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1 things and all that. Mr. Shapiro didn't. And that's  
2 the time to have raised these issues. He consented to  
3 our intervention.

4 And so, when we step away from everything --

5 **THE COURT:** Had you been moved up to 13 by  
6 the time --

7 **MR. FERRARIO:** Yes.

8 **THE COURT:** -- of the intervention?

9 **MR. FERRARIO:** Yes.

10 **THE COURT:** Okay.

11 **MR. FERRARIO:** And that's what -- and that's  
12 why, you know, we went in front of Judge Cadish. I'm  
13 pretty sure -- I can't quote exactly, but I remember  
14 going in front of her in the summer and she said this  
15 was, I think, the first mandamus petition she had  
16 entertained, and she asked us --

17 Isn't that what she said? Yeah.

18 And she says, "How do you want to proceed?"  
19 The reason it kind of drug on is we ended up having  
20 some briefing. We went back and forth, and really the  
21 only people that were arguing at the time was the State  
22 and Acres. And we were pursuing our writ of mandamus,  
23 and by then the issues had crystalized. All the other  
24 parties, I think, had dropped out. The declaratory  
25 relief claim was really on the sideline now. So all we

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1 obtained a judgment on was our -- our mandamus  
2 petition, and the mandamus petition says, State, go  
3 back and properly rank -- or properly rank the  
4 applicants, which means, once you do that, Acres goes  
5 to 13, GB goes to 14. That's all that happened.

6 So, at the end of the day, when I step way  
7 back from this --

8 **THE COURT:** I guess, when -- when did you  
9 realize GB was -- Sciences was No. 13?

10 **MR. FERRARIO:** When did we realize GB Science  
11 was 13? I can't -- I don't remember when I became  
12 aware of the GB Science lawsuit, to be honest with you.  
13 I just don't.

14 Do you remember that?

15 **MS. KATZ:** I wasn't on the file at that time.

16 **MR. FERRARIO:** I honestly don't remember,  
17 Your Honor. I know we were in court, and I was  
18 thinking at the time --

19 **THE COURT:** Why didn't you -- and I  
20 understand you're saying they didn't get scored, but, I  
21 mean -- or didn't release their scores, but why didn't  
22 you just, out of an abundance of caution, plug GB  
23 Sciences in to --

24 **MR. FERRARIO:** I think that's -- that's  
25 addressed here. They didn't allow the publishing of

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1 their scores.

2 THE COURT: You're saying you didn't know --

3 MR. FERRARIO: Where they --

4 THE COURT: -- who they were at all, or that  
5 you didn't know if they were ahead of you or not?

6 MR. FERRARIO: I -- I -- I don't want to  
7 misstate because I didn't draft that initial complaint.  
8 I -- I can -- the person that was doing that's no  
9 longer with the firm, and then Ms. Katz was working on  
10 it. So I can't tell you when I knew of that.

11 I became aware of the -- of the GB Science  
12 lawsuit probably right around the time of the hearing  
13 and when I -- and when Mr. Shapiro showed up. And --  
14 and that he was claiming that there was a problem with  
15 NuLeaf's application, and I thought to myself -- and I  
16 think we even discussed this -- that if we're  
17 successful in front of Judge Cadish, we'll be coming  
18 over in to your suit. And we had -- we had discussions  
19 about the fact that there was another certificate that  
20 was potentially available -- I think it was -- is it  
21 Desert Air was the other party? -- that had been  
22 dismissed, and I think they tried to bring them back in  
23 at one of the last hearings.

24 So, from my perspective, I wouldn't have had  
25 to bring them in to the mandamus case under any

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1 scenario. The only claim that they might have had a  
2 right to participate in might have been a  
3 declaration -- a declaratory relief claim, but that's  
4 not what we ultimately prevailed on. We prevailed on  
5 the mandamus claim.

6 And so, as soon as we got that order -- or,  
7 actually, at the hearing I think Mr. Shapiro and I had  
8 a discussion shortly after saying, you know, We're  
9 going to come --

10 **MR. SHAPIRO:** Your Honor, I'd object to the  
11 representations of this.

12 **MR. FERRARIO:** Well, fine. At the hearing --  
13 he was at the hearing, and then we -- right after we  
14 got the order, we made our motion to come in to this  
15 case.

16 If he thought that he was somehow harmed by  
17 what happened in front of Judge Cadish or that his due  
18 process rights were violated or he wasn't going to be  
19 bound by that Rule 13 -- or that finding by Judge  
20 Cadish saying that Acres was 13, he should have  
21 objected at the time we petitioned to intervene. If he  
22 didn't think we had any business being in this case  
23 because he didn't have an opportunity to participate in  
24 front of Judge Cadish, he should have made that  
25 argument then. He didn't.

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1           At the end of the day, what Your Honor has  
2     tried to do, at least from my reading of the — of the  
3     pleadings and your order, is you tried to follow the  
4     law and get it right. And no matter how much he  
5     argues, no matter how much GB Science complains, they  
6     simply never get to No. 13. So if we want to get this  
7     right. Okay? If we want to do what Mr. Shapiro argues  
8     we should do in his pleading and what GB Science wanted  
9     to do, is they wanted the parties to be in the position  
10    they should have been in on November 3rd, 2014. If you  
11    take his stake, what position should the parties have  
12    been in on November 3rd, 2014? Acres was No. 13; GB  
13    Sciences was No. 14. And when you properly apply the  
14    law, Acres gets the next certificate.

15           So if you go back to the case he cites,  
16    equity regards as done what in good conscious ought to  
17    be done, what in good conscious ought to be done is the  
18    person that should have been properly ranked 13 should  
19    get the certificate.

20           So I can go through the rest of this, but I  
21    think Your Honor's heard enough from us. At the end of  
22    the day, they have no case law that supports them on —  
23    on these propositions. Our mandamus claim was against  
24    the State; we prevailed. The State hasn't appealed.  
25    That means they're duty-bound to rank us 13th;

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1 duty-bound, and they've done that. They followed Judge  
2 Cadish's order.

3 So, at this point in time, according to the  
4 state of Nevada, we are No. 13. Under Your Honor's  
5 ruling, when NuLeaf is gone, the certificate goes to  
6 the next person in order, and that is Acres. And as I  
7 stated at the beginning, under no scenario can GB claim  
8 harm from an appropriate ranking of the applicants. So  
9 their whole argument starts from a false premise.

10 **THE COURT:** Ms. Anderson, let me just ask, if  
11 I had ruled just -- shouldn't have gone to NuLeaf, give  
12 it to No. 13, what would you have been advising the  
13 Nevada State Department of Health and Human Services?

14 **MS. ANDERSON:** And if I can clarify, Your  
15 Honor, if your ruling was we had to give it to No. 13,  
16 if you recall, part of my argument was, if you take  
17 someone out and don't move someone up the list, then we  
18 open up the application period again and let everybody  
19 come in and fight about it. But if your ruling was  
20 that the 13th should move up, it does.

21 **MR. FERRARIO:** You mean it goes to Acres?

22 **MS. ANDERSON:** It goes to Acres.

23 **THE COURT:** Okay. All right. I'll give  
24 you —

25 **MR. SHAPIRO:** Thank you, Your Honor.

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1           His arguments don't make sense. He argues I  
2   should have objected to the motion to intervene and  
3   made all these substantive arguments. That's not the  
4   time for it. A motion to intervene is nothing more  
5   than a request to become a party so you can assert a  
6   right or an interest. That's it. You don't get to the  
7   merits of the case. That wasn't the time to argue the  
8   relative positions. That's not what NRCP 24 requires.  
9   It's not what it states. All that was before Your  
10   Honor was should they be allowed to come in and file a  
11   complaint in intervention? They're the ones that put  
12   themselves in here. They inserted themselves in to  
13   this case. They subjected themselves to Your Honor and  
14   they asserted claims, and we should have the ability to  
15   flush out and -- and argue those claims.

16           Now, they argue we weren't part of Judge  
17   Cadish and, therefore, you know, we didn't show up  
18   and -- and they say it was on a writ of mandamus; it  
19   had nothing to do with equity. If they had properly  
20   named GB Sciences in the Judge Cadish case, then GB  
21   Sciences would have had the opportunity to come in and  
22   do what? File an answer and assert counterclaims. We  
23   could have had Judge Cadish balance the equities  
24   between Acres and GB Sciences and make a determination  
25   as to whether, at that late game -- point in the game,

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1 Acres should be able to leapfrog GB Sciences. And if  
2 they would have allowed us to go in to that case, then  
3 all of these counterclaims would have been heard, but  
4 they didn't.

5 And Mr. Ferrario was very coy with the Court  
6 in saying, "I don't know when I knew about GB Sciences.  
7 You know, we don't know when our firm knew about it."  
8 The reality is they were well aware of it. This is a  
9 small community. I guarantee you their clients knew  
10 about the GB Sciences lawsuit. Their clients know  
11 about all the lawsuits. Everybody's covering every  
12 lawsuit. So they can't come in and plead ignorance,  
13 that in June of 2015 they were not aware of a lawsuit  
14 that had been going on for six months. They should  
15 have named GB Sciences. If they had named GB Sciences,  
16 we would have been able to flush out our counterclaims  
17 against them in front of Judge Cadish, but they didn't.

18 And so the question then becomes: Are we  
19 deprived of that right even though they injected  
20 themselves in to this case? The answer's no, we're  
21 not. They filed a complaint in intervention. That's a  
22 proper pleading. We filed an answer in counterclaim.  
23 That's a proper pleading. We're entitled, under the  
24 due process requirements of the Nevada Constitution, to  
25 be able to be heard on those claims.

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1           And so, Your Honor, we'd request that our  
2 motion be granted.

3           **MR. SMITH:** Your Honor, just quickly, just  
4 for the record — I don't want to be accused of waiver  
5 at some point -- the reason NuLeaf's articulated in  
6 other places, NuLeaf objected to any order, amended or  
7 otherwise, that requires a certificate to be revoked,  
8 understanding that we're trying to get to a place where  
9 NuLeaf can appeal.

10           I just want to put that out there.

11           **THE COURT:** Okay. Thank you.

12           Ms. Anderson, is there anything you want to  
13 add to this?

14           **MS. ANDERSON:** I don't think so.

15           I do want to say that in the hearing before  
16 Judge Cadish, I did try to point out to the Court that  
17 there was other litigation pending, that there were  
18 other parties that might be able to argue -- Judge  
19 Cadish, though, went forward with the decision in part  
20 because she realized it was just going to be for the  
21 13th and that those issues, you know, weren't going to  
22 be addressed in front of her. She made that choice  
23 when we were there before the Court.

24           **THE COURT:** Okay. All right. Well, I don't  
25 see Judge Cadish's decision as essentially leapfrogging

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1 Acres over NuLeaf. Looking at the decision, it appears  
2 that she essentially treated this as a clerical scoring  
3 issue, that Acres should have been scored additional  
4 points, and that happened, by the points that they got,  
5 to put them above GB Sciences. But it wasn't an issue  
6 of -- between Acres and GB Sciences. It was an issue  
7 between Acres and the department.

8           So, you know, ultimately, I come back to  
9 this. I would not have entered with my summary  
10 judgment anything more than this should go to -- to  
11 No. 13, and I tell Department of Health and Human  
12 Services to issue to 13. I knew who 13 was based upon  
13 Judge Cadish's order. Even if I didn't know Judge  
14 Cadish's order, then I would have just gone to -- I  
15 would have said give it to whoever has been scored as  
16 No. 13 or should have been scored as No. 13 at the time  
17 of -- of the -- of the issue on the 4th of November.

18           So I am, at this point, going to deny the  
19 motion for -- to alter or amend judgment or, in the  
20 alternative, for partial reconsideration.

21           **MR. SHAPIRO:** So how do you want to treat the  
22 pending complaint in intervention and counterclaims?  
23 Is that subsumed in your order?

24           **THE COURT:** It's probably to be, if you want  
25 to --

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1           **MR. FERRARIO:** I think you said it would be  
2 moot.

3           **MR. SHAPIRO:** I mean --

4           **THE COURT:** I will tell you --

5           **MR. SHAPIRO:** -- I would like to go forward  
6 with those but --

7           **THE COURT:** I mean, I understand that, and we  
8 can look at the motion to dismiss and I'll give you a  
9 chance to argue a motion -- I'm going -- you know, just  
10 giving you, as I usually do, sort of an upfront as to  
11 what I'm looking at. I do tend to agree with GB  
12 Sciences, that this is not a -- a matter of -- between  
13 you and Acres. It's a matter between Acres and the  
14 Department of Health and Human Services, and GB  
15 Sciences and the Department of Health and Human  
16 Services. This wasn't a competitive thing between -- I  
17 mean, I guess it was competitive in that everybody got  
18 scored, but it wasn't in a sense that, you know, Acres  
19 and GB Sciences wrestled or, you know, did any mind  
20 games or such to get points for -- to get points for  
21 their side and we're arguing about whether or not, you  
22 know, something should be read one way or another way.

23           I mean, again, it seems to me that Acres  
24 said, You should have given us -- I don't know -- 67  
25 and a half points -- I can't remember what it was --

1 and Judge Cadish says, Yeah, you should have given them  
2 67 and a half points. Here's -- you know, add in 67  
3 and a half points. And if that wouldn't have gotten  
4 them up to 13, then they wouldn't have been 13. They  
5 would have been whatever the 67 and a half points would  
6 have -- would have plugged in. And so, you know, I --  
7 I tend to see that -- see -- see the counterclaims in  
8 that light, but I'll let you have --

9 **MR. SHAPIRO:** Well, and, Your Honor, you've  
10 read the briefs, and I don't know that we need to  
11 belabor the point. But -- but I think it's -- it's  
12 disingenuous to argue that this is not a fight between  
13 GB Sciences and Acres when Acres intervenes. I mean,  
14 it goes back to they come in and they want to trump  
15 everything and then they want to argue, But we really  
16 don't have a fight with you. They do, and that's why  
17 they came in.

18 And we do have a claim, and it really goes  
19 back to the arguments that are raised before, which are  
20 I do believe that -- that the declaratory relief  
21 statute in Nevada is broad enough to encompass the  
22 claims that we've asserted. I do believe that we have  
23 a valid equitable estoppel.

24 On the motion to dismiss, the legal standard  
25 is you've got to draw out all reasonable inferences in

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1 favor of the nonmoving party. And I — I think, under  
2 the facts of this case, we have valid claims against  
3 Acres that need to be adjudicated. Granted they  
4 probably should have been adjudicated in the Acres  
5 lawsuit, but Acres didn't bring GB Sciences in so they  
6 weren't. They've now been asserted. I think they've  
7 been properly asserted. Again, this is — this is  
8 Acres' bed that they made. They inserted themselves in  
9 to this case. They subjected themselves to Your  
10 Honor's jurisdiction, and I think that the declaratory  
11 relief and the equitable estoppel claims under a motion  
12 to dismiss standard, which is a much lower standard  
13 than if it were going to trial or a summary judgment,  
14 on a motion to dismiss standard, I believe we have  
15 asserted valid claims and they should not be dismissed.  
16 Beyond that, you've — you've got the arguments.  
17 You've — you know, we've briefed it, and I'll answer  
18 any questions that you have.

19 **THE COURT:** Give me just a little more,  
20 possibly, on your equitable estoppel.

21 **MR. SHAPIRO:** The equitable estoppel argument  
22 is really simple, and that is they should have named GB  
23 Sciences in this case. We filed our lawsuit  
24 immediately. The provisional certificates were issued  
25 on November 3rd. On December 2nd, this lawsuit was

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1 filed. We acted timely, we pursued it, and ultimately  
2 filed the motion for summary judgment which resulted in  
3 the revocation of NuLeaf's provisional certificate.

4 Acres waited six months to file their  
5 lawsuit. I guarantee you their clients knew that the  
6 GB Sciences lawsuit was pending at the moment they  
7 filed their lawsuit. They did not name GB Sciences.  
8 They moved forward in a separate action where GB  
9 Sciences' interest was directly affected, and at a  
10 minimum -- at a minimum -- Acres should reimburse GB  
11 Sciences the more than \$15,000 that they're paying  
12 every month in rent and all of this other expense that  
13 they're incurring for waiting till the last second to  
14 come in. I think, under equitable estoppel, those  
15 facts are sufficient to say, Acres, you may have -- you  
16 may have been given the right to be 13th under the  
17 Cadish decision, but under the equities, we're not  
18 going to let you leapfrog GB Sciences. And we're  
19 simply asking for the right to take some depositions,  
20 to flush out the facts, and then to present the  
21 equitable evidence and arguments to Your Honor. And,  
22 again, this is not a motion for summary judgment  
23 standard; this is a motion to dismiss standard.

24 **THE COURT:** I know.

25 **MR. SHAPIRO:** And it's a much lower standard,

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1 and I think we've met that standard both on the  
2 declaratory relief and the equitable estoppel.

3 **THE COURT:** All right. I'm primarily  
4 interested in the equitable estoppel --

5 **MR. FERRARIO:** Your Honor, there's --

6 **THE COURT:** -- so give me your --

7 **MR. FERRARIO:** They have to have relied to  
8 their detriment on something that we did, and they  
9 simply can't do that because this all comes back to  
10 what Your Honor said. This was a fight, really, at its  
11 core, between us and the State for improperly ranking  
12 us. We didn't come in and say, "Rank us 13th." We  
13 came in and we said, "Give us the points to which we  
14 were entitled," and Your Honor picked up on that and --  
15 a few minutes ago when you made those comments. If we  
16 were 15th, we were 15th. If we were 14th, we were  
17 14th. Whatever rights are accorded to us, we would  
18 get. And that's what we did.

19 To take Mr. Shapiro's comments at face  
20 value -- every applicant knew of every lawsuit? If I  
21 take that at face value, then they knew the minute we  
22 filed our lawsuit in the summer of 2015 that we were  
23 possibly going to obtain some relief that might impact  
24 them. So to go back to the argument we just addressed  
25 before, why didn't his client, even though he wasn't

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1 there at the time, why didn't they intervene and say  
2 "Wait a while." You waited too long. If this is going  
3 to impact me, I got this other lawsuit going on — you  
4 can't do that.

5 So that, in and of itself, if you take his  
6 comment at face value, that negates their claim for  
7 equitable relief because they should have acted sooner.

8 The other thing that — that he -- he  
9 mentioned in terms of the -- the intervention, the  
10 first thing the Court needs to decide is timeliness of  
11 the intervention. He didn't argue that our  
12 intervention was untimely. That's one of the very  
13 first things you address. He didn't make that  
14 argument. This is all now kind of -- I don't want to  
15 say sour grapes, but that's what it is. But it can  
16 never be that when the Court looks at the reality of  
17 the situation. You know what the facts are. There are  
18 no facts here to support an equitable estoppel claim.  
19 There simply aren't. And if there were, he's waived  
20 that claim.

21 But if you take it at face value, every one  
22 knew there was a case, why didn't his client jump up in  
23 the summer of 2015 and intervene in the lawsuit and  
24 say, "Wait, we should be parties. Even though we kept  
25 our score secret, we should be in this case," in front

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1 of Judge Cadish. "We want to argue that nothing should  
2 happen here -- should impact us because we filed our  
3 lawsuit six months prior." They didn't do that.

4 So there is no claim for equitable estoppel.

5 As a matter of fact, I think it was asserted in --

6 Wasn't it asserted in the amended pleading?

7 I mean, it's like a desperation ploy. Why  
8 didn't you include it in the original complaint or in  
9 his original claim? But --

10 **THE COURT:** Well, it's there.

11 **MR. FERRARIO:** So, at the end of the day,  
12 Judge, I think you've got it right. As you've said  
13 repeatedly and as NuLeaf wants, I think everybody, this  
14 needs to get wrapped up here, and it needs to go to the  
15 next level. Their counterclaims should be dismissed  
16 because they are nothing more than an attempt to try to  
17 continue to leverage this proposition without any legal  
18 basis or facts to support the claims.

19 **THE COURT:** Go ahead.

20 **MR. SHAPIRO:** In response, he keeps arguing  
21 that I should have done a lot of things in their motion  
22 to intervene. Motion to intervene is simply a request  
23 to become a party. There's no waiver. There's no law  
24 that says, I waive any arguments, defenses, or claims  
25 at a motion to intervene. That's simply not the law in

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1 Nevada, and for him to keep raising it is disingenuous.

2 Now, he says there's no detrimental reliance.

3 There absolutely is detrimental reliance. My clients  
4 are paying more than \$15,000 a month; that's \$174,000  
5 that my clients have paid to keep this alive. And they  
6 didn't even file their lawsuit until June. By the time  
7 they filed my lawsuit -- their lawsuit, my clients had  
8 paid seven month's worth of rent. 15,000 times seven.

9 I haven't done the math; whatever that comes out to be.

10 It's a big number.

11 **THE COURT:** But --

12 **MR. FERRARIO:** With no guarantee of success.

13 **THE COURT:** Wait.

14 How quickly -- tell me, then, what -- when is  
15 the equitable cutoff in terms of when they should have  
16 acted?

17 **MR. SHAPIRO:** That's for Your Honor to  
18 decide, but that's an issue that has to be decided at  
19 an appropriate time after we've had an opportunity to  
20 present all of the evidence and arguments to Your  
21 Honor.

22 I mean, we're not here to argue equitable  
23 estoppel. We're here to argue whether or not a claim  
24 can be stated, and all inferences need to be taken in  
25 favor of GB Sciences. And when you take all of those

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1 inferences in favor of GB Sciences, I think we clearly  
2 have stated a claim.

3 **THE COURT:** And what act of Acres are you  
4 saying you detrimentally relied on?

5 **MR. SHAPIRO:** That they didn't do anything  
6 for six months -- for seven months. They sat on their  
7 hands. They sat around for seven months while we're  
8 prosecuting our case.

9 **THE COURT:** All right. Okay. Is there  
10 anything else you want to add?

11 **MR. SHAPIRO:** No, Your Honor.

12 **THE COURT:** Okay. All right. As I had  
13 indicated before, I -- in terms of the issues here,  
14 I -- I see this as an issue between Acres and the State  
15 and GB Sciences and the State, but I don't see this as  
16 an issue between GB Sciences and Acres.

17 Acres got the scoring changed. I've seen  
18 nothing to suggest that the scoring change was improper  
19 for some particular reason beyond the State's argument  
20 that -- the State's arguments which Judge Cadish  
21 didn't -- didn't follow. So I just don't see, the suit  
22 here, a battle between -- this being a battle between  
23 GB Sciences and Acres.

24 In terms of the equitable, I just don't see a  
25 delay of six months -- if you call it a delay -- I

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1 mean, in terms of filing a lawsuit to protect their  
2 rights on -- in a case in which it was already highly  
3 circumspect whether or not GB Sciences was going to  
4 succeed or not, at that point in time, as amounting to  
5 something upon which detrimental reliance can be based.

6 So I am going to go ahead and grant the  
7 motion to dismiss the counterclaim.

8 **MR. FERRARIO:** Thank you, Your Honor.

9 We'll prepare an order and circulate it to  
10 Mr. Shapiro.

11 **MR. SHAPIRO:** Thank you, Your Honor.

12 **THE COURT:** All right. Thank you, guys.

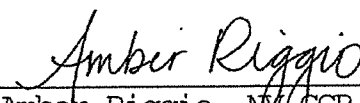
13 (Whereupon, the proceedings concluded at 3:53  
14 p.m.)

15 -o0o-

16 ATTEST: FULL, TRUE, AND ACCURATE TRANSCRIPT OF  
17 PROCEEDINGS.

18

19

  
/S/ Amber Riggio, NW CCR No. 914

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21/7 22/16 26/21	way [8] 10/1 11/11	24/10 24/13 24/13
26/25 29/2 32/24	11/12 19/1 21/1 23/6	26/13 27/5 29/6 29/7
36/11 36/12 36/12	32/22 32/22	30/23 33/13 36/15
36/13 36/17 38/2	we [104]	37/16 39/14 39/15
usually [1] 32/10	we'd [1] 30/1	39/25
	we'll [3] 6/4 24/17	where [9] 6/11 7/8
<b>V</b>	41/9	14/1 14/22 16/3 19/15
vacate [1] 6/4	we're [21] 5/20 9/9	24/3 30/8 35/8
vacated [1] 5/23	9/11 13/24 14/23 17/5	Whereupon [1] 41/13
valid [3] 33/23 34/2	17/7 18/10 19/10	whether [7] 15/2
34/15	20/10 24/16 25/8	16/25 18/10 28/25
value [4] 36/20 36/21	29/20 29/23 30/8	32/21 39/23 41/3
37/6 37/21	32/21 35/17 35/18	which [18] 5/8 8/17
Vegas [5] 2/13 2/21	39/22 39/23 40/7	10/7 10/9 10/16 18/19
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versus [1] 4/12	33/22 34/17 36/1	20/24 23/4 33/19
very [3] 19/11 29/5	39/19	34/12 35/2 36/13
37/12	weeks [1] 11/2	40/20 41/2 41/5
view [1] 6/14	well [19] 7/5 7/12	while [3] 21/12 37/2
violated [1] 25/18	8/12 9/8 9/17 10/6	40/7
vis [2] 10/18 10/18	13/2 13/9 13/12 13/13	who [10] 6/16 6/17
vis-a-vis [1] 10/18	13/17 14/10 15/16	6/17 7/4 8/7 8/23
	18/8 25/12 29/8 30/24	9/24 19/24 24/4 31/12
<b>W</b>	33/9 38/10	whoever [2] 7/3 31/15
Wait [4] 21/12 37/2	went [6] 17/19 20/22	whole [1] 27/9
37/24 39/13	21/6 22/12 22/20	wholly [1] 11/3
waited [3] 12/17 35/4	30/19	whom [2] 7/16 7/19
37/2	were [32] 8/1 9/20	whose [1] 15/16
waiting [1] 35/13	10/3 10/7 10/10 12/19	why [17] 6/3 8/10
waive [1] 38/24	13/21 13/22 15/12	9/19 13/3 13/3 13/4
waived [1] 37/19	15/24 17/20 17/20	16/8 18/8 21/20 22/12
waiver [2] 30/4 38/23	18/2 22/21 22/22	23/19 23/21 33/16
want [21] 5/13 8/10	23/17 24/4 24/5 25/18	36/25 37/1 37/22 38/7
9/3 16/19 16/21 21/8	29/8 29/13 30/17	will [2] 10/20 32/4
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30/4 30/10 30/12	36/14 36/16 36/16	18/19 20/9 38/17
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33/14 33/15 37/14	37/19	working [1] 24/9
38/1 40/10	weren't [6] 8/25 9/21	works [1] 14/25
wanted [3] 11/18 26/8	15/23 28/16 30/21	worth [1] 39/8
26/9	34/6	would [25] 5/22 12/14
	what [42]	12/14 13/13 13/14

**W**

would... [20] 13/14  
13/22 14/6 14/11  
20/18 21/6 27/12  
28/21 29/2 29/3 29/16  
31/9 31/14 31/15 32/1  
32/5 33/5 33/5 33/6  
36/17

wouldn't [4] 14/5  
24/24 33/3 33/4

wrapped [1] 38/14

wrestled [1] 32/19

writ [3] 20/23 22/22  
28/18

written [1] 11/1

wrong [3] 11/12 11/19  
17/18

**X**

xx [2] 1/7 1/19

**Y**

Yeah [3] 9/2 22/17  
33/1

year [1] 9/4

years [1] 21/16

Yes [2] 22/7 22/9

yet [1] 9/13

you [130]

you're [7] 13/1 14/15  
15/1 19/8 20/14 23/20  
24/2

you've [7] 33/9 33/25  
34/16 34/16 34/17  
38/12 38/12

your [50]

  
CLERK OF THE COURT

1 **ORDER**

2 MARK E. FERRARIO, ESQ. (NV Bar #1625)  
3 MOOREA L. KATZ, ESQ. (NV Bar #12007)  
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11 *Counsel for Plaintiff in Intervention Acres Medical, LLC*

12 **DISTRICT COURT**

13 **CLARK COUNTY, NEVADA**

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

Case No.: A-14-710597-C

Dept. No.: XX

16 Plaintiff,

17 v.

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

Defendants.

ACRES MEDICAL, LLC,

Plaintiff in Intervention,

v.

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

**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.

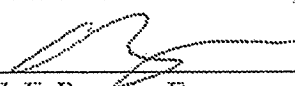
6  
7 **IT IS HEREBY ORDERED** that Intervenor Acres's Motion to Dismiss GB Sciences  
8 Nevada, LLC's Counterclaims Against Acres Medical, LLC is **GRANTED** and that GB Sciences'  
9 Counterclaims against Acres are **DISMISSED WITH PREJUDICE**.

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

11  
12  
13  
14   
DISTRICT COURT JUDGE  
ERIC JOHNSON


15 Respectfully Submitted by:

16 **GREENBERG TRAURIG, LLP**

17   
18 Mark E. Ferrario, Esq.  
19 Nevada Bar No. 1625  
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21 Suite 400 North  
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23 *Counsel for Plaintiff in Intervention Acres Medical, LLC*

24 Approved/Disapproved as to Form and Content:

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*Attorneys for Plaintiff GB Sciences Nevada, LLC*

///

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10 **ADAM PAUL LAXALT**  
11 Attorney General

12 Linda C. Anderson  
13 Linda C. Anderson, Esq.  
14 Chief Deputy Attorney General  
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16 555 E. Washington Ave., #3900  
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CLERK OF THE COURT

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

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

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

16 Plaintiff,

17 v.

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

Defendants.

ACRES MEDICAL, LLC,

Plaintiff in Intervention,

v.

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

Case No.: A-14-710597-C

Dept. No.: XX

**ORDER DENYING PLAINTIFF GB  
SCIENCES NEVADA, LLC'S MOTION TO  
ALTER OR AMEND JUDGMENT; OR, IN  
THE ALTERNATIVE MOTION FOR  
PARTIAL RECONSIDERATION**

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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 GB SCIENCES NEVADA, LLC'S ("Plaintiff") Motion to Alter or Amend Judgment; or, in the Alternative Motion for Partial Reconsideration ("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 MEDICAL, LLC ("Acres"), having appeared by and through its attorneys of record, GREENBERG TRAURIG, LLP; the Court having reviewed the papers and pleadings on file herein, having heard the arguments of counsel, the Court having stated its findings and conclusions on the record, and good cause appearing, NOW **THEREFORE, THE COURT FINDS AND CONCLUDES:**

GB Sciences has not demonstrated that the Court's December 14, 2015 Order ("December Order") was clearly erroneous and therefore has not met the standard for reconsideration. *See Masonry and Tile Contractors Ass'n of S. Nevada v. Jolley, Urga & Wirth, Ltd.*, 941 P.2d 486, 113 Nev. 737 (1997). Nor has GB Sciences demonstrated that the Court's December Order should be amended based on accident or error pursuant to Nevada Rule of Civil Procedure 59(a).

**NOW THEREFORE, IT IS HEREBY ORDERED** that Plaintiff's Motion to Alter or Amend Judgment; or, in the Alternative Motion for Partial Reconsideration is **DENIED**.

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

  
DISTRICT COURT JUDGE

ERIC JOHNSON

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9 *Counsel for Plaintiff in Intervention Acres Medical, LLC*

10 Approved/Disapproved as to Form and Content:

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17 *Attorneys for Plaintiff GB Sciences Nevada, LLC*

18 Approved/Disapproved as to Form and Content:

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26 Approved/Disapproved as to Form and Content:

27 **ADAM PAUL LAXALT**  
28 Attorney General

\_\_\_\_\_

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9 *Counsel for Plaintiff in Intervention Acres Medical, LLC*

10 Approved/Disapproved as to Form and Content:

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16 *Attorneys for Plaintiff GB Sciences Nevada, LLC*

17 Approved/Disapproved as to Form and Content:

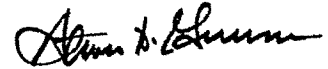
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23 *Attorneys for Nuleaf CLV Dispensary LLC*

24 Approved/Disapproved as to Form and Content:

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26 Attorney General

27 *Linda C. Anderson*  
28 Linda C. Anderson, Esq.  
Chief Deputy Attorney General  
Nevada Bar No. 4090  
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Las Vegas, NV 89101



CLERK OF THE COURT

1 **NEOJ**  
2 MARK E. FERRARIO, ESQ. (NV Bar #1625)  
3 MOOREA L. KATZ, ESQ. (NV Bar #12007)  
4 GREENBERG TRAUIG, LLP  
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9 E-mail: ferrariom@gtlaw.com  
10 katzmo@gtlaw.com  
11 *Counsel for Plaintiff in Intervention*  
12 *Acres Medical, LLC*

8 **DISTRICT COURT**  
9  
10 **CLARK COUNTY, NEVADA**

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

13 Plaintiff,

14 v.

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

26 Defendants.

27 ACRES MEDICAL, LLC,

28 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 DENYING  
PLAINTIFF GB SCIENCES NEVADA,  
LLC'S MOTION TO ALTER OR AMEND  
JUDGMENT; OR, IN THE ALTERNATIVE  
MOTION FOR PARTIAL  
RECONSIDERATION**

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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

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YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE that an ORDER  
DENYING PLAINTIFF GB SCIENCES NEVADA, LLC'S MOTION TO ALTER OR  
AMEND JUDGMENT; OR, IN THE ALTERNATIVE MOTION FOR PARTIAL  
RECONSIDERATION was entered in the above-captioned matter on the 3rd day of March, 2016.

DATED this 4th day of March, 2016.

GREENBERG TRAURIG, LLP

By: /s/ Moorea L. Katz

MARK E. FERRARIO (NV Bar No. 1625)

MOOREA L. KATZ (NV Bar No. 12007)

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Las Vegas, Nevada 89169

*Counsel for Plaintiff in Intervention*

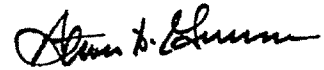
*Acres Medical, LLC*

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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 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 TRAUIG, LLP

  
CLERK OF THE COURT

1 **ORDR**  
2 MARK E. FERRARIO, ESQ. (NV Bar #1625)  
3 MOOREA L. KATZ, ESQ. (NV Bar #12007)  
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11 *Counsel for Plaintiff in Intervention Acres Medical, LLC*

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

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

16 Plaintiff,

17 v.

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

Defendants.

ACRES MEDICAL, LLC,

Plaintiff in Intervention,

v.

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

Case No.: A-14-710597-C

Dept. No.: XX

**ORDER DENYING PLAINTIFF GB  
SCIENCES NEVADA, LLC'S MOTION TO  
ALTER OR AMEND JUDGMENT; OR, IN  
THE ALTERNATIVE MOTION FOR  
PARTIAL RECONSIDERATION**

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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 GB SCIENCES NEVADA, LLC'S ("Plaintiff") Motion to Alter or Amend Judgment; or, in the Alternative Motion for Partial Reconsideration ("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 MEDICAL, LLC ("Acres"), having appeared by and through its attorneys of record, GREENBERG TRAURIG, LLP; the Court having reviewed the papers and pleadings on file herein, having heard the arguments of counsel, the Court having stated its findings and conclusions on the record, and good cause appearing, **NOW THEREFORE, THE COURT FINDS AND CONCLUDES:**

GB Sciences has not demonstrated that the Court's December 14, 2015 Order ("December Order") was clearly erroneous and therefore has not met the standard for reconsideration. *See Masonry and Tile Contractors Ass'n of S. Nevada v. Jolley, Urga & Wirth, Ltd.*, 941 P.2d 486, 113 Nev. 737 (1997). Nor has GB Sciences demonstrated that the Court's December Order should be amended based on accident or error pursuant to Nevada Rule of Civil Procedure 59(a).

**NOW THEREFORE, IT IS HEREBY ORDERED** that Plaintiff's Motion to Alter or Amend Judgment; or, in the Alternative Motion for Partial Reconsideration is **DENIED**.

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

  
DISTRICT COURT JUDGE  
ERIC JOHNSON

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Respectfully Submitted by:

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1 Respectfully Submitted by:

2 **GREENBERG TRAURIG, LLP**

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11 **SMITH & SHAPIRO, PLLC**

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25 *Attorneys for Nuleaf CLV Dispensary LLC*

26 Approved/Disapproved as to Form and Content:

27 **ADAM PAUL LAXALT**

28 Attorney General

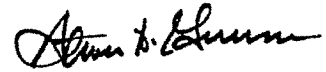
29 \_\_\_\_\_  
30 Linda C. Anderson, Esq.

31 Chief Deputy Attorney General

32 Nevada Bar No. 4090

33 555 E. Washington Ave., #3900

34 Las Vegas, NV 89101



CLERK OF THE COURT

1 **NOTC**

James E. Shapiro, Esq.

2 Nevada Bar No. 7907

Sheldon A. Herbert, Esq.

3 Nevada Bar No. 5988

**SMITH & SHAPIRO, PLLC**

4 2520 St. Rose Parkway, Suite 220

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*Attorneys for GB SCIENCES NEVADA, LLC*

6 **DISTRICT COURT**

7 **CLARK COUNTY, NEVADA**

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

10 Plaintiff,

11 vs.

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

16 Defendants.

Case No. A-14-710597-C

Dept. No. XX

Date:

Time:

17  
18 **AND RELATED CLAIMS**

19  
20 **NOTICE OF CROSS-APPEAL**

21 Notice is hereby given that Plaintiff/Defendant-in-Intervention/Counterclaimant-in-Intervention  
22 GB SCIENCES NEVADA, LLC, a Nevada limited liability company, hereby cross-appeals to the  
23 Supreme Court of Nevada from the following:

- 24 1) The District Court's Minute Order, entered on November 13, 2015.  
25 2) The District Court's Order, entered on December 14, 2015.  
26 3) The District Court's Minute Order, entered on January 26, 2016.

27 \\\

28 \\\

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RAPP000374

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- 1 4) The District Court's Order Denying Plaintiff GB Sciences of Nevada's Motion to Alter  
2 or Amend Judgment; or, in the Alternative, Motion for Partial Reconsideration, entered  
3 on March 3, 2016.
- 4 5) The District Court's Order Granting Intervenor Acres Medical, LLC's Motion to  
5 Dismiss GB Sciences of Nevada, LLC Counterclaims against Acres Medical, LLC,  
6 entered on March 3, 2016.
- 7 6) All other orders and rulings made appealable from the foregoing.

8 DATED this 30<sup>th</sup> day of March, 2016.

9 SMITH & SHAPIRO, PLLC

10  
11 /s/ James E. Shapiro  
12 James E. Shapiro, Esq.  
13 Nevada Bar No. 7907  
14 Sheldon A. Herbert, Esq.  
15 Nevada Bar No. 5988  
16 2520 St. Rose Parkway, Suite #220  
17 Henderson, NV 89074  
18 *Attorneys for Plaintiff/Defendant*  
19 *in Intervention/Counter-*  
20 *claimant in Intervention*

21 **CERTIFICATE OF SERVICE**

22 I hereby certify that I am an employee of SMITH & SHAPIRO, PLLC, and that on the 30<sup>th</sup>  
23 \_day of March, 2016, I served a true and correct copy of the forgoing **NOTICE OF CROSS-APPEAL**,  
24 by e-serving a copy on all parties registered and listed as Service Recipients in Wiznet, the Court's on-  
25 line, electronic filing website, pursuant to Administrative Order 14-2, entered by the Chief Judge,  
26 Jennifer Togliatti, on May 9, 2014.

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

1 Certificate), and (3) determination of entitlement of the Provisional Certificate by a subsequent fully-  
2 briefed dispositive motion or trial on the merits.

3 Acres goes on to argue that GB Sciences was not deprived of due process because it could have  
4 argued at the November 9, 2015 hearing against Acres' receiving the NuLeaf Provisional Certificate.  
5 See Opposition at 6:10-12. However, an actual determination on whether Acres was entitled to be  
6 ranked #13 or not, was not before the Court at the time. The only matters before the Court were (1) the  
7 issues by and between NuLeaf and GB Sciences as to whether the NuLeaf Provisional Certificate could  
8 be revoked and reissued to GB Sciences, and (2) whether Acres could intervene (i.e. become a party  
9 to the case) to, as Acres put it, "protect its rights *and pursue* a Provisional License." Acres was not a  
10 party to the competing motions for summary judgment, directly or by joinder, nor was an actual  
11 determination that the Provisional Certificate be transferred over to Acres even before the Court. Yet,  
12 that was what made it into the Court's ultimately entered MSJ Order.

13 Further, as explained in the Motion, none of the parties made any arguments to the Court  
14 relating to Acres' involvement. In fact, upon inquiry, counsel for GB Sciences noted to the Court that  
15 there would be future pleadings and arguments to determine the relative positions of GB Sciences and  
16 Acres. Outside of this comment, no arguments were raised by any parties relative to Acres, primarily  
17 because the issue had not yet been properly pled, nor was it properly in front of the Court (as it had not  
18 yet been briefed), as well as because none of the parties were prepared to make any such arguments at  
19 that time (as Acres' Motion to Intervene had been granted less than an hour before).

20 Acres next argument is that GB Sciences was not deprived of due process because it is permitted  
21 to brief and argue the instant Motion. See Opposition at 6:16-18. That is nonsensical because a motion  
22 to alter or amend arises under a different standard, happens after-the-fact, the scope of what can be  
23 considered in such a motion is extremely narrow, and the motion in this case still arises without the  
24 benefit of conducting any discovery regarding the critical issue of whether Acres should be ranked  
25 higher than GB Sciences and without any arguments as to the merits of Acres and GB Sciences claims  
26 and defenses.

27 \\\

28 \\\

1 Finally, Acres argues that GB Sciences was not deprived of due process because it was able to  
2 assert its Counterclaim against Acres for declaratory relief. See Opposition at 6:18-19. However, this  
3 argument is also nonsensical because GB Sciences was not able to assert the Counterclaim until after  
4 an actual Complaint in Intervention was filed by Acres, which was after the motion for summary  
5 judgment (which the MSJ Order was supposed to determine) was fully briefed and heard. Contrary to  
6 Acres' arguments, GB Sciences is not being afforded the opportunity to pursue the Counterclaim by  
7 conducting discovery and briefing the law related to the Counterclaim. Rather, the MSJ Order already  
8 effectively ruled against the Counterclaim before GB Sciences has had any opportunity to develop it  
9 through the appropriate legal channels and procedures.

10 As explained in the Motion, the case of Nicoladze v. First Nat. Bank of Nevada, 94 Nev. 377,  
11 580 P.2d 1391 (Nev., 1978) is instructive. In Nicoladze, First National Bank of Nevada ("FNBN")  
12 obtained a judgment against Lawler Cattle Company. Id., at 377. After the Judgment had been  
13 obtained, FNBN filed a motion to add George G. Nicoladze as a party on the theory that he was the alter  
14 ego of the Lawler Cattle Company. Id. "Without conducting a hearing on the matter or making any  
15 findings, the district court granted the motion." Id. at 377-378. In reversing the district court's ruling,  
16 the Nevada Supreme Court held that "*Fundamental due process requires that a person against whom*  
17 *a claim is asserted in a judicial proceeding have an opportunity to be heard and present his*  
18 *defenses.*" Id. at 378 (emphasis added). This did not happen in this case.

19 Although the opinion in the Nicoladze case does not set forth all of the facts that the court relied  
20 upon in making its determination, it is unlikely that Nicoladze had no notice of the lawsuit or the  
21 Judgment against the Lawler Cattle Company. If FNBN actually moved the court to add Nicoladze as  
22 a judgment debtor, under an alter-ego theory, there must have been some kind of close business  
23 association between Nicoladze and the Lawler Cattle Company. That being the case, Nicoladze was  
24 undoubtedly aware of the lawsuit against Lawler Cattle Company. Yet, he was denied due process  
25 because he did not have notice that findings would be made against him.

26 Likewise, in this case, just because there may have been some reference by Acres in its Motion  
27 to Intervene that it was claiming to be #13 in rank, that does not translate into notice to GB Sciences  
28 that the Court would actually rule on that issue when Acres was not a party to the competing motions

1 for summary judgment. With respect to the Complaint in Intervention that came thereafter, it did not  
2 constitute due process or notice to GB Sciences that the Complaint in Intervention would be ruled upon  
3 immediately. Just because a party receives a copy of a complaint does not mean that the party should  
4 expect any immediate result. Rather, the complaint is merely the formal assertion of claims and a  
5 statement that the plaintiff will take a certain position in litigation until such time as an actual judgment  
6 is sought and obtained through default, dispositive motion, or trial, all of which must comply with  
7 Nevada's due process requirements.

8 In this case, GB Sciences filed its Motion for Summary Judgment as well as its Replies to the  
9 Division and NuLeaf's Oppositions, all before Acres even filed its Motion to Intervene. Nothing in GB  
10 Sciences Motion for Summary Judgment, in the Division's Opposition, in NuLeaf's Opposition and  
11 Countermotion, and in GB Sciences' Reply briefs addressed Acres and/or Acres claim that they should  
12 be put ahead of GB Sciences. In fact, prior to December 14, 2015, when this Court entered the MSJ  
13 Order, there was simply no notice to any party that the Court would be deciding the issue of priority  
14 between Acres and GB Sciences.

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

20 In the MSJ Order, the Court essentially granted summary judgment in favor of Acres and against  
21 GB Sciences on all of Acres claims against GB Sciences (filed less than one month prior) and all of GB  
22 Sciences counterclaims against Acres (filed just 11 days prior), all without any advance notice to any  
23 of the parties, without giving GB Sciences an opportunity to brief the issue, without holding a hearing  
24 on the matter, and without providing GB Sciences with an opportunity to be heard. Because GB  
25 Sciences has not had any opportunity to be heard in its defense of Acres' claims against it and in favor  
26 of its Counterclaims against Acres, the December 14, 2015 MSJ Order is unquestionably erroneous and  
27 should be amended to correct this clear violation.

28 \\\

3. The MSJ Order Violates The Principal of Res Judicata.

Acres also argues in its Opposition that there is no *res judicata* problem because Acres is trying to enforce the Order from the Acres Case against the Division, *not* GB Sciences. *See* Opposition at 3:16-17. However, that is simply a matter of sophistry of argument, not accurate, and is belied by Acres' own actions.

In its Complaint in the Acres Case, Acres named a total of twenty-one (21) parties<sup>2</sup>, plus DOE ENTITIES 1-5, ROE ENTITIES 1-4, and POE ENTITIES 1-16. A true and correct copy Acres' Complaint is attached hereto as Exhibit "4" and incorporated herein by this reference. In paragraphs 4 through 25, Acres identified twenty (20) of the Defendants as "Defendant/Real Party in Interest... whose ranking among all such applications might be affected by the relief sought herein." *See* Exhibit "1". In paragraph 25, Acres alleged:

25. On information and belief Defendants/Real Parties in Interest Poe Entities 1-14 are each applicants for a medical marijuana registration certificate to own and operate a dispensary MME in the City of Las Vegas whose ranking among all such applications might be affected by the relief sought herein. Because of the Division's anonymous scoring and ranking process, the identities of the real Parties in Interest Poe Entities 1-14 are unknown to Plaintiffs/Petitioners at this time. (*See Exhibit "1" (emphasis added).*)

Noticeably absent from the list of named Defendants was GB Sciences, although GB Sciences clearly fit the identification of one of the Poe Entities 1-14. *See* Exhibit "1".

Acres clearly recognized and has already admitted that there were numerous parties, all of whom had submitted applications for a Provisional Certificate, all of whom would potentially be affected by Acres Lawsuit, all of whom Acres acknowledged were "Real Parties in Interest," and all of whom Acres knew had an interest in the outcome of the Acres Lawsuit. *See* Exhibit "1". Thus, Acres has already acknowledged that GB Sciences was a real party in interest in the Acres Case.

---

<sup>2</sup>Specifically, Acres named the following as Defendants: (1) NEVADA DEPARTMENT OF HEALTH AND SERVICES, DIVISION OF PUBLIC AND BEHAVIORAL HEALTH; (2) NLVG, LLC; (3) NU LEAF CULTIVATION, LLC; (4) THE MEDMEN OF NEVADA 2, LLC; (5) CANNABIS RENAISSANCE GROUP, LLC; (6) MM DEVELOPMENT, LLC; (7) NYE NATURAL MEDICINAL SOLUTIONS, LLC; (8) GREENLIFE PRODUCTIONS, LLC; (9) GWGA, LLC; (10) NEVADA NATURAL MEDICINES, LLC; (11) WELLNESS ORCHARDS OF NEVADA, LLC; (12) NCMN, LLC; (13) ACC INDUSTRIES, INC.; (14) SAMANTHA'S REMEDIES; (15) NEVADA CARES, LLC; (16) THC NEVADA, LLC; (17) RED ROCK WELLNESS, LLC; (18) QUALCAN OF LAS VEGAS, LLC; (19) PHYSIS ONE LLC; (20) BUFFALO CENTER MEDICAL ADVOCATES; and (21) PRIMO DISPENSARY.

1 The Order in the Acres Case mandated that the Division re-score Acres' application and declare  
2 that Acres was #13 on the list of MME applicants. This clearly has a direct and real affect on GB  
3 Sciences, and as Acres has already admitted, GB Sciences should have been a party to the Acres Case  
4 so that they could have raised their defenses and counterclaims on the issue. Because Acres failed to  
5 include GB Sciences in the Acres Case, even though it included twenty-one (21) other parties and  
6 especially when GB Sciences was arguably the party who was most likely to be affected by the ruling,  
7 there is no question that GB Sciences has the right to argue that the Acres Order does not apply to GB  
8 Sciences and to raise such additional defenses and arguments as it deems appropriate when GB Sciences  
9 is given the opportunity afforded by the Nevada Constitution to be heard on Acres' claims and GB  
10 Sciences' counterclaims.

11 4. Acres is Equitable Estopped From Obtaining NuLeaf's Revoked Provisional  
12 Certificate.

13 Finally, Acres claims that equitable estoppel does not apply for a couple of reasons.  
14 Acres argues that NuLeaf made the same argument of in opposition to Acres' Motion to Intervene, and  
15 the argument was rejected by the Court. See Opposition at 8:4-5. However, this is not true. While  
16 NuLeaf argued lack of timeliness, it only addressed prejudice from intervention because it would "delay  
17 resolution of the motions for summary judgment and stall the outcome of the proceedings." See  
18 NuLeaf's Opposition to the Motion to Intervene at 4:5-6. NuLeaf also argued that it would have to file  
19 additional motions directed at Acres and potentially go to trial with a different or additional party (i.e.  
20 cost more going forward), and NuLeaf would be hampered from becoming operational within 18  
21 months, pursuant to NAC 453A.324. See NuLeaf's Opposition to Motion to Intervene at 4:6-11. The  
22 arguments relating to GB Sciences equitable estoppel claims were not even before the Court and are  
23 substantially different.

24 Further, Acres claims that it did all it could to play fair because it "named as real parties in  
25 interest all applicants for medical marijuana registrations that were publicly available" when it filed the  
26 Acres Case and GB Sciences had not originally consented to its score being published so it was not  
27 included as a party in the Acres Case. See Opposition at 8:9-11. Aside from the fact that this argument  
28 is a clear admission that GB Sciences was a real party in interest that should have been named, Acres

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1 fails to mention that the Acres Case was not initiated until June 9, 2015, which was more than six  
2 months after this matter was filed, that Acres had public notice that GB Sciences was a contender for  
3 one of the Provisional Registration Certificates, and that GB Sciences claimed it was #13 and next in  
4 line, following the revocation of the Provisional Certificates issued to NuLeaf and/or Desert Aire. GB  
5 Sciences, therefore, was easily identifiable by Acres when it filed the Acres Case as a potentially  
6 affected party who also claimed to be #13. Nonetheless, Acres conveniently never bothered to name  
7 or include GB Sciences as a party in the Acres Case.

8 In any event, because the Nevada constitution gives GB Sciences the right to flush out its  
9 equitable estoppel argument and to be heard on the same, the mere fact that Acres is arguing that the  
10 equitable estoppel argument does not apply simply underscores the fact that the MSJ Order violates GB  
11 Sciences' due process rights and must be amended.

12 IV.

13 CONCLUSION

14 Based upon the foregoing points and authorities, the Plaintiff respectfully repeats its request that  
15 the Court alter or amend the Judgment to remove Paragraphs 21, 37, 40, and 41 which grant Nuleaf's  
16 revoked Provisional Certificate to Acres. In the alternative, the Plaintiff respectfully repeats its request  
17 that the Court reconsider the portion of the Order which grants Nuleaf's revoked Provisional Certificate  
18 to Acres.

19 DATED this 18<sup>th</sup> day of January, 2016.

20 SMITH & SHAPIRO, PLLC

21 /s/ James E. Shapiro, Esq.  
22 James E. Shapiro, Esq.  
23 Nevada Bar No. 7907  
24 Sheldon A. Herbert, Esq.  
25 Nevada Bar No. 5988  
26 2520 St. Rose Parkway, Suite 220  
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28 Attorneys for Plaintiff

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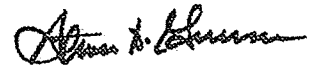
**CERTIFICATE OF SERVICE**

I hereby certify that I am an employee of SMITH & SHAPIRO, PLLC, and that on the 18<sup>th</sup> day of January, 2016, I served a true and correct copy of the forgoing **REPLY TO OPPOSITION TO PLAINTIFF'S MOTION TO ALTER OR AMEND JUDGMENT; OR, IN THE ALTERNATIVE MOTION FOR PARTIAL RECONSIDERATION**, by e-serving a copy on all parties registered and listed as Service Recipients in Wiznet, the Court's on-line, electronic filing website, pursuant to Administrative Order 14-2, entered by the Chief Judge, Jennifer Togliatti, on May 9, 2014.

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

# EXHIBIT 4

# EXHIBIT 4



CLERK OF THE COURT

1 COMP  
2 MARK E. FERRARIO, ESQ.  
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11 [cowdent@gtlaw.com](mailto:cowdent@gtlaw.com)  
12 Counsel for Plaintiffs/Petitioners Acres  
13 Medical LLC, and Acres Cultivation, LLC

8 DISTRICT COURT

9 CLARK COUNTY, NEVADA.

10 ACRES MEDICAL, LLC, a Nevada limited  
11 liability company; and ACRES  
12 CULTIVATION, LLC, a Nevada limited  
13 liability company,

14 Plaintiffs/Petitioners,

15 - vs. -

16 NEVADA DEPARTMENT OF HEALTH  
17 AND SERVICES, DIVISION OF PUBLIC  
18 AND BEHAVIORAL HEALTH,

19 Defendant/ Respondent;

20 And

21 NLVG, LLC; NU LEAF CULTIVATION,  
22 LLC; THE MEDMEN OF NEVADA 2, LLC;  
23 CANNABIS RENAISSANCE GROUP, LLC;  
24 MM DEVELOPMENT, LLC; NYE  
25 NATURAL MEDICINAL SOLUTIONS, LLC;  
26 GREENLIFE PRODUCTIONS, LLC; GWGA,  
27 LLC; NEVADA NATURAL MEDICINES,  
28 LLC; WELLNESS ORCHARDS OF  
NEVADA, LLC; NCMN, 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; 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

COMPLAINT FOR DECLARATORY AND  
INJUNCTIVE RELIEF AND/OR PETITION  
FOR WRIT OF CERTIORARI AND  
MANDAMUS

Exempt from Arbitration:  
Action for Declaratory Relief & Equitable  
Relief

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1  
2 COME NOW, Acres Medical, LLC and Acres Cultivation, LLC, by and through their legal  
3 counsel, the law firm GREENBERG TRAURIG, LLP, and as their Complaint for Declaratory Relief and  
4 Petition for Writs of Mandamus and/or Certiorari, allege as follows:

5 **GENERAL ALLEGATIONS**

6 **THE PARTIES**

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

9 2. Plaintiff/Petitioner Acres Cultivation, LLC ("Acres Cultivation") is a Nevada limited  
10 liability company, duly authorized to conduct business in the State of Nevada.

11 3. Defendant/Respondent Nevada Department of Health and Services, Division of  
12 Public and Behavioral Health (the "Division") is an agency of the State of Nevada, and was the  
13 recipient of the applications submitted by Petitioners.

14 4. Defendant/Real Party in Interest NLVG, LLC is a Nevada limited liability company,  
15 and was an applicant for a medical marijuana registration certificate to own and operate a  
16 cultivation medical marijuana establishment ("MME") in the City of Las Vegas whose ranking  
17 among all such applications might be affected by the relief sought herein.

18 5. Defendant/Real Party in Interest Nu Leaf Cultivation, LLC is a Nevada limited  
19 liability company, and was an applicant for a medical marijuana registration certificate to own and  
20 operate a cultivation MME in the City of Las Vegas whose ranking among all such applications  
21 might be affected by the relief sought herein.

22 6. Defendant/Real Party in Interest The MedMen of Nevada 2, LLC is a Nevada limited  
23 liability company, and was an applicant for medical marijuana registration certificate to own and  
24 operate a cultivation MME and a dispensary MME in the City of Las Vegas whose rankings among  
25 all such applications might be affected by the relief sought herein.

26 7. Defendant/Real Party in Interest Cannabis Renaissance Group, LLC is a Nevada  
27 limited liability company, and was an applicant for medical marijuana registration certificate to own  
28

1 and operate a cultivation MME and a dispensary MME in the City of Las Vegas whose rankings  
2 among all such applications might be affected by the relief sought herein.

3 8. On information and belief, Defendants/Real Parties in Interest Doe Entities 1-3 are  
4 each Nevada entities who submitted applications for medical marijuana registration certificates to  
5 own and operate cultivation MMEs in the City of Las Vegas, and whose ranking among such  
6 applicants may be affected by the relief sought herein. Because of the Division's anonymous scoring  
7 and ranking process, the identities of the real parties in interest Doe Entities 1-3 are unknown to  
8 Plaintiffs/Petitioners at this time.

9 9. Defendant/Real Party in Interest MM Development, LLC, is a Nevada limited  
10 liability company, and was an applicant for a medical marijuana registration certificate to own and  
11 operate a cultivation MME in Nye County whose ranking among all such applications might be  
12 affected by the relief sought herein.

13 10. Defendant/Real Party in Interest Nye Natural Medicinal Solutions, LLC is a Nevada  
14 limited liability company, and was an applicant for a medical marijuana registration certificate to  
15 own and operate a cultivation MME in Nye County whose ranking among all such applications  
16 might be affected by the relief sought herein.

17 11. Defendant/Real Party in Interest GreenLife Production, LLC is a Nevada limited  
18 liability company, and was an applicant for a medical marijuana registration certificate to own and  
19 operate a cultivation MME in Nye County whose ranking among all such applications might be  
20 affected by the relief sought herein.

21 12. Defendant/Real Party in Interest GWGA, LLC is a Nevada limited liability company,  
22 and was an applicant for a medical marijuana registration certificate to own and operate a  
23 cultivation MME in Nye County whose ranking among all such applications might be affected by  
24 the relief sought herein.

25 13. Defendant/Real Party in Interest Nevada Natural Medicines, LLC is a Nevada  
26 limited liability company, and was an applicant for a medical marijuana registration certificate to  
27 own and operate a cultivation MME in Nye County whose ranking among all such applications  
28 might be affected by the relief sought herein.

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Facsimile: (702) 792-0002

1           14. Defendant/Real Party in Interest Wellness Orchards of Nevada, LLC is a Nevada  
2 limited liability company, and was an applicant for a medical marijuana registration certificate to  
3 own and operate a cultivation MME in Nye County whose ranking among all such applications  
4 might be affected by the relief sought herein.

5           15. Defendant/Real Party in Interest NCMM, LLC is a Nevada limited liability  
6 company, and was an applicant for a medical marijuana registration certificate to own and operate a  
7 cultivation MME in Nye County whose ranking among all such applications might be affected by  
8 the relief sought herein.

9           16. On information and belief, Defendant/Real Party in Interest Roe Entities 1-4 were  
10 each Nevada entities who submitted applications for medical marijuana registration certificates to  
11 own and operate cultivation MMEs in Nye County, and whose ranking among such applicants may  
12 affected by the relief sought herein. Because of the Division's anonymous scoring and ranking  
13 process, the identities of the Real Parties in Interest Roe Entities 1-4 is unknown to  
14 Plaintiffs/Petitioners at this time.

15           17. Defendant/Real Party in Interest Samantha's Remedies is a business entity of  
16 unknown type or origin, and was an applicant for a medical marijuana registration certificate to own  
17 and operate a dispensary MME in the City of Las Vegas whose ranking among all such applications  
18 might be affected by the relief sought herein.

19           18. Defendant/Real Party in Interest Nevada, Cares, LLC is a Nevada limited liability  
20 company, was an applicant for a medical marijuana registration certificate to own and operate a  
21 dispensary MME in the City of Las Vegas whose ranking among all such applications might be  
22 affected by the relief sought herein.

23           19. Defendant/Real Party in Interest THC Nevada, LLC is a Nevada limited liability  
24 company, and was an applicant for a medical marijuana registration certificate to own and operate a  
25 dispensary MME in the City of Las Vegas whose ranking among all such applications might be  
26 affected by the relief sought herein.

27           20. Defendant/Real Party in Interest Red Rock Wellness, LLC, is a Nevada limited  
28 liability company, and was an applicant for a medical marijuana registration certificate to own and

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1 operate a dispensary MME in the City of Las Vegas whose ranking among all such applications  
2 might be affected by the relief sought herein.

3 21. Defendant/Real Party in Interest QualCan of Las Vegas, LLC is a Nevada limited  
4 liability company, and was an applicant for a medical marijuana registration certificate to own and  
5 operate a dispensary MME in the City of Las Vegas whose ranking among all such applications  
6 might be affected by the relief sought herein.

7 22. Defendant/Real Party in Interest Physis One LLC is a Nevada limited liability  
8 company, and was an applicant for a medical marijuana registration certificate to own and operate a  
9 dispensary MME in the City of Las Vegas whose ranking among all such applications might be  
10 affected by the relief sought herein.

11 23. Defendant/Real Party in Interest Buffalo Center Medical Advocates is a Nevada  
12 limited liability company, and was an applicant for a medical marijuana registration certificate to  
13 own and operate a dispensary MME in the City of Las Vegas whose ranking among all such  
14 applications might be affected by the relief sought herein.

15 24. Defendant/Real Party in Interest Primo Dispensary is a Nevada corporation, and an  
16 was applicant for a medical marijuana registration certificate to own and operate a dispensary  
17 MME in the City of Las Vegas whose ranking among all such applications might be affected by the  
18 relief sought herein.

19 25. On information and belief Defendants/Real Parties in Interest Poe Entities 1-14 are  
20 each applicants for a medical marijuana registration certificate to own and operate a dispensary  
21 MME in the City of Las Vegas whose ranking among all such applications might be affected by the  
22 relief sought herein. Because of the Division's anonymous scoring and ranking process, the  
23 identities of the real Parties in Interest Poe Entities 1-14 are unknown to Plaintiffs/Petitioners at this  
24 time.

25 26. Pursuant to NRS 453A.322(2), all prospective owners and operators of MMEs were  
26 required to submit an application for a registration certificate to the Division.

27  
28

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1           27. On or about August 14, 2014, Acres Medical submitted to the Division three  
2 applications for medical marijuana registration certificates to own and operate medical marijuana  
3 facilities as follows:

4           a. Application CO12, to own and operate a medical marijuana cultivation facility in Las  
5 Vega, NV;

6           b. Application PO11 – to own and operate a medical marijuana production facility in  
7 Las Vegas, NV, and

8           c. Application DO11, to own and operate a medical marijuana dispensary facility in  
9 Las Vega, NV.

10          28. On the same date, Acres Cultivation submitted to the Division two applications for  
11 medical marijuana registration certificates to own and operate medical marijuana facilities, as  
12 follows:

13           a. Application CO13, to own and operate a medical marijuana cultivation  
14 facility in Armargosa Valley, Nye County, NV;

15           b. Application PO12 – to own and operate a medical marijuana production  
16 facility in Armargosa Valley, Nye County, NV.

17          29. At the time of these submittals, which were made by hand delivery by Petitioner's  
18 representative Paris Balaouras, the Division confirmed that all portions of each application were  
19 included in the submittals.

20          30. In reviewing applications, the Division is required to rank the applications based on,  
21 as relevant here, the contents of the application concerning specific areas of inquiry.

22          31. Among such areas of inquiry is "Organizations Structure":

23           The description of the proposed organizational structure of the proposed medical  
24 marijuana establishment and information concerning each owner, officer and board  
25 member of the proposed medical marijuana establishment, including, without  
26 limitation, the information provided pursuant to subsections 5 and 6 of NAC  
27 453A.306.

28           NAC 453A.310(1)(d).

1 32. The Division issued the rankings of the all applicants on November 3, 2014. Only  
2 the score of those who had opted to allow for publication of scoring were released to the general  
3 public.

4 33. The Division used a point system, assigning a maximum number of points to each of  
5 the criteria on which applications would be ranked.

6 34. The maximum number of points possible for the "Organizational Structure" criterion  
7 was 50.

8 35. In the "Organizational Structure" category, the average score received by an  
9 applicant for a Registration Certificate for a Cultivation MME was 33.37.

10 36. In the "Organizational Structure" category, the average score received by an  
11 applicant for a Registration Certificate for a Production MME was 35.69.

12 37. In the "Organizational Structure" category, the average score received by an  
13 applicant for a Registration Certificate for a Dispensary MME was 34.31.

14 38. Plaintiffs/Petitioners received their scores on January 9, 2014, in a personal meeting  
15 between representatives of petitioners and the Division's Medical Marijuana Program Supervisor,  
16 Richard Willis.

17 39. As relevant here, in their various applications, Petitioners received the following  
18 scores for the Organizational Structure category:

Acres Medical:	Acres Cultivation
C012 - 0	C013 - 0
P011 - 41.3	P012 - 41.3
D011 - 0	

23 As can be seen, the Plaintiffs/Petitioners' information regarding Organizational Structure, which  
24 was identical in all applications, received a score well above the average score for any type of MME  
25 in the Production applications, but was not credited to Plaintiffs/Petitioners Cultivation and  
26 Dispensary applications.

1           40.     As a result of the omission the score for the Organizational Structure in Applications  
2 C012, C013, and D011, Petitioners' overall scores in those three applications was unfairly reduced  
3 by 41.3 points.

4           41.     As a result of the omission of the Organizational Structure in Applications C012,  
5 C013, and D011, these applications were ranked lower than other applicants whose overall scores  
6 were lower than Petitioners' accurate scores for the applications.

7           42.     As a result of the inaccurate lower rankings, Petitioners are placed at a disadvantage  
8 when applying for local jurisdiction approvals for their businesses.

9           43.     In January 2015, in a personal meeting with Mr. Willis, Petitioner's representatives,  
10 Paris Balaouras and Jay Matos advised Mr. Willis of the apparent error in the scoring of  
11 Applications.

12           44.     Mr. Willis advised Petitioners to write a letter to the Division to request the matter be  
13 corrected.

14           45.     On January 20, 2015, Petitioner's, through counsel, sent a letter to the Division  
15 advising it of the apparent error in the score.

16           46.     The Division responded with inaccurate information.

17           47.     On February 5, 2015, Paris Balaouras and Jay Matos again met personally with Mr.  
18 Willis and advised him that the Division's response to the January 20, 2015 letter was inaccurate.  
19 At that meeting, in the presence of Petitioners' representatives and another employee of the  
20 Division, Mr. Willis acknowledged that the 0 scores had been an error committed by the Division.  
21 Mr. Willis stated that he would advise the Division to correct the error, and that Petitioners would  
22 receive a copy of the correction.

23           48.     No such correction was received.

24           49.     On February 25, 2015, Paris Balaouras and Jay Matos again met personally with Mr.  
25 Willis, who on this occasion promised that Petitioners would receive a correction by March 16,  
26 2015.

27           50.     No such correction has been forthcoming.

28

LV 420451699v1

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1 51. The Division had a duty under NAC 453A.310 to accurately rank the applicants for  
2 MMEs.

3 52. The Division, through the Medical Marijuana Program Supervisor, acknowledged  
4 that Petitioners' rankings were inaccurate due to the omission of the score for Organizational  
5 Structure from the total scores in Applications C012, C013, and D011.

6 53. The Division has refused to take action to correct its error, and therefore, has refused  
7 to take an action it is required by law to perform, i.e., to accurately rank applicants for MMEs.

8 **FIRST CAUSE OF ACTION**  
9 **DECLARATORY RELIEF**

10 54. Plaintiffs/Petitioners re-allege and incorporate by reference the allegations contained  
11 in paragraphs 1-31.

12 55. Plaintiffs/Petitioners' rights are affected by the provisions of NRS 453A.24 010 *et*  
13 *seq* and NAC 453A.24 010, *et seq*.

14 56. The Division's actions have created a justiciable controversy with respect to the  
15 construction, interpretation, and application of NRS 453A.24 010 *et seq* and NAC 453A.24 010, *et*  
16 *seq*. to Plaintiffs/Petitioners.

17 57. Plaintiffs/Petitioners are entitled to a declaration from this Court that  
18 Plaintiffs/Petitioners are entitled to accurate scores and rankings for Applications C012, C013, and  
19 D011.

20 **SECOND CAUSE OF ACTION**  
21 **WRIT OF CERTIORARI**

22 58. Plaintiffs/Petitioners re-allege and incorporate by reference the allegations contained  
23 in paragraphs 1-35.

24 59. The Division, in refusing to correct its error, has exceeded its jurisdiction by issuing  
25 rankings of applications that do not reflect the actual scores properly attributed to the applicants.

26 60. No provision in NRS 453A or NAC 453A provides for judicial review of the  
27 Division's action, and accordingly, Petitioners have no plain, speedy and adequate remedy for the  
28 Division's improper actions.

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1           61.     Based on the declarations attached hereto as Exhibits A and B, Plaintiffs/Petitioners  
2     request a writ of certiorari regarding the Division's scoring and ranking of applicants for MMEs for  
3     local jurisdictions City of Las Vegas and Nye County.

THIRD CAUSE OF ACTION  
WRIT OF MANDAMUS

63. Plaintiffs/Petitioners re-allege and incorporate by reference the allegations contained in paragraphs 1-40.

## PRAYER FOR RELIEF

**Wherefore, Plaintiffs/Petitioners pray for relief as follows:**

1. For declarations that:
  - (a) Application C012 should have received a score of 41.3 out of 50 for the Organizational Structure criterion, and therefore, should have received a total score of 170.62, and should be ranked according to that score;
  - (b) Application C013 should have received a score of 41.3 out of 50 for the Organizational Structure criterion, and therefore, should have received a total score of 166.28, and should be ranked according to that score; and

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1 (c) Application D012 should have received a score of 41.3 out of 50 for the  
2 Organizational Structure criterion, and therefore, should have received a total score of 167.3, and  
3 should be ranked according to that score.

4 2. For a writ of certiorari ordering review of the Division's , scoring, and  
5 ranking of applications for Dispensary and Cultivation Certificates in the City of Las Vegas and for  
6 Cultivation Certifications in Nye County.

7 3. For a writ of mandamus ordering the Division to comply with its obligation to score  
8 and rank Applications C012, C013, and D011 by correcting the erroneous omission of the  
9 Organizational Structure score, and re-ranking the Applications accordingly.

10 4. For such other and further relief as may be deemed just and proper by this Court.

11 DATED this 9<sup>th</sup> day of June 2015.

12 GREENBERG TRAURIG

13 By: /s/ Mark E. Ferrario

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

15 3773 Howard Hughes Parkway, Suite 400 North  
16 Las Vegas, Nevada 89169

17 *Counsel for Plaintiffs/Petitioners Acres Medical LLC, and*  
18 *Acres Cultivation, LLC*

---

# EXHIBIT A

---

1 MARK E. FERRARIO, ESQ.  
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3 Suite 400 North  
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5 Emails: [ferrariom@gtlaw.com](mailto:ferrariom@gtlaw.com)  
[cowdent@gtlaw.com](mailto:cowdent@gtlaw.com)  
6 Counsel for Plaintiffs/Petitioners Acres  
Medical LLC, and Acres Cultivation, LLC

7 DISTRICT COURT

8 CLARK COUNTY, NEVADA

9 ACRES MEDICAL, LLC, a Nevada limited  
liability company; ACRES CULTIVATION,  
10 LLC, a Nevada limited liability company,

11 Plaintiffs/Petitioners,

12 -- vs. --

13 NEVADA DEPARTMENT OF HEALTH  
AND SERVICES, DIVISION OF PUBLIC  
14 AND BEHAVIORAL HEALTH,

15 Defendant/ Respondent;

16 And

17 NLVG; NU LEAF CULTIVATION, LLCL  
18 THE MEDMEN OF NEVADA 2, LLC;  
CANNABIS RENAISSANCE GROUP, LLC.;  
19 DOE ENTITIES 1-5; MM DEVELOPMENT,  
LLC; NYE NATURAL MEDICINAL  
20 SOLUTIONS, LLC, GREENLIFE  
PRODUCTIONS, LLC, GWGA, LLC,  
21 NEVADA NATURAL MEDICINES, LLC,  
WELLNESS ORCHARDS OF NEVADA,  
22 LLC, NCMN, LLLC, ACC INDUSTRIES,  
INC.; SAMANTHA'S REMEDIES;  
23 NEVADA, CARES, LLC; THC NEVADA,  
LLC, RED ROCK WELLNESS, LLC,  
24 QUALCAN OF LAS VEGAS, LLC, PHYSIS  
ONE LLC; BUFFALO CENTER MEDICAL  
25 ADVOCATES; PRIMO DISPENSARY; DOE  
ENTITIES 1-5; ROE ENTITIES 1-4, POE  
26 ENTITIES 1-16.

27 Defendants/  
Real Parties in Interest.  
28

Case No.

Dept. No.

DECLARATION OF PARIS BALAOURAS

1 I, Paris Balaouras, declare as follows:

2 1. I am the Vice President of Acres Medical, LLC and Acres Cultivation, LLC.  
3 (hereafter, "Petitioners") The facts stated herein are within my personal knowledge and if called  
4 upon to testify I can truthfully and competently do so as to all matters herein. This declaration is  
5 submitted in support of the Complaint for Declaratory Relief and Petition for Writs of Certiorari  
6 and/or Mandamus, as captioned above.

7 2. On or about August 14, 2014, I traveled to Carson City, Nevada in order to  
8 deliver the three applications by Acres Medical, LLC and two Applications by Acres Cultivation  
9 for medical marijuana registration certificates to own and operate medical marijuana facilities.

10 3. Applications by Acres Medical, LLC were as follows:

- 11 a) Application CO12, to own and operate a medical marijuana cultivation facility  
12 in Las Vega, NV;  
13 b) Application PO11 -- to own and operate a medical marijuana production facility  
14 in Las Vegas, NV, and  
15 c) Application DO11, to own and operate a medical marijuana dispensary facility  
16 in Las Vega, NV.

17 4. Applications by Acres Cultivation, LLC were as follows:

- 18 a) Application CO13, to own and operate a medical marijuana cultivation facility  
19 in Amargosa Valley, NV;  
20 b) Application PO12 -- to own and operate a medical marijuana production  
21 facility in Amargosa Valley, NV; and

22 5. The information that concerned the organization structure for Petitioners was  
23 identical in each application.

24 6. At the time of delivery, Division personnel opened the box for each application  
25 and verified the required contents of such applications had been included.

26 7. In January 2015, Petitioners discovered that the Division had awarded to  
27 Petitioners a score of 41.3 out of a possible 50 for "organizational structure for Applications  
28 P011 and P012.

1 8. At the same time, Petitioners discovered that the Division had awarded Petitioners a  
2 score of 0 out of a possible 50 for "organizational structure" for Applications C011, C013, and  
3 D011.

4 9. In January 2015, Jay Matos and I attended a meeting with the Division's Medical  
5 Marijuana Program Supervisor, Richard Willis, at which time Mr. Willis was informed of the the  
6 error in scoring.

7 10. Mr. Willis advised us to write a letter to the Division to request the matter be  
8 corrected.

9 11. On January 20, 2015, Petitioners, through counsel, sent a letter to the Division  
10 advising it of the apparent error in the score.

11 12. The Division responded to this request with inaccurate information.

12 13. On February 6, 2015, Jay Matos and I again met personally with Mr. Willis and  
13 advised him that the Division's response to the January 20, 2015 letter was inaccurate. At that  
14 meeting, in the presence of a Division employee named Cindy. Mr. Matos and I, Mr. Willis  
15 acknowledged that the 0 scores had been an error committed by the Division. Mr. Willis stated  
16 that he would advise the Division to correct the error, and that Petitioners would receive a copy  
17 of the correction.

18 14. Mr. Matos and I again met with Mr. Willis on February 25, 2015, and again were  
19 promised a response from the Division.

20 15. The error has not been corrected.

21 16. As a result of the inaccurate lower rankings, Petitioners are placed at a  
22 disadvantage when applying for local jurisdiction approvals for their businesses.

23 I declare under penalty of perjury under the laws of the United States of America that the  
24 foregoing is true and correct.

25 Executed within the State of Nevada: June 12, 2015

26   
27 PARIS BALAOURAS  
28

---

## EXHIBIT B

---

1 MARK E. FERRARIO, ESQ.  
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5 Facsimile: (702) 792-9002  
Emails: ~~mark.ferrario@gtl.com~~  
~~mark.ferrario@gtl.com~~  
6 *Counsel for Plaintiffs/Petitioners Acres*  
7 *Medical LLC, and Acres Cultivation, LLC*

8 DISTRICT COURT  
9 CLARK COUNTY, NEVADA

10 ACRES MEDICAL, LLC, a Nevada limited  
liability company; ACRES  
11 CULTIVATION, LLC, a Nevada limited  
liability company,

12 Plaintiffs/Petitioners,

13 -- vs. --

14 NEVADA DEPARTMENT OF HEALTH  
15 AND SERVICES, DIVISION OF PUBLIC  
AND BEHAVIORAL HEALTH.

16 Defendant/ Respondent;

17 And

18 NLVG; NU LEAF CULTIVATION, LLCL  
19 THE MEDMEN OF NEVADA 2, LLC;  
CANNABIS RENAISSANCE GROUP,  
20 LLC.; DOE ENTITIES 1-5; MM  
DEVELOPMENT, LLC; NYE NATURAL  
21 MEDICINAL SOLUTIONS, LLC,  
GREENLIFE PRODUCTIONS, LLC,  
22 GWGA, LLC. NEVADA NATURAL  
MEDICINES, LLC, WELLNESS  
23 ORCHARDS OF NEVADA, LLC, NCMN,  
LLC, ACC INDUSTRIES, INC.;  
24 SAMANTHA'S REMEDIES; NEVADA,  
CARES, LLC; THC NEVADA, LLC, RED  
25 ROCK WELLNESS, LLC, QUALCAN OF  
LAS VEGAS, LLC, PHYSIS ONE LLC;  
26 BUFFALO CENTER MEDICAL  
ADVOCATES; PRIMO DISPENSARY;  
27 DOE ENTITIES 1-5; ROE ENTITIES 1-4,  
POE ENTITIES 1-16.

28 Defendants/  
Real Parties in Interest.

Case No.

Dept. No.

DECLARATION OF JAY MATOS

1 I, Jay Matos, declare as follows:

2  
3 1. I am an employee of Acres Medical, LLC and Acres Cultivation, LLC. (hereafter,  
4 "Petitioners") The facts stated herein are within my personal knowledge and if called upon to testify  
5 I can truthfully and competently do so as to all matters herein. This declaration is submitted in  
6 support of the Complaint for Declaratory Relief and Petition for Writs of Certiorari and/or  
7 Mandamus, as captioned above.

8 2. On August 14, 2014, Petitioners delivered three applications by Acres Medical, LLC  
9 and two Applications by Acres Cultivation for medical marijuana registration certificates to own and  
10 operate medical marijuana facilities.

11 3. Applications by Acres Medical, LLC were as follows:

- 12 a) Application CO12, to own and operate a medical marijuana cultivation facility in  
13 Las Vega, NV;  
14 b) Application PO11 --to own and operate a medical marijuana production facility in  
15 Las Vegas, NV, and  
16 c) Application DO11, to own and operate a medical marijuana dispensary facility in  
17 Las Vega, NV.

18 4. Applications by Acres Cultivation, LLC were as follows:

- 19 a) Application CO13, to own and operate a medical marijuana cultivation facility in  
20 Amargosa Valley, NV;  
21 b) Application PO12 --to own and operate a medical marijuana production facility in  
22 Amargosa Valley, NV, and

23 5. The information that concerned the organization structure for Petitioners was  
24 identical in each application.

25 6. In January 2015, Petitioners discovered that the Division had awarded to Petitioners a  
26 score of 41.3 out of a possible 50 for "organizational structure for Applications P011 and P012.

27 7. At the same time, Petitions discovered that the Division had awarded Petitioners a  
28 score of 0 out of a possible 50 for "organizational structure" for Applications C011, C013, and  
DO11.

1  
2 8. In January 2015, Paris Balaouras and attended a meeting with the Division's Medical  
3 Marijuana Program Supervisor, Richard Willis, at which time Mr. Willis was informed of the the  
4 error in scoring.

5 9. Mr. Willis advised us to write a letter to the Division to request the matter be  
6 corrected.

7 10. On January 20, 2015, Petitioners, through counsel, sent a letter to the Division  
8 advising it of the apparent error in the score.

9 11. The Division responded to this request with inaccurate information.

10 12. On February 6, 2015, Paris Balaouras and I again met personally with Mr. Willis and  
11 advised him that the Division's response to the January 20, 2015 letter was inaccurate. At that  
12 meeting, in the presence of a Division employee named Cindy, Mr. Matos and I, Mr. Willis  
13 acknowledged that the 0 scores had been an error committed by the Division. Mr. Willis stated that  
14 he would advise the Division to correct the error, and that Petitioners would receive a copy of the  
15 correction.

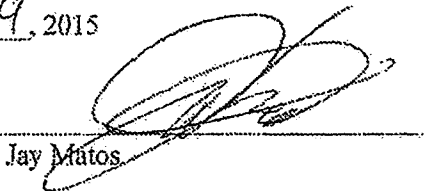
16 13. Mr. Balaouras and I again met with Mr. Willis on February 25, 2015, and again were  
17 promised a response from the Division.

18 14. The error has not been corrected.

19 15. As a result of the inaccurate lower rankings, Petitioners are placed at a disadvantage  
20 when applying for local jurisdiction approvals for their businesses.

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

23 Executed within the State of Nevada: June 9, 2015

24  
25   
26 Jay Matos  
27  
28

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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 SERVICES, DIVISION OF PUBLIC  
AND BEHAVIORAL HEALTH,

Defendant/ Respondent;

And

NLVG, LLC; NU LEAF CULTIVATION,  
LLC; THE MEDMEN OF NEVADA 2, LLC;  
CANNABIS RENAISSANCE GROUP, LLC;  
MM DEVELOPMENT, LLC; NYE  
NATURAL MEDICINAL SOLUTIONS, LLC;  
GREENLIFE PRODUCTIONS, LLC; GWGA,  
LLC; NEVADA NATURAL MEDICINES,  
LLC; WELLNESS ORCHARDS OF  
NEVADA, LLC; NCMN, 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; PRIMO  
DISPENSARY; DOB 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

INITIAL APPEARANCE FEE DISCLOSURE

LV 420468224v1

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1 Pursuant to NRS Chapter 19, as amended by Assembly Bill 65, filing fees are submitted for  
2 the parties appearing in the above-entitled action as indicated below:

3 *Plaintiff/Petitioner Acres Medical LLC;* \$270.00

4 *Plaintiff/Petitioner Acres Cultivation, LLC* \$ 30.00

5 **TOTAL** **\$300.00**

6 DATED this 9<sup>th</sup> day of June 2015.

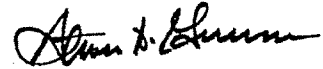
7 GREENBERG TRAURIG

8 By: /s/ Mark E. Ferrario

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

10 3773 Howard Hughes Parkway, Suite 400 North  
11 Las Vegas, Nevada 89169

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



CLERK OF THE COURT

1 **RIS**  
2 MARK E. FERRARIO, ESQ. (NV Bar #1625)  
3 MOOREA L. KATZ, ESQ. (NV Bar #12007)  
4 GREENBERG TRAURIG, LLP  
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11 *Counsel for Plaintiff in Intervention*  
12 *Acres Medical, LLC*

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

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

12 Plaintiff,

13 v.

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

21 Defendants.

22 ACRES MEDICAL, LLC,

23 Plaintiff in Intervention,

24 v.

25 STATE OF NEVADA, DIVISION OF  
26 PUBLIC AND BEHAVIORAL HEALTH OF  
27 THE DEPARTMENT OF HEALTH AND  
28 HUMAN SERVICES; CITY OF LAS VEGAS,  
a municipal corporation and political

Case No.: A710597  
Dept. No.: XX

**REPLY IN SUPPORT OF MOTION TO  
DISMISS GB SCIENCES NEVADA, LLC'S  
COUNTERCLAIM AGAINST ACRES  
MEDICAL, LLC**

**Date of Hearing: Jan. 22, 2016  
Time of Hearing: 9:00 a.m.**

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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

COMES NOW, Plaintiff in Intervention, Acres Medical, LLC ("Acres"), by and through its  
attorneys of record, the law firm of Greenberg Traurig, LLP, and hereby submits this Reply in  
Support of Motion to Dismiss GB Sciences Nevada, LLC's ("GB Sciences") Counterclaim Against  
Acres Medical, LLC for failure to state a claim upon which relief can be granted.

This Reply is based upon the attached memorandum of points and authorities, the papers,  
pleadings and records contained in this Court's file, and the evidence and argument of counsel to be  
presented at the hearing on the Motion.

DATED this 19th day of January, 2016.

GREENBERG TRAURIG, LLP

By: /s/ Moorea L. Katz  
MARK E. FERRARIO (NV Bar No. 1625)  
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*Counsel for Plaintiff in Intervention*  
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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION AND BACKGROUND FACTS

GB Sciences' Opposition presents a litany of unconvincing reasons why it believes that it, over Acres, is the rightful holder of the provisional certificate improperly awarded to Nuleaf. However, none of the reasons offered by GB Sciences in any way challenges that on November 3, 2014,<sup>1</sup> the date on which GB Sciences has argued is critical for determining the rightful certificate holder, Acres outranked GB Sciences and should have received a provisional certificate as one of the top twelve MME applicants in the City of Las Vegas. GB Sciences' arguments all ignore this critical fact and instead request the Court to exercise equitable discretion at odds with the exact same statutory mandates GB Sciences has already argued are not subject to discretion.<sup>2</sup> The equitable relief GB Sciences seeks against Acres is not appropriate or even available.

The majority of GB Sciences' arguments are directed at what it claims to be Acres' untimely intervention in this case. Yet, GB Sciences never opposed Acres' intervention even when Nuleaf was arguing the intervention was untimely for the very reasons that GB Sciences now asserts. Instead, GB Sciences acquiesced to Acres' intervention and now belatedly opposes it because it does not like that Acres received the same relief that GB Sciences was seeking. GB Sciences argues that Acres should have joined GB Sciences to the Acres Lawsuit and sought intervention in this Court at an earlier date. However, these arguments do not support the relief requested by GB Sciences, that is, to equitably leap over Acres' ranking by the Division.

All the while criticizing Acres for failing to join GB Sciences in the Acres Lawsuit, GB Sciences quietly ignores that GB Sciences was aware of the Acres' litigation and never attempted to name Acres as a defendant in this litigation, and by GB Sciences' standards, Acres is a necessary party. Nor does GB Sciences address that it was aware of the Acres Lawsuit, and knew it was an intended ROE defendant, and never sought to intervene in the Acres Lawsuit *despite GB Sciences' counsel attending the hearing on Acres' petition for mandamus.*<sup>3</sup>

<sup>1</sup> See GB Sciences' Motion for Summary Judgment (filed Sept. 18, 2015) (on file herein) at 3, 15.

<sup>2</sup> See Transcript of Proceedings (Nov. 9, 2015), at 19:25-20:1 (on file herein) (GB Sciences counsel arguing in support of summary judgment that the provisions of NRS 453A.322 were "not discretionary").

<sup>3</sup> See Declaration of Mark Ferrario in Support of Order Shortening Time, submitted with Acres' Motion to Intervene as of Right Pursuant to NRCP 24(a) on Order Shortening Time (filed Oct. 19, 2015) (on file herein) at ¶ 6.

1 Indeed, although GB Sciences argues that it was not one of the 21 defendants named in the  
2 Acres Lawsuit "for some unknown reason," the reason was simply that GB Sciences had not  
3 consented to the public release of its ranking by the Divisions and so Acres was unable to  
4 specifically name GB Sciences in its complaint.<sup>4</sup> However, Acres did name numerous other MME  
5 applicants as real parties in interest and also named DOE and ROE defendants for those applicants  
6 it was unable to specifically identify. Clearly, Acres made more of an attempt to notify other MME  
7 applicants of the Acres Lawsuit than did GB Sciences here, even though Acres was requesting only  
8 the rescoring of its application whereas GB Sciences in this suit was seeking to obtain a certificate  
9 incorrectly awarded to another MME applicant. Accordingly, there is no basis on which to  
10 equitably estopp Acres from receiving the provisional certificate. GB Sciences could equally have  
11 sought intervention in the Acres Lawsuit when it was aware of the suit and also that it was a ROE  
12 defendant. GB Sciences has failed to state a claim for declaratory relief or equitable estoppel.

13 Furthermore, Acres' inclusion of other MME applicants as real parties in interest in the  
14 Acres Lawsuit was done pursuant to Nevada statutes governing claims for declaratory relief, which  
15 require that all persons having an interest that could be affected by the declaration to be joined as  
16 real parties in interest. *See* NRS 30.130. However, there is no similar requirement for petitions for  
17 writs of mandamus, which is ultimately the relief that Acres obtained in the Acres Lawsuit. For  
18 that reason, GB Sciences was never a necessary or indispensable party to the Acres Lawsuit, which  
19 simply sought the correction of a scoring discrepancy in Acres' application that was admitted by  
20 the Division. The relief obtained in the Acres Lawsuit was against the Division and the Division is  
21 fully complying with Judge Cadish's Order by ranking Acres as 13<sup>th</sup>.<sup>5</sup>

22 Finally, GB Sciences' proposed amended counterclaim that adds a claim for equitable  
23 estoppel is simply a stalling tactic and should not preclude dismissal of GB Sciences' claims

24  
25 <sup>4</sup> *See* Declaration of Mark Ferrario in Support of Order Shortening Time, submitted with Acres' Motion to Intervene as  
26 of Right Pursuant to NRC 24(a) on Order Shortening Time (filed Oct. 19, 2015) (on file herein) at ¶ 6 ("In an effort to  
27 put on notice any party that might be affected by Acres' suit, Acres named as real parties in interest all applicants for  
28 medical marijuana registrations that were available publically. GB Sciences did not consent to its score being published.  
Therefore, GB Sciences was not named in the 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.").

<sup>5</sup> *See, e.g.,* Transcript of Proceedings (Nov. 9, 2015), at 13:10 (on file herein) (with the Division's counsel noting that  
"Acres is the 13<sup>th</sup>, not GB Science[s].").

1 against Acres. In fact, GB Sciences is not really seeking to amend its counterclaim, which is still a  
2 claim for declaratory relief, but is rather identifying the legal theory behind its cause of action.  
3 Accordingly, even if allowed to amend, GB Sciences' claims against Acres are still subject to  
4 dismissal because GB Sciences has failed to state any facts upon which Acres should be equitably  
5 estopped from receiving a certificate, and none exist. Nor can GB Sciences seek equitable relief at  
6 direct odds with explicit statutory provisions. Indeed, GB Sciences brought this suit based on its  
7 contention that the statutory provisions in NRS 453A.322 are "not discretionary."<sup>6</sup> It cannot now  
8 ask the Court to exercise its discretion to avoid the result of those statutes because it better suits GB  
9 Sciences' purposes.

10 The relief ordered by the Court in its December 2015 Order rightly restores the parties to  
11 the positions they should have occupied on November 3, 2014 had the Division fully complied  
12 with NRS Chapter 453A. GB Sciences' counterclaims request that the Court instead rank the  
13 parties based on Acres' alleged untimeliness to intervene in this litigation. The relief requested by  
14 GB Sciences is simply not appropriate or warranted relief and the Court should dismiss GB  
15 Sciences' claims against Acres in both GB Sciences' counterclaim and amended counterclaims.

## 16 II. LEGAL ARGUMENT

17 There are no facts that would entitle GB Sciences to declaratory or equitable relief against  
18 Acres and GB Sciences has failed to identify any. Even giving GB Sciences the benefit of all fair  
19 inferences, there is simply no basis to grant declaratory relief to GB Sciences where there is no legal  
20 relationship between GB Sciences and Acres, and more importantly, no basis upon which GB  
21 Sciences could outrank Acres on the critical date of November 3, 2014. Likewise, there are no  
22 possible inferences that would entitle GB Sciences to equitably estopp Acres from obtaining the  
23 provisional certificate; Acres intervened in this matter immediately upon obtaining the order in the  
24 Acres Lawsuit, Acres attempted to name any affected entities in the Acres' Lawsuit, Acres  
25 ultimately obtained writ relief in the Acres Lawsuit for which GB Sciences was not an  
26 indispensable party, and GB Sciences failed to intervene in the Acres Lawsuit or name Acres as a  
27 ///

28 <sup>6</sup> See Transcript of Proceedings (Nov. 9, 2015), at 19:25-20:1 (on file herein).

1 defendant here. Accordingly, GB Sciences' proposed amendment would be futile and dismissal is  
2 warranted.

3 **A. GB Sciences' Claim for Declaratory Relief Must Be Dismissed**

4 None of GB Sciences' arguments supports that it has stated a valid claim for declaratory  
5 relief against Acres. Indeed, although GB Sciences purports to address each of the elements of a  
6 declaratory relief claim, GB Sciences repeatedly relies on faulty logic and inapposite analogies.

7 First, GB Sciences argues that "there is no question that a justiciable controversy exists"  
8 because in the Acres Lawsuit, Acres named "twenty-one different named Defendants, plus an  
9 additional 25 specific Doe, Roe and Poe entities . . . all of which Acres acknowledged had a right to  
10 appear in the Acres Lawsuit and all of which had a potential claim in the outcome of the Acres  
11 Lawsuit." Opposition at 8. However, while Acres did name numerous MME applicants as real  
12 parties in interest, that was done simply because Acres was asserting a claim for declaratory relief  
13 against the Division and NRS 30.130 requires all parties who have an interest that could potentially  
14 be affected by the declaration to be made parties. However, Acres ultimately prevailed not on its  
15 declaratory relief claim, but instead on its petition for writ of mandamus, and therefore, NRS 30.130  
16 has no bearing on the issue. Furthermore, GB Sciences lacks standing to challenge the writ directing  
17 the Division to award Acres the score and ranking Acres was statutorily entitled to, which is the  
18 only relief Acres sought in the Acres Lawsuit. Accordingly, the fact that Acres named MME  
19 applicants as defendants in the Acres Lawsuit does not support GB Sciences' contention that a  
20 justiciable controversy exists between Acres and GB Sciences. Indeed, Acres has no control over  
21 GB Sciences' score, and GB Sciences must direct any complaints it has with its score to the  
22 Division, not in a counterclaim against Acres.

23 Next, GB Sciences presumptively contends that "absent Acres' intervention, this Court  
24 would have awarded the NuLeaf Provisional Certificate to GB Sciences, clearly demonstrating that  
25 GB Sciences has an interest in the NuLeaf Provisional Certificate." Opposition at 8.<sup>7</sup> This circular  
26 reasoning is unconvincing on its face. It is also based on the improper assumption that the Court

27  
28 <sup>7</sup> GB Sciences asserts this fallacious argument in support of three of the four elements of its claim for declaratory relief.  
See Opposition at 8:23-25; 9:13-15; 9:22-24.

1 would have awarded GB Sciences the provisional certificate if Acres had not intervened. However,  
2 that is not a given or even reasonable assumption. GB Sciences' Motion for Summary Judgment  
3 was based on the false contention that GB Sciences was ranked 13<sup>th</sup> by the Division within the City  
4 of Las Vegas.<sup>8</sup> However, at the hearing on the cross-motions for summary judgment, the Division  
5 acknowledged that it ranked Acres, not GB Sciences as 13<sup>th</sup> because the Division was subject to  
6 Judge Cadish's writ of mandamus requiring it to correct a clerical discrepancy in the scoring and  
7 ranking of Acres' MME applications. Accordingly, even had Acres not intervened in this case,  
8 there is no basis to assume that the Court would have ordered the Division to award GB Sciences  
9 the provisional certificate when GB Sciences was not ranked 13<sup>th</sup> MME applicant in the City of Las  
10 Vegas by the Division's own admission.

11 GB Sciences next argues that it is clear that GB Sciences had an "interest in the  
12 controversy" because "it was GB Sciences' Motion that Acres allegedly 'joined' in on the same day  
13 it was allowed to intervene." Opposition at 10. GB Sciences misses the point. Acres has not argued  
14 that GB Sciences did not have standing to seek the provisional certificate incorrectly awarded to  
15 Nuleaf. However, GB Sciences can only assert its claims for relief regarding the certificate against  
16 the Division, as Acres has no authority to issue a certificate or ranking to any applicant. GB  
17 Sciences' motion for summary judgment was premised on GB Sciences being ranked 13<sup>th</sup>. Yet GB  
18 Sciences never was actually ranked 13<sup>th</sup>. If GB Sciences has some claim to this ranking it must  
19 make that claim against the Division. It is not the appropriate subject matter of a declaratory relief  
20 claim against Acres.

21 GB Sciences next argues that it "is entitled to a declaration from the Court as to which entity  
22 (GB Sciences or Acres) has a right to [the] Certificate." Opposition at 11. But GB Sciences ignores  
23 that it initiated this action requesting the Court to award the certificate to the rightful holder as of  
24 November 3, 2014, the applicant that would have received the certificate had the Division fully  
25 complied with NRS Chapter 453A. The Court has granted that relief, just not to GB Sciences'  
26 benefit. It would be nonsensical for the Court to conclude that Acres was entitled to the Certificate  
27 on November 3, 2014, but, because of untimely intervention in this lawsuit, GB Sciences should

28 <sup>8</sup> See GB Sciences' Motion for Summary Judgment (filed Sept. 18, 2015) (on file herein) at 7, 9, 15, 16.

1 instead receive the certificate. Especially given that the Court has already determined that Acres'  
2 intervention was timely. Additionally, under GB Sciences' rationale, *all* MME applicants should be  
3 entitled to intervene and introduce evidence of conduct occurring after November 3, 2014 that  
4 equitably weighs for or against any particular applicant. However, it is not an appropriate role for  
5 the Court to ignore the statutory mandate directing the Division to score and rank applicants during  
6 the statutory period by conducting an equitable contest of the applicants after the fact. *See In re*  
7 *Fontainebleau Las Vegas Holdings, LLC*, 128 Nev. Adv. Op. 53 (Nev. Oct. 25, 2012) (holding that  
8 equitable principles cannot defeat explicit statutory directives). There is only one applicant that  
9 should have received the certificate improperly awarded to Nuleaf on November 3, 2014, and that is  
10 the only applicant entitled to the certificate now.

11 Finally, GB Sciences was not an indispensable party to the Acres mandamus proceedings.  
12 The Nevada Supreme Court has held that a party is not an indispensable party to mandamus  
13 proceeding requesting a government entity or officer to issue property in its possession even if the  
14 party can claim concern or interest as to who receives the property. *See Lewis v. Smart*, 96 Nev.  
15 846, 849, 619 P.2d 1212, 1213 (1980). GB Sciences has failed to set forth any facts under which it  
16 would be an indispensable party to the Acres mandamus proceedings or any basis on which it could  
17 have challenged Judge Cadish's order directing the Division to correct the scoring discrepancy in  
18 Acres' application and give Acres the score to which it was originally entitled. Again, Acres is not  
19 seeking to "enforce" Judge Cadish's order against GB Sciences because Acres is not requesting that  
20 GB Sciences take or refrain from taking any action on the basis of Judge Cadish's order. The only  
21 party subject to Judge Cadish's order granting Acres' petition for writ of mandamus is the Division,  
22 and the Division has fully complied. Judge Cadish's order does not provide a basis for GB Sciences  
23 to seek declaratory relief against Acres and GB Sciences' counterclaim must be dismissed.

24 **b. GB Sciences' Claim for Equitable Estoppel Must Be Dismissed**

25 After Acres had filed the instant motion to dismiss, GB Sciences filed an amended  
26 counterclaim against Acres seeking to assert a claim for equitable estoppel against Acres. Critically,  
27 the "amended" counterclaim does not change the relief requested by GB Sciences, which is still a  
28 declaration that it is entitled to the provisional certificate over Acres. Accordingly, the amendment

1 does not really add or change GB Sciences' claim but merely provides the legal authority  
2 purportedly supporting it.

3       However, GB Sciences' proposed amendment cannot save GB Sciences' counterclaims from  
4 dismissal because GB Sciences has failed to assert any basis upon which Acres would be equitably  
5 estopped from receiving the provisional certificate. Indeed, although GB Sciences contends that  
6 Acres should be estopped because Acres failed to join GB Sciences in the Acres Lawsuit, as  
7 mentioned, Acres did name MME applicants it was able to identify as well as DOE and ROE  
8 defendants. Moreover, GB Sciences cannot claim the benefit of equitable principles where it was  
9 aware of the Acres Lawsuit and did not intervene, nor did it name Acres in these proceedings. In  
10 fact, GB Sciences argued to this Court that it was entitled to Nuleaf's certificate as the 13<sup>th</sup> ranked  
11 applicant in the City of Las Vegas even though GB Sciences was admittedly aware of the pending  
12 Acres Lawsuit. GB Sciences has failed to allege any facts supporting a claim for equitable estoppel  
13 and what is more, the Court is unable to grant such relief in the face of the clear statutory directives  
14 to the Division here. Indeed, courts lack discretion to deviate from express statutory requirements.  
15 *See In re Fontainebleau Las Vegas Holdings, LLC*, 128 Nev. Adv. Op. 53 (Nev. Oct. 25, 2012); *see*  
16 *also Pellegrini v. State*, 117 Nev. 860, 878, 34 P.3d 519, 531 (2001) ("We have recognized that . . .  
17 equitable principles will not justify a court's disregard of statutory requirements."). Accordingly,  
18 GB Sciences has failed to state a claim against Acres upon which relief can be granted and the  
19 Court should dismiss GB Sciences' counterclaims.

### 20       **III. CONCLUSION**

21       No further delay of this action is necessary. The Court's December 2015 Order reached the  
22 correct result and placed the parties in the position that they would have been in had the Division  
23 complied with its statutory mandates under NRS Chapter 453A. GB Sciences has failed to state

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1 claims for declaratory relief or equitable estoppel against Acres, and the Court should grant Acres'  
2 motion and allow the parties to seek appellate review of what will then be a final judgment. Acres  
3 therefore respectfully requests the Court grant its motion to dismiss.

4 DATED this 19th day of January, 2016.

5 GREENBERG TRAURIG, LLP

6  
7 By: /s/ Moorea L. Katz

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

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

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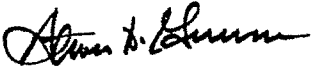
13 *Acres Medical, LLC*  
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**CERTIFICATE OF SERVICE**

Pursuant to Nev. R. Civ. P. 5(b)(2)(D) and E.D.C.R. 8.05, I certify that on this 19th day of January, 2016, I caused a true and correct copy of the foregoing **REPLY IN SUPPORT OF MOTION TO DISMISS GB SCIENCES NEVADA, LLC'S COUNTERCLAIM AGAINST ACRES MEDICAL, LLC** 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

MDSM  
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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

**MOTION TO DISMISS GB SCIENCES  
NEVADA, LLC'S FIRST AMENDED  
COUNTERCLAIM AGAINST ACRES  
MEDICAL, LLC**

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

Defendants in Intervention

5  
6 COMES NOW, Plaintiff in Intervention, Acres Medical, LLC ("Acres"), by and through its  
7 attorneys of record, the law firm of Greenberg Traurig, LLP, hereby submits this Motion to Dismiss  
8 GB Sciences Nevada, LLC's First Amended Counterclaim Against Acres Medical, LLC for failure  
9 to state a claim upon which relief can be granted (the "Motion").

10 This Motion is based upon the attached memorandum of points and authorities, the papers,  
11 pleadings and records contained in this Court's file, and the evidence and argument of counsel to be  
12 presented at the hearing on the Motion.

13 DATED this 25th day of January, 2016.

14 GREENBERG TRAURIG, LLP

15 By: /s/ Moorea L. Katz

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

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19 Las Vegas, Nevada 89169

20 Counsel for Plaintiff in Intervention Acres Medical, LLC  
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**NOTICE OF MOTION**

TO: ALL PARTIES AND ATTORNEYS OF RECORD

YOU AND EACH OF YOU will please take notice that the undersigned will bring the foregoing MOTION TO DISMISS GB SCIENCES NEVADA, LLC'S COUNTERCLAIM AGAINST ACRES MEDICAL, LLC for hearing before the above-entitled Court in Department 28, on the 25 day of March, 2016, at 9:00 a.m./~~p.m.~~, or as soon thereafter as counsel may be heard.

DATED this 25th day of January, 2016.

GREENBERG TRAURIG, LLP

By: /s/ Moorea L. Katz

MARK E. FERRARIO (NV Bar No. 1625)

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*Counsel for Plaintiff in Intervention Acres Medical, LLC*

**MEMORANDUM OF POINTS AND AUTHORITIES**

GB Sciences Nevada, LLC ("GB Sciences") filed a counterclaim against Acres Medical, LLC on December 3, 2015 for declaratory relief. After Acres filed a Motion to Dismiss GB Sciences' Counterclaim, GB Sciences, without seeking leave of court, filed an amended counterclaim to add a claim for equitable estoppel. However, as addressed in Acres' Reply in Support of Motion to Dismiss, GB Sciences' amendment is simply a stalling tactic and does not protect its counterclaim from dismissal.

Acres hereby incorporates by reference the arguments in its Motion to Dismiss GB Sciences Nevada, LLC's Counterclaim Against Acres Medical, LLC and its Reply in Support of the Motion to Dismiss. As argued by Acres in the Motion to Dismiss briefing, GB Sciences' "amended" counterclaim does not change the relief requested by GB Sciences, which is still a declaration that it is entitled to the provisional certificate over Acres. Accordingly, the amendment does not really add

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1 or change GB Sciences' claim but merely provides the legal authority purportedly supporting it.

2       However, GB Sciences' proposed amendment cannot save GB Sciences' counterclaims from  
3 dismissal because GB Sciences has failed to assert any basis upon which Acres would be equitably  
4 estopped from receiving the provisional certificate. Indeed, although GB Sciences contends that  
5 Acres should be estopped because Acres failed to join GB Sciences in the Acres Lawsuit, as  
6 mentioned, Acres did name the Medical Marijuana Establishment applicants it was able to identify  
7 as well as DOE and ROE defendants. Moreover, GB Sciences cannot claim the benefit of equitable  
8 principles where it was aware of the Acres Lawsuit and did not intervene, nor did it name Acres in  
9 these proceedings. In fact, GB Sciences argued to this Court that it was entitled to Nuleaf's  
10 certificate as the 13<sup>th</sup> ranked applicant in the City of Las Vegas even though GB Sciences was  
11 admittedly aware of the pending Acres Lawsuit. GB Sciences has failed to allege any facts  
12 supporting a claim for equitable estoppel and what is more, the Court is unable to grant such relief  
13 in the face of the clear statutory directives to the Division here. Indeed, courts lack discretion to  
14 deviate from express statutory requirements. *See In re Fontainebleau Las Vegas Holdings, LLC*,  
15 128 Nev. Adv. Op. 53 (Nev. Oct. 25, 2012); *see also Pellegrini v. State*, 117 Nev. 860, 878, 34 P.3d  
16 519, 531 (2001) ("We have recognized that . . . equitable principles will not justify a court's  
17 disregard of statutory requirements."). Accordingly, GB Sciences has failed to state a claim against  
18 Acres upon which relief can be granted and the Court should dismiss GB Sciences' First Amended  
19 Answer to Complaint in Intervention and Counterclaim.

20       DATED this 25th day of January, 2016.

21       GREENBERG TRAURIG, LLP

22  
23       By: /s/ Moorea L. Katz  
24       MARK E. FERRARIO (NV Bar No. 1625)  
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28       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 25<sup>th</sup> day of January, 2016, I caused a true and correct copy of the foregoing *Motion to Dismiss GB Sciences Nevada, LLC'S First Amended Counterclaim Against Acres Medical, LLC* 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

10/14/2016

<https://www.clarkcountycourts.us/Anonymous/CaseDetail.aspx?CaseID=11558183&HearingID=189450717&SingleViewMode=Minutes>

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Location : District Court Civil/Criminal Help

**REGISTER OF ACTIONS**

CASE No. A-14-710597-C

GB Sciences Nevada LLC, Plaintiff(s) vs. Nevada State Department of  
Health and Human Services, Defendant(s)

§  
§  
§  
§  
§  
§

Case Type: Other Civil Matters

Date Filed: 12/02/2014

Location: Department 20

Cross-Reference Case Number: A710597

Supreme Court No.: 69909

**PARTY INFORMATION****Lead Attorneys**

**Defendant** Nevada State Department of Health and  
Human Services

Linda Christine Anderson  
*Retained*  
702-486-3420(W)

**Defendant** Nuleaf CLV Dispensary LLC

Todd L Bice  
*Retained*  
702-214-2100(W)

**Intervenor  
Defendant** GB Sciences Nevada LLC

James E. Shapiro  
*Retained*  
702-796-4000(W)

**Intervenor  
Defendant** Nevada State Department of Health and  
Human Services

Linda Christine Anderson  
*Retained*  
702-486-3420(W)

**Intervenor  
Defendant** North Las Vegas, City of

**Intervenor  
Defendant** Nuleaf CLV Dispensary LLC

Todd L Bice  
*Retained*  
702-214-2100(W)

**Intervenor  
Plaintiff** Acres Medical LLC

Mark E. Ferrario, ESQ  
*Retained*  
702-792-3773(W)

**Plaintiff** GB Sciences Nevada LLC

James E. Shapiro  
*Retained*  
702-796-4000(W)

**EVENTS & ORDERS OF THE COURT**

01/26/2016 All Pending Motions (3:00 PM) (Judicial Officer Johnson, Eric)

**Minutes**

01/26/2016 3:00 PM

- PLAINTIFF'S MOTION TO ALTER OR AMEND JUDGMENT OR IN  
THE ALTERNATIVE, MOTION FOR PARTIAL  
RECONSIDERATION...PLAINTIFF IN INTERVENTION ACRES  
MEDICAL, LLC'S MOTION TO DISMISS GB SCIENCES NEVADA,  
LLC'S COUNTERCLAIM AGAINST ACRES MEDICAL, LLC Mr.  
Shapiro advised the issues for trial were with Nuleaf, which have been  
resolved and would request the trial date be vacated as he is not  
prepared to go to trial against Acres and that it can be reset after the

Seeing today, User Court's inquiry, Mr. Smith had no objection

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**RAPP000301**

1/2

10/14/2016

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nearing today. Upon Court's inquiry, Mr. Smith had no objection.  
COURT ORDERED, calendar call and trial date VACATED.  
Arguments by Mr. Shapiro and Mr. Ferrario in support of their  
respective positions. Statements by Mr. Smith and Ms. Anderson.  
Following lengthy arguments, COURT ORDERED Plaintiff's Motion  
for Partial Reconsideration is DENIED and Plaintiff in Intervention  
Acre's Medical, LLC's Motion to Dismiss GB Sciences Nevada, LLC's  
Counterclaim Against Acres Medical is GRANTED. CASE CLOSED.  
Mr. Ferrario to prepare the Order.

Parties Present

Return to Register of Actions

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1 TRAN

2 DISTRICT COURT

3 CLARK COUNTY, NEVADA

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

7 Plaintiff, )

8 vs. )

CASE NO.: A-14-710597-C

DEPT. NO.: XX

9 STATE OF NEVADA, DIVISION OF )  
10 PUBLIC AND BEHAVIORAL HEALTH )  
11 OF THE DEPARTMENT OF HEALTH )  
12 AND HUMAN SERVICES; NULEAF CLV )  
13 DISPENSARY, LLC, a Nevada )  
14 limited liability company; )  
15 DOES 1-10, and ROE ENTITIES )  
16 1-100, inclusive, )

17 Defendants. )

18 AND ALL RELATED CROSS-CLAIMS. )  
19

20 REPORTER'S TRANSCRIPT OF PROCEEDINGS

21 BEFORE THE HONORABLE JUDGE ERIC JOHNSON

22 DEPARTMENT XX

23 TUESDAY, JANUARY 26, 2016

24 3:07 P.M.

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

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

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1 APPEARANCES:

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9 For NuLeaf CLV Dispensary LLC:

10 BY: JORDAN T. SMITH, ESQ.

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14 (702) 214-2100

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16 For Acres Medical LLC:

17 BY: MARK E. FERRARIO, ESQ.

18 BY: MORREA KATZ, ESQ.

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1 APPEARANCES CONTINUED:

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3 Services:

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1 LAS VEGAS, NEVADA; TUESDAY, JANUARY 26, 2016

3:07 P.M.

2 \* \* \* \* \*

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

\* \* \* \* \*

4 THE MARSHAL: All rise. District Court 20's  
5 in session. The Honorable Judge Eric Johnson  
6 presiding.

7 THE COURT: Okay. Good afternoon, everybody.

8 MR. SHAPIRO: Good afternoon.

9 MR. FERRARIO: Good afternoon, Your Honor.

10 THE MARSHAL: Be seated.

11 THE COURT: Let's call GB Sciences Nevada,  
12 LLC versus State -- Nevada State Department of Health  
13 and Human Services, Case No. A710597.

14 Counsel, please make your appearances for the  
15 record.

16 MR. SHAPIRO: Jim Shapiro for GB Sciences  
17 Nevada.

18 MR. FERRARIO: Mark Ferrario and Morrea Katz  
19 for Acres, Your Honor.

20 MS. ANDERSON: Linda Anderson for the  
21 Department of Health and Human Services.

22 MR. SMITH: Jordan Smith on behalf of NuLeaf.

23 THE COURT: I guess we should have pulled  
24 over another table for you guys. You guys back there,  
25 we can --

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1           **MS. ANDERSON:** We are fine right here in the  
2 back.

3           **THE COURT:** Okay.

4           **MR. SMITH:** We had to separate Mr. Ferrario  
5 from everybody.

6           **MR. FERRARIO:** I felt awkward sitting next to  
7 Mr. Shapiro today.

8           **THE COURT:** All right. Which I've got us  
9 looking at plaintiff's motion to alter or amend  
10 judgment, or in the alternative, motion for partial  
11 reconsideration, and Acres' motion to dismiss GB  
12 Sciences' counterclaim.

13                   What do we want to deal with first?

14           **MR. SHAPIRO:** I think there's one that you  
15 didn't mention that we should deal with even before  
16 those two, and that is that we've got a calendar call  
17 tomorrow and that calendar call was originally  
18 scheduled on the claims between NuLeaf and GB Sciences.  
19 That issue's been resolved. If there's still claims  
20 between Acres and GB Sciences, I don't think we're  
21 going to be ready to go to trial on this stack. So I  
22 guess I would request that the calendar call be  
23 vacated, and let's figure out what to do at the end of  
24 today.

25           **THE COURT:** Does NuLeaf have any issue with

1 that?

2 **MR. SMITH:** No objection, Your Honor.

3 **THE COURT:** All right. Why don't we go  
4 ahead -- we'll go ahead and vacate the calendar call  
5 and trial.

6 **MR. SHAPIRO:** Okay. And then I think it  
7 makes sense to do the motion to reconsider first. If  
8 that's denied, then the other one, I think, is rendered  
9 moot because the decision's already been entered.

10 **THE COURT:** Okay. I -- let me just tell you  
11 sort of where I'm looking at, and I looked at this in  
12 the context that I made -- the key finding of mine was  
13 that NuLeaf shouldn't have received the certificate in  
14 view of it having not obtained the letter required by  
15 statute from the City of Las Vegas, and, at that point,  
16 I looked to see who was No. 13 -- my feeling was to  
17 look to see who was No. 13 on the list who should have  
18 got it, and my understanding was pursuant to -- it  
19 wasn't that I was adopting and applying Judge Cadish's  
20 order. It was that, pursuant to her order -- and,  
21 Ms. Anderson, I assume, pursuant to her order -- I  
22 don't think it was appealed -- you adjusted -- Nevada  
23 Department of Health and Human Services adjusted  
24 everything and Acres was No. 13. Right?

25 **MS. ANDERSON:** Correct, Your Honor.

1           **THE COURT:** Okay. So I had contemplated,  
2 when I was doing it, just saying NuLeaf shouldn't get  
3 it and whoever was No. 13 should -- should get, but I  
4 knew who was No. 13 because I had seen Judge Cadish's  
5 order. So I thought, Well, I'm just going to cut  
6 through the -- cut through the water here and -- and --  
7 and deal with it.

8           So that's sort of where I'm coming -- I don't  
9 see -- I'll be honest, I don't see that as having any  
10 real impact upon your due process rights, but I'll give  
11 you a chance to -- to discuss that.

12           **MR. SHAPIRO:** Well, I appreciate that. Thank  
13 you, Your Honor.

14           The problem with the Judge Cadish order is  
15 that when Acres filed their complaint, they listed 21  
16 different defendants, all of whom they specifically  
17 identified as real parties in interest. And then they  
18 listed another 20-plus Doe, Roe, and Poe defendants,  
19 all of whom they likewise identified as real parties in  
20 interest.

21           Now, the reality is there was only one entity  
22 that really had an interest in the outcome of that  
23 case, and that was GB Sciences. Every other entity  
24 that was ranked 12 or higher had no interest in the  
25 outcome because, even if they get put in 13th position,

1 it doesn't affect them. And the entities that were  
2 ranked 14th and lower really had no interest because  
3 they didn't have any claim to any of the provisional  
4 certificates either. So they name all of these  
5 parties, they admit that they're real parties in  
6 interest, but then they -- they fail to name GB  
7 Sciences who had filed this lawsuit a full six months  
8 before their lawsuit was filed. They knew about GB  
9 Sciences. They could have named GB Sciences. They  
10 didn't. Why? They didn't because they didn't want us  
11 coming in and ruining it.

12 Well, we have equitable claims. We --

13 **THE COURT:** Are you saying you didn't know  
14 anything about the lawsuit in front of Judge Cadish? I  
15 mean --

16 **MR. SHAPIRO:** I learned about the lawsuit  
17 after I got into this one, which was after they had  
18 filed -- already filed their motion.

19 **THE COURT:** To intervene in this one or --

20 **MR. SHAPIRO:** No. The motion in the other  
21 case.

22 So I came in -- if you recall, Your Honor, I  
23 wasn't the attorney who filed this case.

24 **THE COURT:** Okay.

25 **MR. SHAPIRO:** And you weren't around at the

1 time either, so you probably don't recall that.

2 THE COURT: Yeah.

3 MR. SHAPIRO: I came in to this case, I want  
4 to say, September of this year. So it was after their  
5 lawsuit had already been filed, and I believe -- and I  
6 didn't know about the case when I first came in. It  
7 was after I came in that I learned about their case.

8 Well, at that point, we've already got  
9 motions for summary judgment pending and we're going  
10 forward. They had a duty to bring us in to the Judge  
11 Cadish case; they didn't do it. We -- we're a real  
12 party in interest, just like they admitted to the  
13 40-plus defendants that they named, and, yet, we had no  
14 opportunity to go in and contest that because they  
15 didn't bring us in.

16 Now, so then the question becomes: Okay, how  
17 do you treat Judge Cadish's order? Well, you either  
18 ignore it or you accept it under res judicata, but you  
19 can't accept it under res judicata. You can't why?  
20 Because we were not a party to the case, and we  
21 weren't -- nobody was in privity of -- in privy with us  
22 in that case to defend our position. Fourteen and  
23 lower didn't care. One through 12 didn't care.  
24 Thirteen's the only one who really had an interest.

25 That order has no prejudicial effect, and so

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1 the proper way for Your Honor to proceed is to ignore  
2 the order. That was an order between the parties to  
3 that case. It doesn't affect GB Sciences. We were not  
4 a party.

5 Now, if you ignore the order, then what do  
6 you do? Well, you go back to what you should be doing  
7 under the rules, which is they were allowed to  
8 intervene. They filed a complaint in intervention  
9 which then put GB Sciences on notice of the claims that  
10 they were asserting against GB Sciences. GB Sciences  
11 filed an answer and a counterclaim and asserted  
12 counterclaims against Acres. We then put Acres on  
13 notice of the claims that we are asserting against  
14 them. Those claims need to be adjudicated. The  
15 problem with the order is that you granted the motion  
16 to intervene on November 9th, which was the same day we  
17 argued the motion for summary judgment. There was no  
18 argument about the relationship vis-a-vis Acres and GB  
19 Sciences. In fact, the comment that I made to the  
20 Court is that will be decided with future pleadings  
21 because we still didn't have a complaint in  
22 intervention, we didn't have an answer and  
23 counterclaims.

24 So the order was entered -- the minute order  
25 was entered before the complaint in intervention was

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1 filed. The written order was entered a -- less than  
2 two weeks after the complaint and intervention was  
3 filed, and it's simply wholly inappropriate to  
4 essentially decide Acres' claims and GB Sciences'  
5 counterclaims without ever holding a hearing on it.  
6 You -- the order that you entered is holding me to  
7 Judge Cadish's order and that's inappropriate.

8 **THE COURT:** I'm not even sure -- I don't even  
9 know if Acres really even needed to include all the  
10 other parties that it included as parties in their --  
11 because, ultimately, the way I understand it -- and if  
12 I'm wrong, let me know -- but the way I ultimately  
13 understand it, this was essentially -- Ms. Anderson, my  
14 understanding is the suit with Acres in front of Judge  
15 Cadish was essentially the department had made a  
16 clerical or typo -- you know, essentially a  
17 typographical or clerical error relating to something  
18 and missed a score and they just wanted that score  
19 plugged in and -- and retotaled. Am I wrong?

20 **MS. ANDERSON:** That -- that was their  
21 argument. I mean, my position in that hearing was to  
22 say I didn't think it was warranted for the type of  
23 relief that was sought because they didn't have an  
24 interest. I made all those arguments. Some parties  
25 did appear, but that was the gist of what our

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1 discussion was before the Court.

2 **THE COURT:** Okay. All right.

3 I guess I -- I just don't see this as -- this  
4 seems to be -- they say, You -- you should have scored  
5 us this. Department of Health and Human Services said,  
6 Oh, we didn't need to or it's moot for all practical  
7 purposes, whatever the context is. They filed a suit,  
8 but the issue seems to be between Acres and the  
9 Department of -- not -- not anything in reference to --  
10 to --

11 **MR. SHAPIRO:** There is. And the reason that  
12 there is because Acres did not include GB Sciences in  
13 that case.

14 **THE COURT:** Okay. What would -- what would  
15 have been your position in that case?

16 **MR. SHAPIRO:** Our position in that case was  
17 that they waited too long. It was prejudicial to us  
18 and our client.

19 Our position was that they were equitably  
20 estopped from -- from taking that six months down the  
21 road based upon the -- the failure to timely file a  
22 lawsuit.

23 See, the problem is --

24 **THE COURT:** I'm just not seeing the actual --

25 **MR. SHAPIRO:** Let's reverse the role.

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1           What you're saying is the -- the Acres  
2 decision doesn't make a difference. Well, if that's  
3 the case, why is Acres in this case? Why did they have  
4 to intervene, and why was it granted?

5           If -- if -- if your logic is truly going to  
6 be held across the board, then there's no reason for  
7 Acres to even be here because what happens over there,  
8 happens over there. The reality is --

9           **THE COURT:** Well, and arguably -- Acres  
10 intervened but, arguably, once I found that NuLeaf  
11 shouldn't receive the certificate -- like I said, I  
12 could have easily just said, Well, it should go to  
13 No. 13. Well, at the time I would have said it should  
14 go to No. 13. That would have been -- would have been  
15 Acres. So Acres, arguably, didn't even -- arguably,  
16 didn't even need to intervene.

17           **MR. SHAPIRO:** Well, they did intervene --

18           **THE COURT:** They did.

19           **MR. SHAPIRO:** -- and it's our position that  
20 they needed to intervene because they had to disrupt us  
21 because we were currently holding the 13th position and  
22 we were the party that would be harmed by Judge  
23 Cadish's ruling. You can't -- you can't harm us when  
24 we -- we're not given an opportunity for -- for notice  
25 and to be heard.

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1           Now, where does that opportunity come? It  
2     could have come in one of two places. They could have  
3     named GB Sciences in the Acres case. If GB Sciences  
4     had been a party to Acres' case and Judge Cadish had  
5     issued a ruling that she ruled, then we wouldn't be  
6     standing here today because that would have satisfied  
7     due process as against GB Sciences, but that's not what  
8     happened. Judge Cadish did not consider any of GB  
9     Sciences' positions, interests, or arguments.

10           **THE COURT:** Well, I guess I'm -- going back,  
11     what -- what would have been your position in front of  
12     Judge Cadish other than the equitable -- I mean, is  
13     that equitable --

14           **MR. SHAPIRO:** Your Honor, I wasn't in that  
15     case so you're asking me to develop a full-fledged  
16     argument when --

17           **THE COURT:** Like I said --

18           **MR. SHAPIRO:** -- I'm standing here today, and  
19     I haven't done that.

20           My point is --

21           **THE COURT:** I mean, I can see if this was a  
22     situation where, you know, it was, like, you know, you  
23     only scored us 15 but, really, we're better than 15;  
24     you should have scored us, I don't know, 20, 25. I  
25     don't know how this all works.

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1           **MR. FERRARIO:** It was -- you're getting to  
2 the point, whether it was discretion. This wasn't  
3 discretion. This was a math error.

4           **THE COURT:** Right. I --

5           **MR. SHAPIRO:** It wasn't.

6           **THE COURT:** I'll let you talk --

7           **MR. SHAPIRO:** It wasn't a math error --

8           **MR. FERRARIO:** It was.

9           **MR. SHAPIRO:** -- Your Honor. What --

10          **THE COURT:** All right.

11          **MR. SHAPIRO:** There was a CD that was blank,  
12 and they didn't score a part of it. And they were  
13 under the duty to give them a good CD and they didn't  
14 give the State a good CD and so the State didn't score  
15 it.

16                 So the question is: Well, whose fault is  
17 that? Is it Acres fault? Is it the State's fault?  
18 Does the State have a duty to go back and ask them for  
19 a good CD when they said, You have to supply all of,  
20 you know, X, Y, and Z?

21                 That's the problem, is there's all kinds of  
22 arguments that we could have developed in the Acres  
23 case, but we weren't given an opportunity to because  
24 Acres didn't include us. They admitted we were a real  
25 party in interest, and they didn't include us.

1 Therefore, the Acres decision has no res judicata  
2 effect against us, and all of those issues still need  
3 to be resolved. And where should it be resolved? It  
4 should be resolved here. Acres came in; GB Sciences is  
5 already here. We had filed a motion for summary  
6 judgment. Those issues need to be resolved in this  
7 case.

8 **THE COURT:** Okay. And tell me again, why  
9 didn't you try to intervene in the Cadish case?

10 **MR. SHAPIRO:** Because by the --

11 **THE COURT:** If you did find out about it  
12 before the ruling --

13 When did the ruling come down in Cadish? I  
14 mean --

15 **MR. SHAPIRO:** I don't --

16 **THE COURT:** -- in Judge Cadish's case.

17 **MR. FERRARIO:** Your Honor, it was in October  
18 and Mr. --

19 **THE COURT:** Okay. That's all I want to know  
20 right now. Like I said, I'm going to give you a  
21 chance. All right? That's all I want to know right  
22 now.

23 So, I mean, you said you found out -- and, I  
24 mean, and we haven't even gotten into the issue of  
25 whether your predecessor was aware of the litigation.

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1 I mean, if you really felt that there was an issue here  
2 that you needed -- it seems to me that, you know, you  
3 could have sought to intervene in the other -- in the  
4 other litigation.

5 **MR. SHAPIRO:** I think we're turning the rules  
6 on the head, though. Is it their obligation to ensure  
7 that we're in there, or is it our obligation to  
8 intervene?

9 I didn't find out about this until after I  
10 got in this case, and I got in this case in September.  
11 I don't recall at what point. What I do recall is, by  
12 the time I learned about the Acres case, there was --  
13 everything was briefed and they had a hearing. That's  
14 when I found out about it.

15 Now, does that mean my client loses its  
16 rights, or does it mean that GB Sciences should have  
17 named us? See, I think the burden's getting shifted to  
18 the wrong party. GB Sciences named 40 different  
19 defendants. They went --

20 **THE COURT:** And some were -- some were Does  
21 or Roes or whatever --

22 **MR. SHAPIRO:** Right. Right.

23 **THE COURT:** Essentially, the Roes or Does and  
24 the number they name paralleled, in large part, the  
25 number of total applicants --

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1           **MR. SHAPIRO:** Right.

2           **THE COURT:** -- that were for the position.

3           **MR. SHAPIRO:** Mm-hmm.

4           **THE COURT:** So you implicitly knew that one  
5 of the Roes or Does was GB Sciences.

6           **MR. SHAPIRO:** When it was too late to do  
7 anything about it.

8           **THE COURT:** Well, I mean, why do you say it  
9 was too late to do anything about it when you came on?  
10 And, again, we're not looking at the issue of whether  
11 your predecessor -- you know, what kind of notice he --  
12 opportunity he had to do something about it.

13           **MR. SHAPIRO:** Because, at that point, we had  
14 already filed our motion for summary judgment in this  
15 case, and we hadn't been named in that case. And so,  
16 from our perspective, it doesn't bind us. There's no  
17 res judicata effect on that order. It doesn't affect  
18 us. They can't push us out of thirteenth position  
19 without giving us due process, which is notice and an  
20 opportunity to be heard.

21           **THE COURT:** See, I'm not convinced that, you  
22 know -- litigation goes on that effects -- you know,  
23 between two people that can result in something that  
24 affects somebody else, and the litigation, in reality,  
25 is between these two people and just because it has an

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1 impact in some way on somebody else doesn't mean that  
2 they should have necessarily sucked someone else in.  
3 And, again, if it's essentially a clerical or scoring  
4 error and -- it just seems to me that -- I'm just  
5 having a hard time --

6 **MR. SHAPIRO:** Here's --

7 **THE COURT:** -- seeing that this is -- that  
8 you -- you're being denied any due process rights by  
9 not being specifically brought in to -- to the action.

10 **MR. SHAPIRO:** The reason that we're denied it  
11 is because the very -- the power by which Judge Cadish  
12 ordered the State to re-work and re-rank Acres was  
13 equitable, and under equity, all of the issues have to  
14 be considered. And if GB Sciences is not a party to  
15 that case where they have a notice and an opportunity  
16 to give additional equitable considerations to the  
17 Court, then -- then the Court is not really truly doing  
18 what equity should be done, and they're denying GB  
19 Sciences their due process right to notice and an  
20 opportunity to be heard.

21 **THE COURT:** Okay.

22 **MR. SHAPIRO:** And I don't believe it's GB  
23 Sciences' duty to run out and try and intervene in the  
24 cases at the last minute. It's Acres who filed their  
25 lawsuit six months after GB Sciences. It's their

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1 obligation to name all of the parties, and if they  
2 don't, then there's no res judicata effect of the  
3 order. And they intervene in this case; both parties  
4 are here. It's the same powers by which Your Honor  
5 ordered the State to revoke NuLeaf's. It's equitable  
6 powers. And when you look at equity, you have to look  
7 at all of the equities and all of the factors that  
8 balance. And, in this case, the decision was made  
9 without looking at all of those equities. Acres is  
10 here, GB Sciences is here, and all we're asking for is  
11 an opportunity to present the arguments and have the  
12 Court make a decision.

13 **THE COURT:** Okay. Now --

14 **MR. FERRARIO:** Your Honor, I think you're  
15 spot on on this. I -- I appreciate the frustration of  
16 Mr. Shapiro, but frustration doesn't equate to a legal  
17 position. And his argument really stems from a false  
18 premise, and that his client would ever be harmed by  
19 the State simply doing what it was supposed to do in  
20 the first place, which is properly rank these  
21 applicants.

22 And when we went to court in front of Judge  
23 Cadish, what we obtained was a judgment on our writ of  
24 mandamus which requires the State to do what it should  
25 have done in the first place, and that's add the

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1 numbers the right way.

2           So this isn't equity and -- you know, this  
3 is -- it's simply that court doing what's right, and  
4 then this Court doing what's right. And I think your  
5 comment that you could have issued an order that said  
6 simply that it went to the 13th ranked applicant would  
7 have got us in the same position. And -- and I -- I  
8 don't want to -- I hate arguing, like, procedural  
9 missteps and things like that, but the truth is  
10 Mr. Shapiro was at the hearing when we argued the  
11 motion. He was there present at the hearing. He  
12 didn't stand up and say to Judge Cadish, "Wait a while.  
13 I just got in this case, and I'm realizing for the  
14 first time that, if you grant this, it's going to harm  
15 my case that I've been litigating for six months or six  
16 years," or whatever. He didn't say anything to that  
17 effect. He knew of that case.

18           So I could say he should have done something.  
19 And, Your Honor, asked that question. He didn't. He  
20 sat on his hands. We didn't -- we told you why we  
21 didn't name them. They didn't allow their score to be  
22 published. We didn't know about them.

23           But the other thing that -- that -- that I  
24 think is -- is troubling here is, when we intervened in  
25 this case, NuLeaf objected saying it was going to stall

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

NULEAF CLV DISPENSARY, LLC, a  
Nevada limited liability company,

Appellant,

vs.

THE STATE OF NEVADA  
DEPARTMENT OF HEALTH AND  
HUMAN SERVICES, DIVISION OF  
PUBLIC AND BEHAVIORAL  
HEALTH; ACRES MEDICAL, LLC, a  
Nevada limited liability company; and  
GB SCIENCES NEVADA, LLC, a  
Nevada limited liability company,

Respondents.

---

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

Cross-Appellant,

vs.

THE STATE OF NEVADA DEPT. OF  
HEALTH AND HUMAN SERVICES,  
DIV. OF PUBLIC AND BEHAVIORAL  
HEALTH; NULEAF CLV  
DISPENSARY, LLC, a Nevada limited  
liability company; and ACRES  
MEDICAL, LLC, a Nevada limited  
liability company,

Cross-Respondents.

**Supreme Court No. 69909**

Electronically Filed  
Nov 01 2016 03:43 p.m.  
District Court Case No. A710597  
Elizabeth A. Brown  
Clerk of Supreme Court

**RESPONDENT/CROSS-  
APPELLANT GB SCIENCES  
NEVADA, LLC'S APPENDIX  
VOLUME 2**

**[RESPONDING BRIEF ON  
APPEAL AND OPENING  
BRIEF ON CROSS-APPEAL]**

**RESPONDENT/CROSS-APPELLANT GB SCIENCES NEVADA, LLC'S  
APPENDIX VOLUME 2**

**[RESPONDING BRIEF ON APPEAL AND OPENING BRIEF ON CROSS-  
APPEAL]**

On Appeal from Judgment Granted by the Eighth Judicial  
District Court of the State of Nevada, in and for Clark County  
Case No. A710597

James E. Shapiro, Esq.  
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**(BATES-STAMPED ORDER)**

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Reply to Opposition to Plaintiff's Motion to Alter or Amend Judgment; or, in the Alternative Motion for Partial Reconsideration	01/18/16	2	RAPP000252 – RAPP000284
Acres Medical, LLC's Reply in Support of Motion to Dismiss GB Sciences Nevada, LLC's Counterclaim Against Acres Medical, LLC	01/19/16	2	RAPP000285 – RAPP000295
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Hearing Transcript – Plaintiff’s Motion to Alter or Amend Judgment or, in the Alternative, Motion for Reconsideration and Acres Medical, LLC’s Motion to Dismiss GB Sciences, LLC’s Counterclaim	01/26/16	2	RAPP000303 – RAPP000358
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Notice of Entry of Order Denying Plaintiff GB Sciences Nevada, LLC’s Motion to Alter or Amend Judgment or, in the Alternative Motion for Reconsideration	03/04/16	2	RAPP000367 – RAPP000373
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<p style="text-align: center;"><b>TABLE OF CONTENTS</b></p> <p style="text-align: center;"><b>(ALPHABETICAL ORDER)</b></p> <p style="text-align: center;"><b>VOLUME 2</b></p>			
<b>DOCUMENT</b>	<b>DATE</b>	<b>VOL.</b>	<b>PAGE</b>
Acres Medical, LLC’s Motion to Dismiss GB Sciences Nevada, LLC’s First Amended Counterclaim Against Acres Medical, LLC	01/25/16	2	RAPP000296 – RAPP000300

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Acres Medical, LLC's Reply in Support of Motion to Dismiss GB Sciences Nevada, LLC's Counterclaim Against Acres Medical, LLC	01/19/16	2	RAPP000285 – RAPP000295
GB Sciences Nevada, LLC's Opposition to Motion to Dismiss Counterclaim; or, in the Alternative Motion for Leave to Amend	01/11/16	2	RAPP000208 – RAPP000242
GB Sciences Nevada, LLC's Notice of Cross-Appeal	03/30/16	2	RAPP000374 – RAPP000375
Hearing Transcript – Plaintiff's Motion to Alter or Amend Judgment or, in the Alternative, Motion for Reconsideration and Acres Medical, LLC's Motion to Dismiss GB Sciences, LLC's Counterclaim	01/26/16	2	RAPP000303 – RAPP000358
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Order Denying Plaintiff GB Sciences Nevada, LLC's Motion to Alter or Amend Judgment or, in the Alternative Motion for Reconsideration	03/03/16	2	RAPP000363 – RAPP000366

Order Granting Intervenor Acres Medical, LLC's Motion to Dismiss GB Sciences Nevada, LLC's Counterclaims Against Acres Medical, LLC	03/03/16	2	RAPP000359 – RAPP000362
Reply to Opposition to Plaintiff's Motion to Alter or Amend Judgment; or, in the Alternative Motion for Partial Reconsideration	01/18/16	2	RAPP000252 – RAPP000284

Dated this 31<sup>st</sup> day of October, 2016.

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## CERTIFICATE OF COMPLIANCE

1. I hereby certify that this brief complies with the formatting requirements of N.R.A.P. 32(a)(4), the typeface requirements of N.R.A.P. 32(a)(5) and the type style requirements of NRAP 32(a)(6) because:

☒ This brief has been prepared in a proportionally spaced typeface using Word Perfect in 14 point font Times New Roman type style; or

☐ This brief has been prepared in a monospaced typeface using [*state name and version of word-processing program*] with [*state number of characters per inch and name of type style*].

2. I further certify that this brief complies with the page- or type-volume limitations of N.R.A.P. 32(a)(7) because, excluding the parts of the brief exempted by N.R.A.P. 32(a)(7)(C), it is either:

☒ Proportionately spaced, has a typeface of 14 points or more, and contains 1233 words; or

☐ Monospaced, has 10.5 or fewer characters per inch, and contains \_\_\_\_\_ words or \_\_\_\_\_ lines of text; or

☒ Does not exceed 40 pages.

3. Finally, I hereby certify that I have read this appellate brief, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular

N.R.A.P. 28(e)(1), which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page and volume number, if any, of the transcript or appendix where the matter relied on is to be found. I understand that I may be subject to sanctions in the event that the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

Dated this 31<sup>st</sup> day of October, 2016.

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## **CERTIFICATE OF SERVICE**

I certify that on the 31<sup>st</sup> day of October, 2016, I served a copy of this  
**RESPONDENT/CROSS-APPELLANT GB SCIENCES NEVADA,**  
**LLC'S APPENDIX VOLUME 2** upon all counsel of record:

- ☐ By personally serving it upon him/her; or
- ☒ By mailing it by first class mail with sufficient postage prepaid to the

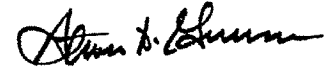
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6 **GB SCIENCES NEVADA, LLC**

7 **DISTRICT COURT**

8 **CLARK COUNTY, NEVADA**

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

11 **Plaintiff,**

12 **vs.**

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

17 **Defendants.**

18 **ACRES MEDICAL, LLC,**

19 **Plaintiff in Intervention,**

20 **vs.**

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

25 **Defendants in Intervention.**

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

**OPPOSITION TO MOTION TO**  
**DISMISS COUNTERCLAIM; OR,**  
**IN THE ALTERNATIVE MOTION**  
**FOR LEAVE TO AMEND**

Date: February 3, 2016  
Time: 8:30am

26 \\\

27 \\\

28 \\\

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

3 Counterclaimant in Intervention,

4 vs.

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

10 Counterdefendants in Intervention.

11  
12 **OPPOSITION TO MOTION TO DISMISS COUNTERCLAIM; OR,**  
13 **IN THE ALTERNATIVE MOTION FOR LEAVE TO AMEND**

14 COMES NOW Plaintiff/Defendant in Intervention/Counterclaimant in Intervention, GB  
15 SCIENCES NEVADA, LLC, a Nevada limited liability company ("GB Sciences"), by and through its  
16 attorneys of record, SMITH & SHAPIRO, PLLC, and files its Opposition to Motion to Dismiss (the  
17 "MTD") GB Sciences Nevada, LLC's Counterclaim Against Acres Medical, LLC ("Acres"); or, in the  
18 Alternative, Motion for Leave to Amend.

19 This Opposition is made and based upon the papers and pleadings on file herein, the attached  
20 Memorandum of Points and Authorities, and any oral argument the Court may wish to entertain in the  
21 premises.

22 Dated this 11<sup>th</sup> day of January, 2016.

23 SMITH & SHAPIRO, PLLC

24 /s/ James E. Shapiro, Esq.  
25 James E. Shapiro, Esq.  
26 Nevada Bar No. 7907  
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2520 St. Rose Parkway, Suite 220  
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Attorneys for Plaintiff,  
GB Sciences Nevada, LLC

1 MEMORANDUM OF POINTS AND AUTHORITIES

2 I.

3 PREFATORY STATEMENT

4 By its present Motion, Acres seeks to dismiss GB Sciences' Counterclaims by arguing that there  
5 is no relationship between Acres and GB Sciences and no controversy to be resolved. However, Acres  
6 arguments are belied by their own actions. As is outlined below, Acres previously recognized that all  
7 parties ranked ahead of them were necessary parties to their initial lawsuit against State, which is why  
8 they named numerous other parties in their lawsuit. Likewise, in order to obtain complete relief, Acres  
9 had to intervene into GB Sciences' lawsuit against the State. If there is no justiciable controversy  
10 between Acres and GB Sciences, why did Acres intervene into this lawsuit? They could have proceeded  
11 forward in their own lawsuit. Clearly, there is a justiciable controversy which this Court needs to  
12 resolve.

13 II.

14 STATEMENT OF FACTS

15 A. ENACTMENT OF MME STATUTES.

16 In 2013, the Nevada Legislature passed Senate Bill 374, which, in part, provided for the  
17 registration of medical marijuana establishments ("MMEs") authorized to cultivate and dispense  
18 marijuana and marijuana infused products to those persons authorized to use medicinal marijuana. The  
19 Nevada Legislature codified Senate Bill 374 in NRS Chapter 453A, *et seq.*

20 The City of Las Vegas was allotted twelve (12) MME registration certificates (the "Registration  
21 Certificates") by the Division. When the STATE OF NEVADA, DIVISION OF PUBLIC AND  
22 BEHAVIORAL HEALTH OF THE DEPARTMENT OF HEALTH AND HUMAN SERVICES (the  
23 "Division") issued its rankings, it ranked GB Sciences as the 13<sup>th</sup> ranked applicant, and Acres much  
24 lower than GB Sciences.

25 B. THE PRESENT LAWSUIT.

26 On December 2, 2014, GB Sciences filed the present lawsuit wherein it sought an order from  
27 this Court directing the Division to revoke the Registration Certificate issued to Nuleaf CLV  
28 Dispensary, LLC ("Nuleaf") and issue the same to GB Sciences.

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

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

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

10 **C. INTENTIONALLY SEPARATE ACRES LAWSUIT.**

11 On or about June 9, 2015, more than six (6) months after GB Sciences filed the present lawsuit,  
12 Acres filed an action against the Division with the Eighth Judicial District Court, being Case No. A-15-  
13 719637-W, to have its MME application with the Division re-scored based upon a purported math error  
14 (the "Acres Lawsuit").

15 In its Complaint, Acres named a total of twenty-one (21) parties<sup>1</sup>, plus plus DOE ENTITIES  
16 1-5, ROE ENTITIES 1-4, and POE ENTITIES 1-16. A true and correct copy Acres' Complaint is  
17 attached hereto as Exhibit "1" and incorporated herein by this reference. In paragraphs 4 through 25,  
18 Acres identified twenty (20) of the Defendants as "Defendant/Real Party in Interest... whose ranking  
19 among all such applications might be affected by the relief sought herein." See Exhibit "1". In  
20 paragraph 25, Acres alleged:

21 25. On information and belief Defendants/Real Parties in Interest Poe  
22 Entities 1-14 are each applicants for a medical marijuana registration certificate to  
23 own and operate a dispensary MME in the City of Las Vegas whose ranking  
24 among all such applications might be affected by the relief sought herein. Because  
of the Division's anonymous scoring and ranking process, the identities of the real

25 <sup>1</sup>Specifically, Acres named the following as Defendants: (1) NEVADA DEPARTMENT OF HEALTH AND  
26 SERVICES, DIVISION OF PUBLIC AND BEHAVIORAL HEALTH; (2) NLVG, LLC; (3) NU LEAF CULTIVATION,  
27 LLC; (4) THE MEDMEN OF NEVADA 2, LLC; (5) CANNABIS RENAISSANCE GROUP, LLC; (6) MM  
28 DEVELOPMENT, LLC; (7) NYE NATURAL MEDICINAL SOLUTIONS, LLC; (8) GREENLIFE PRODUCTIONS,  
LLC; (9) GWGA, LLC; (10) NEVADA NATURAL MEDICINES, LLC; (11) WELLNESS ORCHARDS OF NEVADA,  
LLC; (12) NCMN, LLC; (13) ACC INDUSTRIES, INC.; (14) SAMANTHA'S REMEDIES; (15) NEVADA CARES,  
LLC; (16) THC NEVADA, LLC; (17) RED ROCK WELLNESS, LLC; (18) QUALCAN OF LAS VEGAS, LLC; (19)  
PHYSIS ONE LLC; (20) BUFFALO CENTER MEDICAL ADVOCATES; and (21) PRIMO DISPENSARY.

1 Parties in Interest Poe Entities 1-14 are unknown to Plaintiffs/Petitioners at this time.  
2 (See Exhibit "1" (emphasis added).)

3 Noticeably absent from the list of named Defendants was GB Sciences, although GB Sciences clearly  
4 fit the identification of one of the Poe Entities 1-14. See Exhibit "1".

5 Acres clearly recognized that there were numerous parties, all of whom had submitted  
6 applications for a Provisional Certificate, all of whom would potentially be affected by Acres Lawsuit,  
7 all of whom Acres acknowledged were "Real Parties in Interest," and all of whom Acres knew had an  
8 interest in the outcome of the Acres Lawsuit. See Exhibit "1". However, for some unknown reason,  
9 Acres did not include GB Sciences as a party to the Acres Lawsuit, even though the re-scoring which  
10 Acres sought would affect GB Sciences' own claim to an MME Registration Certificate. Likewise,  
11 Acres deliberately chose not to intervene in this case at that time.

12 On or about October 8, 2015, following a relatively uncontested series of events, the Court in  
13 the Acres Lawsuit granted Acres' Petition for Writ of Mandamus, compelling the Division to re-score  
14 Acres' application for a Provisional Registration Certificate by adding 41.3 to the score, thus raising  
15 Acres' score to 167.3 and making Acres' MME application rank number 13 for the 12 Registration  
16 Certificates allotted to the City of Las Vegas (the "Order").

17 **D. ACRES' ENTRY INTO THIS CASE.**

18 On or about November 9, 2015, the Court granted Acres' motion to intervene in this case. On  
19 or about November 13, 2015, the Court entered a minute order in this case revoking Nuleaf's  
20 Provisional Certificate, but granting it to Acres, applying the re-scoring set forth in the Order and  
21 moving Acres' MME application to #12 in rank (with the removal of Nuleaf), even though GB Sciences  
22 was never a party to the Acres Case or able to litigate the re-scoring of Acres' MME application.

23 On or about November 17, 2015, Acres filed its Complaint in Intervention, wherein it sought  
24 a declaration that Acres, instead of GB Sciences, should receive NuLeaf's Provisional Certificate. In  
25 essence, Acres intervened in this lawsuit seeking to impose the effect of the Order upon GB Sciences  
26 and jump ahead of GB Sciences in line for one of the 12 Registration Certificates allotted to the City  
27 of Las Vegas. Accordingly, on or about December 3, 2015, GB Sciences filed its Answer to the  
28 Complaint in Intervention and Counterclaim against Acres. In its Counterclaims, GB Sciences asserted

1 the same relief sought by Acres (Declaratory Relief), seeking an order awarding the NuLeaf Provisional  
2 Certificate to GB Sciences instead of Acres.

3 Notwithstanding the foregoing, on or about December 28, 2015, Acres filed its Motion to  
4 Dismiss Counterclaim, claiming somehow with a straight face that there is no justiciable controversy  
5 between GB Sciences and Acres for this Court to consider.

6 **E. GB SCIENCES AMENDED COUNTERCLAIM.**

7 On January 5, 2016, GB Sciences filed its Amended Answer and Counterclaim, wherein it  
8 asserted an additional cause of action for Equitable Estoppel.

9 For the following reasons, the Motion to Dismiss should be denied.

10 **III.**

11 **STATEMENT OF AUTHORITIES**

12 **A. STANDARD ON A MOTION TO DISMISS.**

13 The Nevada Supreme Court has repeatedly warned:

14 a complaint will not be dismissed for failure to state a claim unless it appears **beyond**  
15 **a doubt** that the plaintiff could prove no set of facts which, if accepted by the trier of  
fact, would entitle him or her to relief.

16 Simpson v. Mars, Inc., 113 Nev. 188, 190, 929 P.2d 966 (1997) (emphasis added). When considering  
17 a motion to dismiss, the district court must accept all factual allegations contained in the complaint as  
18 true. Lubin v. Kunin, 117 Nev. 107, 110, 17 P.3d 422, 425 (2001).

19 The Nevada Supreme Court has further stated:

20 When considering a motion to dismiss made pursuant to NRCP 12(b)(5), a district court  
21 **must** construe the complaint **liberally** and **draw every fair inference in favor of the**  
22 **plaintiff**. A complaint should not be dismissed unless it appears to a certainty that the  
23 plaintiff could prove no set of facts that would entitle him or her to relief. Moreover,  
24 when a complaint can be amended to state claim for relief, leave to amend, rather than  
dismissal, is the preferred remedy. Leave to amend should be freely given when justice  
requires, and a request to amend should not be denied simply because it was made in  
open court rather than by formal motion.

25 Cohen v. Mirage Resort, Inc., 119 Nev. Adv. Rep. 1, 62 P.3d 720, 734 (February 7, 2003)(emphasis  
26 added); *See also* Hampe v. Foote, 118 Nev. 05, 47 P.3d 438 (2002).

27 \\\

28 \\\

Further, according to N.R.C.P. 8:

(a) Claims for Relief. A pleading which sets forth a claim for relief, whether an original claim, counterclaim, cross-claim, or third-party claim, shall contain (1) *a short and plain statement of the claim* showing that the pleader is entitled to relief.

(f) Construction of Pleadings. All pleadings shall be so *construed as to do substantial justice*.

N.R.C.P. 8 (in pertinent part)(emphasis added).

For the following reasons, the Counterclaim should not be dismissed with respect to Acres.

**B. DECLARATORY RELIEF WAS PROPERLY PLED.**

Contrary to the arguments of Acres, in the State of Nevada, the statutory remedy for declaratory relief is extremely broad. According to Nevada Revised Statutes § 30.030:

Courts of record within their respective jurisdictions shall have power *to declare rights, status and other legal relations whether or not further relief is or could be claimed*. No action or proceeding shall be open to objection on the ground that a declaratory judgment or decree is prayed for. The declaration may be either affirmative or negative in form and effect; and such declarations shall have the force and effect of a final judgment or decree.

N.R.S. § 30.030 (emphasis added). Further, Nevada Revised Statutes § 30.040 provides, more specifically, that:

1. *Any person interested* under a deed, written contract or other writings constituting a contract, or *whose rights, status or other legal relations are affected by a statute, municipal ordinance*, contract or franchise, may have determined any question of construction or validity arising under the instrument, statute, ordinance, contract or franchise and *obtain a declaration of rights, status or other legal relations thereunder*.

N.R.S. § 30.040(1) (emphasis added). Nonetheless, “[t]he enumeration in NRS 30.040, 30.050 and 30.060 does not limit or restrict the exercise of the general powers conferred in NRS 30.030 in any proceeding *where declaratory relief is sought, in which a judgment or decree will terminate the controversy or remove an uncertainty*.” N.R.S. § 30.070(emphasis added).

In Kress v. Corey, 65 Nev. 2, 189 P.2d 253 (1948), the Nevada Supreme Court established a four-pronged test in order to obtain declaratory relief: (1) there must exist a justiciable controversy; that is to say, a controversy in which a claim of right is asserted against one who has an interest in contesting it; (2) the controversy must be between persons whose interests are adverse; (3) the party seeking

1 declaratory relief must have a legal interest in the controversy, that is to say, a legally protectable  
2 interest; and (4) the issue involved in the controversy must be ripe for judicial determination. Kress,  
3 65 Nev. 2, 26, 189 P.2d 361. The Nevada Supreme Court has determined that a request for declaratory  
4 relief may be coupled with other request for relief as well. Nevada Mgt. Co. V. Jack, 75 Nev. 232, 338  
5 P.2d 71 (1959).

6 In this case, contrary to the arguments of Acres, under the plain language of NRS Chapter 30  
7 and the Nevada Supreme Court decision in Kress, there is a justiciable controversy between Acres and  
8 GB Sciences.

9 1. A Justiciable Controversy Exists.

10 The first element is there must exist a justiciable controversy; that is to say, a controversy  
11 in which a claim of right is asserted against one who has an interest in contesting it. Kress, 65 Nev. 2,  
12 26, 189 P.2d 361.

13 In this instance, there is no question that a justiciable controversy exists. Acres sued twenty-one  
14 different named Defendants, plus an additional 25 specific Doe, Roe and Poe entities, all of which  
15 Acres acknowledged were real parties in interest, all of which Acres acknowledged had a right to appear  
16 in the Acres Lawsuit and all of which had a potential claim in the outcome of the Acres Lawsuit. GB  
17 Sciences clearly qualified as one of the Poe Entities, yet for reasons known only to Acres, Acres failed  
18 to name GB Sciences or include them in the Acres Lawsuit. Clearly, Acres knew that the Acres Lawsuit  
19 would potentially affect almost fifty (50) different parties, including GB Sciences. However, because  
20 GB Sciences was never brought in as a party to the Acres Lawsuit, the competing issues between GB  
21 Sciences and Acres has not yet been resolved.

22 Likewise, Acres felt the need to intervene in GB Sciences' lawsuit in order assert its rights  
23 against the NuLeaf Provisional Certificate. Absent Acres' intervention, this Court would have awarded  
24 the NuLeaf Provisional Certificate to GB Sciences, clearly demonstrating that GB Sciences has an  
25 interest in the NuLeaf Provisional Certificate. Since Acres was allowed to intervene, both Acres and  
26 GB Sciences are vying for the same Provisional Certificate. Both Acres and GB Sciences are arguing  
27 that under the equitable principles set forth in this Court's MSJ Order, as well as pursuant to Nevada  
28 Revised Statutes Chapter 465A, each of them are entitled to the NuLeaf Provisional Certificate.

1 This dispute is exactly what NRS Chapter 30 was enacted to resolve. NRS § 30.030 empowers  
2 this Court declare the rights of competing parties. Likewise, under N.R.S. § 30.040, both Acres and  
3 GB Sciences assert competing rights arising under statute (i.e. the MME laws set forth in N.R.S.  
4 Chapter 453A). Finally, NRS § 30.070 empowers this Court to issue a declaration “in any proceeding  
5 where declaratory relief is sought, in which a judgment or decree will terminate the controversy or  
6 remove an uncertainty.” (Emphasis added.)

7 In this case, because Acres and GB Sciences are each claiming they should receive the NuLeaf  
8 Provisional Certificate, and because each of their claims are based upon the same statutes and equitable  
9 arguments, a justiciable controversy exists that is squarely contemplated to be resolved by N.R.S.  
10 Chapter 30.

11 **2. Acres and GB Sciences Are Clearly Adverse.**

12 The second element is the controversy must be between persons whose interests are  
13 adverse. Kress, 65 Nev. 2, 26, 189 P.2d 361. This element is clearly satisfied as absent Acres’  
14 intervention in this lawsuit, the Court would have ordered the Division to issue the NuLeaf Provisional  
15 Certificate to GB Sciences.

16 There is no question that GB Sciences and Acres are competing for the same Provisional  
17 Certificate, and that their interest are therefore adverse.

18 **3. GB Sciences Has a Legal Interest in the Controversy.**

19 The third element is “the party seeking declaratory relief must have a legal interest in  
20 the controversy.” Kress, 65 Nev. 2, 26, 189 P.2d 361.

21 Interpreting N.R.S. Chapter 453A, and applying certain equitable principles, this Court ordered  
22 the Division to revoke NuLeaf’s Provisional Certificate and issue it to Acres. Absent Acres’  
23 intervention, the Court would have ordered the Division to issue NuLeaf’s Provisional Certificate to  
24 GB Sciences. However, under the same equitable principles upon which the Court ordered the Division  
25 to revoke NuLeaf’s Provisional Certificate, the Court should award that Provisional Certificate to GB  
26 Sciences even after Acres intervened (which is the subject of GB Sciences’ Motion for Partial  
27 Reconsideration).

28 \\\

1 In exercising its equitable powers, the Court must balance all of the equities, not just some of  
2 them, and then do what equities demand should be done. It is disingenuous to allow Acres to intervene  
3 on the very day that the Court heard GB Sciences equitable arguments as to why the Division to revoke  
4 NuLeaf's Provisional Certificate, then argue that GB Sciences has no legal interest in the outcome. It  
5 was GB Sciences' Motion that Acres allegedly "joined" in on the same day it was allowed to intervene.  
6 Given the fact that Acres relied upon GB Sciences' motion and arguments, it is clear that GB Sciences  
7 has an interest in the controversy.

8 GB Sciences has just as much right under N.R.S. Chapter 453A to the Provisional Certificate  
9 as Acres, and clearly has a legal interest in the controversy.

10 **4. The Issue is Ripe for Judicial Determination.**

11 The fourth element is the issue involved in the controversy must be ripe for judicial  
12 determination. Kress, 65 Nev. 2, 26, 189 P.2d 361.

13 Clearly, the issue is ripe for a determination. There is nothing which would prevent this Court  
14 from making a final determination of the competing issues between GB Sciences and Acres. This issue  
15 needs a final resolution and this Court reaching a final resolution is in everyone's best interest.

16 **5. Acres' Other Arguments Are Without Merit.**

17 In the Motion to Dismiss, Acres claims that declaratory relief claims cannot be brought  
18 against a party who is without power to enforce the "instrument" from which declaration is sought,  
19 citing Doe v. Bryan, 102 Nev. 523, 728 P.2d 443 (1986) for the stated proposition. *See* MTD at 6:23-  
20 24. However, Bryan is not analogous to this case and involved a much more narrow inquiry. Bryan  
21 involved the interpretation and constitutionality of a specific criminal statute, and the Governor of the  
22 State of Nevada was dismissed as an improper defendant because his duties did not encompass criminal  
23 prosecution. His ability to enforce or not enforce the statute was relevant only to a declaration with  
24 respect to the criminal statute. Declaratory relief under N.R.S. § 30.030, however, goes well beyond  
25 a determination regarding the meaning, application, or enforceability of a statute. It is available  
26 generally to declare any "rights, status, or legal relations" and in any proceeding "in which a judgment  
27 or decree will terminate the controversy or remove an uncertainty." *See* N.R.S. §§ 30.030 and 30.070.

28 \\\

1 Acres also contends that declaratory relief is unavailable because the Court in our case is unable  
2 to fashion "an acceptable" remedy. See MTD at 7:1-2. This is not true. The Court can make a  
3 declaration as sought by GB Sciences: that being that the re-ranking of Acres' MME licence application  
4 is not enforceable as against GB Sciences, and/or that other equitable principles require Acres to remain  
5 behind GB Sciences.

6 Under the extremely broad scope of N.R.S. § 30.030, the Court has the general power "to  
7 *declare rights, status and other legal relations.*" As stated above, because there is only one revoked  
8 Provisional Registration Certificate at play, GB Sciences is entitled to a declaration from the Court as  
9 to which entity (GB Sciences or Acres) has a right to that Certificate. Contrary to the arguments of  
10 Acres, the Court has the ability, under N.R.S. § 30.030 to make such a declaration. The Order from the  
11 Acres Case which formed the basis for Acres' claim to the ranking change has no *res judicata* effect  
12 upon GB Sciences. The fact that the re-ranking of Acres' application is only represented in the Order  
13 and not based upon any previously asserted claims or admissible evidence yet presented in this case,  
14 means that GB Sciences is entitled to contest the re-ranking of Acres' application in this matter, as well  
15 as the issue of which entity is entitled to obtain the revoked Certificate. In any event, under the broad  
16 powers granted a court to make declarations regarding legal rights, GB Sciences has sufficiently pled  
17 its right to obtain such a declaration.<sup>2</sup>

18 **C. GB SCIENCES' EQUITABLE ESTOPPEL CAUSE OF ACTION MUST STILL BE**  
19 **HEARD.**

20 Notwithstanding the foregoing, Acres should not be dismissed as a party to the Counterclaim.  
21 On January 5, 2016, Counterclaimant filed an amended counterclaim that includes an additional cause  
22 of action against Acres for equitable estoppel. N.R.C.P. 15(a) provides that "[a] party may amend the  
23 party's pleading once as a matter of course at any time before a responsive pleading is served . . ."  
24

---

25 <sup>2</sup> Acres also comments that "[t]ellingly, GB Sciences offers no basis upon which it can have a higher ranking  
26 over Acres." See Motion at 7:7-8. Not only is this not true, but that is not the standard on a Motion to Dismiss. The  
27 standard is that "a complaint will not be dismissed for failure to state a claim unless it appears beyond a doubt that the  
28 plaintiff could prove no set of facts which, if accepted by the trier of fact, would entitle him or her to relief." *Simpson v. Mars, Inc.*, 113 Nev. 188, 190, 929 P.2d 966 (1997). GB Sciences does not have to prevail on its claims at  
this point. So long as, taking all reasonable inference in favor of GB Sciences, the Court finds that there is a set of facts  
which, if accepted as true, would entitle GB Sciences to relief, Acres' Motion to Dismiss must be denied.

1 N.R.C.P. 15(a)(in pertinent part). It is also fundamental that a motion to dismiss is not a responsive  
2 pleading and Acres has yet to file a responsive pleading to the Counterclaim. See Washoe Medical  
3 Center v. Second Jud. Dist. Ct., 148 P.3d 790 (Nev. 2006); Stubbs v. Strickland, 297 P.3d 326, Nev.  
4 Adv. Op. 15 (Mar. 14, 2013); Nolen v. Fitzharris, 450 F.2d 958 (9<sup>th</sup> Cir. 1971).

5 However, to the extent that leave is required, N.R.C.P. 15(a) governs those situations in which  
6 a party has a right to amend its pleading. N.R.C.P. 15(a) specifically states:

7 A party may amend the party's pleading once as a matter of course at any time before  
8 a responsive pleading is served or, if the pleading is one to which no responsive pleading  
9 is permitted and the action has not been placed upon the trial calendar, the party may so  
10 amend it at any time within 20 days after it is served. Otherwise a party may amend the  
11 party's pleading only by leave of court or by written consent of the adverse party; and  
12 leave shall be freely given when justice so requires.

13 As N.R.C.P. 15(a) states, "leave shall be freely given when justice so requires." A motion for leave to  
14 amend is clearly within the discretion of the trial court. Adamson v. Bowker, 85 Nev. 115, 120, 450  
15 P.2d 796, 800 (1969); see also Connell v. Carl's Air Condition, 97 Nev. 436, 439, 634 P.2d 673, 675  
16 (1981) (citing Adamson v. Bowker, 85 Nev. 115, 450 P.2d 796 (1969)) (A motion for leave to amend  
17 pursuant to NRCP 15(a) is addressed to the sound discretion of the trial court, and its action will not  
18 be held to be error in the absence of a showing of abuse of discretion).

19 The Nevada Supreme Court has held "that in the absence of any apparent or declared  
20 reason—such as undue delay, bad faith, or dilatory motive on the part of the movant—the leave sought  
21 should be freely given." Stephens v. Southern Nev. Music Co., 89 Nev. 104, 105-106 (1973) (citing  
22 Foman v. Davis, 371 U.S. 178 (1962)).

23 \\\

24 \\\

25 \\\

26 \\\

27 \\\

28 \\\

IV.

CONCLUSION

For the foregoing reasons, Acres Motion to Dismiss should be denied.

DATED this 11<sup>th</sup> day of January, 2016.

SMITH & SHAPIRO, PLLC

/s/ James E. Shapiro  
James E. Shapiro, Esq.  
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Sheldon A. Herbert, Esq.  
Nevada Bar No. 5988  
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*Attorneys for Plaintiff/Defendant  
in Intervention/Counter-  
claimant in Intervention*

CERTIFICATE OF SERVICE

I hereby certify that I am an employee of SMITH & SHAPIRO, PLLC, and that on the 11<sup>th</sup> day of January, 2016, I served a true and correct copy of the forgoing **OPPOSITION TO MOTION TO DISMISS COUNTERCLAIM; OR, IN THE ALTERNATIVE MOTION FOR LEAVE TO AMEND**, by e-serving a copy on all parties registered and listed as Service Recipients in Wiznet, the Court's on-line, electronic filing website, pursuant to Administrative Order 14-2, entered by the Chief Judge, Jennifer Togliatti, on May 9, 2014.

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

# EXHIBIT 1

# EXHIBIT 1

  
CLERK OF THE COURT

1 COMP  
2 MARK E. FERRARIO, ESQ.  
3 Nevada Bar No. 1625  
4 GREENBERG TRAUIG, LLP  
5 3773 Howard Hughes Parkway  
6 Suite 400 North  
7 Las Vegas, Nevada 89169  
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11 [cowdent@gtlaw.com](mailto:cowdent@gtlaw.com)  
12 *Counsel for Plaintiffs/Petitioners Acres*  
13 *Medical LLC, and Acres Cultivation, LLC*

14 DISTRICT COURT

15 CLARK COUNTY, NEVADA

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

20 Plaintiffs/Petitioners,

21 - vs. -

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

25 Defendant/ Respondent;

26 And

27 NLVG, LLC; NU LEAF CULTIVATION,  
28 LLC; THE MEDMEN OF NEVADA 2, LLC;  
CANNABIS RENAISSANCE GROUP, LLC;  
MM DEVELOPMENT, LLC; NYE  
NATURAL MEDICINAL SOLUTIONS, LLC;  
GREENLIFE PRODUCTIONS, LLC; GWGA,  
LLC; NEVADA NATURAL MEDICINES,  
LLC; WELLNESS ORCHARDS OF  
NEVADA, LLC; NCMN, 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; 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

**COMPLAINT FOR DECLARATORY AND  
INJUNCTIVE RELIEF AND/OR PETITION  
FOR WRIT OF CERTIORARI AND  
MANDAMUS**

Exempt from Arbitration:  
Action for Declaratory Relief & Equitable  
Relief

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LV 420451699v1

COME NOW, Acres Medical, LLC and Acres Cultivation, LLC, by and through their legal counsel, the law firm GREENBERG TRAURIG, LLP, and as their Complaint for Declaratory Relief and Petition for Writs of Mandamus and/or Certiorari, allege as follows:

### GENERAL ALLEGATIONS

#### THE PARTIES

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

2. Plaintiff/Petitioner Acres Cultivation, LLC ("Acres Cultivation") is a Nevada limited liability company, duly authorized to conduct business in the State of Nevada.

3. Defendant/Respondent Nevada Department of Health and 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 Petitioners.

4. Defendant/Real Party in Interest NLVG, LLC is a Nevada limited liability company, and was an applicant for a medical marijuana registration certificate to own and operate a cultivation medical marijuana establishment ("MME") in the City of Las Vegas whose ranking among all such applications might be affected by the relief sought herein.

5. Defendant/Real Party in Interest Nu Leaf Cultivation, LLC is a Nevada limited liability company, and was an applicant for a medical marijuana registration certificate to own and operate a cultivation MME in the City of Las Vegas whose ranking among all such applications might be affected by the relief sought herein.

6. Defendant/Real Party in Interest The MedMen of Nevada 2, LLC is a Nevada limited liability company, and was an applicant for medical marijuana registration certificate to own and operate a cultivation MME and a dispensary MME in the City of Las Vegas whose rankings among all such applications might be affected by the relief sought herein.

7. Defendant/Real Party in Interest Cannabis Renaissance Group, LLC is a Nevada limited liability company, and was an applicant for medical marijuana registration certificate to own

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1 and operate a cultivation MME and a dispensary MME in the City of Las Vegas whose rankings  
2 among all such applications might be affected by the relief sought herein.

3 8. On information and belief, Defendants/Real Parties in Interest Doe Entities 1-3 are  
4 each Nevada entities who submitted applications for medical marijuana registration certificates to  
5 own and operate cultivation MMEs in the City of Las Vegas, and whose ranking among such  
6 applicants may be affected by the relief sought herein. Because of the Division's anonymous scoring  
7 and ranking process, the identities of the real parties in interest Doe Entities 1-3 are unknown to  
8 Plaintiffs/Petitioners at this time.

9 9. Defendant/Real Party in Interest MM Development, LLC, is a Nevada limited  
10 liability company, and was an applicant for a medical marijuana registration certificate to own and  
11 operate a cultivation MME in Nye County whose ranking among all such applications might be  
12 affected by the relief sought herein.

13 10. Defendant/Real Party in Interest Nye Natural Medicinal Solutions, LLC is a Nevada  
14 limited liability company, and was an applicant for a medical marijuana registration certificate to  
15 own and operate a cultivation MME in Nye County whose ranking among all such applications  
16 might be affected by the relief sought herein.

17 11. Defendant/Real Party in Interest GreenLife Production, LLC is a Nevada limited  
18 liability company, and was an applicant for a medical marijuana registration certificate to own and  
19 operate a cultivation MME in Nye County whose ranking among all such applications might be  
20 affected by the relief sought herein.

21 12. Defendant/Real Party in Interest GWGA, LLC is a Nevada limited liability company,  
22 and was an applicant for a medical marijuana registration certificate to own and operate a  
23 cultivation MME in Nye County whose ranking among all such applications might be affected by  
24 the relief sought herein.

25 13. Defendant/Real Party in Interest Nevada Natural Medicines, LLC is a Nevada  
26 limited liability company, and was an applicant for a medical marijuana registration certificate to  
27 own and operate a cultivation MME in Nye County whose ranking among all such applications  
28 might be affected by the relief sought herein.

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14. Defendant/Real Party in Interest Wellness Orchards of Nevada, LLC is a Nevada limited liability company, and was an applicant for a medical marijuana registration certificate to own and operate a cultivation MME in Nye County whose ranking among all such applications might be affected by the relief sought herein.

15. Defendant/Real Party in Interest NCMM, LLC is a Nevada limited liability company, and was an applicant for a medical marijuana registration certificate to own and operate a cultivation MME in Nye County whose ranking among all such applications might be affected by the relief sought herein.

16. On information and belief, Defendant/Real Party in Interest Roe Entities 1-4 were each Nevada entities who submitted applications for medical marijuana registration certificates to own and operate cultivation MMEs in Nye County, and whose ranking among such applicants may be affected by the relief sought herein. Because of the Division's anonymous scoring and ranking process, the identities of the Real Parties in Interest Roe Entities 1-4 is unknown to Plaintiffs/Petitioners at this time.

17. Defendant/Real Party in Interest Samantha's Remedies is a business entity of unknown type or origin, and was an applicant for a medical marijuana registration certificate to own and operate a dispensary MME in the City of Las Vegas whose ranking among all such applications might be affected by the relief sought herein.

18. Defendant/Real Party in Interest Nevada, Cares, LLC is a Nevada limited liability company, was an applicant for a medical marijuana registration certificate to own and operate a dispensary MME in the City of Las Vegas whose ranking among all such applications might be affected by the relief sought herein.

19. Defendant/Real Party in Interest THC Nevada, LLC is a Nevada limited liability company, and was an applicant for a medical marijuana registration certificate to own and operate a dispensary MME in the City of Las Vegas whose ranking among all such applications might be affected by the relief sought herein.

20. Defendant/Real Party in Interest Red Rock Wellness, LLC, is a Nevada limited liability company, and was an applicant for a medical marijuana registration certificate to own and

1 operate a dispensary MME in the City of Las Vegas whose ranking among all such applications  
2 might be affected by the relief sought herein.

3 21. Defendant/Real Party in Interest QualCan of Las Vegas, LLC is a Nevada limited  
4 liability company, and was an applicant for a medical marijuana registration certificate to own and  
5 operate a dispensary MME in the City of Las Vegas whose ranking among all such applications  
6 might be affected by the relief sought herein.

7 22. Defendant/Real Party in Interest Physis One LLC is a Nevada limited liability  
8 company, and was an applicant for a medical marijuana registration certificate to own and operate a  
9 dispensary MME in the City of Las Vegas whose ranking among all such applications might be  
10 affected by the relief sought herein.

11 23. Defendant/Real Party in Interest Buffalo Center Medical Advocates is a Nevada  
12 limited liability company, and was an applicant for a medical marijuana registration certificate to  
13 own and operate a dispensary MME in the City of Las Vegas whose ranking among all such  
14 applications might be affected by the relief sought herein.

15 24. Defendant/Real Party in Interest Primo Dispensary is a Nevada corporation, and an  
16 was applicant for a medical marijuana registration certificate to own and operate a dispensary  
17 MME in the City of Las Vegas whose ranking among all such applications might be affected by the  
18 relief sought herein.

19 25. On information and belief Defendants/Real Parties in Interest Poe Entities 1-14 are  
20 each applicants for a medical marijuana registration certificate to own and operate a dispensary  
21 MME in the City of Las Vegas whose ranking among all such applications might be affected by the  
22 relief sought herein. Because of the Division's anonymous scoring and ranking process, the  
23 identities of the real Parties in Interest Poe Entities 1-14 are unknown to Plaintiffs/Petitioners at this  
24 time.

25 26. Pursuant to NRS 453A.322(2), all prospective owners and operators of MMEs were  
26 required to submit an application for a registration certificate to the Division.

1           27. On or about August 14, 2014, Acres Medical submitted to the Division three  
2 applications for medical marijuana registration certificates to own and operate medical marijuana  
3 facilities as follows:

4           a. Application CO12, to own and operate a medical marijuana cultivation facility in Las  
5 Vega, NV;

6           b. Application PO11 – to own and operate a medical marijuana production facility in  
7 Las Vegas, NV, and

8           c. Application DO11, to own and operate a medical marijuana dispensary facility in  
9 Las Vega, NV.

10          28. On the same date, Acres Cultivation submitted to the Division two applications for  
11 medical marijuana registration certificates to own and operate medical marijuana facilities, as  
12 follows:

13           a. Application CO13, to own and operate a medical marijuana cultivation  
14 facility in Armargosa Valley, Nye County, NV;

15           b. Application PO12 – to own and operate a medical marijuana production  
16 facility in Armargosa Valley, Nye County, NV.

17          29. At the time of these submittals, which were made by hand delivery by Petitioner's  
18 representative Paris Balaouras, the Division confirmed that all portions of each application were  
19 included in the submittals.

20          30. In reviewing applications, the Division is required to rank the applications based on,  
21 as relevant here, the contents of the application concerning specific areas of inquiry.

22          31. Among such areas of inquiry is "Organizations Structure":

23           The description of the proposed organizational structure of the proposed medical  
24 marijuana establishment and information concerning each owner, officer and board  
25 member of the proposed medical marijuana establishment, including, without  
26 limitation, the information provided pursuant to subsections 5 and 6 of NAC  
27 453A.306.

28           NAC 453A.310(1)(d).

1           32.     The Division issued the rankings of the all applicants on November 3, 2014. Only  
2     the score of those who had opted to allow for publication of scoring were released to the general  
3     public.

4           33.     The Division used a point system, assigning a maximum number of points to each of  
5     the criteria on which applications would be ranked.

6           34.     The maximum number of points possible for the "Organizational Structure" criterion  
7     was 50.

8           35.     In the "Organizational Structure" category, the average score received by an  
9     applicant for a Registration Certificate for a Cultivation MME was 33.37.

10          36.     In the "Organizational Structure" category, the average score received by an  
11     applicant for a Registration Certificate for a Production MME was 35.69.

12          37.     In the "Organizational Structure" category, the average score received by an  
13     applicant for a Registration Certificate for a Dispensary MME was 34.31.

14          38.     Plaintiffs/Petitioners received their scores on January 9, 2014, in a personal meeting  
15     between representatives of petitioners and the Division's Medical Marijuana Program Supervisor,  
16     Richard Willis.

17          39.     As relevant here, in their various applications, Petitioners received the following  
18     scores for the Organizational Structure category:

19                   Acres Medical:	Acres Cultivation
20                   C012 - 0	C013 - 0
21                   P011 - 41.3	P012 - 41.3
22                   D011 - 0	

23     As can be seen, the Plaintiffs/Petitioners' information regarding Organizational Structure, which  
24     was identical in all applications, received a score well above the average score for any type of MME  
25     in the Production applications, but was not credited to Plaintiffs/Petitioners Cultivation and  
26     Dispensary applications.

1           40.     As a result of the omission the score for the Organizational Structure in Applications  
2 C012, C013, and D011, Petitioners' overall scores in those three applications was unfairly reduced  
3 by 41.3 points.

4           41.     As a result of the omission of the Organizational Structure in Applications C012,  
5 C013, and D011, these applications were ranked lower than other applicants whose overall scores  
6 were lower than Petitioners' accurate scores for the applications.

7           42.     As a result of the inaccurate lower rankings, Petitioners are placed at a disadvantage  
8 when applying for local jurisdiction approvals for their businesses.

9           43.     In January 2015, in a personal meeting with Mr. Willis, Petitioner's representatives,  
10 Paris Balaouras and Jay Matos advised Mr. Willis of the apparent error in the scoring of  
11 Applications.

12           44.     Mr. Willis advised Petitioners to write a letter to the Division to request the matter be  
13 corrected.

14           45.     On January 20, 2015, Petitioner's, through counsel, sent a letter to the Division  
15 advising it of the apparent error in the score.

16           46.     The Division responded with inaccurate information.

17           47.     On February 5, 2015, Paris Balaouras and Jay Matos again met personally with Mr.  
18 Willis and advised him that the Division's response to the January 20, 2015 letter was inaccurate.  
19 At that meeting, in the presence of Petitioners' representatives and another employee of the  
20 Division, Mr. Willis acknowledged that the 0 scores had been an error committed by the Division.  
21 Mr. Willis stated that he would advise the Division to correct the error, and that Petitioners would  
22 receive a copy of the correction.

23           48.     No such correction was received.

24           49.     On February 25, 2015, Paris Balaouras and Jay Matos again met personally with Mr.  
25 Willis, who on this occasion promised that Petitioners would receive a correction by March 16,  
26 2015.

27           50.     No such correction has been forthcoming.  
28

1 51. The Division had a duty under NAC 453A.310 to accurately rank the applicants for  
2 MMEs.

3 52. The Division, through the Medical Marijuana Program Supervisor, acknowledged  
4 that Petitioners' rankings were inaccurate due to the omission of the score for Organizational  
5 Structure from the total scores in Applications C012, C013, and D011.

53. The Division has refused to take action to correct its error, and therefore, has refused to take an action it is required by law to perform, i.e., to accurately rank applicants for MMEs.

**FIRST CAUSE OF ACTION  
DECLARATORY RELIEF**

10 54. Plaintiffs/Petitioners re-allege and incorporate by reference the allegations contained  
11 in paragraphs 1-31.

12 55. Plaintiffs/Petitioners' rights are affected by the provisions of NRS 453A.24 010 *et*  
13 *seq* and NAC 453A.24 010, *et seq*.

14           56.     The Division's actions have created a justiciable controversy with respect to the  
15 construction, interpretation, and application of NRS 453A.24 010 *et seq* and NAC 453A.24 010, *et*  
16 *seq.* to Plaintiffs/Petitioners.

17 57. Plaintiffs/Petitioners are entitled to a declaration from this Court that  
18 Plaintiffs/Petitioners are entitled to accurate scores and rankings for Applications C012, C013, and  
19 D011.

## SECOND CAUSE OF ACTION WRIT OF CERTIORARI

22. 58. Plaintiffs/Petitioners re-allege and incorporate by reference the allegations contained in paragraphs 1-35.

24 59. The Division, in refusing to correct its error, has exceeded its jurisdiction by issuing rankings of applications that do not reflect the actual scores properly attributed to the applicants.

60. No provision in NRS 453A or NAC 453A provides for judicial review of the Division's action, and accordingly, Petitioners have no plain, speedy and adequate remedy for the Division's improper actions.

LV 420451699v1

61. Based on the declarations attached hereto as Exhibits A and B, Plaintiffs/Petitioners request a writ of certiorari regarding the Division's scoring and ranking of applicants for MMEs for local jurisdictions City of Las Vegas and Nye County.

**THIRD CAUSE OF ACTION  
WRIT OF MANDAMUS**

63. Plaintiffs/Petitioners re-allege and incorporate by reference the allegations contained in paragraphs 1-40.

## PRAYER FOR RELIEF

Wherefore, Plaintiffs/Petitioners pray for relief as follows:

1. For declarations that:

(a) Application C012 should have received a score of 41.3 out of 50 for the Organizational Structure criterion, and therefore, should have received a total score of 170.62, and should be ranked according to that score;

(b) Application C013 should have received a score of 41.3 out of 50 for the Organizational Structure criterion, and therefore, should have received a total score of 166.28, and should be ranked according to that score; and

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1 (c) Application D012 should have received a score of 41.3 out of 50 for the  
2 Organizational Structure criterion, and therefore, should have received a total score of 167.3, and  
3 should be ranked according to that score.

4 2. For a writ of certiorari ordering review of the Division's , scoring, and  
5 ranking of applications for Dispensary and Cultivation Certificates in the City of Las Vegas and for  
6 Cultivation Certifications in Nye County.

7 3. For a writ of mandamus ordering the Division to comply with its obligation to score  
8 and rank Applications C012, C013, and D011 by correcting the erroneous omission of the  
9 Organizational Structure score, and re-ranking the Applications accordingly.

10 4. For such other and further relief as may be deemed just and proper by this Court.

11 DATED this 9<sup>th</sup> day of June 2015.

12 GREENBERG TRAURIG

13 By: /s/ Mark E. Ferrario

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

15 3773 Howard Hughes Parkway, Suite 400 North  
16 Las Vegas, Nevada 89169

17 *Counsel for Plaintiffs/Petitioners Acres Medical LLC, and*  
18 *Acres Cultivation, LLC*

---

# EXHIBIT A

---

1 MARK E. FERRARIO, ESQ.  
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6 Counsel for Plaintiffs/Petitioners Acres  
Medical LLC, and Acres Cultivation, LLC

7 DISTRICT COURT

8 CLARK COUNTY, NEVADA

9 ACRES MEDICAL, LLC, a Nevada limited  
liability company; ACRES CULTIVATION,  
10 LLC, a Nevada limited liability company,

11 Plaintiffs/Petitioners,

12 - vs. -

13 NEVADA DEPARTMENT OF HEALTH  
AND SERVICES, DIVISION OF PUBLIC  
14 AND BEHAVIORAL HEALTH,

15 Defendant/ Respondent;

16 And

17 NLVG; NU LEAF CULTIVATION, LLCL  
THE MEDMEN OF NEVADA 2, LLC;  
18 CANNABIS RENAISSANCE GROUP, LLC.;  
DOE ENTITIES 1-5; MM DEVELOPMENT,  
19 LLC; NYE NATURAL MEDICINAL  
SOLUTIONS, LLC, GREENLIFE  
20 PRODUCTIONS, LLC, GWGA, LLC,  
NEVADA NATURAL MEDICINES, LLC,  
21 WELLNESS ORCHARDS OF NEVADA,  
LLC, NCMN, LLLC, ACC INDUSTRIES,  
22 INC., SAMANTHA'S REMEDIES;  
NEVADA, CARES, LLC; THC NEVADA,  
23 LLC, RED ROCK WELLNESS, LLC,  
QUALCAN OF LAS VEGAS, LLC, PHYSIS  
24 ONE LLC; BUFFALO CENTER MEDICAL  
ADVOCATES; PRIMO DISPENSARY; DOE  
25 ENTITIES 1-5; ROE ENTITIES 1-4, POE  
26 ENTITIES 1-16.

27 Defendants/  
Real Parties in Interest.  
28

Case No.

Dept. No.

DECLARATION OF PARIS BALAOURAS

1 I, Paris Balaouras, declare as follows:

2 1. I am the Vice President of Acres Medical, LLC and Acres Cultivation, LLC.  
3 (hereafter, "Petitioners") The facts stated herein are within my personal knowledge and if called  
4 upon to testify I can truthfully and competently do so as to all matters herein. This declaration is  
5 submitted in support of the Complaint for Declaratory Relief and Petition for Writs of Certiorari  
6 and/or Mandamus, as captioned above.

7 2. On or about August 14, 2014, I traveled to Carson City, Nevada in order to  
8 deliver the three applications by Acres Medical, LLC and two Applications by Acres Cultivation  
9 for medical marijuana registration certificates to own and operate medical marijuana facilities.

10 3. Applications by Acres Medical, LLC were as follows:

- 11 a) Application CO12, to own and operate a medical marijuana cultivation facility  
12 in Las Vega, NV;  
13 b) Application PO11 -- to own and operate a medical marijuana production facility  
14 in Las Vegas, NV, and  
15 c) Application DO11, to own and operate a medical marijuana dispensary facility  
16 in Las Vega, NV.

17 4. Applications by Acres Cultivation, LLC were as follows:

- 18 a) Application CO13, to own and operate a medical marijuana cultivation facility  
19 in Amargosa Valley, NV;  
20 b) Application PO12 -- to own and operate a medical marijuana production  
21 facility in Amargosa Valley, NV; and

22 5. The information that concerned the organization structure for Petitioners was  
23 identical in each application.

24 6. At the time of delivery, Division personnel opened the box for each application  
25 and verified the required contents of such applications had been included.

26 7. In January 2015, Petitioners discovered that the Division had awarded to  
27 Petitioners a score of 41.3 out of a possible 50 for "organizational structure for Applications  
28 P011 and P012.

1  
2 8. At the same time, Petitioners discovered that the Division had awarded Petitioners a  
3 score of 0 out of a possible 50 for "organizational structure" for Applications C011, C013, and  
4 D011.

5 9. In January 2015, Jay Matos and I attended a meeting with the Division's Medical  
6 Marijuana Program Supervisor, Richard Willis, at which time Mr. Willis was informed of the the  
7 error in scoring.

8 10. Mr. Willis advised us to write a letter to the Division to request the matter be  
9 corrected.

10 11. On January 20, 2015, Petitioners, through counsel, sent a letter to the Division  
11 advising it of the apparent error in the score.

12 12. The Division responded to this request with inaccurate information.

13 13. On February 6, 2015, Jay Matos and I again met personally with Mr. Willis and  
14 advised him that the Division's response to the January 20, 2015 letter was inaccurate. At that  
15 meeting, in the presence of a Division employee named Cindy, Mr. Matos and I, Mr. Willis  
16 acknowledged that the 0 scores had been an error committed by the Division. Mr. Willis stated  
17 that he would advise the Division to correct the error, and that Petitioners would receive a copy  
18 of the correction.

19 14. Mr. Matos and I again met with Mr. Willis on February 25, 2015, and again were  
20 promised a response from the Division.

21 15. The error has not been corrected.

22 16. As a result of the inaccurate lower rankings, Petitioners are placed at a  
23 disadvantage when applying for local jurisdiction approvals for their businesses.

24 I declare under penalty of perjury under the laws of the United States of America that the  
25 foregoing is true and correct.

26 Executed within the State of Nevada; June 8<sup>th</sup>, 2015

27   
28 PARIS BALAOURAS

---

## EXHIBIT B

---

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10 ~~mark.ferrario@gtlaw.com~~

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

13 **DISTRICT COURT**

14 **CLARK COUNTY, NEVADA**

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

19 Plaintiffs/Petitioners,

20 - vs. -

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

24 Defendant/ Respondent;

25 And

26 NLVG; NU LEAF CULTIVATION, LLCL  
27 THE MEDMEN OF NEVADA 2, LLC;  
28 CANNABIS RENAISSANCE GROUP,  
LLC.; DOE ENTITIES 1-5; MM  
DEVELOPMENT, LLC; NYE NATURAL  
MEDICINAL SOLUTIONS, LLC,  
GREENLIFE PRODUCTIONS, LLC,  
GWGA, LLC, NEVADA NATURAL  
MEDICINES, LLC, WELLNESS  
ORCHARDS OF NEVADA, LLC, NCMN,  
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; PRIMO DISPENSARY;  
DOE ENTITIES 1-5; ROE ENTITIES 1-4,  
POE ENTITIES 1-16.

Defendants/  
Real Parties in Interest.

Case No.

Dept. No.

**DECLARATION OF JAY MATOS**

1 I, Jay Matos, declare as follows:

2  
3 1. I am an employee of Acres Medical, LLC and Acres Cultivation, LLC. (hereafter,  
4 "Petitioners") The facts stated herein are within my personal knowledge and if called upon to testify  
5 I can truthfully and competently do so as to all matters herein. This declaration is submitted in  
6 support of the Complaint for Declaratory Relief and Petition for Writs of Certiorari and/or  
7 Mandamus, as captioned above.

8 2. On August 14, 2014, Petitioners delivered three applications by Acres Medical, LLC  
9 and two Applications by Acres Cultivation for medical marijuana registration certificates to own and  
10 operate medical marijuana facilities.

11 3. Applications by Acres Medical, LLC were as follows:

- 12 a) Application CO12, to own and operate a medical marijuana cultivation facility in  
13 Las Vega, NV;  
14 b) Application PO11 – to own and operate a medical marijuana production facility in  
15 Las Vegas, NV, and  
16 c) Application DO11, to own and operate a medical marijuana dispensary facility in  
17 Las Vega, NV.

18 4. Applications by Acres Cultivation, LLC were as follows:

- 19 a) Application CO13, to own and operate a medical marijuana cultivation facility in  
20 Amargosa Valley, NV;  
21 b) Application PO12 – to own and operate a medical marijuana production facility in  
22 Amargosa Valley, NV, and

23 5. The information that concerned the organization structure for Petitioners was  
24 identical in each application.

25 6. In January 2015, Petitioners discovered that the Division had awarded to Petitioners a  
26 score of 41.3 out of a possible 50 for "organizational structure for Applications PO11 and PO12.

27 7. At the same time, Petitions discovered that the Division had awarded Petitioners a  
28 score of 0 out of a possible 50 for "organizational structure" for Applications CO11, CO13, and  
DO11.

1  
2 8. In January 2015, Paris Balaouras and attended a meeting with the Division's Medical  
3 Marijuana Program Supervisor, Richard Willis, at which time Mr. Willis was informed of the the  
4 error in scoring.

5 9. Mr. Willis advised us to write a letter to the Division to request the matter be  
6 corrected.

7 10. On January 20, 2015, Petitioners, through counsel, sent a letter to the Division  
8 advising it of the apparent error in the score.

9 11. The Division responded to this request with inaccurate information.

10 12. On February 6, 2015, Paris Balaouras and I again met personally with Mr. Willis and  
11 advised him that the Division's response to the January 20, 2015 letter was inaccurate. At that  
12 meeting, in the presence of a Division employee named Cindy, Mr. Matos and I, Mr. Willis  
13 acknowledged that the 0 scores had been an error committed by the Division. Mr. Willis stated that  
14 he would advise the Division to correct the error, and that Petitioners would receive a copy of the  
15 correction.

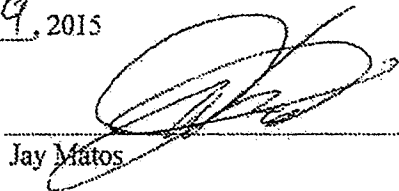
16 13. Mr. Balaouras and I again met with Mr. Willis on February 25, 2015, and again were  
17 promised a response from the Division.

18 14. The error has not been corrected.

19 15. As a result of the inaccurate lower rankings, Petitioners are placed at a disadvantage  
20 when applying for local jurisdiction approvals for their businesses.

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

23 Executed within the State of Nevada: June 9, 2015

24  
25   
26 Jay Matos  
27  
28

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

8 DISTRICT COURT  
9 CLARK COUNTY, NEVADA

10 ACRES MEDICAL, LLC, a Nevada limited  
11 liability company; and ACRES  
12 CULTIVATION, LLC, a Nevada limited  
13 liability company,

14 Plaintiffs/Petitioners,

15 - vs. -

16 NEVADA DEPARTMENT OF HEALTH  
17 AND SERVICES, DIVISION OF PUBLIC  
18 AND BEHAVIORAL HEALTH,

19 Defendant/ Respondent;

20 And

21 NLVG, LLC; NU LEAF CULTIVATION,  
22 LLC; THE MEDMEN OF NEVADA 2, LLC;  
23 CANNABIS RENAISSANCE GROUP, LLC;  
24 MM DEVELOPMENT, LLC; NYE  
25 NATURAL MEDICINAL SOLUTIONS, LLC;  
26 GREENLIFE PRODUCTIONS, LLC; GWGA,  
27 LLC; NEVADA NATURAL MEDICINES,  
28 LLC; WELLNESS ORCHARDS OF  
NEVADA, LLC; NCMN, 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; 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

INITIAL APPEARANCE FEE DISCLOSURE

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1 Pursuant to NRS Chapter 19, as amended by Assembly Bill 65, filing fees are submitted for  
2 the parties appearing in the above-entitled action as indicated below:

3 *Plaintiff/Petitioner Acres Medical LLC;* \$270.00

4 *Plaintiff/Petitioner Acres Cultivation, LLC* \$ 30.00

5 **TOTAL** **\$300.00**

6 DATED this 9<sup>th</sup> day of June 2015.

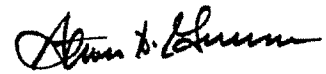
7 GREENBERG TRAURIG

8 By: /s/ Mark E. Ferrario

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



CLERK OF THE COURT

1 **OPP**

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

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11 *Counsel for Plaintiff in Intervention Acres Medical, LLC*

12 **DISTRICT COURT**

13 **CLARK COUNTY, NEVADA**

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

16 **Plaintiff,**

17 v.

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

**Defendants.**

ACRES MEDICAL, LLC,

**Plaintiff in Intervention,**

v.

STATE OF NEVADA, DIVISION OF  
PUBLIC AND BEHAVIORAL HEALTH OF  
THE DEPARTMENT OF HEALTH AND  
HUMAN SERVICES; CITY OF LAS VEGAS,  
a municipal corporation and political

Case No.: A710597

Dept. No.: XX

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

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

5  
6 Defendants in Intervention  
7

8 COMES NOW, Plaintiff in Intervention, Acres Medical, LLC ("Acres"), by and through its  
9 attorneys of record, the law firm of Greenberg Traurig, LLP, and hereby submits this Opposition to  
10 Plaintiff's Motion to Alter or Amend Judgment; or, in the Alternative Motion for Partial  
11 Reconsideration.

12 This Opposition is based upon the attached memorandum of points and authorities, the  
13 papers, pleadings and records contained in this Court's file, and the evidence and argument of  
14 counsel to be presented at the hearing on the Motion.

15 DATED this 11th day of January, 2016.

16 GREENBERG TRAURIG, LLP

17 By: /s/ Moorea L. Katz

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

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

20 3773 Howard Hughes Parkway, Suite 400 North  
21 Las Vegas, Nevada 89169

22 Counsel for Plaintiff in Intervention Acres Medical, LLC  
23  
24  
25  
26  
27  
28

**MEMORANDUM OF POINTS AND AUTHORITIES**

**I. INTRODUCTION**

GB Sciences Nevada, LLC (“GB Sciences”) requests the Court reconsider its December 14, 2015 Order for three reasons: First, GB Sciences claims it was deprived of a fair opportunity to be heard when the Court ordered the Division to issue a provisional certificate to Acres. Second, GB Sciences claims that because it was not made a party to the Acres Lawsuit,<sup>1</sup> it cannot be bound by Judge Cadish’s Order. Finally, GB Sciences argues that Acres is equitably estopped from receiving the provisional certificate. As explained below, none of these arguments have merit and GB Sciences’ Motion for Reconsideration should be denied.

GB Sciences has been afforded multiple opportunities to challenge Acres’ intervention in this matter as well as Acres’ entitlement to the provisional certificate incorrectly awarded to Nuleaf CLV Dispensary, LLC (“Nuleaf”). This opportunity was first available when Acres filed its Motion to Intervene, a motion GB Sciences did not oppose. Additionally, GB Sciences has filed a counterclaim against Acres and has been given the opportunity to brief and litigate any claims it has against Acres. It has thus received all process it is due.

Contrary to GB Sciences’ assertions, Acres is not trying to “enforce” the Acres Order against GB Sciences. Instead, Acres enforced Judge Cadish’s Order against the Division, a party to the Acres Lawsuit, when it requested the Division correct the ministerial error in the scoring of Acres’ Medical Marijuana Establishment (“MME”) application. The Division complied with Judge Cadish’s Order and did not seek to challenge or appeal the ruling. Acres presents to this case not seeking to “enforce” Judge Cadish’s Order, but as the rightful recipient of the relief that GB Sciences has sought against the Division. Indeed, the relief GB Sciences seeks by way of this lawsuit is relief it claims entitlement to as the thirteenth-ranked applicant in the City of Las Vegas. However, GB Sciences was never correctly ranked thirteenth applicant in the City of Las Vegas, which was clear by the time this Court was ruling on GB Sciences’ Motion for Summary Judgment.

---

<sup>1</sup> The “Acres Lawsuit” refers to the proceedings in *Acres Medical, LLC v. Department of Health and Human Services, division of Public and Behavioral Health, et al.*, Case No. A-15-719637-W. See Motion for Reconsideration at 3. The “Acres Order” or “Judge Cadish’s Order” refers to the final order in the Acres Lawsuit, which is attached as Exhibit 1 to the Motion for Reconsideration.

1 The principles of claim and issue preclusion do not apply because Acres is not requesting  
2 that GB Sciences take or refrain from taking any action on the basis of Judge Cadish's Order and is  
3 therefore not seeking to enforce the Order *against* GB Sciences. GB Sciences' argument appears to  
4 be based on the ludicrous proposition that an applicant cannot seek relief from a state regulatory  
5 agency because other applicants have pending applications for the same type of license. Acres  
6 absolutely had the ability to seek relief from the Division when the Division *admitted* a discrepancy  
7 in its scoring of Acres' application.

8 Finally, it is disingenuous for GB Sciences to complain that Acres failed to join GB  
9 Sciences as a party to the Acres Lawsuit when GB Sciences similarly failed to join Acres to this  
10 action. That is especially true where the relief sought in the Acres Lawsuit was simply the re-  
11 ranking of Acres' application based on a ministerial error and the relief sought by GB Sciences in  
12 this litigation was the award of a provisional certificate based on GB Sciences' ranking. Moreover,  
13 GB Sciences has not disputed that it was aware of the Acres Lawsuit or that it attended the  
14 evidentiary hearing on Acres' Petition for Mandamus held on September 29, 2015.

15 GB Sciences has been given a full and fair opportunity to litigate its claims against Acres.  
16 Acres is the only party entitled to the provisional certificate because had the Division complied with  
17 its clear and unambiguous statutory duties, Acres is the party that should have been given the  
18 certificate on November 3, 2014. Despite Nuleaf and GB Sciences' attempts to distort the issues and  
19 convince the Court that there are numerous complex and novel issues to address, this Court reached  
20 the right result in its December 14, 2015 Order and GB Sciences' Motion for Reconsideration  
21 should be denied.

## 22 II. LEGAL ARGUMENT

23 The Court should deny GB Sciences' Motion for Reconsideration because GB Sciences has  
24 not demonstrated that the Court's December Order was clearly erroneous and has therefore not met  
25 the standard for reconsideration. *See* Motion for Reconsideration (citing *Masonry and Tile*  
26 *Contrators Ass'n of S. Nevada v. Jolley, Urga & Wirth, Ltd.*, 941 P.2d 486, 113 Nev. 737 (1997)).  
27 Specifically, the Court should deny GB Sciences' Motion because (a) GB Sciences has not been  
28 deprived of due process where it has had a full and fair opportunity to be heard on its claims against

1 Acres; (b) issue and claim preclusion principles are inapplicable because Acres is not seeking to  
2 enforce Judge Cadish's Order *against* GB Sciences; and (c) Acres is not barred by the doctrine of  
3 equitable estoppel because it timely moved to intervene in these proceedings, as already determined  
4 by the Court.

5 *a. GB Sciences Has Received Due Process*

6 GB Sciences has not been deprived of due process where it was afforded the opportunity to  
7 brief and argue Acres' entitlement to the provisional certificate on multiple occasions.

8 GB Sciences claims it was deprived of due process when the Court awarded the provisional  
9 certificate to Acres even though Acres had not yet sought such relief and the parties had not briefed  
10 or argued Acres' entitlement to the certificate. Motion for Reconsideration at 4-5, 10. However, GB  
11 Sciences ignores that the parties had briefed Acres' entitlement to the provisional certificate in the  
12 briefing on Acres' Motion to Intervene, which was argued at the same time as the cross motions for  
13 summary judgment. Indeed, in the briefing on Acres' Motion to Intervene, Nuleaf argued that  
14 Acres' Motion was untimely and Acres should have moved to intervene earlier in the proceedings,  
15 an argument that the Court ultimately rejected when it allowed Acres' intervention. Moreover, at  
16 the hearing on the Motion to Intervene, the Division appeared to agree that Acres, not GB Sciences,  
17 was the thirteenth ranked applicant in the City of Las Vegas.

18 GB contends that Acres' Complaint in Intervention is where Acres "*for the first time*"  
19 asserted a senior position *vis-à-vis* GB Sciences. However, in the Motion to Intervene, Acres  
20 clearly asserted that it was ranked thirteenth and was entitled to the provisional certificate  
21 incorrectly awarded to Nuleaf. Specifically, Acres argued:

22 [E]ven if GB Sciences opposed the Motion [to Intervene], it could not  
23 claim prejudice. The only prejudice GB Sciences could claim is that  
24 Acres is ranked ahead of GB Sciences and, therefore, will receive the  
25 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 13<sup>th</sup> and therefore ahead of GB Sciences.

26 Acres Medical, LLC's Motion to Intervene as a Matter of  
27 Right Pursuant to NRCP 24 on an Order Shortening Time  
28 (filed Oct. 19, 2015) ("Motion to Intervene"), at 8 (emphasis  
added).

1 Acres' claim to the Provisional License that is the subject of this  
2 action is superior to GB Sciences'. To preclude Acres from  
3 intervening in this action to protect its rights would result in  
4 irreparable prejudice because Acres is next in line to obtain a  
5 Provisional License.

6 Motion to Intervene at 9 (emphasis added).

7 Acres is ranked 13<sup>th</sup> and, therefore next in line for a Provisional  
8 License should one become available. The crux of GB Sciences'  
9 argument is that it is ranked 13<sup>th</sup> and next in line. Therefore, the  
10 subject matter of this action is Acres' potential Provisional License,  
11 not GB Sciences'.

12 Motion to Intervene at 9 (emphasis added).

13 GB Sciences cannot claim ignorance of the purpose and intent behind Acres' intervention,  
14 an intervention that GB Sciences notably failed to oppose. GB Sciences had the opportunity to  
15 argue that Acres' intervention was untimely and inappropriate because Acres was not entitled to the  
16 vacant certificate—GB Sciences simply determined not to avail itself of the process afforded to it.  
17 That does not constitute a due process violation. *See Koerber v. Mismash*, 359 P.3d 701 (UT App.  
18 2015) (declining to find due process violations where parties have an opportunity to be heard but  
19 "fail[] to take full advantage of it.").

20 Furthermore, even assuming GB Sciences was somehow deprived of process before entry of  
21 the summary judgment order, that error has been remedied by affording GB Sciences the  
22 opportunity for briefing and argument on this Motion for Reconsideration as well as on GB  
23 Sciences' counterclaim against Acres for declaratory relief. Indeed, GB Sciences will  
24 unquestionably have had the full and fair opportunity to present to the Court any argument and  
25 evidence supporting a claim to a higher ranking than Acres and entitlement to the provisional  
26 certificate by the time any order in this matter is final. GB Sciences has not been deprived of due  
27 process and its Motion for Reconsideration should be denied.

28 ***b. Issue and Claim Preclusion Doctrines Are Inapplicable Because Acres Is Not***  
***Seeking to Enforce Judge Cadish's Order Against GB Sciences***

GB Sciences argues that because it was not a party the Acres Lawsuit, "the Acres Order has  
no *res judicata* and/or issue preclusion effect on GB Sciences." Motion for Reconsideration at 12  
(citing *University of Nevada v. Tarkanian*, 110 Nev. 581, 598, 879 P.2d 1180, 1191 (1994)).

1 However, Acres is not seeking to “enforce” the Acres Order against GB Sciences because Acres is  
2 not requesting that GB Sciences take or refrain from taking any action as a result of the order.  
3 Indeed, the only party to these proceedings that Acres seeks to enforce Judge Cadish’s Order  
4 *against* is the Division, who was undoubtedly a party to the Acres Lawsuit and subject to the ruling.

5 Critically, Acres has not sought to prevent GB Sciences from litigating any issues or claims  
6 on the basis of res judicata or claim preclusion. Although Acres has filed a motion to dismiss GB  
7 Sciences’ counterclaim against Acres, the Motion to Dismiss is based on the unavailability of  
8 declaratory relief to adjudicate any claims between Acres and GB Sciences. Acres has *not* asserted  
9 that Judge Cadish’s Order prevents GB Sciences from litigating any issues here.

10 The inapplicability of claim and issue preclusion principles is illustrated by the fact that the  
11 Court’s December Order would have the exact same effect even if did not reference Judge Cadish’s  
12 Order in the Acres Lawsuit. Indeed, had this Court’s Order simply provided that Nuleaf was not  
13 entitled to the provisional certificate it received on November 4, 2013 and the certificate should  
14 have been given to the MME applicant ranked 13<sup>th</sup> in the City of Las Vegas, it is still Acres, not GB  
15 Sciences, that would be entitled to the certificate. Reference to Judge Cadish’s Order does not  
16 change this analysis.

17 GB Sciences has failed to provide any basis to challenge Acres’ ranking by the Division,  
18 regardless of whether that issue was previously litigated in the Acres Lawsuit. GB Sciences cannot  
19 claim prejudice by the correct scoring of Acres’ application. Indeed, putting the applicants in the  
20 correct order simply accords them the status to which they were entitled. GB Sciences’ Motion for  
21 Reconsideration should be denied.

22 ***c. Acres Is Not Equitably Estopped from Receiving the Provisional Certificate***

23 Rather than provide any basis on which GB Sciences is entitled to the provisional certificate  
24 over Acres, GB Sciences instead claims that regardless of whether Acres was ranked higher than  
25 GB Sciences in the City of Las Vegas and was entitled on November 3, 2014 to the provisional  
26 certificate, Acres should be equitably estopped from obtaining this relief. Indeed, GB Sciences itself  
27 concedes that its counterclaim for declaratory relief against Acres is based on “equitable and other  
28 doctrines.” Motion for Reconsideration at 6. Yet, the only doctrine, equitable or otherwise,

1 advanced by GB Sciences is that Acres is equitably estopped from receiving the provisional  
2 certificate because "even though this matter was pending and was public information, Acres chose  
3 to sit on the sidelines, rather than intervene until the revocation of Nuleaf's Provisional Certificate  
4 was imminent." Motion for Reconsideration at 13-14. This argument was already unsuccessfully  
5 asserted by Nuleaf when Nuleaf opposed Acres' Motion to Intervene. Furthermore, while the timing  
6 of Acres' intervention might be a basis on which to challenge the propriety of intervention, it is not  
7 a basis to challenge the Court's awarded relief to Acres after Acres has already successfully  
8 intervened.

9 Finally, in the Acres Lawsuit, Acres named as real parties in interest all applicants for  
10 medical marijuana registrations that were publically available. GB Sciences originally had not  
11 consented to its score being published and therefore, GB Sciences was not named in Acres' lawsuit.  
12 However, GB Sciences was aware of the Acres Lawsuit, even sending its counsel to observe the  
13 mandamus hearing on September 29, 2015. By contrast, GB Sciences did not join to these  
14 proceedings any MME applicants save for those it was seeking to deprive of a provisional  
15 certificate. GB Sciences cannot claim that Acres should be equitably estopped from seeking a  
16 provisional certificate where GB Sciences has engaged in the same exact conduct of which it  
17 complains. Accordingly, GB Sciences' Motion for Reconsideration should be denied.

### 18 III. CONCLUSION

19 For the foregoing reasons, Acres respectfully requests that GB Sciences' Motion for  
20 Reconsideration be denied.

21 DATED this 11th day of January, 2016.

22 GREENBERG TRAURIG, LLP

23  
24 By: /s/ Moorea L. Katz

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

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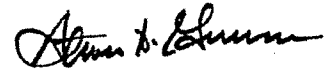
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**CERTIFICATE OF SERVICE**

Pursuant to Nev. R. Civ. P. 5(b)(2)(D) and E.D.C.R. 8.05, I certify that on this 11th day of January, 2016, I caused a true and correct copy of the foregoing **OPPOSITION TO PLAINTIFF'S MOTION TO ALTER OR AMEND JUDGMENT; OR, IN THE ALTERNATIVE MOTION FOR PARTIAL RECONSIDERATION** 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/ Cynthia L. Ney  
An employee of GREENBERG TRAURIG, LLP



CLERK OF THE COURT

**RPLY**

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(702) 318-5033

*Attorneys for Plaintiff*

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

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

Plaintiff,

vs.

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

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

Defendants.

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

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

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

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

3 DATED this 18<sup>th</sup> day of January, 2016.

4 SMITH & SHAPIRO, PLLC

5  
6 /s/ James E. Shapiro, Esq.  
James E. Shapiro, Esq.  
Nevada Bar No. 7907  
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Henderson, NV 89074  
Attorneys for Plaintiff

11  
12 **MEMORANDUM OF POINTS AND AUTHORITIES**

13 **I.**

14 **PREFATORY STATEMENT**

15 According to Acres Medical, LLC ("Acres"), due process is easily satisfied. If Acres is to be  
16 believed, the standard for satisfying due process is so low that objecting to Acres Motion to Intervene  
17 was all the due process that GB Sciences was entitled to receive. Once Acres Motion to Intervene was  
18 granted, GB Sciences no longer had any opportunity to oppose or be heard on the claims asserted by  
19 Acres in its Complaint in Intervention (which was not filed until after GB Sciences' Motion to Intervene  
20 was fully briefed and argued) and which was filed just days before this Court entered its Order entering  
21 final judgment in favor of Acres. How Acres can make this argument with a straight face is a mystery,  
22 but thankfully, this is not the due process standard ingrained in the Nevada Constitution.

23 As explained in the underlying Motion, the Court's ruling in the MSJ Order is a serious violation  
24 of GB Sciences due process rights as it deprived GB Sciences of its right to be heard and to present  
25 evidence and arguments in its behalf. Unless and until this Court provides GB Sciences with a full and  
26 fair opportunity to flush out its defenses and counterclaims against Acres and to make such arguments  
27 and present such evidence as GB Sciences feels is appropriate under the circumstances, it will be  
28 inappropriate for this Court to make any decision regarding the relative positions of GB Sciences and

1 Acres. Thus, that portion of the MSJ Order that addresses the relative positions of GB Sciences and  
2 Acres should be stricken and removed.

3 II.

4 STATEMENT OF FACTS

5 GB Sciences refers to the statement of facts set forth in the underlying Motion and incorporates  
6 the same by this reference as if more fully set forth herein.

7 III.

8 MEMORANDUM OF POINTS AND AUTHORITIES

9 A. THE MSJ ORDER WAS CLEARLY ERRONEOUS.

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

14 1. A Motion to Intervene Does Not Grant Nor Eliminate Any Substantive Rights.

15 In this case, the underlying Motion describes how GB Sciences was deprived of its due  
16 process rights. Nonetheless, Acres first argues that GB Sciences was afforded due process because GB  
17 Sciences had an opportunity to challenge but did not oppose its Motion to Intervene. *See* Opposition  
18 at 3:10-11. However, Acres fails to cite to any legal authority which stands for the proposition that if  
19 a motion to intervene is granted, that all opposing parties somehow lose their ability to defend against  
20 the intervenor's claims.

21 A motion to intervene is nothing more than a request for permission to become a party to the  
22 lawsuit. See NRCP 24. Nothing in NRCP 24 or anywhere else states or stands for the proposition that  
23 if a party is allowed to intervene, that the remaining parties somehow lose their right to defend against  
24 the intervening parties claims. To the contrary, NRCP 24 clearly contemplates that even if a motion  
25 to intervene is granted, the intervening party must still meet its burden of proof on its claims, and the  
26 remaining parties still have the ability to defend against the underlying claims. See NRCP 24 ("Upon  
27 timely application anyone may be permitted to intervene in an action ... when an applicant's claim or  
28 defense and the main action have a question of law or fact in common."). Once a motion to intervene

1 is granted, the intervening party must still assert and prove their claims, just as they would if they had  
2 filed a separate lawsuit. Id.

3 Because intervention does not eliminate the due process requirements that otherwise exist in all  
4 lawsuits, it begs the question as to how the hearing on the motion to intervene and the motion for  
5 summary judgment against NuLeaf, in which the substantive claims and issues between GB Sciences  
6 and Acres had not yet been asserted, let alone vetted and argued, could somehow satisfy GB Sciences'  
7 due process rights. Because granting Acres' motion to intervene did not eliminate any due process  
8 requirements, and because Acres' claims and GB Sciences counterclaims were not yet asserted, let alone  
9 vetted and argued, at the hearing on GB Sciences' Motion for Summary Judgment against NuLeaf, the  
10 portion of the Court's MSJ Order which awarded the Provisional Certificate to Acres violated GB  
11 Sciences' due process rights and should therefore be stricken from the record.

12 **2. GB Sciences Was Denied Due Process by Virtue of The MSJ Order.**

13 As explained in the Motion, Acres did not file its Motion to Intervene, until after GB  
14 Sciences' Motion for Summary Judgment had been fully briefed<sup>1</sup>. Thus, none of arguments addressed  
15 in the briefs related to how Acres' proposed involvement affected the pending motions. Further, none  
16 of the arguments addressed the claims and defenses between Acres and GB Sciences.

17 Certainly, Acres' Motion to Intervene was not coupled with a motion for summary judgment  
18 of its own (nor could it have been as the Complaint in Intervention had not yet been filed). In fact,  
19 Acres did not even pray for such relief in its Motion to Intervene. Acres simply requested that it be  
20 allowed to intervene in this case "to protect its rights *and pursue* a Provisional License through this  
21 action." See Motion to Intervene at 10:4 (emphasis added). Pursuit of a Provisional License would then  
22 naturally involve: (1) the actual filing of pleadings (i.e. the Complaint in Intervention which was filed  
23 on November 17, 2015 after the November 9, 2015 hearing on the motion for summary judgment which  
24 led to the MSJ Order), (2) discovery related to the pursuit of a Provisional License (or Provisional  
25  
26

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