

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.

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

DISTRICT COURT CASE NO.: A-  
15-728448-C

16                   **REPLY IN SUPPORT OF MOTION FOR STAY**

17       **I.     THE STATE’S RESPONSE SHOWS WHY A STAY IS NEEDED**

18       The State’s Response requesting this Court grant the stay so that Desert  
19       Aire Wellness, LLC (“Desert Aire”) can continue to serve the community  
20       while the litigation is pending highlights the importance of a stay in this  
21       action. In addition to having Desert Aire remain open in order to continue to  
22       serve the community, the Response further points out the problems that will  
23       occur if the stay is not granted. There are two possible reversals. First, Desert  
24       Aire could get a reversal, in which case its registration certificate would not be  
25       revoked. Second, Respondent GB Sciences Nevada, LLC (“GB Sciences”)  
26       could win its appeal, in which case, it could be awarded a city license

27       If this Court does not grant a stay and the State is forced to give a  
28       registration certificate to someone else, havoc will occur. By law, there can

only be 12 certificates in the City of Las Vegas. Therefore, if the Court rules that either Desert Aire or GB Sciences is entitled to the certificate, then the entity granted the certificate in the meantime will lose that certificate. This situation would obviously create more havoc. As a result, there is no question that a stay is warranted, not only for all the reasons set forth in Desert Aire's motion for a stay, but in the State's Response as well.

**II. GB SCIENCES' OPPOSITION OFFERS NO REAL ARGUMENT THAT THE OBJECT OF THE APPEAL WILL NOT BE DEFEATED.**

This Court considers four factors in deciding whether to issue a stay: (1) "whether the object of the appeal will be defeated if the stay is denied;" (2) "whether appellant will suffer irreparable or serious injury if the stay is denied;" (3) "whether respondent will suffer irreparable or serious injury if the stay is granted;" and (4) "whether appellant is likely to prevail on the merits in the appeal." Nev. R. App. P. 8(c). Although the Court has not indicated that any one factor carries more weight than the others, and instead recognizes that if one or two factors are especially strong they may counter balance other weak factors, the Court has ruled that if the object of the appeal will be defeated, this may be enough alone to warrant the issuance of a stay. *See Mikohn Gaming Corp. v. McCrea*, 120 Nev. 248, 251, 89 P.3d 36, 38 (2004).<sup>1</sup>

---

<sup>1</sup> In its Opposition, GB Sciences cites to cases from the United States Court of Appeals for the Sixth and Eighth Circuits indicating that those courts give greatest weight to the appellant's likelihood of success on appeal when considering a motion for a stay. (*See* Opposition at p. 7:1-5.) The two cases cited by GB Sciences, however, are inapposite because they dealt with Federal Rule of Appellate Procedure 8, and apply a different set of criteria than those set forth in NRAP 8(c) and this Court's precedent. *Compare Shrink Missouri Government PAC v. Adams*, 151 F.3d 763, 764 (8th Cir. 1998) (setting out standard for stays pursuant to FRAP 8) *and* NRAP 8(c).

1 That is the case here. Without a stay, the object of the appeal will be  
2 completely defeated since Desert Aire will likely be put out of business  
3 forever. Desert Aire's business will be closed if a stay is not granted. It will  
4 have no business and no funds to pay for the lease or other ongoing expenses,  
5 such as taxes, utilities, certificate fees, and security, and will likely lose all of  
6 the goodwill with its patients that it has expended time and money to develop.

7 Desert Aire consists of three women who have spent the last two years  
8 of their lives working on this project without pay, giving up their other  
9 careers and investing their life savings. As described in the Declaration of  
10 Brenda Gunsallus included with Desert Aire's motion for a stay, (*see* Motion  
11 at p. 8:6; *see also* Exh. 7), she and another one of the three principles of  
12 Desert Aire have already invested their life savings into the business, and  
13 there is no money left for further investment. To have to close the business  
14 and try to reopen a year and a half from now when the appeal is finished  
15 would therefore be virtually impossible. All the competitors would have a one  
16 and a half year advantage. In addition, Desert Aire as outlined above could  
17 not possibly come up with the money necessary to remarket the property and  
18 try to recoup the customer base after such a lengthy period. Indeed, there is a  
19 significant product in the facility already, which would go to waste, and over  
20 \$1 million in tenant improvements would deteriorate.

21 GB Sciences' Opposition merely states that because the division made  
22 it clear that the certificate issued was a revocable privilege, no party could  
23 claim a right to any of the certificates and thus having it revoked does not  
24 defeat the object of the appeal, as the division can always reissue the  
25 certificate if ordered to do so. This argument does not oppose or address the  
26 issue of whether the object of the appeal will be defeated. Stating that the  
27  
28

1 State could have revoked the Appellant's certificate does not contest the  
2 argument that since Desert Aire would be out of business and likely unable to  
3 reopen its business. Thus, the object of the appeal would be defeated, and  
4 winning its appeal would be little more than a pyrrhic victory. Nor does GB  
5 Sciences' position address the argument that even if it could reopen for  
6 business, Desert Aire would be irreparably harmed in that it would lose all of  
7 its customers and competitive advantage in being one of the first to market.

8 Further, GB Sciences' argument that the object of the appeal will not be  
9 defeated because the State could have revoked that certificate at any time is  
10 disingenuous. Obviously, the State cannot revoke an entity's certificate after  
11 providing the same without good cause. Here, there has been no good cause to  
12 revoke Desert Aire's certificate. To the contrary, Desert Aire has gotten  
13 glowing inspection reports. Moreover, the State has submitted a response  
14 fully supporting keeping Desert Aire's business open. This completely belies  
15 GB Sciences' argument that the State could have revoked Desert Aire's  
16 certificate.

17 **III. FOR THE SAME REASONS, IT IS CLEAR DESERT AIRE**  
18 **WILL SUFFER IRREPARABLE HARM.**

19 The second factor under NRCP 8(c) is whether Desert Aire will suffer  
20 irreparable or serious harm. This Court has held in the context of an appeal  
21 from an order granting an injunction that "acts committed without just cause  
22 which unreasonably interfere with a business or destroy its credit or profits,  
23 may do an irreparable injury." *Sobol v. Capital Management*, 102 Nev. 444,  
24 446, 726 P.2d 335, 337 (1986) (determining that where a person has  
25 "interfere[ed] with the operation of a legitimate business by creating public  
26 confusion, infringing on goodwill, and damaging reputation in the eyes of  
27  
28

creditors,” it may result in irreparable harm).

Again, Desert Aire will suffer significant irreparable harm in the form of losing its entire business. Desert Aire opened its dispensary in early 2016, and immediately began providing patients with access to medical marijuana. If the Court does not grant a stay, Desert Aire will lose the \$100,000 worth of product, which is currently in the business. Desert Aire will lose all of its patients with whom it has spent significant time and resources building a confidential and supportive relationship. All of its competitors will gain a significant advantage, which will be impossible to overcome. Desert Aire will not have the income to pay its lease, nor will it have the income or money to remarket the property. In addition, Desert Aire would lose several months of the most lucrative sales time for marijuana, which is the period after Nevada legalizes marijuana recreationally.

All of this harm would come without just cause. As discussed in Desert Aire’s emergency motion, during the application period, the Division of Public and Behavioral Health (“DPBH”) viewed and ranked numerous applications. Based on the substance of the applications, DPBH determined that Desert Aire was better qualified to serve medical marijuana patients than numerous other applicants, including GB Sciences. After failing to obtain a provisional certificate from DPBH, GB Sciences initiated several suits in district court in an effort to circumvent DPBH’s determination that it was simply not as well-qualified as other applicants. Desert Aire now stands to lose a business its owners have spent years and millions of dollars trying to build.

Further, as discussed in Desert Aire’s motion, the public policy underpinning Nevada’s medical marijuana laws will be thwarted if Desert

1 Aire's certificate is revoked, as Desert Aire is safely providing medical  
2 marijuana in full compliance with all state and local laws. GB Sciences, on  
3 the other hand, does not stand to suffer any harm from a stay, as the district  
4 court did not grant GB Sciences the certificate being revoked. Thus, unlike  
5 Desert Aire, GB Sciences could not possibly suffer any harm during the stay.

6 **IV. THE THIRD FACTOR REGARDING GB SCIENCES' INJURY**  
7 **ALSO SUPPORTS A STAY.**

8 GB Sciences will not be granted the certificate if Desert Aire's  
9 certificate is revoked. Thus, not only will GB Sciences not suffer any harm if  
10 the Court grants a stay, it will actually benefit GB Sciences if the stay is  
11 granted. This is because if the stay is not granted, the State will have to put  
12 the certificate up to the general public. This means many, many applicants  
13 will apply for the certificate. At this point, it is unclear whether GB Sciences  
14 has a property on which to operate a medical marijuana facility, and it is also  
15 unclear whether GB Sciences can get the final approvals necessary to  
16 commence operation. Revoking Desert Aire's certificate is therefore not in  
17 GB Sciences' best interest.

18 Instead, it is in GB Sciences' best interest that the Court grant a stay. If  
19 the Court does not grant the stay and someone else gets the certificate in the  
20 meantime, GB Sciences' appeal would be mooted. This is because by law  
21 there can only be a certain amount of certificates. If the State grants someone  
22 else the certificate, GB Sciences would not be able to obtain a registration  
23 certificate even if the Court were to rule the lower court should have granted  
24 the certificate to GB Sciences. Thus, it makes no sense for GB Sciences to  
25 even oppose this Motion for Stay but certainly, it will not suffer any harm but  
26 in fact will benefit.

1 **V. DESERT AIRE IS VERY LIKELY TO SUCCEED ON THE**  
2 **MERITS SINCE IT HAS NUMEROUS VALID ARGUMENTS**  
3 **ANY ONE OF WHICH WOULD BE SUFFICIENT TO**  
4 **OVERTURN THE LOWER COURT’S DECISION.**

5 In its Motion for Stay, Desert Aire cited many different arguments why  
6 the District Court’s decision should be reversed. Desert Aire only needs to be  
7 successful on one of those arguments in order to prevail on appeal. Therefore,  
8 since each of the arguments has merit, Desert Aire has a likelihood of success  
9 on its appeal. Desert Aire will not restate each of the arguments set forth in  
10 the Motion, but will instead will refer the Court back to those arguments and  
11 point out a couple issues regarding the opposition to each argument.

12 **A. The Statute in Question is Clearly Ambiguous and**  
13 **Does Not State That The Division Could Only Issue a**  
14 **Provisional Registration Certificate if The Information**  
15 **Set Forth in NRS 453A.322(3)(a)(5) is Complied With**  
16 **as GB Sciences Alleges.**

17 GB Sciences alleges that NRS 453A.322(3)(a)(5) is not ambiguous,  
18 and states that the division could only issue a provisional registration  
19 certificate if the application included the criteria set forth in NRS  
20 453A.322(3)(a)(5). (*See* GB Sciences’ Opposition at p. 2:10-20.) Once the  
21 Court reads NRS 453A.322 in full, it will see that neither of these things are  
22 true. The statute is obviously ambiguous since it states that each application  
23 had to be on the State’s prescribed form and the State’s prescribed form did  
24 not request the information contained in NRS 453A.322(3)(a)(5). Based on  
25 the language of the statute, two interpretations of an applicant’s  
26 responsibilities are possible: either an applicant is required to use the State’s  
27 prescribed form—which does not include the information in NRS  
28 453A.322(3)(a)(5)—as the statute states, or the applicant is required to

1 include information in the application which is not contained on the State's  
2 prescribed form. Given these two possible interpretations, the statute is  
3 ambiguous. *See State, Dept. of Bus. and Indus., Off. of Lab. Com'r v. Granite*  
4 *Const. Co.*, 118 Nev. 83, 40 P.3d 423 (2002) (noting that "if a statute is  
5 susceptible to more than one natural or honest interpretation, it is  
6 ambiguous") (citations omitted).

7 Similarly, the statute did not state when Desert Aire had to submit the  
8 information listed under NRS 453A.322(3)(a)(5). If Desert Aire had to submit  
9 the information with the application (as alleged by GB Sciences), then no one  
10 could have submitted the information because the City had not granted any  
11 compliance permits by the application deadline. If the statute allowed for  
12 Desert Aire to provide the information after the fact (which is what GB  
13 Sciences did through a letter from the City), then Desert Aire met this test  
14 since it in fact received a permit from the City, which it then provided to the  
15 State.

16 However, in reality the statute never required the information for the  
17 State to issue a provisional certificate. Indeed, the statute does not mention  
18 the phrase "provisional certificate." Instead, the statute is merely a guideline  
19 for the State's acceptance of applications. Specifically, the statute states that if  
20 an applicant submits certain information, the State shall issue a registration  
21 certificate. There is nothing in the statute that says that the State cannot issue  
22 a registration certificate if all of the information contained in the statute is not  
23 provided. Indeed, GB Sciences has admitted that DPBH was allowed to  
24 accept all applications under NRS 453A.322. (*See GB Sciences' Opposition*  
25 *at p. 2:10-11.*) That is all NRS 453A.322 dealt with: registration certificates.  
26 It had nothing to do with provisional certificates.  
27  
28



1           Importantly, this is the way the State interpreted the statute. It did not  
2           require the information in NRS 453A.322(3)(a)(5) in order to rank the  
3           applicants. Instead, they ranked the applicants, issued provisional certificates,  
4           and required proof of licensure before they issued a final certificate. Pursuant  
5           to the wealth of Supreme Court authority cited below and in the Motion to  
6           Stay, the Court should defer to the State's interpretation because it is not  
7           inconsistent with the statute.

8           In other words, the litigation initiated by GB Sciences is really much  
9           ado about nothing. The statute in question merely sets forth guidelines for the  
10          State to accept applications. It does not talk about the issuance of provisional  
11          certificates. Furthermore, at best it is ambiguous since it (a) requires the  
12          application to be submitted on the State prescribed form, which does not  
13          include the information allegedly not submitted, and (b) would have been  
14          impossible to have been complied with since the local jurisdiction, the City of  
15          Las Vegas, had not issued any certificates at the time the applications were  
16          due. Based on these facts, it is clear Desert Aire has a likelihood of success on  
17          the merits.

18                           **B.     Desert Aire Substantially Complied With The Statute**  
19                           **If The Information Was Necessary.**

20          It is doubtful that the information under NRS 453A.322 was necessary  
21          as outlined above. In addition, it is doubtful the information was necessary  
22          since the subsection relied upon only required the information if the  
23          marijuana zoning requirements for the City of Las Vegas were different from  
24          those of the State, which they were not. Specifically, the subsection relied  
25          upon by Desert Aire requires proof that if the City of Las Vegas had different  
26          medical marijuana zoning than the State, the Applicant should provide proof  
27  
28

1 in the form of a letter from the City, or the granting of a permit by the City  
2 showing it met those medical marijuana restrictions. In fact, the State's  
3 medical marijuana restrictions (i.e., 1,000 feet from schools; 300 feet from a  
4 community property, such as a house of worship) were the same as the City of  
5 Las Vegas requirements. Thus, the subsection is inapplicable to begin with.

6 However, if the information was required, then Desert Aire's  
7 submission of a letter from a licensed surveyor showing that the City of Las  
8 Vegas medical marijuana zoning restrictions were met by the facility  
9 combined with its eventually providing the State with proof of its licensure  
10 from the City constitutes substantial compliance. *Markowitz v. Saxon Special*  
11 *Servicing*, 129 Nev. Adv. Op. 69, 310 P.3d 569 (2013). Indeed, such a letter  
12 was the best anyone could have done at the time the application was  
13 submitted.

14 Like in *Markowitz*, it is very important to note that at all points in time,  
15 the facility in question did in fact meet the purpose and intent of NRX  
16 453A.322(3)(a)(5) since it complied in all respects with the City of Las  
17 Vegas' medical marijuana restriction as shown by Desert Aire's survey letter  
18 attached to the application and its eventual receipt of a permit and license  
19 from the City of Las Vegas.

20 **C. As GB Sciences Admits in Its Opposition, The District**  
21 **Court's Order Would Lead To An Absurd Result.**

22 GB Sciences admits in its Opposition that if the information was  
23 required at the time the applications were submitted then all of the certificates  
24 would have to be revoked because no one submitted the information with the  
25 application. However, GB Sciences argues that since it submitted the required  
26 information later (as did Desert Aire but simply later than GB Sciences), NRS  
27  
28

1 453A.322 is inapplicable to it. This is disingenuous. If the information was  
2 required, it was required at the time the application was submitted. Thus, if  
3 the Court's interpretation that the information was required is upheld, it will  
4 lead to an absurd in the form of a revocation of all certificates granted years  
5 after they were granted. Interpreting the statute leading to such an absurd  
6 result is contrary to numerous Supreme Court cases and GB Sciences'  
7 Opposition. (See Opposition at p. 8:7-24.)

8 **D. Desert Aire's Equitable Estoppel and Laches**  
9 **Arguments Are Extremely Strong**

10 As the Supreme Court stated in *Nevada Public Employees v. Byrne*, 96  
11 Nev. 276, 280, 607 P.2d 1351 (1980), "we would turn the doctrine of  
12 equitable estoppel up on its head if we were to hold that the power to correct  
13 an inequity, as unjust as the one here, would, without more, defeat our court's  
14 inherit power to **seek or do equity**." (emphasis added).

15 It would grossly unfair to revoke Desert Aire's registration certificate  
16 under the facts set forth in this case including the substantial reliance by the  
17 Defendant on the actions of the State. The State required Desert Aire to  
18 submit the information (and only the information) on the State application  
19 form, which did not include the information GB Sciences alleges should have  
20 been required. Thus, if the information was required, it was the State's fault  
21 that it was not submitted and not Desert Aires's, since the State's form did not  
22 include a request for the information. Next, the Nevada Administrative Code  
23 required the State to notify Desert Aire if its application was deficient. Not  
24 only did the State not notify Desert Aire that its application was deficient, but  
25 it actually awarded Desert Aire both the provisional and final certificates.  
26 Desert Aire relied upon this to spend years of their lives, working for free,  
27  
28

1 spending their life savings, building out the facility and opening for business.  
2 Accordingly, pursuant to the doctrines of equitable estoppel and laches, the  
3 decision should be reversed.

4 This is especially true with respect to not only the State, as shown  
5 above, but also GB Sciences itself. GB Sciences filed a similar lawsuit against  
6 Desert Aire, but later moved to dismiss it. After that dismissal, Desert Aire  
7 spent over \$1 million building out the facility. It would be grossly unfair to  
8 allow the GB Sciences—who had previously dismissed the suit, leaving  
9 Desert Aire to rely upon the dismissal to build the facility—to come back and  
10 bring the action again.

11 **E. The Appellant believes the Court’s Eventual Order**  
12 **Could Read as Follows:**

- 13 1. Appellant, having completed an application on the State’s  
14 required form as the statute in question required substantially  
15 complied with the statute in question. This is especially true  
16 since the one piece of information which was not provided (out  
17 of approximately 20 pieces of information) was unclear,  
18 impossible to comply with and whose purpose of which was in  
19 actuality met by the Appellant’s facility, which met the  
20 requirements of the statute. Thus, in balancing the equities as  
21 required pursuant to the Nevada Supreme Court cases on  
22 substantial compliance, the Court finds substantial compliance is  
23 appropriate.
- 24 2. The statute at best is ambiguous, since it requires the applicant to  
25 submit its application on the State required form, specifically  
26 states that it will not consider any other additional information,  
27 and yet the form did not include the information allegedly  
28 required under NRS 453.322(3)(a)(5). As a result, to avoid  
manifest injustice, the Court finds that proof of licensure was not  
necessarily required at the time the certificate was submitted and  
Appellant’s obtaining that licensure later suffices.

- 1           3.     The Court finds in favor of the Appellant based on a number of  
2           Supreme Court cases finding that a Court should construe  
3           statutes in a way as to avoid an absurd result. It would be an  
4           absurd result to revoke Appellant's certificate two years after it  
5           had been granted because it failed to include in an application a  
6           certificate from the City of Las Vegas when no such certificates  
7           had been issued. It is clear to the Court that the statutory scheme  
8           which was new was not well thought out and it would be unfair  
9           to punish the Appellant for the problems with the statute which  
10          did not consider the fact that the State's application deadline  
11          would be before local government issued certificates.
- 12          4.     The Court grants Judgment in favor of the Appellant on equitable  
13          estoppel grounds for two reasons. First, it would be grossly  
14          unfair to revoke a party's certificate under the facts set forth in  
15          this case including the substantial reliance by the Appellant and  
16          blatant errors of the State. A wealth of Supreme Court case  
17          authority shows that the court should use its equitable powers to  
18          prevent a manifest injustice from occurring and this is such a  
19          case. The State requiring the applicant to submit the information  
20          (and only the information) on the State application form which  
21          did not include the information Respondent alleges should have  
22          been required, was the State's fault if it was required and not the  
23          Appellant's. Further, the Nevada Administrative Code required  
24          the State to notify the Appellant if its application was deficient.  
25          Not only did the State not notify the Appellant that its  
26          application was deficient, but it actually awarded the Appellant  
27          both the provisional and final certificate. The Appellant relied  
28          upon this to spend years of their lives working for free, spending  
            their life savings, building out their facility and opening for  
            business. Accordingly, pursuant to the doctrine of equitable  
            estoppel the Court rules that the Appellant's certificate cannot be  
            pulled at this time. Similarly, Respondent's actions in dismissing  
            the Appellant from a lawsuit and then bringing a new suit seven  
            months later, during which time Appellant relied upon the  
            dismissal to spend significant sums of money warrants equitable  
            estoppel.



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

## CERTIFICATE OF COMPLIANCE

Pursuant to Nev. R. App. P. 32(a)(9)(C):

I hereby certify that the attached proposed REPLY IN SUPPORT OF MOTION FOR STAY complies with the formatting requirements of Nev. R. App. P. 32(a)(4), the typeface requirements of Nev. R. App. P. 32(a)(5) and the type style requirements of Nev. R. App. P. 32(a)(6) because the REPLY IN SUPPORT OF MOTION FOR STAY has been prepared in a proportionally spaced typeface (14 point Times New Roman font).

I further certify that the attached proposed Reply Brief exceeds the page limitation of Nev. R. App. P. 27(d)(2) because it consists of sixteen pages.

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

By: /s/Margaret A. McLetchie  
Margaret A. McLetchie  
Nevada Bar No. 10931  
MCLEATCHIE SHELL LLC  
701 E. Bridger Avenue, Suite 520  
Las Vegas, Nevada 89101  
(702) 728-5300  
maggie@nvlitigation.com  
*Attorney for Desert Aire Wellness, LLC*

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

## CERTIFICATE OF SERVICE

I hereby certify that the foregoing REPLY IN SUPPORT OF MOTION FOR STAY was filed electronically with the Nevada Supreme Court on the 18<sup>th</sup> day of July, 2016. Electronic service of the foregoing document shall be made in accordance with the Master Service List as follows:

James E. Shapiro, Nevada Bar No. 7907  
Sheldon Herbert, Nevada Bar No. 5988  
SMITH & SHAPIRO, PLLC  
2250 St. Rose Pkwy., Suite 220  
Henderson, NV 89074  
*Attorney for Respondent GB Sciences, LLC*

Linda Anderson, Nevada Bar No. 4090  
Chief Deputy Attorney General  
555 E. Washington Ave., Suite 3900  
Las Vegas, NV 89101  
*Counsel for Respondent State of Nevada*

By: /s/ Pharan Burchfield  
EMPLOYEE, McLetchie Shell, LLC



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

2  
3           DESERT AIRE WELLNESS, LLC

4                               Appellant,

5           vs.

6           GB SCIENCES NEVADA, LLC

7                               Respondent.

Electronically Filed  
Jul 19 2016 08:36 a.m.  
Tracie K. Lindeman  
Clerk of Supreme Court

CASE NO.: 70462

DISTRICT COURT CASE NO.:  
A-15-728448-C

8  
9                   **MOTION FOR LEAVE TO FILE BRIEF IN EXCESS OF**  
10                   **PAGE/TYPE VOLUME LIMITATION**

11           Appellant Desert Aire Wellness, LLC, by and through its counsel,  
12           Margaret A. McLetchie, hereby moves this Court, pursuant to Nevada Rule  
13           of Appellate Procedure 32(a)(7)(D), to file a consolidated REPLY IN  
14           SUPPORT OF MOTION FOR STAY and the State of Nevada's Response to  
15           Emergency Motion for Stay that is sixteen pages long. This Motion is  
16           supported by the attached declaration of counsel.

17  
18                   Dated this 18<sup>th</sup> day of July, 2016.

19  
20                               /s/ Margaret A. McLetchie

21                               MARGARET A. MCLEATCHIE

22                               Nevada Bar No. 10931

23                               MCLEATCHIE SHELL LLC

24                               701. E. Bridger Avenue, Suite 520

25                               Las Vegas, NV 89101

26                               Attorney for Desert Aire Wellness, LLC  
27  
28

[illegible]

§ 53.330, as follows:

- 2 -

1 Aire's emergency motion.

2  
3 6. The State filed its response to Desert Aire's motion on June 8, 2016.  
4 GB Sciences submitted an oversized response in opposition with this Court on  
5 June 13, 2016. This Court issued an order directing the court clerk to file the  
6 oversized opposition on July 5, 2016.  
7

8 7. In its July 5, 2016 order, this Court directed Desert Aire to reply to both  
9 the State and GB Sciences' responses.  
10

11 8. Pursuant to NRAP 27(d)(2), the page limit for a reply pleading is five  
12 pages, unless this Court directs or permits otherwise.

13 9. I have drafted a Reply which exceeds that page limit. The Reply is  
14 sixteen pages long.  
15

16 10. In preparing the Reply, I have endeavored to present the facts and  
17 arguments as succinctly as possible.  
18

19 11. However, given the complexity of this case, and the fact that the Reply  
20 addresses arguments raised by both the State and GB Sciences, I required  
21 additional pages to adequately address both responsive pleadings.  
22

23 12. I believe that any reduction to this Reply would materially detract from  
24 Desert Aire's ability to adequately address both respondents' responses.  
25 Given the novelty and complexity of the issues presented by the instant  
26  
27  
28

1 appeal, and the fact that I was addressing two separate responses, I required  
2 the additional pages to adequately present the grounds entitling Desert Aire to  
3 a stay of the district court's order pending appeal  
4

5 13. I therefore respectfully request this Court grant Desert Aire permission  
6 to file a motion in excess of the normal limitations.  
7

8 14. This Reply is not made for the purposes of delay, or any other improper  
9 purpose, but only to ensure that I provide competent and effective  
10 representation to Desert Aire. *See* Nev. R. Prof. Conduct 1.1.  
11

12  
13 I certify under the penalty of perjury that the foregoing is true and  
14 correct.  
15

16 EXECUTED this 18<sup>th</sup> day of July, 2016.

17  
18 /s/ Margaret A. McLetchie  
19 MARGARET A. MCLEATCHIE  
20 Nevada Bar No. 10931  
21 MCLEATCHIE SHELL LLC  
22 701. E. Bridger Avenue, Suite 520  
23 Las Vegas, NV 89101  
24 *Attorney Desert Aire Wellness, LLC*  
25  
26  
27  
28

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

## CERTIFICATE OF COMPLIANCE

Pursuant to Nev. R. App. P. 32(a)(9)(C):

I hereby certify that the attached proposed REPLY IN SUPPORT OF MOTION FOR STAY complies with the formatting requirements of Nev. R. App. P. 32(a)(4), the typeface requirements of Nev. R. App. P. 32(a)(5) and the type style requirements of Nev. R. App. P. 32(a)(6) because the REPLY IN SUPPORT OF MOTION FOR STAY has been prepared in a proportionally spaced typeface (14 point Times New Roman font).

I further certify that the attached proposed Reply Brief exceeds the page limitation of Nev. R. App. P. 27(d)(2) because it consists of sixteen pages.

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

By: /s/Margaret A. McLetchie  
Margaret A. McLetchie  
Nevada Bar No. 10931  
MCLEATCHIE SHELL LLC  
701 E. Bridger Avenue, Suite 520  
Las Vegas, Nevada 89101  
(702) 728-5300  
maggie@nvlitigation.com  
*Attorney for Desert Aire Wellness, LLC*

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**CERTIFICATE OF SERVICE**

I hereby certify that the foregoing MOTION FOR LEAVE TO FILE BRIEF IN EXCESS OF PAGE/TYPE VOLUME LIMITATION was filed electronically with the Nevada Supreme Court on the 18th day of July, 2016. Electronic service of the foregoing document shall be made in accordance with the Master Service List as follows:

James E. Shapiro, Nevada Bar No. 7907  
Sheldon Herbert, Nevada Bar No. 5988  
SMITH & SHAPIRO, PLLC  
2250 St. Rose Parkway, Suite 220  
Henderson, Nevada 89074  
*Counsel for Respondent GB Sciences, LLC*

Linda Anderson, Nevada Bar No. 4090  
Chief Deputy Attorney General  
555 E. Washington Ave., #3900  
Las Vegas, Nevada 89101  
*Counsel for Respondent State of Nevada*

/s/ Pharan Burchfield  
Employee of McLetchie Shell LLC