

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

2
3 DESERT AIRE WELLNESS, LLC, a
4 Nevada limited-liability company,

5 Appellant/Cross-Respondent,
6 vs.

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

9 Respondent/Cross-Appellant.

Electronically Filed
Jun 16 2016 10:20 a.m.
Tracie K. Lindeman
Clerk of Supreme Court

10 STATE OF NEVADA, DIVISION OF
11 PUBLIC AND BEHAVIORAL
12 HEALTH OF THE DEPARTMENT
13 OF HEALTH AND HUMAN
14 SERVICES,

15 Respondent.

CASE NO.: 70462

**DOCKETING STATEMENT
CIVIL APPEALS**

16 **GENERAL INFORMATION**

17 Appellants must complete this docketing statement in compliance with
18 NRAP 14(a). The purpose of the docketing statement is to assist the Supreme
19 Court in screening jurisdiction, identifying issues on appeal, assessing
20 presumptive assignment to the Court of Appeals under NRAP 17, scheduling
21 cases for oral argument and settlement conferences, classifying cases for
22 expedited treatment and assignment to the Court of Appeals, and compiling
23 statistical information.

24 **WARNING**

25 This statement must be completed fully, accurately and on time. NRAP
26 14(c). The Supreme Court may impose sanctions on counsel or appellant if it
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1 appears that the information provided is incomplete or inaccurate. *Id.* Failure
2 to fill out the statement completely or to file it in a timely manner constitutes
3 grounds for the imposition of sanctions, including a fine and/or dismissal of
4 the appeal. A complete list of the documents that must be attached appears as
5 Question 27 on this docketing statement. Failure to attach all required
6 documents will result in the delay of your appeal and may result in the
7 imposition of sanctions. This court has noted that when attorneys do not take
8 seriously their obligations under NRAP 14 to complete the docketing
9 statement properly and conscientiously, they waste the valuable judicial
10 resources of this court, making the imposition of sanctions appropriate. *See*
11 KDI Sylvan Pools v. Workman, 107 Nev. 340, 344, 810 P.2d 1217, 1220
12 (1991). Please use tab dividers to separate any attached documents.
13
14
15

- 16 1. Judicial District: Eighth Department: I
17 County: Clark Judge: Hon. Kenneth E. Cory
18 District Ct. Case No.: A-15-728448-C
- 19 2. **Attorney(s) filing this docketing statement:**
20 Attorney(s): Margaret A. McLetchie Telephone: (702) 728-5300
21 Alina M. Shell
22 Firm: McLetchie Shell, LLC
23 Address: 701 East Bridger Avenue, Suite 520
24 Las Vegas, Nevada 89101
25 Client(s): Desert Aire Wellness, LLC
26
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If this is a joint statement by multiple 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 respondent(s):

Attorney(s): James E. Shapiro Telephone: (702) 318-5033

Sheldon A. Herbert

Firm: Smith & Shapiro, LLC

Address: 2520 St. Rose Parkway., Suite 220

Henderson, Nevada 89074

Client(s): GB Sciences Nevada, LLC

Attorney(s): Adam P. Laxalt Telephone: (702) 486-3420

Linda C. Anderson

Firm: State of Nevada, Attorney General

Address: 555 East Washington Avenue, # 3900

Las Vegas, Nevada 89101

Client(s): State of Nevada, Divison pf Public and Behavioral Health
of the Department of Health and Suman Services

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

☐ Judgment after bench trial

☐ Dismissal:

☐ Judgment after jury verdict

☐ Lack of jurisdiction

☒ Summary judgment

☐ Failure of state claim

☐ Default judgment

☐ Failure to prosecute

☐ Grant/Denial of NRCP 60(b) relief

☐ Other (specify)

☐ Grant/Denial of injunction

☐ Divorce Decree:

☐ Grant/Denial of declaratory relief

☐ Original ☐ Modification

☐ Review of agency determination

☐ Other disposition (specify)

5. Does this appeal raise issues concerning any of the following?

☐ Child Custody

☐ Venue

☐ Termination of parental rights

n/a

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

1 appeal:

2 **n/a**

3 **7. Pending and prior proceedings in other courts.**

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

8 **n/a**

9 **8. Nature of the action.**

10 Briefly describe the nature of the action and the result below:

11
12 On December 2, 2015, Respondent/Cross-Appellant GB Sciences
13 Nevada, LLC (“GB Sciences”) filed a Complaint, and In Addition or in the
14 Alternative Petition for Judicial Review and Writ of Mandamus in the Eighth
15 Judicial District Court of Nevada seeking the district court’s intervention to
16 reinterpret Chapter 453A of the Nevada Revised Statutes and require
17 Defendant Division of Public and Behavioral Health (DPBH), the State
18 subdivision responsible for regulating medical marijuana businesses, to
19 revoke the medical marijuana registration certificate DPBH issued to Desert
20 Aire Wellness, LLC (“Desert Aire”).
21

22 In moving to disqualify the higher-ranked Desert Aire, GB Sciences
23 sought to be awarded a provisional registration certificate by DPBH. GB
24 Sciences was the 13th ranked applicant in the City of Las Vegas. GB
25 Sciences sought declaratory and injunctive relief. In addition, GB Sciences
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1 sought a Petition for Judicial Review and a Petition for a Writ of Mandamus,
2 to determine that because Desert Aire did not have pre-existing approval from
3 the City of Las Vegas on November 3, 2014—something not required by the
4 State under NRS Chapter 453A—DPBH should not have awarded Desert
5 Aire provisional registration certificates.
6

7 On April 28, 2016, the district court—without allowing any
8 discovery—granted summary judgment, ruling that DPBH misapplied the
9 law when it granted Desert Aire’s provisional registration certificate back in
10 2014 and ordering that DPBH revoke Desert Aire’s registration certificate.
11

12 **9. Issues on appeal.**

13 State concisely the principal issue(s) in this appeal:

14 The district court erred in granting summary judgment to GB
15 Sciences and ordering DPBH to revoke Desert Aire’s registration certificate.
16 In so doing, the district court misinterpreted the statutory scheme at issue,
17 and improperly inserted its own judgment for DPBH’s, in excess of its
18 authority. The resulting order, if it is enforced, would lead to inequitable and
19 absurd results that are odds with the underling policy and aim of Nevada’s
20 medical marijuana laws.
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22 The district court also improperly ignored precedent from this Court
23 holding that: (1) substantial compliance with statutes is sufficient; (2) under
24 the doctrines of laches and estoppel, a license should not be revoked as a
25 result of the government’s mistake where the other party relied upon the
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1 State's actions in leading the person to believe that they were within their
2 rights to proceed forward based upon the license or other governmental
3 approval; and (3) the District Court should have construed the statute to
4 avoid manifest injustice since (a) no one could have complied with the
5 statute, (b) the statute was clearly ambiguous since it stated the applicant had
6 to submit its application on the State's prescribed form (and no additional
7 information could be submitted) and the form did not include any spot for the
8 allegedly missing information, and (c) DPBH clearly construed the statute in
9 a manner inconsistent with the district court and yet the court did not give
10 DPBH deference. The district court also erred in denying Desert Aire's
11 Motion to Alter or Amend its order granting summary judgment in favor of
12 GB Sciences.
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15 Additionally, the district court erred in granting summary judgment—
16 an extreme form of relief—in favor of GB Sciences without permitting the
17 parties to conduct any discovery.
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19 Moreover, there have been inconsistent interpretations of the NRS
20 Chapter 453A at the district court level, resulting in uncertainty regarding the
21 future application of NRS 453A.
22

23 Further, the district court erred in granting summary judgment in this
24 matter because GB Sciences is currently litigating against another
25 dispensary, Nuleaf Dispensary, for a registration certificate for this same
26 dispensary location in the City of Las Vegas. *See Nuleaf Dispensary v. State*
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1 of Nevada/GB Sciences v. State of Nevada, Nevada Supreme Court Case No.
2 69909. If GB Sciences is successful in that case, it will have no reason to
3 pursue its litigation against Desert Aire.
4

5 Finally, there have been inconsistent interpretations of the statute at
6 the district court level, resulting in uncertainty regarding the future
7 application of NRS § 453A.

8 **10. Pending proceedings in this court raising the same or similar issues.**

9 If you are aware of any proceedings presently pending before this court
10 which raises the same or similar issues raised in this appeal, list the case
11 name and docket numbers and identify the same or similar issue raised:
12

13 *Nuleaf Dispensary v. State of Nevada/GB Sciences v. State of Nevada,*
14 Nevada Supreme Court Case No. 69909.

15 **11. Constitutional issues.**

16 If this appeal challenges the constitutionality of a statute, and the state, any
17 state agency, or any officer or employee thereof is not a party to this appeal,
18 have you notified the clerk of this court and the attorney general in
19 accordance with NRAP 44 and NRS 30.130?
20

21 ☒ N/A

22 ☐ No

23 ☐ Yes

24 If not, explain: n/a

25 **12. Other issues.**

26 Does this appeal involve any of the following issues?

27 ☐ Reversal of well-settled Nevada precedent (identify the case(s))
28

- ☐ 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:

This appeal presents important questions of public policy regarding the intent and application of NRS § 453A.

While similar issues are presented in *Nuleaf Dispensary v. State of Nevada/GB Sciences v. State of Nevada*, Nevada Supreme Court Case No. 69909, this case raises a number of different and additional legal issues.

13. Assignment to the Court of Appeals or retention in the Supreme Court.

Briefly set forth whether the matter is presumptively retained by the Supreme Court or assigned to the Court of Appeals under NRAP 17, and cite the subparagraph(s) of the Rule under which the matter falls. If appellant believes that the Supreme Court should retain the case despite its presumptive assignment to the Court of Appeals, identify the specific issue(s) or circumstance(s) that warrant retaining the case, and include an explanation of their importance or significance:

This case is presumptively retained by the Supreme Court pursuant to

NRAP 17(a)(8) because it stems from conflicting interpretations of NRS Chapter 453A. Additionally, the Court retains jurisdiction over this matter pursuant to NRAP 17(a)(13), as it raises as a principal issue a matter of first impression for this Court involving the Nevada common law. The case is also presumptively retained by the Court under NRAP 17(a)(14) because it raises as a principal issue a question of statewide public importance. Finally, this matter is not one that would be presumptively assigned to the Court of Appeals under NRAP 17(b).

14. Trial.

If this action proceeded to trial, how many days did the trial last? **n/a**

Was it a bench of jury trial? **n/a**

15. Judicial Disqualification.

Do you intend to file a motion to disqualify or have a justice recuse him/herself from participation in this appeal? If so, which Justice? **No.**

TIMELINESS OF NOTICE OF APPEAL

16. Date of entry of written judgment or order appealed from: April 28, 2016.

If no written judgment or order was filed in the district court, explain the basis for seeking appellate review:

n/a

17. Date written notice of entry of judgment or order was served: April 28, 2016.

1 Was service by:

2 ☐ Delivery

3 ☒ Mail/electronic/fax

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

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

8 ☐ NRCP 50(b)

Date of filing:

9 ☐ NRCP 52(b)

Date of filing:

☐ NRCP 59

Date of filing:

10 **NOTE: Motions made pursuant to NRCP 60 or motions for rehearing or**
11 **reconsideration may toll the time for filing a notice of appeal. See AA**
12 **Primo Builders v. Washington, 126 Nev. ____, 245 P.3d 1190 (2010).**

14 (b) Date of entry of written order resolving tolling motion

15 (c) Date written notice of entry of order resolving tolling motion was served

16 Was service by:

17 ☐ Delivery

18 ☐ Mail

19 **n/a**

20 **19. Date notice of appeal filed May 25, 2016**

21 If more than one party has appealed from the judgment or order, list the date
22 each notice of appeal was filed and identify by name the party filing the
23 notice of appeal:

24 On May 25, 2016, Appellant Desert Aire filed its notice of appeal.
25 Respondent/Cross-Appellant GB Sciences also filed a notice of appeal on
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1 May 25, 2016.

2 **20. Specify statute or rule governing the time limit for filing the notice of**
3 **appeal, e.g., NRAP 4(a) or other**

4 NRAP 4

5
6 **SUBSTANTIVE APPEALABILITY**

7 **21. Specify the statute or other authority granting this court jurisdiction**
8 **to review the judgment or order appealed from:**

9 (a)

- 10 ☒ NRAP 3A(b)(1) ☐ NRS 38.205
11 ☐ NRAP 3A(b)(2) ☐ NRS 233B.150
12 ☐ NRAP 3A(b)(3) ☐ NRS 703.376 (b)
☐ Other (specify)

13 Explain how each authority provides a basis for appeal from the judgment or
14 order:

15 The district court's order constitutes a final judgment because it
16 resolved all claims asserted by GB Sciences against Desert Aire.

17
18 **22. List all parties involved in the action or consolidated actions in the**
19 **district court:**

20 (a) Parties:

21 Plaintiff/Counter Defendant:

22 GB Sciences Nevada, LLC

23 Defendants:

24 Nevada Department of Behavioral Health and Human Services
City of Las Vegas

25 Defendant/Counter Claimant:

Desert Aire Wellness, LLC

26 (b) If all parties in the district court are not parties to this appeal, explain in
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1 detail why those parties are not involved in this appeal, *e.g.*, formally
2 dismissed, not served, or other:

3 City of Las Vegas filed an answer in the underlying action in district
4 court, but was not a party to the motion for summary judgment.
5

6 Samantha Inc. d/b/a Samantha's Remedies moved to intervene in the
7 underlying action. On February 18, 2016, the district court denied Samantha
8 Inc.'s motion to intervene.

9 **23. Give a brief description (3 to 5 words) of each party's separate**
10 **claims, counterclaims, cross-claims, or third-party claims and the date of**
11 **formal disposition of each claim.**

12 Plaintiff's claims:

- 13 (1) Declaratory relief regarding provisional certificate;
14 (2) Injunctive Relief enjoining DPBH;
15 (3) Alternatively, Petition for Writ of Judicial Review; and
16 (4) Alternatively, Petition for Writ of Mandamus.

17 **24. Did the judgment or order appealed from adjudicate ALL the claims**
18 **alleged below and the rights and liabilities of ALL the parties to the**
19 **action or consolidated actions below?**

20 ☒ Yes

21 ☐ No

22 **25. If you answered "No" to question 24, complete the following:**

23 (a) Specify the claims remaining pending below:

24 None.

25 (b) Specify the parties remaining below:
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1 None.

2 (c) Did the district court certify the judgment or order appealed from as a
3 final judgment pursuant to NRCP 54(b)?

4 ☐ Yes

5 ☒ No

6 (d) Did the district court make an express determination, pursuant to NRCP
7 54(b), that there is no just reason for delay and an express direction for the
8 entry of judgment?

9 ☐ Yes

10 ☒ No

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

14 The order at issue constitutes a final judgment under NRAP 3A(b)(1)
15 as to the claims asserted by GB Sciences against Desert Aire.

16 **27. Attach file-stamped copies of the following documents:**

17 ☒ The latest-filed complaint, counterclaims, cross-claims, and third-party
18 claims

19 ☒ Any tolling motion(s) and order(s) resolving tolling motion(s)

20 ☒ Orders of NRCP 41(a) dismissals formally resolving each claim,
21 counterclaims, cross- claims and/or third-party claims asserted in the action
22 or consolidated action below, even if not at issue on appeal

23 ☒ Any other order challenged on appeal

24 ☒ Notices of entry for each attached order

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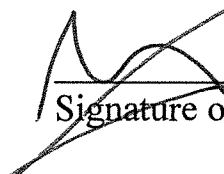
VERIFICATION

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.

Desert Aire Wellness
Name of Appellant

Margaret A. McLetchie
Name of counsel of record

June 15, 2016
Date


Signature of counsel of record

State of Nevada, County of Clark
State and County where signed

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):**


James E. Shapiro
Sheldon Herbert
SMITH & SHAPIRO LLC
2250 St. Rose Pkwy., Suite 220
Henderson, NV 8974

Adam Laxalt
Linda Anderson
ATTORNEY GENERAL'S OFFICE
555 E. Washington Ave., # 3900
Las Vegas, NV 89101

Patrick Sheehan and Richard Bryan
FENNEMORE CRAIG, P.C.
300 S. Fourth Street, Suite 1400
Las Vegas, NV 89101

Dated this 15th day of June, 2016.


Signature



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
liability company,

9 Plaintiff,

10 vs.

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

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

15 Defendants.
16

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.

28 \\

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.

28 \\

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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1 60. Plaintiff is likewise entitled to a declaration that all applicable deadlines and time periods
2 should be tolled and/or extended due to the Division's error described herein.

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.

6 **SECOND CAUSE OF ACTION**
7 **(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.

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

15 64. The Division's refusal to revoke the provisional certificate issued to Desert Aire, or to
16 reissue a provisional certificates to the Plaintiff has caused Plaintiff to suffer irreparable harm and
17 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.

20 66. The Plaintiff complied with the requirements of the City of Las Vegas, and the
21 provisions of N.R.S. Chapter 453A, and should have been issued a provisional certificates as the next
22 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 \ \ \

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.

1 WHEREFORE, Plaintiff prays for relief as follows:

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

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

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

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

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

9 (d) to issue a Provisional Certificate to Plaintiff.

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

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

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

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

20 7. In addition, or in the alternative, Petitioner also petitions this Court to issue a Writ of
21 Mandamus compelling the Division to comply with the requirements of NRS Chapter 453A, NAC
22 453A, and other Nevada laws and regulations and issue Petitioner a Provisional Certificate for the
23 operation of an MME Dispensary in the City of Las Vegas, Nevada, and compelling the City to toll all
24 time periods related to the issuance of licenses for the operation of an MME Dispensary in the City of
25 Las Vegas due to the Division's failure to issue a Provisional Certificate to Plaintiff on November 3,
26 2014.

27 \\\

28 \\\

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 /s/ James E. Shapiro

4 James E. Shapiro, Esq.

5 Nevada Bar No. 7907

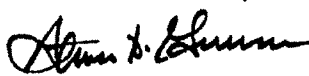
6 Sheldon A. Herbert, Esq.

7 Nevada Bar No. 5988

8 2520 St. Rose Parkway, Suite 220

9 Henderson, NV 89074

10 Attorneys for Plaintiff


CLERK OF THE COURT

1 AACC
2 MICHAEL H. SINGER, ESQ.
3 Nevada Bar No. 1589
4 MICHAEL H. SINGER, LTD.
5 4475 South Pecos Road
6 Las Vegas, Nevada 89121
7 Telephone: (702) 454-2111
8 Facsimile: (702) 454-3333
9 Email: msinger@mhsingerlaw.com
10 Attorney for Defendant/Counterclaimant

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DISTRICT COURT
CLARK COUNTY, NEVADA

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

12 Plaintiff,

13 vs.

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

22 Defendant.

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

25 Counterclaimant,

26 vs.

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

Counterdefendant.

Case No.: A-15-728448-C

Dept. No.: I

ANSWER AND COUNTERCLAIM

26 COMES NOW Defendant, Desert Aire Wellness LLC ("Defendant"), by and through its
27 attorney, MICHAEL H. SINGER, ESQ., of the law firm of MICHAEL H. SINGER, LTD., and for its
28 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.

28 ///

1 **SECOND CAUSE OF ACTION**

2 **(Injunctive Relief)**

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

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

6 **PETITION FOR JUDICIAL REVIEW**

7 26. Defendant restates its responses to the paragraphs above as though fully stated herein.

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

10 28. Defendant denies the allegations contained in paragraphs 79 – 83 of Plaintiff's
11 Complaint.

12 **PETITION FOR WRIT OF MANDAMUS**

13 29. Defendant restates its responses to the paragraphs above as though fully stated herein.

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

15 31. Defendant denies the allegations contained in paragraphs 86 – 91 of Plaintiff's
16 Complaint.
17

18 **AFFIRMATIVE DEFENSES**

19 **I.**

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

21 1. Plaintiff's Complaint fails to state a cause of action against Defendant Desert Aire
22 Wellness LLC.

23 **II.**

24 **(Estoppel / Collateral Estoppel)**

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

28 ///

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.

1 IV.

2 (No Injunctive Relief)

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

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

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

10 V.

11 (Laches)

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

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

16 VI.

17 (Additional Affirmative Defenses)

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

20 COUNTERCLAIM

21 FIRST CAUSE OF ACTION

22 (Attorneys Fees)

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

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

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

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

3 2. Costs of suit;

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

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

6 DATED this 12 day of December, 2015.

7 MICHAEL H. SINGER, LTD.

8
9 BY: Michael H. Singer
10 MICHAEL H. SINGER, ESQ.
11 Nevada Bar No. 1589
12 4475 S. Pecos Road
13 Las Vegas, NV 89121
14 Attorney for Defendant/Counterclaimant
15

16 **CERTIFICATE OF SERVICE**

17 Pursuant to Nev. R. Civ. P. 5(b), I hereby certify that service of the foregoing was made this
18 17th day of December, 2015, by electronic service through the Eighth Judicial
19 District Court's Odyssey E-File and Serve System, to each of the following on the E-Service Master
20 List:

21 **Smith & Shapiro, PLLC**

22 **Contact**

23 Ashley Houston

24 James E. Shapiro

25 Sheldon Herbert

26 Jill Berghammer

Email

ahouston@smithshapiro.com

jshapiro@smithshapiro.com

sherbert@smithshapiro.com

jberghammer@smithshapiro.com

27 [Signature]
28 An employee of Michael H. Singer, Ltd.


CLERK OF THE COURT

1 **NOTC**
James E. Shapiro, Esq.
2 Nevada Bar No. 7907
Sheldon A. Herbert, Esq.
3 Nevada Bar No. 5988
SMITH & SHAPIRO, PLLC
4 2520 St. Rose Parkway, Suite #220
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
liability company,

9
10 Plaintiff,

11 vs.

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

16 Defendants.

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

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

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

24
25 **NOTICE OF ENTRY OF ORDER RE: GB SCIENCES NEVADA, LLC'S MOTION FOR**
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**

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

SMITH & SHAPIRO, PLLC
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Henderson, Nevada 89074
(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**

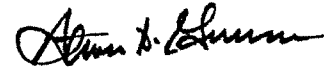
16 I hereby certify that I am an employee of SMITH & SHAPIRO, PLLC, and that on the 28th day
17 of April, 2016, I served a true and correct copy of the forgoing **NOTICE OF ENTRY OF ORDER**
18 **RE: GB SCIENCES NEVADA, LLC'S MOTION FOR SUMMARY JUDGMENT; DESERT**
19 **AIRE WELLNESS, LLC'S COUNTERMOTION 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 **ORDR**

JAMES E. SHAPIRO, ESQ.

2 Nevada Bar No. 7907

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3 Nevada Bar No. 5988

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5 (702) 318-5033

Attorneys for Plaintiff

DISTRICT COURT

CLARK COUNTY, NEVADA

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

10 Plaintiff,

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.

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.

Case No. A-15-728448-C

Dept. No. 1

Date: March 15, 2016

Time: 9:00 a.m.

28 **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 Def(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

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.

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1 NOW THEREFORE:

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

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

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

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

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


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

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

16
17 
DISTRICT COURT JUDGE

18 Respectfully Submitted by:

19 SMITH & SHAPIRO, PLLC

20
21 
James E. Shapiro, Esq.
22 Nevada Bar No. 7907
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23 Attorneys for Plaintiff
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1 Approved:

2 MICHAEL H. SINGER, LTD.

Approved:

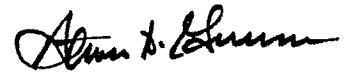
ADAM PAUL LAXALT,
Attorney General



3
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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*

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Attorneys for the STATE OF NEVADA

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CLERK OF THE COURT

1 **NOEJ**
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Attorneys for GB Sciences Nevada, LLC

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

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

11 Plaintiff,

12 vs.

13 STATE OF NEVADA, DIVISION OF PUBLIC AND
BEHAVIORAL HEALTH OF THE DEPARTMENT
14 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
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**
22 **AND GRANT DEFENDANT SUMMARY JUDGMENT TO DEFENDANT OR AT A**
23 **MINIMUM GRANT A STAY PENDING AN APPEAL**

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

28 ///

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1 Dated this 8th day of June, 2016.

2 SMITH & SHAPIRO, PLLC

3
4 /s/ James E. Shapiro, Esq.
James E. Shapiro, Esq.
Nevada Bar No. 7907
Sheldon A. Herbert, Esq.
Nevada Bar No. 5988
2520 St. Rose Parkway, Suite 220
Henderson, NV 89074
Attorneys for Plaintiff/Counterdefendant,
GB Sciences Nevada, LLC

9
10 **CERTIFICATE OF SERVICE**

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

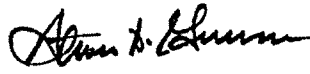
19
20 /s/ Ashley Houston
An employee of SMITH & SHAPIRO, PLLC
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Exhibit “1”

Exhibit “1”

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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**
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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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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

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13 James E. Shapiro, Esq.
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