

CLERK OF THE COURT

Electronically Filed  
May 26 2016 10:22 a.m.  
Tracie K. Lindeman  
Clerk of Supreme Court

**NOTC**  
James E. Shapiro, Esq.  
Nevada Bar No. 7907  
Sheldon A. Herbert, Esq.  
Nevada Bar No. 5988  
**SMITH & SHAPIRO, PLLC**  
2520 St. Rose Parkway, Suite 220  
Henderson, NV 89074  
(702) 318-5033  
*Attorneys for Plaintiff/Counterdefendant,*  
*GB SCIENCES NEVADA, LLC*

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

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

Plaintiff,

vs.

STATE OF NEVADA, DIVISION OF PUBLIC AND BEHAVIORAL HEALTH OF THE DEPARTMENT OF HEALTH AND HUMAN SERVICES; CITY OF LAS VEGAS, a municipal corporation and political subdivision of the State of Nevada; DESERT AIRE WELLNESS, LLC, a Nevada limited liability company; DOES 1-10, and ROE ENTITIES 1-100, inclusive,

Defendants.

DESERT AIRE WELLNESS, LLC, a Nevada limited liability company,

Counterclaimant,

vs.

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

Counterdefendant.

Case No. **A-15-728448-C**  
Dept. No. **I**

Date: N/A  
Time: N/A

**NOTICE OF CROSS-APPEAL**

Notice is hereby given that Plaintiff/Counterdefendant GB SCIENCES NEVADA, LLC, a Nevada limited liability company, hereby cross-appeals to the Supreme Court of Nevada from the following:

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

1           1)       The District Court's Order re: GB Sciences Nevada, LLC's Motion for Summary  
2 Judgment; Desert Aire Wellness, LLC's Countermotion for Summary Judgment, entered on  
3 April 28, 2016.

4           2)       All other orders and rulings made appealable from the foregoing.

5       DATED this 25<sup>th</sup> day of May, 2016.

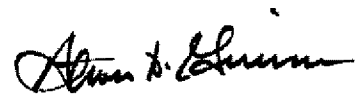
6                               SMITH & SHAPIRO, PLLC

7  
8                               /s/ James E. Shapiro  
9 James E. Shapiro, Esq.  
10 Nevada Bar No. 7907  
11 Sheldon A. Herbert, Esq.  
12 Nevada Bar No. 5988  
13 2520 St. Rose Parkway, Suite #220  
14 Henderson, NV 89074  
15 *Attorneys for Plaintiff/Counterdefendant,*  
16 *GB SCIENCES NEVADA, LLC*

17                               **CERTIFICATE OF SERVICE**

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

23                               /s/ Jill M. Berghammer  
24 An employee of SMITH & SHAPIRO, PLLC  
25  
26  
27  
28



CLERK OF THE COURT

1 **ASTA**  
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  
Henderson, NV 89074  
5 (702) 318-5033  
*Attorneys for Plaintiff/Counterdefendant,*  
6 *GB SCIENCES NEVADA, LLC*

7 **DISTRICT COURT**

8 **CLARK COUNTY, NEVADA**

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

10  
11 Plaintiff,

12 vs.

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

17 Defendants.

18 DESERT AIRE WELLNESS, LLC, a Nevada  
limited liability company,

19 Counterclaimant,

20 vs.

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

22 Counterdefendant.  
23  
24

Case No. **A-15-728448-C**  
Dept. No. **I**

Date: N/A  
Time: N/A

25 **CASE APPEAL STATEMENT**

26 1. Name of cross-appellant filing this case appeal statement: GB SCIENCES NEVADA,  
27 LLC, a Nevada limited liability company.

28 \ \ \

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

2. Identify the judge issuing the decision, judgment, or order appealed from:  
HONORABLE KENNETH C. CORY, DEPT. NO. 1.

3. Identify each cross-appellant and the name and address of counsel for each cross-appellant: GB SCIENCES NEVADA, LLC, SMITH & SHAPIRO, PLLC, 2520 St. Rose Parkway, Suite 220, Henderson, NV 89074.

4. Identify each cross-respondent and the name and address of cross-respondent counsel, if known, for each cross-respondent (if the name of a cross-respondent's appellate counsel is unknown, indicate as much and provide the name and address of that cross-respondent's trial counsel):

Respondent/Cross-Respondent:

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

Appellate counsel: unknown

Trial counsel:

Linda C. Anderson, Esq.  
Chief Deputy Attorney General  
555 E. Washington Ave., #3900  
Las Vegas, NV 89101

Appellant/Cross-Respondent:

DESERT AIRE WELLNESS, LLC,  
a Nevada limited liability company

Appellate counsel:

Richard H. Bryan, Esq.  
Patrick J. Sheehan, Esq.  
FENNEMORE CRAIG, PC  
300 S. Fourth Street, Suite 1400  
Las Vegas, NV 89101

and

Margaret A. McLetchie, Esq.  
Alina M. Shell, Esq.  
MCLECHIE SHELL, LLC  
701 E. Bridger Ave., Suite 520  
Las Vegas, NV 89101

\\

5. Indicate whether any attorney identified above in response to question 3 or 4 is not licensed to practice law in Nevada and, if so, whether the district court granted that attorney permission to appear under SCR 42 (attach a copy of any district court order granting such permission): N/A.

6. Indicate whether cross-appellant was represented by appointed or retained counsel in the district court: retained counsel.

7. Indicate whether cross-respondent is represented by appointed or retained counsel on appeal: retained counsel.

8. Indicate whether cross-appellant was granted leave to proceed in forma pauperis, and the date of entry of the district court order granting such leave: N/A.

9. Indicate the date the proceedings commenced in the district court (e.g., date complaint, indictment, information, or petition was filed): December 2, 2015.

10. Provide a brief description of the nature of the action and result in the district court, including the type of judgment or order being appealed and the relief granted by the district court:

The action involves the issuance of provisional registration certificates ("Provisional Certificate") by the State of Nevada to applicants for medical marijuana establishment ("MME") dispensaries in the City of Las Vegas, pursuant to the provisions of N.R.S. Chapter 453A. Notwithstanding the fact that Appellant/Cross-respondent Desert Aire Wellness, LLC ("Desert Aire") did not satisfy the requirement identified in N.R.S. § 453A.322(3)(a)(5), the State of Nevada issued a Provisional Certificate to Desert Aire. The District Court revoked Desert Aire's Provisional Certificate but declined to award it to Respondent/Cross-Appellant GB Sciences Nevada, LLC.

On April 28, 2016, the District Court entered an Order Re: GB Sciences Nevada, LLC's Motion for Summary Judgment; Desert Aire Wellness, LLC's Countermotion for Summary Judgment. The Cross-Appellant is appealing that portion of the April 28, 2016 Order wherein the Court declined to award the Provisional Certificate to GB Sciences Nevada, LLC.

11. Indicate whether the case has previously been the subject of an appeal to or original writ proceeding in the Supreme Court and, if so, the caption and Supreme Court docket number of

1 the prior proceeding: On May 25, 2016, Appellant/Cross-respondent Desert Aire filed its Notice of  
2 Appeal in this case.

3 12. Indicate whether this appeal involves child custody or visitation: N/A.

4 13. If this is a civil case, indicate whether this appeal involves the possibility of  
5 settlement: Settlement is possible.

6 DATED this 25<sup>th</sup> day of May, 2016.

7 **SMITH & SHAPIRO, PLLC**

8  
9 /s/ James E. Shapiro  
10 James E. Shapiro, Esq.  
11 Nevada Bar No. 7907  
12 Sheldon A. Herbert, Esq.  
13 Nevada Bar No. 5988  
14 2520 St. Rose Parkway, Suite #220  
15 Henderson, NV 89074  
16 *Attorneys for Plaintiff/Counterdefendant*

17 **CERTIFICATE OF SERVICE**

18 I hereby certify that I am an employee of SMITH & SHAPIRO, PLLC, and that on the 25<sup>th</sup>  
19 day of May, 2016, I served a true and correct copy of the forgoing **CASE APPEAL**  
20 **STATEMENT**, by e-serving a copy on all parties registered and listed as Service Recipients in  
21 Wiznet, the Court's on-line, electronic filing website, pursuant to Administrative Order 14-2, entered  
22 by the Chief Judge, Jennifer Togliatti, on May 9, 2014.

23 /s/ Jill M. Berghammer  
24 An employee of SMITH & SHAPIRO, PLLC  
25  
26  
27  
28

CASE SUMMARY  
**CASE SUMMARY**  
**CASE NO. A-15-728448-C**

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

§  
§  
§  
§  
§

Location: **Department 1**  
Judicial Officer: **Cory, Kenneth**  
Filed on: **12/02/2015**  
Cross-Reference Case Number: **A728448**

**CASE INFORMATION**

**Statistical Closures**

04/28/2016 Summary Judgment

Case Type: **Other Civil Matters**

Case Flags: **Appealed to Supreme Court**  
**Arbitration Exemption Granted**

**DATE**

**CASE ASSIGNMENT**

**Current Case Assignment**

Case Number A-15-728448-C  
Court Department 1  
Date Assigned 12/02/2015  
Judicial Officer Cory, Kenneth




**PARTY INFORMATION**

<b>Plaintiff</b>	<b>GB Sciences Nevada LLC</b>	<i>Lead Attorneys</i> <b>Shapiro, James E.</b> <i>Retained</i> 702-796-4000(W)
<b>Defendant</b>	<b>City of Las Vegas</b>	<b>Jerbic, Bradford Robert</b> <i>Retained</i> 702-229-6629(W)
	<b>Desert Aire Wellness LLC</b>	<b>Sheehan, Patrick J.</b> <i>Retained</i> 702-692-8011(W)
	<b>Nevada Department of Behavioral Health and Human Services</b>	<b>Laxalt, Adam Paul</b> <i>Retained</i> 702-486-3420(W)
<b>Counter Claimant</b>	<b>Desert Aire Wellness LLC</b>	<b>Sheehan, Patrick J.</b> <i>Retained</i> 702-692-8011(W)
<b>Counter Defendant</b>	<b>GB Sciences Nevada LLC</b>	<b>Shapiro, James E.</b> <i>Retained</i> 702-796-4000(W)

**DATE**

**EVENTS & ORDERS OF THE COURT**

**INDEX**












12/02/2015	 Complaint Filed By: Counter Defendant GB Sciences Nevada LLC <i>Complaint</i>	
12/17/2015	 Affidavit of Service Filed By: Counter Defendant GB Sciences Nevada LLC <i>Affidavit of Service - City of Las Vegas</i>	
12/17/2015	 Initial Appearance Fee Disclosure Filed By: Counter Claimant Desert Aire Wellness LLC <i>Initial Appearance Fee Disclosure</i>	

CASE SUMMARY  
**CASE SUMMARY**  
**CASE NO. A-15-728448-C**









12/17/2015	 Answer and Counterclaim Filed By: Counter Claimant Desert Aire Wellness LLC <i>Answer and Counterclaim</i>
12/24/2015	 Answer Filed By: Defendant Nevada Department of Behavioral Health and Human Services <i>Answer</i>
12/24/2015	 Motion to Intervene Party: Other Samantha Inc <i>Motion of Samantha Inc. d/b/a Samantha's Remedies to Intervene as Plaintiff Pursuant to NRCP 24 and Motion to Stay Proceedings Pending Resolution of Supreme Court Proceedings</i>
12/28/2015	 Certificate of Service Filed by: Other Samantha Inc <i>Certificate of Service</i>
12/29/2015	 Response Filed by: Defendant Nevada Department of Behavioral Health and Human Services <i>State Response to Samantha Remedies' Motion to Intervene and Motion to Stay</i>
01/08/2016	 Opposition to Motion Filed By: Counter Claimant Desert Aire Wellness LLC <i>DESERT AIRE WELLNESS LLC'S OPPOSITION TO SAMANTHA INC. d/b/a SAMANTHA'S REMEDIES MOTION TO INTERVENE AS PLAINTIFF PURSUANT TO NRCP 24 AND MOTION TO STAY PROCEEDINGS PENDING RESOLUTION OF SUPREME COURT PROCEEDINGS</i>
01/14/2016	 Opposition to Motion Filed By: Counter Defendant GB Sciences Nevada LLC <i>Plaintiff's Opposition to Motion of Samantha Inc. d/b/a Samantha's Remedies to Intervene as Plaintiff Pursuant to NRCP 24 and Motion to Stay Proceeding Pending Resolution of Supreme Court Proceedings</i>
01/15/2016	 Supplemental Filed by: Counter Claimant Desert Aire Wellness LLC <i>Desert Aire Wellness LLC's Supplement to Opposition to Samantha Inc. d/b/a Samantha's Remedies Motion to Intervene as Plaintiff Pursuant to NRCP 24 and Motion to Stay Proceedings Pending Resolution of Supreme Court Proceedings</i>
01/19/2016	 Reply to Opposition Filed by: Other Samantha Inc <i>Brief in Support of Motion of Samantha Inc. d/b/a Samantha's Remedies to Intervene as Plaintiff Pursuant to NRCP 24 and Motion to Stay Proceedings Pending Resolution of Supreme Court Proceedings, and in Reply to Oppositions</i>
01/19/2016	 Answer to Complaint Filed by: Defendant Nevada Department of Behavioral Health and Human Services <i>City of Las Vegas' Answer to Complaint</i>
01/21/2016	 Motion for Summary Judgment Filed By: Counter Defendant GB Sciences Nevada LLC <i>Motion for Summary Judgment Against Desert Aire Wellness, LLC</i>
01/25/2016	



CASE SUMMARY  
**CASE SUMMARY**  
**CASE NO. A-15-728448-C**

	 <b>Motion to Intervene</b> (3:00 AM) (Judicial Officer: Cory, Kenneth) Events: 12/24/2015 Motion to Intervene <i>Samantha Inc. d/b/a Samantha's Remedies Motion to Intervene as Plaintiff Pursuant to NRCP 24 and Motion to Stay Proceedings Pending Resolution of Supreme Court Proceedings</i>
02/08/2016	 Countermotion For Summary Judgment Filed By: Counter Claimant Desert Aire Wellness LLC <i>Desert Aire Wellness LLC's Opposition to Plaintiff's Motion For Summary Judgment Against Desert Aire Wellness LLC and Countermotion For Summary Judgment Against GB Sciences Nevada LLC</i>
02/09/2016	 Affidavit of Service Filed By: Counter Defendant GB Sciences Nevada LLC <i>Affidavit of Service (State of Nevada - Office of the Attorney General)</i>
02/09/2016	 Affidavit of Service Filed By: Counter Defendant GB Sciences Nevada LLC <i>Affidavit of Service (State of Nevada, Division of Public and Behavior Health of the Department of Health and Human Services.</i>
02/09/2016	 Affidavit of Service Filed By: Counter Defendant GB Sciences Nevada LLC <i>Affidavit of Service ( Desert Aire Wellness, LLC)</i>
02/09/2016	 Affidavit of Service Filed By: Counter Defendant GB Sciences Nevada LLC <i>Affidavit of Service ( State of Nevada - Office of the Attorney General)</i>
02/18/2016	 Notice of Entry of Order Filed By: Counter Defendant GB Sciences Nevada LLC <i>Notice of Entry of Order Denying Samantha Inc. d/b/a Samantha's Remedies Motion to Intervene as Plaintiff Pursuant to NRCP 24 and Motion to Stay Proceeding Pending Resolution of Supreme Court Proceedings</i>
02/18/2016	 Order Filed By: Counter Defendant GB Sciences Nevada LLC <i>Order Denying Samantha Inc. d/b/a Samantha's Remedies Motion to Intervene as Plaintiff Pursuant to NRCP 24 and Motion to Stay Proceedings Pending Resolution of Supreme Court Proceedings</i>
02/18/2016	 Reply to Opposition Filed by: Counter Defendant GB Sciences Nevada LLC <i>Reply to Desert Aire Wellness, LLC's Opposition to Plaintiff's Motion for Summary Judgment Against Desert Aire Wellness, LLC and Opposition to Countermotion for Summary Judgment Against GB Sciences Nevada, LLC</i>
02/19/2016	 Certificate of Service Filed by: Counter Defendant GB Sciences Nevada LLC <i>Certificate of Service</i>
02/22/2016	 Supplemental Filed by: Defendant Nevada Department of Behavioral Health and Human Services <i>Supplement to Desert Aire Wellness LLC's Opposition to Plaintiff's Motion For Summary Judgment Against Desert Aire Wellness LLC and Countermotion For Summary Judgment Against GB Sciences Nevada LLC</i>

CASE SUMMARY  
**CASE SUMMARY**  
**CASE NO. A-15-728448-C**

02/23/2016	<b>Motion for Summary Judgment</b> (9:00 AM) (Judicial Officer: Cory, Kenneth) Events: 01/21/2016 Motion for Summary Judgment <i>Plaintiff's Motion for Summary Judgment Against Desert Aire Wellness, LLC</i>
02/23/2016	<b>Opposition and Countermotion</b> (9:00 AM) (Judicial Officer: Cory, Kenneth) <i>Desert Aire Wellness LLC's Opposition to Plaintiff's Motion For Summary Judgment Against Desert Aire Wellness LLC and Countermotion For Summary Judgment Against GB Sciences Nevada LLC</i>
02/23/2016	 <b>All Pending Motions</b> (9:00 AM) (Judicial Officer: Cory, Kenneth) <i>PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT AGAINST DESERT AIRE WELLNESS, LLC...DESERT AIRE WELLNESS LLC'S OPPOSITION TO PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT AGAINST DESERT AIRE WELLNESS LLC AND COUNTERMOTION FOR SUMMARY JUDGMENT AGAINST GB SCIENCES NEVADA LLC</i> <i>Parties Present: Attorney Singer, Michael H.</i> <i>Attorney Anderson, Linda Christine</i> <i>Attorney Shapiro, James E.</i>
02/26/2016	 <b>Motion for Summary Judgment</b> Filed By: Counter Defendant GB Sciences Nevada LLC <i>Motion for Summary Judgment</i>
03/03/2016	 <b>Countermotion For Summary Judgment</b> Filed By: Counter Claimant Desert Aire Wellness LLC <i>Desert Aire Wellness LLC's Opposition to Plaintiff/Counterdefendant's Motion For Summary Judgment and Countermotion For Summary Judgment</i>
03/03/2016	 <b>Response</b> Filed by: Defendant Nevada Department of Behavioral Health and Human Services <i>State Response To Motion For Summary Judgment</i>
03/08/2016	 <b>Reply to Opposition</b> Filed by: Counter Defendant GB Sciences Nevada LLC <i>Reply to Desert Aire Wellness LLC's Opposition to Plaintiff/Counter-Defendant's Motion for Summary Judgment and Opposition to Countermotion for Summary Judgment Against GB Sciences Nevada LLC</i>
03/08/2016	 <b>Reply</b> Filed by: Counter Defendant GB Sciences Nevada LLC <i>Reply to State Response to Motion for Summary Judgment</i>
03/15/2016	<b>Motion for Summary Judgment</b> (9:00 AM) (Judicial Officer: Cory, Kenneth) <i>Plaintiff's Motion for Summary Judgment</i>
03/15/2016	<b>Opposition and Countermotion</b> (9:00 AM) (Judicial Officer: Cory, Kenneth) <i>Desert Aire Wellness LLC's Opposition to Plaintiff/Counterdefendant's Motion For Summary Judgment and Countermotion For Summary Judgment</i>
03/15/2016	 <b>All Pending Motions</b> (9:00 AM) (Judicial Officer: Cory, Kenneth) <i>PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT...DESERT AIRE WELLNESS LLC'S OPPOSITION TO PLAINTIFF/COUNTERDEFENDANT'S MOTION FOR SUMMARY JUDGMENT AND COUNTERMOTION FOR SUMMARY JUDGMENT</i> <i>Parties Present: Attorney Singer, Michael H.</i> <i>Attorney Anderson, Linda Christine</i> <i>Attorney Shapiro, James E.</i>
03/17/2016	 <b>Commissioners Decision on Request for Exemption - Granted</b> Party: Counter Defendant GB Sciences Nevada LLC

CASE SUMMARY  
**CASE SUMMARY**  
**CASE NO. A-15-728448-C**

*Commissioner's Decision on Request for Exemption*

03/18/2016	 Arbitration File <i>Arbitration File</i>
03/22/2016	 Transcript of Proceedings <i>Transcript Re: Plaintiff's Motion for Summary Judgment Desert Aire Wellness LLC's Opposition to Plaintiff/Counter-Defendant's Motion for Summary Judgment and Countermotion for Summary Judgment 03-15-16</i>
04/07/2016	 Substitution of Attorney Filed by: Counter Claimant Desert Aire Wellness LLC <i>Substitution of Attorney</i>
04/14/2016	 Motion to Reconsider Filed By: Counter Claimant Desert Aire Wellness LLC <i>Motion for Reconsideration and Request that the Court Reverse and Grant Defendant Summary Judgment to Defendant or at a Minimum Grant a Stay Pending an Appeal</i>
04/26/2016	 Response Filed by: Defendant Nevada Department of Behavioral Health and Human Services <i>State Response To Motion For Reconsideration</i>
04/28/2016	 Order Filed By: Counter Defendant GB Sciences Nevada LLC <i>Order Re: GB Sciences Nevada, LLC's Motion for Summary Judgment; Desert Aire Wellness, LLC's Countermotion for Summary Judgment</i>
04/28/2016	 Notice of Entry of Order Filed By: Counter Defendant GB Sciences Nevada LLC <i>Notice of Entry of Order Re: GB Sciences Nevada, LLC's Motion for Summary Judgment; Desert Aire Wellness, LLC's Countermotion for Summary Judgment</i>
04/28/2016	<b>Partial Summary Judgment</b> (Judicial Officer: Cory, Kenneth) Debtors: Desert Aire Wellness LLC (Defendant) Creditors: GB Sciences Nevada LLC (Plaintiff) Judgment: 04/28/2016, Docketed: 05/05/2016
05/02/2016	 Opposition to Motion Filed By: Counter Defendant GB Sciences Nevada LLC <i>Opposition to Motion for Reconsideration and Request That the Court Reverse and Grant Defendant Summary Judgment to Defendant or at a Minimum a Stay Pending Appeal</i>
05/10/2016	 Reply Filed by: Counter Claimant Desert Aire Wellness LLC <i>Reply in Support of Motion to Alter or Amend Judgment, Countermotion for Summary Judgment or in the Alternative a Stay Pending an Appeal</i>
05/16/2016	 <b>Motion For Reconsideration</b> (3:00 AM) (Judicial Officer: Cory, Kenneth) <i>Defendant's Motion for Reconsideration and Request that the Court Reverse and Grant Defendant Summary Judgment to Defendant or at a Minimum Grant a Stay Pending an Appeal</i>
05/25/2016	 Notice of Appearance Party: Counter Claimant Desert Aire Wellness LLC <i>Notice of Appearance</i>

CASE SUMMARY  
**CASE SUMMARY**  
CASE NO. A-15-728448-C

05/25/2016	 Notice of Appeal Filed By: Counter Claimant Desert Aire Wellness LLC <i>Notice of Appeal</i>
05/25/2016	 Case Appeal Statement Filed By: Counter Claimant Desert Aire Wellness LLC <i>Case Appeal Statement</i>
05/25/2016	 Notice of Appeal Filed By: Counter Defendant GB Sciences Nevada LLC <i>Notice of Appeal</i>
05/25/2016	 Case Appeal Statement Filed By: Counter Defendant GB Sciences Nevada LLC <i>Case Appeal Statement</i>

DATE	FINANCIAL INFORMATION
	<b>Counter Claimant</b> Desert Aire Wellness LLC Total Charges 657.50 Total Payments and Credits 657.50 <b>Balance Due as of 5/26/2016 0.00</b>
	<b>Other</b> Samantha Inc Total Charges 7.00 Total Payments and Credits 7.00 <b>Balance Due as of 5/26/2016 0.00</b>
	<b>Counter Defendant</b> GB Sciences Nevada LLC Total Charges 694.00 Total Payments and Credits 694.00 <b>Balance Due as of 5/26/2016 0.00</b>

## DISTRICT COURT CIVIL COVER SHEET A-15-728448-C

County, Nevada

Case No.

(Assigned by Clerk's Office)

I

**I. Party Information** (provide both home and mailing addresses if different)

Plaintiff(s) (name/address/phone):

GB SCIENCES NEVADA, LLC, a Nevada limited liability company

Defendant(s) (name/address/phone):

STATE OF NEVADA, DIVISION OF PUBLIC AND

BEHAVIORAL HEALTH OF THE DEPARTMENT OF HEALTH AND HUMAN SERVICES;

CITY OF LAS VEGAS; DESERT AIRE WELLNESS, LLC;

DOES 1-10, and ROE ENTITIES 1-100, inclusive.

Attorney (name/address/phone):

James E. Shapiro, Esq. and Sheldon A. Herbert, Esq.

Smith &amp; Shapiro, PLLC

2520 St. Rose Parkway, Suite 220

Henderson, NV 89074

Attorney (name/address/phone):

**II. Nature of Controversy** (please select the one most applicable filing type below)**Civil Case Filing Types**

<b>Real Property</b> <b>Landlord/Tenant</b> <input type="checkbox"/> Unlawful Detainer <input type="checkbox"/> Other Landlord/Tenant <b>Title to Property</b> <input type="checkbox"/> Judicial Foreclosure <input type="checkbox"/> Other Title to Property <b>Other Real Property</b> <input type="checkbox"/> Condemnation/Eminent Domain <input type="checkbox"/> Other Real Property	<b>Negligence</b> <input type="checkbox"/> Auto <input type="checkbox"/> Premises Liability <input type="checkbox"/> Other Negligence <b>Malpractice</b> <input type="checkbox"/> Medical/Dental <input type="checkbox"/> Legal <input type="checkbox"/> Accounting <input type="checkbox"/> Other Malpractice	<b>Torts</b> <b>Other Torts</b> <input type="checkbox"/> Product Liability <input type="checkbox"/> Intentional Misconduct <input type="checkbox"/> Employment Tort <input type="checkbox"/> Insurance Tort <input type="checkbox"/> Other Tort
<b>Probate</b> (select case type and estate value) <input type="checkbox"/> Summary Administration <input type="checkbox"/> General Administration <input type="checkbox"/> Special Administration <input type="checkbox"/> Set Aside <input type="checkbox"/> Trust/Conservatorship <input type="checkbox"/> Other Probate <b>Estate Value:</b> <input type="checkbox"/> Over \$200,000 <input type="checkbox"/> Between \$100,000 and \$200,000 <input type="checkbox"/> Under \$100,000 or Unknown <input type="checkbox"/> Under \$2,500	<b>Construction Defect &amp; Contract</b> <b>Construction Defect</b> <input type="checkbox"/> Chapter 40 <input type="checkbox"/> Other Construction Defect <b>Contract Case</b> <input type="checkbox"/> Uniform Commercial Code <input type="checkbox"/> Building and Construction <input type="checkbox"/> Insurance Carrier <input type="checkbox"/> Commercial Instrument <input type="checkbox"/> Collection of Accounts <input type="checkbox"/> Employment Contract <input type="checkbox"/> Other Contract	<b>Judicial Review/Appeal</b> <b>Judicial Review</b> <input type="checkbox"/> Foreclosure Mediation Case <input type="checkbox"/> Petition to Seal Records <input type="checkbox"/> Mental Competency <b>Nevada State Agency Appeal</b> <input type="checkbox"/> Department of Motor Vehicle <input type="checkbox"/> Worker's Compensation <input type="checkbox"/> Other Nevada State Agency <b>Appeal Other</b> <input type="checkbox"/> Appeal from Lower Court <input type="checkbox"/> Other Judicial Review/Appeal
<b>Civil Writ</b> <b>Civil Writ</b> <input type="checkbox"/> Writ of Habeas Corpus <input type="checkbox"/> Writ of Mandamus <input type="checkbox"/> Writ of Quo Warrant <input type="checkbox"/> Writ of Prohibition <input type="checkbox"/> Other Civil Writ		<b>Other Civil Filing</b> <b>Other Civil Filing</b> <input type="checkbox"/> Compromise of Minor's Claim <input type="checkbox"/> Foreign Judgment <input checked="" type="checkbox"/> Other Civil Matters

Business Court filings should be filed using the Business Court civil coversheet.

12/2/2015

Date

Signature of initiating party or representative

See other side for family-related case filings.

ORIGINAL

CLERK OF THE COURT

1 **ORDR**

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

Henderson, NV 89074

5 (702) 318-5033

*Attorneys for Plaintiff*

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

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

Plaintiff,

Case No. A-15-728448-C

Dept. No. 1

10 vs.

11 STATE OF NEVADA, DIVISION OF PUBLIC  
12 AND BEHAVIORAL HEALTH OF THE  
13 DEPARTMENT OF HEALTH AND HUMAN  
14 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; DOES 1-10,  
15 and ROE ENTITIES 1-100, inclusive,

Defendants.

Date: March 15, 2016

Time: 9:00 a.m.

17 DESERT AIRE WELLNESS, LLC, a Nevada  
limited liability company,

Counterclaimant,

19 vs.

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

Counterdefendant.

24 **ORDER RE: GB SCIENCES NEVADA, LLC'S MOTION FOR SUMMARY JUDGMENT;**  
25 **DESERT AIRE WELLNESS, LLC'S COUNTERMOTION FOR SUMMARY JUDGMENT**

26 THIS MATTER having come before the Court on GB SCIENCES NEVADA, LLC's  
27 ("*Plaintiff*") Motion for Summary Judgment (the "*Motion*") and on Defendant DESERT AIRE  
28 WELLNESS, LLC ("*Desert Aire*") Countermotion for Summary Judgment ("*Countermotion*");

<input type="checkbox"/> Voluntary Dismissal	<input checked="" type="checkbox"/> Summary Judgment
<input type="checkbox"/> Involuntary Dismissal	<input type="checkbox"/> Stipulated Judgment
<input type="checkbox"/> Stipulated Dismissal	<input type="checkbox"/> Default Judgment
<input type="checkbox"/> Motion to Dismiss by Defendant	<input type="checkbox"/> Judgment of Arbitration

SMITH & SHAPIRO, PLLC  
2520 St. Rose Parkway, Suite 220  
Henderson, NV 89074  
O: (702) 318-5033 F: (702) 318-5034

SMITH & SHAPIRO, PLLC  
2520 St. Rose Parkway, Suite 220  
Henderson, NV 89074  
O:(702)318-5033 F:(702)318-5034

1 Plaintiff, having appeared by and through its attorneys of record, SMITH & SHAPIRO, PLLC;  
2 Defendant STATE OF NEVADA, DEPARTMENT OF HEALTH AND HUMAN SERVICES (the  
3 "State" or "Division"), having appeared by and through ADAM PAUL LAXALT, Attorney General  
4 through his Chief Deputy Attorney General, LINDA C. ANDERSON; Defendant Desert Aire,  
5 having appeared by and through its attorneys of record, MICHAEL H. SINGER, LTD., Defendant  
6 CITY OF LAS VEGAS having failed to appear or file any briefs regarding the matter<sup>1</sup>, the Court  
7 having reviewed the papers and pleadings on file herein, having heard the arguments of counsel, the  
8 Court having stated its findings and conclusions on the record, the Court being fully advised in the  
9 premises, and good cause appearing, NOW THEREFORE, THE COURT FINDS AND  
10 CONCLUDES:

11 **UNDISPUTED FACTS**

12 **A. BACKGROUND.**

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

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

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

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

23 5. The Division, as well as the local jurisdiction, played a role in the ultimate licensing  
24 of MMEs. Specifically, the local jurisdiction was tasked with considering issues such as site plans,  
25 zoning and proximity to other business or facilities (the "Local Application Process") while the

26  
27 <sup>1</sup> Plaintiff previously notified the Court that Plaintiff was no longer seeking any claims against the City of Las Vegas as  
28 the Plaintiff's claims had been rendered moot. Notwithstanding, the City of Las Vegas was included as an interested  
party to give them an opportunity to heard on the Plaintiff's requested relief against the State of Nevada and Desert Aire  
Wellness, LLC.

1 Division focused on public health, public safety, and marijuana as a medicine (the "Division  
2 Application Process").

3 6. In accordance with its responsibilities, the City of Las Vegas enacted Ordinance No.  
4 6321 and 6324 to establish zoning regulations, licensing regulations, and standards for MME  
5 locations.

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

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

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

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

19 **B. DESERT AIRE'S APPLICATION.**

20 10. Plaintiff and Desert Aire were two of the 49 applicants for a Dispensary License in  
21 the City of Las Vegas.

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

24 12. Prior to the October 28-29, 2014 Las Vegas City Council meeting, Desert Aire  
25 withdrew their application for a special use permit and compliance permit.

26 13. On October 30, 2014, the City of Las Vegas sent a letter to the Division notifying the  
27 Division that Desert Aire's application for a special use permit and compliance permit from the City  
28 of Las Vegas had been withdrawn and identifying for the Division the twenty-eight (28) applicants



1 who had been granted a special use permit and compliance permit for purposes of NRS §  
2 453A.322(3)(a)(5).

3 14. The City of Las Vegas letter was intended to comply, and did comply, with NRS  
4 453A.322(3)(a)(5).

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

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

13 17. While Desert Aire subsequently obtained a special use permit, that did not occur until  
14 after November 3, 2014. Desert Aire ultimately opened for business.

15 18. At the time the Department registered Desert Aire and issued a Provisional License,  
16 Desert Aire did not meet the requirements of N.R.S. § 453A.322, which specifically permitted the  
17 Division to register a medical marijuana establishment and issue a registration certificate if the  
18 business seeking to register had completed all of the requirements of subsection 3(a), including  
19 providing a letter from the applicable local authority certifying that the proposed medical marijuana  
20 establishment is in compliance with [zoning] restrictions and satisfies all applicable building  
21 requirements.

22 19. Pursuant the plain terms of the statute, the Division should not have registered Desert  
23 Aire and issued a registration certificate as Desert Aire had not met all the requirements of the  
24 statute.

25 20. The Nevada Department of Health and Human Services should have registered and  
26 issued the registration certificate to the medical marijuana establishment to the top twelve ranked  
27 applicants which met all the requirements of the statute.

28 \\\

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

### CONCLUSIONS OF LAW

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

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

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

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

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

27. The Division has acknowledged that a complaint for declaratory and injunctive relief is appropriate.

28. The issuance of the Provisional Certificate to Desert Aire was in error and contrary to NRS § 453A.322(3).

29. Desert Aire should have been disqualified due to their non-compliance with NRS § 453A.322(3)(a)(5).

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

\\

1 NOW THEREFORE:

2 31. IT IS HEREBY ORDERED Plaintiffs Motion for Summary Judgment is GRANTED  
3 in part and DENIED in part.

4 32. IT IS FURTHER ORDERED that Plaintiff's Motion is GRANTED to the extent that  
5 Desert Aire should not have been registered or issued a certification of registration as a medical  
6 marijuana establishment because it had not met all the necessary requirements of 453A.322(3)(a).



7 33. IT IS FURTHER ORDERED that the Division shall rescind or withdraw the  
8 dispensary registration previously issued to Desert Aire.

9 34. IT IS FURTHER ORDERED that Plaintiff's Motion for is DENIED to the extent  
10 Plaintiff seeks the re-issue of Desert Aire's dispensary registration to Plaintiff.

11 35. IT IS FURTHER ORDERED Defendant Desert Aire's Countermotion for Summary  
12 Judgment is DENIED.

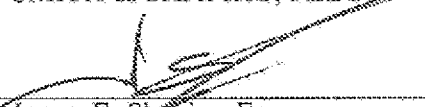
13 36. IT IS FURTHER ORDERED that there being no other unresolved claims or issues,  
14 this matter is and shall be CLOSED and this Order shall be a FINAL, APPEALABLE ORDER.

15 IT IS SO ORDERED this 28 day of April, 2016.

16  
17   
DISTRICT COURT JUDGE  
18 

18 Respectfully Submitted by:

19 SMITH & SHAPIRO, PLLC

20  
21   
James E. Shapiro, Esq.  
22 Nevada Bar No. 7907  
2520 Saint Rose Parkway, Suite 220  
Henderson, Nevada 89074  
23 Attorneys for Plaintiff  
24  
25  
26  
27  
28

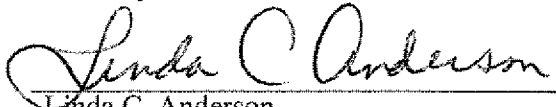
1 Approved:

2 MICHAEL H. SINGER, LTD.

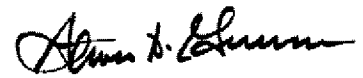
Approved:

ADAM PAUL LAXALT,  
Attorney General

3  
4  
5 Michael H. Singer, Esq.  
6 Nevada Bar No. 1589  
7 4475 South Pecos Rd.  
8 Las Vegas, NV 89121  
9 *Attorneys for DESERT AIRE*  
10 *WELLNESS, LLC*

  
Linda C. Anderson  
Chief Deputy Attorney General  
Nevada Bar No. 4090  
555 E. Washington Ave., #3900  
Las Vegas, NV 89101  
*Attorneys for the STATE OF NEVADA*

SMITH & SHAPIRO, PLLC  
2520 St. Rose Parkway, Suite 220  
Henderson, NV 89074  
O: (702) 318-5033 F: (702) 318-5034



CLERK OF THE COURT

**NOTC**  
James E. Shapiro, Esq.  
Nevada Bar No. 7907  
Sheldon A. Herbert, Esq.  
Nevada Bar No. 5988  
**SMITH & SHAPIRO, PLLC**  
2520 St. Rose Parkway, Suite #220  
Henderson, NV 89074  
(702) 318-5033  
*Attorneys for Plaintiff*

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

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

Plaintiff,

vs.

STATE OF NEVADA, DIVISION OF PUBLIC AND BEHAVIORAL HEALTH OF THE DEPARTMENT OF HEALTH AND HUMAN SERVICES; CITY OF LAS VEGAS, a municipal corporation and political subdivision of the State of Nevada; DESERT AIRE WELLNESS, LLC, a Nevada limited liability company; DOES 1-10, and ROE ENTITIES 1-100, inclusive,

Defendants.

DESERT AIRE WELLNESS, LLC, a Nevada limited liability company,

Counterclaimant,

vs.

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

Counterdefendant.

Case No. **A-15-728448-C**  
Dept. No. I

Date: March 15, 2016  
Time: 9:00 a.m

**NOTICE OF ENTRY OF ORDER RE: GB SCIENCES NEVADA, LLC'S MOTION FOR SUMMARY JUDGMENT; DESERT AIRE WELLNESS, LLC'S COUNTERMOTION FOR SUMMARY JUDGMENT**

PLEASE TAKE NOTICE that an **ORDER RE: GB SCIENCES NEVADA, LLC'S MOTION FOR SUMMARY JUDGMENT; DESERT AIRE WELLNESS, LLC'S**

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

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

1 COUNTERMOTION FOR SUMMARY JUDGMENT was entered in the above-entitled matter on  
2 the 28<sup>th</sup> day of April, 2016, a copy of which is attached hereto as Exhibit 1.

3  
4 DATED this 28<sup>nd</sup> day of April, 2016.

5  
6 SMITH & SHAPIRO, PLLC

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

15 **CERTIFICATE OF SERVICE**

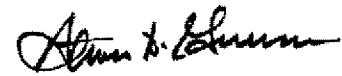
16 I hereby certify that I am an employee of SMITH & SHAPIRO, PLLC, and that on the 28<sup>th</sup> day  
17 of April, 2016, I served a true and correct copy of the forgoing **NOTICE OF ENTRY OF ORDER**  
18 **RE: GB SCIENCES NEVADA, LLC'S MOTION FOR SUMMARY JUDGMENT; DESERT**  
19 **AIRE WELLNESS, LLC'S COUNTERMOTION FOR SUMMARY JUDGMENT**, by e-serving  
20 a copy on all parties registered and listed as Service Recipients in Wiznet, the Court's on-line,  
21 electronic filing website, pursuant to Administrative Order 14-2, entered by the Chief Judge, Jennifer  
22 Togliatti, on May 9, 2014.

23  
24  
25 /s/ Ashley R. Houston  
26 An employee of SMITH & SHAPIRO, PLLC  
27  
28

Exhibit “1”

Exhibit “1”

ORIGINAL

  
CLERK OF THE COURT

1 **ORDR**

2 JAMES E. SHAPIRO, ESQ.  
3 Nevada Bar No. 7907  
4 Sheldon A. Herbert, Esq.  
5 Nevada Bar No. 5988  
6 **SMITH & SHAPIRO, PLLC**  
7 2520 St. Rose Parkway, Suite 220  
8 Henderson, NV 89074  
9 (702) 318-5033  
10 *Attorneys for Plaintiff*

DISTRICT COURT

CLARK COUNTY, NEVADA

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

10 Plaintiff,

Case No. A-15-728448-C  
Dept. No. I

11 vs.

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

20 Defendants.

Date: March 15, 2016  
Time: 9:00 a.m.

17 DESERT AIRE WELLNESS, LLC, a Nevada  
18 limited liability company,

19 Counterclaimant,

20 vs.

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

23 Counterdefendant.

24 **ORDER RE: GB SCIENCES NEVADA, LLC'S MOTION FOR SUMMARY JUDGMENT;**  
25 **DESERT AIRE WELLNESS, LLC'S COUNTERMOTION FOR SUMMARY JUDGMENT**

26 THIS MATTER having come before the Court on GB SCIENCES NEVADA, LLC's  
27 ("Plaintiff") Motion for Summary Judgment (the "Motion") and on Defendant DESERT AIRE  
28 WELLNESS, LLC ("Desert Aire") Countermotion for Summary Judgment ("Countermotion");

<input type="checkbox"/> Voluntary Dismissal	<input checked="" type="checkbox"/> Summary Judgment
<input type="checkbox"/> Involuntary Dismissal	<input type="checkbox"/> Stipulated Judgment
<input type="checkbox"/> Stipulated Dismissal	<input type="checkbox"/> Default Judgment
<input type="checkbox"/> Motion to Dismiss by Defendant	<input type="checkbox"/> Judgment of Arbitration

SMITH & SHAPIRO, PLLC  
2520 St. Rose Parkway, Suite 220  
Henderson, NV 89074  
O: (702) 318-5033 F: (702) 318-5034



SMITH & SHAPIRO, PLLC  
2520 St. Rose Parkway, Suite 220  
Henderson, NV 89074  
O: (702) 318-5033 F: (702) 318-5034

1 Plaintiff, having appeared by and through its attorneys of record, SMITH & SHAPIRO, PLLC;  
2 Defendant STATE OF NEVADA, DEPARTMENT OF HEALTH AND HUMAN SERVICES (the  
3 "State" or "Division"), having appeared by and through ADAM PAUL LAXALT, Attorney General  
4 through his Chief Deputy Attorney General, LINDA C. ANDERSON; Defendant Desert Aire,  
5 having appeared by and through its attorneys of record, MICHAEL H. SINGER, LTD., Defendant  
6 CITY OF LAS VEGAS having failed to appear or file any briefs regarding the matter<sup>1</sup>, the Court  
7 having reviewed the papers and pleadings on file herein, having heard the arguments of counsel, the  
8 Court having stated its findings and conclusions on the record, the Court being fully advised in the  
9 premises, and good cause appearing, NOW THEREFORE, THE COURT FINDS AND  
10 CONCLUDES:

#### 11 UNDISPUTED FACTS

##### 12 A. BACKGROUND.

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

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

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

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

23 5. The Division, as well as the local jurisdiction, played a role in the ultimate licensing  
24 of MMEs. Specifically, the local jurisdiction was tasked with considering issues such as site plans,  
25 zoning and proximity to other business or facilities (the "Local Application Process") while the

26  
27 <sup>1</sup> Plaintiff previously notified the Court that Plaintiff was no longer seeking any claims against the City of Las Vegas as  
28 the Plaintiff's claims had been rendered moot. Notwithstanding, the City of Las Vegas was included as an interested  
party to give them an opportunity to heard on the Plaintiff's requested relief against the State of Nevada and Desert Aire  
Wellness, LLC.

SMITH & SHAPIRO, PLLC  
2520 St. Rose Parkway, Suite 220  
Henderson, NV 89074  
O: (702) 318-5033 F: (702) 318-5034

1 Division focused on public health, public safety, and marijuana as a medicine (the "Division  
2 Application Process").

3 6. In accordance with its responsibilities, the City of Las Vegas enacted Ordinance No.  
4 6321 and 6324 to establish zoning regulations, licensing regulations, and standards for MME  
5 locations.

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

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

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

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

19 **B. DESERT AIRE'S APPLICATION.**

20 10. Plaintiff and Desert Aire were two of the 49 applicants for a Dispensary License in  
21 the City of Las Vegas.

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

24 12. Prior to the October 28-29, 2014 Las Vegas City Council meeting, Desert Aire  
25 withdrew their application for a special use permit and compliance permit.

26 13. On October 30, 2014, the City of Las Vegas sent a letter to the Division notifying the  
27 Division that Desert Aire's application for a special use permit and compliance permit from the City  
28 of Las Vegas had been withdrawn and identifying for the Division the twenty-eight (28) applicants

1 who had been granted a special use permit and compliance permit for purposes of NRS §  
2 453A.322(3)(a)(5).

3 14. The City of Las Vegas letter was intended to comply, and did comply, with NRS  
4 453A.322(3)(a)(5).

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

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

13 17. While Desert Aire subsequently obtained a special use permit, that did not occur until  
14 after November 3, 2014. Desert Aire ultimately opened for business.

15 18. At the time the Department registered Desert Aire and issued a Provisional License,  
16 Desert Aire did not meet the requirements of N.R.S. § 453A.322, which specifically permitted the  
17 Division to register a medical marijuana establishment and issue a registration certificate if the  
18 business seeking to register had completed all of the requirements of subsection 3(a), including  
19 providing a letter from the applicable local authority certifying that the proposed medical marijuana  
20 establishment is in compliance with [zoning] restrictions and satisfies all applicable building  
21 requirements.

22 19. Pursuant the plain terms of the statute, the Division should not have registered Desert  
23 Aire and issued a registration certificate as Desert Aire had not met all the requirements of the  
24 statute.

25 20. The Nevada Department of Health and Human Services should have registered and  
26 issued the registration certificate to the medical marijuana establishment to the top twelve ranked  
27 applicants which met all the requirements of the statute.

28 \\\

SMITH & SHAPIRO, PLLC  
2520 St. Rose Parkway, Suite 220  
Henderson, NV 89074  
O:(702)318-5033 F:(702)318-5034

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

### CONCLUSIONS OF LAW

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

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

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

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

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

27. The Division has acknowledged that a complaint for declaratory and injunctive relief is appropriate.

28. The issuance of the Provisional Certificate to Desert Aire was in error and contrary to NRS § 453A.322(3).

29. Desert Aire should have been disqualified due to their non-compliance with NRS § 453A.322(3)(a)(5).

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

\\

1 NOW THEREFORE:

2 31. IT IS HEREBY ORDERED Plaintiffs Motion for Summary Judgment is GRANTED  
3 in part and DENIED in part.

4 32. IT IS FURTHER ORDERED that Plaintiff's Motion is GRANTED to the extent that  
5 Desert Aire should not have been registered or issued a certification of registration as a medical  
6 marijuana establishment because it had not met all the necessary requirements of 453A.322(3)(a).

7 33. IT IS FURTHER ORDERED that the Division shall rescind or withdraw the  
8 dispensary registration previously issued to Desert Aire.

9 34. IT IS FURTHER ORDERED that Plaintiff's Motion for is DENIED to the extent  
10 Plaintiff seeks the re-issue of Desert Aire's dispensary registration to Plaintiff.

11 35. IT IS FURTHER ORDERED Defendant Desert Aire's Countermotion for Summary  
12 Judgment is DENIED.

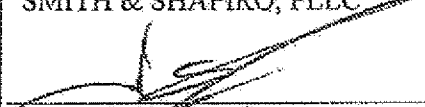
13 36. IT IS FURTHER ORDERED that there being no other unresolved claims or issues,  
14 this matter is and shall be CLOSED and this Order shall be a FINAL, APPEALABLE ORDER.

15 IT IS SO ORDERED this 16 day of April, 2016.

16  
17   
DISTRICT COURT JUDGE

18 Respectfully Submitted by:

19 SMITH & SHAPIRO, PLLC

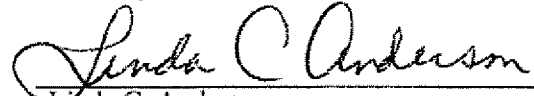
20  
21   
James E. Shapiro, Esq.  
Nevada Bar No. 7907  
2520 Saint Rose Parkway, Suite 220  
Henderson, Nevada 89074  
23 Attorneys for Plaintiff  
24  
25  
26  
27  
28

SMITH & SHAPIRO, PLLC  
2520 St. Rose Parkway, Suite 220  
Henderson, NV 89074  
O:(702)318-3033 F:(702)318-3034

1 Approved:  
2 MICHAEL H. SINGER, LTD.

Approved:  
ADAM PAUL LAXALT,  
Attorney General

3  
4  
5 Michael H. Singer, Esq.  
6 Nevada Bar No. 1589  
7 4475 South Pecos Rd.  
8 Las Vegas, NV 89121  
9 *Attorneys for DESERT AIRE*  
10 *WELLNESS, LLC*

  
Linda C. Anderson  
Chief Deputy Attorney General  
Nevada Bar No. 4090  
555 E. Washington Ave., #3900  
Las Vegas, NV 89101  
*Attorneys for the STATE OF NEVADA*

SMITH & SHAPIRO, PLLC  
2520 St. Rose Parkway, Suite 220  
Henderson, NV 89074  
O: (702) 318-5033 F: (702) 318-5034

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Other Civil Matters**

**COURT MINUTES**

**January 25, 2016**

---

A-15-728448-C      GB Sciences Nevada LLC, Plaintiff(s)  
vs.  
Nevada Department of Behavioral Health and Human Services, Defendant(s)

---

**January 25, 2016      3:00 AM      Motion to Intervene**

**HEARD BY:** Cory, Kenneth      **COURTROOM:** RJC Courtroom 16A

**COURT CLERK:** Michele Tucker

**RECORDER:**

**REPORTER:**

**PARTIES**

**PRESENT:**

**JOURNAL ENTRIES**

- COURT ORDERED, Samantha Inc. d/b/a Samantha's Remedies Motion to Intervene as Plaintiff Pursuant to NRCP 24 and Motion to Stay Proceedings Pending Resolution of Supreme Court Proceedings DENIED. Mr. Shapiro to prepare the Order.

CLERK'S NOTE: The above minute order has been distributed to: James Shapiro, Esq., Michael Singer, Esq., Linda Anderson, Esq., and Kimberly Maxson-Rushton, Esq. via e-mail. /mlt

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

Other Civil Matters

COURT MINUTES

February 23, 2016

---

A-15-728448-C      GB Sciences Nevada LLC, Plaintiff(s)  
vs.  
Nevada Department of Behavioral Health and Human Services, Defendant(s)

---

February 23, 2016      9:00 AM      All Pending Motions

HEARD BY: Cory, Kenneth      COURTROOM: RJC Courtroom 16A

COURT CLERK: Michele Tucker

RECORDER: Lisa Lizotte

REPORTER:

**PARTIES**

**PRESENT:**      Anderson, Linda Christine      Attorney  
Shapiro, James E.      Attorney  
Singer, Michael H.      Attorney

**JOURNAL ENTRIES**

- PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT AGAINST DESERT AIRE WELLNESS, LLC...DESERT AIRE WELLNESS LLC'S OPPOSITION TO PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT AGAINST DESERT AIRE WELLNESS LLC AND COUNTERMOTION FOR SUMMARY JUDGMENT AGAINST GB SCIENCES NEVADA LLC

Mr. Shapiro gave factual back ground and argued Senate Bill 247, City Ordinance 6321 & 6324, and argued NRS 453A.322. Mr. Shapiro gave summary of hearing in which the City made their decisions on the application. Further arguments by Mr. Shapiro as to provisional letter. Ms. Anderson advised the motion was not made against the Division and a response has not been filed. Ms. Anderson further advised the Division based their decision on their ranking not on the letters and as they had not received letters from anyone. Statements by the Court regarding the statute requiring the letter. Ms. Anderson advised no one had submitted letters and the Division made the decision to go forward as they were trying to meet the needs of the community. The Court read the statute and made further statements regarding the requirement of the letter. Mr. Shapiro requested the matter be continued in order for them to file a motion for summary judgment against the State. Statements by



the Court. Mr. Singer advised they have relied upon the City and the State and have appeared before the City Council many times and they have not appeared to object. Mr. Singer argued they have done everything they were supposed to do and spent enormous amounts of money. Mr. Singer further argued Price/Carson City case. Ms. Anderson requested filing supplemental briefs. Colloquy. COURT ORDERED, Motions DENIED WITHOUT PREJUDICE and it would allow filing with a more encompassing motion. COURT FURTHER ORDERED, Plaintiff's motion due February 26, 2016, Defendants Opposition due March 4, 2016, Reply due March 8, 2016 and Matter SET for hearing.

3/15/16 9:00 AM MOTION FOR SUMMARY JUDGMENT

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Other Civil Matters**

**COURT MINUTES**

**March 15, 2016**

---

A-15-728448-C      GB Sciences Nevada LLC, Plaintiff(s)  
vs.  
Nevada Department of Behavioral Health and Human Services, Defendant(s)

---

**March 15, 2016      9:00 AM      All Pending Motions**

**HEARD BY:** Cory, Kenneth      **COURTROOM:** RJC Courtroom 16A

**COURT CLERK:** Michele Tucker

**RECORDER:** Lisa Lizotte

**REPORTER:**

**PARTIES**

**PRESENT:**      Anderson, Linda Christine      Attorney  
Shapiro, James E.      Attorney  
Singer, Michael H.      Attorney

**JOURNAL ENTRIES**

- PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT...DESERT AIRE WELLNESS LLC'S  
OPPOSITION TO PLAINTIFF/COUNTERDEFENDANT'S MOTION FOR SUMMARY JUDGMENT  
AND COUNTERMOTION FOR SUMMARY JUDGMENT

Following arguments by counsel, COURT ORDERED, Desert Aire Wellness LLC's Opposition to Plaintiff/Counterdefendant's Motion for Summary Judgment and Countermotion for Summary Judgment DENIED. COURT FURTHER ORDERED, Plaintiff's Motion for Summary Judgment GRANTED as to the license was improperly granted and DENIED as to the remaining. Court STATED the State did not act in accordance with the law in the way they acted and must do so. The Court applauds the State's concerns about acting in accordance with the law, as they have been vested with that discretion by the legislative. The Court hopes the State moves quickly, so long as it is carefully and methodically as to the care, health, and welfare of the State, as this is a new area. Mr. Shapiro to prepare the Order.

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Other Civil Matters**

**COURT MINUTES**

**May 16, 2016**

---

A-15-728448-C	GB Sciences Nevada LLC, Plaintiff(s) vs. Nevada Department of Behavioral Health and Human Services, Defendant(s)
---------------	--

---

May 16, 2016	3:00 AM	Motion For Reconsideration
--------------	---------	-------------------------------

HEARD BY: Cory, Kenneth	COURTROOM: RJC Courtroom 16A
-------------------------	------------------------------

COURT CLERK: Michele Tucker

RECORDER:

REPORTER:

**PARTIES  
PRESENT:**

**JOURNAL ENTRIES**

- COURT ORDERS, Defendant's Motion for Reconsideration and Request that the Court Reverse and Grant Defendant Summary Judgment to Defendant or at a Minimum Grant a Stay Pending an Appeal DENIED IN ITS ENTIRETY. Mr. Shapiro to prepare the Order.

CLERK'S NOTE: The above minute order has been distributed to: James Shapiro, Esq. (jshapiro@smithshapiro.com), Patrick Shehan, Esq. (psheehan@fclaw.com), and Linda Anderson, Esq. (landerson@ag.nv.gov). /mlt



**EIGHTH JUDICIAL DISTRICT COURT CLERK'S OFFICE**  
**NOTICE OF DEFICIENCY**  
**ON APPEAL TO NEVADA SUPREME COURT**

**JAMES E. SHAPIRO, ESQ.**  
**2520 ST. ROSE PKWY., SUITE 220**  
**HENDERSON, NV 89074**

**DATE: May 26, 2016**  
**CASE: A-15-728448-C**

**RE CASE:** GB SCIENCES NEVADA, LLC vs. STATE OF NEVADA, DIVISION OF PUBLIC AND BEHAVIORAL HEALTH OF THE DEPARTMENT OF HEALTH AND HUMAN SERVICES; CITY OF LAS VEGAS; DESERT AIRE WELLNESS, LLC

**NOTICE OF APPEAL FILED: May 25, 2016**

**YOUR APPEAL HAS BEEN SENT TO THE SUPREME COURT.**

**PLEASE NOTE: DOCUMENTS **NOT** TRANSMITTED HAVE BEEN MARKED:**

- ☒ **\$250 – Supreme Court Filing Fee (Make Check Payable to the Supreme Court)\*\***
  - If the \$250 Supreme Court Filing Fee was not submitted along with the original Notice of Appeal, it must be mailed directly to the Supreme Court. The Supreme Court Filing Fee will not be forwarded by this office if submitted after the Notice of Appeal has been filed.
- ☐ **\$24 – District Court Filing Fee (Make Check Payable to the District Court)\*\***
- ☒ **\$500 – Cost Bond on Appeal (Make Check Payable to the District Court)\*\***
  - NRAP 7: Bond For Costs On Appeal in Civil Cases
- ☐ **Case Appeal Statement**
  - NRAP 3 (a)(1), Form 2
- ☐ **Order**
- ☐ **Notice of Entry of Order**

---

**NEVADA RULES OF APPELLATE PROCEDURE 3 (a) (3) states:**

"The district court clerk must file appellant's notice of appeal despite perceived deficiencies in the notice, including the failure to pay the district court or Supreme Court filing fee. The district court clerk shall apprise appellant of the deficiencies in writing, and shall transmit the notice of appeal to the Supreme Court in accordance with subdivision (e) of this Rule with a notation to the clerk of the Supreme Court setting forth the deficiencies. Despite any deficiencies in the notice of appeal, the clerk of the Supreme Court shall docket the appeal in accordance with Rule 12."

***Please refer to Rule 3 for an explanation of any possible deficiencies.***

---

***\*\*Per District Court Administrative Order 2012-01, in regards to civil litigants, "...all Orders to Appear in Forma Pauperis expire one year from the date of issuance." You must reapply for in Forma Pauperis status.***

# Certification of Copy

State of Nevada }  
County of Clark } SS:

I, Steven D. Grierson, the Clerk of the Court of the Eighth Judicial District Court, Clark County, State of Nevada, does hereby certify that the foregoing is a true, full and correct copy of the hereinafter stated original document(s):

NOTICE OF CROSS-APPEAL; CASE APPEAL STATEMENT; DISTRICT COURT DOCKET ENTRIES; CIVIL COVER SHEET; ORDER RE: GB SCIENCES NEVADA, LLC'S MOTION FOR SUMMARY JUDGMENT; DESERT AIRE WELLNESS, LLC'S COUNTERMOTION FOR SUMMARY JUDGMENT; NOTICE OF ENTRY OF ORDER RE: GB SCIENCES NEVADA, LLC'S MOTION FOR SUMMARY JUDGMENT; DESERT AIRE WELLNESS, LLC'S COUNTERMOTION FOR SUMMARY JUDGMENT; DISTRICT COURT MINUTES; NOTICE OF DEFICIENCY

GB SCIENCES NEVADA, LLC,

Plaintiff(s),

vs.

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

Defendant(s),

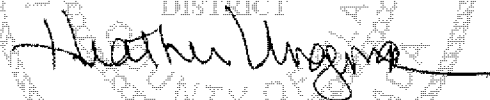
Case No: A-15-728448-C

Dept No: I

now on file and of record in this office.

IN WITNESS THEREOF, I have hereunto  
Set my hand and Affixed the seal of the  
Court at my office, Las Vegas, Nevada  
This 26 day of May 2016.

Steven D. Grierson, Clerk of the Court



Heather Ungermann, Deputy Clerk