

DATED this 6 day of April, 2016.

Defendant/Counterclaimant Desert Aire Wellness, LLC

Sign:

Print

Stacey Huffman
Stacey Huffman

I hereby consent to the above and foregoing substitution.

DATED this day of April, 2016.

By:

Michael H. Singer, Esq. (NV Bar No.
1589)
4475 South Pecos Road
Las Vegas, Nevada 89121

Attorneys for Desert Aire Wellness, LLC

I hereby accept the above and foregoing substitution.

DATED this day of April, 2016.

FENNEMORE CRAIG, P.C.

By:

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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I hereby certify that I am an employee of Fennemore Craig Jones Vargas and that on April 7, 2016, service of the **SUBSTITUTION OF ATTORNEYS** was made on the following counsel of record and/or parties by electronic transmission to all parties appearing on the electronic service list in Gdyssey E-File & Serve (Wiznet):

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For Case**

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

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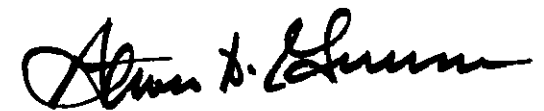
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CLERK OF THE COURT

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DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiff,

vs.

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

Defendants.

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

Counterclaimant,

vs.

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

Counterdefendant.

CASE NO. A-15-728448-C

DEPT. NO. I

**MOTION FOR RECONSIDERATION
AND REQUEST THAT THE COURT
REVERSE AND GRANT DEFENDANT
SUMMARY JUDGMENT TO
DEFENDANT OR AT A MINIMUM
GRANT A STAY PENDING AN APPEAL**

Defendant Desert Aire Wellness, LLC ("Desert") hereby moves for reconsideration of the Court's Order granting summary judgment against Desert and asks the Court to instead grant Desert summary judgment. The motion is made on the grounds that there are eleven separate reasons why the Court should reconsider its Order all of which are meritorious and only one of which is necessary for the Court to reconsider its Order. In considering the Motion, Desert would

1 ask the Court to keep in mind that the subsection relied upon by Plaintiff merely requires proof
2 that an applicant's facility meets the City of Las Vegas' medical marijuana restrictions. That was
3 the purpose of the statute not for the applicant to show that it had already acquired a license for
4 the space. When considering this the Court will see Desert in fact complied with the statute since
5 it provided proof that Desert met the City of Las Vegas medical marijuana restrictions in its
6 application. No one else could have done any better and if the Court does not reconsider its
7 Order most of the medical marijuana licenses across the State will have to be revoked.

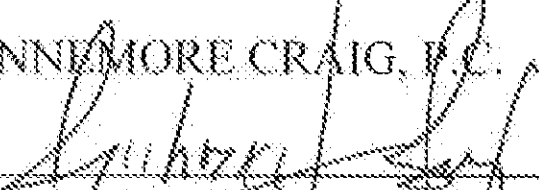
8 The eleven reasons are; 1. the subsection of the statute cited is not applicable since the
9 statue does not "require" the information set forth in the subsection to be included in the
10 application but instead, the "required" information for a State application is set forth in N.A.C.
11 453A.306 which requirements Desert did meet. 2. This is clearly the way the state interpreted the
12 statute (indeed the state required all applicants to use a specific form when filling out their
13 application which form did not include the information contained in the subsection relied upon by
14 the Plaintiff in this action but instead mirrored N.R.S. 453A.306). Accordingly, pursuant to
15 Nevada Supreme Court authority the Court should follow this interpretation; 3. At a minimum the
16 statute is ambiguous when considered with other surrounding statutes and code sections. As a
17 result, pursuant to established Nevada Supreme Court authority the Court should interpret the
18 statutes in favor of Defendant. 4. If the statute did require proof of zoning compliance from the
19 City prior to any provisional certification from the state (it did not) Desert did meet the
20 requirement since it sent a letter required by the City showing it met the City medical marijuana
21 zoning restrictions in its State application. Indeed, the cities medical marijuana zoning restrictions
22 (1000 feet from any school, 300 feet from any community facility such as park, church) mirror
23 the States zoning restrictions. Therefore since Plaintiff provided proof that its facility was more
24 than 1000 feet from any school or 300 feet from any community facility in the form of a letter
25 from a licensed surveyor in its application it complied with the subsection cited by Plaintiff even
26 though not required. 5. At a minimum, there was substantial compliance pursuant to established
27 Nevada Supreme Court authority since Desert included in its state application the equivalent of
28 proof that it complied with the City of Las Vegas medical marijuana zoning restrictions and

1 indeed has always complied with those restrictions which was the purpose of the section cited by
2 Plaintiff. 6. Pursuant to clear Nevada Supreme Court authority the Court should hold that under
3 the doctrines of equitable estoppel and laches it is denying the request to revoke Desert's license
4 to prevent manifest injustice. 7. Nevada Supreme Court law provides that the court should
5 construe statutes liberally to avoid unjust results. 8. Even if there was a technical breach of the
6 statute (there was not) Desert cured that breach when it received final SUP approval from the City
7 of Las Vegas which was sent to the state prior to the state issuing its final approval just like all the
8 other applicants – none of whom submitted any proof of licensure with their application 9. **If the**
9 **Courts order is allowed to stand all of the other applicants licenses would be revoked since**
10 **none of them submitted the information required under N.R.S. 453A.322(3)(A)(5). The**
11 **information had to be included in the application in August. Therefore, the State's sending**
12 **a list of what applicants had been approved in October is of no matter. Thus, if the Court**
13 **deems that such information was required in each applicant's application (again the deadline was**
14 **August and no one submitted the information in August quite frankly because none could) every**
15 **City of Las Vegas license would have to be revoked as would most from the County and all from**
16 **northern Nevada. This would be an absurd result which even Plaintiff's counsel states the law**
17 **does not allow. 10. Plaintiff lacks standing to bring this action since if its interpretation were**
18 **correct it failed to meet the statutes requirements also. 11. At a minimum the Court should allow**
19 **testimony and discovery pursuant to N.R.C.P. 56 (f) if it is not otherwise convinced with the**
20 **arguments above.**

21 The motion is based on the following memorandum of points and authorities and the
22 exhibits attached.

23 Dated this 14 day of April, 2016.

24 FENNEMORE CRAIG, P.C.

25 By: 
26 Richard H. Bryan (Bar No. 2029)
27 Patrick J. Sheehy (Bar No. 3812)
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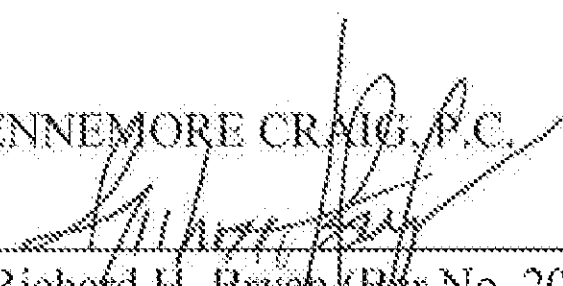
1 NOTICE OF MOTION

2 **TO: ALL PARTIES AND THEIR ATTORNEYS OF RECORD**

3 YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE that the undersigned will
4 bring the foregoing Motion on for hearing before the above-entitled Court on the 16th
5 day of May, 2016, in Department I, at In Chambers, or as soon thereafter
6 as counsel can be heard.

7 Dated this 14 day of April, 2016.

8 FENNEMORE CRAIG P.C.

9 By: 
10 Richard H. Bryan (Bar No. 2029)
11 Patrick J. Sheehan (Bar No. 3812)
12 300 S. Fourth Street, Suite 1400
Las Vegas, Nevada 89101
Attorney for Desert Aire Wellness, LLC

13 MEMORANDUM OF POINTS AND AUTHORITIES

14 **I. INTRODUCTION – DESERT DID PROVIDE PROOF IN ITS APPLICATION**
15 **THAT IT MET THE CITY OF LAS VEGAS' MEDICAL MARIJUANA ZONING**
16 **RESTRICTIONS. THEREFORE THIS IS MUCH TO DO ABOUT NOTHING.**
17 **HOWEVER, TAKING PLAINTIFFS POSITION, THE COURT'S ORDER**
WOULD RESULT IN VIRTUALLY ALL MEDICAL MARIJUANA LICENSES
BEING REVOKED AN ABSURD RESULT.

18 This case is not like the other two cases cited by Plaintiff in its Motion for Summary
19 Judgment Nevada Wellness and NuLeaf. In those cases neither entity got SUP approval from the
20 relevant local governmental authority. To the contrary this case is like the one decided by Judge
21 Delaney concerning the so called Clark County eight where she in effect ruled there was
22 substantial compliance.

23 In this case Desert did get final SUP approval from the City of Las Vegas. Exhibit 1.
24 Further, it is important to note that at all relevant times its facility did in fact meet all of the City
25 of Las Vegas marijuana zoning restrictions and Desert provided proof of this in its state
26 application. Exhibit 2. Equally important (as will be shown in detail below) the Nevada Revised
27 Statutes never required the state to require an applicant to show that it met the local government's
28 medical marijuana zoning restrictions either through proof of licensure or a letter from that

1 jurisdiction in order to get a provisional license. Instead, the statute referenced by Plaintiff merely
2 stated that if an applicant did provide such information along with 20 other items the state had to
3 issue a registration certificate. Exhibit 3. However, no place in the statute does it state that the
4 state could not issue a registration certificate if an applicant was missing one or more of the items
5 such as proof of the applicants building meeting the local government's medical marijuana
6 restrictions. The Nevada Revised Statutes only state that any applicants provisional certificate
7 could not be deemed final until it provided proof of compliance with the local jurisdictions zoning
8 requirements. Desert did this prior to the state issuing final approval.

9 Moreover, the application filed had to be on an application form "prescribed by the
10 division" pursuant to the statute cited by Plaintiff N.R.S. 453A.322. That form did not include
11 any requirement that the applicant provide proof of licensure by the local government or a letter
12 stating the applicant had met the zoning restrictions. Instead, the application form mirrored
13 N.A.C. 453A.306 entitled "Applications to Operate Establishment: Required Provisions."
14 That section is what was required under Nevada law as shown from its title. Exh. 4. There is no
15 question that Desert's application included all the things contained on the form prescribed by the
16 division and all the required provisions under N.A.C. 453A.306.

17 One of the things was a professionally prepared survey which demonstrated that the
18 applicant had satisfied all the requirements of sub-sub-paragraph (II) of subparagraph (2) of
19 paragraph (a) of subsection III of N.R.S. 453A.322. Those requirements are the exact same
20 zoning requirements as the City of Las Vegas *i.e.*, that the proposed medical marijuana facility
21 would be 1,000 feet from any school or at least 300 feet from any community recreational
22 facility, City Park, etc. Exh. 5. **Thus, this whole thing is a big to do about nothing.** The State
23 medical marijuana zoning restrictions are the same as the City of Las Vegas. Desert's application
24 provided proof that it complied with the City (and the State) medical marijuana zoning
25 restrictions. Thus, Desert's application clearly complied with the requirements for the same.

26 Further, no other applicant seeking a City of Las Vegas medical marijuana establishment
27 included proof of licensure from the City of Las Vegas or a letter from the City of Las Vegas
28 certifying that the proposed medical marijuana establishment was in compliance with the City of

1 Las Vegas enacted medical marijuana zoning restrictions. This is because it was not until after the
2 state application deadline that the City of Las Vegas even considered any applicants' licenses.

3 Thus, if -- as Plaintiffs argue -- applicants had to submit zoning approval from the City of
4 Las Vegas when it submitted its state application, none of the City of Las Vegas applicants met
5 the requirements of N.R.S. 453A.322(3)(a)(5). The applications all had to be submitted to the
6 state in mid-August, 2014. No one's application included the information set forth in N.R.S.
7 453A.322(3)(a)(5). If as Plaintiff alleges, it was a requirement to comply with that section and
8 those that did not should have their license revoked all licensees would have their license revoked
9 since none did except as Desert did as explained above.

10 Plaintiff argued, and it appears the Court bought the argument, that because the City had
11 sent the State a list of the applicants who had been granted City licensure on October 30th
12 somehow GB Sciences and the other applicants who were on that approved list complied with the
13 statute. They clearly did not. The statute in which the section is included does not allow one to
14 supplement their application after the application deadline. The whole reason for the application
15 deadline was so the State could immediately begin reviewing the applications to meet the 90 day
16 deadline. That somebody could supplement their application after the fact would be to read
17 something into the statute which was not there. To the contrary the division could only accept
18 applications for a 10 day business period. Thus, any documents submitted with an application had
19 to have been submitted by August 17, 2014. **Therefore, the City sending something to the**
20 **State long after the application deadline does not cure anyone not filing the information**
21 **noted under N.R.S. 322A.(3)(a)(5).**

22 When taking into account that a. Desert did in fact provide proof that its facility met the
23 City of Las Vegas' medical marijuana zoning restrictions in the form required by the City of Las
24 Vegas when it submitted its medical marijuana application for the state i.e. a zoning letter and
25 survey from a licensed surveyor and b. got City of Las Vegas final license approval prior to the
26 state issuing its final license approval the Court should reconsider its decision and award Desert
27 summary judgment.

28 This is especially true since pursuant to Nevada Supreme Court authority regarding

1 statutory construction, laches, equitable estoppel and deference to state agencies actions the Court
2 should do whatever it can to prevent manifest injustice which would clearly occur if the state
3 were to revoke Desert's license. Clearly, it would be manifest injustice if Desert's medical
4 marijuana license was revoked after it a. submitted in its application the only possible proof of
5 compliance with the City of Las Vegas' medical marijuana zoning restrictions, the letter from the
6 licensed surveyor, since this is what the City of Las Vegas required; b. in fact met the City of Las
7 Vegas medical marijuana zoning restrictions at all times; c. like every other City of Las Vegas
8 medical marijuana applicant could not have provided proof of licensure when submitting the
9 application since the City of Las Vegas had not issued anyone a license prior to the state
10 application date; d. did in fact get City of Las Vegas medical marijuana license approval which
11 the state received prior to the state issuing final approval; e. based on the states provisional
12 approval, the city's provisional approval, the city's final approval and the state's final approval
13 built out at a substantial cost a medical marijuana facility, opened for business, spent a large sum
14 of money on advertising etc.; f. the states own interpretation of the statute (which is not wrong)
15 was that applicants did not have to provide proof of licensure from the City of Las Vegas prior to
16 getting provisional certificates; g. Desert did the same thing every other applicant did except that
17 it received its approval a month and a half later than the other applicants but before any final
18 approval was given; h. the Plaintiff GB Sciences waited well over a year to bring its claim and
19 until after Desert had spent over \$1 million before bringing the claim. Indeed G.B. Sciences
20 actually dismissed a similar claim against Desert in April, 2015.

21 Based on these undisputed facts, even if the Court did not agree with all of the other
22 reasons for reconsideration set forth above, it should use its equitable powers to reconsider the
23 decision. Nevada Supreme Court authority supports this result. *Nevada Pub. Employees*
24 *Retirement Board v. Byrne* 96 Nev. 276, 607 P.2d 1351 (1980). In that case the Court held that
25 equitable estoppel prevented a governmental entity from denying benefits as a result of a
26 technical violation of a statute stating:

27 We would turn the doctrine of equitable estoppel upon
28 its head if we were to hold that the power to correct an
inequity, as unjust as the one here, would, without

1 more, defeat our Court's inherent power to seek or do
2 equity.
3 Id. at 280.

4 Here, there would be a huge injustice if Desert, LLC members lost hundreds of thousands
5 of dollars representing their entire lifetime savings because they submitted an application which
6 complied with the State's mandated application form, complied with the NAC Code, setting forth
7 the application requirements, never received any letter from the State stating that its application
8 was not sufficient (as is required by law if an applicant is denied), spent two years of their lives
9 working almost full time on the project without any pay, built their facility, opened for business,
10 spent huge sums marketing the facility only to see their license revoked because of an alleged
11 technicality caused by the State. If there was ever a situation where the court needed to use its
12 inherent power to seek or do equity, this is the case.

13 Similarly, the Nevada Supreme Court has stated that the Court should construe statutes to
14 avoid an absurd result. Obviously revoking Desert's license resulting in their members losing
15 their life savings after it had repeatedly been told they had a license, not to mention revoking
16 every other applicants license after everyone simply followed the States required application
17 form, would be absurd. At a minimum the statutes are ambiguous since N.A.C. 453A.306 lists the
18 required things to be included in the application and those requirements were the only
19 requirements on the form required by the State. Accordingly, because the statutes were at best
20 ambiguous, in order to avoid an absurd result, the Court should follow the statutory construction
21 set forth above and used by the State. *Smith v. Kisorin USA, Inc.* 127 Nev. Adv. Op. 37, 254 P.3d,
22 636 (2011) (Supreme Court has a duty to construe statutes as a whole so that all provisions are
23 considered together and, to the extent practicable reconciled and harmonized. In interpreting
24 statutes, the Supreme Court considers the policy and spirit of the law and will seek to avoid an
25 interpretation that leads to an absurd result).

26 II. STATEMENT OF FACTS.

27 First, it needs to be noted that the State required its applications to be filed before
28 any jurisdiction had issued any medical marijuana licenses. As a result, no applicant was able to

1 get proof of licensure from the local jurisdiction prior to the filing of the State applications.
2 Second, the application form that the State proposed and had all applicants fill out did not include
3 any requirement or have any part of the detailed form require proof that the city, town or county
4 that the proposed medical marijuana establishment would be located in had issued a license.
5 Further, the State did not even look at whether any applicant had provided proof of license from
6 the local government authority (again they could not have since the State application was due
7 beforehand) or a letter stating the zoning requirements had been met. Instead, the State decided it
8 would issue a registration certificate to all applicants whose application substantially complied
9 and then rank them.

10 In other words, although N.R.S. 453A.322 states that the division shall issue a registration
11 certificate and random 20 digit identification number to any applicant whose application included
12 the 20 or so listed items the statute did not indicate that the state could not issue registration
13 certificates and an identification number to any applicant whose application did not include all the
14 20 or so items. To the contrary the state followed its application form which mirrored N.A.C.
15 453A.306 the only rule whose language did state what items were "required". Desert's application
16 (presumably like everybody else's application) did comply with all of those requirements. In
17 other words, the state did not look to or require proof that an application contained proof of
18 licensure with the City of Las Vegas or a letter certifying that the proposed medical marijuana
19 establishment was in compliance with the zoning restrictions. See Exhibit 7 State's Response to
20 Motion for Preliminary Injunction in Case No. A-14-710488 at Page 2, Lines 26-27 and Page 3,
21 Lines 1-20.

22 The City of Las Vegas does have minimum special use requirements specific to medical
23 marijuana establishments. Those are, "no medical marijuana dispensary may be located within
24 1,000 feet of any school; or within 300 feet of any individual care center licensed for more than
25 12 children, community recreational facility (public), City Park or church/house of worship. "See
26 Exhibit 5. However, the City never has opined or drafted a letter stating that anyone is in
27 compliance with those zoning requirements. Instead, the City made each of the applicants submit
28 a letter from a licensed surveyor stating that the applicant had in fact, met those requirements.

1 Specifically the Department of Planning's special use permit submittal requirements for Medical
2 Marijuana (a copy of which is attached as exhibit 8) required the applicant to provide, "a certified
3 copy of a survey sealed by a State of Nevada registered surveyor documenting compliance of the
4 proposed site with to all state distance requirements and the requirements of title 19 (the city
5 requirements). The survey shall be a professional drawing 11x17 in size." The City never went
6 out and measured anything itself or stated that any applicant had met the requirements.

7 The only thing the City did was require that letter as part of the application then, once the
8 applicant got SUP approval the city issued an SUP approval letter stating "This approval is
9 subject to:

- 10 1. Conformance to all minimum requirements under LVMC
11 Title 19.12 for a medical marijuana dispensary use.

12 Exh. 1.

13 These however, were not issued until months after the State application was due.

14 Thus, the best anyone could have done when submitting their application was to provide
15 a copy of the survey and or a letter from a licensed surveyor showing that the City of Las Vegas
16 medical marijuana zoning restrictions were met. Defendant Desert did in fact, submit such a
17 survey and letter with its application. A copy of the letter is attached as exhibit 2 and the actual
18 survey was also attached to the application. Then, at some point later, after obtaining SUP
19 approval, long after the state application deadline had passed, the state was provided a copy of a
20 SUP approval letter from the City. Exh. 1. Just like all other applicants.

21 Thus, the facts are that at all points in time the proposed medical marijuana facility of
22 Desert in fact, met all of the medical marijuana zoning requirements. As a result, applicant
23 received its City of Las Vegas approval on December 17, 2014. Exh. 1. Then, on December 21,
24 2015, the State, through the Department of Health and Human Services, sent Desert a letter
25 stating as follows:

26 Congratulations to Desert Aire Wellness at 430 East Sahara
27 Avenue, No. 4632, Las Vegas, for completing its preopening
inspection.

28 This letter accompanies your final medical marijuana

1 establishment registration certificate. You are authorized to
2 begin acquiring medical marijuana in accordance with the
3 requirements of Nevada Revised Statutes (N.R.S.) and Nevada
4 Administrative Code (NAC) 453(a). Be advised that the
5 division needs to perform an operational inspection of your
6 establishment before you start selling medical marijuana to
7 patients.

8 Exhibit 9.

9 Accordingly, based upon its initial approval from the State and the City approval in 2014,
10 Desert built its facility in 2015 and began operations early this year. It did so after obtaining the
11 licensure from the State and the City the same way everybody else did. Indeed, it went above
12 and beyond what everybody else did by submitting the survey and survey letter as part of its
13 application to the state to show that it in fact, met the minimum City of Las Vegas medical
14 marijuana zoning restrictions. In other words its initial application included the only thing
15 possible which could have complied with NRS 453A.322(3)(a)(5)'s notation that the applicant
16 submit with its application proof that the applicant's proposed medical marijuana establishment
17 met any local medical marijuana zoning restrictions. Thus, Desert clearly met the purpose and
18 intent of that section of the statute.

19 Another fact that is important is that GB Sciences filed the same lawsuit against Desert in
20 2014. However, it dismissed Desert in April 2015. As a result, Desert went forward and spent a
21 ton of money based on the State's high ranking of Desert, the City's preliminary and final
22 approval of Desert and GB's dismissing Desert from the lawsuit that it filed. Desert has now
23 spent in excess of \$1.5 million on the facility. Exh. 6. As a result, pursuant to well-established
24 Nevada Supreme Court authority the Plaintiff and the State are estopped from taking Desert's
25 license now.

26 **III. THE STATUTE DID NOT REQUIRE PROOF OF LICENSURE OR LETTER**
27 **FROM THE CITY STATING THE ZONING REQUIREMENTS HAD BEEN MET**
28 **PRIOR TO THE ISSUANCE OF FINAL APPROVAL BY THE STATE.**

To clarify, Plaintiff's argument is that the State should not have issued a medical
marijuana establishment registration certificate to Desert without Desert providing proof of
licensure from the City of Las Vegas or a letter from the City of Las Vegas stating Desert's
building met the marijuana zoning restrictions. The argument lacks merit because the statute did

1 not require such proof prior to the issuance of a registration certificate. Instead, the statute merely
2 states that the State shall issue a registration certificate if the applicant provides an application
3 with 20 or so different items. It does not state that the State cannot issue a registration certificate
4 if the applicant does not provide one of those items.

5 The statute in question states as follows:

6 (3) Except as otherwise provided in, not later than 90
7 days after receiving an application to operate a medical
8 marijuana establishment, the division shall register the
9 medical marijuana establishment and issue a medical
10 marijuana establishment registration certificate and a
11 random 20-digit alpha numeric identification number if:

12 (a) the person who wishes to operate the proposed medical
13 marijuana establishment has submitted to the division all of
14 the following:

15 [There then is a long list of items such as proof the
16 applicant controls more than \$250,000, etc.]

17 (5) If the city, town or county in which the proposed
18 medical marijuana establishment will be located has
19 enacted zoning restrictions, proof of licensure with the
20 applicable local governmental authority or letter from the
21 applicable local governmental authority certifying that the
22 proposed medical marijuana establishment is in compliance
23 with those restrictions and satisfies all applicable building
24 requirements.

25 N.R.S. 453A.322.

26 The State made the decision not to require the proof that the applicant met the local
27 jurisdictions medical marijuana zoning restrictions when issuing its provisional certificates
28 because N.R.S. 453A.326 covered the issue of compliance with all applicable local government
ordinance or rules. N.R.S. 453A.326 states,

“In a local government jurisdiction that issues business licenses, the
issuance by the division of a medical marijuana establishment registration
certificate shall be deemed to be provisional until such time as:

(a) the establishment is in compliance with all applicable local government
ordinance or rules; and (b) the local government has issued a business
license for the operation of the establishment.

Thus, pursuant to N.R.S 453A.322 (3) if an applicant did submit all the numerous items
under Subsection (a) then the State was required to issue a medical marijuana registration

1 certificate. One of those things was proof of licensure or letter from the applicable local
2 government certifying compliance with the local government's medical marijuana zoning
3 requirements. However, the State was not required pursuant to N.R.S. 453A.322 (3) NOT to
4 issue a registration certificate if the applicant failed to provide the proof of licensure. In other
5 words, although the statute required the state to issue a registration certificate to anyone that did
6 present all of the requirements under 453A.322 (3)(a) the statute does not state the State could not
7 issue a registration certificate to persons who do not provide an application containing every
8 single one of the requirements contained therein. This included the proof of the local licensure or
9 zoning.

10 The only statute which required proof that the establishment was in compliance with all
11 applicable local government ordinances or rules and that the local government had issued a
12 business license for the operation of the establishment was NRS 453A.326. That statute held that
13 no entities' license could go from provisional to final until the applicant proved it was in
14 compliance with all applicable local government ordinances or rules i.e. received an SUP. Desert
15 did this before the state gave its final approval.

16 Thus, the State made the decision that it would issue provisionals without requiring proof
17 of licensure, but emphasized that it in fact it was just a provisional. Exh. 7. Then, it would require
18 proof that the establishment was in compliance with all applicable local government ordinances
19 and had obtained a business license (and presumably a final approval from the local jurisdiction)
20 before issuing final approval.

21 The statute clearly allows this and indeed, it makes sense. Which raises the second reason
22 (in addition to the plain language of the statute not requiring proof of licensure in an applicant's
23 state application prior to the state issuing provisional certificates) why it is clear that proof of
24 licensure in the applicant's application could not have been a requirement for the state to issue a
25 registration certificate. This is because it would have been impossible for any applicant seeking a
26 medical marijuana establishment in the City of Las Vegas to provide proof of licensure since the
27 state's application deadline was before any city licenses were granted or anyone could get a letter
28 from the city. Again the city requirement for proof of zoning restriction compliance was a survey

1 and letter from a licensed surveyor and Desert provided this in its state application. This is the
2 best it or anyone could have done. Obviously a statute cannot be construed as requiring something
3 that would have been impossible to submit with the application.

4 **IV. THE NEVADA SUPREME COURT HAS HELD THAT STATUTES SHOULD BE**
5 **CONSTRUED LIBERALLY, CONSIDER THE VARIOUS SECTIONS**
6 **TOGETHER AND PROVIDE DEFERENCE TO THE GOVERNING BODY**
7 **REGARDING INTERPRETATION OF ITS OWN RULES**

8 The Nevada Supreme Court has stated, "Whenever the interpretation of a statute or
9 constitution in a certain way will result in manifest injustice, or public inconvenience, courts will
10 always scrutinize the statute or constitution closely to see if it will not admit some other
11 interpretation. *State ex. rel. McMillan v. Sadler* 25 Nev. 131, 58 P.284 (1899). Similarly, the
12 Supreme Court has stated that it is not for the court to step into the shoes of the State and make
13 decisions for them. *North Lake Tahoe Fire Protection District v. Washoe County Board of*
14 *County Commissioners* 129 Nev. Adv. Op. 72, 310 P.3d 583, 585-587 (2013).

15 In this case, the statute in question does not require the State not to issue provisional
16 medical marijuana establishment certificates if an applicant did not provide proof of licensure
17 from the local government. Again, the statute simply states that the State shall issue a registration
18 certificate if the applicant provided all of the information. It does not state that the state cannot
19 issue a provisional certificate if the applicant did not provide proof of licensure from the local
20 jurisdiction.

21 The only statute that did require the State to require proof of conformance with local
22 zoning requirements was NRS 453A.326 requiring the same before the State issued the final
23 medical marijuana approval. Desert did in fact, obtain final local approval prior to Desert
24 receiving final state approval. Moreover, there are two other things in the statutes pointing to the
25 fact that it was not the items listed under N.R.S. 453A.322 which were required but instead the
26 items listed under N.A.C. 453.A306. The first is that N.R.S. 453A.322 states that, "a person who
27 wishes to operate a medical marijuana establishment must submit to the division an application
28 on a form prescribed by the division." See paragraph 2 of statute attached as Exh. 3. Thus, the
very statute cited by Plaintiff states that all applicants had to submit their application based on the

1 application form prescribed by the division. Desert like all other applicants did in fact submit
2 their application on the State's application form. That form did not include the subsection 5
3 requirement now relied upon by Plaintiff.

4 Second, the application did in fact follow N.A.C. 453A.306. That statute did specifically
5 (unlike N.R.S. 453.A322) state what was required in the application form. Desert complied with
6 everything under that code section.

7 To construe the statute as requiring applicants to submit proof of licensure when they
8 submitted their applications to the State is not only inconsistent with the express wording of the
9 statutes language, especially when taken together, but also, not the procedure followed by the
10 State. Instead, the state construed the statute as not requiring the applicants to submit all of the 20
11 or so things listed in NRS 453A.322 but instead interpreted the statute as allowing it to issue
12 registration certificates to all in order to rank the applicants based on its selective criteria.
13 Pursuant to the above cited case law the Court should follow this interpretation. To do otherwise
14 would result in manifest injustice.

15 This is because not only Desert but numerous other applicants would be in the position of
16 having been told by the State and local jurisdiction that they had a license, built the facility,
17 opened for business only to have their license pulled because the State interpreted the statute one
18 way and was overruled by the court. For example, each of the entities in Clark County, Nevada,
19 City of Las Vegas and Northern Nevada received their provisional registration certificate without
20 including proof of licensure from the local jurisdiction in their application since none of those
21 jurisdictions issued any licenses prior to the application deadline from the state. The statute states
22 that the proof of licensure (or a letter from the local jurisdiction) had to be submitted at the time
23 of application. No one complied with this save and except possibly Desert since it submitted the
24 surveyor letter, which in effect complied with the statute. Obviously, pursuant to the Nevada
25 Supreme Court case law, the court should interpret the statute in a manner consistent with the
26 State's practices and to avoid manifest injustice.

27 **V. AT WORST THE STATE'S STATUTES AND RULES ARE AMBIGUOUS IN**
28 **WHICH CASE THE COURT SHOULD CONSTRUE THE STATUES IN A**
MANNER TO AVOID AN ABSURD RESULT.

1 N.A.C. 453A.306 states what was required in the state application. The State mirrored its
2 application upon that code section. N.R.S. 453A.322, the statute relied upon by Plaintiff,
3 specifically states that all applicants had to submit their application in compliance with the State's
4 application. As a result pursuant to N.R.S. 453A.322 every applicant had to follow the application
5 form prepared by the state which mirrored N.A.C. 453A.306. Therefore, at worst adding a
6 requirement from N.R.S. 453A.322 which was not included on the State prescribed application
7 (which the statute stated must be followed) and which was not included in the only statute which
8 specifically stated "what things were required" in the application creates ambiguity.

9 Accordingly, since not following the State's own interpretation of its statute and instead
10 enforcing another provision contrary to the State's interpretation, would result in most Nevada
11 applicants medical marijuana licenses being revoked a year and a half after their issuance and
12 when the facilities have been opened would be absurd, the Court should construe the statutes as
13 the State did. *Smith v. Kisorin USA, Inc.* 127 Nev. adv. Op. 37, 254 p3d 636 (2011). (Supreme
14 Court has a duty to construe statutes as a whole so that all provisions are considered together and,
15 to the extent practicable reconciled and harmonized. In interpreting statutes, the Supreme Court
16 considers the policy and spirit of the law and will seek to avoid an interpretation at least when
17 absurd results.)

18 **VI. EVEN IF THE STATUTE COULD BE READ AS REQUIRING APPLICANTS TO**
19 **INCLUDE IN THEIR STATE APPLICATION PROOF OF LICENSURE WITH**
20 **THE CITY OF LAS VEGAS OR A LETTER FROM THE CITY STATING THE**
21 **FACILITY COMPLIED WITH ZONING PRIOR TO STATE ISSUANCE OF A**
22 **PROVISIONAL CERTIFICATE TO APPLICANTS, THE COURT SHOULD**
23 **RULE THAT DESERT COMPLIED WITH THE STATUTE.**

24 Even if the statute did require either proof of licensure or a letter from the applicable
25 government authority certifying that the proposed marijuana establishment complied with the
26 local medical marijuana zoning requirements, Desert in fact, complied with the requirement.
27 First, it provided with its state application a survey and survey letter showing it met all the
28 distance requirements set forth in the City of Las Vegas's specific medical marijuana building
restrictions such as, not being located within 1,000 feet of any school, 300 feet of any individual
care center, church, park, etc. Exh. 2. This was the best anyone could do since it was the City of

1 Las Vegas's policy to require each of the applicants to provide the survey from a licensed
2 surveyor showing all of the medical marijuana zoning requirements were met. Then, the State
3 received Desert's SUP approval, which equates to license approval. Thus, it complied with the
4 statute.

5 This is because if the statute could be construed as requiring the proof of local zoning
6 compliance at the time the application was submitted Desert provided the City of Las Vegas
7 equivalent to such proof in the form of the letter from the licensed surveyor. In other words the
8 best that could have been done at the time.

9 On the other hand if applicants could provide proof of licensure in the future then Desert's
10 SUP approval which was sent to the state by the city was provided. Indeed this is what everybody
11 did. Thus, if anybody complied with N.R.S. 453A.322 it was Desert.

12 **VII. AT A MINIMUM DESERT SUBSTANTIALLY COMPLIED WITH THE**
13 **STATUTE WHICH IS SUFFICIENT PURSUANT TO WELL ESTABLISHED**
14 **NEVADA SUPREME COURT AUTHORITY**

15 If for any reason the Court does believe that an applicant had to submit proof that its
16 establishment met the City of Las Vegas's enacted zoning restrictions, either through proof of
17 licensure or a letter from the applicable local governmental authority at the time the application
18 was filed (as shown above it does not) then at a minimum Desert substantially complied with this
19 requirement. First, it submitted the letter from the surveyor and survey showing that it met the
20 requirements. This clearly constitutes substantial compliance under well-established Nevada
21 Supreme Court authority. Specifically, the Nevada Supreme Court has stated that substantial
22 compliance with the statute is sufficient where the purpose of the statute can be adequately served
23 in a manner other than by technical compliance with the statutory language. *Schleining v. CAP*
24 *One, Inc.*, 130 Nev. ADV. Rep. 36, 326 P.3d 4 (2014). In that case the Nevada Supreme Court
25 noted that there was no prejudice to any party by allowing substantial compliance and the purpose
26 of the statute would have been met by allowing substantial compliance. In other words, the test is
27 whether or not the purpose of the statute was met. *See also, Nevada Equities v. Willard Pease*
28 *Drilling Co.*, 84 Nev. 300, 440 P.2d 122 (1968) ("The claimant substantially complied with the
licensing scheme under both chapters. It is not suggested that *Willard Pease Drilling Co.* was

1 wanting in experience, financial responsibility, or indeed, in any particular detrimental to the
2 safety and protection of the public. It had passed the scrutiny of the contractor's board in these
3 respects and was issued a license. We shall not condone a forfeiture in the absence of any
4 ascertainable public policy requiring us to do so.") *Id.* at 303.

5 Like in the *Willard Pease* case, there is no suggestion that Desert did not comply with the
6 City of Las Vegas medical marijuana zoning requirements. To the contrary, there was abundant
7 proof that it did since it got staff approval and final SUP approval from the City not to mention
8 the proof from the license surveyor that the requirements were met. Further, nobody would be
9 harmed if a court ruled that Desert met the substantial compliance test since the City and State
10 both in fact, granted the license to Desert finding them to be a suitable applicant who met the
11 zoning requirements. The only section which did specifically state what was required in the State
12 medical marijuana application was N.A.C. 453A.306. The Court will note that section is the only
13 section, which states what is required in the application. Desert met all of those requirements.
14 Similarly, the statute states that the application must be on the application form drafted by the
15 State. That application form did not include any requirement for proof of the City of Las Vegas
16 licensure but instead, mirrored requirements of N.A.C. 453A.306. Clearly, then what Desert did
17 constitutes substantial compliance.

18 **VIII. GB SCIENCES HAS NO STANDING TO BRING THIS ACTION SINCE ITS**
19 **APPLICATION DID NOT HAVE THE INFORMATION IT NOW ALLEGES HAD**
20 **TO BE INCLUDED.**

21 Again, Desert does not believe that N.R.S. 453A.322 (3)(a)(5) language
22 concerning proof of licensure was required in an applicant's application. However, if it was then
23 GB Sciences is in no position to complain that the information was not included in Desert's since
24 it was not included in GB Sciences (or any other applicants) application either.

25 GB Sciences alleges that since it received license approval from the City of Las Vegas on
26 or about October 29, 2014 it somehow complied with its alleged argument that a person had to
27 submit proof of licensure from the City of Las Vegas or a letter from the City of Las Vegas
28 showing it met the City of Las Vegas' medical marijuana zoning restrictions. First, GB Sciences
never submitted such information to the State. Second, although the City of Las Vegas provided

1 such information to the State it did so long after the application deadline. There is nothing in the
2 statute that states that an entity can supplement its application long after the deadline.

3 Thus, GB Sciences apparently wants the Court to not technically enforce the statute it is
4 citing. How ironic considering it is trying to bring an extremely technical argument that defies
5 common sense and the express wording of the statutes. It would have the Court believe that since
6 it got City SUP approval and the City sent that SUP approval to the State on or about October 30,
7 2014 it somehow complied with N.R.S. 453A.322 (3)(a)(5). However, it clearly did not. This is
8 because the statute required the information to be submitted to the State and the deadline for
9 submitting the information to the State pursuant to N.R.S. 453A.324 (4) was August 17th. GB
10 Sciences never provided anything complying with N.R.S. 453A.322 with its application. Further,
11 it never supplemented its application to provide any additional information even if that were
12 allowed which it was not since the deadline was a deadline for a reason. That, the City sent the
13 State a list of entities which did receive SUP approval on or about October 30, 2014, does not
14 equate to submitting proof of licensure with the State by the August deadline. Further, it should
15 also be noted that even though the City of Las Vegas might have submitted the information
16 concerning who got SUP approval on October 30, 2014 by then the State had already issued or at
17 least made its decision concerning the approvals.

18 Not having complied with the alleged requirements itself, GB Sciences has no standing to
19 bring the present action. This is another reason why this Court should reverse its decision and
20 order summary judgment for Desert.

21 **IX. THE COURT SHOULD REVERSE THE DECISION ON ESTOPPEL GROUNDS.**

22 In *Southern Nevada Memorial Hospital v. The Department of Human Resources* 101 Nev.
23 387, 705 P.2d 139 (1985) the Nevada Supreme Court held that equitable estoppel prevented a
24 government entity from taking back a license to avoid manifest injustice and hardship to the
25 injured party. In that case, the Department of Health had granted an application from *Southern*
26 *Nevada Hospital* to expand its facility by the addition of 65 beds. At the same time it filed the
27 application numerous other hospitals filed similar applications seeking basically the same beds.
28 *Southern Nevada* was granted the license and issued a letter of approval. That letter of approval

1 specifically authorized the applicant to begin the expansion and indeed, required the expansion to
2 occur within a certain period of time. Thereafter, upon appeal from another applicant the
3 department changed the decision granting *Southern Nevada* license approval. The Nevada
4 Supreme Court however, agreed with *Southern Nevada* in its court action holding that the State
5 was estopped from taking back the license approval for the additional 65 beds.

6 The Nevada Supreme Court stated, "The modern trend permits the application of equitable
7 estoppel against the government to avoid manifest injustice and hardship to the injured
8 party....The doctrine of estoppel, as applied to governmental agencies, is rooted in concepts of
9 justice and right, and is premised on the idea that the sovereign is responsible and a citizen has a
10 legitimate expectation that the government should deal fairly with him or her." *Id.* at 141
11 (*citation omitted*).

12 The same is true here, the State should not be allowed to revoke Desert's license. Again,
13 Desert does not believe that the State did violate the Nevada Revised Statutes. However, if it did
14 it is estopped from revoking the license now since it was the State's own decision as to how to
15 interpret the statutes and what and what not to require that caused the problem.

16 Certainly, it is not equitable for the State to not require proof of local government zoning
17 approval prior to issuing the provisional certificate, not include this requirement in its own
18 detailed application, not review any of the applications to see if said information had been
19 provided and yet issue their provisional and final licenses especially knowing the applicants
20 would rely on the same to build and open a facility.

21 Desert clearly relied upon the issuance of the provisional license in moving forward with
22 the pursuit of its final City license and final State license. The current members of the LLC have
23 spent their life savings, spent significant sums in legal fees, spent a large sum of money to quickly
24 perform all the tenant improvements and otherwise get the building ready for opening since there
25 was a time deadline, opened the facility, spent a significant amount of time and money to operate
26 the business and even more time and money to market the business. See Exh. 6. All in reliance
27 upon the State's issuance of the provisional certificate and final State, certificate. It would be
28 grossly unfair to allow the State to revoke that license at this time. Indeed, it would be against

1 established Nevada Supreme Court law regarding equitable estoppel against the government. *Id.*
2 *See, also, State ex rel. Shannon v. Sponburgh*, 401 P.2d 635 (Wash. 1965).

3 Although not truly relevant since it would be the State that would be revoking the license,
4 it should also be pointed out that GB Sciences itself committed acts warranting equitable estoppel
5 and laches. Specifically, GB Sciences filed the same lawsuit against Desert back in 2014 but
6 dismissed the lawsuit against Desert (admittedly without prejudice) in April 2015. Exh. 10.
7 Following that time Desert spent significant amounts of time and money on legal fees, getting the
8 licenses and building the building before this lawsuit was filed. Exh. 6.

9 The doctrine of laches is also applicable. The case of *Carson City v. Price*, 113 Nev. 409,
10 934 P.3d 1042 (1997) supports this proposition. In *Carson City v. Price*, the Carson City Board of
11 *Governors* approved a project built and paid for by an entity, Citizens For Affordable Homes, Inc.
12 ("CAHI"). CAHI had satisfied all the conditions of the Agreement with Carson City and the City
13 then transferred to CAHI a deed conveying title to a detention pond property which CAHI had
14 reengineered and reconstructed a storm drainage system, thereby enabling CAHI to develop the
15 pond property for homes.

16 The Prices (Respondents) owned property abutting the detention pond and did not attend
17 the public meeting when the city board approved the project, although they became aware of the
18 City action. Nonetheless, some eight (8) months after the pond project was completed,
19 Respondents brought suit for injunctive relief to prevent CAHI from further developing the pond
20 (with two incomplete homes under construction) and for monetary damages.

21 The trial court gave Respondents a Temporary Restraining Order, followed by a
22 preliminary injunction. The City and CAHI appealed, arguing that the Respondent's suit was
23 barred by laches, and the Supreme Court agreed, thereby dissolving the injunction. In so doing,
24 the Supreme Court, citing prior authority stated, 113 Nev. 409, at 412:

25 "Laches is an equitable doctrine which may be invoked
26 when delay by one party works to the disadvantage of the
27 other, causing a change of circumstances which would
28 make the grant of relief to the delaying party inequitable."
Building & Constr. Trades v. Public Works, 108 Nev. 605,
610-11, 836 P.2d 633, 636-37 (1992). "Thus, laches is
more than a mere delay in seeking to enforce one's rights; it

1 is a delay that works to the disadvantage of another." Home
2 Savings v. Bigelow, 105 Nev. 494, 496, 779 P.2d 85, 86
3 (1989). "The condition of the party asserting laches must
become so c hanged that the party cannot be restored to its
former states." *Id.*, at 412, 413.

4 The court noted that waiting eight (8) months from the time of the public hearing, and
5 after CAHI's spending "thousands of dollars preparing the lots, gaining governmental approvals,
6 and actually completing a large portion of the construction... [r]espondents' delay caused a
7 material disadvantage to CAHI so altering CAHI's position that it cannot be restored to its pre-
8 project condition." *Id.*, at 413.

9 Sound familiar? Here, this Plaintiff voluntarily dismissed Defendant from the prior action
10 involving the same legal issues. Now, some nine (9) months after the voluntary dismissal of
11 Defendant in the prior action and after Defendant expended hundreds of thousands of dollars in
12 constructing its MME facility and securing all governmental approvals, Plaintiff seeks an
13 affirmative injunction preventing Defendant from operating its approved MME dispensary.

14 Plaintiff cites *Leonard v. Stoebling*, 102 Nev. 543, 728 P.2d 1358 (1986) and *Memory*
15 *Gardens of Las Vegas v. Pet Ponderosa Memorial Gardens, Inc.*, 88 Nev. 1, 492 P.2d 123 (1972)
16 in support of its argument that an affirmative injunction, undoing prior unlawful acts, has case
17 support. Not only are these cases distinguishable in that the wrongdoer violated the other parties'
18 real property rights, in neither instance did the party seeking an injunction wait an inordinate
19 amount of time before instituting legal process.

20 In short, the facts of this case mandate that Plaintiff's own actions prohibit, in equity, the
21 relief sought -- a mandatory affirmative injunction -- against Defendant, and, to the contrary,
22 mandates that Defendant's Countermotion for Summary Judgment dismissing Plaintiff's
23 Complaint against it be granted.

24 **X. THE COURT SHOULD ALLOW THE PARTIES TO DO DISCOVERY IF IT**
25 **DOES NOT GRANT DESERT SUMMARY JUDGMENT.**

26 The Court granted summary judgment. Yet, the transcript of the hearing shows that the
27 Court had numerous questions regarding the matter. Lawyers answered some of those questions
28 but no evidence was presented regarding those questions. Desert believes that, based on the

1 above, that the Court should reconsider its decision and grant Desert summary judgment. This is
2 because the statute does not require proof of City of Las Vegas licensure prior to the state having
3 the ability to issue the provisional certificate, even if there was ambiguity regarding whether the
4 state could issue the provisional certificates Nevada Supreme Court statutory construction holds
5 that this Court should rule that the statute does not require the provisional certificates to avoid
6 manifest injustice and an absurd result (everybody's application would have to be thrown out
7 since no one complied with the statute under the interpretation set forth by Plaintiff) and Plaintiff
8 complied or at least substantially complied with the statute. Further, there is really no dispute that
9 equitable estoppel and laches require the Court to prevent the revocation of Desert's license in
10 order to avoid manifest injustice.

11 But, if the Court is not convinced for any reason Desert would request that it be allowed to
12 conduct discovery pursuant to N.R.C.P. 56(f).

13 As shown from the Affidavit of Patrick Sheehan attached hereto, that discovery would
14 include depositions of the State to see exactly what they did, how they interpreted the statute,
15 depositions of the City regarding their policies, obtaining a full copy of the application of other
16 similarly situated parties including GB Sciences, questioning GB Sciences regarding why they
17 waited so long in bringing the action against Desert or more particularly, why they dismissed the
18 action against Desert and then brought it back many months later and other facts and
19 circumstances regarding all of the arguments raised above. Exh. 11

20 Desert should have the opportunity to show what the actions of the governmental entities
21 were, what the actions of GB Sciences were and the total inequity of allowing a revocation of
22 Defendant's license through discovery. This was the decision reached by the Nevada Supreme
23 Court in *Cheger, Inc. v. Painters and Decorators Joint Comm.* 98 Nev. 609, 655 p.2d 996 (1982).
24 In that case the Court reversed the granting of summary judgment based on the respondents claim
25 that the Court should have provided equitable estoppel stating that there was an issue of material
26 fact (on equitable estoppel and other facts of the case), that had be determined by the trial Court.

27 **XI. AT A MINIMUM DESERT WOULD REQUEST A STAY PENDING APPEAL**
28 **AND INDEED A STAY PENDING THE COURT'S ORDER UNTIL THE**
MOTION FOR RECONSIDERATION IS HEARD.

1 Pursuant to N.R.A.P. 8(a) the District Court can grant a stay pending appeal. The
2 Court generally considers the following factors when making that decision. (1) whether the object
3 of the appeal or writ petition will be defeated if the stay is denied; (2) whether appellate will
4 suffer irreparable or serious injury if the stay is denied; (3) whether respondent in interest will
5 suffer irreparable or serious injury if the stay is granted and (4) whether the appellate is likely to
6 prevail on the merits in the appeal *Hansen v. Eighth Judicial District Court* 116 Nev. 650, 6 p3d
7 982 (2000).

8 Each of those factors heavily weighs in favor of granting the stay pending appeal. First, if
9 the license is revoked the whole object of the appeal will be defeated. Second, Desert would
10 suffer irreparable harm because if it had to close its business it would lose all the momentum all
11 the advertising it would probably be sunk forever. Third, obviously since GB Sciences was not
12 awarded a license it would not suffer any harm whatsoever if the stay was granted. Fourth, based
13 on the above Desert respectfully asserts that it presents at least a serious question and that the
14 balance of equities weighs heavily in favor of it.

15 Indeed, this last test is really the test. Specifically this because the Nevada Supreme Court
16 has stated that a movant does not always have to show the probability of success on the merits in
17 order to get a stay. However, the movant must, "present a substantial case on the merits when a
18 serious legal question is involved and show that the balance of equities weighs heavily in favor of
19 granting the stay." Id at page 987.

20 This is obviously the case here since not only would Defendants license be revoked (and
21 lifetime savings lost) but numerous others would also as the case presents a serious question of
22 law.

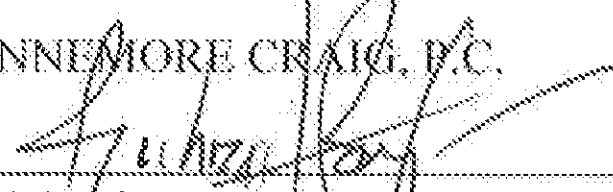
23 XII. CONCLUSION.

24 For the above foregoing reasons Defendant ask that the Court reconsider its motion
25 granting summary judgment to the Plaintiff and instead, grant summary judgment to the
26 Defendant. Alternatively, and at a minimum, that it allow the Defendant to conduct discovery.

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Dated this 14 day of April, 2016.

FENNEMORE CRAIG, P.C.

By: 
Richard H. Bryan (Bar No. 2029)
Patrick J. Sheehan (Bar No. 3812)
300 S. Fourth Street, Suite 1400
Las Vegas, Nevada 89101
Attorney for Desert Aire Wellness, LLC

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I hereby certify that I am an employee of Fennemore Craig Jones Vargas and that on April 14, 2016, service of the **MOTION FOR RECONSIDERATION AND REQUEST THAT THE COURT REVERSE AND GRAND DEFENDANT SUMMARY JUDGMENT** was made on the following counsel of record and/or parties by electronic transmission to all parties appearing on the electronic service list in Odyssey E-File & Serve (Wiznet):

**E-Service Master List
For Case**

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

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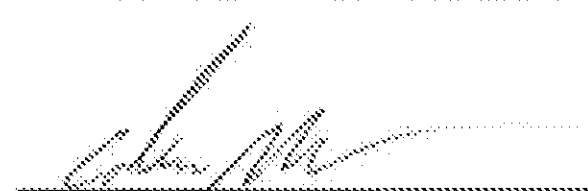
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An Employee of Fennemore Craig, P.C.

EXHIBIT

1



December 22, 2014

Cecile Properties, LLC
420 East Sahara Avenue
Las Vegas, Nevada 89104

RE: REHEAR - SUP-55207 - SPECIAL USE PERMIT
CITY COUNCIL MEETING OF DECEMBER 17, 2014

Dear Applicant:

The City Council at a regular meeting held December 17, 2014 APPROVED the request for a Special Use Permit FOR A PROPOSED 2,268 SQUARE-FOOT MEDICAL MARIJUANA DISPENSARY at 420 East Sahara Avenue (APN 162-03-416-022), C-1 (Limited Commercial) Zone. The Notice of Final Action was filed with the Las Vegas City Clerk on December 18, 2014. This approval is subject to:

Planning

1. Conformance to all Minimum Requirements under LVMC Title 19.12 for a Medical Marijuana Dispensary use. *
2. No physician or medical person making recommendations for medical marijuana may be located within a dispensary.
3. There shall be no on-premise consumption (the use, smoking, ingestion or consumption of any marijuana, edible marijuana or marijuana infused product) on the licensed premises.
4. All development shall be in conformance with the site plan, building elevations and floor plan, date stamped 08/04/14, and sign elevations date stamped 08/07/14, except as amended by conditions herein. Any modification of the premises of a medical marijuana establishment shall be filed 60 days in advance of any proposed construction. A full and complete copy of all architectural and building plans shall be filed with the Director for a review of compliance with Title 6.95 and Title 19. The Director shall review the plans and approve any modifications in compliance with this chapter prior to the commencing of any construction of modifications.
5. This approval shall be void eighteen months from the date of final approval, unless exercised pursuant upon the issuance of a business license. An Extension of Time may be filed for consideration by the City of Las Vegas.
6. All necessary building permits shall be obtained and final inspections shall be completed in compliance with Title 19 and all codes as required by the Department of Building and Safety.
7. Conformance to the associated final recommendation of the Downtown Design Review Committee (DDCR) shall be required.
8. These Conditions of Approval shall be affixed to the cover sheet of any plan set submitted for building permit, as well as submitted as part of any business license application.
9. The presence of minors on the premises of a medical marijuana establishment is prohibited unless the minor is a qualified patient on the premises of a dispensary and is accompanied by his or her parent or legal guardian.

LAS VEGAS
CITY COUNCIL

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/city of las vegas

2014 WINNER OF THE U.S. CONFERENCE OF MAYORS CLIMATE PROTECTION AWARD

SUP-60371 [PRJ-60307] - Page Two
August 4, 2015

This action by the Department of Planning staff on August 4, 2015 is final unless a written appeal is filed with the Director of the Department of Planning within ten days of the date of this letter.

Sincerely,

A handwritten signature in black ink, appearing to read 'Andrew P. Reed', with a stylized flourish at the end.

Andrew P. Reed, AICP
Planning Supervisor
Case Planning Division

AR:nl

cc:

Ms. Lucy Stewart
1916 Trail Peak Lane
Las Vegas, Nevada 89134

EXHIBIT

2

Baughman & Turner, Inc.

Consulting Engineers & Land Surveyors

1210 Hinson Street
Las Vegas, Nevada 89102-1604

Phone (702) 870-8771
Fax (702) 878-2695

July 17, 2014

City of Las Vegas Planning Dept.
333 North Rancho Drive
Las Vegas, Nevada 89106

**Re: Proposed Suitability Licensing
Medical Marijuana Establishment (Dispensary)
420 East Sahara Avenue**

To Whom It May Concern,

I have researched existing records, performed an on-site visit of the above-referenced project, and verified in the field the following:

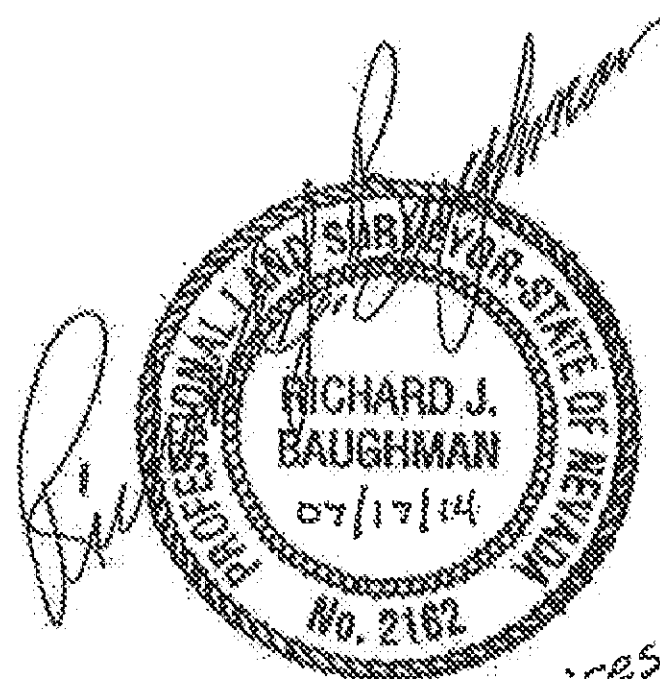
- 1) There are no churches, teenage dance halls, parks or playgrounds, public libraries, daycare facilities, or any other facility that would meet the definition of a "community facility" as defined by NRS 458A.322 located within a 300 foot radius of the proposed establishment.
- 2) There are no schools, public and/or private that provide formal education associated with pre-school through grade 12 within a 1000 foot radius of the proposed establishment.
- 3) Proximity Exhibit is attached.

Should you have any questions, please feel free to contact David Turner, at this office.

Sincerely,
Baughman & Turner, Inc.

Richard J. Baughman, PLS
Nevada Certificate No. 2162

RJB/aw



Expires
12/31/14

EXHIBIT

3

Justia › US Law › US Codes and Statutes › Nevada Revised Statutes ›
2013 Nevada Revised Statutes › Chapter 453A - Medical Use of Marijuana › NRS 453A.322
Effective April 1,

[View the 2014 Nevada Revised Statutes |](#)
[View Previous Versions of the Nevada Revised Statutes](#)

2013 Nevada Revised Statutes

Chapter 453A - Medical Use of Marijuana

NRS 453A.322 - Registration of establishments: Requirements; expiration and renewal. [Effective April 1, 2014.]

Universal Citation: NV Rev Stat § 453A.322 (2013)

1. Each medical marijuana establishment must register with the Division.
2. A person who wishes to operate a medical marijuana establishment must submit to the Division an application on a form prescribed by the Division.
3. Except as otherwise provided in NRS 453A.324, 453A.326, 453A.328 and 453A.340, not later than 90 days after receiving an application to operate a medical marijuana establishment, the Division shall register the medical marijuana establishment and issue a medical marijuana establishment registration certificate and a random 20-digit alphanumeric identification number if:
 - (a) The person who wishes to operate the proposed medical marijuana establishment has submitted to the Division all of the following:
 - (1) The application fee, as set forth in NRS 453A.344;

(2) An application, which must include:

(I) The legal name of the proposed medical marijuana establishment;

(II) The physical address where the proposed medical marijuana establishment will be located and the physical address of any co-owned additional or otherwise associated medical marijuana establishments, the locations of which may not be within 1,000 feet of a public or private school that provides formal education traditionally associated with preschool or kindergarten through grade 12 and that existed on the date on which the application for the proposed medical marijuana establishment was submitted to the Division, or within 300 feet of a community facility that existed on the date on which the application for the proposed medical marijuana establishment was submitted to the Division;

(III) Evidence that the applicant controls not less than \$250,000 in liquid assets to cover the initial expenses of opening the proposed medical marijuana establishment and complying with the provisions of NRS 453A.320 to 453A.370, inclusive;

(IV) Evidence that the applicant owns the property on which the proposed medical marijuana establishment will be located or has the written permission of the property owner to operate the proposed medical marijuana establishment on that property;

(V) For the applicant and each person who is proposed to be an owner, officer or board member of the proposed medical marijuana establishment, a complete set of the person's fingerprints and written permission of the person authorizing the Division to forward the fingerprints to the Central Repository for Nevada Records of Criminal History for submission to the Federal Bureau of Investigation for its report;

(VI) The name, address and date of birth of each person who is proposed to be an owner, officer or board member of the proposed medical marijuana establishment; and

(VII) The name, address and date of birth of each person who is proposed to be employed by or otherwise provide labor at the proposed medical marijuana establishment as a medical marijuana establishment agent;

(3) Operating procedures consistent with rules of the Division for oversight of the proposed medical marijuana establishment, including, without limitation:

(I) Procedures to ensure the use of adequate security measures; and

(II) The use of an electronic verification system and an inventory control system, pursuant to NRS 453A.354 and 453A.356;

(4) If the proposed medical marijuana establishment will sell or deliver edible marijuana products or marijuana-infused products, proposed operating procedures for handling such products which must be preapproved by the Division;

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

(6) Such other information as the Division may require by regulation;

(b) None of the persons who are proposed to be owners, officers or board members of the proposed medical marijuana establishment have been convicted of an excluded felony offense;

(c) None of the persons who are proposed to be owners, officers or board members of the proposed medical marijuana establishment have:

(1) Served as an owner, officer or board member for a medical marijuana establishment that has had its medical marijuana establishment registration certificate revoked; or

(2) Previously had a medical marijuana establishment agent registration card revoked; and

(d) None of the persons who are proposed to be owners, officers or board members of the proposed medical marijuana establishment are under 21 years of age.

4. For each person who submits an application pursuant to this section, and each person who is proposed to be an owner, officer or board member of a proposed medical marijuana establishment, the Division shall submit the fingerprints of the person to the Central Repository for Nevada Records of Criminal History for submission to the Federal Bureau of Investigation to determine the criminal history of that person.

5. Except as otherwise provided in subsection 6, if an application for registration as a medical marijuana establishment satisfies the requirements of this section and the establishment is not disqualified from being registered as a medical marijuana establishment pursuant to this section or other applicable law, the Division shall issue to the establishment a medical marijuana establishment registration certificate. A medical marijuana establishment registration certificate expires 1 year after the date of issuance and may be renewed upon:

(a) Resubmission of the information set forth in this section; and

(b) Payment of the renewal fee set forth in NRS 453A.344.

6. In determining whether to issue a medical marijuana establishment registration certificate pursuant to this section, the Division shall consider the criteria of merit set forth in NRS 453A.328.

7. As used in this section, community facility means:

(a) A facility that provides day care to children.

(b) A public park.

(c) A playground.

(d) A public swimming pool.

(e) A center or facility, the primary purpose of which is to provide recreational opportunities or services to children or adolescents.

(f) A church, synagogue or other building, structure or place used for religious worship or other religious purpose.

(Added to NRS by 2013, 3702, effective April 1, 2014)

Disclaimer: These codes may not be the most recent version. Nevada may have more current or accurate information. We make no warranties or guarantees about the accuracy, completeness, or adequacy of the information contained on this site or the information linked to on the state site. Please check official sources.

EXHIBIT

4

NAC 453A.304 Request for applications to operate establishment: Notice; required provisions; time period for submission of applicants. (NRS 453A.370)

1. Once each year, the Division will determine whether a sufficient number of medical marijuana establishments exist to serve the people of this State and, if the Division determines that additional medical marijuana establishments are necessary, the Division will issue a request for applications to operate a medical marijuana establishment. The Division will provide notice of a request for applications to operate a medical marijuana establishment by:

- (a) Posting on the website of the Division that the Division is requesting applicants to submit their applications;
- (b) Posting a copy of the request for applications at the principal office of the Division, the Legislative Building and at not less than three other separate, prominent places within this State; and
- (c) Making notification of the posting locations using the electronic mailing list maintained by the Division for medical marijuana establishment information.

2. When the Division issues a request for applications pursuant to this section, the Division will include in the request the point values that will be allocated to each applicable portion of the application.

3. The Division will accept applications in response to a request for applications issued pursuant to this section for 10 business days beginning on the date which is 45 business days after the date on which the Division issued the request for applications.

4. If the Division receives an application in response to a request for applications issued pursuant to this section on a date other than the dates set forth in subsection 3, the Division must not consider the application and must return the application to the entity that submitted the application.

(Added to NAC by Div. of Pub. & Behavioral Health by R004-14, 3-28-2014, eff. 4-1-2014)

NAC 453A.306 Applications to operate establishment: Required provisions. (NRS 453A.322, 453A.344, 453A.370)
An application submitted in response to a request for applications issued pursuant to NAC 453A.304 must include:

- 1. A one-time, nonrefundable application fee of \$5,000.
- 2. An application on a form prescribed by the Division pursuant to subsection 2 of NRS 453A.322. The application must include, without limitation:
 - (a) Whether the applicant is applying for a medical marijuana establishment registration certificate for an independent testing laboratory, a cultivation facility, a facility for the production of edible marijuana products or marijuana-infused products or a medical marijuana dispensary;
 - (b) The name of the proposed medical marijuana establishment, as reflected in the articles of incorporation or other documents filed with the Secretary of State;
 - (c) The type of business organization of the applicant, such as individual, corporation, partnership, limited-liability company, association or cooperative, joint venture or any other business organization;
 - (d) Confirmation that the applicant has registered with the Secretary of State as the appropriate type of business, and the articles of incorporation, articles of organization or partnership or joint venture documents of the applicant;
 - (e) The physical address where the proposed medical marijuana establishment will be located and the physical address of any co-owned or otherwise affiliated medical marijuana establishments;
 - (f) The mailing address of the applicant;
 - (g) The telephone number of the applicant;
 - (h) The electronic mail address of the applicant;
 - (i) If the applicant is applying for a medical marijuana establishment registration certificate to operate a medical marijuana dispensary, the proposed hours of operation during which the medical marijuana dispensary plans to be available to dispense medical marijuana to patients who hold valid registry identification cards or to the designated primary caregivers of such patients;
 - (j) An attestation that the information provided to the Division to apply for the medical marijuana establishment registration certificate is true and correct according to the information known by the affiant at the time of signing; and
 - (k) The signature of a natural person for the proposed medical marijuana establishment as described in subsection 1 of NAC 453A.300 and the date on which the person signed the application.

3. Documentation from a financial institution in this State, or any other state or the District of Columbia, which demonstrates:

- (a) That the applicant has at least \$250,000 in liquid assets as required pursuant to sub-subparagraph (III) of subparagraph (2) of paragraph (a) of subsection 3 of NRS 453A.322 which are unencumbered and can be converted within 30 days after a request to liquidate such assets; and
- (b) The source of those liquid assets.

4. To assist the Division in considering the criterion of merit set forth in subsection 9 of NRS 453A.328, evidence of the amount of taxes paid to, or other beneficial financial contributions made to, this State or its political subdivisions within the last 5 years by the applicant or the persons who are proposed to be owners, officers or board members of the proposed medical marijuana establishment.

5. A description of the proposed organizational structure of the proposed medical marijuana establishment, including, without limitation:

(a) An organizational chart showing all owners, officers and board members of the proposed medical marijuana establishment;

(b) A list of all owners, officers and board members of the proposed medical marijuana establishment that contains the following information for each person:

- (1) The title of the person;
- (2) A short description of the role the person will serve in for the organization and his or her responsibilities;
- (3) Whether the person has served or is currently serving as an owner, officer or board member for another medical marijuana establishment;
- (4) Whether the person has served as an owner, officer or board member for a medical marijuana establishment that has had its medical marijuana establishment registration certificate revoked;

EXHIBIT

5



Requirement 1 would qualify the parcel under the distance separation requirement;

B. The proposed medical marijuana cultivation facility will have direct access (both ingress and egress) from a street having a minimum right-of-way width of 100 feet. The required access may be shared with a larger development but must be located within the property lines of the parcel on which the proposed medical marijuana cultivation facility will be located;

- * 4. The use shall conform to, and is subject to, the provisions of LVMC Title 6, as they presently exist and may be hereafter amended.
- * 5. No outside storage shall be permitted, including the use of shipping containers for on-site storage.
- * 6. An air filtration system to be designed by a Nevada licensed engineer shall be provided prior to the issuance of a certificate of occupancy.
- * 7. Signage for the establishment shall be limited to one wall sign per street frontage, the face of the sign not to exceed thirty square feet in area and not to exceed two feet in height. Such a sign shall be internally illuminated, with the use of neon prohibited.
- * 8. The Special Use Permit shall be void without further action if the uses ceases for a period exceeding 90 days.
- * 9. A medical marijuana cultivation facility shall obtain all required approvals from the State of Nevada to operate such a facility prior to the Special Use Permit being exercised pursuant to LVMC 19.16.110.

On-site Parking Requirement: One space for each 1000 square feet of gross floor/yard area identified for cultivation.

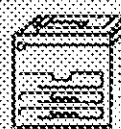
Medical Marijuana Dispensary

Description: An establishment which acquires, possesses, delivers, transfers, transports, supplies, sells or dispenses marijuana or related supplies and educational materials to the holder of a valid registry identification card. This use includes a "medical marijuana dispensary," as defined in NRS 453A.115.

Minimum Special Use Permit Requirements:

- * 1. Pursuant to its general authority to regulate the cultivation, production, dispensing, and sale of medical marijuana, the City Council declares that the public health, safety and general welfare of the City are best promoted and protected by generally requiring a minimum separation between a medical marijuana dispensary and certain other uses that should be protected from the impacts associated with a medical marijuana dispensary. Therefore, except as otherwise provided below, no medical marijuana dispensary may be located within 1000 feet of any school, or within 300 feet of any individual care center licensed for more than 12 children, community recreational facility (public), City park, or church/house of worship.

- * 2. The distance separation referred to in Requirement 1 shall be measured with reference to the shortest distance between two property lines, one being the property line of the proposed medical marijuana dispensary which is closest to the existing use to which the measurement pertains, and the other being the property line of that existing use which is closest to the proposed medical marijuana dispensary. The distance shall be measured in a straight line without regard to intervening obstacles.
- * 3. For the purpose of Requirement 2, and for that purpose only:
 - a. The "property line" of a protected use refers to the property line of a fee interest parcel that has been created by an approved and recorded parcel map or subdivision map, and does not include the property line of a leasehold parcel; and
 - b. The "property line" of a medical marijuana dispensary refers to:
 - i. The property line of a parcel that has been created by an approved and recorded parcel map or commercial subdivision map; or
 - ii. The property line of a parcel that is located within an approved and recorded commercial subdivision and that has been created by a record of survey or legal description, if:
 - A. Using the property line of that parcel for the purpose of measuring the distance separation referred to in Requirement 1 would qualify the parcel under the distance separation requirement;
 - B. The proposed medical marijuana dispensary will have direct access (both ingress and egress) from a street having a minimum right-of-way width of 100 feet. The required access may be shared with a larger development but must be located within the property lines of the parcel on which the proposed medical marijuana dispensary will be located;
 - C. All parking spaces required by this Section 19.12.070 for the medical marijuana dispensary use will be located on the same parcel as the use; and
 - D. The owners of all parcels within the commercial subdivision, including the owner of agreement, satisfactory to the City Attorney, that provides for perpetual, reciprocal cross-access, ingress and egress throughout the commercial subdivision.
- * 4. The use shall conform to, and is subject to, the provisions of LVMC Title 6, as they presently exist and may be hereafter amended.
- * 5. No outside storage shall be permitted, including the use of shipping containers for on-site storage.
- * 6. Subject to the requirements of applicable building and fire codes, public access to the building shall be from one point of entry and exit, with no other access to the interior of the building permitted.



EXHIBIT

6

1 **AFF**
2 FENNEMORE CRAIG, P.C.
3 Patrick J. Sheehan (Nevada Bar No. 3812)
4 Richard H. Bryan (Nevada Bar No. 2029)
5 300 S. Fourth Street, Suite 1400
6 Las Vegas, Nevada 89101
7 Tel.: (702) 692-8000
8 Fax: (702) 692- 8099
9 Email: psheehan@fclaw.com
10 *Attorneys for Desert Aire Wellness, LLC*

7 **DISTRICT COURT**

8 **CLARK COUNTY, NEVADA**

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

11 Plaintiff,

12 vs.

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

22 Defendants.

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

24 **AFFIDAVIT OF BRENDA GUNSALLUS**

25 STATE OF NEVADA)

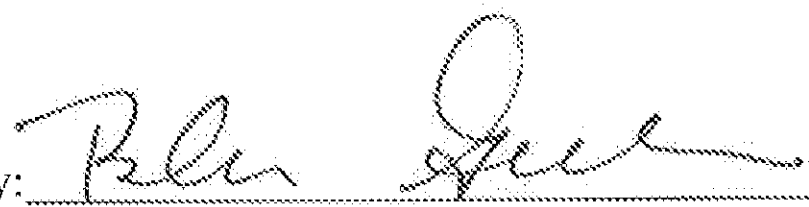
26 COUNTY OF CLARK)

27) SS.

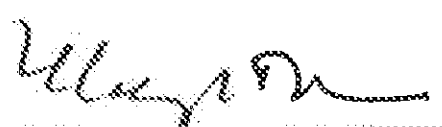
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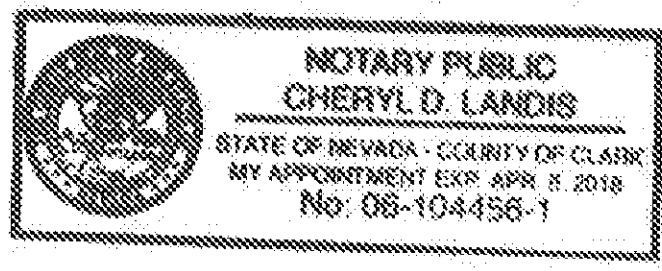
1. I am a member of Desert Aire Wellness, LLC.
2. I can attest that between April 1, 2015 and December 3, 2015, Desert spent approximately \$1,400,000 towards the medical marijuana facility.
3. I can further testify that the total amount spent is over \$2 million to date.
4. I can also testify that I have invested my life savings of \$500,000 and another member Alex Davis, has invested her \$300,000 of lifetime savings into the project.
5. If for any reason the license was revoked, both of us in effect, would lose our lifetime savings.

Dated this 12th day of April 2016.

By: 
BRENDA GUNSALLAS

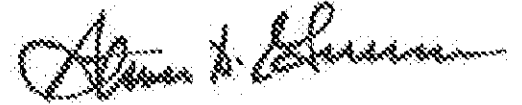
SUBSCRIBED and SWORN to before me
on this 12th day of April, 2016.


Notary Public in and for Said County and State



EXHIBIT

7



CLERK OF THE COURT

CATHERINE CORTEZ MASTO
Attorney General
Linda C. Anderson
Chief Deputy Attorney General
Nevada Bar No. 4090
555 E. Washington Ave., #3900
Las Vegas, NV 89101
P: (702) 486-3420
F: (702) 486-3871
E-mail: landerson@ag.nv.gov

DISTRICT COURT
CLARK COUNTY, NEVADA

NEVADA MEDICAL MARIJUANA
DISPENSARY, INC.; GB SCIENCES NEVADA
LLC; NEVADA HOLISTIC MEDICINE LLC;
FIDELIS HOLDINGS, LLC; and DESERT INN
ENTERPRISES INC.,

Plaintiffs/Petitioners,

vs.

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

Defendants/Respondents

Case No.: A-14-710488-C
Dept. No.: XXV

STATE RESPONSE TO MOTION FOR PRELIMINARY INJUNCTION

Date of Hearing: December 12, 2014

Time of Hearing: 10:00 a.m.

COMES NOW Defendant STATE OF NEVADA on its relation to the DEPARTMENT OF HEALTH AND HUMAN SERVICES, DIVISION OF PUBLIC AND BEHAVIORAL HEALTH (hereinafter "DIVISION"), by and through CATHERINE CORTEZ MASTO, Attorney General by Chief Deputy Attorney General, LINDA C. ANDERSON, and files this Response to the Motion for Preliminary Injunction on Order Shortening Time filed on December 3, 2014.

The Division of Public and Behavioral Health of the Department of Health and Human Services has the statutory authority to register medical marijuana establishments. The Division does not "license" the establishments and instead issues certificates of registration pursuant to NRS 453A.322.

1 The Nevada Legislature specified that the Division could accept applications once a calendar year for a
2 ten day period as described in NRS 453.324(4). The registration of dispensaries was a competitive
3 process because Clark County was limited to forty (40) dispensaries with the Clark County Commission
4 allocating eighteen (18) to unincorporated Clark County pursuant to NRS 453A.324 and NRS
5 453A.326. The Division scored and ranked the applications according to the considerations set forth in
6 NRS 453A.328 and the criteria set forth in regulation and the announcement of the application process
7 by the Division. Because NRS 453A.700(1)(a) provides that the Division shall maintain the
8 confidentiality of "the contents of any applications, records, or other written documentation that the
9 Division or its designee creates or receives pursuant to the provisions of this chapter [NRS 453A]," the
10 Division shall not disclose any contents of an application unless ordered to do so by this Court.
11 Otherwise the Division will rely on the documents presented to the Court by the other parties in this
12 matter in order to respond.

13 The Division agrees that a complaint for declaratory and injunctive relief is appropriate for
14 Plaintiffs to challenge the process of the Division in registering dispensaries in unincorporated Clark
15 County. Although "registration" is included in the definition of license under NRS 233B.034 for
16 purposes of NRS 233B.127, the Nevada Legislature made clear that they did not intend to provide for
17 notice and opportunity for hearing prior to a denial or revocation of a registration. NRS 453A.320
18 provides the following:

19 The purpose for registering medical marijuana establishments and medical marijuana
20 establishment agents is to protect the public health and safety and the general welfare of
21 the people of this State. Any medical marijuana establishment registration certificate
22 issued pursuant to NRS 453A.322 and any medical marijuana establishment agent
23 registration card issued pursuant to NRS 453A.332 is a revocable privilege and the
24 holder of such a certificate or card, as applicable, does not acquire thereby any vested
25 right.

26 The Nevada Legislature provided that this "revocable privilege" does not implicate any property rights
27 for due process concerns. Therefore, neither the Legislature nor the Division created any administrative
28 hearing process to appeal a denial or a revocation of a registration.

29 Although the application form for a medical marijuana itself as described in NRS
30 453A.322(3)(a)(2) did not include evidence of approval by the local authority of compliance with
31 ...

1 zoning restrictions, the Nevada Legislature required that the applicant submit to the Division the
2 following in NRS 453A.322(3)(a)(5):

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

8 Therefore, any applicant was on notice that they needed to submit authorization from the local
9 governmental authority to the Division or the application could be disqualified. The scoring and
10 ranking by the Division focused on the criteria set forth by the Nevada Legislature in NRS 453A.328
11 rather than zoning issues which would remain in the realm of the local authority.

12 The Division does not dispute that they issued registrations to applicants who did not comply
13 with NRS 453A.322(3)(a)(5) and denied registrants who had been issued a special permit from Clark
14 County. The Division did not disqualify those establishments listed as Defendants in this matter during
15 the application process and issued a registration certificate which is currently provisional under NRS
16 453A.326(3). The Division retains the ability to immediately revoke the registration pursuant to NRS
17 453A.340(3) and NAC 453A.332(a) and (b) if those establishments cannot demonstrate compliance
18 with the statutory requirements for the location of the facility. If the Division revokes the registration,
19 there will be vacant slots for dispensaries in unincorporated Clark County under the current allocation.
20 The Nevada Legislature did not address these circumstances or process if the Division failed to properly
21 disqualify an applicant within the 90 day timeframe for review or if a registrant did not have local
22 approval.

23 Absent action by either this Court or the Nevada Legislature, the Division will open up a new
24 application period in the calendar year 2015 and consider new applications for dispensaries. The
25 Nevada Legislature only authorized the Division to issue registration certificates "not later than 90 days
26 after receiving an application to operate a medical marijuana establishment " as set forth in NRS
27 453A.322(3). Without Court intervention, the Division does not have statutory legal authority to
28 advance the applicants who had the requisite approval of the local authority after completion of the
scoring by the Division after the 90 day period which has already run.

1 Although Division employees made representations in the past that indicated that the Division
2 would move forward the next ranked applicant in the event that a registrant was not approved by the
3 local authority, the Division cannot waive the statutory time frame of 90 days and alter its authority to
4 issue registrations. While advancing the next ranked applicant would have provided an expedited
5 approach to meet the needs of the community, it was not an option that the Nevada Legislature provided
6 to the Division. The Division notes that it was not aware that any other entity changed its conduct in
7 reliance on those representations.

8 Again, no property interest exists for any plaintiff or defendant and no dispensary is currently
9 operating in Nevada at this time. Any establishment could be subject to challenge if the Division issued
10 an additional registration after the 90 day period had run without an order from a court or specific
11 authorization to do so by the Nevada Legislature. In order to promote stability to best meet the needs of
12 the community, the Division respectfully requests this Court to resolve this dispute as to which entities
13 are entitled to registration at this time.

14 CONCLUSION

15 Unless otherwise directed by this Court or the Nevada Legislature, the Division plans to
16 determine if any registrations should be revoked and then accept new applications next calendar year to
17 ensure the issuance of the dispensary registrations for any vacant slots. The Division will improve the
18 process to ensure that all applicants submit applicable approval of local authority as set forth in NRS
19 453A.322(3)(a)(5) before issuing registration. However, the Division will also abide by any
20 determination of this Court and issue registrations as ordered.

21 AFFIRMATION PURSUANT TO NRS 239B.030

22 The undersigned does hereby affirm that the preceding document does not contain the social
23 security number of any person.

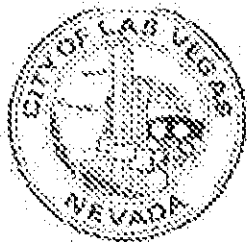
24 Dated: December 9, 2014

25 CATHERINE CORTEZ MASTO
26 Attorney General

27 By: /s/ Linda C. Anderson
28 Linda C. Anderson
Chief Deputy Attorney General

EXHIBIT

8



DEPARTMENT OF PLANNING

MEDICAL MARIJUANA ESTABLISHMENT SPECIAL USE PERMIT SUBMITTAL REQUIREMENTS

- ☐ **APPLICATION/PETITION FORM:** A completed Application/Petition Form is required. The application shall be signed, notarized and acknowledged by the owner of record of each parcel of property. **Non-Property Owner:** An application is sufficient if it is signed and acknowledged by a lessee, a contract purchaser or an optionee of the property for which the Special Use Permit is sought. However, interest in that property must exist in a written agreement with the owner of record, attached to which is a copy of the Special Use Permit application and in which the owner of record has authorized the lessee, contract purchaser or optionee to sign the application. The agreement must further stipulate that the owner of record consents to the filing and processing of the application and agrees to be bound by the requested Special Use Permit.
- ☐ **DEED & LEGAL DESCRIPTION:** In order to verify ownership, a copy of the recorded deed(s) for the subject property(ies), including exhibits and attachments, is required. The deed and all attachments must be legible. In most cases, the legal description on the deed is sufficient.
- ☐ **JUSTIFICATION LETTER:** A detailed letter that explains the request, the intended use of the property, hours of operation, and how the project meets/supports existing City policies and regulations is required. The letter must also include a disclosure notification of any additional medical marijuana establishment application submittals and where and what type they are, if any.
- ☐ **PROJECT OF REGIONAL SIGNIFICANCE:** If a subject site is located within 500 feet of another jurisdiction (Clark County or the City of North Las Vegas) an Environmental Impact Assessment Statement will be required. A copy of the required form can be found at <http://www.lasvegasnevada.gov/files/DINA-PRS.docx>.
- ☐ **SEPARATION DISTANCE SURVEY:** A certified copy of a survey sealed by a State of Nevada registered surveyor documenting compliance of the proposed site with to all state distance requirements and the requirements of Title 19. The survey shall be a professional drawing 11x17 in size.
- ☐ **FEES:** Public Hearing \$500 plus \$750 for notification and advertising costs
plus \$30 for recording of Notice of Zoning Action (\$1,280 Total)
- ☐ **ALL PLANS SUBMITTED MUST BE 11x17 IN SIZE.**
SITE PLAN: (6 folded and 1 rolled, colored)* Draw to scale and make legible: the entire subject parcel(s), all proposed and existing structures, utility easements and locations, signage, and adjacent streets. **Colors to Use:** residential buildings-YELLOW; multi-family buildings-ORANGE; commercial buildings-PINK; landscaping-GREEN; pavement-GRAY; industrial building-PURPLE; public building-BLUE. Site Plans must include:
- | | | |
|----------------------------------------------------|-----------------------------------------------------|--------------------------------------------------|
| <input type="checkbox"/> PROPERTY LINES CALLED OUT | <input type="checkbox"/> ADJACENT LAND USES/STREETS | <input type="checkbox"/> PARKING ANALYSIS |
| <input type="checkbox"/> DIMENSIONS (ACTUAL)/SCALE | <input type="checkbox"/> INGRESS/EGRESS | <input type="checkbox"/> BUILDING SIZE (SQ. FT.) |
| <input type="checkbox"/> STREET NAMES | <input type="checkbox"/> VICINITY MAP | <input type="checkbox"/> PROPERTY SIZE (SQ. FT.) |
| <input type="checkbox"/> PARKING SPACES | <input type="checkbox"/> NORTH ARROW | <input type="checkbox"/> SCALE |
- ☐ **BUILDING ELEVATIONS:** (1 folded and 1 rolled, colored) Draw and make legible: all sides of all buildings on site. Indicate proposed or existing wall/window sign locations with dimensions. **Photographs may be submitted for existing buildings only when no outside changes are proposed.** Building Elevations must include:
- | | | |
|-------------------------------------------------|-----------------------------------------------------------------|-----------------------------------------------------|
| <input type="checkbox"/> DIRECTION OF ELEVATION | <input type="checkbox"/> BUILDING MATERIALS & COLORS CALLED OUT | <input type="checkbox"/> ELEVATION DIMENSIONS/SCALE |
|-------------------------------------------------|-----------------------------------------------------------------|-----------------------------------------------------|
- ☐ **SIGN ELEVATIONS:** (1 folded and 1 rolled, colored) Draw and make legible: all elevations of each proposed or existing sign on the site. Elevations must include:
- | | | |
|-------------------------------------------------|-----------------------------------------------------------------|-----------------------------------------------------|
| <input type="checkbox"/> DIRECTION OF ELEVATION | <input type="checkbox"/> BUILDING MATERIALS & COLORS CALLED OUT | <input type="checkbox"/> ELEVATION DIMENSIONS/SCALE |
|-------------------------------------------------|-----------------------------------------------------------------|-----------------------------------------------------|
- ☐ **FLOOR PLAN:** (1 folded and 1 rolled) Draw and make legible: all rooms and/or spaces contained within the building(s) on the site. Floor Plans must include:
- | | | |
|------------------------------------------|-------------------------------------------------------------|------------------------------------------------|
| <input type="checkbox"/> ENTRANCES/EXITS | <input type="checkbox"/> MAXIMUM OCCUPANCY (PER U.B.C.) | <input type="checkbox"/> ROOM DIMENSIONS/SCALE |
| <input type="checkbox"/> USE OF ROOMS | <input type="checkbox"/> SEATING CAPACITY (WHEN APPLICABLE) | <input type="checkbox"/> NORTH ARROW |
- ☐ **LASER PRINT:** A reduced, black & white 8.5x11 (high resolution) copy of above required plans and drawings is required.
- ☐ **STATEMENT OF FINANCIAL INTEREST:** A completed Statement of Financial Interest is required for both the property owner and applicant.

EXHIBIT

9

DEPARTMENT OF HEALTH AND HUMAN SERVICES
DIVISION OF PUBLIC AND BEHAVIORAL HEALTH
Medical Marijuana Program
4150 Technology Way, Suite 106
Carson City, Nevada 89706
Telephone: (775) 684-3487 • Fax: (775) 684-3213
medicalmarijuana@health.nv.gov

December 31, 2015

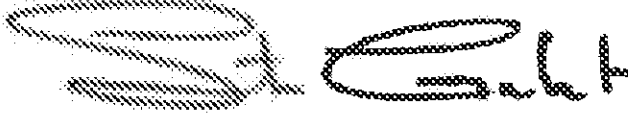
Brenda Gursallus
Desert Aire Wellness
307 Carol Little Ct.
Henderson, NV 89014

Ms. Gursallus,

Congratulations to Desert Aire Wellness at 420 E. Sahara Avenue #4632, Las Vegas, for completing its pre-opening inspection.

This letter accompanies your final Medical Marijuana Establishment Registration Certificate. You are authorized to begin acquiring medical marijuana in accordance with the requirements of Nevada Revised Statutes (NRS) and Nevada Administrative Code (NAC) 453A. Be advised that the Division needs to perform an operational inspection of your establishment before you start selling medical marijuana to patients. This requirement is in accordance with NAC 453A.322 *Inspections of establishments*.

Sincerely,



Steve Gilbert, Program Manager II
Medical Marijuana Program

SG:mjg

Date Issued: December 31, 2015
Date of Expiration: December 31, 2016

Certificate Number: MM00000000000000000000

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

MEDICAL MARIJUANA PROGRAM

4150 Technology Way, Suite 106
Carson City, Nevada 89706
Telephone: (775) 684-3487

This is to Certify that Desert Aire Wellness (D168)

located at 420 E. Sahara Avenue, Las Vegas, NV 89101
Address City or Town and Zip Code County

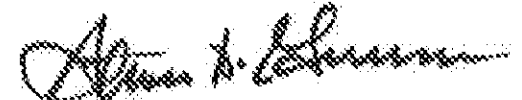
has been found to possess the qualifications for certification as a

Medical Marijuana Dispensary Establishment

JA832

EXHIBIT

10


CLERK OF THE COURT

VDSM
JEFFERY A. BENDAVID, ESQ.
Nevada Bar No. 6220
JOHN T. MORAN, III, ESQ.
Nevada Bar No. 7453
MORAN BRANDON BENDAVID MORAN
630 South 4th Street
Las Vegas, Nevada 89101
(702) 384-8424
Attorneys for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

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

Plaintiff,

v.

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

Defendants.

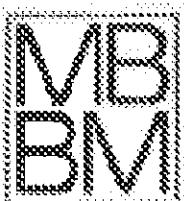
CASE NO: A-14-710597-C
DEPT. NO: XX

NOTICE OF VOLUNTARY
DISMISSAL WITHOUT
PREJUDICE OF DEFENDANT
DESERT AIRE WELLNESS, LLC,
ONLY

Comes now Plaintiff, by and through its attorney of record, JEFFERY BENDAVID,
ESQ. of MORAN BRANDON BENDAVID MORAN, and pursuant to N.R.C.P. 41(a)(1)(i),
voluntarily dismisses, without prejudice, the above-captioned matter against Defendant,

/ / /

/ / /



MORAN BRANDON
BENDAVID MORAN
ATTORNEY AT LAW

630 SOUTH 4TH STREET
LAS VEGAS, NEVADA 89101
PHONE: (702) 384-8424
FAX: (702) 384-8424

1 DESERT AIRE WELLNESS, LLC, *only*, a Nevada limited liability company,

2 DATED this 1st day of April, 2015.

3
4 MORAN BRANDON BENDAVID MORAN

5
6 /s/: Jeffery A. Bendavid, Esq.

7 JEFFERY A. BENDAVID, ESQ.

8 Nevada Bar No. 6220

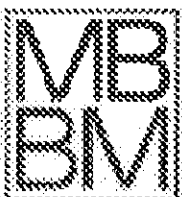
9 JOHN T. MORAN, III, ESQ.

10 Nevada Bar No. 7453

11 630 South 4th Street

12 Las Vegas, Nevada 89101

13 *Attorneys for Plaintiff*



MORAN BRANDON
BENDAVID MORAN
ATTORNEYS AT LAW

1300 CHURCH STREET, 1
LAS VEGAS, NEVADA 89101
PHONE: 702.361.0000
FAX: 702.361.0001

EXHIBIT

11

1 **AFF**
2 FENNEMORE CRAIG, P.C.
3 Patrick J. Sheehan (Nevada Bar No. 3812)
4 Richard H. Bryan (Nevada Bar No. 2029)
5 300 S. Fourth Street, Suite 1400
6 Las Vegas, Nevada 89101
7 Tel.: (702) 692-8000
8 Fax: (702) 692- 8099
9 Email: psheehan@fcclaw.com
10 *Attorneys for Desert Aire Wellness, LLC*

11 **DISTRICT COURT**

12 **CLARK COUNTY, NEVADA**

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

CASE NO. A-15-728448-C

15 Plaintiff,

DEPT. NO. I

16 vs.

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

26 Defendants.

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

Counterclaimant,

vs.

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

Counterdefendant.


AFFIDAVIT OF PATRICK J. SHEEHAN

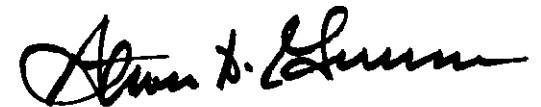
Patrick J. Sheehan, under penalty of perjury declares under oath as follows:

1. Desert would ask that if the Court does not grant it summary judgment that
will allow discovery. That discovery would include, depositions of the State to see exactly what

1 they did, how they interpreted the statute, depositions of the City regarding their policies,
2 obtaining a full copy of the application of other similarly situated parties including GB Sciences,
3 questioning GB Sciences regarding why they waited so long to bring the action against Desert or
4 particularly, why they dismissed the action against Desert and then brought it back many months
5 later and other facts and circumstances regarding all the arguments raised in the Motion for
6 Reconsideration. Further affiant sayeth not.

7
8 Dated this 14 day of April 2016.

9 By: 
Patrick J. Sheehan



CLERK OF THE COURT

ADAM PAUL LAXALT
Attorney General
Linda C. Anderson
Chief Deputy Attorney General
Nevada Bar No. 4090
555 E. Washington Ave., #3900
Las Vegas, NV 89101
P: (702) 486-3420
F: (702) 486-3871
E-mail: landerson@ag.nv.gov

DISTRICT COURT
CLARK COUNTY, NEVADA

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

Plaintiff,

vs.

STATE OF NEVADA, DIVISION OF PUBLIC
AND BEHAVIORAL HEALTH; et. al.

Defendants.

Case No. A-15-728448-C

Dept. No. I

STATE RESPONSE TO MOTION FOR RECONSIDERATION

Date of Hearing: May 16, 2016

Time of Hearing: In Chambers

COMES NOW Defendant STATE OF NEVADA on its relation to the DEPARTMENT OF HEALTH AND HUMAN SERVICES, DIVISION OF PUBLIC AND BEHAVIORAL HEALTH (hereinafter "DIVISION"), by and through ADAM PAUL LAXALT, Attorney General by Chief Deputy Attorney General, LINDA C. ANDERSON, and files this response to the Motion For Reconsideration and Request that the Court Reverse and Grant Defendant Summary Judgment To Defendant or at a Minimum Grant a Stay Pending Appeal filed April 14, 2016.

This Court has thoroughly examined the arguments made by the Division in this matter so the Division will not repeat them in this response. However, because the Court has not yet signed an order after the ruling on March 15, 2016, the motion filed by Desert Aire Wellness will give this Court the opportunity to review the decision from their perspective for purposes of the final order. The motion highlights that consideration of the "timing" of events is critical to this decision. First, the motion raises

1 the question of whether the timing of the approval from the City of Las Vegas should have a substantive
2 impact on the reading of the requirement from the Nevada Legislature in NRS 453A.322(3)(a)(5) that
3 the applicant submit to the Division the following:

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

7 As noted in the pleadings, neither party had approval from the local authority at the time the application
8 was submitted to the Division. The pleadings show that Desert Aire Wellness received approval from
9 the City of Las Vegas but not at the same time that GB Sciences did.

10 The second issue of "timing" is whether the challenge brought by GB Sciences to Desert Aire
11 Wellness in this case is timely. Certainly the initial action in case number A-14-710597 filed on
12 December 5, 2014, in Department 20 was timely because it was filed within 30 days of the notice of the
13 registrations and before any medical marijuana establishment was operating. However, on April 1,
14 2015, GB Sciences chose to dismiss Desert Aire Wellness from the litigation without prejudice and then
15 filed a motion for summary judgment against the other Defendant Nuleaf on September 18, 2015. The
16 motion for summary judgment was granted but the dispensary was awarded to another intervening
17 party. GB Sciences then sought to bring Desert Aire Wellness back into the litigation in a motion filed
18 November 16, 2015, but the Court denied that request. See, Exhibit 1 for Order Denying Plaintiff's
19 Motion for Leave to Amend. Therefore, GB Sciences filed our present case against Desert Aire
20 Wellness on December 2, 2015, which is a year after the initial challenge was brought and apparently
21 after Desert Aire Wellness had taken the necessary steps to open the dispensary.

22 The Division continues to support that a final decision can be reached in this case through
23 summary judgment so any issues can be resolved at the appellate level in an expedited fashion. The
24 Division submits that discovery in this matter would only add to the delay and not alter the issues before
25 this Court. If this Court declines to reconsider its prior decision, the Division does support that a stay of
26 the revocation be entered into this matter for Desert Aire Wellness. The community will not be served
27 by the closure of an operating dispensary while this matter is resolved by the court system

28 ///

CONCLUSION

Again, no property interest exists for either the plaintiff or any registrant in this matter and the Division does not have an interest in any particular establishment receiving or maintaining a registration. The Division respectfully requests this Court to issue a final decision and to grant stay if necessary for Desert Aire Wellness.

AFFIRMATION PURSUANT TO NRS 239B.030

The undersigned does hereby affirm that the preceding document does not contain the social security number of any person.

Dated: April 26, 2016.

ADAM PAUL LAXALT
Attorney General

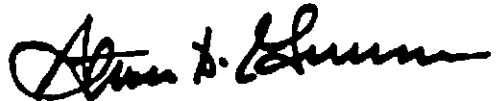
By: /s/ Linda C. Anderson
Linda C. Anderson
Chief Deputy Attorney General

CERTIFICATE OF SERVICE

I hereby certify that I am an employee of the Office of the Attorney General and that on April 26, 2016, I electronically served the foregoing by using the electronic filing system to e-serve a copy on all parties registered and listed as Service Recipients in Wiznet, the Court's on-line filing website, pursuant to Administrative Order 14-2, entered by the Chief Judge, Jennifer Togliatti on May 9, 2014..

Linda Rouste
An Employee of the Office of the Attorney General

EXHIBIT 1



CLERK OF THE COURT

ADAM PAUL LAXALT
Attorney General
Linda C. Anderson
Chief Deputy Attorney General
Nevada Bar No. 4090
555 E. Washington Ave., #3900
Las Vegas, NV 89101
P: (702) 486-3420
F: (702) 486-3871
E-mail: landerson@ag.nv.gov

DISTRICT COURT
CLARK COUNTY, NEVADA

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

Plaintiff,

vs.

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

Defendants.

Case No.: A-14-710597

Dept. No.: XX

ACRES MEDICAL, LLC,

Plaintiff in Intervention,

vs.

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

Defendants in Intervention.

ORDER DENYING PLAINTIFF'S MOTION FOR LEAVE TO AMEND

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

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

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

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

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

Dated: 1-22-16


DISTRICT COURT JUDGE
ERIC JOHNSON

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

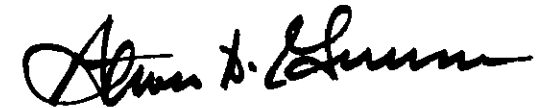
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Submitted by:

ADAM PAUL LAXALT
Attorney General

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

RE: *GB Sciences v. State of Nevada*



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,

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

11 vs.

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

16 Defendants.

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

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

19 Counterclaimant,

20 vs.

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

22 Counterdefendant.
23

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

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

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

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

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

3 DATED this 28nd day of April, 2016.

6 SMITH & SHAPIRO, PLLC

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

15 CERTIFICATE OF SERVICE

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

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

Exhibit “1”

Exhibit “1”

ORIGINAL

CLERK OF THE COURT

1 **ORDER**

2 JAMES E. SHAPIRO, ESQ.

3 Nevada Bar No. 7907

4 Sheldon A. Herbert, Esq.

5 Nevada Bar No. 5988

6 **SMITH & SHAPIRO, PLLC**

7 2520 St. Rose Parkway, Suite 220

8 Henderson, NV 89074

9 (702) 318-5033

10 *Attorneys for Plaintiff*

DISTRICT COURT

CLARK COUNTY, NEVADA

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

13 Plaintiff,

Case No. A-15-728448-C

Dept. No. I

14 vs.

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

23 Defendants.

Date: March 15, 2016

Time: 9:00 a.m.

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

26 Counterclaimant,

27 vs.

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

Counterdefendant.

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

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

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

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

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

1 Plaintiff, having appeared by and through its attorneys of record, SMITH & SHAPIRO, PLLC;
2 Defendant STATE OF NEVADA, DEPARTMENT OF HEALTH AND HUMAN SERVICES (the
3 "State" or "Division"), having appeared by and through ADAM PAUL LAXALT, Attorney General
4 through his Chief Deputy Attorney General, LINDA C. ANDERSON; Defendant Desert Aire,
5 having appeared by and through its attorneys of record, MICHAEL H. SINGER, LTD., Defendant
6 CITY OF LAS VEGAS having failed to appear or file any briefs regarding the matter¹, the Court
7 having reviewed the papers and pleadings on file herein, having heard the arguments of counsel, the
8 Court having stated its findings and conclusions on the record, the Court being fully advised in the
9 premises, and good cause appearing, NOW THEREFORE, THE COURT FINDS AND
10 CONCLUDES:

11 UNDISPUTED FACTS

12 A. BACKGROUND.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

28 \\\

CONCLUSIONS OF LAW

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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 18 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
2520 Saint Rose Parkway, Suite 220
23 Henderson, Nevada 89074
Attorneys for Plaintiff

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

1 Approved:
2 MICHAEL H. SINGER, LTD.
3
4

5 Michael H. Singer, Esq.
6 Nevada Bar No. 1589
7 4475 South Pecos Rd.
8 Las Vegas, NV 89121
9 *Attorneys for DESERT AIRE*
10 *WELLNESS, LLC*
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Approved:
ADAM PAUL LAXALT,
Attorney General



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

SMITH & SHAPIRO, PLLC
2520 St. Rose Parkway, Suite 220
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1 **IN THE SUPREME COURT OF THE STATE OF NEVADA**

2 DESERT AIRE WELLNESS, LLC, a
3 Nevada Limited Liability Company,

4 Appellant/Cross-Respondent,
5 vs.

6 GB SCIENCES NEVADA, LLC, a
7 Nevada Limited Liability Company,

8 Respondent/Cross-Appellant,
9 and

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

Electronically Filed
Dec 13 2016 10:34 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

CASE NO.: 70462

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

16 **JOINT APPENDIX VOLUME IV**

17 Appeal from Eighth Judicial District Court, Clark County

18 The Honorable Kenneth C. Cory, District Judge

19 District Court Case No. A-15-728448-C

20 FENNEMORE CRAIG, P.C.
21 Richard H. Bryan (Bar No. 2029)
22 Patrick J. Sheehan (Bar No. 3812)
23 300 S. Fourth Street, Suite 1400
24 Las Vegas, Nevada 89101

25 and

26 MCLETCHIE SHELL LLC
27 Margaret A. McLetchie (Bar No. 10931)
28 Alina M. Shell (Bar No. 11711)
701 East Bridger Ave., Suite 520
Las Vegas, Nevada 89101
Counsel for Desert Aire Wellness, LLC

INDEX TO JOINT APPENDIX

<u>VOL.</u>	<u>DOCUMENT</u>	<u>DATE</u>	<u>BATES NUMBERS</u>
I	Affidavit of Service (City of Las Vegas)	12/17/15	JA022 – JA023
II	Affidavit of Service (Desert Aire Wellness, LLC)	02/09/16	JA303 – JA304
II	Affidavit of Service (State of Nevada, Division of Public and Behavioral Health, Department of Health and Human Services)	02/09/16	JA300 – JA302
I	Answer	12/24/15	JA024 – JA027
I	Answer and Counterclaim	12/17/15	JA015 – JA021
I	City of Las Vegas' Answer to Complaint	01/19/16	JA028 – JA032
I	Complaint	12/02/15	JA001 – JA014
IV	Desert Aire Wellness, LLC's Opposition to Plaintiff/Counterdefendant's Motion for Summary Judgment and Countermotion for Summary Judgment	03/03/16	JA656 – JA664
II	Desert Aire Wellness, LLC's Opposition to Plaintiff's Motion for Summary Judgment Against Desert Aire Wellness, LLC and Countermotion for Summary Judgment Against GB Sciences Nevada, LLC	02/08/16	JA230 – JA299

<u>VOL.</u>	<u>DOCUMENT</u>	<u>DATE</u>	<u>BATES NUMBERS</u>
V	Minute Order re: Motion for Reconsideration	05/16/16	JA978
II	Minute Order re: Plaintiff's Motion for Summary Judgment Against Desert Aire Wellness, LLC and Desert Aire Wellness, LLC's Opposition to Plaintiff's Motion for Summary Judgment Against Desert Aire Wellness, LLC and Countermotion for Summary Judgment Against GB Sciences Nevada, LLC	02/23/16	JA380 – JA381
IV	Minute Order re: Plaintiff's Motion for Summary Judgment and Desert Aire Wellness, LLC's Opposition to Plaintiff/ Counterdefendant's Motion for Summary Judgment and Countermotion for Summary Judgment Against GB Sciences Nevada, LLC	03/15/2016	JA749
IV	Motion for Reconsideration and Request that the Court Reverse and Grant Defendant Summary Judgment to Defendant or at a Minimum Grant a Stay Pending Appeal	04/14/16	JA781 – JA838
III	Motion for Summary Judgment	02/26/16	JA418 – JA619

<u>VOL.</u>	<u>DOCUMENT</u>	<u>DATE</u>	<u>BATES NUMBERS</u>
I	Motion for Summary Judgment Against Desert Aire Wellness, LLC	01/21/16	JA033 – JA229
V	Notice of Appeal	05/25/16	JA979 – JA992
V	Notice of Cross-Appeal	05/25/16	JA993 – JA994
V	Notice of Entry of Order Denying Desert Aire Wellness, LLC's Motion for Reconsideration and Request that the Court Reverse and Grant Defendant Summary Judgment to Defendant or at a Minimum Grant a Stay Pending Appeal	06/08/16	JA995 – JA999
IV	Notice of Entry of Order re: GB Sciences Nevada, LLC's Motion for Summary Judgment; Desert Aire Wellness, LLC's Countermotion for Summary Judgment	04/28/16	JA846 – JA855
V	Opposition to Motion for Reconsideration and Request that the Court Reverse and Grant Defendant Summary Judgment to Defendant or at a Minimum Grant a Stay Pending Appeal	05/02/16	JA856 – JA943

<u>VOL.</u>	<u>DOCUMENT</u>	<u>DATE</u>	<u>BATES NUMBERS</u>
V	Reply in Support of Motion to Alter or Amend Judgment, Countermotion for Summary Judgment or in the Alternative a Stay Pending an Appeal	05/10/16	JA944 – JA977
IV	Reply to Desert Aire Wellness, LLC's Opposition to Plaintiff/ Counterdefendant's Motion for Summary Judgment and Countermotion for Summary Judgment Against GB Sciences Nevada, LLC	03/08/16	JA665 – JA737
II	Reply to Desert Aire Wellness, LLC's Opposition to Plaintiff's Motion for Summary Judgment Against Desert Aire Wellness, LLC and Opposition to Countermotion for Summary Judgment Against GB Sciences Nevada, LLC	02/18/16	JA305 – JA374
IV	Reply to State Response to Motion for Summary Judgment	03/08/16	JA738 – JA748
IV	State Response to Motion for Reconsideration	04/26/16	JA839 – JA845
III	State Response to Motion for Summary Judgment	03/03/16	JA620 – JA655
IV	Substitution of Attorneys	04/07/16	JA777 – JA780

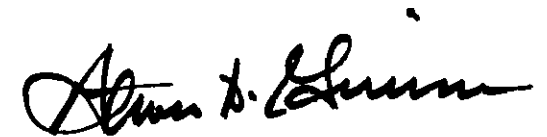
<u>VOL.</u>	<u>DOCUMENT</u>	<u>DATE</u>	<u>BATES NUMBERS</u>
II	Supplement to Desert Aire Wellness, LLC's Opposition to Plaintiff's Motion for Summary Judgment Against Desert Aire Wellness, LLC and Countermotion for Summary Judgment Against GB Sciences Nevada, LLC	02/22/16	JA375 – JA379
II	Transcript re Plaintiff's Motion for Summary Judgment Against Desert Aire Wellness, LLC and Desert Aire Wellness, LLC's Opposition to Plaintiff's Motion for Summary Judgment Against Desert Aire Wellness, LLC and Countermotion for Summary Judgment Against GB Sciences Nevada, LLC	02/23/16	JA382 – JA417
IV	Transcript re Plaintiff's Motion for Summary Judgment and Desert Aire Wellness, LLC's Opposition to Plaintiff/Counterdefendant's Motion for Summary Judgment and Countermotion for Summary Judgment Against GB Sciences Nevada, LLC	03/15/16	JA750 – JA776

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James E. Shapiro, Nevada Bar No. 7907
Sheldon Herbert, Nevada Bar No. 5988
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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

- 7 -



CLERK OF THE COURT

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

DISTRICT COURT
CLARK COUNTY, NEVADA

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

Plaintiff,

vs.

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

Defendant.

AND ALL RELATED CLAIMS

Case No.: A-15-728448-C

Dept. No.: I

Date of Hearing: March 15, 2016

Time of Hearing: 9:00 a.m.

**DESERT AIRE WELLNESS LLC'S
OPPOSITION TO
PLAINTIFF/COUNTERDEFENDANT'S
MOTION FOR SUMMARY JUDGMENT
and
COUNTERMOTION FOR SUMMARY
JUDGMENT**

COMES NOW Defendant, Desert Aire Wellness LLC, by and through its attorney, MICHAEL H. SINGER, ESQ., of the law firm of MICHAEL H. SINGER, LTD., and hereby submits its Opposition to Plaintiff/Counterdefendant's Motion For Summary Judgment and Countermotion For Summary Judgment.

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1 This Opposition and Cross-Motion is made and based on the pleadings and papers on file, the
2 following Memorandum of Points and Authorities, the Affidavit of Michael H. Singer, Esq., and any
3 oral argument the Court may choose to hear.

4 DATED this 3rd day of March, 2016.

5 MICHAEL H. SINGER, LTD.

6
7 BY: /s/ Michael H. Singer, Esq.
8 MICHAEL H. SINGER, ESQ.
9 Nevada Bar No. 1589
4475 S. Pecos Road
Las Vegas, NV 89121
10 Attorney for Defendant/Counterclaimant

11
12 **POINTS AND AUTHORITIES**

13 **I.**

14 **STATEMENT OF FACTS**

15 The Statement of Facts as set forth in Desert Aire Wellness LLC's Opposition to GB Sciences
16 Nevada LLC's Motion For Summary Judgment Against Desert Aire Wellness LLC ("Desert") is
17 incorporated herein by reference.

18 In addition thereto, it should be noted that the bulk of the expense incurred by Desert to complete
19 construction of its dispensary facility occurred subsequent to August, 2015, several months after Desert
20 was voluntarily dismissed from the preceding action by Plaintiff. See Exhibit "A," Affidavit of Michael
21 H. Singer, Esq. attached hereto and made a part hereof by reference. And, Desert was never notified by
22 Plaintiff that Plaintiff attempted to bring Desert back into that action, by service of motion, or otherwise,
23 contrary to Plaintiff's prior assertion of Desert's knowledge of same. See Exhibit "A."

24 Next, Desert appeared before the Las Vegas City Council on at least five (5) occasions after
25 April 4, 2015, in connection with the application, and ultimate granting of the City Business License,
26 and Plaintiff did not, at any time, or in any manner, appear to contest or object to same. See Exhibit
27 "A."

28 ///

Lastly, Desert has been open for business and actually conducting business, at it 420 E. Sahara Avenue location since February 6, 2016, in accordance with its Las Vegas City Business License.

II.

ARGUMENT

Desert repeats and restates the legal arguments previously set forth in its Opposition to Plaintiff's Motion For Summary Judgment Against Desert Aire Wellness LLC.

In its current argument, Plaintiff cites two recent Nevada District Court cases in support of its application for an “affirmative injunction.” But, in neither of those cases was the defendant’s provisional certificate revoked after the certificate becoming permanent by reason of issuance of a Las Vegas City Business License, nor had either of the defendants in those cases been approved, as had Desert, (although post November 3, 2014) for a Las Vegas City Special Use Permit.

Additionally, neither of the defendants in the cited District Court cases ever received a Special Use Permit for their designated dispensary site. In fact, they were both denied by the local authority. Here, this defendant, albeit post November 3, 2014, did, in fact, receive City zoning approval for its dispensary site. Thus, the two District Court cases relied upon by Plaintiff in this motion do not remotely resemble the facts here involved.

Defendant, Desert, in this case has, therefore, not only relied upon Plaintiff's voluntary dismissal of the earlier case, or Plaintiff's failure to ever object to the issuance of the City Business License, but it has also relied upon the issuance of the Provisional Certificate by the State of Nevada and the Las Vegas City Business License Department. If the State is required to revoke its Certificate, where does that leave Desert, having now expended One Million Three Hundred Thousand Dollars (\$1,300,000) since April 4, 2015 in direct costs to secure its Las Vegas City Business License, including start-up costs required by the City to meet the specific preconditions to opening the facility.

Must the State reimburse Desert for its loss, and its continuing liability under its Lease Agreement, for accepting Desert's late zoning approval and then not revoking its earlier granting of the

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/ / /

/ / /

1 Provisional Certificate? Or does the receipt, although post November 3, 2014, of City zoning approval
2 constitute satisfaction of the statutory application requirements.¹

3 NRS 453A.322(3)(a)(5) only requires that local governmental authority certify that the proposed
4 medical marijuana establishment be located in a suitable building zone and the building meets local
5 building requirements.

6 Desert has met both such requirements and has proceeded in accordance with the approval of
7 both the State and the City of Las Vegas. To now issue an “affirmative injunction” would do injustice to
8 the principle of weighing the equities as a key element in awarding injunctive relief. No evidence has
9 been presented as to the prejudice afforded this Plaintiff, i.e. (i) has it been legally bound to, and is
10 making lease payments, and, if so, how much?, or (ii) how much has been expended, intangible and
11 tangible costs, for the construction build-out, or (iii) has it paid the Fifty Thousand Dollar (\$50,000)
12 license fee to the City, or (iv) has it posted a Three Hundred Thousand Dollar (\$300,000) surety bond in
13 favor of the City, etc.

14 These items have been conveniently omitted from Plaintiff’s factual statements, as if these
15 considerations should have no bearing on the outcome of this case, regardless, and in spite, of the
16 equitable arguments presented by Desert. In short, Plaintiff’s own actions, or inaction, has resulted in
17 Desert having secured its permanent state MME registration, and it should not now be rewarded for its
18 prior activity, or lack thereof.²

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27 ¹ Nothing specifically in the statute precludes the issuance of the Provisional Certificate if the location is approved, only if
the special use permit is denied. It was never here denied.

28 ² This is not to insinuate Desert’s license was improperly granted since it did have, at all times, a suitable location.
Instead, this particular Plaintiff should not be in a position to raise the question of the certificate legality.

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III.

CONCLUSION

For the reasons hereinabove stated, the unique facts involved in this case, and the equitable principles here involved, Plaintiff's Motion For Summary Judgment should be denied and Defendant's Countermotion for Summary Judgment should be granted.

DATED this 3rd day of March, 2016.

MICHAEL H. SINGER, LTD.

BY: /s/ Michael H. Singer, Esq.
MICHAEL H. SINGER, ESQ.
Nevada Bar No. 1589
4475 S. Pecos Road
Las Vegas, NV 89121
Attorney for Defendant/Counterclaimant

1 **CERTIFICATE OF SERVICE**

2 Pursuant to Nev. R. Civ. P. 5(b), I hereby certify that service of the foregoing was made this 3rd
3 day of March, 2016, by electronic service through the Eighth Judicial District Court's Odyssey E-File
4 and Serve System, to each of the following on the E-Service Master List:

5 **Attorney General's Office**

6 **Contact**

7 Linda Aouste
8 Linda C. Anderson
9 Nevada Attorney General

Email

laouste@ag.nv.gov
landerson@ag.nv.gov
wiznetfilings@ag.nv.gov

10 **City of Las Vegas-City Attorney's Office**

11 **Contact**

12 Betsy Comella
13 Cindy Kelly
14 John A. Curtas, Esq.
15 Kelli Hansen

Email

bcomella@lasvegasnevada.gov
ckelly@lasvegasnevada.gov
jacurtas@lasvegasnevada.gov
khansen@lasvegasnevada.gov

16 **Cooper Levenson, P.A.**

17 **Contact**

18 Gregory A. Kraemer, Esq.
19 Kimberly Maxson-Rushton
20 Theresa Rutkowski

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krushton@cooperlevenson.com
trutkowski@cooperlevenson.com

21 **Smith & Shapiro, PLLC**

22 **Contact**

23 Ashley Houston
24 James E. Shapiro
25 Sheldon Herbert
26 Jill Berghammer

Email

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jshapiro@smithshapiro.com
sherbert@smithshapiro.com
jberghammer@smithshapiro.com

27 /s/ Diane L. Hutchings

28 An employee of Michael H. Singer, Ltd.

EXHIBIT A

1 **AFFIDAVIT OF MICHAEL H. SINGER, ESQ. IN SUPPORT OF DESERT AIRE WELLNESS**
2 **LLC'S OPPOSITION TO PLAINTIFF/COUNTERDEFENDANT'S MOTION FOR SUMMARY**
3 **JUDGMENT**

4 **and**
5 **COUNTERMOTION FOR SUMMARY JUDGMENT**

6
7 STATE OF NEVADA)
8) ss
9 COUNTY OF CLARK)

10 MICHAEL H. SINGER, ESQ., being first duly sworn, deposes and says that:

11 1. Affiant's law firm, Michael H. Singer, Ltd., represents Defendant/Counterclaimant, Desert Aire
12 Wellness LLC ("Desert") in the above-entitled action.

13 2. Affiant makes this Affidavit in support of Desert Aire Wellness LLC's Opposition to
14 Plaintiff/Counterdefendant's Motion For Summary Judgment and Countermotion For Summary
15 Judgment.

16 3. Desert was voluntarily dismissed without prejudice by Plaintiff pursuant to NRCP 41(a)(1)(i) by
17 Plaintiff in Case No. A-14-710597-C on April 4, 2015.

18 4. While Desert began making lease payments for 420 E. Sahara Avenue, its MME location,
19 beginning in January 2015, Desert did not begin spending money for construction until late summer or
20 early fall 2015.

21 5. From April 4, 2015, to completion of construction in December 2015, based upon an accounting
22 provided by Desert's Manager, Desert expended \$1,300,000.00 to construct the premises, to meet other
23 specific requirements of the City, e.g. the bond, and pre-opening expenses.

24 6. Affiant has never received and was never notified by Plaintiff that Plaintiff attempted to bring
25 Desert back into that action, by service of motion, or otherwise.

26 7. Desert appeared before the Las Vegas City Council on at least five (5) occasions after April 1,
27 2015, in connection with the application, and ultimate granting of the City Business License.

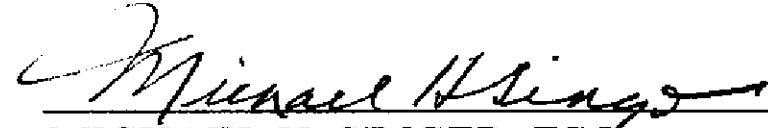
28 8. Plaintiff did not, at any time, or in any manner, appear to contest or object to same at any of
these appearances before the Las Vegas City Council.

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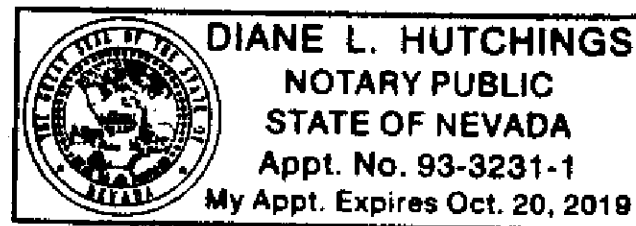
1 9. Desert has been open for business and actually conducting business, at it 420 E. Sahara Avenue
2 location since February 6, 2016, in accordance with its Las Vegas City Business License.

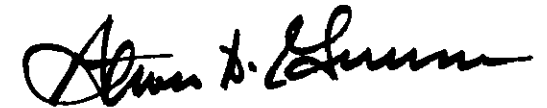
3 FURTHER AFFIANT SAYETH NAUGHT.

4 
MICHAEL H. SINGER, ESQ.

5 SUBSCRIBED AND SWORN to before
6 me this 3rd day of March, 2016.

7 
8 Notary Public in and for said County
9 and State





CLERK OF THE COURT

**RPLY
OPPS**

James E. Shapiro, Esq.
Nevada Bar No. 7907

Sheldon A. Herbert, Esq.
Nevada Bar No. 5988

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

Attorneys for Plaintiff/Counterdefendant

DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiff,

vs.

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

Defendants.

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

Counterclaimant,

vs.

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

Counterdefendant.

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

**REPLY TO DESERT AIRE
WELLNESS LLC'S OPPOSITION TO
PLAINTIFF/COUNTER-
DEFENDANT'S MOTION FOR
SUMMARY JUDGMENT and
OPPOSITION TO COUNTERMOTION
FOR SUMMARY JUDGMENT
AGAINST GB SCIENCES NEVADA,
LLC**

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

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

\\

\\

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

1 REPLY TO DESERT AIRE WELLNESS LLC'S OPPOSITION TO
2 PLAINTIFF/COUNTERDEFENDANT'S MOTION FOR SUMMARY
3 JUDGMENT and OPPOSITION TO COUNTERMOTION FOR SUMMARY
4 JUDGMENT AGAINST GB SCIENCES NEVADA, LLC

5 COMES NOW Plaintiff/Counterdefendant GB SCIENCES NEVADA, LLC, a Nevada
6 limited liability company ("GB Sciences"), by and through its attorneys of record, SMITH &
7 SHAPIRO, PLLC, and files its Reply and Opposition to Desert Aire Wellness LLC Opposition to
8 Plaintiff's Motion for Summary Judgment and Countermotion for Summary Judgment (the
9 "Opposition and Countermotion").

10 This Reply and Opposition is made and based upon the papers and pleadings on file herein,
11 the attached Exhibits, the attached Memorandum of Points and Authorities, and any oral argument
12 the Court wishes to entertain in the premises.

13 DATED this 8th day of March, 2016.

14 SMITH & SHAPIRO, PLLC

15 /s/ James E. Shapiro
16 James E. Shapiro, Esq.
17 Nevada Bar No. 7907
18 Sheldon A. Herbert, Esq.
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20 2520 St. Rose Parkway, Suite 220
21 Henderson, NV 89074
22 Attorneys for Plaintiff/Counterdefendant

23 MEMORANDUM OF POINTS AND AUTHORITIES

24 I.

25 PREFATORY STATEMENT

26 Even though Desert Aire has filed an Opposition and Countermotion to the Plaintiff's Motion
27 for Summary Judgment, Desert Aire failed to establish any sufficient cause for denial of Plaintiff's
28 Motion. To the contrary, Desert Aire virtually admits that, as of November 3, 2014, Desert Aire did
not meet the statutory requirements of NRS § 453A.322. As such, it was clear error by the STATE
OF NEVADA, DEPARTMENT OF HEALTH AND HUMAN SERVICES (the "Division") to issue

1 a Provisional Registration Certificate to Desert Aire. Further, none of Desert Aire's other arguments
2 provide any basis on which to deny Plaintiff's Motion. Inasmuch as Desert Aire makes any
3 protestations regarding costs it has incurred in relation to the pursuit of an MME dispensary, Desert
4 Aire always assumed the risk that those costs might be incurred in vain because a Registration
5 Certificate, provisional or otherwise, is always revocable and Desert Aire, itself, failed to follow the
6 law.

7 II.

8 STATEMENT OF UNDISPUTED FACTS

9 Plaintiff refers to the Statement of Facts and Statement of Undisputed Facts set forth in its
10 Motion for Summary Judgment and incorporates the same by this reference.

11 However, Plaintiff reiterates the following undisputed facts (which include key admissions
12 by Desert Aire in its original Opposition and Countermotion to Plaintiff's original Motion for
13 Summary Judgment, which Desert Aire filed on February 8, 2016 (the "Original Opposition")).

14 1. On October 29, 2014, Desert Aire was not awarded a special use permit and
15 compliance permit for an MME dispensary by the City of Las Vegas because it had withdrawn its
16 applications for the permits. See Exhibit "8" to the Motion for Summary Judgment. *Desert Aire*
17 *admits this fact.* See Original Opposition at 2:23.

18 2. Although Desert Aire claims that its application received staff approval, the Planning
19 Commission was recommending DENIAL on a 4-1-2 vote prior to the October 29, 2014 meeting.
20 See Exhibit "B" to the Original Opposition.

21 3. Desert Aire does not explain why it withdrew its applications for a special use permit
22 and compliance permit after it allegedly had staff approval. Rather, Desert Aire voluntarily withdrew
23 its applications before the October 29, 2014 Hearing, admitting by its actions that the applications
24 were flawed. See Original Opposition at 2:23.

25 4. On October 30, 2014, the City of Las Vegas notified the Division of the withdrawal
26 of Desert Aire's applications for a special use permit and compliance permit for an MME
27 Dispensary. See Exhibit "9" to the Motion for Summary Judgment.

28 \\\

1 5. Desert Aire claims that it later obtained approval for its special use and compliance
2 permit applications on December 17, 2014, which was 44 days *after November 3, 2014, when the*
3 *approvals were required.* See Original Opposition at 2:26 and at 4:12-13.

4 6. The conditions to the untimely approval of Desert Aire's applications are the exact
5 same conditions placed on the staff recommendations which the Planning Commission intended to
6 reject on October 29, 2014, thus, indicating that as of November 3, 2014, there were some additional
7 undisclosed fatal flaws to Desert Aire's applications on its approval deadline. See Exhibit "B" and
8 "C-1" to the Original Opposition.

9 7. Not surprisingly, Staff recommended denial of Desert Aire's application on December
10 17, 2014. See Exhibit "C" to the Original Opposition.

11 8. The Division originally ranked Desert Aire 10th and the Plaintiff 13th. See Exhibit
12 "11" and "12" to the Motion for Summary Judgment. However, if Desert Aire is properly
13 disqualified for failure to comply with N.R.S. § 453A.322(a)(3)(5), the Plaintiff is the next highest
14 applicant, and, in accordance with the Division's prior testimony on this very issue, Plaintiff should
15 be issued the Provisional Certificate originally issued to Desert Aire. See Exhibit "2" to the Motion
16 for Summary Judgment.

17 9. The Honorable Ronald J. Israel ruled on the same issue raised in this case in the
18 matter of *Henderson Organic Remedies, LLC v. State of Nevada et al.*, Eighth Judicial District Court
19 Case No. A-14-710193-C (the "*HOR Case*"). Judge Israel determined the following (in pertinent
20 part):

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

24 10. One of the six (6) items required by law before the Division could
25 issue a Provisional Certificate is found in NRS § 453A.322(3)(a)(5), which states:

26 If the city, town or county in which the proposed medical marijuana
27 establishment will be located has enacted zoning restrictions, **proof**
28 **of licensure with the applicable local governmental authority or**
a letter from the applicable local governmental authority
certifying that the proposed medical marijuana establishment is

1 in compliance with those restrictions and satisfies all applicable
2 building requirements. (NRS § 453A.322(3)(a)(5))

3 See Order from the HOR Case, attached to the Motion for Summary Judgment as Exhibit "13".

4 10. Wellness Connections of Nevada, LLC (a defendant in the HOR Case) ("Wellness
5 Connections") did not have proof of licensure or a letter. Therefore, Judge Israel went on to rule
6 that:

7 31. The issuance of the Provisional Certificate to Wellness Connections
8 was in error and contrary to NRS § 453A.322(3).

9 32. Wellness Connections should have been disqualified due to their non-
10 compliance with NRS § 453A.322(3)(a)(5).

11 ...

12 37. However, because Wellness Connections failed to comply with NRS
13 § 453A.322(3)(a)(5), Wellness Connections should have been disqualified, thereby
14 moving the Plaintiff to the coveted fifth spot.

15 See Exhibit "13" to the Motion for Summary Judgment.

16 11. The Honorable Eric Johnson ruled on the same issue raised in this case in the matter
17 of *GB Sciences Nevada, LLC v. State of Nevada et al.*, Eighth Judicial District Court Case No.
18 A-14-710597-C (the "Nuleaf Case").

19 In the Nuleaf Case, MME applicant Nuleaf CLV Dispensary, LLC ("Nuleaf") had been
20 ranked by the Division within the top-12 candidates for one of the 12 MME Dispensary Registration
21 Certificates allocated to the City of Las Vegas, just like Desert Aire.¹ Like Desert Aire, Nuleaf had
22 failed to obtain Zoning Approval from the City of Las Vegas. Nonetheless, like Desert Aire, the
23 Division had issued a Provisional Certificate to Nuleaf even though Nuleaf had failed to obtain the
24 Zoning Approval. Consequently, hearing the same arguments as asserted in this case, the Court in
25 the Nuleaf Case ordered the revocation of Nuleaf's Provisional Certificate. Further, the Court in the
26 Nueaf Case likewise recognized that the pertinent date was November 3, 2014. See Exhibit "14".
27 Because Nuleaf did not meet the statutory requirements as of November 3, 2014, the Division erred
28 in issuing a Provisional Certificate to Nuleaf. *Id.* It really didn't matter why Nuleaf did not qualify,

¹ Nuleaf was ranked as high as Number 3.

1 all that mattered was that as of November 3, 2014, Nuleaf did not qualify. *Id.* Unfortunately for GB
2 Sciences, through a twist of events not present here², the revoked Provisional Certificate was
3 awarded to intervenor Acres Medical, LLC ("Acres").

4 11. Both Wellness Connections in the HOR Case, and Nuleaf in the Nuleaf Case had
5 asserted affirmative defenses of estoppel and laches to try and get around their failure to satisfy the
6 provisions of N.R.S. § 453A.322(3), but to no avail. True and correct copies of their Answers are
7 attached hereto collectively as Exhibit "1" and incorporated by this reference herein.

8 12. Desert Aire was a party in the Nuleaf Case from the time it was file on December 2,
9 2014 through April 1, 2015, when it was dismissed as a party, *without prejudice*. Desert Aire admits
10 that the dismissal was *without prejudice*. See Original Opposition at 3:17. See also a true and
11 correct copy of the Dismissal attached hereto as Exhibit "2" and incorporated by this reference
12 herein.

13 13. Plaintiff attempted to bring Desert Aire back into the Nuleaf Case on November 16,
14 2015, before this case was filed. A true and correct copy of the Motion to Amend is attached hereto
15 as Exhibit "3" and incorporated by this reference herein. The Motion to Amend was denied, without
16 prejudice, and solely on the basis that it was after the deadline for amending pleadings set forth in
17 the Scheduling Order in the case, and good cause had not been shown for modifying the Scheduling
18 Order. A true and correct copy of the Order denying Motion to Amend is attached hereto as Exhibit
19 "4".

20 14. Desert Aire was on public notice of the HOR Case and other District Court cases
21 involving disputes over the issuance of Provisional Registration Certificates, including *Nevada*
22 *Medical Marijuana Dispensary, Inc. v. State of Nevada et al.*, Case A-14-710488-C, *Acres Medical,*
23 *LLC v. Nevada Department of Health and Human Services*, Case A-15-719637-W, and *Samantha,*
24 *Inc. v. Department of Health and Human Services*, Case A-14-710874-J.

25 \\\

26
27 ² Acres claimed to have a higher score and higher ranking than GB Sciences, based upon an Order obtained in
28 separate action initiated by Acres. Acres Medical, LLC v. Department of Health and Human Services, Division of Public
and Behavioral Health, et al., Eighth Judicial District Court Case No. A-15-719637-W. Based upon that Order, Judge
Johnson awarded the Provisional Certificate to Acres instead of GB Sciences.

III.

STATEMENT OF AUTHORITIES

A. DESERT AIRE DID NOT COMPLY WITH N.R.S. § 453A.322(3)(a)(5).

In the Original Opposition, Desert Aire argued that the MME statutes do not require it to obtain a special use permit before the issuance of a Provisional Registration Certificate. *See* Original Opposition at 4:22-27. In support of its assertion, Desert Aire cited to Las Vegas Ordinance No. 6321 for the proposition that the Provisional Registration Certificate would need to be issued *before* a special use permit could be issued by the City of Las Vegas. *See* Original Opposition at 4:27 - 5:2. Similarly, in the Opposition and Countermotion, Desert Aire argues that the MME laws only require the City of Las Vegas to “certify that the proposed medical marijuana establishment be located in a suitable building zone and the building meets local building requirements,” and that Desert Aire met both requirements. *See* Opposition and Countermotion at 4:3-7. However, Desert Aire admits that it did not obtain any such approvals until *after* November 3, 2014. *See* Opposition and Countermotion at 3:14. This is in direct contravention of the express terms of N.R.S. § 453A.322(3)(a)(5).

While it may be true that the actual issuance of a special use permit can take place after a Provisional Registration Certificate is issued by the Division, Nevada Revised Statutes § 453A.322(3) makes it clear that the Division is authorized to issue a Provisional Registration Certificate *if and only if* the applicant had complied with N.R.S. § 453A.322(3)(a)(5). Specifically, N.R.S. § 453A.322(3) states, in pertinent part:

3. ... not later than 90 days after receiving an application..., the Division shall register the medical marijuana establishment and issue a medical marijuana establishment registration certificate and a random 20-digit alphanumeric identification number *if*:

(a) The person who wishes to operate the proposed medical marijuana establishment has submitted to the Division all of the following:

* * *

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

1 N.R.S. § 453A.322(3) (emphasis added). In other words, *before* the Division could issue a
2 Provisional Registration Certificate, the applicant must have received zoning approval of some sort,
3 either (1) proof of licensure with the applicable local government authority, or (2) *a letter from the*
4 *applicable local governmental authority certifying that the proposed medical marijuana*
5 *establishment is in compliance with those restrictions and satisfies all applicable building*
6 *requirements.*³ Judge Johnson recognized that the City of Las Vegas issued the letter required by
7 N.R.S. § 453A.322(3). See Exhibits “9” and “14”. Before the Division issued a Provisional
8 Registration Certificate to Desert Aire, Desert Aire had done *neither*. See Exhibit “9”. In fact, the
9 City of Las Vegas had specifically notified the Division that Desert Aire had not complied, yet the
10 Division issued the Provisional Certificate notwithstanding. Id.

11 There is no uncertainty in this language. The words “*if*” “*has submitted*” *all* of the
12 following” leave no ambiguity as to whether or not the requirements set forth in N.R.S. §
13 453A.322(3)(a)(5) are discretionary or mandatory, or whether they be taken care of *BEFORE* the
14 Provisional Registration Certificate has been issued. These words make it clear that the Division is
15 authorized to issue a Provisional Registration Certificate *if* it has received some form of approval
16 from the local government as described in N.R.S. § 453A.322(3)(a)(5).

17 Because Desert Aire withdrew its application and did not obtain any approval of its
18 applications by the City of Las Vegas on October 30, 2014, the plain language of the statute
19 prohibited the Division from issuing a Provisional Registration Certificate to Desert Aire. There is
20 no discretion built into the law. It is mandatory, and by issuing a Provisional Registration Certificate
21 to Desert Aire, the Division violated the law.

22 \\\

23
24
25 ³ The Provisional Registration Certificate is only provisional until the applicant “is in compliance with all
26 applicable local government ordinances or rules, and the local government has issued a business license for the operation
27 of the establishment.” However, just because the Provisional Registration Certificate is “provisional” until everything
28 is complied with (i.e., safety inspections, public hearings, special use permit actually issued, fees paid, suitability
interviews conducted by Las Vegas Metropolitan Police Department, business license actually issued, etc.), it does not
mean that the initial showings required by N.R.S. § 453A.322(3)(a)(5) can be ignored or taken care of later by Desert
Aire. Otherwise, N.R.S. § 453A.322(3)(a)(5) would never have been drafted into the statute because N.R.S. § 453A.326
would have been sufficient. The plain language of N.R.S. § 453A.322(3)(a) [*“has submitted”*] belies this argument, in
any event.

1 This should come as no surprise because Nuleaf and Wellness Connection also received
2 Provisional Registration Certificates in violation of N.R.S. § 453A.322(3) because they failed to
3 provide the proof required by N.R.S. § 453A.322(3)(a)(5) to the Division. Fortunately, both Judge
4 Israel and Judge Johnson wisely ordered that those certificates be revoked and reissued to the next
5 applicants in line who had complied with N.R.S. § 453A.322(3).

6 The well-reasoned analyses of N.R.S. Chapter 453A by both Judge Israel and Judge Johnson
7 should be persuasive authority to guide this Court in the instant case. The facts of the cases are
8 almost identical. Henderson Organic Remedies, like the Plaintiff, met all of the requirements to
9 receive a Provisional Registration Certificate, but was initially ranked just one spot outside of the
10 allotted number of Provisional Certificates available. In the Nuleaf Case and HOR Case, Nuleaf and
11 Wellness Connections, just like Desert Aire, were inappropriately granted a Provisional Certificate
12 by the Division notwithstanding the fact that they failed to obtain the permit approvals mandated by
13 N.R.S. § 453A.322(3).

14 In its current Opposition and Countermotion, Desert Aire attempts to undermine the
15 persuasive effect of these cases by claiming that they do not “remotely resemble” the facts in this
16 case. See Opposition and Countermotion at 3:15-16. In support of this assertion, Desert Aire argues
17 that (1) the Registration Certificates in the Nuleaf Case and HOR Case were revoked while they were
18 still provisional (while Desert Aire’s has become “permanent”), and (2) neither of the applicants in
19 the Nuleaf Case and HOR Case had obtained a business license or special use permit (which Desert
20 Aire has now obtained, post-deadline). See Opposition and Countermotion at 3:8-13.

21 However, the first alleged factual distinction is irrelevant. As has already been explained,
22 with concurrence from the Division, a Registration Certificate can be revoked at any time, pursuant
23 to N.R.S. § 453A.320:

24 [t]he purpose for registering medical marijuana establishments and medical marijuana
25 establishment agents is to protect the public health and safety and the general welfare
26 of the people of this State. Any medical marijuana establishment registration
27 certificate issued pursuant to NRS 453A.322 and any medical marijuana
28 establishment agent registration card issued pursuant to NRS 453A.332 *is a*
revocable privilege and the holder of such a certificate or card, as applicable, does not
acquire thereby any vested right.

28 \ \ \

1 N.R.S. § 453A.320 (emphasis added). Thus, whether a Registration Certificate is still provisional,
2 or is no longer provisional, is really a distinction without meaning.

3 Further, it really does not matter how far down the line Desert Aire has gone. The fact
4 remains that the Division only had authority to issue the Provisional Certificate *if* Desert Aire had
5 complied with *all* of the requirements of NRS 453A.322(3)(a). Because Desert Aire clearly and
6 unquestionably had not complied with NRS 453A.322(3)(a)(5) when the Provisional Certificate was
7 issued on November 3, 2014, the fact that Desert Aire may have obtained the necessary approval at
8 a later date is irrelevant and does not vest the Division with the authority to issue the Provisional
9 Certificate on November 3, 2014.

10 Finally, the second alleged factual distinction is, likewise, irrelevant. Whether the City of
11 Las Vegas later approves applications for licensing and permits, after the statutorily mandated
12 deadline (as in this case), it does not matter. Desert Aire failed to satisfy N.R.S. § 453A.322(3)(a)(5)
13 by November 3, 2014. Plain and simple. Consequently, under the material facts in this case, this
14 Court should follow the well-reasoned decisions by Judge Israel and Judge Johnson, and order the
15 Division to revoke the Provisional Certificate originally issued to Desert Aire and reissue it to the
16 Plaintiff.

17 **B. PLAINTIFF IS NOT GUILTY OF LACHES.**

18 In this case, Desert Aire argues that laches would prevent Plaintiff from obtaining the
19 injunction it seeks essentially because Plaintiff dismissed Desert Aire from the Nuleaf Case and
20 Desert Aire purportedly incurred costs in developing its MME business. *See* Original Opposition
21 at 6:6-10 and 17-20. In the Opposition and Countermotion, filed March 3, 2016, Desert Aire
22 attempts to bolster this claim by asserting that it lost nearly \$1,300,000.00 since April 2015. *See*
23 Opposition and Countermotion at 3:21-23.

24 However, in support of its Opposition and Countermotion, Desert Aire relies upon the
25 hearsay testimony of its attorney, Michael Singer, and not the admissible testimony of a witness with
26 personal knowledge. Evidence introduced in support of or opposition to a motion for summary
27 judgment must be admissible evidence. Collins v. United Fed. Sav. & Loan Ass'n, 99 Nev. 284,
28 300, 662 P.2d 610, 620 (1983). The court must not consider hearsay or other inadmissible evidence.

1 Adamson v. Bowker, 85 Nev. 115, 119, 450 P.2d 796, 799 (1969). Unless Michael Singer (the
2 Defendants' attorney) lays the foundation for his testimony by demonstrating that he has actual first
3 hand knowledge of the items contained in his Affidavit (i.e., that he knows how much was spent by
4 Desert Aire, and that he personally appeared at the hearings), which given the fact that he is the
5 attorney is very unlikely, his Affidavit should be disregarded.

6 Further, laches is an equitable doctrine which will be invoked when delay by one party works
7 to the disadvantage of the other, causing a change of circumstances which would make the grant of
8 relief to the delaying party inequitable. Erickson v. One Thirty-Three, Inc. and Assoc.; 104 Nev.
9 755, 766 P.2d 898, 900 (1988); Pub. Service Comm'n v. Sierra Pacific, 103 Nev. 187, 734 P.2d 1245
10 (1987); Leaver v. Grose, 610 P.2d 1262 (Utah 1980). However, laches implies some kind of
11 ignorance on the part of the supposed victim of the matter that is being delayed. Otherwise, as the
12 doctrine is understood, the alleged victim would not have changed its circumstances based upon such
13 a delay.

14 Desert Aire's argument strategically avoids a series of undisputed facts which militate against
15 any finding that Plaintiff is guilty of laches. First, Desert Aire was a party in Nuleaf Case as far back
16 as December 2, 2014, when the Nuleaf Case was filed.⁴ See Original Opposition at 3:3-4. This was
17 less than 30 days after the Provisional Registration Certificates were improperly issued to Desert Aire
18 and others.

19 It was not until April 1, 2015 (four months later) that Desert Aire was dismissed from the
20 Nuleaf Case, *without* prejudice. See Exhibit "2". Further, Plaintiff attempted to bring Desert Aire
21 back into the Nuleaf Case as early as November 16, 2015, but Plaintiff's Motion to Amend was
22 denied for reasons *other than* the substantive legal issues in dispute in the Nuleaf Case and in this
23 case. See Exhibit "3" and "4". While Desert Aire may not have known about Plaintiff's November
24 16th attempt, they were aware of this lawsuit, which was filed a few weeks later on December 2, 2015
25 (the same date as the hearing wherein the Motion to Amend was denied). Thus, there was only a
26 period of roughly 7 and ½ months that no active claims were on file against Desert Aire's improperly
27

28 ⁴ This was even two weeks *before* Desert Aire allegedly obtained special use permit from the City of Las Vegas
on December 17, 2014.

1 issued Provisional Registration Certificate. All costs allegedly incurred by Desert Aire outside of
2 that gap were expended in blatant disregard for the potential peril that Desert Aire might suffer with
3 a loss of its Provisional Registration Certificate.

4 Second, in its Opposition and Countermotion, Desert Aire claims reliance upon its dismissal
5 in the Nuleaf Case, arguing that (1) most of the expenses it incurred were in August 2015 (during
6 the 7 ½ month “gap period” when Desert Aire was not an active party to the Nuleaf Case), (2) Desert
7 Aire appeared before the City of Las Vegas five times during the “gap period” and Plaintiff did not
8 also appear and object to Desert Aire’s applications, and (3) Desert Aire has been open for business
9 since February 6, 2016. See Opposition and Countermotion at 2:18 - 3:2.

10 However, when Desert Aire was dismissed from the Nuleaf Case on April 1, 2015, it was
11 done *without prejudice*. It should have been clear to Desert Aire that Plaintiff was not permanently
12 abandoning its claim to Desert Aire’s Provisional Registration Certificate. Otherwise, the dismissal
13 would have been *with prejudice*. Thus, any activities undertaken, and costs incurred, by Desert Aire
14 inside of that 7 ½ month gap were incurred with full knowledge on the part of Desert Aire (and while
15 assuming the risk), that Plaintiff might eventually reassert its claims to Desert Aire’s Provisional
16 Registration Certificate, as Plaintiff has done in this case. Such a risk is not dependent upon whether
17 Plaintiff appeared at various city council meetings to protest legally ineffective post-deadline
18 attempts on the part of Desert Aire to obtain business licenses or special use permits. Desert Aire
19 can hardly complain.

20 Third, Desert Aire is on notice of the law. As explained above, N.R.S. § 453A.320 clearly
21 recognizes that “[a]ny medical marijuana establishment registration certificate issued pursuant to
22 NRS 453A.322 . . . is a *revocable privilege* and the holder of such a certificate or card, as applicable,
23 does not acquire thereby any vested right.” N.R.S. § 453A.320 (emphasis added). Thus, regardless
24 of any amount of investment made or cost incurred by Desert Aire, it clearly knows (or should know)
25 that a Registration Certificate, provisional or otherwise, could be revoked at any time. There are
26 numerous reasons why this can happen, and Desert Aire (along with everyone else) proceeds forward
27 at their own risks.

28

1 Fourth, Desert Aire was on public notice all along of the Nuleaf Case, HOR Case, and the
2 other actions filed in the Eighth Judicial District Court wherein various applicants were vying for the
3 limited MME Registration Certificates issued by the Division and legal claims of impropriety were
4 being hotly contested. Nonetheless, Desert Aire apparently continued to expend costs in the face of
5 this unsettled legal environment.

6 Fifth, Desert Aire refers to Carson City v. Price, 113 Nev. 409, 934 P.2d 1042 (1997), arguing
7 that it is "strikingly similar" to the instant case. See Original Opposition at 5:7-9. However, nothing
8 could be further from the truth. As the Nevada Supreme Court in Price observed, the question of
9 laches turns on the specific facts of the case. 113 Nev. 409, 934 P.2d at 1043. Unlike our case, the
10 critical facts upon which the court's finding of laches hung were: (1) the respondent in Price had
11 notice of an August 18, 1994 public hearing and failed to attend the hearing to object, (2) Carson
12 City conveyed land at issue by deed on November 30, 1994, (3) on December 7, 1994 another notice
13 was provided to the respondents that construction would begin, (4) on February 17, 1995 the public
14 works department issued building permits, (5) construction began in February 1995, and (6) on April
15 11, 1995, the Respondents filed suit after a substantial amount of construction had been completed.
16 See Price at 1043-44. Essentially, the respondents had done nothing to prosecute claims after
17 receiving notice of what was going to transpire, which ultimately included conveyance of real
18 property, issuance of construction permits, and a substantial amount of actual construction
19 completed.

20 In contrast, in our case, as stated earlier, Desert Aire was made a party to the Nuleaf Case
21 soon after the Provisional Registration Certificate at issue was improperly issued by the Division and
22 was an active defendant in that case for four months. Therefore, Plaintiff prosecuted its claims at
23 the outset, before Desert Aire likely incurred the costs of which it complains. When Desert Aire was
24 dismissed, it was *without prejudice*, meaning the claims were not being abandoned by the Plaintiff
25 and were still hanging over Desert Aire's head as a real possibility. Further, Plaintiff tried to
26 formally bring Desert Aire back into the Nuleaf Case, but was unable to, due to procedural issues.
27 Unlike in Price, the entire time since the Provisional Registration Certificate was issued to Desert
28 Aire, it has been an active defendant or was aware that it could easily become an active defendant.

1 Moreover, Desert Aire was always aware, or should have been aware, that its Provisional
2 Registration Certificate could be revoked at any time, pursuant to N.R.S. § 453A.320, even if it had
3 never previously been a party to the Nuleaf Case.

4 Sixth, Desert Aire is not the only applicant to claim an affirmative defense of laches and
5 estoppel. Both Nuleaf and Wellness Connection asserted those defenses in their answers in the
6 Nuleaf Case and HOR Case, but to no avail. The courts in both cases revoked their improperly
7 issued Provisional Registration Certificates for violation of the MME laws, nonetheless. *See Exhibit*
8 *"1"*.

9 Finally, in its Reply to the Original Opposition, Plaintiff argued that Desert Aire is not the
10 only party that has been incurring substantial costs in pursuit of an MME business. Plaintiff also
11 argued that it has been incurring the same or similar expenses for tenant build-outs, lease payments,
12 and legal expenses necessary to obtain the proper permits and licenses, and to obtain the Provisional
13 Registration Certificate that should have been issued to it in the first place.

14 Consequently, having been given an opportunity now to effectively "respond to a reply,"
15 Desert Aire queries in its Opposition and Countermotion that Plaintiff has failed to prove that
16 Plaintiff incurred any costs for lease payments, tenant build-outs, licensing fees, or obtaining a surety
17 bond, all of which Desert Aire claims it incurred. *See Opposition and Countermotion at 4:8-13.*

18 However, in making its arguments Plaintiff should not be mistakenly understood as arguing
19 that any harm or prejudice suffered by Plaintiff in this case is a necessary element that needs to be
20 proven. The point of bringing up Plaintiff's costs, is to demonstrate that the costs which Desert Aire
21 may claim support its excuse for violating the MME laws are not atypical to Desert Aire, but are
22 incurred and assumed by all applicants who apply for a Registration Certificate and hope they will
23 eventually be able to open for business as an MME dispensary.

24 The reason why Plaintiff is entitled to summary judgment is that Desert Aire did not satisfy
25 the requirements of N.R.S. § 453A.322(3)(a)(5), the Division violated the law in issuing a
26 Provisional Registration Certificate to Desert Aire, and a mandatory injunction is available under the
27 law to "restore the status quo, to undo wrongful conditions" and to compel "the undoing of acts that
28 had been illegally done." Leonard v. Stoebling, 102 Nev. 543, 728 P.2d 1358 (1986); City of Reno

1 v. Matley, 378 P.2d 256, 79 Nev. 49 (1963). Plaintiff need not quantify what the Division's and
2 Desert Aire's unlawful acts have cost Plaintiff in order to obtain the relief Plaintiff seeks.

3 Plaintiff has suffered prejudice by the unlawful acts of the Division. Plaintiff complied with
4 N.R.S. § 453A.322(3)(a)(5), while Desert Aire did not; however, Plaintiff did not receive a
5 Registration Certificate while Desert Aire did. The prejudice is fundamental. Therefore, the
6 undisputed facts in this case demonstrate that Plaintiff is not guilty of laches and Plaintiff's claim
7 to injunctive relief cannot be defeated with such a defense. Plaintiff is entitled to summary
8 judgment, while Desert Aire is not.

9 **C. PLAINTIFF IS NOT EQUITABLY ESTOPPED FROM CLAIMING RELIEF.**

10 Finally, Desert Aire argues the similar defense of equitable estoppel. *See* Original Opposition
11 at 6:22-7:22. As Desert Aire observed, to defeat Plaintiff's right to the same injunctions issued by
12 the courts in the Nuleaf Case and the HOR Case, with a defense of equitable estoppel, Desert Aire
13 would have to prove the following:

- 14 (1) the party to be estopped must be apprised of the true facts,
15 (2) he must intend that either his conduct be relied upon or the other party could reasonably
16 believe he could act upon such conduct,
17 (3) the party asserting estoppel must be ignorant of the true state of facts, and
18 (4) he must have relied to his detriment on the conduct of the party to be estopped.

19 Breliant v. Preferred Equities Corp., 112 Nev. 663, 673-74, 918 P.2d 314 (1996).

20 In this case, Desert Aire essentially argues that it suffered various development costs when
21 Plaintiff led Desert Aire to believe that Plaintiff would make no claims to the Provisional
22 Registration Certificate. *See* Original Opposition at 7:17-19.

23 However, such an argument is ludicrous. Soon after the Provisional Registration Certificate
24 was issued to Desert Aire, it was made a party to the Nuleaf Case and remained as such for four
25 months. Even though it was dismissed as a party on April 1, 2015, the dismissal was without
26 prejudice and Plaintiff attempted to amend its Complaint to bring Desert Aire back into the case in
27 mid-November 2015. Desert Aire was not ignorant that Plaintiff was asserting claims against its
28 Provisional Registration Certificate because it was served with the Complaint in the Nuleaf Case,

1 wherein Plaintiff made such claims. Desert Aire was also not ignorant of the fact that the dismissal
2 was *without prejudice*, thus Plaintiff was preserving a right to make the same claims later. Finally,
3 Desert Aire was not ignorant of the fact that Plaintiff tried to reassert its claims against Desert Aire
4 in the Nuleaf Case on November 16, 2015 with its Motion to Amend.⁵

5 Further, it cannot be said that Plaintiff intended Desert Aire to incur expenses believing that
6 Plaintiff would never try to make any claims to the Provisional Registration Certificate issued to
7 Desert Aire. It is really irrelevant to the Plaintiff what Desert Aire spends but if the Plaintiff intended
8 Desert Aire to rack up expenses in the belief that Plaintiff would never assert any ongoing claim
9 against the Provisional Registration Certificate issued to Desert Aire, Plaintiff would have dismissed
10 Desert Aire, *with prejudice*. In addition, because the dismissal was *without prejudice*, Desert Aire
11 cannot argue that it reasonably believed it could rack up development costs without a risk that
12 Plaintiff would later re-assert claims to Desert Aire's Provisional Registration Certificate.

13 Finally, Desert Aire did not rely to its detriment on anything Plaintiff did or did not do.
14 Desert Aire likely incurred development and start-up costs all along, including: (1) before it obtained
15 the Provisional Registration Certificate, (2) after it obtained the Provisional Registration Certificate
16 and while Desert Aire was still an active party to the Nuleaf Case for four months before the April
17 1, 2015 dismissal, and (3) on and after November 16, 2015, when Plaintiff sought to bring Desert
18 Aire back into the Nuleaf Case.

19 In fact, Desert Aire likely incurred its alleged expenses in the same manner as every other
20 successful and unsuccessful applicant for an MME Registration Certificate: with the hope that it
21 would be able to eventually open for business, but in clear recognition of the risks referred to above
22 which might prevent that from happening. This is regardless of any of the legal disputes in cases
23 moving through the court system, and whether certain parties were asserting certain claims. Simply
24 put, Desert Aire would have incurred all of the same expenses whether Plaintiff dismissed Desert
25 Aire as a party to the Nuleaf Case or not. There was nothing Plaintiff did or did not do which would
26

27
28 ⁵ In its Opposition and Countermotion, Desert Aire argues that it was "never notified" of the motion to amend
in the Nuleaf Case. See Opposition and Countermotion at 2:21-23. Regardless, Desert Aire had public notice of the
Nuleaf Case and anything filed therein, and Desert Aire was served with the Complaint in this case soon thereafter.

1 have changed any of that.⁶ Therefore, the undisputed facts in this case demonstrate that Plaintiff's
2 claim to injunctive relief cannot be defeated by equitable estoppel. Plaintiff is entitled to summary
3 judgment, while Desert Aire is not.

4 **D. THE COUNTERCLAIM MUST BE DISMISSED.**

5 In this case, Desert Aire does not oppose the portion of Plaintiff's Motion for Summary
6 Judgment related to Desert Aire's counterclaim for attorneys fees. Eighth Judicial District Court
7 Rule 2.20(e) provides, in pertinent part: "... [the f]ailure of the opposing party to serve and file
8 written opposition may be construed as an admission that the motion and/or joinder is meritorious
9 and a consent to granting the same." EDCR 2.20(e)(in pertinent part). Therefore, in addition to the
10 reasons set forth in the Motion for Summary Judgment, Plaintiff is entitled to summary judgment
11 on Desert Aire's Counterclaim because Desert Aire has failed to oppose that part of the motion for
12 summary judgment under EDCR 2.20(e).

13 **IV.**

14 **CONCLUSION**

15 For the foregoing reasons and as a matter of law, GB Sciences is entitled to a declaration and
16 mandatory injunction requiring the Division to immediately revoke Desert Aire's Provisional
17 Registration Certification and re-issue it to GB Sciences. GB Sciences is also entitled to summary
18 judgment on the Counterclaim by Desert Aire for attorneys fees.

19 \\\

20 \\\

21 \\\

22 \\\

23
24 ⁶ Certainly, there is no indication that Desert Aire would have simply rolled over, disgorged its Provisional
25 Registration Certificate, and ceased development if it had not been dismissed as a party on April 1, 2015. Rather, it would
26 have actively litigated the issue of entitlement to the Certificate, until a result was obtained. Desert Aire would have also
27 continued to incur the same business start-up costs that it complains that it has incurred while the legal issues were in play.
28 Desert Aire admits that its construction costs and the \$10,000.00 per month in lease payments which Desert Aire
complaints it had to make *began on January 1, 2015, while Desert Aire was a party to the Nuleaf Case and three months
before Desert Aire was dismissed as a party in the case.* See Original Opposition at 3:8-10. Further, Desert Aire
probably had the lease agreement in place even before the Provisional Registration Certificate was improperly issued and
it probably was obligated to making those lease payments, whether it retained its Certificate or not. Thus, the dismissal
did not "cause" Desert Aire to incur those costs.

1 DATED this 8th day of March, 2016.

2 SMITH & SHAPIRO, PLLC

3
4 /s/ James E. Shapiro
James E. Shapiro, Esq.
Nevada Bar No. 7907
5 Sheldon A. Herbert, Esq.
Nevada Bar No. 5988
6 2520 St. Rose Parkway, Suite 220
Henderson, NV 89074
7 *Attorneys for Plaintiff*

8
9 **CERTIFICATE OF SERVICE**

10 I hereby certify that I am an employee of SMITH & SHAPIRO, PLLC, and that on the 8th day
11 of March, 2016, I served a true and correct copy of the forgoing **REPLY TO DESERT AIRE**
12 **WELLNESS LLC'S OPPOSITION TO PLAINTIFF'S/COUNTER- DEFENDANT'S**
13 **MOTION FOR SUMMARY JUDGMENT and OPPOSITION TO COUNTERMOTION FOR**
14 **SUMMARY JUDGMENT AGAINST GB SCIENCES NEVADA, LLC**, by e-serving a copy on
15 all parties registered and listed as Service Recipients in Wiznet, the Court's on-line, electronic filing
16 website, pursuant to Administrative Order 14-2, entered by the Chief Judge, Jennifer Togliatti, on
17 May 9, 2014.

18
19
20 /s/ Jill M. Berghammer
21 An employee of SMITH & SHAPIRO, PLLC
22
23
24
25
26
27
28

EXHIBIT 1

EXHIBIT 1


CLERK OF THE COURT

1 ANSC
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6 Nevada Bar No. 8171
7 Email: djm@juww.com
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10 Las Vegas, Nevada 89169
11 (702) 699-7500 Telephone
12 (702) 699-7555 Facsimile
13 Attorneys for Defendant Wellness
14 Connection of Nevada, LLC

DISTRICT COURT

CLARK COUNTY, NEVADA

11 HENDERSON ORGANIC REMEDIES, LLC,)
12 a Nevada limited liability company,)

13 Plaintiff,)

14 vs.)

15 STATE OF NEVADA, DEPARTMENT OF)
16 HEALTH AND HUMAN SERVICES; CITY)
17 OF HENDERSON, a municipal corporation)
18 and political subdivision of the State of)
19 Nevada, and WELLNESS CONNECTION OF)
20 NEVADA, LLC, a Nevada limited liability)
21 company; DOES 1-10, and ROE ENTITIES)
22 1-10, inclusive,)

23 Defendants.)

Case No. A-14-710193-C
Dept No. XXVIII

WELLNESS CONNECTION OF
NEVADA, LLC'S ANSWER TO
COMPLAINT

21 Defendant Wellness Connection of Nevada, LLC ("Wellness"), by and through its
22 attorneys, Jolley Urg, Woodbury & Little, as and for its Answer to Plaintiff Henderson Organic
23 Remedies, LLC's Complaint ("the Complaint") on file herein, admits, denies and alleges as
24 follows:

IDENTIFICATION OF THE PARTIES

26 1. Answering Paragraph 1 of the Complaint, Wellness is without knowledge or
27 information sufficient to form a belief as to the truthfulness of the allegations contained therein,
28 and therefore denies the same.

2. Answering Paragraph 2 of the Complaint, Wellness admits the allegations contained therein.

3. Answering Paragraph 3 of the Complaint, Wellness admits that Defendant City of Henderson is a municipal corporation and is without knowledge or information sufficient to form a belief as to the truthfulness of the remaining allegations contained therein, and therefore denies the same.

4. Answering Paragraph 4 of the Complaint, Wellness admits the allegations contained therein.

5. Answering Paragraph 5 of the Complaint, Wellness is without knowledge or information sufficient to form a belief as to the truthfulness of the allegations contained therein, and therefore denies the same.

GENERAL ALLEGATIONS

6. Answering Paragraph 6 of the Complaint, Wellness responds that it contains a legal conclusion to which no response is necessary.

7. Answering Paragraph 7 of the Complaint, Wellness responds that it contains a legal conclusion to which no response is necessary.

8. Answering Paragraph 8 of the Complaint, Wellness responds that it contains a legal conclusion to which no response is necessary.

9. Answering Paragraph 9 of the Complaint, Wellness responds that the document referred to therein speaks for itself, and denies any remaining allegations contained therein.

10. Answering Paragraph 10 of the Complaint, Wellness responds that the document referred to therein speaks for itself, and denies any remaining allegations contained therein.

THE CITY OF HENDERSON'S APPLICATION PROCESS

11. Answering Paragraph 11 of the Complaint, Wellness is without knowledge or information sufficient to form a belief as to the truthfulness of the allegations contained therein, and therefore denies the same.

12. Answering Paragraph 12 of the Complaint, Wellness responds that the document referred to therein speaks for itself, and denies any remaining allegations contained therein.

13. Answering Paragraph 13 of the Complaint, Wellness responds that the document referred to therein speaks for itself, and denies any remaining allegations contained therein.

THE DIVISION'S APPLICATION PROCESS

14. Answering Paragraph 14 of the Complaint, Wellness is without knowledge or information sufficient to form a belief as to the truthfulness of the allegations contained therein, and therefore denies the same.

15. Answering Paragraph 15 of the Complaint, Wellness denies the allegations contained therein.

16. Answering Paragraph 16 of the Complaint, Wellness denies the allegations contained therein.

WELLNESS CONNECTION OF NEVADA, LLC'S APPLICATION

17. Answering Paragraph 17 of the Complaint, Wellness is without knowledge or information sufficient to form a belief as to the truthfulness of the allegations contained therein, and therefore denies the same.

18. Answering Paragraph 18 of the Complaint, Wellness denies the allegations contained therein.

19. Answering Paragraph 19 of the Complaint, Wellness admits that it received a letter from representatives of the City of Henderson dated July 31, 2014, the contents of which speaks for itself, denies any remaining allegations contained therein.

20. Answering Paragraph 20 of the Complaint, Wellness admits that staff at the City of Henderson determined that its proposed site was not suitable for a medical marijuana establishment, denies that the Henderson City Council made any suitability determination, admits that it submitted an Appeal of Decision Application Form, and denies any remaining allegations contained therein.

21. Answering Paragraph 21 of the Complaint, Wellness denies the allegations contained therein.

22. Answering Paragraph 22 of the Complaint, Wellness denies the allegations contained therein.

23. Answering Paragraph 23 of the Complaint, Wellness denies that it filed two appeals to the Henderson City Council, admits that a hearing took place on December 2, 2014 before the Henderson City Council, and deny any remaining allegations contained therein.

24. Answering Paragraph 24 of the Complaint, Wellness denies that the documentation referenced therein was required to be provided to the Division and denies any remaining allegations contained therein.

25. Answering Paragraph 25 of the Complaint, Wellness denies that it did not meet the requirements of NRS § 453A.322(3)(a), admits that it received a provisional medical marijuana registration certificate, denies that the Division exceeded its authority, and denies any remaining allegations contained therein.

26. Answering Paragraph 26 of the Complaint, Wellness is without knowledge or information sufficient to form a belief as to the truthfulness of the allegations contained therein, and therefore denies the same.

27. Answering Paragraph 27 of the Complaint, Wellness is without knowledge or information sufficient to form a belief as to the truthfulness of the allegations contained therein, and therefore denies the same.

28. Answering Paragraph 28 of the Complaint, Wellness is without knowledge or information sufficient to form a belief as to the truthfulness of the allegations contained therein, and therefore denies the same.

29. Answering Paragraph 29 of the Complaint, Wellness responds that the averment does not contain allegation of facts capable of being answered but rather a hypothetical and Wellness is therefore without knowledge or information sufficient to form a belief as to the truthfulness of the allegations contained therein, and therefore denies the same.

FIRST CLAIM FOR RELIEF

(Declaratory Relief)

30. Answering Paragraph 30 of the Complaint, Wellness repeats and realleges its answers to each and every preceding paragraph as though fully set forth herein.

1 31. Answering Paragraph 31 of the Complaint, Wellness is without knowledge or
2 information sufficient to form a belief as to the truthfulness of the allegations contained therein,
3 and therefore denies the same.

4 32. Answering Paragraph 32 of the Complaint, Wellness is without knowledge or
5 information sufficient to form a belief as to the truthfulness of the allegations contained therein,
6 and therefore denies the same.

7 33. Answering Paragraph 33 of the Complaint, Wellness denies the allegations
8 contained therein.

9 34. Answering Paragraph 34 of the Complaint, Wellness denies the allegations
10 contained therein.

11 35. Answering Paragraph 35 of the Complaint, Wellness denies the allegations
12 contained therein.

13 36. Answering Paragraph 36 of the Complaint, Wellness denies the allegations
14 contained therein.

15 37. Answering Paragraph 37 of the Complaint, Wellness denies the allegations
16 contained therein.

17 38. Answering Paragraph 38 of the Complaint, Wellness denies the allegations
18 contained therein.

19 39. Answering Paragraph 39 of the Complaint, Wellness denies the allegations
20 contained therein.

21 SECOND CLAIM FOR RELIEF

22 (Injunctive Relief)

23 40. Answering Paragraph 40 of the Complaint, Wellness repeats and realleges its
24 answers to each and every preceding paragraph as though fully set forth herein.

25 41. Answering Paragraph 41 of the Complaint, Wellness is without knowledge or
26 information sufficient to form a belief as to the truthfulness of the allegations contained therein,
27 and therefore denies the same.

28 ///

42. Answering Paragraph 42 of the Complaint, Wellness denies the allegations contained therein.

43. Answering Paragraph 43 of the Complaint, Wellness is without knowledge or information sufficient to form a belief as to the truthfulness of the allegations contained therein, and therefore denies the same.

44. Answering Paragraph 44 of the Complaint, Wellness denies the allegations contained therein.

45. Answering Paragraph 45 of the Complaint, Wellness denies the allegations contained therein.

46. Answering Paragraph 46 of the Complaint, Wellness denies the allegations contained therein.

47. Answering Paragraph 47 of the Complaint, Wellness denies the allegations contained therein.

48. Answering Paragraph 48 of the Complaint, Wellness denies the allegations contained therein.

49. Answering Paragraph 49 of the Complaint, Wellness denies the allegations contained therein.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

Plaintiff's Complaint fails to state a claim upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

Plaintiff lacks standing.

THIRD AFFIRMATIVE DEFENSE

This Court lacks subject matter jurisdiction.

FOURTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred by principles of estoppel.

FIFTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred by principles of laches.

SIXTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred by principles of illegality.

SEVENTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred by the terms of NRS Chapter 453A, including the 90-day deadline for issuance of a medical marijuana registration certificate.

EIGHTH AFFIRMATIVE DEFENSE

Wellness reserves the right to amend this Answer to assert additional affirmative defenses that may become known and available.

NINTH AFFIRMATIVE DEFENSE

Wellness has been required to retain the services of an attorney and has been damaged as a result thereof in the amount of their attorneys' fees and costs incurred and to be incurred.

WHEREFORE, Wellness demands judgment as follows:

1. That Plaintiff take nothing by way of its Complaint;
2. For costs and reasonable attorney's fees; and
3. For such other relief as the Court may deem just and proper.

DATED this 18 day of February, 2015.

JOLLEY URGALAW WOODBURY & LITTLE

By: 

WILLIAM R. URGALAW, ESQ., #1495
DAVID J. MALLEY, ESQ., #8171
3800 Howard Hughes Parkway, Suite 1600
Las Vegas, Nevada 89169
*Attorneys for Defendant Wellness
Connection of Nevada, LLC*

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WOODBURY & LITTLE P.C.
3800 HOWARD HUGHES PARKWAY, SUITE 1600, LAS VEGAS, NV 89169
TELEPHONE: (702) 662-2500 FAX: (702) 662-2555

CERTIFICATE OF SERVICE

I hereby certify that I am employed in the County of Clark, State of Nevada, am over the age of 18 years and not a party to this action. My business address is Jolley Urga Woodbury & Little, 3800 Howard Hughes Parkway, 16th Floor, Las Vegas, Nevada, 89169.

On this day I served the **WELLNESS CONNECTION OF NEVADA, LLC'S ANSWER TO COMPLAINT** in this action or proceeding electronically with the Clerk of the Court via the Odyssey E-File and Serve system, which will cause this document to be served upon the following counsel of record:

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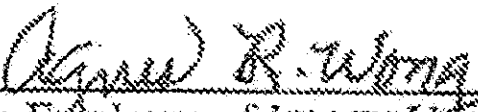
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I certify under penalty of perjury that the foregoing is true and correct, and that I executed this Certificate of Service on February 18, 2015, at Las Vegas, Nevada.


An Employee of JOLLEY URG & WOODBURY & LITTLE



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11 *Attorneys for Nuleaf CLV Dispensary LLC*

12 **DISTRICT COURT**

13 **CLARK COUNTY, NEVADA**

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

16 Plaintiff,

17 v.

18 STATE OF NEVADA, DIVISION OF
19 PUBLIC AND BEHAVIORAL HEALTH OF
20 THE DEPARTMENT OF HEALTH AND
21 HUMAN SERVICES; CITY OF LAS VEGAS,
22 a municipal corporation and political
23 subdivision of the State of Nevada; DESERT
24 AIRE WELLNESS, LLC, a Nevada limited
25 liability company; NULEAF CLV
26 DISPENSARY, LLC, a Nevada limited
27 liability company; DOES 1 through 100; and
28 ROE entities 1 through 100,

Defendants.

Case No.: A-14-710597-C
Dept. No.: XX

**DEFENDANT NULEAF CLV
DISPENSARY LLC'S ANSWER TO
FIRST AMENDED COMPLAINT AND
IN ADDITION, OR IN THE
ALTERNATIVE, FIRST AMENDED
PETITION FOR JUDICIAL REVIEW
AND WRIT OF MANDAMUS**

20 Defendant Nuleaf CLV Dispensary, LLC ("Nuleaf"), by and through its attorneys,
21 Pisanelli Bice PLLC, hereby responds to the First Amended Complaint and in addition, or in the
22 alternative, submits its First Amended Petition for Judicial Review and Writ of Mandamus as
23 follows:

24 **I. PARTIES**

- 25 1. Nuleaf is without sufficient information to form a belief as to the truth or falsity of
26 the allegations contained within Paragraph 1 and therefore denies the same.
- 27 2. Nuleaf admits the allegations contained within Paragraph 2.
- 28 3. Nuleaf admits the allegations contained within Paragraph 3.

1 4. Nuleaf is without sufficient information to form a belief as to the truth or falsity of
2 the allegations contained within Paragraph 4 and therefore denies the same.

3 5. Nuleaf admits the allegations contained within Paragraph 5.

4 6. Nuleaf is without sufficient information to form a belief as to the truth or falsity of
5 the allegations contained within Paragraph 6 and therefore denies the same.

6 7. Paragraph 7 states a legal conclusion to which no response is required. To the extent
7 a response is necessary, Nuleaf denies the allegations contained within Paragraph 7.

8 **II. GENERAL ALLEGATIONS**

9 8. Nuleaf repeats and realleges the responses contained within Paragraphs 1 through 7.

10 **GENERAL STATUTORY AND REGULATORY FRAMEWORK**

11 9. Nuleaf admits the Nevada Legislature passed Senate Bill 374 in 2013. The
12 remainder of Paragraph 9 states a legal conclusion to which no response is required. To the extent
13 a response is necessary, Nuleaf denies the remaining allegations contained within Paragraph 9.

14 10. Nuleaf admits the allegations contained within Paragraph 10.

15 11. Paragraph 11 states a legal conclusion to which no response is required. To the extent
16 a response is necessary, Nuleaf denies the allegations contained within Paragraph 11.

17 12. Nuleaf is without sufficient information to form a belief as to the truth or falsity of
18 the allegations contained within Paragraph 12 and therefore denies the same.

19 13. Nuleaf admits *NRS Chapter 453A* was implemented on or about April 1, 2014. The
20 remainder of Paragraph 13 states a legal conclusion to which no response is required. To the extent
21 a response is necessary, Nuleaf denies the remaining allegations contained within Paragraph 13.

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

23 14. Nuleaf is without sufficient information to form a belief as to the truth or falsity of
24 the allegations contained within Paragraph 14 and therefore denies the same.

25 15. Paragraph 16 states a legal conclusion to which no response is required. To the
26 extent a response is necessary, Nuleaf denies the allegations contained within Paragraph 15.

27 16. Paragraph 16 states a legal conclusion to which no response is required. To the extent
28 a response is necessary, Nuleaf denies the allegations contained within Paragraph 16.

1 17. Nuleaf is without sufficient information to form a belief as to the truth or falsity of
2 the allegations contained within Paragraph 17 and therefore denies the same.

3 18. Nuleaf is without sufficient information to form a belief as to the truth or falsity of
4 the allegations contained within Paragraph 18 and therefore denies the same.

5 19. Nuleaf admits that the City Council of the City of Las Vegas held a meeting on or
6 about October 28, 2014.

7 20. Nuleaf is without sufficient information to form a belief as to the truth or falsity of
8 the allegations contained within Paragraph 20 and therefore denies the same.

9 21. Nuleaf admits Nuleaf was not awarded a Special Use Permit at that time, but denies
10 that it was required to do so. Nuleaf affirmatively notes that by State law, it has 18 months to obtain
11 all required permits. Nuleaf is without sufficient information to form a belief as to the truth or
12 falsity of the remaining allegations within Paragraph 21 and therefore denies the same.

13 22. Nuleaf is without sufficient information to form a belief as to the truth or falsity of
14 the allegations contained within Paragraph 22 and therefore denies the same.

15 23. Nuleaf admits that Nuleaf was notified that it was not granted a Special Use Permit
16 at that time, but denies that it was required to do so. Nuleaf affirmatively notes that by State law,
17 it has 18 months to obtain all required permits. Nuleaf is without sufficient information to form a
18 belief as to the truth or falsity of the remaining allegations within Paragraph 23 and therefore denies
19 the same.

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

21 24. Paragraph 24 states a legal conclusion to which no response is required. To the extent
22 a response is necessary, Nuleaf deny the allegations contained within Paragraph 24.

23 25. Paragraph 25 states a legal conclusion to which no response is required. To the extent
24 a response is necessary, Nuleaf deny the allegations contained within Paragraph 25.

25 26. Paragraph 26 states a legal conclusion to which no response is required. To the extent
26 a response is necessary, Nuleaf deny the allegations contained within Paragraph 26.

27 27. Paragraph 27 states a legal conclusion to which no response is required. To the extent
28 a response is necessary, Nuleaf denies the allegations contained within Paragraph 27.

1 28. Paragraph 28 states a legal conclusion to which no response is required. To the extent
2 a response is necessary, Nuleaf denies the allegations contained within Paragraph 28.

3 29. Nuleaf is without sufficient information to form a belief as to the truth or falsity of
4 the allegations contained within Paragraph 29 and therefore denies the same.

5 30. Nuleaf is without sufficient information to form a belief as to the truth or falsity of
6 the allegations contained within Paragraph 30 and therefore denies the same.

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

8 31. Paragraph 31 states a legal conclusion to which no response is required. To the extent
9 a response is necessary, Nuleaf denies the allegations contained within Paragraph 31.

10 32. Paragraph 32 states a legal conclusion to which no response is required. To the extent
11 a response is necessary, Nuleaf deny the allegations contained within Paragraph 32.

12 33. Paragraph 33 states a legal conclusion to which no response is required. To the extent
13 a response is necessary, Nuleaf denies the allegations contained within Paragraph 33.

14 34. Paragraph 34 states a legal conclusion to which no response is required. To the extent
15 a response is necessary, Nuleaf denies the allegations contained within Paragraph 34.

16 35. Nuleaf admits that the City of Las Vegas is a Nevada city. The remaining allegations
17 in Paragraph 35 call for a legal conclusion to which no response is necessary. To the extent a
18 response is necessary, Nuleaf denied the allegations in Paragraph 35.

19 36. Paragraph 36 states a legal conclusion to which no response is required. To the extent
20 a response is necessary, Nuleaf denies the allegations contained within Paragraph 36.

21 37. Nuleaf is without sufficient information to form a belief as to the truth or falsity of
22 the allegations contained within Paragraph 37 and therefore denies the same.

23 38. Paragraph 38 states a legal conclusion to which no response is required. To the extent
24 a response is necessary, Nuleaf denies the allegations contained within Paragraph 38.

25 39. Nuleaf is without sufficient information to form a belief as to the truth or falsity of
26 the allegations contained within Paragraph 39 and therefore denies the same.

27 40. Paragraph 40 states a legal conclusion to which no response is required. To the extent
28 a response is necessary, Nuleaf denies the allegations contained within Paragraph 40.

1 41. Paragraph 41 states a legal conclusion to which no response is required. To the extent
2 a response is necessary, Nuleaf denies the allegations contained within Paragraph 41.

3 42. Paragraph 42 states a legal conclusion to which no response is required. To the extent
4 a response is necessary, Nuleaf denies the allegations contained within Paragraph 42.

5 43. Paragraph 43 states a legal conclusion to which no response is required. To the extent
6 a response is necessary, Nuleaf denies the allegations contained within Paragraph 43.

7 44. Paragraph 44 states a legal conclusion to which no response is required. To the extent
8 a response is necessary, Nuleaf denies the allegations contained within Paragraph 44.

9 45. Paragraph 45 states a legal conclusion to which no response is required. To the extent
10 a response is necessary, Nuleaf denies the allegations within Paragraph 45.

11 46. Paragraph 46 states a legal conclusion to which no response is required. To the extent
12 a response is necessary, Nuleaf denies the allegations contained within Paragraph 46.

13 47. Nuleaf is without sufficient information to form a belief as to the truth or falsity of
14 the allegations contained within Paragraph 47 and therefore denies the same.

15 48. Nuleaf is without sufficient information to form a belief as to the truth or falsity of
16 the allegations contained within Paragraph 48 and therefore denies the same.

17 49. Nuleaf is without sufficient information to form a belief as to the truth or falsity of
18 the allegations contained within Paragraph 49 and therefore denies the same.

19 50. Nuleaf is without sufficient information to form a belief as to the truth or falsity of
20 the allegations contained within Paragraph 50 and therefore denies the same.

21 51. Nuleaf is without sufficient information to form a belief as to the truth or falsity of
22 the allegations contained within Paragraph 51 and therefore denies the same.

23 PLAINTIFF AND DEFENDANTS' APPLICATIONS

24 52. Nuleaf is without sufficient information to form a belief as to the truth or falsity of
25 the allegations contained within Paragraph 52 and therefore denies the same.

26 53. Nuleaf admits Nuleaf filed an application with the Division. Nuleaf is without
27 sufficient information to form a belief as to the truth or falsity of the remaining allegations within
28 Paragraph 53 and therefore denies the same.

1 54. Nuleaf admits Nuleaf submitted an application to the City of Las Vegas for a Special
2 Use Permit. Nuleaf is without sufficient information to form a belief as to the truth or falsity of the
3 remaining allegations within Paragraph 54 and therefore denies the same.

4 55. Nuleaf is without sufficient information to form a belief as to the truth or falsity of
5 the allegations contained within Paragraph 55 and therefore denies the same.

6 56. Nuleaf admits that its application for a special use permit was denied, but Nuleaf
7 affirmatively notes that by State law, it has 18 months to obtain all required permits. . Nuleaf is
8 without sufficient information to form a belief as to the truth or falsity of the remaining allegations
9 in Paragraph 56 and therefore denies the same.

10 57. Nuleaf is without sufficient information to form a belief as to the truth or falsity of
11 the allegations contained within Paragraph 57 and therefore denies the same.

12 58. Nuleaf is without sufficient information to form a belief as to the truth or falsity of
13 the allegations contained within Paragraph 58 and therefore denies the same.

14 59. Nuleaf is without sufficient information to form a belief as to the truth or falsity of
15 the allegations contained within Paragraph 59 and therefore denies the same.

16 60. Paragraph 60 states a legal conclusion to which no response is required. To the extent
17 a response is necessary, Nuleaf denies the allegations contained within Paragraph 60.

18 61. Nuleaf is without sufficient information to form a belief as to the truth or falsity of
19 the allegations contained within Paragraph 61 and therefore denies the same.

20 62. Nuleaf is without sufficient information to form a belief as to the truth or falsity of
21 the allegations contained within Paragraph 62 and therefore denies the same.

22 63. Paragraph 63 states a legal conclusion to which no response is required. To the extent
23 a response is necessary, Nuleaf denies the allegations contained within Paragraph 63.

24 64. Nuleaf is without sufficient information to form a belief as to the truth or falsity of
25 the allegations contained within Paragraph 64 and therefore denies the same.

26 65. Nuleaf admits Nuleaf received a provisional registration certificate. Nuleaf is
27 without sufficient information to form a belief as to the truth or falsity of the remaining allegations
28 within Paragraph 65 and therefore denies the same.

1 66. Nuleaf denies the allegations of Paragraph 66.

2 67. Paragraph 67 states a legal conclusion to which no response is required. To the extent
3 a response is necessary, Nuleaf is without sufficient information to form a belief as to the truth or
4 falsity of the allegations contained within Paragraph 67 and therefore denies the same.

5 68. Paragraph 68 states a legal conclusion to which no response is required. To the extent
6 a response is necessary, Nuleaf is without sufficient information to form a belief as to the truth or
7 falsity of the allegations contained within Paragraph 68 and therefore denies the same.

8 **DIVISION'S REFUSAL TO IDENTIFY NEXT HIGHEST RANKED APPLICANT**

9 69. Nuleaf is without sufficient information to form a belief as to the truth or falsity of
10 the allegations contained within Paragraph 69 and therefore denies the same.

11 70. Paragraph 70 states a legal conclusion to which no response is required. To the extent
12 a response is necessary, Nuleaf is without sufficient information to form a belief as to the truth or
13 falsity of the allegations contained within Paragraph 70 and therefore denies the same.

14 71. Nuleaf is without sufficient information to form a belief as to the truth or falsity of
15 the allegations contained within Paragraph 71 and therefore denies the same.

16 72. Paragraph 72 states a legal conclusion to which no response is required. To the extent
17 a response is necessary, Nuleaf is without sufficient information to form a belief as to the truth or
18 falsity of the allegations contained within Paragraph 72 and therefore denies the same.

19 **THE CITY OF LAS VEGAS' SUBSEQUENT PROCESSING OF DESERT AIRE**
20 **AND NULEAF'S APPLICATIONS**

21 73. Nuleaf is without sufficient information to form a belief as to the truth or falsity of
22 the allegations contained within Paragraph 73 and therefore denies the same.

23 74. Nuleaf is without sufficient information to form a belief as to the truth or falsity of
24 the allegations contained within Paragraph 74 and therefore denies the same.

25 75. Nuleaf is without sufficient information to form a belief as to the truth or falsity of
26 the allegations contained within Paragraph 75 and therefore denies the same.

1 76. Paragraph 76 states a legal conclusion to which no response is required. To the extent
2 a response is necessary, Nuleaf is without sufficient information to form a belief as to the truth or
3 falsity of the allegations contained within Paragraph 76 and therefore denies the same.

4 77. Nuleaf is without sufficient information to form a belief as to the truth or falsity of
5 the allegations contained within Paragraph 77 and therefore denies the same.

6 78. Nuleaf is without sufficient information to form a belief as to the truth or falsity of
7 the allegations contained within Paragraph 78 and therefore denies the same.

8 79. Nuleaf is without sufficient information to form a belief as to the truth or falsity of
9 the allegations contained within Paragraph 79 and therefore denies the same.

10 80. Nuleaf admits the allegations contained within Paragraph 80.

11 81. Nuleaf admits the allegations contained within Paragraph 81.

12 82. Nuleaf admits that the City Council for Las the City of Las Vegas denied Nuleaf's
13 request for a Special Use Permit at that time. Nuleaf is without sufficient information to form a
14 belief as to the truth or falsity of the remaining allegations within Paragraph 82 and therefore denies
15 the same.

16 83. Nuleaf admits the Division issued Nuleaf a provisional registration certificate. The
17 remainder of Paragraph 83 states a legal conclusion to which no response is required. To the extent
18 a response is necessary, Nuleaf denies the allegations contained within Paragraph 83.

19 84. Nuleaf admits the allegations contained within Paragraph 84.

20 85. Nuleaf denies the allegations contained within Paragraph 85.

21 86. Paragraph 86 contains argumentation and opinions to which no response is required.
22 To the extent a response is necessary, Nuleaf denies the allegations contained within Paragraph 86.

23 87. Paragraph 86 contains argumentation and opinions to which no response is required.
24 To the extent a response is necessary, Nuleaf denies the allegations contained within Paragraph 87.

25 **III. FIRST CLAIM FOR RELIEF**

26 **(Declaratory Judgment)**

27 88. Nuleaf repeats and realleges the responses contained within Paragraphs 1
28 through 87.

- 1 89. Nuleaf denies the allegations contained within Paragraph 89.
- 2 90. Nuleaf denies the allegations contained within Paragraph 90.
- 3 91. Nuleaf denies the allegations contained within Paragraph 91.
- 4 92. Paragraph 92 is a statement to which no response is required. To the extent a
5 response is necessary, Nuleaf denies the allegations contained within Paragraph 92.
- 6 93. Paragraph 93 is a statement to which no response is required. To the extent a
7 response is necessary, Nuleaf denies the allegations contained within Paragraph 93.
- 8 94. Paragraph 94 is a statement to which no response is required. To the extent a
9 response is necessary, Nuleaf denies the allegations contained within Paragraph 94.
- 10 95. Paragraph 95 is a statement to which no response is required. To the extent a
11 response is necessary, Nuleaf denies the allegations contained within Paragraph 95.
- 12 96. Paragraph 96 is a statement to which no response is required. To the extent a
13 response is necessary, Nuleaf denies the allegations contained within Paragraph 96.
- 14 97. Paragraph 97 is a statement to which no response is required. To the extent a
15 response is necessary, Nuleaf denies the allegations contained within Paragraph 97.
- 16 98. Paragraph 98 is a statement to which no response is required. To the extent a
17 response is necessary, Nuleaf denies the allegations contained within Paragraph 98.
- 18 99. Paragraph 99 is a statement to which no response is required. To the extent a
19 response is necessary, Nuleaf denies the allegations contained within Paragraph 99.
- 20 100. Paragraph 100 is a statement to which no response is required. To the extent a
21 response is necessary, Nuleaf denies the allegations contained within Paragraph 100.
- 22 101. Paragraph 101 is a statement to which no response is required. To the extent a
23 response is necessary, Nuleaf denies the allegations contained within Paragraph 101.
- 24 102. Paragraph 102 is a statement to which no response is required. To the extent a
25 response is necessary, Nuleaf denies the allegations contained within Paragraph 102.
- 26 103. Paragraph 103 is a statement to which no response is required. To the extent a
27 response is necessary, Nuleaf denies the allegations contained within Paragraph 103.
- 28 104. Nuleaf denies the allegations contained within Paragraph 104.

IV. SECOND CLAIM FOR RELIEF

(Injunctive Relief)

105. Nuleaf repeats and realleges the responses contained within Paragraphs 1 through 104.

106. Nuleaf denies the allegations contained within Paragraph 106.

107. Nuleaf denies the allegations contained within Paragraph 107.

108. Nuleaf denies the allegations contained within Paragraph 108.

109. Nuleaf denies the allegations contained within Paragraph 109.

110. Nuleaf denies the allegations contained within Paragraph 110.

111. Nuleaf denies the allegations contained within Paragraph 111.

112. Nuleaf denies the allegations contained within Paragraph 112.

113. Nuleaf denies the allegations contained within Paragraph 113 and all subparts.

114. Nuleaf denies the allegations contained within Paragraph 114 and all subparts.

115. Nuleaf denies the allegations contained within Paragraph 115.

PETITION FOR JUDICIAL REVIEW

116. Nuleaf repeats and realleges the responses contained within Paragraphs 1 through 115.

117. Nuleaf is without sufficient information to form a belief as to the truth or falsity of the allegations contained within Paragraph 117 and therefore denies the same.

118. Paragraph 118 states a legal conclusion to which no response is required. To the extent a response is necessary, Nuleaf denies the allegations contained within Paragraph 118.

119. Paragraph 119 states a legal conclusion to which no response is required. To the extent a response is necessary, Nuleaf denies the allegations contained within Paragraph 119.

120. Nuleaf is without sufficient information to form a belief as to the truth or falsity of the allegations contained within Paragraph 120 and therefore denies the same.

121. Nuleaf is without sufficient information to form a belief as to the truth or falsity of the allegations contained within Paragraph 121 and therefore denies the same.

- 1 122. Nuleaf is without sufficient information to form a belief as to the truth or falsity of
2 the allegations contained within Paragraph 122 and therefore denies the same.
- 3 123. Paragraph 123 states a legal conclusion to which no response is required. To the
4 extent a response is necessary, Nuleaf denies the allegations contained within Paragraph 123.
- 5 124. Paragraph 124 states a legal conclusion to which no response is required. To the
6 extent a response is necessary, Nuleaf denies the allegations contained within Paragraph 124.
- 7 125. Paragraph 125 states a legal conclusion to which no response is required. To the
8 extent a response is necessary, Nuleaf denies the allegations contained within Paragraph 125.
- 9 126. Paragraph 126 is a statement to which no response is required. To the extent a
10 response is necessary, Nuleaf denies the allegations contained within Paragraph 126.
- 11 127. Paragraph 127 is a statement to which no response is required. To the extent a
12 response is necessary, Nuleaf denies the allegations contained within Paragraph 127.
- 13 PETITION FOR WRIT OF MANDAMUS
- 14 128. Nuleaf repeats and realleges the responses contained within Paragraphs 1
15 through 127.
- 16 129. Paragraph 129 states a legal conclusion to which no response is required. To the
17 extent a response is necessary, Nuleaf denies the allegations contained within Paragraph 129.
- 18 130. Paragraph 130 states a legal conclusion to which no response is required. To the
19 extent a response is necessary, Nuleaf denies the allegations contained within Paragraph 130.
- 20 131. Paragraph 131 states a legal conclusion to which no response is required. To the
21 extent a response is necessary, Nuleaf denies the allegations contained within Paragraph 131.
- 22 132. Paragraph 132 states a legal conclusion to which no response is required. To the
23 extent a response is necessary, Nuleaf denies the allegations contained within Paragraph 132.
- 24 133. Nuleaf denies the allegations contained within Paragraph 133.
- 25 134. Paragraph 134 is a statement to which no response is required. To the extent a
26 response is necessary, Nuleaf denies the allegations contained within Paragraph 134.
- 27
- 28

AFFIRMATIVE DEFENSES

1. That Plaintiffs/Petitioners' First Amended Complaint and in Addition, or in the Alternative, First Amended Petition for Judicial Review and Writ of Mandamus fails to state a claim for which relief can be granted.

2. Plaintiffs/Petitioners lack standing.

3. This Court lacks subject matter jurisdiction.

4. Plaintiffs/Petitioners' claims are barred by principles of estoppel.

5. Plaintiffs/Petitioners' claims are barred by principles of laches.

6. Plaintiffs/Petitioners' claims are barred by principles of illegality.

7. Plaintiffs/Petitioners' claims are barred by the terms of NRS Chapter 453A, including the 90-day deadline for issuance of Certificates.

8. Nuleaf reserves the right to amend this Answer to assert additional affirmative defenses that may become known and available.

WHEREFORE, Nuleaf prays as follows:

1. That Plaintiffs/Petitioners take nothing by virtue of their Amended Complaint;

2. That judgment be entered in favor of Nuleaf and against Plaintiff/Petitioners;

3. That Nuleaf be awarded their full and proper attorneys' fees and costs; and

4. For such other and further relief as the Court deems just and proper.

DATED this 5th day of October, 2015.

PISANELLI BICE PLLC

By: /s/ Todd L. Bice

Todd L. Bice, Esq., Bar No. 4534
Jordan T. Smith, Esq., Bar No. 12097
400 South 7th Street, Suite 300
Las Vegas, Nevada 89101

Attorneys for Nuleaf CLV Dispensary LLC

PISANELLI BICE PLLC
400 SOUTH 7th STREET, SUITE 300
LAS VEGAS, NEVADA 89101

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of PISANELLI BICE PLLC, and that on this 5th day of October, 2015, I caused to be served a true and correct copy of the above and foregoing DEFENDANT NULEAF CLV DISPENSARY LLC'S ANSWER TO FIRST AMENDED COMPLAINT AND IN ADDITION, OR IN THE ALTERNATIVE, FIRST AMENDED PETITION FOR JUDICIAL REVIEW AND WRIT OF MANDAMUS to the following via the Court's Wiznet e-filing system:

Catherine Cortez-Masto
Attorney General
Linda C. Anderson, Nevada Bar #4090
Chief Deputy Attorney General
555 E. Washington Ave., #3900
Las Vegas, NV 89101

Attorneys for The State of Nevada

Michael V. Cristalli, Esq.
Dylan T. Ciciliano, Esq.
GORDON SILVER
3960 Howard Hughes Pkwy., 9th Floor
Las Vegas, NV 89169

Attorneys for Desert Aire Wellness, LLC

Jeffery A. Bendavid, Esq.
MORAN BRANDON BENDAVID MORAN
630 S. Fourth Street
Las Vegas, NV 89101

Attorney for GB Science Nevada LLC

/s/ Shannon Thomas
An employee of PISANELLI BICE PLLC

EXHIBIT 2

EXHIBIT 2


CLERK OF THE COURT

VDSM
JEFFERY A. BENDAVID, ESQ.
Nevada Bar No. 6220
JOHN T. MORAN, III, ESQ.
Nevada Bar No. 7453
MORAN BRANDON BENDAVID MORAN
630 South 4th Street
Las Vegas, Nevada 89101
(702) 384-8424
Attorneys for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

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

Plaintiff,

v.

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

Defendants.

CASE NO: A-14-710597-C
DEPT. NO: XX

NOTICE OF VOLUNTARY
DISMISSAL WITHOUT
PREJUDICE OF DEFENDANT
DESERT AIRE WELLNESS, LLC,
ONLY

Comes now Plaintiff, by and through its attorney of record, JEFFERY BENDAVID,
ESQ. of MORAN BRANDON BENDAVID MORAN, and pursuant to N.R.C.P. 41(a)(1)(i),
voluntarily dismisses, without prejudice, the above-captioned matter against Defendant,

///

///



MORAN BRANDON
BENDAVID MORAN
ATTORNEY AT LAW

630 SOUTH 4TH STREET
LAS VEGAS, NEVADA 89101
PHONE: (702) 384-8424
FAX: (702) 384-8424

1 DESERT AIRE WELLNESS, LLC, *only*, a Nevada limited liability company.

2 DATED this 1st day of April, 2015.

3
4 MORAN BRANDON BENDAVID MORAN

5
6 /s/: Jeffery A. Bendavid, Esq.
JEFFERY A. BENDAVID, ESQ.

7 Nevada Bar No. 6220

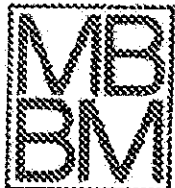
8 JOHN T. MORAN, III, ESQ.

Nevada Bar No. 7453

9 630 South 4th Street

10 Las Vegas, Nevada 89101

Attorneys for Plaintiff

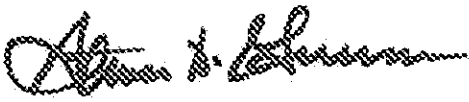


MORAN BRANDON
BENDAVID MORAN
Attorneys at Law

630 South 4th Street
Las Vegas, Nevada 89101
Phone: (702) 388-8924
Fax: (702) 388-8928

EXHIBIT 3

EXHIBIT 3


CLERK OF THE COURT

1 MAMC
James E. Shapiro, Esq.
2 Nevada Bar No. 7907
Sheldon A. Herbert, Esq.
3 Nevada Bar No. 5988
SMITH & SHAPIRO, PLLC
4 2520 St. Rose Parkway, Suite 220
Henderson, NV 89074
5 (702) 318-5033
Attorneys for Plaintiff

DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiff,

10 vs.

Case No. A-14-710597-C
Dept. No. XX

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

16 Defendants.

17
18 PLAINTIFF'S MOTION FOR LEAVE TO AMEND
19 FIRST AMENDED COMPLAINT

20 COMES NOW Plaintiff GB SCIENCES NEVADA, LLC, a Nevada limited liability company
21 ("GB Sciences"), by and through its attorneys of record, SMITH & SHAPIRO, PLLC, and files its
22 Motion for Leave to Amend First Amended Complaint (the "Motion").

23 This Motion is made necessary due to the fact that another party, ACRES MEDICAL, LLC
24 ("Acres Medical") intervened in this case on November 9, 2015 and the Court granted GB Sciences'
25 Motion for Summary Judgment, in part, but awarded the Provisional Certificate at issue to Acres
26 Medical.

27 \\\

28 \\\

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

1 This Motion is made and based upon the pleadings and papers on file herein, the attached
2 Exhibits, the attached proposed Second Amended Complaint, and the following points and authorities
3 submitted in support hereof.

4 DATED this 16th day of November, 2015.

5 SMITH & SHAPIRO, PLLC

6
7 /s/ James E. Shapiro, Esq.
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*

11 NOTICE OF MOTION

12 TO: ALL PARTIES OF INTEREST:

13 PLEASE TAKE NOTICE that the undersigned will bring the above and foregoing
14 PLAINTIFF'S MOTION FOR LEAVE TO AMEND FIRST AMENDED COMPLAINT before
15 Department No. XX of the EIGHTH JUDICIAL DISTRICT COURT on the 23 day of
16 DEC, 2015, at 8:30 A.m. or as soon thereafter as counsel can be heard.

17 Dated this 16th day of November, 2015.

18 SMITH & SHAPIRO, PLLC

19
20 /s/ James E. Shapiro
21 James E. Shapiro, Esq.
22 Nevada Bar No. 7907
23 Sheldon A. Herbert, Esq.
24 Nevada Bar No. 5988
25 2520 St. Rose Parkway, Suite 220
26 Henderson, NV 89074
27 *Attorneys for Plaintiff*

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2520 St. Rose Parkway, Suite 220
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(702) 318-5033

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

1 MEMORANDUM OF POINTS AND AUTHORITIES

2 I.

3 STATEMENT OF FACTS

4 A. MEDICAL MARIJUANA LAWS AND APPLICATION PROCESSES.

5 In 2013, Senate Bill 374 was passed which provided for the registration of medical marijuana
6 establishments authorized to cultivate or dispense marijuana or manufacture edible marijuana products
7 or marijuana-infused products for sale to persons authorized to engage in the medical use of marijuana.
8 Senate Bill 374 was codified into NRS Chapter 453A. Under NRS § 453A.320 et seq., Defendant
9 STATE OF NEVADA, DEPARTMENT OF HEALTH AND HUMAN SERVICES (the "Division")
10 was tasked with processing and ranking applications for Medical Marijuana Establishments ("MMEs")
11 for each local jurisdiction in Nevada. There were three types of MME's, Dispensaries, Cultivation
12 Facilities, and Production Facilities. The MME at issue in this lawsuit is a Dispensary. The Division,
13 as well as the local jurisdiction, played a role in the ultimate licensing of MMEs. Specifically, the local
14 jurisdiction was tasked with considering issues such as site plans, zoning and proximity to other
15 business or facilities while the Division focused on public health, public safety, and marijuana as a
16 medicine.

17 Around the time that N.R.S. § 453A.322 was enacted, Senator Tick Segerblom called a meeting
18 of the Advisory Commission on the Administration of Justice's Subcommittee on the Medical Use of
19 Marijuana. During that meeting, Chad Westom of the Division stated that the Division "will receive
20 all the applications of people who apply across the state. [The Division] would come up with the
21 highest . . . rankings in Clark County and issue provisional certificates." Mr. Westom went on to state
22 that ". . . the State process was merit based and it followed the statutes and regulations." Mr. Westom
23 made it very clear that the intent behind the law was that if one of the highest ranked applicants was
24 denied, the Division would issue a provisional registration certificate (a "Provisional Certificate") to
25 the next ranked applicant.

26 In accordance with its responsibilities, Defendant CITY OF LAS VEGAS ("City of Las Vegas")
27 enacted Ordinance No. 6321 and 6324 to establish zoning regulations, licensing regulations, and
28 standards for MME locations. In addition, the City of Las Vegas issued a Medical Marijuana Business

1 License Application Form (the "Las Vegas Application"). The Division issued its own application
2 packet (the "Division Application"), which provided a detailed explanation as to what was required to
3 be contained within each application. While the Division was allowed to *accept* all applications
4 submitted, under N.R.S. § 453A.322, the Division could only issue a Provisional Certificate if the
5 applicant's application included six (6) specific items and if the applicant otherwise met the
6 requirements established by N.R.S. Chapter 453A. One of the six (6) items required by law before the
7 Division could issue a Provisional Certificate is found in N.R.S. § 453A.322(3)(a)(5), which requires
8 the applicant to obtain preliminary zoning approval ("Zoning Approval").

9 **B. DEFENDANTS NULEAF AND DESERT AIRE FAILED TO SATISFY THE MME**
10 **LAWS.**

11 Defendants NuLeaf CLV Dispensary, LLC ("NuLeaf") and Desert Aire Wellness, LLC
12 ("Desert Aire") were two of the applicants for an MME Dispensary License in the City of Las Vegas.
13 The City of Las Vegas was allotted twelve (12) MME registration certificates by the Division. Among
14 the applicants for the certificates allotted to the City of Las Vegas, NuLeaf was ranked No. 3 by the
15 Division and Desert Aire was ranked No. 10.

16 On September 23, 2014, the City of Las Vegas Planning Commission recommended denial of
17 NuLeaf's request for a special use permit on a 4-0-2 vote. NuLeaf also received 70 separate protests
18 for its application. On October 28-29, 2014, the Las Vegas City Council held a special meeting to
19 consider each applicant for a special use permit and compliance permit for an MME Dispensary. The
20 City of Las Vegas denied special use permits and compliance permits to ten (10) applicants, including
21 NuLeaf. Desert Aire had withdrawn its applications prior to the special meeting.

22 On or about October 30, 2014, the City of Las Vegas sent a letter to the Division notifying the
23 Division that NuLeaf's application for a special use permit and compliance permit from the City of Las
24 Vegas had been denied and that Desert Aire had withdrawn its applications. Yet, notwithstanding the
25 fact that the Division had been notified that NuLeaf and Desert Aire did not meet the requirements of
26 NRS § 453A.322(3)(a), the Division inappropriately issued Provisional Certificates for MME
27 Dispensaries to NuLeaf and Desert Aire, in violation of its authority and in violation of NRS §
28

1 453A.322(3)(a)(5). The issuance of the Provisional Certificates to NuLeaf and Desert Aire were clear
2 error by the Division.

3 **C. GB SCIENCES FOLLOWED THE MME LAWS.**

4 Meanwhile, unlike NuLeaf and Desert Aire, on October 9, 2014, the City of Las Vegas Planning
5 Commission had recommended approval of Plaintiff's request for a special use permit. Further, unlike
6 NuLeaf and Desert Aire, on October 28-29, 2014, the City of Las Vegas approved twenty-seven
7 applications for special use permits and compliance permits, including Plaintiff's application.
8 However, on or about November 3, 2014, Plaintiff received notification from the Division that it was
9 not issued a Provisional Certificate due to the fact that it was not ranked in the top 12 by the Division.
10 Rather, the Plaintiff was ranked No. 13 by the Division.

11 The Plaintiff fully complied with all requirements of the City of Las Vegas and the Division for
12 the establishment of a MME. If the Division had complied with NRS § 453A.322(3)(a) and
13 disqualified NuLeaf and Desert Aire due to their failure to comply with NRS § 453A.322(3)(a)(5), the
14 Plaintiff would have been ranked 11th in the Division's ranking and would, therefore, have received a
15 Provisional Certificate from the Division.

16 **D. THIS LITIGATION.**

17 Accordingly, on or about December 2, 2014, GB Sciences filed a Complaint against the
18 Division, NuLeaf, and Desert Aire for declaratory and injunctive relief, a petition for judicial review,
19 and a petition for writ of mandamus, to essentially enjoin the Division from issuing actual Registration
20 Certificates to NuLeaf and Desert Aire and to issue a Provisional Certificate to Plaintiff, instead, as the
21 next highest ranking eligible candidate. On or about December 5, 2014, Plaintiff filed its First
22 Amended Complaint to include the City of Las Vegas. On or about December 11, 2014, Plaintiff also
23 filed a Motion for Preliminary and Permanent Injunction, which was heard and denied on December
24 31, 2014.

25
26 \\\

27 \\\

28 \\\

1 On or about January 23, 2015, the City of Las Vegas was dismissed, without prejudice. On or
2 about April 1, 2015, Desert Aire was also dismissed as a defendant in this case, without prejudice,
3 because Plaintiff determined at the time that Desert Aire was not a necessary party as Plaintiff would
4 still be in the "top 12 applicants" for the City of Las Vegas even if Desert Aire did not lose its
5 Provisional Certificate as long as NuLeaf was eliminated.

6 **E. ACRES MEDICAL'S INTERVENTION.**

7 On or about October 19, 2015, Acres Medical, LLC ("Acres Medical") filed a Motion to
8 Intervene in this case. Acres Medical had also applied for an MME Dispensary Provisional
9 Registration Certificate with the Division but had not been ranked within the "top 12 candidates" for
10 the City of Las Vegas due to what Acres Medical claims was a calculation error.

11 Acres Medical had filed its own action for a re-scoring of Acres' points and re-ranking of Acres
12 by the Division, styled Acres Medical, LLC et al. v. Nevada Department of Health and Human Services
13 et al., being Eighth Judicial District Court Case No. A719637 (the "Acres Case"). Apparently on or
14 about October 8, 2015, the Court in the Acres Case granted Acres Medical's petition for writ of
15 mandamus compelling the Division to re-score Acres Medical's application, thus making it No. 13
16 among the candidates for Provisional Certificates allocated to the City of Las Vegas.

17 On or about November 9, 2015, the Court granted Acres Medical's Motion to Intervene.
18 Consequently, a new party, Acres Medical, was brought into the case to compete with the Plaintiff for
19 a position among the Provisional Certificates allocated to the City of Las Vegas. Moreover, on or about
20 November 13, 2015, the Court granted GB Science's Motion for Summary Judgment, in part, stripping
21 NuLeaf of its Provisional Certificate. However, the Court awarded that Provisional Certificate to Acres
22 Medical. Accordingly, it is clear that Desert Aire is, once again, a necessary party to this action.

23 Therefore, for the following reasons, the Plaintiff should be permitted to amend its Complaint
24 to bring Desert Aire back into the case as a party, along with the City of Las Vegas.¹

25 \ \ \

26
27
28 ¹ The City of Las Vegas must be brought in so that the Court can issue a mandatory injunction against the City,
compelling it to toll its various deadlines for MME Dispensary licenses with respect to Plaintiff, which has been harmed
and delayed due to the Division's failure to timely issue a Provisional Certificate to the Plaintiff.

II.

LEGAL AUTHORITY

A. LEGAL STANDARD TO AMEND PLEADINGS.

N.R.C.P. 15(a) governs those situations in which a party has a right to amend its pleading. N.R.C.P. 15(a) specifically states:

A party may amend the party's pleading once as a matter of course at any time before a responsive pleading is served or, if the pleading is one to which no responsive pleading is permitted and the action has not been placed upon the trial calendar, the party may so amend it at any time within 20 days after it is served. Otherwise a party may amend the party's pleading only by leave of court or by written consent of the adverse party; and leave shall be freely given when justice so requires.

As N.R.C.P. 15(a) states, "leave shall be freely given when justice so requires." A motion for leave to amend is clearly within the discretion of the trial court. Adamson v. Bowker, 85 Nev. 115, 120, 450 P.2d 796, 800 (1969); *see also* Connell v. Carl's Air Condition, 97 Nev. 436, 439, 634 P.2d 673, 675 (1981) (*citing Adamson v. Bowker*, 85 Nev. 115, 450 P.2d 796 (1969)) (A motion for leave to amend pursuant to NRCP 15(a) is addressed to the sound discretion of the trial court, and its action will not be held to be error in the absence of a showing of abuse of discretion).

The Nevada Supreme Court has held "that in the absence of any apparent or declared reason—such as undue delay, bad faith, or dilatory motive on the part of the movant—the leave sought should be freely given." Stephens v. Southern Nev. Music Co., 89 Nev. 104, 105-106 (1973) (*citing Foman v. Davis*, 371 U.S. 178 (1962)).

B. PLAINTIFF SHOULD BE PERMITTED TO AMEND ITS COMPLAINT.

In this case, as it stood before the Motion to Intervene, Plaintiff and NuLeaf were competing for the 12th MME Dispensary Provisional Certificate allocated the City of Las Vegas. However, with the intervention of Acres Medical, Acres Medical was also competing for that Provisional Certificate. Now that the Court has stripped NuLeaf of its Provisional Certificate and awarded it to Acres Medical, Plaintiff will need to amend its complaint to assert claims against Desert Aire and Acres Medical. Desert Aire never properly qualified for a Provisional Certificate, in the first instance, and now an additional MME Dispensary Provisional Certificate will need to be made available. Further, Plaintiff has additional claims against Acres Medical that it should be allowed to assert and prosecute.

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1 Therefore, Plaintiff will need to amend its complaint to bring Desert Aire back into the case as
2 a Defendant which received a Provisional Certificate without qualifying for the same. Plaintiff will also
3 need to bring back the City of Las Vegas as a party to the case, so that the Court can issue a mandatory
4 injunction against the City, compelling it to toll its various deadlines for MME Dispensary licenses with
5 respect to Plaintiff. Finally, Plaintiff will need to amend its complaint to assert its claims against Acres
6 Medical. A true and correct copy of the proposed Second Amended Complaint is attached hereto as
7 Exhibit "I" and incorporated by this reference herein.

8 Plaintiff is not guilty of bad faith or delay, but has brought this Motion to Amend as a result of
9 very recent developments and changed circumstances which make amendments to the pleadings
10 necessary. Therefore, the Motion to Amend should be granted.

11 III

12 CONCLUSION

13 Based upon the foregoing points and authorities, the Plaintiff respectfully requests that the Court
14 grant the Plaintiff leave to amend its Complaint to assert cross-claims against Acres Medical and to
15 bring Desert Aire and the City of Las Vegas back into the case and re-assert claims against Desert Aire
16 and the City of Las Vegas.

17 DATED this 16th day of November, 2015.

18 SMITH & SHAPIRO, PLLC

19
20 /s/ James E. Shapiro, Esq.
James E. Shapiro, Esq.
Nevada Bar No. 7907
Sheldon A. Herbert, Esq.
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CERTIFICATE OF SERVICE

I hereby certify that I am an employee of SMITH & SHAPIRO, PLLC, and that on the 16th day of November, 2015, I served a true and correct copy of the forgoing PLAINTIFF'S MOTION FOR LEAVE TO AMEND FIRST AMENDED COMPLAINT, by e-serving a copy on all parties registered and listed as Service Recipients in Wiznet, the Court's on-line, electronic filing website, pursuant to Administrative Order 14-2, entered by the Chief Judge, Jennifer Togliatti, on May 9, 2014.

/s/ Jill M. Berghammer

An employee of SMITH & SHAPIRO, PLLC

EXHIBIT 1

EXHIBIT 1

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1 ACOM
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Attorneys for Plaintiff

6 DISTRICT COURT

7 CLARK COUNTY, NEVADA

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

10 Plaintiff,

vs.

Case No. A-14-710597-C
Dept. No. XX

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

17 Defendants.

18
19 PLAINTIFF'S SECOND AMENDED COMPLAINT, AND, IN ADDITION, OR, IN THE
20 ALTERNATIVE, SECOND AMENDED PETITION FOR JUDICIAL REVIEW AND
WRIT OF MANDAMUS

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

25 PARTIES

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

28 \\\

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

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

4. Upon information and belief, Defendant NULEAF CLV DISPENSARY, LLC ("Nuleaf") is a Nevada limited liability company doing business in Clark County, Nevada.

5. Upon information and belief, Defendant ACRES MEDICAL, LLC ("Acres Medical") is a Nevada limited liability company doing business in Clark County, Nevada.

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

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

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

GENERAL ALLEGATIONS

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

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

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

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

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

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

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

CITY OF LAS VEGAS' APPROVAL PROCESS

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

17. In addition to the responsibilities of the Division, the City of Las Vegas, like several other Nevada cities, towns, and counties, was tasked with the responsibility of considering and approving "local" issues related to the registration of a Medical Marijuana Establishment such as "site

1 plans, project descriptions, zoning, and proximity to other business or facilities," as well as business
2 licensing.

3 18. In accordance with such responsibilities, the City Council of the City of Las Vegas
4 enacted Ordinance No. 6321 to establish zoning regulations and standards for medical marijuana
5 establishments.

6 19. The City Council of the City of Las Vegas also enacted Ordinance No. 6324 to establish
7 licensing regulations and standards for medical marijuana establishments.

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

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

13 22. Plaintiff and Defendants Nuleaf, Desert Aire, and Acres Medical were four (4) of the
14 applicants.

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

17 24. The City of Las Vegas granted a special use permit to twenty-seven (27) applicants,
18 including Plaintiff.

19 25. The City of Las Vegas denied ten (10) applicants, including Nuleaf, a Special Use
20 Permit.

21 26. Six applicants, including Desert Aire withdrew their applications prior to the City
22 Council's October 28, 2014 special meeting.

23 27. Upon information and belief, the City of Las Vegas thereafter informed the Division of
24 those applicants granted a special use permit and those applicants denied a special use permit by the
25 City of Las Vegas.

26 ///

27 ///

28 ///

THE DIVISION'S APPLICATION AND APPROVAL PROCESS

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

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

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

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

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

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

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

THE DIVISION'S ISSUANCE OF PROVISIONAL CERTIFICATES

35. NRS 453A.322(3) required the Division to register a medical marijuana establishment applicant, issue a medical marijuana establishment registration certificate, and issue a random 20-digit alphanumeric identification number not later than 90 days from the Division's receipt of an application only if such an application for a medical marijuana establishment contained the specific items required

1 by NRS 453A.322(3)(a), which among other items, included the necessary prior zoning approvals from
2 the applicable local jurisdiction identified in NRS 453A.322(3)(a)(5).

3 36. However, the requirements of NRS 453A.322(3) and the Division's ability to issue a
4 medical marijuana registration certificate were subject expressly to the exceptions set forth in NRS
5 453A.326.

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

9 38. The City of Las Vegas is a Nevada city that enacted ordinances for the zoning and
10 business licensing of medical marijuana establishments.

11 39. As such, NRS 453A.326(3) required that the Division ensure compliance with NRS
12 453A.326(3)(5).

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

18 **PLAINTIFF AND DEFENDANTS' APPLICATIONS**

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

22 42. Plaintiff, Desert Aire, Nuleaf, and Acres were among these applicants to the Division.

23 43. Prior to submitting an application to the Division, Plaintiff, Desert Aire, Nuleaf, and
24 Acres each submitted an application to the City of Las Vegas for a Special Use Permit and a Business
25 License as required by the City of Las Vegas' newly enacted ordinances.

26 44. However, Desert Aire subsequently withdrew its application before the City of Las
27 Vegas and never obtained the required the Special Use Permit or Business License from the City of Las
28 Vegas prior to November 3, 2014.

1 45. After an October 29, 2014 special meeting, the City Council of the City of Las Vegas
2 denied Nuleaf's application for a Special Use Permit.

3 46. To the contrary, Plaintiff received a Special Use Permit for the operation of medical
4 marijuana dispensary from the City of Las Vegas and further, its application for Business License was
5 recommended for approval.

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

9 48. Upon information and belief, the City of Las Vegas informed the Division of those
10 applicants that it approved for a Special Use Permit, which included Plaintiff, and those applicants that
11 it denied a Special Use Permit, which included Nuleaf, or otherwise had withdrawn their applications,
12 which included Desert Aire.

13 49. Upon information and belief, the Division, upon receipt of the 49 applications for the
14 operation of a medical marijuana dispensary in the City of Las Vegas, never made the required initial
15 determination that each application for the operation of a medical marijuana dispensary was complete.

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

20 51. As a result, the Division improperly ranked the applications of Desert Air and Nuleaf
21 against the acceptable criteria.

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

25 53. At the same time, Plaintiff discovered that the Division ranked and issued provisional
26 registration certificate to Desert Aire (ranked #10) and Nuleaf (ranked #3 even though each were denied
27 and/or failed to obtain the required Special Use Permit and Business License from the City of Las
28 Vegas.

1 54. Had the Division complied with the express requirements of NRS 453A.322(3), NAC
2 453A.310, NAC 453A.312, and NAC 453A.332, and the Division's previous public statements regarding
3 the correct application procedure, neither Desert Air (ranked #10) nor Nuleaf should have received a
4 ranking let alone a provisional registration certificate.

5 55. More importantly, Plaintiff's score (166.86) would have and should been high enough
6 to rank within the top 12 spots (# 11) allotted for the City of Las Vegas and therefore, Plaintiff should
7 have received a provisional registration certificate from the Division within the 90-day evaluation
8 period.

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

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

14 57. Plaintiff repeats and realleges the allegations contained in Paragraphs 1 through 56 of
15 the Second Amended Complaint, and incorporates the same by this reference as if more fully set forth
16 herein.

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

20 59. The interests of Plaintiff are adverse to the interests of the Division, City, Nuleaf, Desert
21 Aire, and Acres Medical, if any.

22 60. Plaintiff has a legally protectable interest in the controversy.

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

62. Plaintiff is entitled to a declaration, pursuant to N.R.S. § 30.010 *et seq.*, that Nuleaf and Desert Aire failed to comply with the express provisions of N.R.S. § 453A.322(3)(a)(5), that the Division improperly issued provisional certificates to Nuleaf and Desert Aire, that the Plaintiff did

1 comply with the express provisions of N.R.S. § 453A.322(3)(a)(5), that the Division improperly denied
2 Plaintiff a provisional certificates as the next applicant in line, that the provisional certificates issued
3 to Nuleaf and Desert Aire should be revoked, that a provisional certificates should be issued to Plaintiff,
4 that Nuleaf and Desert Aire should not be issued actual provisional certificates, and that the deadlines
5 and requirements of the City for issuance of licenses for MME Dispensaries should be tolled for the
6 benefit of the Plaintiff until after the Plaintiff's claims are determined in this case so that Plaintiff will
7 not suffer detriment due to the fact that it should have been issued a provisional certificates on
8 November 3, 2014.

9 63. Alternatively, and in the event that the Court is not willing to issue a declaration,
10 pursuant to N.R.S. § 30.010 *et seq.* that both provisional certificates issued to Nuleaf and Desert Aire
11 should be revoked, then Plaintiff is entitled to a declaration that the one revoked provisional certificates
12 should still be issued to the Plaintiff, and that the re-scoring and re-ranking of Acres Medical, which
13 might compete for that provisional certificates, was void, and/or that due to public policy and/or
14 equitable principles, Acres Medical should not receive the one available provisional certificate, which
15 should instead be issued to Plaintiff.

16 64. Plaintiff has been required to retain the services of an attorney to prosecute this matter,
17 and Plaintiff is, therefore, entitled to its reasonable attorneys' fees and costs incurred in prosecuting this
18 matter.

19 **SECOND CAUSE OF ACTION**
20 **(Injunctive Relief)**

21 65. Plaintiff repeats and realleges the allegations contained in Paragraphs 1 through 64 of
22 the Second Amended Complaint, and incorporates the same by this reference as if more fully set forth
23 herein.

24 66. The Division's issuance of provisional certificates to Nuleaf and Desert Aire has caused
25 irreparable harm to the Plaintiff because there are only 12 Provisional Certificates allocated to the City
26 of Las Vegas and Plaintiff was denied one of the 12 Provisional Certificates due to the improper
27 issuance of provisional certificates to Nuleaf and Desert Aire.

28 ///

1 67. If Acres Medical is issued a provisional certificates as a result of its intervention in this
2 case, and Plaintiff is not, then Plaintiff will be irreparably harmed.

3 68. The Division's refusal to revoke the provisional certificates issued to Nuleaf and Desert
4 Aire, or to reissue a provisional certificates to the Plaintiff has caused Plaintiff to suffer irreparable
5 harm and Plaintiff continues to suffer irreparable harm.

6 69. Nuleaf and Desert Aire failed to comply with the requirements of the City of Las Vegas
7 or the provisions of N.R.S. Chapter 453A for issuance of provisional certificates.

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

11 71. The Plaintiff is likely to succeed on the merits of its case because the plain language of
12 the applicable provisions of N.R.S. Chapter 453A requires the Division to score applicants and issue
13 a provisional certificates in order of rank, Plaintiff satisfied all provisions of NRS Chapter 453A and
14 would have been ranked #10 for the 12 provisional certificates allocated to the City of Las Vegas, with
15 the elimination of Nuleaf and Desert Aire which did not comply with the provisions of NRS Chapter
16 453A.

17 72. Plaintiff has no adequate remedy at law and compensatory relief is inadequate.

18 73. Plaintiff is entitled to a permanent mandatory injunction against the Division, enjoining
19 the Division:

- 20 (a) from issuing actual Registration Certificates to Nuleaf and Desert Aire;
21 (b) to revoke the provisional certificates issued to Nuleaf and Desert Aire;
22 (c) to identify Plaintiff as the next highest ranking applicant for one of the Provisional
23 Certificates allocated to the City of Las Vegas; and
24 (d) to issue a provisional certificates to Plaintiff.

25 74. Plaintiff is entitled to a permanent mandatory injunction against the City, requiring the
26 City to toll all deadlines which would have been required of the Plaintiff until after the Court rules on
27 Plaintiff's claims in this case, by virtue of the fact that Plaintiff should have received a Provisional
28 Certificate on November 3, 2014.

1 75. Alternatively, and in the event that the Court is not willing to enjoin the Division to
2 revoke both Provisional Certificates issued to Nuleaf and Desert Aire, then the Plaintiff is entitled to
3 a permanent mandatory injunction that the one revoked provisional certificates be issued to the
4 Plaintiff, and not to Acres Medical because the re-scoring and re-ranking of Acres Medical was void,
5 and/or that due to public policy and/or equitable principles, Acres Medical should not receive the one
6 available provisional certificate, which should instead be issued to Plaintiff.

7 76. Plaintiff has been required to retain the services of an attorney to prosecute this matter,
8 and Plaintiff is, therefore, entitled to its reasonable attorneys' fees and costs incurred in prosecuting this
9 matter.

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

13 PETITION FOR JUDICIAL REVIEW

14 77. Plaintiff repeats and realleges the allegations contained in Paragraphs 1 through 76 of
15 the Second Amended Complaint, and incorporates the same by this reference as if more fully set forth
16 herein.

17 78. Petitioner, GB Sciences Nevada, LLC, a Nevada limited liability company (hereinafter
18 "Petitioner") is an applicant to the Division for the Division's issuance of a Registration Certificate for
19 the operation of a Medical Marijuana Establishment (an "MME") Dispensary in the City of Las Vegas,
20 Nevada.

21 79. Through the Division's application process and the Division's review, scoring, and
22 ranking of Petitioner's application for an MME Registration Certificate, the Division has determined
23 the legal rights, duties, or privileges of Petitioner as to the issuance of a Registration Certificate for the
24 operation of an MME Dispensary in the City of Las Vegas, Nevada.

25 80. Accordingly, Petitioner is a party of record to proceedings at the Division in a contested
26 matter.

27 81. On or about November 3, 2014, the Division sent out a letter informing Petitioner that
28 the Division had not issued a provisional Registration Certificate (a "Provisional Certificate") to

1 Petitioner because Petitioner did not achieve a score high enough to rank it in the top 12 applicants
2 within the City of Las Vegas, Nevada.

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

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

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

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

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

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

23 88. Petitioner further demands that the entire record of the proceeding at the Division be
24 transmitted by the Division in the manner required by *NRS 233B.131*.

25 **PETITION FOR WRIT OF MANDAMUS**

26 89. Plaintiff repeats and realleges the allegations contained in Paragraphs 1 through 88 of
27 the Second Amended Complaint, and incorporates the same by this reference as if more fully set forth
28 herein.

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

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

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

9 93. Accordingly, the Division has failed to perform acts that Nevada law compelled the
10 Division to perform.

11 94. Petitioner has no plain, speedy, and adequate remedy in the ordinary course of law to
12 correct the Division's failure to perform as required by Nevada law or compel the Division to perform,
13 as it is required by Nevada law.

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

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

23
24 WHEREFORE, Plaintiff prays for relief as follows:

- 25 1. For declaratory relief in the manner set forth in Plaintiff's First Cause of Action;
26 2. For injunctive relief, specifically a preliminary and permanent mandatory injunction,
27 enjoining the Division:
28 (a) from issuing actual Registration Certificates to Nuleaf and Desert Aire;

- 1 (b) to revoke the Provisional Certificates issued to Nuleaf and Desert Aire;
- 2 (c) to identify Plaintiff as the next highest ranking applicant for one of the Provisional
- 3 Certificates allocated to the City of Las Vegas; and
- 4 (d) to issue a Provisional Certificate to Plaintiff.
- 5 3. For injunctive relief, specifically a preliminary and permanent mandatory injunction,
- 6 requiring the City to toll all deadlines which would have been required of the Plaintiff until after the
- 7 Court rules on Plaintiff's claims in this case, by virtue of the fact that Plaintiff should have received a
- 8 Provisional Certificate on November 3, 2014.
- 9 4. Alternatively, and in the event that the Court is not willing to enjoin the Division to
- 10 revoke both Provisional Certificates issued to Nuleaf and Desert Aire, for a permanent mandatory
- 11 injunction that the one revoked provisional certificates be issued to the Plaintiff, and not to Acres
- 12 Medical because the re-scoring and re-ranking of Acres Medical was void, and/or that due to public
- 13 policy and/or equitable principles, Acres Medical should not receive the one available provisional
- 14 certificate, which should instead be issued to Plaintiff.
- 15 5. For reasonable attorneys' fees and costs of suite; and
- 16 6. For such other and further relief as the Court deems appropriate in the premises.
- 17 7. In addition, or in the alternative, Plaintiff also petitions this Court for Judicial Review
- 18 of the Division's "final decision" denying Petitioner's application and refusing to issue Petitioner a
- 19 Provisional Certificate for the operation of an MME Dispensary in the City of Las Vegas, Nevada in
- 20 accordance with NRS Chapter 453A and NAC Chapter 453A.
- 21 8. In addition, or in the alternative, Petitioner also petitions this Court to issue a Writ of
- 22 Mandamus compelling the Division to comply with the requirements of NRS Chapter 453A, NAC
- 23 453A, and other Nevada laws and regulations and issue Petitioner a Provisional Certificate for the
- 24 operation of an MME Dispensary in the City of Las Vegas, Nevada, and compelling the City to toll all
- 25 time periods related to the issuance of licenses for the operation of an MME Dispensary in the City of
- 26 Las Vegas due to the Division's failure to issue a Provisional Certificate to Plaintiff on November 3,
- 27 2014.
- 28 ///

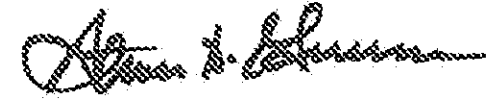
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Sheldon A. Herbert, Esq.
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EXHIBIT 4

EXHIBIT 4


CLERK OF THE COURT

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DISTRICT COURT
CLARK COUNTY, NEVADA

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

Plaintiff,

vs.

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

Defendants.

Case No.: A-14-710597

Dept. No.: XX

ACRES MEDICAL, LLC,

Plaintiff in Intervention,

vs.

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

Defendants in Intervention.

ORDER DENYING PLAINTIFF'S MOTION FOR LEAVE TO AMEND

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

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

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

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

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

Dated: 1-22-16


DISTRICT COURT JUDGE
ERIC JOHNSON

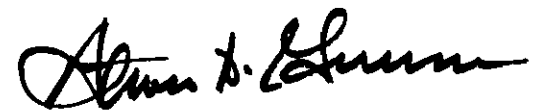
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Submitted by:

ADAM PAUL LAXALT
Attorney General

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

RE: *GB Sciences v. State of Nevada*



CLERK OF THE COURT

1 **RPLY**

James E. Shapiro, Esq.

2 Nevada Bar No. 7907

Sheldon A. Herbert, Esq.

3 Nevada Bar No. 5988

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4 2520 St. Rose Parkway, Suite 220

Henderson, NV 89074

5 (702) 318-5033

Attorneys for Plaintiff/Counterdefendant

7 **DISTRICT COURT**

8 **CLARK COUNTY, NEVADA**

9 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
14 DEPARTMENT OF HEALTH AND HUMAN
SERVICES; CITY OF LAS VEGAS, a municipal
15 corporation and political subdivision of the State of
Nevada; DESERT AIRE WELLNESS, LLC, a
16 Nevada limited liability company; DOES 1-10, and
ROE ENTITIES 1-100, inclusive,

17 Defendants.

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

20 Counterclaimant,

21 vs.

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

23 Counterdefendant.

Case No. A-15-728448-C

Dept. No. I

**REPLY TO STATE RESPONSE TO
MOTION FOR SUMMARY
JUDGMENT**

Date: March 15, 2016

Time: 9:00 a.m.

SMITH & SHAPIRO, PLLC

2520 St. Rose Parkway, Suite 220

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27 \ \ \

28 \ \ \

REPLY TO STATE RESPONSE TO MOTION FOR SUMMARY JUDGMENT

COMES NOW Plaintiff/Counterdefendant GB SCIENCES NEVADA, LLC, a Nevada limited liability company ("**GB Sciences**"), by and through its attorneys of record, SMITH & SHAPIRO, PLLC, and files its Reply to State Response to Motion for Summary Judgment (the "**State Response**").

This Reply is made and based upon the papers and pleadings on file herein, the attached Exhibits, the attached Memorandum of Points and Authorities, and any oral argument the Court wishes to entertain in the premises.

DATED this 8th day of March, 2016.

SMITH & SHAPIRO, PLLC

/s/ James E. Shapiro
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MEMORANDUM OF POINTS AND AUTHORITIES

I.

STATEMENT OF UNDISPUTED FACTS

Plaintiff refers to the Statement of Facts and Statement of Undisputed Facts set forth in its Motion for Summary Judgment and incorporates the same by this reference.

However, Plaintiff reiterates the following undisputed facts:

1. On October 29, 2014, Desert Aire was not awarded a special use permit and compliance permit for an MME dispensary by the City of Las Vegas because it had withdrawn its applications for the permits. *See* Exhibit "8" to the Motion for Summary Judgment.

2. On October 30, 2014, the City of Las Vegas notified the Division of the withdrawal of Desert Aire's applications for a special use permit and compliance permit for an MME Dispensary. *See* Exhibit "9" to the Motion for Summary Judgment.

3. The Division admits that N.R.S. § 453A.322(3)(a)(5) put applicants on notice that "they needed to submit authorization from the local government authority to the Division or the application could be disqualified." *See* Response at 3:18-26.

4. The Division originally ranked Desert Aire 10th and the Plaintiff 13th. *See* Exhibit "11" and "12" to the Motion for Summary Judgment. However, if Desert Aire is properly disqualified for failure to comply with N.R.S. § 453A.322(a)(3)(5), the Plaintiff is the next highest applicant, and, in accordance with the Division's prior testimony on this very issue, Plaintiff should be issued the Provisional Certificate originally issued to Desert Aire. *See* Exhibit "2" to the Motion for Summary Judgment. The Division admits that Plaintiff was ranked No. 13 by the Division. *See* Response at 2:21-22. The Division also admits that its employees made representations that indicated that the Division would "move forward the next ranked applicant in the event that a registrant was not approved by the local authority." *See* Response at 4:19-21.

5. The Division admits that Registration Certificates, like the one issued to Desert Aire, are revocable under N.R.S. § 453A.320. *See* Response at 2:1-8.

6. The Division also seeks court intervention. *See* Response at 4:16-18.

7. The Honorable Ronald J. Israel ruled on the same issue raised in this case in the matter of *Henderson Organic Remedies, LLC v. State of Nevada et al.*, Eighth Judicial District Court Case No. A-14-710193-C (the "**HOR Case**"). Judge Israel determined the following (in pertinent part):

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

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

\\

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

See Order from the HOR Case, attached to the Motion for Summary Judgment as Exhibit “13”.

Wellness Connections of Nevada, LLC (a defendant in the HOR Case) (“Wellness Connections”) did not have proof of licensure or a letter. Therefore, Judge Israel went on to rule that:

31. The issuance of the Provisional Certificate to Wellness Connections was in error and contrary to NRS § 453A.322(3).

32. Wellness Connections should have been disqualified due to their non-compliance with NRS § 453A.322(3)(a)(5).

...

37. However, because Wellness Connections failed to comply with NRS § 453A.322(3)(a)(5), Wellness Connections should have been disqualified, thereby moving the Plaintiff to the coveted fifth spot.

See Exhibit “13” to the Motion for Summary Judgment.

8. The Honorable Eric Johnson ruled on the same issue raised in this case in the matter of *GB Sciences Nevada, LLC v. State of Nevada et al.*, Eighth Judicial District Court Case No. A-14-710597-C (the “Nuleaf Case”).

In the Nuleaf Case, MME applicant Nuleaf CLV Dispensary, LLC (“Nuleaf”) had been ranked by the Division within the top-12 candidates for one of the 12 MME Dispensary Registration Certificates allocated to the City of Las Vegas, just like Desert Aire.¹ Like Desert Aire, Nuleaf had failed to obtain Zoning Approval from the City of Las Vegas. Nonetheless, like Desert Aire, the Division had issued a Provisional Certificate to Nuleaf even though Nuleaf had failed to obtain the Zoning Approval. Consequently, hearing the same arguments as asserted in this case, the Court in the Nuleaf Case ordered the revocation of Nuleaf’s Provisional Certificate. Further, the Court in the Nuleaf Case likewise recognized that the pertinent date was November 3, 2014. See Exhibit “14”. Because Nuleaf did not meet the statutory requirements as of November 3, 2014, the Division erred

¹ Nuleaf was ranked as high as Number 3.

1 in issuing a Provisional Certificate to Nuleaf. Id. It really didn't matter why Nuleaf did not qualify,
2 all that mattered was that as of November 3, 2014, Nuleaf did not qualify. Id. Unfortunately for GB
3 Sciences, through a twist of events not present here², the revoked Provisional Certificate was
4 awarded to intervenor Acres Medical, LLC ("Acres"). The Division admits that it was directed to
5 rescind the registration of Nuleaf and issue a Registration Certificate to Acres. *See* Response at 3:1-
6 3.

7 **II.**

8 **STATEMENT OF AUTHORITIES**

9 **A. DESERT AIRE DID NOT COMPLY WITH N.R.S. § 453A.322(3)(a)(5).**

10 **1. The Law is Clear.**

11 As explained in the Motion for Summary Judgment, Nevada Revised Statutes §
12 453A.322(3) makes it clear that the Division is authorized to issue a Provisional Registration
13 Certificate *if and only if* the applicant had complied with N.R.S. § 453A.322(3)(a)(5). Specifically,
14 N.R.S. § 453A.322(3) states, in pertinent part:

15 3. ... not later than 90 days after receiving an application..., the Division shall register
16 the medical marijuana establishment and issue a medical marijuana establishment
registration certificate and a random 20-digit alphanumeric identification number *if*:

17 (a) The person who wishes to operate the proposed medical marijuana
18 establishment has submitted to the Division all of the following:

19 * * *

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

23 N.R.S. § 453A.322(3) (emphasis added). In other words, *before* the Division could issue a
24 Provisional Registration Certificate, the applicant must have received zoning approval of some sort,
25

26 _____
27 ² Acres claimed to have a higher score and higher ranking than GB Sciences, based upon an Order obtained in
28 separate action initiated by Acres. Acres Medical, LLC v. Department of Health and Human Services, Division of Public
and Behavioral Health, et al., Eighth Judicial District Court Case No. A-15-719637-W. Based upon that Order, Judge
Johnson awarded the Provisional Certificate to Acres instead of GB Sciences.

1 either (1) proof of licensure with the applicable local government authority, or (2) *a letter from the*
2 *applicable local governmental authority certifying that the proposed medical marijuana*
3 *establishment is in compliance with those restrictions and satisfies all applicable building*
4 *requirements.*³ Judge Johnson recognized that the City of Las Vegas issued the letter required by
5 N.R.S. § 453A.322(3). *See* Exhibits “9” and “14” to the Motion for Summary Judgment. Before the
6 Division issued a Provisional Registration Certificate to Desert Aire, Desert Aire had done *neither*.
7 *See* Exhibit “9”. In fact, the City of Las Vegas had specifically notified the Division that Desert Aire
8 had not complied, yet the Division issued the Provisional Certificate notwithstanding. *Id.*

9 There is no uncertainty in this language. The words “*if*” “*has submitted*... *all* of the
10 following” leave no ambiguity as to whether or not the requirements set forth in N.R.S. §
11 453A.322(3)(a)(5) are discretionary or mandatory, or whether they be taken care of *BEFORE* the
12 Provisional Registration Certificate has been issued. These words make it clear that the Division
13 is authorized to issue a Provisional Registration Certificate *if* it has received some form of approval
14 from the local government as described in N.R.S. § 453A.322(3)(a)(5).

15 **B. THE DIVISIONS ARGUMENTS LACK MERIT.**

16 In its Response, the Division raises a couple of arguments and propositions, each of which
17 will be addressed.

18 **1. The Division’s Argument About not Receiving the Letter Within the 10-Day**
19 **Application Period is not Supported and Would Lead to an Absurd Result.**

20 In its Response, the Division claims that “no applicant was able to submit either proof
21 of licensure or a letter from the City of Las Vegas at the time of the application.” *See* Response at
22 4:3-4 (emphasis added). However, while this may be true, it is irrelevant.

24 ³ The Provisional Registration Certificate is only provisional until the applicant “is in compliance with all
25 applicable local government ordinances or rules, and the local government has issued a business license for the operation
26 of the establishment.” However, just because the Provisional Registration Certificate is “provisional” until everything
27 is complied with (i.e., safety inspections, public hearings, special use permit actually issued, fees paid, suitability
28 interviews conducted by Las Vegas Metropolitan Police Department, business license actually issued, etc.), it does not
mean that the initial showings required by N.R.S. § 453A.322(3)(a)(5) can be ignored or taken care of later by Desert
Aire. Otherwise, N.R.S. § 453A.322(3)(a)(5) would never have been drafted into the statute because N.R.S. § 453A.326
would have been sufficient. The plain language of N.R.S. § 453A.322(3)(a) [“*has submitted*”] belies this argument, in
any event.

1 Nothing in the statute or anywhere else gives the State the ability to ignore NRS §
2 453A.322(3)(a)(5) simply because none of the applicants submitted the letter as part of their
3 application package. If the Division's interpretation of the statute is to be accepted (and for the
4 reasons set forth next, it should not be), then the Division lacked authority to issue any Provisional
5 Certificates in the City of Las Vegas and all Provisional Certificates issued by the Division must be
6 recalled.

7 Thankfully, nothing in NRS § 453A.324 supports this interpretation. To the contrary, so long
8 as the Division receives the letter required by NRS § 453A.322(3)(a)(5) prior to issuing the
9 Provisional Certificates, the Division had full authority to proceed with those applications who met
10 all of the requirements identified in NRS § 453A.322(3)(a). This interpretation is not only consistent
11 with what the statute says, but it avoids the absurd and extreme alternatives of voiding all prior
12 Provisional Certificates issued by the Division, or alternatively, allowing the Division to simply
13 ignore a plain requirement contained in the statute.

14 Nothing in NRS § 453A.324 states that the Division cannot accept a letter which is
15 specifically required by NRS § 453A.322(3)(a)(5) after the ten-day period. It would be an error for
16 the Court to interpose this requirement when it simply does not exist. Further, NRS § 453A.322 and
17 NRS § 453A.324 should be read harmoniously. State v. Steven Daniel P. (In re Steven Daniel P.),
18 309 P.3d 1041, 1044, 129 Nev. Adv. Op. 73 (Nev., 2013). When considering that NRS §
19 453A.322(3)(a)(5) specifically recognized, indeed required, that the letter would not be coming from
20 the applicant, but from a local jurisdiction, including a requirement (which does not otherwise exist)
21 that the Applicant must include such a letter with his application to the Division is inconsistent with
22 NRS § 453A.322(3)(a)(5). So long as the Division received the required letter prior to issuing the
23 Provisional Certificate, the Division was duty bound to consider it.

24 In this case, there is no dispute that the Division was provided with a letter from the City of
25 Las Vegas which was specifically drafted and delivered to comply with NRS § 453A.322(3)(a)(5)
26 prior to the issuance by the Division of any Provisional Certificates. Thus, the Division was duty
27 bound to review and consider the letter before issuing any of the Provisional Certificates, which they
28 did not do.

1 It is likewise undisputed that at the time that the Provisional Certificate was issued to Desert
2 Aire, Desert Aire did not have the necessary Zoning Approval because Desert Aire's applications
3 for special use permit and compliance permit had been withdrawn. It is further undisputed that the
4 Division had been notified of this fact prior to issuing the Provisional Certificate, but failed to
5 consider it. Therefore, at the time that the Division issued the Provisional Certificate to Desert Aire,
6 it did so in direct violation of NRS § 453A.322(3)(a)(5).

7 **2. The Divisions Alleged Failure to Identify Any Basis on Which to Revoke the**
8 **Registration is Consistent with its Misinterpretation of the Statute.**

9 In its Response, the Division states that it "has not identified a basis to revoke the
10 registration issued to Desert Aire Wellness." However, the only way that the Division can make this
11 statement is by continuing to ignore the clear and unambiguous requirement of NRS §
12 453A.322(3)(a)(5), just as the Division has done since the law was passed. Once NRS §
13 453A.322(3)(a)(5) is considered, the Division clearly has a basis on which to revoke Desert Aire's
14 Provisional Certificate due to the fact that, on November 3, 2014, when the Provisional Certificate
15 was issued, Desert Aire did not satisfy the requirement found in NRS § 453A.322(3)(a)(5).

16 It is important to note that, notwithstanding the Divisions' protestations, Judge Johnson has
17 already disagreed with their interpretation and ordered them to revoke a Provisional Certificate
18 which, up to that point, they had been unwilling to do. This case requires the same outcome.

19 **3. The Division's Proffering of a New Application Period Will Not Solve the**
20 **Problem.**

21 The Division next states that "the Division could open up a new application period
22 in the calendar year 2016 and consider new applications for dispensaries if any dispensary
23 registration is revoked or surrendered because it does not comply with local zoning restrictions in
24 the City of Las Vegas or the ongoing requirements of the Division." However, this recommendation
25 is nothing more than a band-aid that fails to address the merits of the issue.

26 \ \ \

27 \ \ \

28 \ \ \

1 *First*, opening up a new application period does not address the fact that the Provisional
2 Certificate was issued to Desert Aire in violation of the law. Nor does it address the fact that, if the
3 law had been followed, the Provisional Certificate originally issued to Desert Aire would have been
4 issued to Plaintiff.

5 *Second*, as both Judge Bare and Judge Johnson previously recognized, and as was set forth
6 in detail in Plaintiff's Motion (see pages 16-17) to require the Plaintiff to wait until the next round
7 and submit a new application is to deny the Plaintiff any remedies at all.

8 For the foregoing reasons, this suggestion is irrelevant to the present issues and disputes and
9 should be disregarded by the Court.

10 **C. THE DIVISIONS DISCUSSION OF OTHER DECISIONS ONLY SUPPORTS THE**
11 **PLAINTIFF'S POSITION.**

12 Finally, the Division references and discusses three other District Court cases. Specifically,
13 the Division points out (as Plaintiff previously did), that in *Henderson Organic Remedies v. State*
14 *of Nevada* (the "**HOR Case**"), the District Court did not order any revocation because Wellness
15 Connections voluntarily surrendered its certificate. While this is true, the pertinent point of the HOR
16 Case is that, under a similar (albeit not identical) set of facts, the District Court ordered the Division
17 to reissue a Provisional Certificate, which is exactly what we are asking this Court to do.

18 The Division also argues that the Nuleaf Case and HOR Case are dissimilar from the present
19 case because Nuleaf and Wellness Connection had both received denials of their special use permit
20 applications, while Desert Aire had not received a denial before issuance of its Provisional
21 Registration Certificate (rather, Desert Aire withdrew its application for special use permit before the
22 deadline). *See* Response at 5:15-21.

23 However, this is a distinction without meaning. Whether applications for licensing and
24 permits are withdrawn by the applicant (Desert Aire), or denied by the local authority (Wellness and
25 Nuleaf), the result is the same under the MME laws. The plain language of N.R.S. §
26 453A.322(3)(a)(5) provides that the applicant must provide the state with: (1) proof of licensure, or
27 (2) a letter from the applicable local governmental authority certifying that the proposed medical
28 marijuana establishment is in compliance. Either the applicant has submitted one of those items to

1 the Division, or it has not. The reason for failing to do so (i.e. withdrawal of application vs. denial
2 of application) simply does not matter.

3 Likewise, the Division references Nevada Medial Marijuana Dispensary v. State of Nevada
4 (the “NMMD Case”). However, as the Division acknowledged, the lawsuit was never resolved on
5 its merits, but was instead dismissed. Thus, the findings of Judge Delaney were made under a
6 different standard and based upon a different set of facts.

7 Further, as its only support for its arguments, the Division simply attached as Exhibit 5 to
8 its Response a copy of the Order entered by Judge Delaney in the NMMD Case. The problem is
9 that the Order does not provide any detail about why Judge Delaney found substantial compliance
10 or how that would apply in this case. Thus, the NMMD Case is not helpful in this situation.

11 Finally, the Division makes the assertion that “in unincorporated Clark County, some
12 dispensaries which are now operating did not have a special use permit at the time of their
13 application.” See Response at 6:6-8. This assertion is not contained in the Order, attached as
14 Exhibit “5”, nor is it supported by any evidence.

15 However, even if the assertion was true, it is immaterial in any event. NRS §
16 453A.322(3)(a)(5) does not require, nor does Plaintiff argue, that permits must, in every instance,
17 be actually obtained prior to the issuance of the Provisional Registration Certificate. Rather, if
18 permits are not obtained ahead of time, then the local authority must still send a letter “certifying that
19 the proposed medical marijuana establishment is in compliance . . .” Thus, provided such letter was
20 sent, an applicant could obtain an actual special use permit after the deadline. Therefore, the
21 NMMD Case is of no value in this case.

22 III.

23 CONCLUSION

24 For the foregoing reasons and as a matter of law, GB Sciences is entitled to summary
25 judgment against all Defendants. GB Sciences is entitled to a declaration and mandatory injunction
26 requiring the Division to immediately revoke Desert Aire’s Provisional Registration Certification
27 and re-issue it to GB Sciences. GB Sciences is also entitled to summary judgment on the
28 Counterclaim by Desert Aire for attorneys fees.

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

1 DATED this 8th day of March, 2016.

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*

11 **CERTIFICATE OF SERVICE**

12 I hereby certify that I am an employee of SMITH & SHAPIRO, PLLC, and that on the 8th
13 day of March, 2016, I served a true and correct copy of the forgoing **REPLY TO STATE**
14 **RESPONSE TO MOTION FOR SUMMARY JUDGMENT**, by e-serving a copy on all parties
15 registered and listed as Service Recipients in Wiznet, the Court's on-line, electronic filing website,
16 pursuant to Administrative Order 14-2, entered by the Chief Judge, Jennifer Togliatti, on May 9,
17 2014.

18 /s/ Jill M. Berghammer
19 An employee of SMITH & SHAPIRO, PLLC
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REGISTER OF ACTIONS

CASE No. A-15-728448-C

GB Sciences Nevada LLC, Plaintiff(s) vs. Nevada Department of Behavioral Health and Human Services, Defendant(s)§
§
§
§
§
§
§Case Type: **Other Civil Matters**

Date Filed: 12/02/2015

Location: **Department 1**

Cross-Reference Case Number: A728448

Supreme Court No.: 70462

PARTY INFORMATION

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

EVENTS & ORDERS OF THE COURT

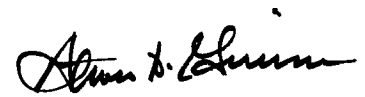
03/15/2016 **All Pending Motions** (9:00 AM) (Judicial Officer Cory, Kenneth)
PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT...DESERT AIRE WELLNESS LLC'S OPPOSITION TO PLAINTIFF/COUNTERDEFENDANT'S MOTION FOR SUMMARY JUDGMENT AND COUNTERMOTION FOR SUMMARY JUDGMENT

Minutes

03/15/2016 9:00 AM

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

[Parties Present](#)[Return to Register of Actions](#)



CLERK OF THE COURT

1 **TRAN**

2
3 **EIGHTH JUDICIAL DISTRICT COURT**
4 **CIVIL/CRIMINAL DIVISION**
5 **CLARK COUNTY, NEVADA**

6 GB SCIENCES NEVADA, LLC,) CASE NO. A-15-728448
7 Plaintiff,) DEPT. NO. I
8 vs.)
9 NEVADA DEPARTMENT OF BEHAVIORAL)
10 HEALTH AND HUMAN SERVICES, et al,)
11 Defendants,)
12 and all related parties and actions.)

13 BEFORE THE HONORABLE KENNETH CORY, DISTRICT COURT JUDGE

14 TUESDAY, MARCH 15, 2016

15 ***TRANSCRIPT RE:***
16 **PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT**

17 **DESERT AIRE WELLNESS LLC'S OPPOSITION TO PLAINTIFF/
18 COUNTER-DEFENDANT'S MOTION FOR SUMMARY JUDGMENT
AND COUNTERMOTION FOR SUMMARY JUDGMENT**

19 **APPEARANCES:**

20 For the Plaintiff: JAMES E. SHAPIRO, ESQ.

21 For Defendant Nevada Department of
22 Behavioral Health and Human Services: LINDA C. ANDERSON, ESQ.

23 For Defendant Desert Aire Wellness, LLC: MICHAEL H. SINGER, ESQ.

24 RECORDED BY: Lisa Lizotte, Court Recorder

JA750

1 CLARK COUNTY, NEVADA

TUESDAY, MARCH 15, 2016

2 **PROCEEDINGS**

3 (PROCEEDINGS BEGAN AT 10:05 A.M.)

4 THE CLERK: Page 7, GB Sciences versus Nevada Department of
5 Behavioral Health. Case Number A728448.

6 MR. SINGER: Good morning, Your Honor. Michael Singer for Desert Aire;
7 1589.

8 MS. ANDERSON: Linda Anderson from the Attorney General's Office.
9 Bar No. 4090.

10 MR. SHAPIRO: Jim Shapiro on behalf of the plaintiff, GB Sciences.

11 THE COURT: You're going to have to go some -- even with marijuana,
12 you're going to have to go some to be as interesting as some of these.

13 MR. SHAPIRO: I was going to say, I'm not used to getting out-interested by
14 another case. This usually is the most interesting case. But the license plate one --

15 THE COURT: Especially by a license plate.

16 MR. SHAPIRO: I know.

17 THE COURT: Okay.

18 MR. SHAPIRO: Well, Your Honor, this is round two --

19 THE COURT: Yeah.

20 MR. SHAPIRO: -- and there's a little bit of difference in the pleadings, but for
21 the most part they were pretty consistent with what went before, so unless you have
22 any questions you'd like to pose, I just have just a few comments. I'm not going to
23 rehash everything. I know you're up to speed on it.

24 THE COURT: Sure. Go right ahead.

1 MR. SHAPIRO: I think the issue that is most illustrative, or however you say
2 that word, of this case is the question of the ten days, and that really emphasizes
3 the question that the Court has to decide. The letter from the City of Las Vegas was
4 clearly delivered to the Division to comply with NRS 453A.322. The statute that the
5 City of Las Vegas passed specifically references that requirement, sub-paragraph
6 3(a)(5), and says we've passed this statute to deal with the requirement found.
7 So, Las Vegas passes a statute. They go through an initial process. They hold
8 hearings. And then they approve sixteen or however many they approved, they
9 denied ten and there are six that are withdrawn. They then send that letter to the
10 Division, not within the ten day period but before the Division issued the provisional
11 certificate.

12 So there's really three outcomes that can happen. The first outcome is
13 does the Division have the authority to ignore a clear and unambiguous requirement
14 of the law? Now, I think the answer is clearly no. The Division has to follow the very
15 law that gives them the authority that they have. They can't ignore it.

16 So then they go to the other extreme and they say, well, because we
17 didn't get this letter within the ten day period, you have to revoke everyone's license.
18 Well, I don't think that's what the law says either. The statute doesn't say that, the
19 law doesn't say that, and that certainly would be a Draconian and absurd result.

20 The third option is, okay, the Legislature said you have to have this
21 letter from the local governing authority. The Division received that letter prior to
22 issuing the provisional certificates. In fact, the Division had ranked the certificates,
23 one, two -- however many there were. It wouldn't have been difficult at all for the
24 Division to go through, line the list up from the City of Las Vegas, say, okay, they

1 don't have it, they don't have it, they don't have it, they don't have it; let's issue
2 to the next ten. They could have done that within the ninety day period and we
3 wouldn't be here today.

4 And that's the result that makes not only the most sense legally but
5 logically. And that's the result that we're asking the Court to enter, is the Division
6 had this list, they had a ranking. I mean, it just doesn't take a rocket scientist to
7 cross people off that list and say, okay, who's left? Let's issue it to the first twelve
8 people. And we're asking the Court to require the Division to do that in this case.
9 There's no question that Desert Aire did not have -- did not comply with NRS
10 453A.322, sub-paragraph 3(a)(5). They just didn't. And therefore their license
11 should be revoked and it should be issued to GB Sciences, who the evidence shows
12 did comply and would have been the one who would have received that certificate.

13 You've heard all the other arguments. Do you have any questions?

14 THE COURT: No.

15 MR. SHAPIRO: Okay.

16 MR. SINGER: Once again, Your Honor, the point of it is we are basically in
17 the middle at this particular point in time. Had the State when the application was
18 finally submitted by the City saying that our location was approved, it was clearly
19 within the zone that required it, said at that particular point in time, hey, it's too late,
20 you can't go forward, we wouldn't be here today. We wouldn't have spent a million --
21 I think it's now up to a million, seven hundred thousand dollars, if I'm not mistaken.
22 And the idea that I don't have their personal information is nonsense. I do, I have all
23 of that personal information, and I'm representing to the Court that that's the result
24 of an accounting that's been done on behalf of Desert Aire. They have a million,

1 seven hundred thousand dollars at this point in time invested.

2 They had many opportunities, and in fact I am led to believe, although
3 I can't say personally that I can testify to that, is that they were present at several
4 of the City Council meetings where Desert Aire was at issue, subsequent to the
5 time when Desert Aire had actually received the special use permit from the City
6 in December of 2014.

7 Somebody -- not us -- at this particular point in time is responsible
8 for what happened. I don't believe that they have the standing, given that they
9 sat on their hands during this particular time to challenge the granting of our --
10 what ultimately became a permanent license, because no one came in there and
11 challenged it prior to the time that we actually got our permanent business license
12 and have now been open for roughly six weeks.

13 I believe that the State, in terms of what their powers were, is that if
14 you give deference, as you should under Chapter 233 to the determinations that the
15 State made, that this wasn't a violation of the statute. Yes, the application said this
16 had to be in there, but what were the remedies? The State should have disallowed
17 it, but didn't. As a result, we went forward at extraordinary expense while they sat
18 on their hands now and wait until we have expended this great deal of sum of
19 money to now challenge our ranking or whatever, the granting of our certificate.

20 I think the case that I cited in Reno is directly on point. The two cases
21 that they cite I believe are distinguishable for the reasons I set forth in the brief. And
22 the two other decisions that have been rendered by your compatriots here all involve
23 guys whose location was denied. It was never within the proper zone. This location
24 was always within the proper zoning. Thank you.

1 THE COURT: And it was within the proper zone, so what is he complaining
2 of? Why -- what's the violation of the statute that he's --

3 MR. SINGER: Is that at the time -- the argument is that on November 3rd
4 when the certificates, the provisional certificates were issued, the State had within
5 its files the information from the City that six applicants, including Desert Aire, had
6 withdrawn their request at that point in time for a special use permit.

7 THE COURT: And did the statute require the State to limit its granting to
8 those that --

9 MR. SINGER: I don't think -- No, I don't think --

10 THE COURT: -- had been granted zoning within -- from the City?

11 MR. SINGER: No. See, that's -- I don't believe that to be the case.

12 THE COURT: Okay.

13 MR. SINGER: The application says it had to be included, okay, but it doesn't
14 say if something is missing there, but it's ultimately rendered sufficient by reason of
15 the fact that all of the conditions had been satisfied.

16 THE COURT: So your position is that the State was free to grant the license
17 to anyone, regardless of whether they -- the City had acted or had zoned them?

18 MR. SINGER: No. I think if in fact this location had never been in a proper
19 zone; one story. That's not the case here. It was always in a proper zone. The fact
20 that the special use permit was issued a month later, I think *nunc pro tunc* the State
21 had the authority to continue, as it did because it didn't send us a letter saying, hey,
22 you guys are late with this, you can't go forward. And now we're between a rock
23 and a hard place because of that. And there's nothing specifically in the statute
24 that says if you don't have all of this stuff in there you are automatically --

1 THE COURT: Excluded.

2 MR. SINGER: -- disqualified.

3 THE COURT: Okay.

4 MS. ANDERSON: Your Honor, I recognize I did not really answer the
5 question you posed to me last time we were here, which is why did we just ignore
6 or put that aside.

7 THE COURT: Uh-huh.

8 MS. ANDERSON: All I can provide for you is what happened with my client.
9 The Legislature had them focus on some factors. They developed their application
10 looking at those factors. Back when they were developing that application, nobody
11 had any zoning in place. And they actually got pretty fortunate up in Washoe.
12 Everybody that they approved were approved. Down here in Clark County we
13 actually were fairly close. We only had approved two that were denied and then
14 eight in Clark County and Desert Aire, which didn't have the full approval prior to
15 the application being considered.

16 THE COURT: So your client did not view the statute as limiting it to those
17 that had the appropriate city zoning?

18 MS. ANDERSON: Clearly it did not, based on the way that it acted. It did
19 not --

20 THE COURT: And what is the rationale for that?

21 MS. ANDERSON: Again, because they -- and it's kind of a balancing act.
22 I think it's best addressed in Judge Delaney's order. They recognize that the local
23 government process -- who comes first, the State process or the local government
24 process? Both have to approve that establishment before it can go forward. The

1 State's perspective was looking at whether it met the State requirements and its
2 ranking, rather than focusing on the local, realizing that if it's provisional and the
3 locals say no, this is not going to meet zoning, it's not going to meet building, it's
4 not going to meet all those things, they aren't going to be able to go forward and
5 operate.

6 THE COURT: So, is there a record of your client considering these
7 applications in that manner?

8 MS. ANDERSON: The record is based on -- you mean, is there a record that
9 I could provide to the Court? No. We ranked all those applications looking at the
10 factors the Legislature had delineated for them, which did not include zoning, which
11 is why you won't see that listed in anything that the State was looking at. Counsel
12 provided you the big packet of what the application looked for, and it never even
13 asked about zoning.

14 THE COURT: So, if you would, help me out. Well, I'll tell you what. Let's
15 put the shoe on the other foot.

16 MS. ANDERSON: Okay.

17 THE COURT: Let's ask the plaintiff here to tell me what they did wrong with
18 the statute.

19 MR. SHAPIRO: Let's look at the statute.

20 THE COURT: Okay.

21 MR. SHAPIRO: The statute states under sub-paragraph 3 that "not later than
22 ninety days after receiving the application the Division shall register the medical
23 marijuana establishment and issue a medical marijuana establishment registration
24 certificate."

1 THE COURT: I'm sorry. Are you in the bill or are you in NRS 453A.324?

2 MR. SHAPIRO: I'm on 453A. Exhibit 6.

3 THE COURT: Right. Okay. And you're in sub 3.

4 MR. SHAPIRO: And I'm in sub 3.

5 THE COURT: Okay.

6 MR. SHAPIRO: Now, the premise of our argument is that the Division has to
7 follow the law. And I think that's a pretty fair -- it's a safe position to take. They have
8 to comply with the law. Division -- the end of sub-paragraph 3 there's a word, one
9 word. The last word there is "if." Now, so they issue a provisional certificate if,
10 (a) the person who wishes to operate the proposed medical marijuana establishment
11 has submitted to the Division all of the following. And then you go down 1, 2, 3, 4
12 and 5. Sub-paragraph 5 says if the city, town -- you know, you can read it, but in
13 essence if they passed any ordinances you have to have a letter from that governing
14 authority that states that the proposed medical marijuana establishment is in
15 compliance with those restrictions. You have to have an affirmative letter. The
16 law is clear. You can issue a provisional certificate if they have received all of the
17 following, including sub-paragraph 5. That's the law.

18 THE COURT: All right. Now, back to the State.

19 MS. ANDERSON: Back to the State.

20 THE COURT: How did you comply with this part of the statute?

21 MS. ANDERSON: We did not comply with that part of the statute for any of
22 them because in the City of Las Vegas nobody had submitted that kind of application.
23 The City of Las Vegas came in after the fact and put that in after the application
24 period was done. And so that's why we are here before you, Your Honor, to make

1 this decision as to whether you find -- and again, we have no vested interest in
2 anybody's particular property going forward, but my client didn't foresee it.

3 THE COURT: Well, I heard the argument from plaintiff's counsel that -- you
4 would think I could remember Mr. Shapiro's name -- from Mr. Shapiro that there was
5 time before the State actually acted when the City had notified, albeit late, as to
6 who was appropriately within the zoning.

7 MS. ANDERSON: All I can tell you is my client acted solely on the applications
8 they had before them, so they did not consider it. Whether they had extra time, like
9 I said, it was the last possible day. They didn't do that. So I can't change, you know,
10 whether they could have, should have. They did not.

11 THE COURT: Okay. All right, anything else from any of the parties?

12 MR. SINGER: I think we've been through this *ad infinitum*.

13 MR. SHAPIRO: Your Honor, I just want to point out that something came
14 up today that I hadn't connected before, and that is Ms. Anderson pointed out that
15 the State's application didn't even ask for this letter. So they're saying we had to
16 receive it in the first ten days, but it wasn't even part of something that they asked
17 for. But in the end analysis that really is irrelevant because at the end of the day
18 the Division's authority is derived from the statute, and they have to comply with
19 the statute and they didn't. And so we would ask that you issue an order that does
20 comply.

21 MS. ANDERSON: And, Your Honor, if I could just add to that. As I've stated
22 throughout all my pleadings, every applicant knew that that's what they needed,
23 based on what the statute said that they had to have. And so most of the applicants,
24 fortunately, came forward when they picked a property that had the approval and

1 went forward. That's the only notice that everybody was on, is that they had to
2 have that.

3 THE COURT: So on the date that the State actually acted, they did have
4 the necessary letter from the City for the rest of the applicants?

5 MS. ANDERSON: I can't pinpoint that. All I can do is take the representation,
6 the date of the letter, when the City of Las Vegas said it was sent. No one seems
7 to know when and where they received anything at that point in time, as you might
8 imagine. So I can't give you a specific as to when they got that letter, but I can tell
9 you in the representations of the City of Las Vegas is that they sent it.

10 THE COURT: That they did?

11 MS. ANDERSON: That they sent that letter to the State.

12 THE COURT: All right. Well, then, Mr. Shapiro, doesn't it fall to you as the
13 movant to show that on the date that the State acted they did not in fact have the
14 necessary approval from the City regarding Desert Aire?

15 MR. SHAPIRO: Yeah, I think I've done that. No one has contested that there
16 was a letter sent by the City on October 30th. That's not in dispute.

17 THE COURT: Okay.

18 MR. SHAPIRO: And I think that satisfies that requirement, that they had the
19 information. That was Exhibit 9. You know, Exhibit 12 is their rankings. They could
20 have, if they -- it wouldn't have taken very long. They could have gone through,
21 matched it up and issued appropriate certificates. Within an hour they could have
22 completed that task, and they certainly had an hour to do that before issuing. They
23 had more than an hour, but at a minimum they had that amount of time, could have
24 complied with the statute and they didn't.

1 THE COURT: And your point is that on the date that the State acted, they
2 not only had information from the City that Desert Aire was not qualified, but that
3 your client was qualified?

4 MR. SHAPIRO: Yes.

5 THE COURT: All right. I guess that's why I get the big bucks because I make
6 the hard decisions. It seems to me that the movant here has carried the burden of
7 proof to show that the statute was not complied with insofar as the State acted to
8 grant it to Desert Aire. I am not, however, convinced that it necessarily follows that
9 therefore the license must go or the -- what do we call it, registration?

10 MR. SHAPIRO: Provisional certificate.

11 MR. SINGER: Certificate.

12 THE COURT: Provisional certificate, thank you -- therefore must go to GB
13 Sciences. So the motion is granted in part and denied in part. I think that the matter
14 goes back to the State, armed with this undoubtedly unwelcome information, to
15 determine what their process is under the law at this point. It's up to the State to
16 act in conformance with the statute, and I'm not in a position to dictate to the State,
17 you know, who is the qualified candidate.

18 MR. SHAPIRO: Your Honor, and I respect your decision, but let me ask this.

19 THE COURT: Is that the same as --

20 MR. SHAPIRO: That's the same, with all due respect.

21 THE COURT: With all due respect. Yeah. Okay.

22 MR. SHAPIRO: Everybody duck. No. No, it actually isn't. What you have
23 essentially done is said that Desert Aire didn't qualify and therefore the State should
24 revoke that certificate and it goes back to the Division to decide. What I would ask

1 and what we are asking is that you order the State to issue the provisional certificate
2 to the next qualified candidate.

3 THE COURT: Why would I do that?

4 MR. SHAPIRO: Because the law allows you to put the parties in the position
5 they should have been on November 3rd.

6 THE COURT: Has the State indicated they would not do that?

7 MR. SHAPIRO: Yes, they have.

8 THE COURT: Oh. I missed something. I'm sorry.

9 MS. ANDERSON: The State could only -- what I put in my pleadings is with
10 the ruling what the State's next action would be would be to open up the application
11 period and allow people to re-apply for it, because we could only issue those
12 certificates within the ninety day period.

13 THE COURT: Okay.

14 MR. SHAPIRO: And our position is -- and that's the position that they've
15 been consistent with. They've also said we'll do whatever you've asked us to do.
16 These are the same things that came up in front of Judge Johnson and Judge
17 Johnson issued a ruling. He said take it away from New Leaf; you're ordered to
18 issue it to the candidate who on November 3rd, 2014 was the next highest ranked
19 applicant. And in that case he determined that another party stepped in front of us.
20 We were 13th and he said they stepped in front, so therefore it goes to them.

21 The problem and the relief that we are seeking in this case, I don't
22 think anybody -- well, a lot of people dispute that there was a violation of the statute,
23 but there clearly was a violation of the statute. The problem is this. To require or to
24 allow the state to simply open it up again is to deprive GB Sciences of its remedies

1 because GB Sciences submitted an application vis-a-vis -- I don't remember how
2 many other, we'll call it fifty other applicants -- and they were ranked compared
3 to those applicants and they were ranked number 13. Now, if the Division had
4 followed the law, then they would have been ranked actually number 9 or 10 or
5 11 or 12. It doesn't matter. And they would have received a provisional certificate.

6 To tell the State do whatever you want to do and open up a new one
7 is to deny all remedies. We're coming to the Court. We've shown you the law that
8 says you have the ability to put the parties in the position they should have been on
9 November 3rd. Now, if you're not comfortable saying that GB Sciences is the next
10 qualified candidate, then simply issue the order to the State saying issue it to the
11 next qualified candidate. But to revoke Desert Aire's provisional certificate and then
12 just require to open up is really to deny any relief to GB Sciences. And clearly the
13 statute gives you, Your Honor, the authority to order the Division to do that. They
14 never appealed Judge Johnson's orders. They're going to comply.

15 THE COURT: Did no one?

16 MR. SHAPIRO: What's that?

17 THE COURT: No one appealed Judge Johnson's orders?

18 MR. SHAPIRO: New Leaf did.

19 THE COURT: Ahh. Surprise, surprise.

20 MR. SHAPIRO: Surprise, surprise. But we believe it would -- well, it would
21 be a total denial of GB Sciences' rights. They qualify. Your Honor has confirmed
22 that. You've confirmed Desert Aire didn't qualify and there's now an available
23 provisional certificate. So the question is, should GB Sciences be forced to go
24 through an entirely different application process? Now they're stacked up against

1 different applicants who now have had the benefit of a year and they prepare, you
2 know, different applications and they write it different and they hire these people,
3 they pay them two hundred thousand dollars to write their application for them. Is
4 that going to satisfy the injustice that's been committed upon GB Sciences? And
5 the answer is no. It needs to be -- the Division needs to be ordered and saying --
6 going back to the time and place, November 3rd, 2014, Desert Aire didn't qualify.
7 We've established that. Find the next applicant and put them in the place they
8 should have been.

9 And the beauty about the Court's power in that respect is we don't
10 have to get into a discussion about whether or not they have authority to go past
11 ninety days because Your Honor has the power to time travel. You can go back to
12 November 3rd, 2014 and say GB Sciences -- or excuse me, Division, you should
13 issue that to GB Sciences as of November 3rd, 2014. That's what the supreme
14 court has said. You raised your eyebrow, so I want to cite Your Honor to that case
15 law, because I do believe it's important.

16 THE COURT: I'm sorry. Any time somebody tells me I can time travel --

17 MS. ANDERSON: Just think of all the things you could do.

18 MR. SHAPIRO: You didn't know all that power, did you?

19 THE COURT: Yeah.

20 MR. SHAPIRO: All right. If you go back to -- I'm on page 15 of my brief and
21 I'm citing to Leonard v. Stoebling, 102 Nev. 543. The supreme court has held that
22 the district courts have authority to issue mandatory injunctions to restore the
23 status quo to undue wrongful conditions. In Memory Gardens of Las Vegas v.
24 Pet Ponderosa Memorial Gardens again they say -- well, maybe that's not the one

1 I was looking for. But you have -- there's some more case law and I can't find it
2 right now. The Court has the ability to put the parties -- and I'm citing it in there
3 somewhere -- to put the parties in the position they would have been in if the law
4 had been followed. And that's the relief we're seeking from Your Honor. It isn't
5 just revoke Desert Aire's provisional certificate and allow it to go to the public
6 through a second round. We're saying, Your Honor, you need to -- because the
7 State screwed up, because they messed up, you need to order the State to issue it
8 to the next party, whoever would have been in that position on November 3rd, 2014.
9 So that's what we're asking you to do.

10 THE COURT: Well, let's see if the State agrees. Is the State asking us to
11 do that?

12 MR. SINGER: Your Honor, getting to the point of the equities and what the
13 State can do and it can't do, the case that I cited you in Reno, clearly the city council
14 violated the law in doing what they did in giving the developer this property. Now,
15 given that fact, the supreme court still said that because of the equities involved
16 we're not going to take it away from them.

17 THE COURT: Uh-huh.

18 MR. SINGER: So we have that situation here as well.

19 THE COURT: I see.

20 MR. SINGER: I mean, we have conflicting equities, I guess is the best way
21 to describe it. We relied on the fact that no one told us after we got the provisional
22 certificate and we filed and got the City to give the special use permit, the State not
23 coming back and saying wait a second, guys, you can't go forward.

24 THE COURT: What does the State say?

1 MS. ANDERSON: And the State says that obviously we feel that the Court's
2 ruling, if the Court remains in that way, is appropriate because we are back to
3 allowing the parties to go forward. We have an establishment that's already up
4 and operating. We're not -- if we open it up again we will consider all the factors
5 that the Legislature has indicated us to do. The Legislature clearly wanted this
6 done in an expedited manner. We're now two years -- you know, we're going to
7 be on two years before we get this cleared up. And our interest is making sure we
8 have the best establishment for the community and that's what we would open up
9 the application period to do.

10 THE COURT: How much deference should the Court give to the fact that
11 this is new legislation, newly enacted for a new entity and it was the first time that
12 the State was doing it?

13 MS. ANDERSON: And interestingly enough, we've not only had that it was
14 newly enacted, we've had the Legislature look at it again and didn't make any
15 changes. The Legislature could have this last time around said ninety days -- oh,
16 we really meant for you to have that list go on and on. In the bill that you did see the
17 Legislature opened up for a limited time only that period for the eight in Clark County
18 and allowed us to open up an application period. So that's why we continue to feel
19 we're bound by that ninety day rule.

20 THE COURT: So, are you able to say what the net effect of the Court's ruling
21 would be if I stuck by that and simply left it to the State to perform its function?

22 MS. ANDERSON: What the State has to do is give notice, open up the
23 application period and allow this dispensary in the City of Las Vegas, and we'd
24 reconsider those applications of anyone who applies.

1 THE COURT: Okay.

2 MR. SHAPIRO: And that process is what only fixes half the problem. The
3 problem is you have an entity that complied with the law, did everything they were
4 required to do, and on November 3rd, 2014, they should have received a provisional
5 certificate. And I don't think the State disputes that. They didn't. And Your Honor
6 has the power to put the parties in the position they should have been in, and that's
7 what we're asking Your Honor to do. You've given us half of what we want, and you
8 recognize that and I recognize that. But we're asking you to go the rest of the way,
9 and that is to put GB Sciences in the position that they could and should have been
10 in on November 3rd, 2014. You clearly have the power to do it, and that's under
11 the City of Reno v. Matley. It's under the Leonard v. Stoebling, Memory Gardens,
12 all those cases that I've cited.

13 THE COURT: Well, okay, but on the other side I'm being cited cases that
14 say that I'm supposed to look at the equities and I'm supposed to give deference to
15 the fact that they've already spent a bunch of money.

16 MR. SHAPIRO: So have we.

17 THE COURT: Okay.

18 MR. SHAPIRO: Everybody has spent money. This is a revokable privilege.
19 Everyone proceeds forward at their own risk. So the fact that they've spent money
20 really doesn't factor into the equities. Everybody spent money.

21 THE COURT: And could the same be said for your client?

22 MR. SHAPIRO: Yeah, we've spent a lot of money, too.

23 THE COURT: So therefore it should just go back to the State, let them
24 function the way the Legislature determined for them to function.

1 MR. SHAPIRO: The difference is --

2 THE COURT: Have a second bite at it because the first time somebody
3 was given it who didn't qualify under the statute.

4 MR. SHAPIRO: Here's the difference. We're not talking equities at that
5 point, we're talking law. The Division didn't follow the law. If they had followed
6 the law, GB Sciences would have a provisional certificate. This isn't an equitable
7 balancing, this is saying, look, if the Division had done what they were required to
8 do we wouldn't be here today, because the Division would have taken the letter,
9 which is Exhibit 9, and they would have taken their rankings, which is Exhibit 12,
10 and they would have gone and crossed out all of the parties who didn't qualify.
11 And then they would have moved everybody else up and GB Sciences would have
12 received a provisional certificate.

13 THE COURT: Let me just interrupt for one second.

14 (The Court confers with the clerk)

15 THE COURT: Okay, go ahead. Sorry.

16 MR. SHAPIRO: So in this particular case the question is -- you've got three
17 parties. You have GB Sciences, who did everything they were supposed to do,
18 who fully complied with the law and who met all statutory requirements. That's not
19 in dispute. You have Desert Aire, who met every law and requirement except one.
20 Then you have the Division, who admittedly did not give any heed to the letter that
21 the City of Las Vegas issued for the express purpose of complying with the statute.
22 Now, the decision to revoke GB Sciences or Desert Aire's provisional certificate
23 is an appropriate decision. The problem is it doesn't remedy the problem because
24 the issue is GB Sciences should have received that provisional certificate.

1 THE COURT: Why does it not, if you have equal opportunity to qualify before
2 the State Board on this go-around with --

3 MR. SHAPIRO: Because we already did qualify. Unlike every other applicant
4 who will apply for this provisional certificate, we will be the only ones who under
5 the law should have received it the first time around. Nobody else will be in that
6 position.

7 THE COURT: What I hear you saying is kind of a variant of what I heard
8 from the other side, that it's only equitable that they should keep their license
9 because they've spent a bunch of money. And they did everything they could to
10 do it right, so why should they be deprived?

11 MR. SHAPIRO: The difference -- and I hear what you're saying and I think
12 I understand where you're going with this, but here's the distinction. The argument
13 about money has no legal basis. It is strictly an equitable argument. GB Sciences
14 is in a different position because we complied with the law. We did everything we
15 were asked to do. Unlike Desert Aire, who withdrew their application and therefore
16 didn't qualify, we went forward and checked off every single box.

17 That's different than their argument that we spent a lot of money,
18 because we can prove that on that date we complied. We can prove that on that
19 date we should have been ranked in the top twelve by the State because there were
20 two or three -- in this case one, but in other cases two or three that didn't qualify.
21 And you don't even have to worry about the two or three. There was one that didn't
22 qualify. We should have been in that spot. We can prove that by law statutorily.
23 That's why it's different than the argument of GB Sciences (sic) who's saying we
24 spent a lot of money, you know, equity should bear in our favor. In this case it's

1 a matter of law. You look at the statute and you say, did they comply? Yes, they
2 did. So should they receive that provisional certificate? And that's what we're
3 asking the Court to do.

4 THE COURT: Okay. Let me ask the State. I have a question for the State.

5 MS. ANDERSON: Yes.

6 THE COURT: What is your view of what your client's purpose is in being
7 involved in this whole process anyway?

8 MS. ANDERSON: It's to protect public health and safety.

9 THE COURT: Okay.

10 MS. ANDERSON: And that's why it's interesting, whenever the Legislature
11 created this, they didn't create property interest for anyone.

12 THE COURT: Uh-huh.

13 MS. ANDERSON: So in the ruling that you've made today, Your Honor,
14 I think you've actually recognized that there is no property interest by any party, but
15 that both parties who are in this litigation should have an opportunity to go forward
16 and apply, and that will allow the Division to best consider all the information and
17 when any mistakes were made, as we are in a better spot to do so.

18 THE COURT: Are you able to say what the Division would do different next
19 time? I put it that way because --

20 MS. ANDERSON: They will certainly be advised very strongly to make sure
21 their application requests the zoning information.

22 THE COURT: And is that the only thing they would do differently?

23 MS. ANDERSON: The only thing that they would do is, you know, they now
24 clearly have a little more experience with the establishments that are up and running

1 and what factors I think they will think will be -- create the most expedited, most
2 successful way of serving the community.

3 THE COURT: Would I be reading into your response that they would be
4 exercising the State of Nevada's interest, as you've already given some indication
5 of, in watching after the health and well-being of the citizenry of this state?

6 MS. ANDERSON: That's their role is to serve the community and come forth
7 with the best solution for this scenario.

8 MR. SINGER: If I may interject?

9 THE COURT: Sure. Give him another shot --

10 MR. SHAPIRO: Okay.

11 THE COURT: -- and then you, and then I'm going to rule.

12 MR. SHAPIRO: Okay.

13 MR. SINGER: Well, if we're talking about additional applications or what
14 have you, being the fact that we have already satisfied everything by being open
15 and operating properly, is it not something that we need to go through a second
16 time? Should we not -- and it's not a question of whether GB Sciences gets their
17 provisional certificate or not. I don't really have an opinion on that one way or
18 the other. It doesn't matter to me and if they deserve one they should have one.
19 But to put us --

20 THE COURT: What was the case that you cited that you said the equities
21 need to be involved?

22 MR. SINGER: If you hold on, Your Honor.

23 THE COURT: And what was the statutory framework that they were
24 interpreting?

1 MR. SINGER: I'll give you the case in a moment. The statutory authority
2 had to do with the city giving property to this developer that was owned by the city.
3 Oh, did I not put it in my second reply?

4 MR. SHAPIRO: Carson City v. Price, Your Honor.

5 MR. SINGER: Yeah. Carson City, basically what it did improperly and
6 illegally, apparently, gave property that the city owned to this developer to build
7 housing on it for --

8 THE COURT: Was that a new statute that had been passed --

9 MR. SINGER: Was it a new statute that --

10 THE COURT: -- that they were dealing with?

11 MR. SINGER: There's no way telling from the case whether it was a new
12 statute. But it definitely violated the city charter in doing that.

13 THE COURT: Okay.

14 MR. SINGER: But it had gotten to the point, and the purpose of it was to
15 give this land so they could build low income housing, which was to be to the benefit
16 of the city, presumably. Well, other people came in and said, wait a second, our
17 property is located right next to what -- there had been this beautiful pond and now
18 you destroyed our property rights by doing this and you did it illegally. And the
19 supreme court said, well, under these circumstances, given the fact that all this work
20 had been done, all this effort had been done, eight months had elapsed from the
21 time that the city passed the resolution or whatever it was that needed to be done
22 to the time that these people finally objected and brought their lawsuit, it's too late.

23 Well, we pretty much have the same situation here. Yes, initially we
24 were part of a lawsuit, but prior counsel for them, I'm not exactly sure which ones,

1 dropped the lawsuit, took us out of the case. In the interim, we then went forward.
2 We spent this money. We got the building approval from the City of Las Vegas.
3 We did everything we're supposed to do. And now they want to take that license
4 or privilege away from us, take that -- well, the right that we acquired under these
5 circumstances.

6 THE COURT: You mean, the privilege you acquired?

7 MR. SINGER: Yeah.

8 THE COURT: Okay, here's what I think.

9 Oh, you want to say something. Okay, go ahead.

10 MR. SHAPIRO: I just want to follow up on the State's position, and that is
11 they said -- or you asked them about exercising the State's interest for public safety
12 and welfare. They already did that. They already exercised their interest. Exhibit
13 12 --

14 THE COURT: And did it wrong, according to you.

15 MR. SHAPIRO: No. The only thing they did wrong was ignoring the law.

16 THE COURT: I see.

17 MR. SHAPIRO: They ranked all 49 of the applicants and GB Sciences was
18 ranked 13 and they issued 12 provisional certificates. They have already determined
19 that GB Sciences was the 13th best suited for the health and safety of Nevadans to
20 have a medical marijuana dispensary. If they had followed the law and eliminated
21 Desert Aire, then we would have been the 12th best and there's no question they
22 would have issued that provisional certificate to us. So the argument that we're
23 going to act in the best interest of the health and safety of the state of Nevada really
24 doesn't carry weight because they've already done it, they've already gone through

1 the process, and GB Sciences should be given that provisional certificate.

2 THE COURT: Is that the only way in which the State exercises any effort
3 to watch out for the health and welfare of the State of Nevada in this process?

4 MR. SHAPIRO: Yes.

5 THE COURT: That's the only thing they do?

6 MR. SHAPIRO: To my knowledge.

7 THE COURT: Okay. Is that correct?

8 MS. ANDERSON: We continue to provide oversight to all of those
9 establishments, to look into their -- whether they're in compliance with all the
10 requirements. And the Legislature had this as an on-going process. They allow
11 us once a year to open up a new application period if we determine there's a need
12 for more establishments of some kind, or if any establishment doesn't comply and
13 we end up revoking their license, we would have to replace them.

14 THE COURT: Okay.

15 MS. ANDERSON: And I said license; just to show that I would, too.
16 Registration.

17 THE COURT: Okay. I remain convinced that the appropriate course is to
18 point out that the State did not act in accordance with the law in the way that it acted
19 and that it must do so. I believe -- correct me if I'm wrong, Mr. Shapiro -- in your
20 complaint you asked for equitable and injunctive relief, I believe.

21 MR. SHAPIRO: Uh-huh.

22 THE COURT: Is it in that vein that I would enter an order, albeit granting
23 a motion for summary judgment, only to the extent of saying that in this new area,
24 which is a new venture for this state and one which many states have not dared to

1 tread yet, that unfortunately because of deadlines that were put to the State they
2 acted quickly and when the smoke cleared not in compliance, complete compliance
3 with the law. I applaud the State's concern about acting in accordance with the law
4 as they've been vested with that discretion by the legislation. I would hope that they
5 would move however quickly they may be able to, so long as it is carefully.

6 I do not believe, and if I'm to be faulted somewhere in injecting my own
7 opinion into this, it is that this is a new area and I think the State should move very
8 methodically and carefully. I don't know the scope of the concerns that the State
9 is able to exercise. It may have been quite limited by the Legislature. I don't know.
10 I hope it was not. But whatever is the proper ambit of the State's care and concern
11 for the health and welfare of this state, I hope that they will not forget to bear that
12 in mind as they go through whatever process they believe is in accordance with the
13 statute.

14 MS. ANDERSON: Thank you, Your Honor.

15 THE COURT: And that's what I think is the appropriate response for a court
16 at this time.

17 MR. SHAPIRO: I understand you granted and denied my motion. I'd still like
18 the opportunity to prepare the order and run it by opposing counsel.

19 THE COURT: Certainly.

20 MS. ANDERSON: We have no problem with that.

21 THE COURT: You may do so.

22 MR. SHAPIRO: Thank you, Your Honor.

23 MS. ANDERSON: And Your Honor, I know we will do a better job just looking
24 at one than looking at all of them at the same time. There is that benefit.

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THE COURT: All right. All right, thank you.

MR. SHAPIRO: Thank you.

THE COURT: Oh, the counter motion then is necessarily denied.

MR. SHAPIRO: Thank you. Yeah, I didn't think of that, but thank you.

MS. ANDERSON: Thank you, Your Honor.

THE COURT: Thank you.

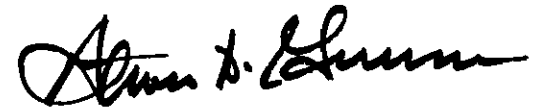
(PROCEEDINGS CONCLUDED AT 10:51:30 A.M.)

* * * * *

ATTEST: I do hereby certify that I have truly and correctly transcribed the audio/video proceedings in the above-entitled case to the best of my ability.



Liz Garcia, Transcriber
LGM Transcription Service



CLERK OF THE COURT

SUBT

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DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiff,

vs.

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

Defendants.

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

Counterclaimant,

vs.

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

Counterdefendant.

CASE NO. A-15-728448-C

DEPT. NO. I

SUBSTITUTION OF ATTORNEYS

1 Patrick J. Sheehan and Richard H. Bryan with the law firm of Fennemore Craig, P.C.
2 are hereby substituted as counsel of record for Defendant/Counterclaimant, Desert Aire Wellness,
3 LLC in the above-captioned matter, in place and stead of Michael H. Singer, Esq..

4 DATED this _____ day of April, 2016.

5 Defendant/Counterclaimant Desert Aire Wellness,
6 LLC

7 Sign: _____

8 Print _____

9
10 I hereby consent to the above and foregoing substitution.

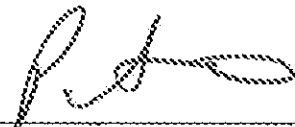
11 DATED this 6th day of April, 2016.

12
13 By: 
14 Michael H. Singer, Esq. (NV Bar No. 1589)
15 4475 South Pecos Road
16 Las Vegas, Nevada 89121
Attorneys for Desert Aire Wellness, LLC

17 I hereby accept the above and foregoing substitution.

18 DATED this 6 day of April, 2016.

19 FENNEMORE CRAIG, P.C.

20 By: 
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