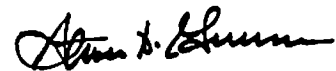


# EXHIBIT 1



CLERK OF THE COURT

ADAM PAUL LAXALT  
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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; et. al,

Defendants.

Case No.: A-14-710597

Dept. No.: XX

ACRES MEDICAL, LLC,

Plaintiff in Intervention,

vs.

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

Defendants in Intervention.

**ORDER DENYING PLAINTIFF'S MOTION FOR LEAVE TO AMEND**

This matter came before the Court on December 2, 2015, on a Motion for Leave to Amend First Amended Complaint filed by Plaintiff GB Sciences Nevada, LLC on November 16, 2015, which was heard on an Order Shortening Time filed November 17, 2015. At the hearing, Plaintiff GB Sciences Nevada, LLC was represented by James, E. Shapiro, Esq; Defendant Nevada Department of Health and

Human Services was represented by Linda C. Anderson, Chief Deputy Attorney General; Defendant Nuleaf CLV Dispensary was represented by Todd L. Bice, Esq. and proposed Plaintiff in Intervention Acres Medical, LLC was represented by Mark E. Ferrario, Esq. John A. Curtas, Esq. representing City of Las Vegas was also present at the hearing. This Court having reviewed the papers and pleading on file, having heard arguments and good cause appearing, the Court makes the following findings of fact, conclusions of law and orders as follows:

The Court finds that Plaintiff GB Sciences sought to amend their First Amended Complaint to assert claims against the City of Las Vegas which had been voluntarily dismissed on January 23, 2015, without prejudice and to assert claims against Desert Aire Wellness which was also voluntarily dismissed without prejudice on April 1, 2015. The Court further finds that according to the Scheduling Order filed on July 2, 2015, all parties were to file motions to amend the pleadings or add parties on or before August 11, 2015. In a recent decision, the Nevada Court of Appeals examined the interplay between the lenient standard for amendment in NRCP Rule 15(a) and the requirements for modification of a scheduling order under NRCP Rule 16(b) and concluded that this Court must determine whether good cause exists to modify the scheduling order. *Nutton v. Sunset Station*, 131 Nev. Adv. Op. 34, 357 P.3d 966 (2015).

This Court had already ruled on counter motion for summary judgment in a Minute Order issued November 13, 2015. Defendant NuLeaf objected to the amendment as untimely because it would delay a final order in this matter and interfere with appellate rights. This Court finds and concludes that good cause does not exist to modify the scheduling order and allow amendment. The Court finds and concludes that amendment at this juncture would prevent the timely resolution of the litigation.

IT IS HEREBY ORDERED that the Motion for Leave to Amend First Amended Complaint filed by Plaintiff GB Sciences Nevada, LLC on November 16, 2015, is DENIED.

Dated: 1-22-16

  
DISTRICT COURT JUDGE  
ERIC JOHNSON

*ja*

1 Submitted by:

2 ADAM PAUL LAXALT  
3 Attorney General

4 By: /s/ Linda C. Anderson

5 Linda C. Anderson  
6 Chief Deputy Attorney General

7 RE: *GB Sciences v. State of Nevada*  
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1                                   **IN THE SUPREME COURT OF THE STATE OF NEVADA**

2  
3       DESERT AIRE WELLNESS, LLC                                    )

4                                   Appellant,

5                                   vs.

6       GB SCIENCES NEVADA, LLC                                    )

7                                   Respondent/Cross-Appellant                                    )

Electronically Filed  
Jun 08 2016 09:22 a.m.

Case No.: 70462  
Tracie K. Lindeman  
Clerk of Supreme Court  
District Case No.: A-15-728448-C

8  
9                                   **STATE RESPONSE TO EMERGENCY MOTION FOR STAY**

10           COMES NOW Defendant STATE OF NEVADA on its relation to the  
11 DEPARTMENT OF HEALTH AND HUMAN SERVICES, DIVISION OF PUBLIC  
12 AND BEHAVIORAL HEALTH (hereinafter "DIVISION"), by and through ADAM  
13 PAUL LAXALT, Attorney General by Chief Deputy Attorney General, LINDA C.  
14 ANDERSON, and files this response to the Motion For Emergency Stay as directed by  
15 this Court in an Order filed May 31, 2016. The DIVISION supports a stay of the  
16 District Court Order to the extent that it directs the DIVISION to "rescind or withdraw  
17 the dispensary registration previously issued to Desert Aire".

18           **I. HARM TO THE COMMUNITY**

19           In addition to the factors under NRAP 8(c), the community will not be served by the  
20 closure of an operating dispensary. In this case, the District Court did not award a  
21 registration to GB Sciences or any other applicant as a replacement to Desert Aire  
22 Wellness so the City of Las Vegas would have one less dispensary available while this  
23 litigation is pending. Although the DIVISION does not have an interest in a particular  
24 dispensary, the DIVISION supports stability in the operation of existing dispensaries in  
25 order to meet the needs of the community. A stay of the District Court order would  
26 serve the needs of patients who currently rely on Desert Aire Wellness and minimize  
27 unnecessary disruption or barriers to access in their choice of treatment.

28       ...

## II. HARM TO THE PARTIES

In addition to the factors described by the Appellant, no clear source for compensatory damages exists for the harm suffered by Desert Aire Wellness for the loss of business. This registration is a revocable privilege and does not implicate any property rights as described in NRS 453A.320. Therefore, the financial harm to Desert Aire Wellness could be irreparable if the stay is not granted.

If Desert Aire Wellness' registration is rescinded, the District Court order contemplated that the DIVISION would go forward with a new application process to register a dispensary in the City of Las Vegas which would be open to all parties. According to NRS 453A.324(4), the DIVISION can only accept applications once a calendar year. Because both Desert Aire Wellness and GB Sciences have challenged the decision, proceeding with another application process is likely to result in more litigation if a new registration were issued.<sup>1</sup> Therefore, a stay would be beneficial to Desert Aire Wellness, GB Sciences, and the DIVISION to avoid the unnecessary use of time and expense of a new application process if either of these parties is successful on appeal.

Finally, GB Sciences is also pursuing another cross-appeal for this same dispensary location in the City of Las Vegas in *Nuleaf Dispensary v. State of Nevada/GB Sciences v. State of Nevada*. Case No. 69909. If GB Sciences is successful in that case, GB Sciences will have no reason to pursue this appeal in this matter. Therefore, the denial of the stay in this matter may have even less of an impact on GB Sciences and will only serve to remove a competitor from the marketplace.

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<sup>1</sup> After this Court declined to rule on the writ in *State v. Eighth Judicial District Court (Samantha Remedies)* Case No. 67423, the petition for judicial review is also proceeding on another contender for one of the twelve dispensary slot in the City of Las Vegas. Judge Smith ordered the release of the confidential scoring tool as part of that review so the DIVISION will need to develop a new process before a new application process is initiated so that Samantha Remedies will not have an unfair advantage in any future competitive process. Samantha Remedies was denied intervention in this case on February 19, 2016 so is not a party to this appeal.

### III. LIKELIHOOD OF SUCCESS ON THE MERITS

The arguments raised by the Appellant highlight that consideration of the “timing” of events is critical to the assessment of likelihood of success on the merits. First, the motion raises the question of whether the timing of the approval from the City of Las Vegas should have a substantive impact on the reading of the requirement from the Nevada Legislature in NRS 453A.322(3)(a)(5) that the applicant submit to the Division the following:

If the city, town or county in which the proposed medical marijuana establishment will be located has enacted zoning restrictions, proof of licensure with the applicable local governmental authority or a letter from the applicable local governmental authority certifying that the proposed medical marijuana establishment is in compliance with those restrictions and satisfies all applicable building requirements.

As noted in the motion, neither party had approval from the local authority at the time the application was submitted to the Division. The pleadings show that Desert Aire Wellness received approval from the City of Las Vegas but not at the same time that GB Sciences did and this Court will be asked to determine if the timing matters.

The second issue of “timing” is whether the challenge brought by GB Sciences to Desert Aire Wellness in this case was timely. Although Desert Aire Wellness made a laches argument based on the actions of the DIVISION, those same arguments should be consider in context of the action taken by GB Sciences in filing a second lawsuit against Desert Aire Wellness. Certainly the initial action in a different District Court case (Case Number A-14-710597-C)<sup>2</sup> filed on December 5, 2014, was timely because it was filed within 30 days of the notice of the registrations and before any medical marijuana establishment was operating. However, on April 1, 2015, GB Sciences chose to dismiss Desert Aire Wellness from that litigation without prejudice and then filed a motion for summary judgment against the other Defendant Nuleaf on September 18, 2015. The motion for summary judgment was granted but the dispensary was awarded to another

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<sup>2</sup> See, *Nuleaf Dispensary v. State of Nevada/GB Sciences v. State of Nevada*. Case No. 69909.

1 intervening party. GB Sciences then sought to bring Desert Aire Wellness back into the  
2 litigation in a motion filed November 16, 2015, but the Court denied that request. *See*,  
3 Exhibit 1 for Order Denying Plaintiff's Motion for Leave to Amend. After one District  
4 Court Judge found the delay was too long, GB Sciences filed a second lawsuit in our  
5 present case against Desert Aire Wellness on December 2, 2015. Our present case was  
6 not only filed a year after the initial challenge was brought, but relief was also sought  
7 after Desert Aire Wellness had taken the necessary steps to open the dispensary.  
8 Therefore, the equitable doctrine of laches may be applicable to GB Sciences in  
9 pursuing the second action against Desert Aire Wellness even though the first case was  
10 dismissed without prejudice. *See, Carson City v. Price*, 113 Nev. 409, (34 P.3d 104  
11 (1997) (Delay of one party works to the disadvantage of the other.)

### 12 CONCLUSION

13 Again, no property interest exists for either the appellant or cross-appellant in this  
14 matter and the DIVSION does not have an interest in any particular establishment  
15 receiving or maintaining a registration. However, the Division respectfully requests this  
16 Court to grant stay for Desert Aire Wellness so the dispensary can continue to serve the  
17 community while this litigation is pending.

18 Dated: June 7, 2016

19 ADAM PAUL LAXALT  
20 Attorney General

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

24 ...  
25 ...  
26 ...  
27 ...  
28 ...



**Attorney General's Office**  
555 E. Washington, Suite 3900  
Las Vegas, Nevada 89101

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