAPIRO: Your Honor, with that, then, do
20 you have any questions regarding our interpretation of
21 the statute? I think it's -- I think it's abundantly
22 clear.

23 THE COURT: No, no. I do understand your
24 interpretation.

25 MR. SHAPIRO: Okay. I'll --

1 THE COURT: Before you get up, I do want to
2 ask Ms. Anderson one -- let's --

3 Was there ever any discussion just saying, We
4 can't issue -- you know, just telling everybody, We
5 can't issue the 12 registrations because nobody has met
6 the one requirement of A2, 5?

7 MS. ANDERSON: Again, what -- what -- what my
8 client did, what the Division did, was -- was did not
9 look at that whole issue in terms of the locals coming
10 first. They looked at the State. They were very
11 consumed with looking at meeting all the criteria that
12 the State had in place. So they did not -- there was
13 no discussion, no looking at it.

14 The problem that we continued to say, though,
15 is that only a Court can order us to go further than
16 this because we had -- could only issue within that
17 90-day period, and that's what we were hoping to
18 accomplish.

19 THE COURT: Okay. But I understand that you
20 have the 90 days, and that's obviously significant.
21 But, I mean, is there any reason you just can't -- you
22 couldn't have said, you know, State, we know you want
23 to get these up and running but --

24 MS. ANDERSON: Because we --

25 THE COURT: -- at this point in time --

1 MS. ANDERSON: Because we only had --

2 (Simultaneous crosstalk.)

3 THE COURT: -- you either need to give us
4 more time or we're just not issuing 12 --

5 MS. ANDERSON: And we could have not issued
6 any for -- because we didn't ask for the information.
7 So if we had looked at that very strictly, we wouldn't
8 have actually been able to issue any, but then we would
9 have had to wait until the next calendar year to do
10 another application period.

11 THE COURT: Okay. All right. Thank you.

12 MR. SHAPIRO: And just to follow up on that
13 real quick, Your Honor. Obviously, on the 90-day
14 window, we believe Your Honor has the ability to put
15 the parties in the position they should have been on
16 November 3rd. So we're not even arguing that -- that
17 there needs to be an extension.

18 We put some arguments in our brief that that
19 is not a -- a cap. It's a call to action, not a cap.
20 But I really don't even think we get there because you
21 do have the ability to say we're going to go
22 retroactively and put the parties where they should
23 have been, and that's what we're asking the Court to
24 do.

25 THE COURT: And I follow what you're saying.

1 But I'm -- was interested to know -- because this seems
2 to be an issue, that nobody, as far as the State was
3 concerned, was qualified, as far as they knew, on the
4 90th day. And so I'm just sort of wondering --

5 MS. ANDERSON: Because --

6 THE COURT: -- why we issued any if nobody
7 was -- I'm not trying to be --

8 MS. ANDERSON: No.

9 THE COURT: -- obstructive. But, I mean,
10 just say, Hey, you know, nobody met this requirement
11 so, you know, we don't issue any.

12 MS. ANDERSON: You know, again, part of that
13 is the timing, though; is that we knew there was an
14 application process out there. We didn't know, you
15 know, that decision was going to come down when it did.
16 And we would have been in the same boat that we are in
17 now, that those -- we were hoping that they would match
18 up, as they actually all did in Washoe, fortunately,
19 but not down here. So, you know, it's just these two.
20 And then this is the vehicle we put before the Court,
21 is to allow these parties to come in and make these
22 arguments to you.

23 THE COURT: All right. I think I'm good.

24 Let me hear from -- and I'm sorry. I know
25 you've jumped up a couple times.

1 MR. BICE: That's quite all right, Your
2 Honor.

3 I would submit that the answer to that
4 question that you just posed to the State is that is a
5 little even simpler.

6 The reason that the State took the approach
7 that it did is because the approach being offered here
8 by the plaintiffs is impossible. And, in fact, no one
9 qualifies. And they don't qualify today under what
10 they are telling you this statute means. They want to
11 sort of slide over that and hope that you don't really
12 read the statute carefully and they'd hope that you
13 don't look at this letter that they got from the City,
14 that the City sent to the State on the exact last day
15 of the application process. Because if the Court does
16 look at what the statute actually says and looks at
17 what the City did, the State would tell you no one
18 applies, no one can satisfy that criteria even to this
19 day. And you know why, Your Honor? Is because the
20 statute says that they not only have to show either a
21 proof of licensure or under Sub 5, they have to
22 prove -- they have to present a letter that says that
23 they are in -- this is for a city that complies, Your
24 Honor, that adopts a special ordinance for these
25 medical marijuana businesses. All right? They have to

1 present the -- the State with a letter that says that
2 you have satisfied those applicable ordinances and
3 satisfies all applicable building requirements. That's
4 what that letter has to say.

5 And you know what the State recognized, Your
6 Honor, and recognized that in every one of these
7 applications, including at the County level and at the
8 City of Henderson and the City of North Las Vegas and
9 the City of Reno and in the City of Las Vegas? No one
10 could satisfy that criteria because the cities were not
11 issuing any authorizations under their building codes.
12 No one was submitting building plans. No one was
13 submitting any outlines for any sort of construction
14 plans. All the requirements about satisfying the
15 City's building requirements, they didn't do that
16 either. Neither one of these plaintiffs over here did
17 that. They -- they're asking you -- and this is why
18 the Division took the approach that they did, and this
19 is -- it is a bit ironic to hear GB Science touting
20 Judge Delaney's decision, Your Honor, since they were
21 the losing party against my other client, my other
22 NuLeaf client in that case under this exact same
23 argument. They're making the exact same pitch, just a
24 little bit different nuance to Your Honor, and I'll
25 explain why. But the point being, as Judge Delaney

1 recognized and as the Division recognized, no one can
2 satisfy that requirement if it's taken literally.

3 So this is left to the Division. This is a
4 brand-new statutory scheme. The Division is put under
5 an extraordinary time line by the Legislature. You
6 only get 90 days. And by the way -- and you got to
7 remember something else, Your Honor. The
8 constitutional amendment that brought this in to
9 existence I think was a decade old. The State had been
10 dragging its feet, arguably, for a decade on this. And
11 so the -- when the Legislature ultimately adopted this
12 statute and the Governor ultimately signed it, that's
13 why they were put under such strict time lines on this
14 90-day window.

15 So what happens is the State sets up the
16 process, everybody submits their application. We
17 submitted ours, just like they did. Our applications
18 in both the County and in the City of Las Vegas were
19 superior. GB Science I think lost out in -- in -- I'm
20 not sure every jurisdiction it applied, but certainly
21 in Clark County, which was the largest, and in the City
22 of Las Vegas because they submitted a substandard
23 application.

24 Now, what the State then recognized is:
25 Well, wait a minute. No one can satisfy this subpart 5

1 if it's taken on its face because no one can
2 demonstrate compliance with the building code
3 requirements, no one can demonstrate requirements with
4 the City's licensing code requirements because the City
5 hasn't even issued business licenses to these people.
6 So what the State did was they took a very reasonable
7 approach to the statutory -- the statute and the
8 statutory scheme and construed it and implemented it
9 consistent with their directive from the -- from the
10 Legislature. And I would point out to the Court, this
11 is exactly why 453A.326 sub 3 even exists, Your Honor.
12 That says that the certificates have to be provisional
13 until such time as you satisfy all -- what's the
14 terminology? Until they satisfy all local governmental
15 ordinances and rules. That's why the statute is set up
16 this way. And the State recognized that and, thus,
17 reasonably harmonized these two provisions -- 322 3A5
18 and 326 sub 3 -- and recognized you cannot satisfy all
19 local ordinances or building code requirements in order
20 to even apply or get a provisional certificate. You
21 can't even reconcile these ordinances to take the
22 approach of the plaintiffs here. That's why Judge
23 Delaney rejected that reproach -- that approach, and
24 that's why we're asking you to reject it.

25 And then, Your Honor, something very

1 interesting happened in the last legislative session.
2 So everybody knew how the Division was applying this
3 ordinance -- or this statute, and I've heard them say:
4 Well, it's clear on its face. It says if they -- if
5 you have all of this, then they can give you a
6 certificate.

7 Well, that's interesting because, as the
8 Legislature -- as the Division recognized, it has to
9 harmonize these statutes and implement them reasonably.

10 So in the last legislative session, Your
11 Honor, everybody went up to the Legislature, including
12 the folks at GB Sciences, complaining about this. What
13 did the Legislature do, Your Honor? In -- this was
14 addressed in the Clark County litigation, and that's
15 why the Clark County litigation, Your Honor, has been
16 settled. Because it -- it basically -- the controversy
17 became moot. Because the Legislature said: We're
18 going to expand the number of licenses. The
19 legislature did not in any way, shape, or form
20 criticize or reject the Division's interpretation of
21 the statute. In fact, the Legislature left the
22 Division's approach in interpreting these statutes and
23 reconciling them and harmonizing them and implementing
24 them just as the Division had done from day -- from the
25 very first day. So -- so not only do you not have a --

1 a statute that the Division -- well, I should rephrase
2 that. The Division isn't violating the statute. The
3 Division is, in fact, interpreting it and implementing
4 it and using its reasonable approach to implementing
5 the statutory scheme, but the Legislature has ratified
6 that. The Legislature knew what was going on, expanded
7 the number of licenses in Clark County, and left the
8 Division doing exactly what it is doing under
9 subparagraph 5 and how it is implementing it.

10 Now, take that a step further and --

11 THE COURT: Let me just stop you.

12 I mean, I understand the argument that the
13 Legislature could have done something, but I didn't see
14 really anywhere in there where the Legislature was
15 being specifically tasked to -- where it was clear that
16 somebody -- that this is -- the body, in some general
17 way, took cognizance of how the State didn't require a
18 letter --

19 MR. BICE: Yes.

20 THE COURT: -- beforehand, and -- and said,
21 you know, "We like how they did that. We're not going
22 to take any action on that."

23 MR. BICE: Your Honor, I have to agree with
24 you. I acknowledge that to be the case. But I -- I
25 guess maybe it's just a practical aspect of this too.

1 The reason that the Legislature was considering this
2 subject matter is because of all of this litigation.
3 There was litigation about the City, there was
4 litigation about Clark County, there was litigation
5 about Henderson, and that's why the Legislature was
6 even considering this issue. And the only reason that
7 there was legislative consideration of the issue is
8 because of how the Division was interpreting and
9 applying subparagraph 5. That was -- that has been the
10 controversy since day one, and that's the only reason
11 that the Legislature was even asked to intervene.

12 So I don't think one can say, Well, we
13 shouldn't -- we can't really infer legislative
14 ratification from the Legislature's intervention when,
15 in fact, that's the only reason that the Legislature
16 even had to intervene, was because of how the Division
17 was implementing subparagraph 5 and reconciling it with
18 the other terms of the ordinance to make the
19 ordinance -- or to make the statute work in a
20 consistent and reasonable fashion, and that is exactly
21 what the Division has done. And if the Legislature had
22 disagreed with that, I'm sure that the Legislature
23 would have corrected that in the last legislative
24 session instead of increasing the number of licenses in
25 Clark County, which is what they did.

1 But there's one additional point, Your Honor.
2 Not only was the -- has the Legislature confirmed the
3 appropriateness of how the Division is applying
4 subparagraph 5 in order to reconcile with the other
5 provisions in this statute, the City of Las Vegas has
6 now recognized the same thing. And we put this in our
7 reply brief to you because it happened relatively
8 recently. On November 16th and 17th, the City is going
9 to, once again, reopen the process to the provisional
10 certificate holders, i.e. NuLeaf. Because the City
11 knows that, in fact, it cannot deny under the -- it
12 can't basically bar you from applying to the State.
13 And this is another point that Judge Delaney had made
14 in her order. People have the right to apply to the
15 State. The City can't -- the locals cannot somehow
16 preempt the -- they have the doctrine of preemption
17 backwards.

18 The locals tried to dictate -- in Clark
19 County, tried to dictate who could apply to the State,
20 and the State rejected that approach, as did Judge
21 Delaney, saying, That is not your prerogative. Your
22 prerogative is to apply your local land use ordinances
23 and to do that consistent with the law, but you cannot
24 simply handpick using what was, at least in that case,
25 a very politicized criteria, handpick who's going to

1 win and then say they're the only people that can go up
2 to the State and satisfy the statute. That's why that
3 case came out the way it did, and that's why GB Science
4 was involved in that process and GB Science lost the
5 exact same argument it is making to you today. And for
6 good reason. Because they're basically trying to get
7 you to say that the State -- you should override the
8 Division's reasonable interpretation of the statute
9 that they have been charged by the Legislature with
10 implementing, interpreting, and enforcing. And it's
11 the only common sense interpretation that would work,
12 Your Honor. Because if you accept their argument about
13 what subparagraph 5 means, that it should be applied
14 literally, that no one can apply and no one can obtain
15 a certificate unless they have -- using their
16 terminology, unless they have a letter saying that not
17 only do they satisfy the specialized codes for medical
18 marijuana, but they also have to satisfy all applicable
19 building requirements, you will not see that anywhere.
20 And that is why the Division has taken the very
21 reasonable approach it did.

22 So they're asking you to disregard that. The
23 discretion at the Nevada Supreme Court says that the
24 Division has, in interpreting and implementing its
25 statutory scheme that it's charged with. They're also

1 asking you to disregard what the Legislature did in the
2 last session when it didn't change how the Division was
3 interpreting this. Next they're asking you to
4 disregard what the City of Las Vegas has recently set
5 up to confirm this very process because NuLeaf will be
6 the -- is a provisional certificate holder and will
7 satisfy this criteria on November the 16th. And they
8 asked you to do all of that, Your Honor. GB Sciences
9 asks of you to disregard all of that precedent, all of
10 the law, all of the policy consideration in favor of
11 someone who, at least according to Judge Cadish, isn't
12 even the next-in-line party. That's what -- that is
13 what we -- you are being asked to do. And that, Your
14 Honor, we ask you to reject.

15 I will agree with counsel about one thing,
16 when he says this -- this is an issue about timing. It
17 sure is, and my client needs to proceed. Because, as
18 the State is pointing out, maybe they're going to give
19 me a lot more pushback on this 18-month window than I
20 was hoping, but we'll have to address that with the
21 State. But the problem for us, Your Honor, this is why
22 we have -- they have moved, we have countermoved. This
23 is purely a question of whether or not the Division has
24 the discretion to implement this statute in the -- in
25 the manner in which it implemented it.

1 THE COURT: Let me just ask, going forward,
2 you know, in the process, let's say the cities get more
3 on -- the zoning authorities get more on the ball and
4 start issuing these letters more timely. Is it your
5 position, then, that in the -- would it be your
6 position, then, in the future that if you have three
7 more certificates that are made available and there's
8 six candidates and only -- and three of them have
9 gotten the whole letter from the City but three
10 haven't, that the State should ignore that fact in
11 terms of the scoring and essentially if the three that
12 don't have it are the top in terms of the State's
13 scoring system, they should still get the registration
14 and then 18 months to get the zoning? Is that how
15 we -- is that -- I mean, I can understand -- I guess
16 what I'm -- you know, statutes are statutes, and I
17 can -- and I see the argument here in that the State's
18 dealing with something where, yeah, I don't know if
19 it's been ten years, but this -- the constitutional
20 amendment had been around for --

21 MS. ANDERSON: It's been ten years.

22 MR. BICE: It was ten years, Your Honor.

23 THE COURT: I mean, it's been around for a
24 long time. And, you know, now, suddenly, we're moving
25 on it, people are trying to set it up, and there is

1 some -- some -- you know, we -- you can argue
2 massaging, but the statute is a statute and an
3 interpretation is an interpretation. Do we -- you
4 know, I have issue with massaging the statute one way
5 and saying I'm going to interpret it to where on zoning
6 and building we've got 18 months, but then, in the
7 future, the State says "Well, you know, we're going to
8 expect you to have it at the -- at the very beginning,"
9 and I have some issue --

10 MR. BICE: Yes, Your Honor.

11 THE COURT: -- with that kind of
12 interpretation.

13 MR. BICE: I recognize that, Your Honor. But
14 let me address this point because -- or address it this
15 way.

16 I recognize the concern about subparagraph 5.
17 I think that the Division has done the only reasonable
18 approach that it can -- and that, by the way, is
19 regardless of the timing of the City's letter. The
20 timing of the City's letter poses a particular obstacle
21 to giving it consideration in this case, but I would
22 submit that, regardless of when that letter came, the
23 State is not bound to let the cities or the local
24 jurisdictions determine who is the most qualified
25 applicant. They've got -- and that was Judge Delaney's

1 point. They've got it backwards. So what the -- what
2 I would submit --

3 THE COURT: Well, the cities can't decide
4 who's the most qualified. I mean, they can obviously
5 decide zoning issues and building code issues --

6 MR. BICE: Correct.

7 THE COURT: -- and if they are doing those in
8 an effort to manipulate who they want to have receive
9 the registrations, then I think you've got a pretty
10 good argument that they're -- and I can't remember what
11 the standard is for overruling a -- the zoning, but
12 it's, like, something like abuse of --

13 MR. BICE: Arbitrary --

14 THE COURT: Yeah, arbitrary and capricious.
15 I mean, that -- you would have a pretty good argument
16 in that regard, that it's arbitrary and capricious, but
17 absent -- I mean, if they legitimately are applying
18 zoning codes and building codes and these -- that seems
19 to be a factor that the State -- the Legislature can
20 say the State should take into account in issuing one
21 of these certificates.

22 MR. BICE: And it is something that the State
23 can and should be taking into account to ultimately
24 issue the certificate and ultimately convert the
25 provisional certificate into a final certificate, which

1 is what the provisions of 326 sub 3 provide, Your
2 Honor.

3 The problem that the local jurisdictions
4 created for the State was they didn't limit themselves
5 to addressing land use and zoning. They essentially
6 tried to preempt the State's ability to implement and
7 decide who were the most qualified operators of a
8 medical marijuana business from both a financial
9 structure, a security structure, and the like. That is
10 what they tried to do. The reason -- and I -- there
11 was going to be litigation about the propriety of Clark
12 County doing that because Clark County was the
13 principle that started that practice of -- of trying to
14 basically pick who would win and then say those are the
15 only people that can go up to the state level. That
16 process -- that litigation was ultimately resolved.
17 The County was sued by my clients and others --

18 THE COURT: Are you saying that's what
19 happened here with the City of Las Vegas?

20 MR. BICE: I'm not saying that is what
21 happened at the City of Las Vegas. I'm saying we never
22 got to that point because we never got to that point
23 about the -- that process in the City of Las Vegas
24 because the City submitted this at the last possible
25 minute before the -- the State acted on everybody's

1 applications.

2 I would submit that the timing of the City's
3 process is highly suspicious. Why would you be
4 submitting that letter on October 30 when you knew that
5 the 90-day window closed on November the 1st? I would
6 submit it was because the City was trying to determine
7 who could and who could not get a State provisional
8 certificate. We never got to that point. I believe
9 that the City has now recognized the error in the way
10 that they were trying to handle that process and have
11 now opened that process up again on November 16th and
12 the 17th, as we point out to you in our brief. We did
13 not have to sue the City to make the City reopen that
14 process. The City ultimately has agreed to do it, and
15 I'm not sure if they call it by way of a text amendment
16 or however they are handling it, Your Honor. But we
17 ultimately didn't have to sue the City to bring them --
18 what we believe bring them into compliance with what
19 state law provided. That process is going to be
20 completed in about a week.

21 So that's why, Your Honor, we have
22 countermove for summary judgment. Their approach to
23 the statute -- and it's just -- it's literally this,
24 Your Honor. If sub 5 means what counsel claims it
25 does, no one qualifies and no one will ever qualify

1 because no one can have all of their building
2 requirements satisfied, and no one will get a letter
3 from the City or from any other local government saying
4 that they have satisfied local building requirements,
5 and that's why when you asked the question about the
6 timing of the letter and the question about, Well,
7 shouldn't the State be considering some of these
8 things, yes. And I think the State acknowledges that.
9 As long as they get the information, they will
10 certainly consider it. But the State isn't going to be
11 bound to those decisions. The State isn't going to let
12 the local jurisdiction dictate --

13 THE COURT: Well, I mean, I think -- if the
14 decision is legitimately a zoning building code
15 decision, then I think the State is, by the statute,
16 bound -- bound by the decision.

17 I do agree with you, if the City is
18 manipulating who should -- then, you know, you -- you
19 may meet that arbitrary and capricious standard.

20 MR. BICE: Yeah. But here's my point, Your
21 Honor. Because the State -- in order to reconcile the
22 State's time line, this 90-day window, and the zoning
23 issues -- and, remember, you know, you know how the
24 zoning process works, Your Honor. You apply, you go
25 through the process, you go through the -- the Planning

1 Commission, you ultimately go to the City Council, and
2 if the City Council acts in an arbitrary and capricious
3 fashion, you go to court under a writ of mandamus
4 proceedings. That cannot be done in 90 days.

5 So what I'm telling the Court is -- and I
6 think that the Division's approach is the right
7 approach as confirmed even by the Legislature -- is you
8 cannot let the local jurisdiction under the guise of,
9 Well, this is a land use decision, say who can and who
10 cannot qualify for a provisional certificate. And
11 that's what was going on. I think it has now stopped.
12 I think that the Division's approach has been not only
13 confirmed by the courts but also confirmed by the
14 Legislature, and I don't think that we're going to have
15 that problem going forward again. But if we do have
16 that problem going forward again, where the locals try
17 to pick and choose who should really be entitled to a
18 provisional certificate and are doing so for reasons
19 other than legitimate zoning criteria, then the -- the
20 point is, is the Division's approach is the best
21 approach because it protects the rights of all parties
22 to have -- get that provisional certificate and then
23 have the appeals process work its way through if
24 someone is aggrieved on the zoning issue.

25 And that's why, Your Honor, the question

1 before the Court is a simple one, I would submit. Is
2 the statute -- is the Division's approach to the
3 statute reasonable within its discretion? And I would
4 submit to the Court it's the only possible approach to
5 the statute. Because if it is applied literally as the
6 plaintiffs' approach, they don't qualify.

7 And I thank the Court for its time.

8 THE COURT: All right. Thank you.

9 Ms. Anderson, let me go back to you again.

10 Don't worry.

11 Sort of this issue that I raised. Let's --
12 in the future, what are you going to be advising the
13 Division if you got six applicants for three positions
14 and three actually get this letter and three don't but
15 the -- whatever scoring system -- I have no idea what
16 the scoring system was, but whatever scoring system
17 says the three who don't have the letter are the top
18 three, are you going to be interpreting -- is the
19 Division going to be interpreting it in future that
20 they got 18 -- we're going to go forward with the top
21 three, and you got 18 months to get the zoning and
22 building?

23 MS. ANDERSON: And I always like a good
24 hypothetical, Your Honor. But this one, you know, the
25 Legislature actually hasn't answered the final question

1 of who goes first. The local -- and I have to say the
2 City of Las Vegas, I don't get any sense, was trying
3 to -- to jury-rig a -- a decision here. But I think
4 ultimately what's interesting, Your Honor, is
5 regardless of what the Division does, the locals
6 actually have the final say because they're the ones
7 that issue the business license.

8 So these applicants really have to get --
9 pick a location that's going to be appropriate.
10 They're going to have to work very closely with both
11 the local and the State, and I'm hopeful that we're not
12 going to have this situation in the future. The -- the
13 number of registrations is limited for dispensaries, so
14 we may not see this quite in this way. But another
15 thing we're going to have in place is we're going to be
16 able to time our application process so the locals can
17 work more harmoniously. And that's really been the
18 solution from the State's perspective, is that we're
19 going to have to work closer with the locals to make
20 sure we've got that criteria more in sync with what
21 we're both looking at.

22 We recognize that the local entity ultimately
23 has to approve, and that's what, in this case, will
24 happen or not happen. They may go forward and still
25 not get approval from the City of Las Vegas until we

1 see this process, but we're asking this Court to
2 resolve it one way or another just so we can at least
3 move on from this case.

4 THE COURT: All right. I've got a trial.
5 Three minutes.

6 MR. SHAPIRO: I understand, Your Honor, and
7 I'll try and make this brief, but I want to -- I want
8 to hit some -- some important points.

9 If you take a look -- I'm trying to work in
10 reverse. I'm going to talk about the City of Las
11 Vegas. Attached as Exhibit 10 is their letter. Their
12 letter clearly indicates that it is made in order for
13 the Court to make a determination under the statute,
14 and in that letter there were 37 applications that the
15 City of Las Vegas were considering. Some had been
16 withdrawn, and so it had been whittled down to 37.
17 Twenty-seven of those applications were -- were granted
18 and approved. Ten were denied. That's not
19 jury-rigging the process. They got 12 licenses. They
20 approved 27. There's no way you can argue that the
21 City of Las Vegas did anything wrong in approving 27
22 different potential applications. So --

23 THE COURT: Well, I'm not -- and I'm not
24 going there today because we aren't -- that's a whole
25 different litigation all together.

1 MR. SHAPIRO: Right. Right.

2 THE COURT: I don't want to even touch that.
3 I'm not -- but the reference -- and I'll be honest. I
4 don't have the -- the letter from the City in front of
5 me, but the reference by counsel, you know, to the
6 building -- applicable building requirements, he seems
7 to suggest that the letter maybe does suggest that
8 you're in compliance with zoning restrictions but it
9 doesn't touch upon the applicable building requirements
10 aspect of --

11 MR. SHAPIRO: Here's -- let's cut to the
12 chase because this is statutory interpretation. What
13 NuLeaf is arguing is that Your Honor throws out an
14 entire provision of the statute. And it has to be one
15 provision or the other. Either you throw out
16 subparagraph 5, which requires a letter from the local
17 ordinance. Obviously the Legislature intended the
18 local jurisdiction to have some say in this process,
19 and he wants to throw that out.

20 He also wants to throw out the 90-day period.
21 When you look at NRS 453A.322, it says not later than
22 90 days is when they have to issue the applicant if
23 they have received six items. That's at the 90-day
24 period. He wants to take that 90 days and expand it to
25 18 months. That's not what the Legislature allowed.

1 To accept his interpretation is to take that
2 90-day window and throw it out. You -- you can't
3 enforce the statute as written under his
4 interpretation. You have to simply modify it, which is
5 not the Court's jurisdiction. So what do you do? How
6 do you resolve this issue? Clearly the Legislature
7 intended that the local jurisdiction --

8 THE COURT: Focus on the letter for a second,
9 though.

10 MR. SHAPIRO: Okay.

11 THE COURT: I mean, I understand your
12 argument with what the Legislature intended, but focus
13 on the issue with the letter. Because I'm going to go
14 back and I'm going to take a closer look at --

15 (Simultaneous crosstalk.)

16 MR. SHAPIRO: It's -- it's Exhibit 10 and
17 it -- it states -- and I'll -- I'll read you the letter
18 because I think that's informative.

19 "Dear Chad,"

20 And this is to Chad Weston (phonetic) who, by
21 the way, interestingly enough, was the one who
22 testified at the committee, that in the event someone
23 was denied, that the Division would then issue the next
24 highest ranked applicant. So anyway.

25 "Dear Chad, Las Vegas Municipal Code

1 6.95.080, subparagraph D-Medical Marijuana
2 Establishment, requires notification to the
3 State regulatory authority if an applicant
4 for a medical marijuana establishment has
5 been found in conformance with land use
6 restrictions and if the application to the
7 City is eligible to be considered for a
8 medical marijuana establishment business
9 license."

10 So they've -- they've hit both of those
11 issues.

12 "On October 28th and 29th, 2014, the Las
13 Vegas City Council deliberated on
14 applications presented to the City for
15 dispensaries, cultivation, and production
16 facilities."

17 They've notified the State.

18 "We have looked at this on October 28th and
19 29th. The attached list for each type of
20 establishment is the result of the Council's
21 actions on each application."

22 It then lists 27 applications that were
23 approved, ten applications that were denied, and
24 approximately ten applications that had been withdrawn.

25 That letter was drafted, written, and

1 intended to comply with subparagraph 5, and under a
2 reasonable interpretation, the State could and should
3 have accepted that letter as a fulfillment or a denial
4 of the requirement of subparagraph 5.

5 And, Your Honor, when you asked the question,
6 In the future, are you going to enforce this, the State
7 didn't really answer the question. But of course they
8 are. They have to. The Legislature's the one that
9 makes the laws. And, therein, they're required to --
10 to proceed forward under those laws. In fact, their
11 authority is derived from those laws. They don't have
12 the authority to skip it so --

13 THE COURT: I understand.

14 MR. SHAPIRO: So anyway -- and I apologize.

15 THE COURT: Let me -- one minute: How I
16 should read that letter?

17 MR. BICE: That letter is written pursuant to
18 the City's code. It says it right at the beginning:
19 The City adopted a specialized code to deal with
20 medical marijuana facilities. Look at what the statute
21 provides. The statute provides the letter has to cover
22 two topics; not only the medical marijuana provision --
23 if you accept their interpretation, it has to cover not
24 only Section 6 -- Code Chapter 6 of the City Code,
25 which deals with the medical marijuana licensing, but

1 also the building code requirements. Not a word
2 mentioned in it. You know why? Because no one
3 satisfies all the building code requirements until such
4 time as you get the provisional license and then you go
5 back to the City with the provisional license and you
6 get all of the additional licenses, which is exactly
7 what NRS 453A.326 sub 3 says. That's why the license
8 is provisional, is because you have to have an
9 opportunity to go back to the locals and convince them
10 that you can satisfy all of the requirements, including
11 the building code.

12 THE COURT: All right. I'm -- I'm following
13 where you're going.

14 MR. BICE: Thank you, Your Honor.

15 THE COURT: Do you need one minute?

16 MR. LELEU: No, Your Honor.

17 THE COURT: Okay. All right.

18 MR. BICE: Thank you, Your Honor.

19 THE COURT: I do appreciate everybody needs a
20 decision on this. I'm going to make a -- essentially a
21 decision that I'll send out by e-mail by the end of the
22 day on Thursday to whoever is the prevailing party
23 asking you to do a written order at that point in time
24 so that you'll have, by next Monday -- is it Monday?

25 MR. BICE: The 16th, Your Honor, is --

1 THE COURT: Monday and Tuesday.

2 MR. BICE: Yes.

3 THE COURT: So you'll have it by next Monday
4 or Tuesday, the Court's decision, however way its going
5 to --

6 Now, let me just -- do we have agreement as
7 to who's No. 13?

8 MR. SHAPIRO: We don't, Your Honor. That --
9 that has to be resolved, and I'm going to be talking
10 with counsel here at possible resolutions so we can
11 avoid a lot more fighting. There's -- there's a whole
12 bunch more moving parts that are potentially going to
13 be raised by this intervention. I think the issues
14 vis-a-vis NuLeaf are ripe for determination. Obviously
15 this creates some other issues that we can deal with
16 another day.

17 THE COURT: Okay. All right. Thank you,
18 everybody.

19 MR. SHAPIRO: Thank you.

20 MR. SMITH: Thank you, Your Honor.

21 (Whereupon, the proceedings concluded at 9:39
22 a.m.)

23

24 -o0o-

25 ATTEST: FULL, TRUE, AND ACCURATE TRANSCRIPT OF. . .

1 . . .PROCEEDINGS.

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4 /s/ *Amber M. Riggio*
Amber M. Riggio, CCR No. 914
5 E/S 01/17/2016 at 4:51 a.m.
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2	a.m [3] 1/21 4/1 53/22	ambiguity [1] 19/15
20-digit [1] 19/20	A2 [1] 25/6	amend [2] 18/20 19/3
2014 [1] 50/12	A3 [1] 20/23	amendment [3] 30/8 38/20 42/15
2015 [2] 1/20 4/1	A710597 [1] 4/10	ANDERSON [5] 3/13 4/18 18/7 25/2 45/9
2100 [1] 2/17	ability [6] 13/14 14/2 23/23 26/14 26/21 41/6	another [8] 13/5 13/12 24/3 26/10 35/13 46/14 47/2 53/16
214-2100 [1] 2/17	able [2] 26/8 46/16	answer [3] 7/4 28/3 51/7
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29th [2] 50/12 50/19	abuse [1] 40/12	anybody [3] 7/7 12/2 14/23
3	accept [3] 36/12 49/1 51/23	anything [5] 20/19 23/3 23/16 23/19 47/21
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30th [3] 20/16 22/21 23/7	according [3] 13/11 21/5 37/11	apologize [3] 15/16 17/23 51/14
318-5033 [1] 2/8	account [2] 40/20 40/23	appeals [1] 44/23
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	<p>Y</p> <p>yeah [4] 5/1 38/18 40/14 43/20</p> <p>year [4] 12/11 13/2 15/17 26/9</p> <p>years [3] 38/19 38/21 38/22</p> <p>yes [5] 20/15 33/19 39/10 43/8 53/2</p> <p>you [155]</p> <p>you'll [2] 52/24 53/3</p> <p>you're [6] 21/21 22/23 24/4 26/25 48/8 52/13</p> <p>you've [4] 7/1 18/3 27/25 40/9</p> <p>your [79]</p>
	<p>Z</p> <p>zoning [17] 17/8 19/11 22/14 38/3 38/14 39/5 40/5 40/11 40/18 41/5 43/14 43/22 43/24 44/19 44/24 45/21 48/8</p>
<p>untimely [2] 5/13 5/13</p> <p>up [20] 5/19 7/13 10/4 14/7 14/10 15/13 16/9 25/1 25/23 26/12 27/18 27/25 30/15 31/15 32/11 36/1 37/5 38/25 41/15 42/11</p> <p>upon [2] 8/23 48/9</p> <p>us [6] 6/21 8/18 13/2 25/15 26/3 37/21</p> <p>use [6] 7/16 12/1 35/22 41/5 44/9 50/5</p> <p>used [1] 9/17</p> <p>using [3] 33/4 35/24 36/15</p> <p>utilize [1] 12/19</p>	<p>what [84]</p> <p>what's [4] 19/12 19/13 31/13 46/4</p> <p>whatever [2] 45/15 45/16</p> <p>when [20] 11/19 11/20 15/5 15/12 16/16 18/13 18/14 19/14 23/6 27/15 30/11 34/14 37/2 37/16 39/22 42/4 43/5 48/21 48/22 51/5</p> <p>where [9] 14/10 15/10 26/22 33/14 33/15 38/18 39/5 44/16 52/13</p> <p>Whereupon [1] 53/21</p> <p>whether [3] 12/17 22/17 37/23</p> <p>which [22] 5/6 5/6 7/14 8/23 11/2 11/8 11/14 12/2 13/20 14/7 14/18 17/18 18/25 20/16 30/21 34/25 37/25 40/25 48/16 49/4 51/25 52/6</p> <p>while [1] 5/18</p> <p>whittled [1] 47/16</p> <p>who [25] 5/17 12/4 14/24 14/25 17/9 17/16 17/17 19/22 20/21 35/19 37/11 39/24 40/8 41/7 41/14 42/7 42/7 43/18 44/9 44/9 44/17 45/17 46/1 49/20 49/21</p> <p>who's [3] 35/25 40/4 53/7</p> <p>whoever [1] 52/22</p> <p>whole [5] 21/14 25/9 38/9 47/24 53/11</p> <p>why [26] 6/13 8/4 11/14 12/3 14/22 27/6 28/19 29/17 29/25 30/13 31/11 31/15 31/22 31/24 32/15 34/5 36/2 36/3 36/20 37/21 42/3 42/21 43/5 44/25 52/2 52/7</p> <p>will [9] 24/10 36/19 37/5 37/6 37/15 42/25 43/2 43/9 46/23</p> <p>win [2] 36/1 41/14</p> <p>window [10] 7/16 8/15 8/18 22/1 26/14 30/14 37/19 42/5 43/22 49/2</p> <p>wishes [1] 19/22</p> <p>withdrawn [2] 47/16 50/24</p> <p>within [5] 6/18 13/14 16/5 25/16 45/3</p> <p>without [2] 6/11 15/22</p> <p>wondering [1] 27/4</p> <p>word [1] 52/1</p> <p>words [1] 19/25</p> <p>work [8] 18/8 34/19 36/11 44/23 46/10 46/17 46/19 47/9</p> <p>worked [1] 18/7</p> <p>works [1] 43/24</p> <p>worry [1] 45/10</p> <p>would [34] 5/8 6/6 6/7 6/21 6/22 10/3 10/6 10/7 11/12 11/23 12/23 13/6 13/8 16/13 22/7 26/8 27/16 27/17 28/3 28/17 31/10 34/23 36/11 38/5 39/21 40/2 40/15 41/14 42/2 42/3 42/5 45/1 45/3 49/23</p> <p>would submit [1] 40/2</p> <p>wouldn't [1] 26/7</p> <p>writ [1] 44/3</p> <p>written [5] 22/24 49/3 50/25 51/17 52/23</p> <p>wrong [5] 18/23 23/4 24/6 24/7 47/21</p> <p>wrongs [1] 24/9</p>
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<p>wait [2] 26/9 30/25</p> <p>waits [1] 5/17</p> <p>want [10] 9/16 12/13 16/10 25/1 25/22 28/10 40/8 47/7 47/7 48/2</p> <p>wanted [3] 9/24 10/2 13/25</p> <p>wants [3] 48/19 48/20 48/24</p> <p>was [82]</p> <p>Washington [1] 3/15</p> <p>Washoe [1] 27/18</p> <p>wasn't [3] 15/19 16/17 22/2</p> <p>waste [1] 18/4</p> <p>way [22] 13/5 13/12 17/2 21/13 21/19 22/24 30/6 31/16 32/19 33/17 36/3 39/4 39/15 39/18 42/9 42/15 44/23 46/14 47/2 47/20 49/21 53/4</p> <p>ways [1] 21/11</p> <p>we [121]</p> <p>we'll [1] 37/20</p> <p>we're [29] 5/5 6/10 6/19 11/16 12/15 12/16 14/3 14/7 19/12 21/13 21/14 24/7 26/4 26/16 26/21 26/23 31/24 32/17 33/21 38/24 39/7 44/14 45/20 46/11 46/15 46/15 46/18 46/21 47/1</p> <p>we've [4] 13/24 16/11 39/6 46/20</p> <p>week [1] 42/20</p> <p>weekend [1] 11/25</p> <p>well [27] 5/23 6/6 6/8 6/18 7/25 8/13 9/15 9/22 10/15 10/16 14/12 21/8 21/11 23/19 23/24 24/12 30/25 32/4 32/7 33/1 34/12 39/7 40/3 43/6 43/13 44/9 47/23</p> <p>went [3] 12/3 16/6 32/11</p> <p>were [34] 5/12 9/25 10/12 14/13 14/19 14/22 14/24 15/2 15/5 16/4 16/16 17/16 20/7 20/17 22/17 22/21 22/21 23/7 25/10 25/17 27/17 29/10 29/20 30/13 30/18 41/7 42/10 47/14 47/15 47/17 47/17 47/18 50/22 50/23</p> <p>Weston [1] 49/20</p>	<p>X</p>