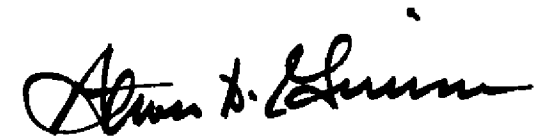


EXHIBIT F

EXHIBIT F



CLERK OF THE COURT

AACC
MICHAEL H. SINGER, ESQ.
Nevada Bar No. 1589
MICHAEL H. SINGER, LTD.
4475 South Pecos Road
Las Vegas, Nevada 89121
Telephone: (702) 454-2111
Facsimile: (702) 454-3333
Email: msinger@mhsingerlaw.com
Attorney for Defendant/Counterclaimant

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,

Defendant.

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

ANSWER AND COUNTERCLAIM

COMES NOW Defendant, Desert Aire Wellness LLC (“Defendant”), by and through its
attorney, MICHAEL H. SINGER, ESQ., of the law firm of MICHAEL H. SINGER, LTD., and for its
Answer to Plaintiff’s Complaint, answers as follows:

1 **PARTIES**

2 1. Defendant admits the allegations contained in paragraphs 1 – 4, and 6 of Plaintiff's
3 Complaint.

4 2. Defendant Denies the allegations contained in paragraph 5 of Plaintiff's Complaint.

5 **GENERAL ALLEGATIONS**

6 3. Defendant admits the allegations contained in paragraphs 7 – 10, and 13 of Plaintiff's
7 Complaint.

8 4. Defendant is without sufficient information or belief to either admit or deny the
9 allegations contained in paragraphs 11 and 12 of Plaintiff's Complaint and therefore denies the same.

10 **CITY OF LAS VEGAS' APPROVAL PROCESS**

11 5. Defendant admits the allegations contained in paragraphs 14, 16 – 18, and 21 of
12 Plaintiff's Complaint.

13 6. Defendant admits that the City of Las Vegas was granted certain responsibilities in
14 connection with the issuance of a business license for the legal sale of medical marijuana, and denies the
15 remainder of the allegations contained in paragraph 15 of Plaintiff's Complaint.

16 7. Defendant is without sufficient information or belief to either admit or deny the
17 allegations contained in paragraphs 19, 23, and 25 of Plaintiff's Complaint and therefore denies the
18 same.

19 8. Defendant is without sufficient information or belief that Plaintiff was an applicant for a
20 medical marijuana license and denies the allegations contained in paragraph 20 of Plaintiff's Complaint.

21 9. Defendant admits Plaintiff was granted a special use permit, and denies the remainder of
22 the allegations contained in paragraph 22 of Plaintiff's Complaint.

23 10. Defendant denies it withdrew its application, and is without sufficient information to
24 either admit or deny the remainder of the allegations contained in paragraph 24 of Plaintiff's Complaint
25 and therefore denies the same.

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

27 11. Defendant admits the allegations contained in paragraphs 26 and 36 of Plaintiff's
28 Complaint.

1 12. Defendant denies paragraphs 27 – 30 on the basis that they state a legal conclusion, not a
2 factual allegation.

3 13. Defendant is without sufficient information or belief to either admit or deny the
4 allegations contained in paragraphs 31 and 32 of Plaintiff's Complaint and therefore denies the same.

5 14. Defendant denies paragraphs 33 – 35, and 37 – 38 of Plaintiff's Complaint on the basis
6 that it calls for a legal conclusion and is not a factual assertion.

7 **PLAINTIFF AND DEFENDANTS' APPLICATIONS**

8 15. Defendant admits the allegations contained in paragraph 39 of Plaintiff's Complaint.

9 16. Defendant admits it was an applicant, and is without sufficient information to either
10 admit or deny the remainder of the allegations contained in paragraph 40 of Plaintiff's Complaint and
11 therefore denies the same.

12 17. Defendant admits it submitted an application to the City of Las Vegas, and is without
13 sufficient information to either admit or deny the remainder of the allegations contained in paragraph 41
14 of Plaintiff's Complaint and therefore denies the same.

15 18. Defendant denies the allegations contained in paragraphs 42, 51, 46 – 48 of Plaintiff's
16 Complaint.

17 19. Defendant is without sufficient information to either admit or deny the allegations
18 contained in paragraphs 43, 44, 49, 50, 52, and 53 of Plaintiff's Complaint and therefore denies the
19 same.

20 20. Defendant denies that the City of Las Vegas ever notified the Division that Defendant
21 had withdrawn its application and that, in fact, Defendant withdrew its application.

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

24 21. Defendant restates its responses to the paragraphs above as though fully stated herein.

25 22. Defendant denies the allegations contained in paragraphs 55, and 57 – 61 of Plaintiff's
26 Complaint.

27 23. Defendant admits the allegations contained in paragraph 56 of Plaintiff's Complaint.

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25. Defendant denies the allegations contained in paragraphs 62 – 71 of Plaintiff's Complaint.

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27. Defendant is without sufficient information to either admit or deny the allegations contained in paragraphs 73 – 78 of Plaintiff's Complaint and therefore denies the same.

Complaint.

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30. Defendant admits the allegations contained in paragraph 85 of Plaintiff's Complaint.

Complaint.

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(Failure To State a Cause of Action Against Desert Aire Wellness LLC)

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1. On November 3, 2014, Defendant Desert Aire Wellness LLC received notification from the Division that its location at “420 E. Sahara Ave #4632 in the LAS VEGAS local jurisdiction” had been approved as a suitable location for the operation of a medical marijuana dispensary.

///

2. Since November 3, 2014 to the present date, Defendant Desert Aire Wellness LLC has spent approximately Eight Hundred Thousand Dollars (\$800,000) in improvements and related expenses to meet the City of Las Vegas business license requirements, and will likely spend approximately One Hundred Fifty Thousand Dollars (\$150,000) to finalize the total reconstruction of its dispensary site, including all necessary equipment needed for an efficiently operated dispensary.

3. On or about December 2, 2014, Plaintiff filed an action in District Court (Case No.: A-14-710597-C) wherein it claimed it was improperly denied a provisional certificate by the Division.

4. Defendant Desert Aire Wellness LLC was a named defendant in that matter and it appeared as such and participated in all proceedings through April 1, 2015, when this Plaintiff voluntarily dismissed, without prejudice, Case No.: A-14-710597-C against Defendant Desert Aire Wellness LLC.

5. Defendant Desert Aire Wellness LLC expended in excess of Fifty Thousand Dollars (\$50,000) in defense of that proceeding which contained the same allegations as those contained herein.

6. By reason of the above, it would be unjust and inequitable to deprive Defendant Desert Aire Wellness LLC of its legal right to operate a MMS dispensary, and Plaintiff is estopped from doing so, and from enjoining the Division and City of Las Vegas from issuing their final licensing approvals to Defendant Desert Aire Wellness LLC.

7. As an alternative to the foregoing, Plaintiff is collaterally estopped from contesting Defendant Desert Aire Wellness LLC's legal authority to own and operate a MME dispensary.

III.

(Failure to Exhaust Administrative Remedy)

1. Plaintiff, has never brought a “contested matter” before the applicable licensing agency, the Division of Public Health and Behavioral Health, the State of Nevada Department of Health and Human Services.

2. By reason thereof, Plaintiff, pursuant to Chapter 233B of the Nevada Revised Statutes, has not exhausted its administrative remedy.

3. As a consequence, Plaintiff is not entitled to Judicial Review of the Division's refusal to grant it an MME registration certificate.

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IV.

(No Injunctive Relief)

1. Defendant restates paragraphs 1 – 5 of its Second Affirmative Defense as though fully stated herein.

2. The balance of hardships weighs heavily in favor of Defendant Desert Aire Wellness LLC given the time, effort, and money it has expended to secure the MME registration certificate.

3. In accordance therewith, Plaintiff has no legal right or equitable claim to enjoin the division, the City of Las Vegas, or Defendant Desert Aire Wellness LLC from securing its MME registration certificate.

V.

(Laches)

1. Defendant restates paragraphs 1 – 5 of its Second Affirmative Defense as though fully stated herein.

2. As a consequence of the foregoing, Plaintiff's claims against Defendant Desert Aire Wellness LLC are barred by the doctrine of laches.

VI.

(Additional Affirmative Defenses)

1. Defendant reserves the right to assert any additional affirmative defenses as the evidence later develops and reserves the right to seek leave of court to amend its Answer.

COUNTERCLAIM

FIRST CAUSE OF ACTION
(Attorneys Fees)

1. It has been necessary for Defendant/Counterclaimant Desert Aire Wellness LLC to engage the services of Michael H. Singer, Ltd. to defend this action.

2. By reason thereof, Defendants/Counterclaimants are entitled to an award of attorneys fees.

WHEREFORE, Defendant/Counterclaimant Desert Aire Wellness LLC prays for relief as follows:

1. Judgment dismissing Plaintiff's Complaint against Desert Aire Wellness LLC, the Division, and the City insofar as it related to Desert Aire Wellness LLC;

2. Costs of suit;

3. For attorneys fees to be determined by the Court; and

4. For such other and further relief as the Court deems reasonable in the premises.

DATED this 17th day of December, 2015.

MICHAEL H. SINGER, LTD.

BY: /s/ Michael H. Singer, Esq.

MICHAEL H. SINGER, ESQ.

Nevada Bar No. 1589

4475 S. Pecos Road

Las Vegas, NV 89121

Attorney for Defendant/Counterclaimant

CERTIFICATE OF SERVICE

Pursuant to Nev. R. Civ. P. 5(b), I hereby certify that service of the foregoing was made this 17th day of December, 2015, by electronic service through the Eighth Judicial District Court's Odyssey E-File and Serve System, to each of the following on the E-Service Master List:

Smith & Shapiro, PLLC

Contact

Ashley Houston

James E. Shapiro

Sheldon Herbert

Jill Berghammer

Email

ahouston@smithshapiro.com

jshapiro@smithshapiro.com

sherbert@smithshapiro.com

jberghammer@smithshapiro.com

/s/ Diane L. Hutchings

An employee of Michael H. Singer, Ltd.

EXHIBIT E

EXHIBIT E

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 & 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**

Real Property Landlord/Tenant <input type="checkbox"/> Unlawful Detainer <input type="checkbox"/> Other Landlord/Tenant Title to Property <input type="checkbox"/> Judicial Foreclosure <input type="checkbox"/> Other Title to Property Other Real Property <input type="checkbox"/> Condemnation/Eminent Domain <input type="checkbox"/> Other Real Property	Negligence <input type="checkbox"/> Auto <input type="checkbox"/> Premises Liability <input type="checkbox"/> Other Negligence Malpractice <input type="checkbox"/> Medical/Dental <input type="checkbox"/> Legal <input type="checkbox"/> Accounting <input type="checkbox"/> Other Malpractice	Torts Other Torts <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
Probate Probate (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 Estate Value <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	Construction Defect & Contract Construction Defect <input type="checkbox"/> Chapter 40 <input type="checkbox"/> Other Construction Defect Contract Case <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	Judicial Review/Appeal Judicial Review <input type="checkbox"/> Foreclosure Mediation Case <input type="checkbox"/> Petition to Seal Records <input type="checkbox"/> Mental Competency Nevada State Agency Appeal <input type="checkbox"/> Department of Motor Vehicle <input type="checkbox"/> Worker's Compensation <input type="checkbox"/> Other Nevada State Agency Appeal Other <input type="checkbox"/> Appeal from Lower Court <input type="checkbox"/> Other Judicial Review/Appeal
Civil Writ Civil Writ <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		Other Civil Filing Other Civil Filing <input type="checkbox"/> Compromise of Minor's Claim <input type="checkbox"/> Foreign Judgment <input checked="" type="checkbox"/> Other Civil Matters

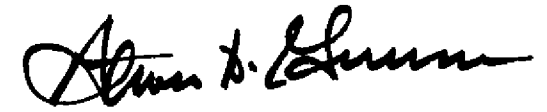
Business Court filings should be filed using the Business Court civil coversheet.

12/2/2015

Date

Signature of initiating party or representative

See other side for family-related case filings.



CLERK OF THE COURT

1 **ACOM**
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

6 **DISTRICT COURT**

7 **CLARK COUNTY, NEVADA**

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

10 Plaintiff,

11 vs.

Case No. A - 1 5 - 7 2 8 4 4 8 - C
Dept. No. I

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; DESERT AIRE WELLNESS, LLC, a
15 Nevada limited liability company; DOES 1-10, and
ROE ENTITIES 1-100, inclusive,

16 Defendants.

17
18 **COMPLAINT**

19 COMES NOW Plaintiff GB SCIENCES NEVADA, LLC, a Nevada limited liability company,
20 by and through its attorneys of record, SMITH & SHAPIRO, PLLC, and for its Complaint, and, in
21 Addition, or in the Alternative, Petition for Judicial Review and Writ of Mandamus (the "Complaint").
22 alleges and avers as follows:

23 **PARTIES**

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

26 2. Defendant, STATE OF NEVADA, DIVISION OF PUBLIC AND BEHAVIORAL
27 HEALTH OF THE DEPARTMENT OF HEALTH AND HUMAN SERVICES (the "Division") is an
28 agency of the State of Nevada.

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

1 3. Upon information and belief, Defendant DESERT AIRE WELLNESS, LLC ("Desert
2 Aire") is a Nevada limited liability company doing business in Clark County, Nevada.

3 4. Upon information and belief, Defendant CITY OF LAS VEGAS (the "City") is a
4 municipal corporation and political subdivision of the State of Nevada.

5 5. The true names and capacities whether individual, corporate, associate or otherwise of
6 Defendants named herein as DOES 1 through 100, inclusive, and ROE ENTITIES 1 through 100,
7 inclusive, and each of them, are unknown to Plaintiff who therefore sues those Defendants by such
8 fictitious names. Plaintiff is informed, believes, and thereon alleges that each of the Defendants
9 designated herein as a DOE or ROE ENTITY are one or more of the applicants improperly or
10 unlawfully issued a provisional registration certificate for the operation of a medical marijuana
11 establishment in the City of Las Vegas by the Division. In addition, or in the alternative, Plaintiff is
12 informed, believes, and thereon alleges that each of the Defendants designated herein as a DOE or ROE
13 ENTITY are one or more of the parties to the Division's proceeding challenged by Plaintiff as part of
14 Plaintiff's Petition for Judicial Review asserted herein. The Division's anonymous application, scoring,
15 and ranking process for the issuance of registration certificate for the operation of a medical marijuana
16 establishment in the City of Las Vegas prevents Plaintiff from knowing the identities of DOE 1 through
17 100 or ROE ENTITIES 1 through 100 at this time. Plaintiff prays for leave to amend this Complaint
18 to insert the true names or identities along with appropriate allegations when same become known.

19 6. Venue is proper in this Court pursuant to N.R.S. § 13.020(3) and N.R.S. §
20 233N.130(2)(b), in that this is the county where the cause, or some part thereof, arose and the aggrieved
21 party resides.

22 GENERAL ALLEGATIONS

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

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

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

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

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

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

14 13. Specifically, the local jurisdiction was tasked with considering issues such as site plans,
15 zoning and proximity to other business or facilities while the Division focused on public health, public
16 safety, and marijuana as a medicine.

17 CITY OF LAS VEGAS' APPROVAL PROCESS

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

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

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

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

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

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

8 20. Plaintiff and Defendant Desert Aire were two of the applicants.

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

11 22. The City of Las Vegas granted a special use permit to twenty-seven (27) applicants,
12 including Plaintiff.

13 23. The City of Las Vegas denied ten (10) applicants a Special Use Permit.

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

16 25. The City of Las Vegas thereafter informed the Division of those applicants granted a
17 special use permit and those applicants denied a special use permit by the City of Las Vegas.

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

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

22 27. While the Division was allowed to *accept* all applications submitted, under N.R.S. §
23 453A.322, the Division could only issue a Provisional Certificate if the applicant's application included
24 six (6) specific items and if the applicant otherwise met the requirements established by N.R.S. Chapter
25 453A.

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

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

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

9 31. Supposedly in accordance with these and many other statutory and regulatory
10 requirements, the Division issued an application packet on May 30, 2014.

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

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

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

21 34. However, the requirements of NRS 453A.322(3) and the Division's ability to issue a
22 medical marijuana registration certificate were subject expressly to the exceptions set forth in NRS
23 453A.326.

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

27 36. The City of Las Vegas is a Nevada city that enacted ordinances for the zoning and
28 business licensing of medical marijuana establishments.

1 37. As such, NRS 453A.326(3) required that the Division ensure compliance with NRS
2 453A.326(3)(5).

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

8 **PLAINTIFF AND DEFENDANTS' APPLICATIONS**

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

12 40. Plaintiff and Desert Aire were among these applicants to the Division.

13 41. Prior to submitting an application to the Division, Plaintiff and Desert Aire each
14 submitted an application to the City of Las Vegas for a Special Use Permit and a Business License as
15 required by the City of Las Vegas' newly enacted ordinances.

16 42. However, Desert Aire subsequently withdrew its application before the City of Las
17 Vegas and never obtained the required the Special Use Permit or Business License from the City of Las
18 Vegas prior to November 3, 2014.

19 43. To the contrary, Plaintiff received a Special Use Permit for the operation of medical
20 marijuana dispensary from the City of Las Vegas and further, its application for Business License was
21 recommended for approval.

22 44. In addition, Plaintiff submitted as part of its application to the Division the City of Las
23 Vegas' certification that Plaintiff complied with the City of Las Vegas's ordinances and building
24 requirements concerning the operation of a medical marijuana establishment in the City of Las Vegas.

25 45. Upon information and belief, the City of Las Vegas informed the Division of those
26 applicants that it approved for a Special Use Permit, which included Plaintiff, and those applicants that
27 it denied a Special Use Permit or otherwise had withdrawn their applications, which included Desert
28 Aire.

1 46. Upon information and belief, the Division, upon receipt of the forty-nine (49)
2 applications for the operation of a medical marijuana dispensary in the City of Las Vegas, never made
3 the required initial determination that each application for the operation of a medical marijuana
4 dispensary was complete.

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

9 48. As a result, the Division improperly ranked the applications of Desert Aire against the
10 acceptable criteria.

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

14 50. At the same time, Plaintiff discovered that the Division ranked and issued provisional
15 registration certificate to Desert Aire (ranked #10).

16 51. Had the Division complied with the express requirements of NRS 453A.322(3), NAC
17 453A.310, NAC 453A.312, and NAC 453A.332, and the Division's previous public statements regarding
18 the correct application procedure, Desert Aire (ranked #10) should not have received a ranking let alone
19 a provisional registration certificate.

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

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

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

54. Plaintiff repeats and realleges the allegations contained in Paragraphs 1 through 54 of the Second Amended Complaint, and incorporates the same by this reference as if more fully set forth herein.

55. There exists a justiciable controversy between Plaintiff, on the one hand, and the Division, City, and Desert Aire, on the other hand regarding the issuance of provisional certificates for MME dispensaries under NRS Chapter 453A.

56. The interests of Plaintiff are adverse to the interests of the Division, City, and Desert Aire, if any.

57. Plaintiff has a legally protectable interest in the controversy.

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

59. Plaintiff is entitled to a declaration, pursuant to N.R.S. § 30.010 *et seq.*, that Desert Aire failed to comply with the express provisions of N.R.S. § 453A.322(3)(a)(5), that the Division improperly issued a provisional certificate to Desert Aire, that the Plaintiff did comply with the express provisions of N.R.S. § 453A.322(3)(a)(5), that the Division improperly denied Plaintiff a provisional certificates as the next applicant in line, that the provisional certificate issued to Desert Aire should be revoked, that a provisional certificates should be issued to Plaintiff, that Desert Aire should not be issued an actual provisional certificate, and that the deadlines and requirements of the City for issuance of licenses for MME Dispensaries should be tolled for the benefit of the Plaintiff until after the Plaintiff's claims are determined in this case so that Plaintiff will not suffer detriment due to the fact that it should have been issued a provisional certificates on November 3, 2014.

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

SECOND CAUSE OF ACTION
(Injunctive Relief)

8 62. Plaintiff repeats and realleges the allegations contained in Paragraphs 1 through 61 of
9 the Second Amended Complaint, and incorporates the same by this reference as if more fully set forth
10 herein.

63. The Division's issuance of provisional certificate to Desert Aire has caused irreparable harm to the Plaintiff because there are only 12 Provisional Certificates allocated to the City of Las Vegas and Plaintiff was denied one of the 12 Provisional Certificates due to the improper issuance of provisional certificate to Desert Aire.

64. The Division's refusal to revoke the provisional certificate issued to Desert Aire, or to reissue a provisional certificates to the Plaintiff has caused Plaintiff to suffer irreparable harm and Plaintiff continues to suffer irreparable harm.

18 65. Desert Aire failed to comply with the requirements of the City of Las Vegas or the
19 provisions of N.R.S. Chapter 453A for issuance of provisional certificates.

66. The Plaintiff complied with the requirements of the City of Las Vegas, and the provisions of N.R.S. Chapter 453A, and should have been issued a provisional certificates as the next eligible and qualified applicant in line.

23 67. The Plaintiff is likely to succeed on the merits of its case because the plain language of
24 the applicable provisions of N.R.S. Chapter 453A requires the Division to score applicants and issue
25 a provisional certificates in order of rank, Plaintiff satisfied all provisions of NRS Chapter 453A and
26 would have been ranked #10 for the 12 provisional certificates allocated to the City of Las Vegas, with
27 the elimination of Desert Aire which did not comply with the provisions of NRS Chapter 453A.

28 11

1 68. Plaintiff has no adequate remedy at law and compensatory relief is inadequate.

2 69. Plaintiff is entitled to a permanent mandatory injunction against the Division, enjoining
3 the Division:

4 (a) from issuing actual Registration Certificates to Desert Aire;

5 (b) to revoke the provisional certificates issued to Desert Aire;

6 (c) to identify Plaintiff as the next highest ranking applicant for one of the Provisional
7 Certificates allocated to the City of Las Vegas; and

8 (d) to issue a provisional certificates to Plaintiff.

9 70. Plaintiff is entitled to a permanent mandatory injunction against the City, requiring the
10 City to toll all deadlines which would have been required of the Plaintiff until after the Court rules on
11 Plaintiffs claims in this case, by virtue of the fact that Plaintiff should have received a Provisional
12 Certificate on November 3, 2014.

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

16 **In addition, or in the alternative to Plaintiff's allegations and Causes of Action asserted**
17 **above, Plaintiff also alleges the following and petitions this Court for Judicial Review in the**
18 **manner prescribed by *NRS 233B.010, et seq.***

19 **PETITION FOR JUDICIAL REVIEW**

20 72. Plaintiff repeats and realleges the allegations contained in Paragraphs 1 through 71 of
21 the Second Amended Complaint, and incorporates the same by this reference as if more fully set forth
22 herein.

23 73. Petitioner, GB Sciences Nevada, LLC, a Nevada limited liability company (hereinafter
24 "**Petitioner**") is an applicant to the Division for the Division's issuance of a Registration Certificate for
25 the operation of a Medical Marijuana Establishment (an "**MME**") Dispensary in the City of Las Vegas,
26 Nevada.

27 74. Through the Division's application process and the Division's review, scoring, and
28 ranking of Petitioner's application for an MME Registration Certificate, the Division has determined

1 the legal rights, duties, or privileges of Petitioner as to the issuance of a Registration Certificate for the
2 operation of an MME Dispensary in the City of Las Vegas, Nevada.

3 75. Accordingly, Petitioner is a party of record to proceedings at the Division in a contested
4 matter.

5 76. On or about November 3, 2014, the Division sent out a letter informing Petitioner that
6 the Division had not issued a provisional Registration Certificate (a "Provisional Certificate") to
7 Petitioner because Petitioner did not achieve a score high enough to rank it in the top 12 applicants
8 within the City of Las Vegas, Nevada.

9 77. On or about November 20, 2014, Petitioner sent correspondence to the Division
10 requesting a hearing regarding Petitioner's application to the Division for a Registration Certificate for
11 the operation of an MME Dispensary in the City of Las Vegas, Nevada.

12 78. On November 25, 2014, the Division sent out a letter informing Petitioner that
13 Petitioner's request for a hearing was denied since the Nevada Legislature allegedly did not provide
14 Petitioner hearing rights concerning its application for a Registration Certificate.

15 79. As such, the Division's November 3, 2014 notification to Petitioner refusing to issue
16 Petitioner a Provisional Certificate for the operation of an MME Dispensary in the City of Las Vegas,
17 Nevada is the Division's final decision on the matter.

18 80. As such, Petitioner has been aggrieved by the Division's "final" refusal to issue
19 Petitioner a Provisional Certificate for the operation of an MME Dispensary in the City of Las Vegas,
20 Nevada in accordance with NRS Chapter 453A and NAC 453A.

21 81. Pursuant to *NRS 233B.130*, Petitioner is entitled to Judicial Review of the Division's
22 "final decision" denying Petitioner's application and refusing to issue Petitioner a Provisional
23 Certificate for the operation of an MME Dispensary in the City of Las Vegas, Nevada in accordance
24 with NRS Chapter 453A and NAC 453A.

25 82. Petitioner, therefore, petitions this Court for Judicial Review of the proceeding at the
26 Division, including, but not limited to, Petitioner's submission, review, scoring, and ranking of its
27 application for registration certificate for the operation of an MME Dispensary in the City of Las Vegas,
28 Nevada.

1 83. Petitioner further demands that the entire record of the proceeding at the Division be
2 transmitted by the Division in the manner required by *NRS 233B.131*.

3 **PETITION FOR WRIT OF MANDAMUS**

4 84. Plaintiff repeats and realleges the allegations contained in Paragraphs 1 through 83 of
5 the Second Amended Complaint, and incorporates the same by this reference as if more fully set forth
6 herein.

7 85. The Division was required to solicit applications, review, score, rank, and issue
8 Provisional Certificates for the operation of an MME in the City of Las Vegas, Nevada in compliance
9 with NRS Chapter 453A, NAC 453A, and other Nevada laws and regulations.

10 86. The Division failed to comply with the requirements of NRS Chapter 453A, NAC 453A,
11 and other Nevada laws and regulations of an MME in the City of Las Vegas to Desert Aire.

12 87. The Division further failed to comply with the requirements of NRS Chapter 453A, NAC
13 453A, and other Nevada laws and regulations when it unlawfully denied Petitioner a Provisional
14 Certificate for the operation of an MME in the City of Las Vegas, Nevada.

15 88. Accordingly, the Division has failed to perform acts that Nevada law compelled the
16 Division to perform.

17 89. Petitioner has no plain, speedy, and adequate remedy in the ordinary course of law to
18 correct the Division's failure to perform as required by Nevada law or compel the Division to perform,
19 as it is required by Nevada law.

20 90. Petitioner, therefore, petitions this Court for a Writ of Mandamus as alleged and in a
21 formal Application for Writ of Mandamus to be filed separately, to compel the Division to issue
22 Petitioner the Provisional Certificate for the operation of an MME Dispensary in the City of Las Vegas,
23 Nevada that Petitioner was entitled to receive had the Division complied with the requirements of NRS
24 Chapter 453A, NAC 453A, and other Nevada laws and regulations.

25 91. Petitioner also petitions this Court for a Writ of Mandamus as alleged and in a formal
26 Application for Writ of Mandamus to be filed separately, to compel the City to toll all time periods
27 related to the issuance of licenses for the operation of an MME Dispensary in the City of Las Vegas due
28 to the Division's failure to issue a Provisional Certificate to Plaintiff on November 3, 2014.

WHEREFORE, Plaintiff prays for relief as follows:

1. For declaratory relief in the manner set forth in Plaintiff's First Cause of Action;

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

(a) from issuing actual Registration Certificates to Desert Aire;

(b) to revoke the Provisional Certificates issued to Desert Aire;

(c) to identify Plaintiff as the next highest ranking applicant for one of the Provisional Certificates allocated to the City of Las Vegas; and

(d) to issue a Provisional Certificate to Plaintiff.

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

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

5. For such other and further relief as the Court deems appropriate in the premises.

6. In addition, or in the alternative, Plaintiff also petitions this Court for Judicial Review of the Division's "final decision" denying Petitioner's application and refusing to issue Petitioner a Provisional Certificate for the operation of an MME Dispensary in the City of Las Vegas, Nevada in accordance with NRS Chapter 453A and NAC Chapter 453A.

7. In addition, or in the alternative, Petitioner also petitions this Court to issue a Writ of Mandamus compelling the Division to comply with the requirements of NRS Chapter 453A, NAC 453A, and other Nevada laws and regulations and issue Petitioner a Provisional Certificate for the operation of an MME Dispensary in the City of Las Vegas, Nevada, and compelling the City to toll all time periods related to the issuance of licenses for the operation of an MME Dispensary in the City of Las Vegas due to the Division's failure to issue a Provisional Certificate to Plaintiff on November 3, 2014.

\\

\\

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

1 DATED this 2nd day of December, 2015.

2 SMITH & SHAPIRO, PLLC

3
4 /s/ James E. Shapiro
James E. Shapiro, Esq.
Nevada Bar No. 7907
5 Sheldon A. Herbert, Esq.
Nevada Bar No. 5988
6 2520 St. Rose Parkway, Suite 220
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7 Attorneys for Plaintiff
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5 (702) 318-5033
Attorneys for Plaintiff

**DISTRICT COURT
CLARK COUNTY, NEVADA**

6
7
8 GB SCIENCES NEVADA, LLC, a Nevada limited
liability company,

9 Plaintiff,

10 vs.

Case No.
Dept. No.

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

15 Defendants.
16

17 **INITIAL APPEARANCE FEE DISCLOSURE**

18 Pursuant to NRS Chapter 19, as amended by Senate Bill 106, filing fees are submitted for parties
19 appearing in the above-entitled action as indicated below:

20 GB SCIENCES NEVADA, LLC,
a Nevada limited liability company \$ 270.00

21
22 TOTAL \$ 270.00

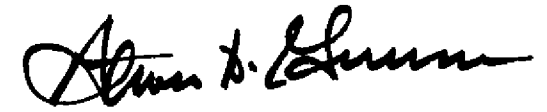
23 DATED this 2nd day of December, 2015.

24 **SMITH & SHAPIRO, PLLC**

25 /s/ James E. Shapiro
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26 Nevada Bar No. 7907
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27 Nevada Bar No. 5988
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Attorneys for Plaintiff

EXHIBIT D

EXHIBIT D



CLERK OF THE COURT

1 **NOEJ**
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2 Nevada Bar No. 7907
Sheldon A. Herbert, Esq.
3 Nevada Bar No. 5988
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Attorneys for GB Sciences Nevada, LLC

6 **DISTRICT COURT**
7
8 **CLARK COUNTY, NEVADA**

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

10 Plaintiff,

11 vs.

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

16 Defendants.

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

Date: May 16, 2016
Time: IN CHAMBERS

17
18 AND RELATED CLAIMS
19

20 **NOTICE OF ENTRY OF ORDER DENYING DESERT AIRE WELLNESS, LLC'S**
21 **MOTION FOR RECONSIDERATION AND REQUEST THAT THE COURT REVERSE**
AND GRANT DEFENDANT SUMMARY JUDGMENT TO DEFENDANT OR AT A
22 **MINIMUM GRANT A STAY PENDING AN APPEAL**

23 NOTICE OF HEREBY GIVEN that an **ORDER DENYING DESERT AIRE WELLNESS,**
24 **LLC'S MOTION FOR RECONSIDERATION AND REQUEST THAT THE COURT**
25 **REVERSE AND GRANT DEFENDANT SUMMARY JUDGMENT TO DEFENDANT OR**
26 **AT A MINIMUM GRANT A STAY PENDING AN APPEAL**, was entered on 8th day of June,
27 2016. A copy of said Order is attached hereto as Exhibit 1.

28 **///**

SMITH & SHAPIRO, PLLC
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Henderson, Nevada 89074
(702) 318-5033

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

1 Dated this 8th day of June, 2016.

2 SMITH & SHAPIRO, PLLC

3
4 /s/ James E. Shapiro, Esq.

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

13 **CERTIFICATE OF SERVICE**

14 I hereby certify that I am an employee of SMITH & SHAPIRO, PLLC, and that on the 8th day
15 of June, 2016, I served a true and correct copy of the foregoing **NOTICE OF ENTRY OF ORDER**
16 **DENYING DESERT AIRE WELLNESS, LLC'S MOTION FOR RECONSIDERATION AND**
17 **REQUEST THAT THE COURT REVERSE AND GRANT DEFENDANT SUMMARY**
18 **JUDGMENT TO DEFENDANT OR AT A MINIMUM GRANT A STAY PENDING AN**
19 **APPEAL**, by e-serving a copy on all parties registered and listed as Service Recipients in Wiznet,
20 the Court's on-line, electronic filing website, pursuant to Administrative Order 14-2, entered by the
21 Chief Judge, Jennifer Togliatti, on May 9, 2014.

22
23 /s/ Ashley Houston
24 An employee of SMITH & SHAPIRO, PLLC
25
26
27
28

Exhibit “1”

Exhibit “1”

ORIGINAL

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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 GB Sciences Nevada, LLC*

11 **DISTRICT COURT**

12 **CLARK COUNTY, NEVADA**

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

15 Plaintiff,

16 vs.

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

25 Defendants.

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

Date: May 16, 2016
Time: IN CHAMBERS

26 AND RELATED CLAIMS

27 **ORDER DENYING DESERT AIRE WELLNESS, LLC'S MOTION FOR**
28 **RECONSIDERATION AND REQUEST THAT THE COURT REVERSE AND GRANT**
DEFENDANT SUMMARY JUDGMENT TO DEFENDANT OR AT A MINIMUM
GRANT A STAY PENDING AN APPEAL

29 THIS MATTER having come before the Court on May 16, 2016, in Chambers, on
30 Defendant/Counterclaimant Desert Aire Wellness, LLC's Motion for Reconsideration and Request
31 that the Court Reverse and Grant Defendant Summary Judgment to Defendant or at a Minimum
32 Grant a Stay Pending an Appeal (the "Motion for Reconsideration"), filed by and through its
33 counsel, FENNEMORE CRAIG, P.C.; the Motion for Reconsideration having been opposed by
34 Plaintiff/Counterdefendant GB Sciences Nevada, LLC, by and through its counsel, SMITH &

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SHAPIRO, PLLC; the Motion for Reconsideration having been responded to by Defendant State of Nevada, the Court having reviewed the papers and pleadings on file herein, the Court being fully advised in the premises, and GOOD CAUSE APPEARING therefore;

IT IS HEREBY ORDERED that the Motion for Reconsideration is DENIED IN ITS ENTIRETY.

DATED: 6th day of June, 2016


DISTRICT COURT JUDGE

Respectfully submitted by:

SMITH & SHAPIRO, PLLC


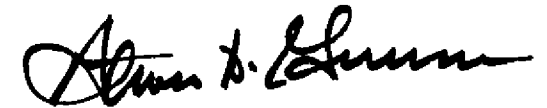

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*Attorneys for Plaintiff/Counterdefendant,
GB Sciences Nevada, LLC*

EXHIBIT C

EXHIBIT C



CLERK OF THE COURT

1 **NOTC**
James E. Shapiro, Esq.
2 Nevada Bar No. 7907
Sheldon A. Herbert, Esq.
3 Nevada Bar No. 5988
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5 (702) 318-5033
Attorneys for Plaintiff

6 **DISTRICT COURT**

7 **CLARK COUNTY, NEVADA**

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

9
10 Plaintiff,

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

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; DESERT AIRE WELLNESS, LLC, a
15 Nevada limited liability company; DOES 1-10, and
ROE ENTITIES 1-100, inclusive,

16 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 limited
liability company,

22 Counterdefendant.
23

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

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

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(702) 318-5033

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

3
4 DATED this 28nd 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 28th 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 **ORDER**

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

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

13 Plaintiff,

Case No. A-15-728448-C

Dept. No. I

14 vs.

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

23 Defendants.

Date: March 15, 2016

Time: 9:00 a.m.

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

26 Counterclaimant,

27 vs.

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

Counterdefendant.

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

THIS MATTER having come before the Court on GB SCIENCES NEVADA, LLC's
("Plaintiff") Motion for Summary Judgment (the "Motion") and on Defendant DESERT AIRE
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(s)	<input type="checkbox"/> Judgment of Arbitration

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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 matter¹, 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 ¹ 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

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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 \\\

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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 18 day of April, 2016.

16
17 
DISTRICT COURT JUDGE

18 Respectfully Submitted by:

19 SMITH & SHAPIRO, PLLC


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

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1 Approved:
2 MICHAEL H. SINGER, LTD.
3

Approved:
ADAM PAUL LAXALT,
Attorney General

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*

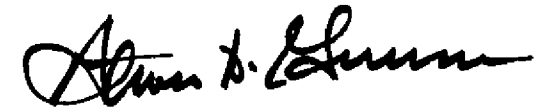

Linda C. Anderson
Chief Deputy Attorney General
Nevada Bar No. 4090
555 E. Washington Ave., #3900
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Attorneys for the STATE OF NEVADA

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EXHIBIT B

EXHIBIT B

ORIGINAL



CLERK OF THE COURT

1 **ORDER**

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 GB Sciences Nevada, LLC*

11 **DISTRICT COURT**

12 **CLARK COUNTY, NEVADA**

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

15 Plaintiff,

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

16 vs.

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

25 Defendants.

Date: May 16, 2016
Time: IN CHAMBERS

26 AND RELATED CLAIMS

27 **ORDER DENYING DESERT AIRE WELLNESS, LLC'S MOTION FOR**
28 **RECONSIDERATION AND REQUEST THAT THE COURT REVERSE AND GRANT**
DEFENDANT SUMMARY JUDGMENT TO DEFENDANT OR AT A MINIMUM
GRANT A STAY PENDING AN APPEAL

29 THIS MATTER having come before the Court on May 16, 2016, in Chambers, on
30 Defendant/Counterclaimant Desert Aire Wellness, LLC's Motion for Reconsideration and Request
31 that the Court Reverse and Grant Defendant Summary Judgment to Defendant or at a Minimum
32 Grant a Stay Pending an Appeal (the "Motion for Reconsideration"), filed by and through its
33 counsel, FENNEMORE CRAIG, P.C.; the Motion for Reconsideration having been opposed by
34 Plaintiff/Counterdefendant GB Sciences Nevada, LLC, by and through its counsel, SMITH &

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Henderson, Nevada 89074
(702) 318-5033

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1 SHAPIRO, PLLC; the Motion for Reconsideration having been responded to by Defendant State of
2 Nevada, the Court having reviewed the papers and pleadings on file herein, the Court being fully
3 advised in the premises, and GOOD CAUSE APPEARING therefore;

4 IT IS HEREBY ORDERED that the Motion for Reconsideration is DENIED IN ITS
5 ENTIRETY.

6 DATED: 6th day of June, 2016

7
8 
9 DISTRICT COURT JUDGE

10 Respectfully submitted by:

11 SMITH & SHAPIRO, PLLC


12 
13 James E. Shapiro, Esq.
14 Nevada Bar No. 7907
15 Sheldon A. Herbert, Esq.
16 Nevada Bar No. 5988
17 2520 St. Rose Parkway, Suite 220
18 Henderson, NV 89074
19 Attorneys for Plaintiff/Counterdefendant,
20 GB Sciences Nevada, LLC
21
22
23
24
25
26
27
28

EXHIBIT A

EXHIBIT A

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. 1

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.

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

23 Counterclaimant,

24 vs.

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

27 Counterdefendant.

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

29 THIS MATTER having come before the Court on GB SCIENCES NEVADA, LLC's
30 ("Plaintiff") Motion for Summary Judgment (the "Motion") and on Defendant DESERT AIRE
31 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 Deft(s)	<input type="checkbox"/> Judgment of Arbitration

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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 matter¹, 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 ¹ Plaintiff previously notified the Court that Plaintiff was no longer seeking any claims against the City of Las Vegas as
27 the Plaintiff’s claims had been rendered moot. Notwithstanding, the City of Las Vegas was included as an interested
28 party to give them an opportunity to heard on the Plaintiff’s requested relief against the State of Nevada and Desert Aire
Wellness, LLC.

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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 \\\

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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.

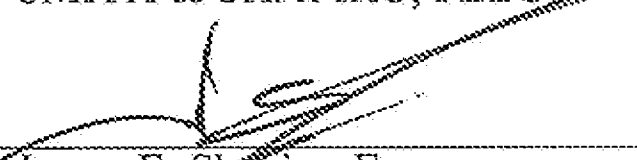
13 36. IT IS FURTHER ORDERED that there being no other unresolved claims or issues,
14 this matter is and shall be CLOSED and this Order shall be a FINAL, APPEALABLE ORDER.

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

16
17 
DISTRICT COURT JUDGE

18 Respectfully Submitted by:

19 SMITH & SHAPIRO, PLLC

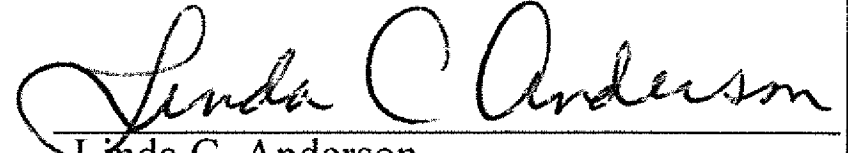
20
21 
James E. Shapiro, Esq.
22 Nevada Bar No. 7907
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23 Henderson, Nevada 89074
Attorneys for Plaintiff

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.
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9 *Attorneys for DESERT AIRE*
10 *WELLNESS, LLC*

Linda C. Anderson
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Attorneys for the STATE OF NEVADA

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In the Supreme Court of the State of Nevada

DESERT AIRE WELLNESS, 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,

Respondent.

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

Cross-Appellant,

vs.

THE STATE OF NEVADA DEPARTMENT OF
HEALTH AND HUMAN SERVICES,
DIVISION OF PUBLIC AND BEHAVIORAL
HEALTH; DESERT AIRE WELLNESS, LLC, a
Nevada limited liability company,

Cross-Respondents.

Supreme Court No. 70462

District Court No.

Electronically Filed
Jun 16 2016 09:54 a.m.
Tracie K. Lindeman
Clerk of Supreme Court
A728448

**DOCKETING STATEMENT
CIVIL CROSS-APPEAL**

GENERAL INFORMATION

All appellants not in proper person must complete this docketing statement. NRAP 14(a). The purpose of the docketing statement is to assist the Supreme Court in screening jurisdiction, classifying cases for en banc, panel, or expedited treatment, compiling statistical information and identifying parties and their counsel.

This statement must be completed fully, accurately and on time. NRAP 14(c). The Supreme Court may impose sanctions on counsel or appellant if it appears that the information provided is incomplete or inaccurate. *Id.* Failure to attach documents as requested in this statement, completely fill out the statement, or to fail to file it in a timely manner, will constitute grounds for the imposition of sanctions, including a fine and/or dismissal of the appeal.

This court has noted that when attorneys do not take seriously their obligations under NRAP 14 to complete the docketing statement properly and conscientiously, they waste the valuable judicial resources of this court, making the imposition of sanctions appropriate. *See Moran v. Bonneville Square Assocs.*, 117 Nev 525, 25 P.3d 898 (2001); *KDI Sylvan Pools v. Workman*, 107 Nev. 340, 344, 810 P.2d 1217, 1220 (1991). Please use tab dividers to separate any attached documents.

1. Judicial District: Eighth Department: I County: Clark
Judge: The Honorable Kenneth C. Cory District Court Docket No.: A-15-728448-C

2. **Attorney filing this docket statement:**

Attorney: James E. Shapiro, Esq. Telephone: (702) 318-5033
Firm: Smith & Shapiro, PLLC
Address: 2520 St. Rose Pkwy., Suite 220, Henderson, NV 89074
Clients: Cross-Appellant, GB Sciences Nevada, LLC, a Nevada limited liability company

If this is a joint statement completed on behalf of multiple cross-appellants, add the names and addresses of other counsel and the names of their clients on an additional sheet accompanied by a certification that they concur in the filing of this statement.

3. **Attorney(s) representing cross-respondent(s):**

Attorney: Richard H. Bryan, Esq., Patrick J. Sheehan, Esq. Telephone: (702) 692-8000
Firm: FENNEMORE CRAIG, P.C.
Address: 300 S. Fourth Street, Suite 1400, Las Vegas, NV 89101
Clients: Cross-Respondent, Desert Aire Wellness, LLC, a Nevada limited liability company

Attorney: Margaret A. McLetchie, Esq., Alina M. Shell, Esq. Telephone: (702) 728-5300
Firm: MCLETCHIE SHELL, LLC
Address: 701 East Bridger Ave., Suite 520, Las Vegas, NV 89101
Clients: Cross-Respondent, Desert Aire Wellness, LLC, a Nevada limited liability company

Attorney: Adam P. Laxalt, Linda C. Anderson, Esq. Telephone: (702) 486-3077
Firm: STATE OF NEVADA, ATTORNEY GENERAL
Address: 555 E. Washington Avenue, #3900, Las Vegas, NV 89101
Clients: Cross-Respondent, State of Nevada, Division of Public and Behavioral Health of the Department of Health and Human Services

4. **Nature of disposition below (check all that apply):**

- | | |
|--|---|
| <input type="checkbox"/> Judgment after bench trial | <input checked="" type="checkbox"/> Grant/Denial of injunction |
| <input type="checkbox"/> Judgment after jury verdict | <input checked="" type="checkbox"/> Grant/Denial of declaratory relief |
| <input checked="" type="checkbox"/> Summary judgment | <input type="checkbox"/> Review of agency determination |
| <input type="checkbox"/> Default judgment | <input type="checkbox"/> Divorce decree: |
| <input type="checkbox"/> Dismissal | <input type="checkbox"/> Original <input type="checkbox"/> Modification |
| <input type="checkbox"/> Lack of jurisdiction | <input type="checkbox"/> Other disposition (specify) _____ |
| <input type="checkbox"/> Failure to state a claim | _____ |
| <input type="checkbox"/> Failure to prosecute | _____ |
| <input type="checkbox"/> Other (specify) _____ | _____ |
| <input type="checkbox"/> Grant/Denial of NRCP 60(b) relief | _____ |

5. Does this cross-appeal raise issues concerning any of the following:

- | | |
|--|--|
| <input type="checkbox"/> Child custody | <input type="checkbox"/> Termination of parental rights |
| <input type="checkbox"/> Venue | <input type="checkbox"/> Grant/denial of injunction or TRO |
| <input type="checkbox"/> Adoption | <input type="checkbox"/> Juvenile matters |

6. **Pending and prior proceedings in this court.** List the case name and docket number of all appeals or original proceedings presently or previously pending before this court which are related to this cross-appeal:

Name: Desert Aire Wellness, LLC v. GB Sciences Nevada, LLC et al.

Docket Number: 70462

7. **Pending and prior proceedings in other courts.** List the case name, number and court of all pending and prior proceedings in other courts which are related to this cross-appeal (e.g., bankruptcy, consolidated or bifurcated proceedings) and their dates of disposition:

On June 15, 2016, GB Sciences filed a Motion to Consolidate Appeal No. 69909 with Appeal No. 70462.

8. **Nature of the action.** Briefly describe the nature of the action, including a list of the causes of action pleaded, and the result below:

Nature of the action: The action involves the issuance of provisional registration certificates ("**Provisional Certificates**") 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 Cross-Respondent Desert Aire Wellness, LLC ("**Desert Aire**") did not satisfy the requirement identified in N.R.S. § 453A.322(3)(a)(5), Cross-Respondent the State of Nevada issued a Provisional Certificate to Desert Aire. The District Court ordered the Division to rescind or withdraw Desert Aire's Provisional Certificate but declined to award it to Cross-Appellant GB Sciences of Nevada, LLC. Desert Aire appealed the decision. Cross-Appellant agrees that Desert Aire's Certificate should have been rescinded, but contends that it should have been awarded to Cross-Appellant.

Causes of action: (1) Declaratory Judgment, (2) Injunctive Relief, (3) Petition for Judicial Review, and (4) Petition for Writ of Mandamus.

Result below: On March 15, 2016, the District Court entered a Minute Order in relation to competing motions for summary judgment, in which the Court ordered the Division to rescind Desert Aire's Provisional Certificate but declined to order the Division to reissue the Provisional Certificate to GB Sciences. On April 28, 2016, the material terms of the Minute Order were memorialized in a written Order.

9. **Issues on cross-appeal.** State concisely the principal issue(s) in this cross-appeal: Whether the Provisional Certificate ordered by the District Court to be rescinded and withdrawn from Cross-Respondent Desert Aire should have been awarded to Cross-Appellant GB Sciences.

10. **Pending proceedings in this court raising the same or similar issues.** If you are aware of any proceedings presently pending before this court which raises the same or similar issues raised in this cross-appeal, list the case name and docket number and identify the same or similar issues raised:

Case Name: NuLeafCLV Dispensary, LLC v. State of Nevada, Department of Health and Human Services, Division of Public and Behavioral Health, et al.,

Docket Number 69909

Same or Similar Issues: (1) In both appeals, the appellants are asking the Nevada Supreme Court to reject the District Court's interpretation of N.R.S. § 453A.322(3)(a)(5) that required the Division to deny the application of any applicant who did not show up as approved on the City of Las Vegas' October 30, 2014

letter. (2) In both appeals, the appellants are asking the Nevada Supreme Court to overrule the District Court's Order directing the Division to revoke any Certificate issued in violation thereof of N.R.S. § 453A.322(3)(a)(5). (3) Both appellants appear to be questioning the District Court's ability to order the Division to revoke or rescind the Certificates. (4) In both appeals, there is an issue dealing with whether the District Court should have ordered the Division to reissue the revoked Certificates to the next applicant in line which had satisfied N.R.S. § 453A.322(3)(a)(5).

11. **Constitutional issues.** If this cross-appeal challenges the constitutionality of a statute, and the state, any state agency, or any officer or employee thereof is not a party to this cross-appeal, have you notified the clerk of this court and the attorney general in accordance with NRAP 44 and NRS 30.130?

N/A

12. **Other issues.** Does this cross-appeal involve any of the following issues?
- ☐ Reversal of well-settled Nevada precedent (on an attachment, identify the case(s))
 - ☐ An issue arising under the United States and/or Nevada Constitutions
 - ☐ A substantial issue of first-impression
 - ☐ An issue of public policy
 - ☐ An issue where en banc consideration is necessary to maintain uniformity of this court's decisions
 - ☐ A ballot question

If so, explain: _____

13. Trial. If this action proceeded to trial, how many days did the trial last? N/A

Was it a bench or jury trial? N/A

14. Judicial disqualification. Do you intend to file a motion to disqualify or have a justice recuse him/herself from participation on this cross-appeal? If so, which Justice? No

TIMELINESS OF NOTICE OF APPEAL

15. **Date of entry of written judgment or order cross-appealed from** April 28, 2016 and June 8, 2016. **Attach a copy. If more than one judgment or order is cross-appealed from, attach copies of each judgment or order from which a cross-appeal is taken.**

(a) If no written judgment or order was filed in the district court, explain the basis for seeking appellate review:
N/A.

16. **Date written notice of entry of judgment or order served** April 28, 2016 and June 8, 2016. **Attach a copy, including proof of service, for each order or judgment cross-appealed from.**

(a) Was service by delivery _____ or by mail X (e-service) (specify).

17. **If the time for filing the notice of cross-appeal was tolled by a post-judgment motion (NRCP 50(b), 52(b), or 59),**

(a) Specify the type of motion, and the date and method of service of the motion, and date of filing.

NRCP 50(b) _____ Date served _____ By delivery _____ Or by mail _____ Date of filing _____.
 NRCP 52(b) _____ Date served _____ By delivery _____ Or by mail _____ Date of filing _____.
 NRCP 59(e) _____ Date served _____ By delivery _____ Or by mail _____ Date of filing _____.

Attach copies of all post-trial tolling motions

NOTE: Motions made pursuant to NRCP 60 or motion for rehearing or reconsideration do not toll the time for filing a notice of cross-appeal.

(b) Date of entry of written order resolving tolling motion _____. Attach a copy.

(c) Date written notice of entry of order resolving motion served _____. Attach a copy. including proof of service.

(i) Was service by delivery _____ or by mail _____ (specify).

18. Date notice of cross-appeal was filed May 25, 2016.

(a) If more than one party has appealed from the judgment or order, list date each notice of appeal was filed and identify by name the party filing the notice of appeal: On May 25, 2015, Cross-Respondent Desert Aire Wellness, LLC filed the initial Notice of Appeal in this matter.

19. Specify statute or rule governing the time limit for filing the notice of cross-appeal, e.g., NRAP 4(a), NRS 155.190, or other: NRAP 4(a)(1), and NRAP 4(a)(2).

SUBSTANTIVE APPEALABILITY

20. Specify the statute or other authority granting this court jurisdiction to review the judgment or order cross-appealed from:

NRAP 3A(b)(1) X NRS 155.190 _____ (specify subsection) _____
NRAP 3A(b)(2) _____ NRS 38.205 _____ (specify subsection) _____
NRAP 3A(b)(3) X NRS 703.376 _____ (specify subsection) _____
Other (specify) _____

Explain how each authority provides a basis for appeal from the judgment or order: NRAP 3A(b)(1) provides the basis for this appeal because the order being appealed from is a final judgment entered in an action or proceeding commenced in the court in which the judgment is rendered. NRAP 3A(b)(3) provides the basis for this appeal because the Court denied Cross-Appellant a mandatory injunction against the State of Nevada to issue the Provisional Certificate at issue to Cross-Appellant.

21. List all parties involved in the action in the district court:

Cross-Appellant: GB Sciences, LLC, a Nevada limited liability company
Cross-Respondent: Desert Aire Wellness, LLC, a Nevada limited liability company
Cross-Respondent: State of Nevada, Division of Public and Behavioral Health of the Department of Health and Human Services
City of Las Vegas

(a) If all parties in the district court are not parties to this cross-appeal, explain in detail why those parties are not involved in this cross-appeal, e.g., formally dismissed, not served, or other: The declaratory relief claims against the City of Las Vegas were rendered moot prior to final adjudication of the district court case.

22. Give a brief description (3 to 5 words) of each party's separate claims, counterclaims, cross-claims or third-party claims, and the trial court's disposition of each claim, and how each claim was resolved (i.e., order, judgment, stipulation), and the date of disposition of each claim. Attach a copy of each disposition.

Cross-Appellant's claims against Respondent State of Nevada, Division of Public and Behavioral Health of the Department of Health and Human Services:

- (i) Declaratory Judgment. State improperly issued Provisional Certificate.
 - (ii) Injunction. Issue Certificate to Cross-Appellant.
 - (iii) Petition for Judicial Review: Review Decision to Issue Certificate.
 - (iv) Petition for Writ of Mandamus: Compel issuance of Provisional Certificate to Cross-Appellant.
- April 28, 2016 Judgment: claims (i) and (ii) granted, but (iii) and (iv) denied.

Cross-Appellant's claims against Cross-Respondent Desert Aire Wellness, LLC:

- (i) Declaratory Judgment. State improperly issued Provisional Certificate.
 - (ii) Injunction. Issue Certificate to Cross-Appellant.
- April 28, 2016 Judgment: claim (i) granted, but (ii) denied.

Cross-Appellant's claims against Defendant City of Las Vegas:

- (i) Declaratory Judgment. Applicable deadlines should be tolled.
 - (ii) Injunction. Applicable deadlines should be tolled.
- April 28, 2016 Judgment: not addressed due to claims being moot. Still included as an interested party.

Cross-Respondent State of Nevada, Division of Public and Behavioral Health of the Department of Health and Human Services' counterclaims against Cross-Appellant: None.

Cross-Respondent Desert Aire Wellness, LLC's counterclaims against Cross-Appellant: None.

Defendant City of Las Vegas' counterclaims against Cross-Appellant: None.

23. **Attach copies of the last-filed version of all complaints, counterclaims, and/or cross-claims filed in the district court.**

See Exhibits "E" and "F".

24. **Did the judgment or order appealed from adjudicate ALL the claims alleged below and the rights and liabilities of ALL the parties to the action below:**

Yes X No

25. **If you answered "No" to the immediately previous question, complete the following:**

- (a) Specify the claims remaining pending below: N/A.
- (b) Specify the parties remaining below: N/A.
- (c) Did the district court certify the judgment or order appealed from as a final judgment pursuant to NRCP 54(b): N/A.

Yes No X **If "Yes," attach a copy of the certification or order, including any notice of entry and proof of service.**

- (d) Did the district court make an express determination, pursuant to NRCP 54(b), that there is no just reason for delay and an express direction for the entry of judgment:

Yes No X

26. **If you answered "No" to any part of question 25, explain the basis for seeking appellate review (e.g., order is independently appealable under NRAP 3A(b)): N/A.**

VERIFICATION

I declare under penalty of perjury that I have read this docketing statement, that the information provided in this docketing statement is true and complete to the best of my knowledge, information and belief, and that I have attached all required documents to this docketing statement.

GB Sciences, LLC, a Nevada limited liability company

Name of cross-appellant

June 15, 2016

Date

Clark County, Nevada

State and county where signed

James E. Shapiro, Esq.

Name of counsel for record

Signature of counsel of record

INDEX OF EXHIBITS

April 28, 2016 Order in relation to Motions for Summary Judgment	Exhibit "A"
June 8, 2016 Order Regarding Motion for Reconsideration	Exhibit "B"
April 28, 2016 Notice of Entry of Order in relation to Motions for Summary Judgment.	Exhibit "C"
June 8, 2016 Notice of Entry of Order Regarding Motion for Reconsideration.	Exhibit "D"
December 2, 2015 Complaint	Exhibit "E"
December 17, 2015 Desert Aire Wellness, LLC's Answer and Counterclaim	Exhibit "F"

CERTIFICATE OF SERVICE

I certify that on the 15th day of June, 2016, I served a copy of this completed docketing statement 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 following address(es):

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*Attorneys for Cross-Respondent,
STATE OF NEVADA*

Dated this 15th day of June, 2016.



Jill M. Berghammer

Signature