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ARIZONA SUPERIOR COURT

COUNTY OF MARICOPA

CV2011 011288

ELEMENTS THERAPEUTIC DISPENSARY, an Arizona Non-Profit Corporation, ARIZONA DISPENSARY SOLUTIONS, LLC, an Arizona Limited Liability Company; ARIZONA ALTERNATIVE RELIEF CENTERS, INC., an Arizona Non-Profit Corporation dba MEDICAL MARIJUANA DISPENSARIES, PROTECT ARIZONA PATIENTS, INC., an Arizona Non-Profit Corporation; CULTIVATION MANAGEMENT SERVICES, an Arizona Limited Liability Company; HEATHER TORGERSON, a married woman; STEPHEN JOHNSON, a single man; ROBERT LILES, a married man; GREGORY DELUCA; a single man, HEIGHTENED HEALING, LLC, an Arizona Limited Liability Company; ALAN J. CITRIN, M.D., P.C.; JOHN AND JANE DOE I-X; and BLACK CORPORATIONS I-X.

Plaintiffs,

vs.

WILL HUMBLE, Director of the Arizona Department of Health Services, in his Official Capacity; THE ARIZONA DEPARTMENT OF HEALTH SERVICES, a political subdivision of the State of Arizona; JOHN AND JANE DOE I-X; and BLACK CORPORATIONS I-X,

Defendants.

EMERGENCY PETITION FOR SPECIAL ACTION RE: WRIT OF MANDAMUS

///

Plaintiffs in the above-captioned and numbered cause, by and through their attorney undersigned, allege as follows:

JURISDICTION

1. This court has jurisdiction of this matter under Rule 1 of the Arizona Rules of Procedure for Special Actions and its general jurisdiction for actions against a State Official and Department.

2. Plaintiffs seek an emergency order mandating that Will Humble as the Executive Director of the Arizona Department of Health (AZDHS) issue medical marijuana dispensary licenses pursuant to the full implementation of the AMMA, pending resolution of the Declaratory Judgment (2:11-CV-01072-SRB) action filed in District Court by Thomas C. Horne on behalf of the State of Arizona, Governor Janice K. Brewer, *et al.*

3. Plaintiffs previously sought relief in the Court of Appeals pursuant to A. R.S. §12-2021 Annotated, however the court, in its sole discretion denied the matter without prejudice based upon jurisdiction and suggested the action be filed in Superior Court.

PARTIES

4. Plaintiff Elements Therapeutic Dispensary, Inc. ("Elements") is an Arizona Non-Profit Corporation, organized under the laws of the State of Arizona; it has expended in excess of $225,000 to develop and market customized software, processes and systems for submission of a dispensary license, relying upon the representations of the State, to its detriment.

5. Plaintiff Protect Arizona Patients, Inc. ("Protect Arizona Patients") is an Arizona Non-profit Corporation, organized under the laws of the State of Arizona. It

represents the interests of medical marijuana patients and prospective dispensary owners who will be irreparably harmed by the failure of the State to implement the highly regulated dispensary component of the "Arizona Medical Marijuana Act" ("The Act" or "The AMMA").

6. Plaintiff Arizona Dispensary Solutions, LLC ("Arizona Dispensary") is an Arizona Limited Liability Company, organized under the laws of the State of Arizona. It has expended in excess of $75,000 in preparation for submission of applications to the AZDHS, relying upon the representations of the State, to its detriment. The core business of Arizona Dispensary is based on compliance with AZDHS Medical Marijuana rules, the Arizona Revised Statutes created by the AMMA and the dispensary application timeline set forth by the AZDHS.

7. Plaintiff Arizona Alternative Relief Centers, Inc. ("AARC") is an Arizona Non-Profit Corporation dba Medical Marijuana Dispensaries, organized under the laws of the State of Arizona. It has expended approximately $50,000 in preparation of its submission for a dispensary license, relying upon the representations of the State, to its detriment.

8. Plaintiff Cultivation Management Services, LLC ("CMS") is an Arizona Limited Liability Company, organized under the laws of the State of Arizona. CMS is an independent inspection, testing and certification service dedicated to ensuring that quality certified Cannabis is distributed to qualified patients and that AZDHS has third party verification of inventory levels. CMS has expended in excess of $50,000 developing

customized inventory control systems and processes designed specifically for the prospective dispensary licensees.

9. Plaintiff Heather Torgerson ("Torgerson") is an adult resident citizen of the State of Arizona and medical marijuana patient. She has been diagnosed with a malignant brain tumor that is in remission and whose side effects have been greatly relieved and continue to be relieved by the recommended use of Cannabis. Plaintiff Heather Torgerson did vote in favor of Proposition 203.

10. Plaintiff Stephen Johnson ("Johnson") is an adult resident citizen of the State of Arizona and medical marijuana patient. He is a quadriplegic who has been confined to a wheelchair for the past thirty (30) years and has been greatly relieved and continues to be relieved by the recommended use of Cannabis.

11. Plaintiff Robert Liles ("Liles") is an adult resident citizen of the State of Arizona and a medical marijuana patient who has been assigned Social Security Disability and who seeks to purchase his medicine from medical marijuana dispensaries. Plaintiff Liles did vote in favor of Proposition 203.

12. Plaintiff Gregory DeLuca ("DeLuca") who is an adult resident and citizen of the State of Arizona.

13. Plaintiff Heightened Healing LLC. is an Arizona Limited Liability Company, organized under the laws of the State of Arizona. It has expended approximately $50,000 in preparation of its submission for a dispensary license, relying upon the representations of the State, to its detriment.

14. Plaintiff Alan J. Citrin, M.D., P.C., is an Arizona professional corporation. Dr. Citrin is the Medical Director for a Surgical Center in Tempe. Dr. Citrin is a licensed Anesthesiologist with a sub-specialty in maternal high-risk anesthesiology. Dr. Citrin has been approached by one of the other Corporate Plaintiffs in this action about serving as the medical director of the Elements dispensary. Dr. Citrin, individually and on behalf of his Professional Corporation, desires to pursue a medical dispensary license and is exploring the possibility of serving as Medical Director of other dispensaries once they are opened.

15. Plaintiffs John Does I-X and Jane Does I-X, at all times relevant hereto, are adult citizens of the State of Arizona.

16. Defendant Will Humble ("Defendant") is the Director of the Arizona Department of Health Services ("AZDHS"), a political subdivision of the State of Arizona, pursuant to A.R.S. §36-102. In that capacity, Defendant is responsible for the AZDHS employees who are implementing and overseeing the AMMA, A.R.S. §§36-2801, *et seq.*, including but not limited to the issuance of qualified patient, designated caregiver, and not-for-profit medical marijuana dispensary agent registration cards and the registration of not-for-profit medical marijuana dispensary licenses.

17. Defendant The Arizona Department of Health Services ("AZDHS") is a political subdivision of the State of Arizona, pursuant to A.R.S. §36-102. It has been tasked with the responsibility of implementing and overseeing the AMMA, A.R.S. §§36-2801, *et seq.*, including but not limited to the drafting of the Act, establishing the rules and regulations related to the issuance of qualified patient, designated caregiver, and not-for-

profit medical marijuana dispensary agent registration cards and the registration of not-for-profit medical marijuana dispensary licenses.

18. Defendants John Doe and Jane Doe I-X are adult citizens of the State of Arizona, and are subject to service of process.

19. Defendants Black Corporations I-X are Arizona corporations, organized under the laws of the State of Arizona, and are subject to service of process by and through their registered agents

ALLEGATIONS.

20. On November 2, 2010, Arizona voters passed Proposition 203, an initiative measure now identified as the AMMA, envisioned to decriminalize medical marijuana use by people with certain chronic and debilitating medical conditions. Proposition 203 provided that its purpose "is to protect patients with debilitating medical conditions, as well as their physicians and providers, from arrest and prosecution, criminal and other penalties and property forfeiture if such patients engage in the medical use of marijuana." Arizona Governor Jan Brewer signed Proposition 203 into law on December 14, 2010.

21. The Act requires AZDHS to be responsible for implementing and overseeing the Act and provides for the registration and certification of "nonprofit medical marijuana dispensaries," "nonprofit medical marijuana dispensary agents," "qualifying patients," and "designated caregivers."

22. Under the Act, AZDHS is mandated to adopt rules governing the registration and certification process within 120 days after the effective date of the AMMA and to adopt rules establishing the form and content of applications, the manner in which applications

will be considered, the amount of application and renewal fees within certain maximum limits, and specific rules governing dispensaries, a key component of the AMMA.

23. As required by the Act, AZDHS filed its Rules with the Arizona Secretary of State on April 13, 2011.

24. On April 14, 2011, AZDHS began accepting applications from persons who sought to be certified as Qualifying Patients and Designated Caregivers. As of June 30, 2011, more than 6,500 Qualifying Patients and 186 Designated Caregivers had been certified by AZDHS.

25. Under the Act, AZDHS is required to register nonprofit medical marijuana dispensaries and to issue a registration certificate within 90 days after receiving an application.

26. AZDHS is also required to register medical marijuana dispensary agents and to issue registry identification cards to qualifying patients and designated caregivers within certain time frames after receipt of information and documents as set forth in the AMMA.

27. AZDHS was to begin accepting applications for medical marijuana dispensaries and medical marijuana dispensary agents on June 1, 2011. Medical marijuana dispensaries and medical marijuana dispensary agents must be registered by the AZDHS before they can lawfully operate under the Act.

28. Upon information and belief, as early as January 10, 2011, Carolyn Short ("Short"), an attorney who was licensed by the State Bar of Arizona participated in a meeting with Arizona Attorney General Tom Horne ("Horne") and former U.S. Attorney General Paul Charlton ("Charlton") to discuss a legal scheme to file for a declaratory

judgment to delay implementation of the state's medical marijuana law. Incredulously, on February 16, 2011 Short, the Executive Director of Keep AZ Drug Free, wrote an email to Defendant Humble (**SEE** Appendix Document 1).

29. In her February 16th email, Short misrepresented the Controlled Substances Act ("CSA") to Humble. Although the CSA makes no reference to the *facilitation* of any action and no state employee has been prosecuted for implementation of its state law in any jurisdiction, Short further contended that "there is no question but that AZDHS employees and representatives, by virtue of actions taken as required by Prop 23 will facilitate the possession, manufacture and distribution of marijuana, all of which are illegal under the CSA".

30. Moreover, any prosecution of an Arizona state employee is at the discretion of the US Attorney, Dennis Burke ("Burke") who has indicated he has no intention of prosecuting state officials for implementation of the AMMA.

31. Although Short apologized "for the threatening tone" of her email, she advised Defendant Humble that "If I don't hear from you, I will assume that you did in fact instruct Tom Horne not to seek declaratory relief. We then will advise your employees of your stance on the matter and the risks associated with implementing this program".

32. Short concluded, "... we are running out of options and it is time for someone to take a stand on this issue." Short ignores the fact that the voters of Arizona had taken a stand on the issue more than two (2) months earlier -- they voted to pass Proposition 203 and Defendant Humble was simply performing his legal obligation in good faith as a government official.

33. Upon information and belief, on or about April 18, 2011, Defendant Humble spoke by telephone with Assistant U.S. Attorney Patrick Cunningham inquiring whether the Arizona United States Attorney's Office would consider sending a letter regarding medical marijuana, and if so, if that letter could address whether state employees would be at risk of federal prosecution for implementation of the AMMA.

34. On May 2, 2011, Burke issued a letter addressed to Defendant Humble, pursuant to Humble's request, regarding the State's implementation and oversight of the Act (**SEE** Appendix Document 2).The letter addressed the growing, distribution and possession of marijuana, but notably omitted any reference to the prosecution of state employees. Burke's letter cites an October 2009 memorandum from then-Deputy Attorney General Ogden who provided guidance that," in districts where a state had enacted medical marijuana programs, a U.S. Attorney's Office ("USAO") ought not focus their limited resources on those seriously ill individuals who use marijuana as part of a medically recommended treatment regimen and are in clear and unambiguous compliance with such state laws." He continues, "**And, as has been our policy, this USAO will continue to follow that guidance**," (*emphasis added*).

35. On May 27, 2011, five (5) days prior to the date AZDHS was scheduled to begin accepting dispensary applications, Janice Brewer, ("Brewer") in her capacity as the Governor of the State of Arizona, filed a Complaint for Declaratory Judgment in the United States District Court in Arizona (**SEE** Appendix Document 3).The complaint asked the Court to determine whether strict compliance and participation by citizens and state employees in the AMMA provides a safe harbor from federal prosecution, or in the

alternative, whether the AMMA is preempted by the Controlled Substances Act ("CSA") and federal law. Brewer did not seek (or obtain) any injunctive relief enjoining state employees from continuing to issue patient and caregiver cards under the AMMA.

36. Because of the May 27, 2011 lawsuit and legal advice from the Attorney General, AZDHS suspended its acceptance of dispensary applications which was to begin on June 1. However, since state employees continue to issue caregiver cards and patient cards, under Brewer's theory, they could be subject to prosecution for implementing any component of the AMMA. Consequently, issuance of one component of the AMMA -- dispensary licenses -- will not create any more or any less liability for state employees.

37. On June 1, 2011, OF&C, Inc., dba the Virtue Center, attempted to submit an application and business plan for a dispensary license, however, it was unilaterally and publicly rejected by Defendants. Moreover, Defendant AZDHS has unequivocally stated on its website that it won't accept any dispensary applications based upon the filing for declaratory judgment. AZDHS's website specifically states:

> "**ALERT:** The Attorney General filed for declaratory judgment in federal court about the legality of the Arizona Medical Marijuana Act and our Rules. Because of the court filing and legal advice from the Attorney General, AZDHS won't accept dispensary applications in June. However, we will continue to process applications for Patient and Caregiver cards".
>
> (**SEE** Appendix Document 4).

38. Defendants have willfully, wrongfully, and without cause, failed and refused, and still fail and refuse to accept, process dispensary license applications and issue dispensary licenses.

39. Horne, as legal representative for Defendants has conspired with others by willfully, wrongfully, and without cause directing his client Defendant Humble to delay the full implementation of the AMMA by refusing to process dispensary license applications and to issue dispensary licenses.

40. The refusal of Defendants Humble and AZDHS to process and issue dispensary licenses is arbitrary and capricious, and an abuse of discretion, for alternative reasons, including but not limited to:

> The Act has not been declared pre-empted by federal law, nor has the federal court issued any injunction against implementation of the Act;
>
> Burke, as the U.S. Attorney has not indicated that Arizona state employees are at a risk of prosecution; to the contrary, Burke has refuted Brewer's and Horne's claims.
>
> Horne, Short, *et al.* have conspired since January 2011 to delay the full Implementation of the AMMA in total disregard for the passage of the Act.
>
> Defendant Humble is refusing to process dispensary applications submitted to AZDHS, while directing AZDHS staff to continue processing patient and caregiver applications.

41. Through numerous press conferences and interviews, Burke has indicated that Brewer and Horne are "intentionally misinterpreting" his May 4th letter addressed to Defendant. Burke has further stated that Arizona state employees are not at risk of being prosecuted.

42. In fact, during an interview with the *Arizona Daily Star* on May 27, 2011, Burke stated that "Gov. Jan Brewer and Attorney General Tom Horne are distorting the facts on the issue of medical marijuana, and the risk of federal prosecution of state workers."

The article states in *pertinent part*:

"Burke said his letter simply spelled out the priorities his office has in going after those who sell, transport or use marijuana, and never mentioned state workers. The point his letter made is that he would not prioritize going after patients who use medical marijuana under Arizona law, Burke said. . . . Burke said if there was any confusion, Brewer and Horne could have called him or written back for clarification instead of grandstanding at a press conference and filing a lawsuit.

He said a suit asking a judge to rule Arizonans can ignore federal drug laws is a waste. "A federal judge isn't going to tell a U.S. attorney what he can and can't enforce," Burke said.

And Burke pointed out that Humble, whose department is charged with implementing the law, was not alarmed by the May 2 letter, or worried about how it would affect his staffers who are processing the permits for those who want to use marijuana as well as those who want to operate dispensaries or even cultivate the drug.

(**SEE** Appendix Document 5)

43. The AMMA provides for no more than one hundred twenty five (125) highly regulated dispensary and cultivation sites. Stringent dispensary license regulations include, but are not limited to full vetting of the applicant, verification of substantial financial resources, significant zoning restrictions that limit the locale of the dispensaries, comprehensive background checks, audited inventory controls which regulate the origin, distribution, transfer and sale of the Cannabis, and a $5,000 application fee.

44. Conversely, Caregivers require a set of fingerprints, verification that they have not been convicted of an "excluded felony" in the past ten (10) years, state residency and $200.00. Moreover, based upon the current AZDHS licenses, as of this filing, approximately 6,500 applicants have requested to cultivate marijuana, which could currently result in 6,500 individual cultivation sites. Further, patients can "donate" medicine to other patients with virtually no restriction. These caregivers and patients would be precluded from

growing once the dispensaries open if their patients live less than twenty-five (25) miles from one of the 125 dispensaries in the state.

45. Due to the highly unregulated nature of the caregivers, Defendant has previously expressed concern about the caregiver model, publicly stating at the *Valley Partnership* breakfast on April 29th that the caregiver component of the AMMA was analogous to "the wild, wild west". Due to the recent events, time is now of the essence as the unregulated caregiver model continues to gain momentum.

46. Most recently, headlines reveal that a MMJ patient who was issued a patient card by AZDHS on May 25th was involved in a fatal shooting while attempting to "sell" marijuana of questionable origin on June 3rd during an alleged robbery by another "patient". These incidents will continue to evolve unless relief is granted by this Honorable Court as caregivers are able to develop collectives, growing without regulation or supervision. (**SEE** Appendix Document 6).

47. The February 16, 2011 email transmitted by Short to Defendant Humble clearly references the intention of Short, Charlton and Horne to conspire to file for a Declaratory Judgment without basis as early as January 2011. Upon information and belief, Horne did not file a declaratory judgment because, according to Short, at the time, "his client, Will Humble did not want him to do so".

48. Defendant Humble's decision to fully implement the AMMA **seven (7) days** prior to the date scheduled to accept applications, pending the filing of the action for the Declaratory Judgment is a ruse perpetrated by Keep AZ Drug Free Executive Director

Carolyn Short, the Attorney General Thomas Horne, and former U.S Attorney Paul Charlton to arbitrarily and without basis to delay the full implementation of the AMMA.

49. Pursuant to the Act, Plaintiff Elements, Protect Arizona Patients, Arizona Dispensary and AARC relied upon AZDHS representations that dispensary applications would be accepted beginning on June 1, 2011. By delaying the dispensary application process, Plaintiffs are suffering significant and irreparable pecuniary harm, losing potential revenue, and/or are subjecting their prospective clients to being put in a disadvantageous competitive position. These Plaintiffs have collectively expended hundreds of thousands of dollars to prepare for submission of their respective plans to AZDHS, including, but not limited to payment of fees for zoning verification, nonrefundable lease deposits and/or purchase of buildings, real estate agent commissions, business plan consulting, software development, legal fees, marketing and advertising expenses, education and training fees.

50. Plaintiffs Torgerson and Johnson, pursuant to the Act, by virtue of their debilitating illnesses, relied and continue to rely upon AZDHS representations that they will have access to quality, inventory-controlled Cannabis dispensed through highly regulated dispensary owners. As the dispensary component of the AMMA is needlessly being placed at risk by the Defendants, irreparable damage could be caused to Plaintiffs Torgerson and Johnson, whose primary source of Cannabis will be cultivated by highly unregulated caregivers. It is important also to note that Plaintiff Torgerson voted **for** Proposition 203.

51. In conclusion, based upon the foregoing, it is in the best interests of the residents of the State of Arizona, including the patients with debilitating illnesses and the prospective dispensary licensees who have, in good faith, spent months preparing to submit

dispensary licenses, that Defendant Humble direct the AZDHS to accept and process dispensary applications under the stringent regulations of the AMMA.

52. Time is of the essence, because, in the absence of the issuance of a maximum of one hundred and twenty five (125) dispensary licenses, the AMMA provides for the expansion of a network of thousands of caregivers and patients who are able to cultivate Cannabis without supervision, with no zoning restrictions, and with virtually no AZDHS oversight. (**SEE** Appendix Document 8). Such caregiver/patient collectives are being established and advertised to medical marijuana patients. Once this caregiver/patient network becomes entrenched in neighborhoods throughout the state, it will be virtually impossible for the Defendants to control, monitor or most importantly, shut down the network of caregivers and potentially thousands of unregulated cultivation sites.

53. On June14, 2011, Plaintiffs filed an Emergency Petition for Special Action re Writ of Mandamus and subsequently amended the Petition. **SEE** Amended Emergency Petition for Special Action re Writ of Mandamus attached hereto as Appendix Document 9. The State fully responded to the Emergency Petition and also requested that the Court of Appeals stay the action. One of the reasons the State alleged the Petition should be denied was that the United States Attorney General was about to issue a clarification of the prior position contained in an October, 2009 memorandum authored by David Ogden (the "Ogden" Memo). **SEE** Appendix Document 10.

54. On June 29, 2011 the United States Attorney General issued a clarification (the "Cole" Memo) regarding the prior "Ogden" Memo. **SEE** Appendix Document 11. Neither the Ogden Memo nor the Cole Memo indicates that the Federal Government is

going to criminally prosecute state employees who merely issue dispensary licenses. In fact, nowhere in the Controlled Substances Act ("CSA") does it specifically provide that a state worker issuing a dispensary license does so in violation of the CSA.

55. Contrary to allegations made by the State in its Complaint for Declaratory Judgment, Arizona state employees do not incur any more or less liability by issuing dispensary licenses in addition to caregiver licenses and patients cards.

56. Horne previously represented that if the United States Attorney General reiterated the prior position of the Ogden memo, he would stop the Federal lawsuit. **SEE** Appendix Document 12.

57. With the State already having fully briefed its position, Plaintffs request the Court set a hearing on this matter as soon as practicable.

WHEREFORE, Plaintiffs pray that the Court enter an Order as follows:

A. Granting a hearing within ten (10) days of the filing of this Petition;

B. Ordering that Defendants be immediately served with the Petition;

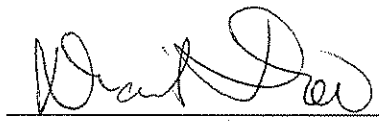
C. Granting an emergency Writ of Mandamus commanding Defendant to fully implement the AMMA by accepting dispensary applications within thirty (30) days of the execution of the Writ, and further directing the State to process those applications and issue licenses within the timeframes outlined in the AMMA;

D. Finding that Defendants' action in refusing to accept and process such dispensary applications and to issue dispensary licenses is arbitrary and capricious and an abuse of discretion;

E. Awarding Plaintiffs their attorney's fees and costs in bringing this action; pursuant to the provisions of A.R.S. §12-2030;

F. For such other and further relief as may be just and proper.

RESPECTFULLY SUBMITTED this 1st day of July, 2011



David W. Dow
Attorney for Plaintiffs

VERIFICATION

STATE OF ARIZONA)
) ss.
County of Maricopa)

SHAKIRA KARIM, in her capacity as a Principal of Plaintiff Elements Therapeutic Dispensary, verifies that she has read the contents of this Complaint and knows the information contained therein to be true and correct based on her own personal knowledge. As to those statements made upon information and belief, to the best of her understanding, she believes them to be true.

DATED this 1st day of July, 2011.

SHAKIRA KARIM

SUBSCRIBED AND SWORN TO before me the undersigned Notary Public this 1st day of July, 2011, by Shakira Karim.

Notary Public

"OFFICIAL SEAL"
Andrea C. Austin
Notary Public - Arizona
Maricopa County
My Commission Expires 3/4/2012

Official Notary Stamp

APPENDIX DOCUMENTS

1. February 16, 2011 email generated by then Attorney Carolyn Short addressed to AZDHS Executive Director Will Humble.

2. May 2, 2011 Dennis Burke ("Burke"), U.S. Attorney for the District of Arizona, letter addressed to Will Humble.

3. May 27, 2011 Declaratory Judgment filed by Governor Janice Brewer in Federal District Court.

4. June 12, 2011 Screenshot from home page of Department of Health Services website. www.azdhs.gov.

5. May 27, 2011 *Arizona Daily Star* news article quoting U.S. Attorney Dennis Burke.

6. June 6, 2011 *ABC News 15* news article entitled, "*Medical Marijuana Buy Ends in Shooting.*"

7. June 8, 2011 *Arizona New Times* news article exposing a plan to launch a legal action against the medical marijuana law in January 2011.

8. June 30, 2011 email advertising unregulated patient/caregiver collective.

9. Petitioners' First Amended Emergency Petition for Special Action re Writ of Mandamus filed June 24, 2011;

10. October, 2009 memorandum authored by David Ogden (the "Ogden" Memo).

11. Memorandum authored by James M. Cole on June 29, 2011 (the "Cole" Memo).

12. Attorney General Tom Horne Press Release

APPENDIX 1

From: **Carolyn Short** <carolyn@keepazdrugfree.com>
Date: Wed, Feb 16, 2011 at 1:49 PM
Subject: Prop 203
To: Will Humble <Will.Humble@azdhs.gov>

Hi Will,

On January 10, 2011, Paul Charlton and I met with Attorney General Horne to discuss our conclusion that implementation of Prop 203 would subject you and other ADHS employees to federal prosecution for violating the Controlled Substances Act ("CSA"). AG Horne suggested that he could file a declaratory judgment action, asking a court to determine whether the implementation of Arizona's law would subject you and other ADHS employees to the risk of federal prosecution under the CSA. Two weeks later, AG Horne indicated that he would not file a declaratory judgment action because his "client, Will Humble" did not want him to do so.

Marijuana is a Schedule I drug under the CSA. Schedule I drugs are those that have a high potential for abuse, lack any accepted medical use and can't be used safely even under the supervision of a physician. As a Schedule I drug, the manufacture, distribution or possession of marijuana is a criminal offense under the CSA. Section 841(a) of the CSA provides that "it is unlawful for any person knowingly or intentionally . . . to manufacture, distribute, or dispense, or possess with intent to manufacture, distribute, or dispense, a controlled substance." Section 844(a) of the CSA provides that it is "unlawful for any person knowingly or intentionally to possess a controlled substance unless such substance was obtained directly, or pursuant to a valid prescription or order, from a practitioner . . . ." (This exception does not apply to Schedule I drugs such as marijuana, which has no accepted medical use.) The consequences of violating the CSA include various fines and terms of imprisonment.

Based on current case law, there is no question but that ADHS employees and representatives, by virtue of actions taken as required by Prop 203, will facilitate the possession, manufacture and distribution of marijuana, all of which are illegal under the CSA. Anyone who possesses, cultivates or distributes marijuana, even if such acts are legal under state law, is subject to federal sanctions. See Gonzales v. Raich, 125 S.Ct. 2195 (2005), and United States v. Oakland Cannabis Buyers' Cooperative, 121 S.Ct. 1711 (2001), and United States v. Rosenthal, 454 F.3d 943 (2006).

The federal ban on marijuana makes anyone who possesses, cultivates, or distributes marijuana pursuant to state law, including those state officials who implement such state law, guilty of a federal crime, and subject to

federal prosecution. This is not mere speculation. In a press release dated August 17, 2007, New Mexico Governor Richardson stated that "The Bush Administration earlier this year threatened to target New Mexico state officials with federal prosecution if the Legislature passed a bill making medical marijuana legal for the most seriously ill patients." http://www.allamericanpatriots.com/48729141_medical_marijuana_new_mexico_governor_bill_richardson_urges_bush_administration_end_heartle ADHS employees or agents facilitating or implementing Prop 203 could be subject to federal prosecution under the CSA, which could result in substantial fines and terms of imprisonment.

I am mindful of the current federal administration's policy of prioritization with respect to enforcing the CSA. In his October 19, 2009 Memorandum, David Ogden, Deputy Attorney General, states that "as a general matter, pursuit of these priorities should not focus federal resources in your States on individuals whose actions are in clear and unambiguous compliance with existing state laws providing for the medical use of marijuana." Mr. Ogden goes on to say, however, that this guidance for prosecutors does not provide a legal defense to violations of federal law "nor does clear and unambiguous compliance with state law or the absence of one or all of the above factors create a legal defense to a violation of the Controlled Substances Act." The fact is that the current administration's philosophy concerning prosecution of those acting under state "medical" marijuana laws (a) does not change federal law; (b) sets priorities which allow a U.S. Attorney to exercise discretion and charge a low priority case where appropriate; (c) could change at any time; and (d) is inconsistent with the policies of the Drug Enforcement Administration, which continues to pursue those acting under state "medical" marijuana laws.

Any ambiguity raised by Ogden's memorandum recently was clarified by the U.S. Attorney for the Northern District of California, Melinda Haag, in her February 1, 2011 letter (attached) to Oakland city officials who were accepting "applications for permits to operate 'industrial cannabis cultivation and manufacturing facilties'" pursuant to an Oakland city ordinance. U.S. Attorney Haag specifically refers to Ogden's memorandum, acknowledging that federal resources should not be focused on "seriously ill individuals who use marijuana as part of a medically recommended treatment regimen in compliance with state law," but stating that federal authorities "will enforce the CSA vigorously against individuals and organizations that participate in unlawful manufacturing and distribution activity involving marijuana, even if such activities are permitted under state law." Not only did U.S. Attorney Haag make crystal clear that individuals directly involved in growing and distributing marijuana will be prosecuted under federal law, she also warned that

"others who knowingly facilitate the actions of the licensees, including property owners, landlords, and financiers should also know that their conduct violates federal law." Those who "facilitate," in the meaning of case law, would include State officials. City officials in Oakland apparently have been told by the County Attorney that they, too, could face federal prosecution. http://www.ajc.com/news/nation-world/feds-to-oakland-pot-827270.html By the way, note that U.S. Attorney Haag states she consulted the Attorney General, Eric Holder, about the Oakland ordinance, making crystal clear the current federal administration's position with respect to the growing and distribution, as opposed to mere use by seriously ill people, of marijuana.

If I don't hear from you, I will assume that you did in fact instruct Tom Horne not to seek declaratory relief. We then will advise your employees of your stance on the matter and the risks associated with implementing this program. You and I have had a great relationship, Will, and I apologize for the threatening tone, but we are running out of options and it is time for someone to take a stand on this issue.

If you have any doubts about the accuracy of this summary, you should consult with Attorney General Horne (who has been given a more detailed analysis of the law on this subject, including descriptions of criminal sanctions) or your own personal attorney.

Carolyn

APPENDIX 2

U.S. Department of Justice

United States Attorney
District of Arizona

Two Renaissance Square
40 North Central Avenue, Suite 1200
Phoenix, Arizona 85004-4408

Main: (602) 514-7500
Main FAX: (602) 514-7693

May 2, 2011

Will Humble
Director
Arizona Department of Health Services
150 N. 18th Avenue
Phoenix, Arizona 85007

Re: Arizona Medical Marijuana Program

Dear Mr. Humble:

I understand that on April 13, 2011, the Arizona Department of Health Services filed rules implementing the Arizona Medical Marijuana Act (AMMA), passed by Arizona voters on November 2, 2010. The Department of Health Services rules create a regulatory scheme for the distribution of marijuana for medical use, including a system for approving, renewing, and revoking registration for qualifying patients, care givers, nonprofit dispensaries, and dispensary agents. I am writing this letter in response to numerous inquiries and to ensure there is no confusion regarding the Department of Justice's view of such a regulatory scheme.

The Department has advised consistently that Congress has determined that marijuana is a controlled substance, placing it in Schedule I of the Controlled Substances Act (CSA). That means growing, distributing, and possessing marijuana in any capacity, other than as part of a federally authorized research program, is a violation of federal law regardless of state laws that purport to permit such activities. As has been the case for decades, the prosecution of individuals and organizations involved in the trade of illegal drugs and the disruption of illegal drug manufacturing and trafficking networks, is a core priority of the Department of Justice. The United States Attorney's Office for the District of Arizona ("the USAO") will continue to vigorously prosecute individuals and organizations that participate in unlawful manufacturing, distribution and marketing activity involving marijuana, even if such activities are permitted under state law.

An October, 2009, memorandum from then-Deputy Attorney General Ogden provided guidance that, in districts where a state had enacted medical marijuana programs, USAOs ought not focus their limited resources on those seriously ill individuals who use marijuana as part of a medically recommended treatment regimen and are in clear and unambiguous compliance with such state laws. And, as has been our policy, this USAO will continue to follow that guidance. The public should understand, however, that even clear and unambiguous compliance with AMMA does not render possession or distribution of marijuana lawful under federal statute.

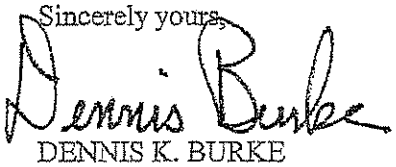
Moreover, the CSA may be vigorously enforced against those individuals and entities who operate large marijuana production facilities. Individuals and organizations – including property owners, landlords,

and financiers – that knowingly facilitate the actions of traffickers also should know that compliance with AMMA will not protect them from federal criminal prosecution, asset forfeiture and other civil penalties. This compliance with Arizona laws and regulations does not provide a safe harbor, nor immunity from federal prosecution.

The USAO also has received inquiries about our approach to AMMA in Indian Country, which comprises nearly one third of the land and five percent of the population of Arizona, and in which state law – including AMMA – is largely inapplicable. The USAO currently has exclusive felony jurisdiction over drug trafficking offenses in Indian Country. Individuals or organizations that grow, distribute or possess marijuana on federal or tribal lands will do so in violation of federal law, and may be subject to federal prosecution, no matter what the quantity of marijuana. The USAO will continue to evaluate marijuana prosecutions in Indian Country and on federal lands on a case-by-case basis. Individuals possessing or trafficking marijuana in Indian Country also may be subject to tribal penalties.

I hope that this letter assists the Department of Health Services and potential registrants in making informed choices regarding the possession, cultivation, manufacturing, and distribution of medical marijuana.

Sincerely yours,



DENNIS K. BURKE
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APPENDIX 3

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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ARIZONA

STATE OF ARIZONA; JANICE K. BREWER, Governor of the State of Arizona, in her Official Capacity; WILL HUMBLE, Director of the Arizona Department of Health Services, in his Official Capacity; ROBERT C. HALLIDAY, Director of the Arizona Department of Public Safety, in his Official Capacity; Plaintiffs, vs. UNITED STATES OF AMERICA; UNITED STATES DEPARTMENT OF JUSTICE; ERIC H. HOLDER, JR., Attorney General of the United States of America, in his Official Capacity; DENNIS K. BURKE, United States Attorney for the District of Arizona, in his Official Capacity; ARIZONA ASSOCIATION OF DISPENSARY PROFESSIONALS, INC., an Arizona corporation; JOSHUA LEVINE; PAULA	Case No. **COMPLAINT FOR DECLARATORY JUDGMENT**

PENNYPACKER; DR. NICHOLAS FLORES; JANE CHRISTENSEN; PAULA POLLOCK; SERENITY ARIZONA, INC., an Arizona nonprofit corporation; HOLISTIC HEALTH MANAGEMENT, INC., an Arizona nonprofit corporation; JEFF SILVA; ARIZONA MEDICAL MARIJUANA ASSOCIATION; DOES I-X; DOES XI-XX;

Defendants.

Plaintiffs, State of Arizona; Janice K. Brewer, Governor of the State of Arizona, in her Official Capacity; Will Humble, Director of Arizona Department of Health Services, in his Official Capacity; and Robert C. Halliday, Director of Arizona Department of Public Safety, in his Official Capacity, through undersigned counsel, bring this civil action for declaratory judgment and allege as follows:

THE AMMA

1. On November 2, 2010, Arizona voters were asked to consider whether the State should decriminalize medical marijuana. Proposition 203, an initiative measure identified as the "Arizona Medical Marijuana Act" ("The Act" or "AMMA"), envisioned decriminalizing medical marijuana for use by people with certain chronic and debilitating medical conditions. Qualifying patients would be able to receive up to 2 ½ ounces of marijuana every two weeks from medical marijuana dispensaries or to cultivate their own plants under certain conditions. Proposition 203 provided that its purpose "is to protect patients with debilitating medical conditions, as well as their physicians and providers, from arrest and prosecution, criminal and other penalties and property forfeiture if such patients engage in the medical use of marijuana."

2. Arizona voters passed Proposition 203 in November 2010; the Governor signed it into law on December 14, 2010.

3. The Act requires the Arizona Department of Health Services ("ADHS") to be responsible for implementing and overseeing the Act.

4. Specifically, the Act provides for the registration and certification by the ADHS of "nonprofit medical marijuana dispensaries," "nonprofit medical marijuana dispensary agents," "qualifying patients," and "designated caregivers."

5. Under the Act, the ADHS is mandated to adopt rules governing the registration and certification process within 120 days after the effective date of the AMMA.

6. Under the Act, the ADHS is required to adopt rules establishing the form and content of applications, the manner in which applications will be considered, the amount of application and renewal fees within certain maximum limits, and rules governing dispensaries.

7. As required by the Act, the ADHS promulgated final rules that were filed with the Secretary of State on April 13, 2011.

8. On April 14, 2011, the ADHS began accepting applications from persons who sought to be certified as Qualifying Patients and Designated Caregivers. As of May 24, 2011, 3,696 Qualifying Patients and 69 Designated Caregivers were certified by the ADHS.

9. Under the Act, the ADHS is required to register nonprofit medical marijuana dispensaries and to issue a registration certificate within 90 days after receiving an application.

10. Under the Act, the ADHS is required to register nonprofit medical marijuana dispensary agents and to issue registry identification cards to qualifying patients and designated caregivers within certain time frames after receipt of information and documents as set forth in the AMMA.

11. The ADHS will begin accepting applications for nonprofit medical marijuana dispensaries and nonprofit medical marijuana dispensary agents on June 1,

2011. Nonprofit medical marijuana dispensaries and nonprofit medical marijuana dispensary agents must be registered by the ADHS before they can lawfully operate under the Act.

12. Beginning August 2011, the ADHS will begin issuing registration certificates for nonprofit medical marijuana dispensaries and registry identification cards for nonprofit medical marijuana dispensary agents.

13. Under the Act, a qualified patient, designated caregiver, or nonprofit medical marijuana dispensary agent with a registry card is allowed to acquire, possess, cultivate, manufacture, use, administer, deliver, transfer, and transport marijuana.

14. Under the Act, registered nonprofit medical marijuana dispensaries and certain qualified patients and designated caregivers are allowed to cultivate marijuana.

15. Under the Act, registered nonprofit medical marijuana dispensaries are allowed to dispense marijuana to qualifying patients and designated caregivers.

16. Under the Act, the ADHS is required to maintain a web-based verification system that can be accessed on a 24-hour basis by law enforcement personnel and nonprofit medical marijuana dispensaries to verify registry identification cards.

17. Under the Act, the ADHS is required to receive a full set of fingerprints from certain applicants for the purpose of obtaining a state and federal criminal background check. The ADHS has contracted with the Arizona Department of Public Safety ("DPS") to perform these background checks.

18. Under the rules for the Act, applicants submitting an application for a registry identification card or to amend, change, or replace a registry identification card for a qualifying patient, designated caregiver, or nonprofit medical marijuana dispensary agent must submit the application electronically through a web-based system created by the ADHS.

19. Under the Act, the ADHS is allowed to inspect nonprofit medical marijuana dispensaries after reasonable notice.

20. Under the Act, the ADHS is required to generally maintain the confidentiality of all information it receives in the course of its duties.

21. The Act provides criminal sanctions for the ADHS employees and agents who breach the confidentiality requirement. Specifically, A.R.S. § 36-2816 provides, "[i]t is a class 1 misdemeanor for any person, including an employee or official of the Department or another state agency or local government, to breach the confidentiality of information obtained pursuant to this chapter."

22. On or about April 14, 2011, Jenny A. Durkan, United States Attorney for the Western District of Washington and Michael C. Ormsby, United States Attorney for the Eastern District of Washington issued a letter to Christine Gregoire, Washington State Governor regarding medical marijuana legislative proposals ("Durkan/Ormsby Letter"). Attached hereto as Exhibit A.

23. The Durkan/Ormsby Letter states that "state employees who conducted activities mandated by the Washington legislative proposals would not be immune from liability under the CSA."

24. On or about April 18, 2011, Plaintiff Will Humble, Director of the ADHS ("Director Humble") spoke by telephone with Assistant United States Attorney Patrick Cunningham inquiring whether the Arizona United States Attorney's Office was considering sending a letter regarding medical marijuana, and if so, if that letter could address whether state employees would be at risk of federal prosecution for implementation of the AMMA.

25. On May 2, 2011, Dennis Burke, the U.S. Attorney for the District of Arizona, issued a letter ("Burke Letter") addressed to Director Humble, regarding the State's implementation and oversight of the Act. In that letter, the U.S. Attorney advised Director Humble that the growing, distribution, and possession of marijuana "in any capacity, other than as part of a Federally authorized research program, is a violation of Federal law regardless of State laws that purport to legalize such activities." The letter

further provides that the U.S. Attorney will continue to vigorously prosecute individuals and organizations that participate in unlawful manufacturing, distributing, and marketing activities involving marijuana, even if such activities are permitted under state law. Importantly, the U.S. Attorney wrote that "compliance with Arizona laws and regulations does not provide a safe harbor, nor immunity from Federal prosecution." A copy of this letter is attached as Exhibit B.

26. The Burke Letter ultimately ignored Director Humble's request for clarification on the issue of federal liability for state employees implementing the AMMA.

27. The actions by the Defendant United States Department of Justice ("DOJ") and its United States Attorneys demonstrate a calculated and coordinated effort on the part of the federal government to threaten prosecution of individuals including state employees who conduct lawful activities under a state's medical marijuana law.

28. Citizens of Arizona and the United States have a right to reasonable certainty with respect to the application of both state and federal law, especially with regard to making medical and business decisions. Further, employees of the ADHS are at risk of being prosecuted by federal authorities if they comply with and implement the AMMA in accordance with its terms.

29. On or about October 19, 2009, David W. Ogden ("Deputy AG Ogden"), Deputy Attorney General for the United States Department of Justice, issued to all United States Attorneys a Memorandum for Selected United States Attorneys regarding investigations and prosecutions in states authorizing the medical use of marijuana ("Ogden Memo"). Attached hereto as Exhibit C.

30. Since that time, citizens, business entities, and state entities have been operating under the guidelines and assumptions of the Ogden Memo in making their business and medical decisions.

31. Recently, the principles of the Ogden Memo have been systematically modified by a series of letters from U.S. Attorneys, including the letter attached as Exhibit B, which has had a negative effect and created uncertainty as to the application of federal law to state medical marijuana programs, which has harmed the Plaintiffs. As set forth previously, the positions set forth in Exhibits A and B pose a threat and palpable harm to citizens and employees of the State of Arizona if they participate, implement and carry out the provisions of the AMMA.

32. Plaintiffs respectfully request that the Court determine whether strict compliance and participation by citizens and state employees in the AMMA provides a safe harbor from federal prosecution, or in the alternative, whether the AMMA is preempted by the Controlled Substances Act ("CSA") and federal law.

THE PARTIES

33. Plaintiff State of Arizona is a sovereign state of the United States.

34. Plaintiff Janice K. Brewer is the Governor of the State of Arizona ("Governor Brewer"). In that capacity, Governor Brewer is vested with the supreme executive power of Arizona and is responsible for the faithful execution of all laws, including the AMMA, and for the protection of the health and safety of Arizona's citizens and state employees, including those employees responsible for implementing, administering, and overseeing the AMMA. Governor Brewer sues in her Official Capacity.

35. Plaintiff Director Humble is the Director of the ADHS. In that capacity, Director Humble is responsible for the ADHS employees who are implementing and overseeing the AMMA, A.R.S. §§ 36-2801, *et seq.*, including but not limited to the issuance of qualified patient, designated caregiver, and nonprofit medical marijuana dispensary agent registration cards and the registration of nonprofit medical marijuana dispensaries. On June 1, 2011, pursuant to the AMMA, Director Humble and his employees will begin accepting and processing applications for registration of nonprofit

medical marijuana dispensaries and nonprofit medical marijuana dispensary agents. Activity surrounding a state's authorization and/or licensing of medical marijuana dispensaries has garnered the attention of U.S. Attorneys in other states. Director Humble sues in his Official Capacity and on behalf of the ADHS employees who are following state law in implementing the AMMA.

36. Plaintiff Robert C. Halliday ("Director Halliday") is the Director of the DPS. The DPS employees, under the direction of Director Halliday, perform criminal background checks and use the web-based verification system to verify registry identification cards as contemplated under the AMMA. Director Halliday sues in his Official Capacity and on behalf of the DPS employees who are following state law in implementing the AMMA. Additionally, the DPS, as a state law enforcement entity, faces conflicts, as do other law enforcement entities, between the activity permitted by the AMMA and not permitted by federal law which places those law enforcement employees in an untenable position.

37. Defendant United States of America ("United States") is a sovereign government of those limited enumerated powers specified in the Constitution of the United States. All references in this Complaint refer to Defendant United States of America in its sovereign capacity.

38. Defendant DOJ is an executive department of the United States government. The DOJ and its subordinate agencies are responsible for enforcement of the CSA, 21 U.S.C. §§ 801, *et seq.*, under the direction of the United States Attorney General.

39. Defendant Eric H. Holder, Jr. is the Attorney General of the United States of America ("U.S. Attorney General") and, as head of the DOJ, has responsibilities associated with national drug policy including but not limited to enforcement and prosecution of violations of the CSA. The U.S. Attorney General is sued in his Official Capacity.

40. Defendant Dennis K. Burke is the United States Attorney for the District of Arizona ("U.S. Attorney Burke"), and as such, is the chief federal law enforcement officer in the District of Arizona. U.S. Attorney Burke is charged with the responsibility to prosecute violations of federal law, including violations of the CSA. U.S. Attorney Burke is sued in his Official Capacity.

41. Defendants United States, DOJ, U.S. Attorney General, and U.S. Attorney Burke are hereinafter referred to as the "Government Defendants."

42. Defendant Arizona Association of Dispensary Professionals, Inc. ("AZADP") is an Arizona corporation with its principal place of business at 17233 N. Holmes Boulevard, Suite 1615, Phoenix, Arizona 85053. The AZADP is an organization comprised of approximately 8000 members. The AZADP membership includes patients, caregivers, dispensary candidates, and other business owners whose operations are directly related to the Arizona medical marijuana industry.

43. Numerous members of the AZADP, acting in good faith and in full compliance with state laws, and in reliance upon the full faith and credit of the Constitution of Arizona, have made significant personal and financial investments into various medical marijuana business operations throughout Arizona.

44. Defendant AZADP's standing and legal position in this action may be adverse to that of the government Defendants.

45. The judgment obtained in this action could have far reaching adverse consequences for the Defendant AZADP's members, causing severe and irreparable personal and financial harm.

46. Upon information and belief, Defendant Joshua Levine ("Mr. Levine") is and, at all times relevant hereto, has been an Arizona resident and registered Independent voter. Mr. Levine has declared that he voted in favor of Proposition 203 and believes that his rights, power and influence as a voter will be injured and infringed if Proposition 203 is not fully implemented.

47. Upon information and belief, Defendant Paula Pennypacker ("Ms. Pennypacker") is and, at all times relevant hereto, has been an Arizona resident and registered Republican voter. Ms. Pennypacker has declared that she voted in favor of Proposition 203 and believes her rights, power, and influence as a voter will be injured and infringed if Proposition 203 is not fully implemented.

48. Upon information and belief, at all times relevant hereto, Defendant Dr. Nicholas Flores ("Dr. Flores") was an Arizona licensed physician specializing in oncology and radiology. Upon information and belief, Dr. Flores has contractually agreed to serve as a medical director for an intended dispensary applicant and believes that his financial interests, contractual and other rights will be compromised and injured if Proposition 203 is not fully implemented.

49. Upon information and belief, at all times relevant hereto, Defendant Jane Christensen ("Mrs. Christensen") was an Arizona resident. Upon information and belief, Mrs. Christensen is a prospective dispensary applicant and has spent significant sums in pursuit of a license and believes she stands to suffer injury to her financial and other interests if Proposition 203 is not fully implemented.

50. Upon information and belief, at all times relevant hereto, Defendant Paula Pollock ("Ms. Pollock") was an Arizona resident. Upon information and belief, Ms. Pollock was a prospective dispensary applicant and has spent significant sums in pursuit of a license and believes she stands to suffer injury to her financial and other interests if Proposition 203 is not fully implemented.

51. Upon information and belief, at all times relevant hereto, Defendant Serenity Arizona, Inc. ("Serenity Arizona") was an Arizona nonprofit corporation. Upon information and belief, Defendant Serenity Arizona is a prospective dispensary applicant and has spent significant sums in pursuit of a license and believes it stands to suffer injury to its financial and other interests if Proposition 203 is not fully implemented.

52. Upon information and belief, at all times relevant hereto, Defendant Holistic Health Management, Inc. ("Holistic Health") was an Arizona nonprofit corporation. Upon information and belief, Defendant Holistic Health is a prospective dispensary applicant and has spent significant sums in pursuit of a license and believes it stands to suffer injury to its financial and other interests if Proposition 203 is not fully implemented.

53. Upon information and believe, at all times relevant hereto, Defendant Jeff Silva ("Mr. Silva") was an Arizona resident suffering from a debilitating condition and has been advised by health care professionals that his condition would benefit from the use of medical marijuana. Upon information and belief, Mr. Silva believes that he stands to suffer injury if Proposition 203 is not fully implemented.

54. Defendant Arizona Medical Marijuana Association ("AZMMA") is a real party in interest in regard to the Act's implementation. The AZMMA was established after the 2010 passage of Proposition 203. The AZMMA's membership includes the individuals who, as the registered political committee known as the Arizona Medical Marijuana Policy Project, qualified this measure for the ballot and then secured its passage. The AZMMA and its members are committed to the Act's implementation in a manner that establishes a well-regulated medical marijuana program to serve the needs of patients with debilitating medical conditions and furthers the intent of the Act.

55. Defendants DOES I-X are sued under fictitious names because their true names and capacities are unknown: that DOES I-X are persons, partnerships, associations, corporations, limited liability companies, limited partnerships, or some other form of entity that is subject to the jurisdiction of this Court. DOES I-X assert that the AMMA is a valid and enforceable law that should be fully implemented in accordance with its terms; that the true names and interests of DOES I-X will be determined and this Complaint amended when this information is ascertained.

56. Defendants DOES XI-XX are sued under fictitious names because their true names and capacities are unknown: that DOES XI-XX are persons, partnerships, associations, corporations, limited liability companies, limited partnerships, or some other form of entity that is subject to the jurisdiction of this Court. DOES XI-XX assert that the AMMA is preempted by the CSA and is not a valid and enforceable law and that it should not implemented in accordance with its terms; that the true names and interests of DOES XI-XX will be determined and this Complaint amended when this information is ascertained.

JURISDICTION AND VENUE

57. This Court has jurisdiction under Article III of the Constitution of the United States, and pursuant to 28 U.S.C. § 1331 because the matters in controversy arise under the Constitution of the United States and laws of the United States and present a federal question.

58. This Court also has jurisdiction pursuant to 28 U.S.C. § 1346 because the United States and its agencies and officers are Defendants.

59. Plaintiffs are seeking relief pursuant to the Declaratory Judgment Act, 28 U.S.C. § 2201.

60. Venue lies in the District of Arizona pursuant to 28 U.S.C. § 1391 because a substantial portion of the events or omissions giving rise to the claims alleged arose within the jurisdiction of United States District Court for the District of Arizona.

61. Venue also lies in the District of Arizona pursuant to 28 U.S.C. § 1402 because the United States and its agencies and officers are Defendants and the Plaintiffs reside in and have their principal places of business located in the District of Arizona.

DECLARATORY JUDGMENT

62. There is an actual controversy of sufficient immediacy and concreteness relating to the legal rights and duties of the Plaintiffs and their legal relations with the Defendants to warrant relief under 28 U.S.C. § 2201.

63. The harm to the Plaintiffs and their state employees as a direct result of the actions and threatened actions of the Defendants is sufficiently real and imminent to warrant the issuance of a conclusive declaratory judgment.

64. It is well established that what makes a declaratory judgment action a proper judicial resolution of a case or controversy rather than an advisory opinion is the settling of some dispute that affects the behavior of the defendant toward the plaintiff. Here, a declaration that compliance with the AMMA provides a safe harbor from federal prosecution would settle the current dispute which affects the behavior of the Defendants toward the Plaintiffs. Conversely, a declaration that the AMMA does not provide a safe harbor from federal prosecution would likewise settle the dispute which affects the behavior of the Defendants toward the Plaintiffs.

THE CONTROLLED SUBSTANCES ACT AND FEDERAL CRIMINAL STATUTES

65. The Defendant United States categorizes marijuana as a Schedule I controlled substance, pursuant to the CSA, and the United States is authorized to arrest and prosecute individuals and businesses that grow, possess, transport, or distribute marijuana. 21 U.S.C.A. § 812.

66. The CSA states that under federal law it is unlawful to manufacture, distribute, or dispense, or possess with intent to manufacture, distribute, or dispense, a controlled substance. 21 U.S.C.A. § 841.

67. The CSA states that under federal law it is unlawful to use any communication facility to commit felony violations of the CSA. 21 U.S.C.A. § 843(b).

68. A "communication facility" is defined as "any and all public and private instrumentalities used or useful in the transmission of writing, signs, signals, pictures, or sounds of all kinds and includes mail, telephone, wire, radio, and all other means of communication. 21 U.S.C.A. § 843(b).

69. The CSA states that under federal law it is unlawful to conspire to commit any of the violations set forth in the CSA. 21 U.S.C.A. § 846.

70. The CSA states that under federal law it is unlawful to knowingly open, lease, rent, use, or maintain property for the manufacturing, storing, or distribution of controlled substances. 21 U.S.C.A. § 856.

71. Under federal law, it is unlawful to aid and abet the commission of a federal crime. 18 U.S.C.A. § 2.

72. Under federal law, it is unlawful to conspire to commit an offense against the United States. 18 U.S.C.A. § 371.

73. Under federal law, it is unlawful to assist an offender thereby becoming an accessory to a crime. 18 U.S.C.A. § 3.

74. Under federal law, it is unlawful to conceal knowledge of a felony from the United States. 18 U.S.C.A. § 4.

75. Under federal law, it is unlawful to make certain financial transactions designed to promote illegal activities or to conceal or disguise the source of the proceeds of that illegal activity. 18 U.S.C.A. § 1956.

STATES ENACTING MEDICAL MARIJUANA LAWS AND WARNINGS / ENFORCEMENT HISTORY OF THE FEDERAL GOVERNMENT DEFENDANTS

76. Approximately 16 States and the District of Columbia have enacted laws relating to medical marijuana. Those states include: Arizona, Washington, Montana, Colorado, California, Rhode Island, Hawaii, Vermont, Nevada, New Mexico, New Jersey, Michigan, Alaska, Delaware, Maine, and Oregon.

77. At least two States, Rhode Island and Vermont, have suspended their medical marijuana programs following certain acts of enforcement by the Defendants.

78. Growers and dispensary owners in several states with medical marijuana laws have endured federal raids of their facilities operating under duly enacted state laws.

Such states suffering federal raids include, but are not necessarily limited to, Michigan, Nevada, Montana, and California.

79. In Arizona, applicants for nonprofit medical marijuana dispensaries have filed for Special Use Permits under the AMMA to operate such facilities.

80. Based upon the stated course of action that will be taken by the federal government against those lawfully working in furtherance of the states' laws regarding implementation of the AMMA, the property, revenue, and liberty interests of the State of Arizona and its citizens are at risk of seizure, forfeiture, and federal prosecution while acting in compliance with state law.

81. The employees and officers of the State of Arizona have a mandatory duty to implement and oversee the administration of the AMMA. Failure to faithfully implement the AMMA exposes Plaintiffs to legal action. Yet, pursuant to Exhibits A and B, the Plaintiffs and their employees and officers risk prosecution and penalties under federal criminal statutes if they faithfully comply with Arizona law.

82. The ADHS' employees and agents cannot comply with both the federal requirements of reporting wrongdoing (18 U.S.C.A. §§ 3, 4, and 371) and with the AMMA's confidentiality obligations (A.R.S. §§ 36-2810 and 2816).

83. In implementing and overseeing the administration of the AMMA, employees and officers of the State of Arizona face a very definite and serious risk that they could be subjected to federal prosecution for aiding and abetting the use, possession, or distribution of marijuana under the CSA.

84. Not only do the Plaintiffs have a personal stake in the controversy at issue, they also assert the interests of other employees, officers, and citizens of the State of Arizona who are or may be similarly situated.

85. These employees, officers, and citizens of the State of Arizona would otherwise have standing to sue in their own right. The interests of these employees, officers, and citizens of the State of Arizona are germane to the purposes of the Plaintiffs

in filing this action. Neither the claims asserted nor the relief requested requires the participation of these individuals in this action.

86. The Plaintiffs, employees, officers, and citizens of the State of Arizona are presented with the certain and immediate dilemma to choose between complying with Arizona state law and risking serious federal prosecution and other serious penalties.

87. The Government Defendants have communicated a specific warning or threat of criminal prosecution and other legal proceedings to Director Humble, even if the Plaintiffs and employees, officers, or citizens of the State of Arizona are following Arizona state law. The federal government has made clear its intent to threaten and eventually eliminate any business or enterprise related to the medical use of marijuana. As such, these actions qualify as pre-enforcement warnings or threats to initiate proceedings against Plaintiffs, and those similarly situated.

88. The Government Defendants have a history of enforcement against those acting under state law with regard to the medical marijuana laws of other states.

89. The property of the Plaintiffs and that of citizens are at risk of seizure and forfeiture. The State of Arizona and its citizens stand to lose revenue. The employees, officers, and citizens of the State of Arizona are at risk of prosecution and other penalties if they follow the duly enacted AMMA in compliance with the laws of Arizona.

90. With all due respect to the Government Defendants, the actions of these Government Defendants serve to undermine efforts of the Plaintiffs to implement state law in accordance with the will of the people of the State of Arizona.

91. In addition, upon information and belief, the remaining Defendants contend that AMMA should be implemented in accordance with its terms and that such implementation will not constitute a violation of the CSA.

THE OGDEN MEMO

92. On or about October 19, 2009, ("Deputy AG Ogden"), Deputy Attorney General for the United States Department of Justice, issued to all United States Attorneys

a Memorandum for Selected United States Attorneys regarding investigations and prosecutions in states authorizing the medical use of marijuana. *See* Exhibit C.

93. The stated purpose of the Ogden Memo was to provide "clarification and guidance to federal prosecutors in States that have enacted laws authorizing the medical use of marijuana" and to "provide uniform guidance to focus federal investigations and prosecutions in these States on core federal enforcement priorities."

94. The Ogden Memo states, *inter alia*, that "[t]he Department of Justice is committed to the enforcement of the Controlled Substances Act in all States."

95. The Ogden Memo states that "Congress has determined that marijuana is a dangerous drug, and the illegal distribution and sale of marijuana is a serious crime. . . ."

96. The Ogden Memo states that "[i]n general, United States Attorneys are vested with 'plenary authority with regard to federal criminal matters' within their districts. USAM 9-2.001. In exercising this authority, United States Attorneys are 'invested by statute and delegation from the Attorney General with the broadest discretion in the exercise of such authority.' *Id.* This authority should, of course, be exercised consistent with Department priorities and guidance."

97. The Ogden Memo states that "[t]he prosecution of significant traffickers of illegal drugs, including marijuana, and the disruption of illegal drug manufacturing and trafficking networks continues to be a core priority in the Department's efforts against narcotics and dangerous drugs, and the Department's investigative and prosecutorial resources should be directed toward these objectives."

98. The Ogden Memo states that "[a]s a general matter, pursuit of these priorities should not focus federal resources in your States on individuals whose actions are in clear and unambiguous compliance with existing state laws providing for the medical use of marijuana. For example, prosecution of individuals with cancer or other serious illnesses who use marijuana as part of a recommended treatment regimen consistent with applicable state law, or those caregivers in clear and unambiguous

compliance with existing state law who provide such individuals with marijuana, is unlikely to be an efficient use of limited federal resources."

99. The Ogden Memo states that "prosecution of commercial enterprises that unlawfully market and sell marijuana for profit continues to be an enforcement priority of the Department. To be sure, claims of compliance with state or local law may mask operations inconsistent with the terms, conditions, or purposes of those laws, and federal law enforcement should not be deterred by such assertions when otherwise pursuing the Department's core enforcement priorities."

100. The Ogden Memo states that "[o]f course, no State can authorize violations of federal law."

101. The Ogden Memo states that "[i]ndeed, this memorandum does not alter in any way the Department's authority to enforce federal law, including laws prohibiting the manufacture, production, distribution, possession, or use of marijuana on federal property."

102. The Ogden Memo states that "[t]his guidance regarding resource allocation does not 'legalize' marijuana or provide a legal defense to a violation of federal law, nor is it intended to create any privileges, benefits, or rights, substantive or procedural, enforceable by any individual, party or witness in any administrative, civil, or criminal matter. Nor does clear and unambiguous compliance with state law or the absence of one or all of the above factors [unlawful possession or unlawful use of firearms, violence, sales to minors, financial and marketing activities inconsistent with the terms, conditions, or purposes of state law, including evidence of money laundering activity and/or financial gains or excessive amounts of cash inconsistent with purported compliance with state or local law, amounts of marijuana inconsistent with purported compliance with state or local law, illegal possession or sale of other controlled substances, or ties to other criminal enterprises] create a legal defense to a violation of the Controlled Substances Act."

103. The Ogden Memo states that "nothing herein precludes . . . investigation or prosecution, even when there is clear and unambiguous compliance with existing state law, in particular circumstances where investigation or prosecution otherwise serves important federal interests."

THE STATE OF ARIZONA

104. On or about May 2, 2011, Defendant U.S. Attorney Burke issued a letter to Plaintiff Director Humble regarding the Arizona Medical Marijuana Program ("Burke Letter"). *See* Exhibit B.

105. The Burke Letter states, *inter alia*, that "[t]he Department [of Justice] has advised consistently that Congress has determined that marijuana is a controlled substance, placing it in Schedule I of the Controlled Substances Act (CSA). That means growing, distributing, and possessing marijuana in any capacity, other than as part of a federally authorized research program, is a violation of federal law regardless of state laws that purport to permit such activities. As has been the case for decades, the prosecution of individuals and organizations involved in the trade of illegal drugs and the disruption of illegal drug manufacturing and trafficking networks, is a core priority of the Department of Justice. The United States Attorney's Office for the District of Arizona ("the USAO") will continue to vigorously prosecute individuals and organizations that participate in unlawful manufacturing, distribution and marketing activity involving marijuana, even if such activities are permitted under state law."

106. The Burke Letter states that "[t]he public should understand . . . that even clear and unambiguous compliance with AMMA does not render possession or distribution of marijuana lawful under federal statute."

107. The Burke Letter states that "the CSA may be vigorously enforced against those individuals and entities who operate large marijuana production facilities. Individuals and organizations -- including property owners, landlords, and financiers -- that knowingly facilitate the actions of traffickers also should know that compliance with

AMMA will not protect them from federal criminal prosecution, asset forfeiture and other civil penalties. This compliance with Arizona laws and regulations does not provide a safe harbor, nor immunity from federal prosecution."

THE STATE OF WASHINGTON

108. In or about 1998, the State of Washington first enacted a law to decriminalize medical marijuana.

109. On or about April 14, 2011, Jenny A. Durkan, United States Attorney for the Western District of Washington and Michael C. Ormsby, United States Attorney for the Eastern District of Washington issued a letter to Christine Gregoire, Washington State Governor regarding medical marijuana legislative proposals ("Durkan/Ormsby Letter"). *See* Exhibit A.

110. The Durkan/Ormsby Letter states, *inter alia*, that "we maintain the authority to enforce the CSA vigorously against individuals and organizations that participate in unlawful manufacturing and distribution activity involving marijuana, even if such activities are permitted under state law."

111. The Durkan/Ormsby Letter states that "[t]he Washington legislative proposals will create a licensing scheme that permits large-scale marijuana cultivation and distribution. This would authorize conduct contrary to federal law and thus, would undermine the federal government's efforts to regulate the possession, manufacturing, and trafficking of controlled substances. Accordingly, the Department [of Justice] could consider civil and criminal legal remedies regarding those who set up marijuana growing facilities and dispensaries as they will be doing so in violation of federal law."

112. The Durkan/Ormsby Letter states that "[o]thers who knowingly facilitate the actions of the licensees, including property owners, landlords, and financiers should also know that their conduct violates federal law."

113. The Durkan/Ormsby Letter states that "state employees who conducted activities mandated by the Washington legislative proposals would not be immune from liability under the CSA."

114. The Durkan/Ormsby Letter states that "[p]otential actions the Department [of Justice] could consider include injunctive actions to prevent cultivation and distribution of marijuana and other associated violations of the CSA; civil fines; criminal prosecution; and the forfeiture of any property used to facilitate a violation of the CSA."

115. The Durkan/Ormsby Letter states that "[a]s the Attorney General has repeatedly stated, the Department of Justice remains firmly committed to enforcing the CSA in all states."

THE STATE OF MONTANA

116. In or about 2004, the State of Montana first enacted a law to decriminalize medical marijuana.

117. On or about April 20, 2011, Michael W. Cotter, United States Attorney for the District of Montana issued a letter to Senator Jim Peterson, Montana Senate President, and Representative Mike Milburn, Speaker of the House of Representatives for the State of Montana ("Cotter Letter"). Attached hereto as Exhibit D.

118. The Cotter Letter states, *inter alia*, that "the Department [of Justice] has stated on many occasions that Congress placed marijuana in Schedule I of the Controlled Substances Act (CSA) and, as such, growing, distributing, and possessing marijuana in any capacity, other than as part of a federally authorized research program, is a violation of federal law regardless of state laws that purport to permit such activities."

119. The Cotter Letter states that "[t]he prosecution of individuals and organizations involved in the trade of any illegal drugs and the disruption of drug trafficking organizations is a core priority of the Department [of Justice]. This core priority includes prosecution of business enterprises that unlawfully market and sell marijuana."

120. The Cotter Letter states that "we maintain the authority to enforce the CSA against individuals and organizations that participate in unlawful manufacturing and distribution activity involving marijuana, even if such activities are permitted under state law."

THE STATE OF COLORADO

121. In or about 2000, the State of Colorado first enacted a law to decriminalize medical marijuana.

122. On or about April 26, 2011, John F. Walsh, United States Attorney for the District of Colorado issued a letter to John Suthers, Attorney General for the State of Colorado ("Walsh Letter"). Attached hereto as Exhibit E.

123. The Walsh Letter states, *inter alia*, that "[a]s reiterated in the Ogden memo, the prosecution of individuals and organizations involved in the trade of any illegal drugs and the disruption of drug trafficking organizations is a core priority of the Department. This core priority includes prosecution of business enterprises that unlawfully market and sell marijuana."

124. The Walsh Letter states that "we maintain the authority to enforce the CSA vigorously against individuals and organizations that participate in unlawful manufacturing and distribution activity involving marijuana, even if such activities are permitted under state law. The Department's [of Justice] investigative and prosecutorial resources will continue to be directed toward these objectives."

125. The Walsh Letter states that "[t]he Department [of Justice] would consider civil and criminal legal remedies regarding those who invest in the production of marijuana, which is in violation of federal law, even if the investment is made in a state-licensed fund of the kind proposed."

126. The Walsh Letter states that "the Department would consider civil actions and criminal prosecution regarding those who set up marijuana growing facilities and

dispensaries, as well as property owners, as they will be acting in violation of federal law."

127. The Walsh Letter states that "[a]s the Attorney General has repeatedly stated, the Department of Justice remains firmly committed to enforcing the federal law and the Controlled Substances Act in all states."

128. The Attorney General of Colorado issued a letter dated April 26, 2011, to the Governor of Colorado, John Hickenlooper and Members of the Colorado General Assembly regarding the federal enforcement of marijuana laws ("COAG Letter"). Attached hereto as Exhibit F.

129. The COAG Letter states "[o]f great concern is the fact that some . . . U.S. Attorneys do not consider state employees who conduct activities under state medical marijuana laws to be immune from liability under federal law."

THE STATE OF CALIFORNIA

130. In or about 1996, the State of California first enacted a law to decriminalize medical marijuana.

131. On or about February 1, 2011, Melinda Haag, United States Attorney for the Northern District of California issued a letter to the Oakland City Attorney, John A. Russo ("Haag Letter"). Attached hereto as Exhibit G.

132. The Haag Letter states, *inter alia*, that "[t]he prosecution of individuals and organizations involved in the trade of any illegal drugs and the disruption of drug trafficking organizations is a core priority of the Department. This core priority includes prosecution of business enterprises that unlawfully market and sell marijuana."

133. The Haag Letter states that "we will enforce the CSA vigorously against individuals and organizations that participate in unlawful manufacturing and distribution activity involving marijuana, even if such activities are permitted under state law. The Department's investigative and prosecutorial resources will continue to be directed toward these objectives."

134. The Haag Letter states that "[t]he government may also pursue civil injunctions, and the forfeiture of drug proceeds, property traceable to such proceeds, and property used to facilitate drug violations."

135. The Haag Letter states that "[t]he Department [of Justice] is concerned about the Oakland Ordinance's creation of a licensing scheme that permits large-scale industrial marijuana cultivation and manufacturing as it authorizes conduct contrary to federal law and threatens the federal government's efforts to regulate the possession, manufacturing, and trafficking of controlled substances."

136. The Haag Letter states that "the Department is carefully considering civil and criminal legal remedies regarding those who seek to set up industrial marijuana growing warehouses in Oakland pursuant to licenses issued by the City of Oakland. Individuals who elect to operate 'industrial cannabis cultivation and manufacturing facilities' will be doing so in violation of federal law. Others who knowingly facilitate the actions of the licensees, including property owners, landlords, and financiers should also know that their conduct violates federal law."

137. The Haag Letter states that "[p]otential actions the Department [of Justice] is considering include injunctive actions to prevent cultivation and distribution of marijuana and other associated violations of the CSA; civil fines; criminal prosecution; and the forfeiture of any property used to facilitate a violation of the CSA."

138. The Haag Letter states that "[a]s the Attorney General has repeatedly stated, the Department of Justice remains firmly committed to enforcing the CSA in all states."

THE STATE OF RHODE ISLAND

139. In or about 2006, the State of Rhode Island first enacted a law to decriminalize medical marijuana.

140. On or about April 29, 2011, Peter F. Neronha, United States Attorney for the District of Rhode Island, issued a letter to Governor Lincoln D. Chafee regarding medical marijuana ("Neronha Letter"). Attached hereto as Exhibit H.

141. The Neronha Letter states, *inter alia*, that "[t]he prosecution of individuals and organizations involved in the trade of any illegal drugs and the disruption of drug trafficking organizations is a core priority of the Department of Justice. This core priority includes prosecution of business enterprises that unlawfully market and sell marijuana."

142. The Neronha Letter states that "the Department of Justice maintains the authority to enforce the CSA vigorously against individuals and organizations that participate in unlawful manufacturing and distribution activity involving marijuana, even if such activities are permitted under state law. The Department's investigative and prosecutorial resources will continue to be directed toward these objectives."

143. The Neronha Letter states that the Rhode Island Medical Marijuana Act and "the registration scheme it purports to authorize, and the anticipated operation of the three centers appear to permit large-scale marijuana cultivation and distribution. Such conduct is contrary to federal law and thus, undermines the federal government's efforts to regulate the possession, manufacturing, and trafficking of controlled substances."

144. The Neronha Letter states that "the Department of Justice could consider civil and criminal legal remedies against those individuals and entities who set up marijuana growing facilities and dispensaries as such actions are in violation of federal law. Others who knowingly facilitate those individuals and entities who set up marijuana growing facilities and dispensaries, including property owners, landlords, and financiers, should also know that their conduct violates federal law."

THE STATE OF HAWAII

145. In or about 2000, the State of Hawaii first enacted a law to decriminalize medical marijuana.

146. On or about April 12, 2011, Florence T. Nakakuni, United States Attorney for the District of Hawaii, issued a letter to Jodie F. Maesaka-Hirata, Director of the Department of Public Safety for the State of Hawaii regarding a medical marijuana bill pending in the Hawaii Legislature ("Nakakuni Letter"). Attached hereto as Exhibit I.

147. The pending bill would create a State licensing scheme which permits the marijuana distribution center in each county to support unlimited numbers of resident caregivers and patients and non-resident patients visiting from other states.

148. The Nakakuni Letter states, *inter alia*, that "[t]he prosecution of individuals and organizations involved in the trade of any illegal drugs and the disruption of drug trafficking organizations is a core priority of the Department [of Justice]. This core priority includes prosecutions of business enterprises that unlawfully market and sell marijuana."

149. The Nakakuni Letter states that "we maintain the authority to enforce the CSA vigorously against individuals and organizations that participate in unlawful manufacturing and distribution activity of controlled substances, including marijuana, even if such activities are permitted under state law."

150. The Nakakuni Letter states that "the Department [of Justice] is carefully considering civil and criminal legal remedies if this Bill is enacted and becomes law, with respect to those who seek to create such marijuana distribution centers pursuant thereto."

151. The Nakakuni Letter states that "[i]ndividuals who elect to operate such marijuana centers will be doing so in violation of Federal law. Others who knowingly facilitate and assist the actions of the licensees (including property owners, landlords, and financiers) should also know that their conduct violates Federal law."

THE STATE OF VERMONT

152. In or about 2004, the State of Vermont first enacted a law to decriminalize medical marijuana.

153. In Vermont, upon information and belief, United States Attorney Tristram Coffin recently warned lawmakers, who are deciding on whether to expand the state's 2004 medical marijuana law to include state-licensed dispensaries, that doing so will place the state in violation of federal law.

THE STATE OF NEW MEXICO

154. In or about 2007, the State of New Mexico first enacted a law to decriminalize medical marijuana.

155. On or about August 6, 2007, the Office of the Attorney General for the State of New Mexico issued an opinion letter to Dr. Alfredo Vigil, Cabinet Secretary Designate, regarding the exposure to federal prosecution of state employees acting on behalf of the state with regard to a medical marijuana law ("NMAG Letter"). Attached hereto as Exhibit J.

156. The NMAG Letter concluded that a Department of Health employee, or representative acting on behalf of the Department of Health, may be subject to federal prosecution under the CSA.

THE STATE OF MAINE

157. In or about 1999, the State of Maine first enacted a law to decriminalize medical marijuana.

158. On or about May 16, 2011, Thomas E. Delahanty II, United States Attorney for the District of Maine issued a letter to Senator Earle L. McCormick and Representatives Meredith N. Strang Burgess of the Maine Legislature regarding pending medical marijuana legislation ("Delahanty Letter"). Attached hereto as Exhibit K.

159. The Delahanty Letter states, *inter alia*, that the U. S. Attorney could not endorse or comment upon the proposed legislation "other than to advise you those activities by users (patients), caregivers and dispensaries remain illegal under the federal Controlled Substances Act (CSA)."

160. The Delahanty Letter states that "growing, distributing, and possessing marijuana in any capacity, other than as part of a federally authorized research program, is a violation of federal law regardless of state laws permitting such activities."

161. The Delahanty Letter states that "we will enforce the CSA vigorously against individuals and organizations that participate in unlawful manufacturing and distribution activity involving marijuana, even if such activities are permitted under state law. The Department's investigative and prosecutorial resources will continue to be directed toward these objectives."

162. The Delahanty Letter states that "[f]ederal money laundering and related statutes, which prohibit a variety of different types of financial activity involving the movement of drug proceeds, may likewise be utilized. The government may also pursue civil injunctions, and the forfeiture of drug proceeds, property traceable to such proceeds, and property used to facilitate drug violations."

OTHER STATES

163. The other states and district that have enacted laws regarding the medical use of marijuana, including Nevada, New Mexico, New Jersey, Michigan, Alaska, Delaware, Oregon, and the District of Columbia, likely have or will receive the same or similar guidance from the Defendants regarding the likelihood of prosecution and enforcement under the CSA.

164. The Ogden Memo and the aforementioned U.S. Attorneys' Letters state that limited resources should not be used to prosecute seriously ill individuals who use marijuana as part of a medically recommended treatment regimen and are in clear and unambiguous compliance with state laws. At the present time, the DOJ is using its discretion to not prosecute seriously ill individuals who are in compliance with state medical marijuana laws; other persons or entities who are likewise in clear and unambiguous compliance with the AMMA, however, will be prosecuted. This absurd

result demonstrates the need for judicial intervention and a declaration of rights regarding the AMMA and federal law.

165. Further, the deliberate and ominous shift in tone of the more recent U.S. Attorneys' Letters, including Exhibit B, has had a negative and palpable effect and created uncertainty as to the application of federal law to state medical marijuana programs, and in particular, the AMMA. The Court should resolve this uncertainty by declaring whether the AMMA complies with federal law and should be implemented in accordance with its terms, or conversely, whether the AMMA is preempted by the CSA and therefore void.

CONCLUSION

166. By virtue of the foregoing, the federal government's position places the AMMA in conflict with the CSA as well as the policies of the DOJ that have been implemented to enforce the CSA.

167. Defendants DOES I-X, contrary to the federal government, contend that the AMMA does not violate federal law and that it should be strictly implemented in accordance with its terms.

168. Defendants DOES XI-XX, in accordance with the federal government, contend that the AMMA does violate federal law and that it should not be implemented.

169. A controversy has arisen and now exists between Plaintiffs and Defendants and, indeed among Defendants, relating to their rights and duties.

170. In light of this controversy and the competing claims of the parties, Plaintiffs desire a declaration of Plaintiffs' rights with respect to whether the AMMA complies with federal law and should be implemented and enforced in accordance with its terms, or whether the AMMA should be declared preempted in whole or in part because of an irreconcilable conflict with federal law.

171. Such a declaration is necessary so that Plaintiffs may ascertain their rights and duties because of the unsettled and competing claims of the parties.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request a declaratory judgment as follows:

A. The Court declare the respective rights and duties of the Plaintiffs and the Defendants regarding the validity, enforceability, and implementation of the AMMA.

B. The Court determine whether strict compliance and participation in the AMMA provides a safe harbor from federal prosecution.

C. The Court grant such other and further relief as it deems appropriate and proper.

Dated this 27th day of May, 2011.

THOMAS C. HORNE
Attorney General

s/ Kevin D. Ray
Kevin D. Ray
Lori S. Davis
Aubrey Joy Corcoran
Assistant Attorneys General

Attorneys for Plaintiffs

#1924728

APPENDIX 4

Division of Public Health Services Home
Arizona Medical Marijuana Program Home
Law Enforcement Agencies
Employee Verification
Application Reports
Rules & Statutes
Qualifying Patients
Caregivers
Dispensaries
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OFFLINE
submit questions 24/7

Arizona Medical Marijuana Program

Home

The Attorney General filed for declaratory judgment in federal court about the legality of the Arizona Medical Marijuana Act and our Rules. Because of the court filing and legal advice from the Attorney General, ADHS won't accept dispensary applications in June. However, we will continue to process applications for Patient and Caregiver cards.

The requirements and instructions for obtaining an identification card.

Qualifying Patients

Fill out the necessary paperwork to assist a qualifying patient.

Caregivers

Get info on dispensary certificate and approval to operate applications.

Dispensaries

Learn how to become a dispensary agent and the required documentation.

Dispensary Agents

How to recommend medical marijuana to a qualifying patient.

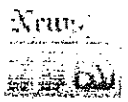
Physicians

Find answers to some of the most frequently asked questions.

FAQs

Mark these upcoming dates and milestones on your calendar.

Important Dates



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Latest News

In November 2010, voters passed the Arizona Medical Marijuana Act. The citizen initiative (Proposition 203) called on the Arizona Department of Health Services to create a medical marijuana program within 120 days from the official election results. Qualifying patients can start applying for identification cards on April 14, 2011, and the Department suspended the dispensary and dispensary agent portions on May 27, 2011. All information will be made available on this website as soon as it is ready. You can also find historical documents from the development of the program.

APPENDIX 5

Horne says suit seeking guidance on prosecution risks is only logical

Pot letter misread, says US attorney

By Howard Fischer Capitol Media Services | Posted: Friday, May 27, 2011 12:00 am

PHOENIX - The top federal prosecutor in Arizona said Gov. Jan Brewer and Attorney General Tom Horne are distorting the facts on the issue of medical marijuana, and the risk of federal prosecution of state workers.

Brewer and Horne announced earlier this week they will file suit, based on concerns about a letter from Dennis Burke, the U.S. attorney for Arizona, which they say suggests state employees who process permits under the voter-approved law could be charged with violating the federal Controlled Substances Act.

The pair said their concern is protecting state workers and others involved with medical marijuana, and is not a reflection of their opposition to the initiative.

Brewer said Burke's letter to Health Director Will Humble earlier this month warned that compliance with Arizona's new medical marijuana law does not immunize anyone from federal prosecution.

The yet-to-be-filed lawsuit is expected to ask a federal judge to determine what legal protections, if any, Arizona's voter-approved law provides.

Burke said his letter simply spelled out the priorities his office has in going after those who sell, transport or use marijuana, and never mentioned state workers. The point his letter made is that he would not prioritize going after patients who use medical marijuana under Arizona law, Burke said.

Gubernatorial press aide Matthew Benson conceded that Burke never mentions state workers, but said just because Burke didn't say it doesn't mean state workers have nothing to fear.

Horne likewise responded that Burke's not specifically mentioning state employees did not mean they are not at that risk.

Burke's position that compliance with the state medical marijuana law is no protection from federal prosecution, Horne said, leads to the logical conclusion that state employees could be at risk by issuing permits to let people grow, sell or possess marijuana, which could be seen as "facilitating" the distribution of the drug.

Burke said if there was any confusion, Brewer and Horne could have called him or written back for clarification instead of grandstanding at a press conference and filing a lawsuit.

He said a suit asking a judge to rule Arizonans can ignore federal drug laws is a waste. "A federal judge isn't going to tell a U.S. attorney what he can and can't enforce," Burke said.

And Burke pointed out that Humble, whose department is charged with implementing the law, was not alarmed by the May 2 letter, or worried about how it would affect his staffers who are processing the permits for those who want to use marijuana as well as those who want to operate dispensaries or even cultivate the drug.

Humble continues to have his employees issue permits for marijuana users.

In a separate development Thursday, Maricopa County Attorney Bill Montgomery advised county supervisors to stop doing anything to implement the law until the conflict with federal laws is resolved. The county must approve zoning and use permits for marijuana facilities.

Amelia Cramer, the chief deputy Pima County attorney, said her office has not been asked for an opinion on the law and how it affects county workers.

Medical marijuana buy ends in shooting

Posted: 06/03/2011

- By: Deborah Stocks

PHOENIX - Police have identified a man shot and killed while trying to rob a medical marijuana grower at gunpoint Thursday.

Phoenix police said in a Friday news release that 38-year-old Larry Miller died at a local hospital.

advertisement

Police said the 30-year-old shooter had been issued an Arizona Medical Marijuana Identification card allowing him to grow and possess marijuana. He apparently advertised medical marijuana for sale to people who could show him their own medical marijuana identification card.

Police said just before 4 p.m. Thursday Miller and another man met the 30-year-old grower at an apartment complex near 17th and Missouri avenues to make a purchase. When the grower, who was not identified, asked for their medical marijuana identification cards, Miller said his card was in his apartment and lured the seller to the back of the apartment complex, police said.

Miller then pulled out a weapon and tried to rob the grower of the marijuana. Police said a struggle took place and the marijuana grower grabbed his own gun and shot Miller.

When police arrived, they found the grower doing CPR on Miller.

Police said the man who was with Miller grabbed the grower's backpack, believed to contain marijuana, and fled the area.

The grower was questioned and released by police.

Police said no arrest was made but that the Maricopa County Attorney's Office will determine whether charges should be filed against the grower.

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APPENDIX 8

APPENDIX 8

GRAND OPENING of Arizona's First Professional Cannabis Club. FREE MARIJUANA

Phoenix AZ, June 28, 2011, On May 31, 2011 Governor Brewer suspended the Medical Marijuana Dispensary Program. This left thousands of qualified patients without an effective way to purchase the medicine that was approved by the voters in November 2010. Patients are unfortunately being forced back into the black market only to be victimized by unscrupulous marketers selling low quality medicine at exorbitant prices and other criminal elements.

We welcome you to join us for the unveiling of our new, one of a kind, Cannabis Club. This club is designed to provide qualified patients with a safe and legal way to obtain medical Marijuana. This is an historical occasion as the Arizona marijuana industry evolves.

We have developed Arizona's first professionally operated Cannabis Club. The 2811 Club, LLC is a private membership club. *(The name is derived from the portion of the Arizona Medical Marijuana Act that permits transfers of Medical Marijuana between qualified patients, A.R.S 36-2811).* To become a member and gain entry you must hold a valid Arizona Medical Marijuana Card issued by the Arizona Department of Health services.

The 2811 Club is designed to be an educational and resource center for qualified patients. We offer substantial membership benefits including extensive classes on Growing and cooking marijuana, first timer's classes on how to properly consume Marijuana, lectures on the different types of Marijuana strains together with their associated benefits, legal and Medical classes, spiritual and mystical marijuana beliefs and much more. Moreover, our club includes significant resources such as a marijuana library, unique online resources, community bulletin boards, and advocacy programs including petition drives. Our members will enjoy group discounts on all sorts of products and services including hydroponic supplies, marijuana related clothing and other mercantiles.

Most importantly however, is the member's use of our beautiful and cozy Starbucks-inspired club house. This comfortable facility is designed to encourage networking among qualified patients. The club offers free Wi-Fi, and will sponsor Karaoke nights, singles night, guest speakers, open mic night, and pain management vendor demonstrations including massage therapy, acupuncture, stone therapy, herbal remedies and so much more.

Additionally, The 2811 Club, LLC actively supports numerous not-for-profits Compassion/Caregiver Clubs across the state. We offer free space in our Club House to numerous groups who want to distribute, FREE OF CHARGE, their excess marijuana. From time to time The 2811 Club makes donations to these groups to offset the cost of acquiring the Marijuana.

To assure safe, quality medicine for its members the 2811 Club tests all marijuana distributed at its facilities. Each member can obtain, FREE OF CHARGE, up to 1/8 of an ounce of high quality medical grade marijuana on each visit to the Club.

Member safety is our number one concern. the 2811 Club employs state of the art security including private on-site armed guards together with strict rules of conduct for its members and staff. There is no safer, more dignified and legal way for qualified patients to obtain the medicine they voted for.

There are at least five other locations planned across the valley, and we anticipate that this business model may replace the dispensary program entirely.

The 2811 Club will hold its official grand opening at 9am on July 4th 2011. "What better way to celebrate your independence then to join our club and get your FREE MEDICAL MARIJUANA". Large crowds are expected and every effort will be made to accommodate all attendees.

We encourage you to join us for this very special history making moment.

Grand Opening:

Monday July 4th 2011 at 9am

The 2811 Club, LLC
17233 N Holmes Blvd.
Suite 1615
Phoenix, AZ 85053

I-17 and Bell Road
Bell Canyon Pavilions
Approximately 500 feet behind Hooters

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23623 n scottsdale road
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APPENDIX 9

COURT OF APPEALS DIVISION ONE
STATE OF ARIZONA
FILED

JUN 24 2011

RUTH WILLINGHAM, CLERK
BY_____

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COURT OF APPEALS

STATE OF ARIZONA

DIVISION ONE

ELEMENTS THERAPEUTIC DISPENSARY, an Arizona Non-Profit Corporation, ARIZONA DISPENSARY SOLUTIONS, LLC, an Arizona Limited Liability Company; ARIZONA ALTERNATIVE RELIEF CENTERS, INC., an Arizona Non-Profit Corporation dba MEDICAL MARIJUANA DISPENSARIES, PROTECT ARIZONA PATIENTS, INC., an Arizona Non-Profit Corporation; CULTIVATION MANAGEMENT SERVICES, an Arizona Limited Liability Company; HEATHER TORGERSON, a married woman; Stephen Johnson, a single man; John Doe I now known as ROBERT LILES, a married man; John Doe II now known as GREGORY DELUCA; Jane Doe I-X; and Black Corporation I now known as HEIGHTENED HEALING, LLC, an Arizona Limited Liability Company; Black Corporation II now known as Alan J. Citrin, M.D., P.C.; Petitioners, vs. WILL HUMBLE, Director of the Arizona Department of Health Services, in his Official Capacity; THE ARIZONA DEPARTMENT OF HEALTH SERVICES, a political subdivision of the State of Arizona; JOHN AND JANE DOE I-X; and BLACK CORPORATIONS I-X, Respondents.	Court Of Appeals Division One No. 1 CA-SA 11-0161 **PETITIONERS' FIRST AMENDED EMERGENCY PETITION FOR SPECIAL ACTION RE: WRIT OF MANDAMUS**

///

COME NOW the above-named Petitioners in the above-captioned and numbered cause, by and through their attorney undersigned, and respectfully submit their First Amended Emergency Petition to this Court requesting that the Court continue with all deadlines imposed by the prior Expedited Order dated June 14, 2011. This Amended Petition merely deletes one Corporate Petitioner and adds two Corporate Petitioners in its place and two individual Petitioners along with the previously-named individual Petitioners. Petitioners re-urge their request for an expedited order, pursuant to Rule 1 of the Arizona Rules of Procedure for Special Actions, as follows:

JURISDICTION

This Court has jurisdiction to entertain this petition and to grant relief by virtue of A.R.S. §12-2021, Arizona Revised Statues, Annotated, as well as A.R.S. §12-120.21(A)(4), where there is an issue of overriding significance to the public which presents constitutional issues of statewide importance involving the doctrine of separation of powers. See *State ex rel. Woods v. Block,* 189 Ariz. 269, 942 P.2d 428, 247 Ariz. Adv. Rep. 22 (Ariz. Jul 15, 1997). There, the Court held a statute to be unconstitutional because it "violated separation of powers" clause of the State Constitution.

In addition, this Court's jurisdiction extends to the issue herein because there is an implication of the authority of a "constitutional body with broad powers," and involves fundamental rights guaranteed by both the Arizona and federal constitutions. See *Arizona Corp. Comm'n. v. State ex rel. Woods*, 131 P.U.R.4th 604, 171 Ariz. 286, 830 P.2d 807, Util. L. Rep. P 26,195 (Ariz. Apr 21, 1992). That case turned on issues presented which were "questions of first impression" and "statewide importance." The Court submitted that those factors made it appropriate for it to exercise its discretion to accept jurisdiction.

Finally, Petitioners herein lack an "equally plain, speedy and adequate remedy to obtain their requested relief. " *Western Sun Contractors Co. v. Superior Court*, 159 Ariz.

223, 766 P.2d 96 (Ariz.App. Div. 1 Sep 22, 1988) where the Court held that a special action is the appropriate means to adjudicate public contract disputes.

ISSUE

Whether the Arizona Department of Health (AZDHS) should be mandated to issue medical marijuana dispensary licenses pursuant to the full implementation of the AMMA, pending resolution of the Declaratory Judgment (2:11-CV-01072-SRB) action filed in District Court by Thomas C. Horne on behalf of the State of Arizona, Governor Janice K. Brewer, *et al.*

FACTS

Petitioner Elements Therapeutic Dispensary, Inc. ("Elements") is an Arizona Non-Profit Corporation, organized under the laws of the State of Arizona; it has expended in excess of $225,000 to develop and market customized software, processes and systems for submission of a dispensary license, relying upon the representations of the State, to its detriment.

Petitioner Protect Arizona Patients, Inc. ("Protect Arizona Patients") is an Arizona Non-profit Corporation, organized under the laws of the State of Arizona. It represents the interests of medical marijuana patients and prospective dispensary owners who will be irreparably harmed by the failure of the State to implement the highly regulated dispensary component of the "Arizona Medical Marijuana Act" ("The Act" or "The AMMA").

Petitioner Arizona Dispensary Solutions, LLC ("Arizona Dispensary") is an Arizona Limited Liability Company, organized under the laws of the State of Arizona. It has expended in excess of $75,000 in preparation for submission of applications to the AZDHS, relying upon the represent at ions of the St at e, to its detriment. The core business of Arizona Dispensary is based on compliance with AZDHS Medical Marijuana

rules, the Arizona Revised Statutes created by the AMMA and the dispensary application timeline set forth by the AZDHS.

Petitioner Arizona Alternative Relief Centers, Inc. ("AARC") is an Arizona Non-Profit Corporation dba Medical Marijuana Dispensaries, organized under the laws of the State of Arizona. It has expended approximately $50,000 in preparation of its submission for a dispensary license, relying upon the representations of the State, to its detriment.

Petitioner Cultivation Management Services, LLC ("CMS") is an Arizona Limited Liability Company, organized under the laws of the State of Arizona. CMS is an independent inspection, testing and certification service dedicated to ensuring that quality certified Cannabis is distributed to qualified patients and that AZDHS has third party verification of inventory levels. CMS has expended in excess of $50,000 developing customized inventory control systems and processes designed specifically for the prospective dispensary licensees.

Petitioner Heather Torgerson ("Torgerson") is an adult resident citizen of the State of Arizona and medical marijuana patient. She has been diagnosed with a malignant brain tumor that is in remission and whose side effects have been greatly relieved and continue to be relieved by the recommended use of Cannabis. Petitioner Heather Torgerson did vote in favor of Proposition 203.

Petitioner Stephen Johnson ("Johnson") is an adult resident citizen of the State of Arizona and medical marijuana patient. He is a quadriplegic who has been confined to a wheelchair for the past thirty (30) years and has been greatly relieved and continues to be relieved by the recommended use of Cannabis.

Petitioner John Doe I now known as Robert Liles ("Liles") is an adult resident citizen of the State of Arizona and a medical marijuana patient who has been assigned Social Security Disability. Petitioner Liles did vote in favor of Proposition 203.

Petitioner John Doe II is now known as Gregory DeLuca ("DeLuca") who is an adult resident and citizen of the State of Arizona. Jane Does I-X, at all times relevant hereto, are adult citizens of the State of Arizona.

Petitioner Black Corporation I now known as Heightened Healing LLC. is an Arizona Limited Liability Company, organized under the laws of the State of Arizona.

Petitioner Black Corporation II now known as Alan J. Citrin, M.D., P.C., is an Arizona professional corporation. Dr. Citrin is the Medical Director for a Surgical Center in Tempe. Dr. Citrin is a licensed Anesthesiologist with a sub-specialty in maternal high-risk anesthesiology. Dr. Citrin has been approached by one of the other Corporate Petitioners in this action about serving as the medical director of the Elements dispensary. Dr. Citrin, individually and on behalf of his Professional Corporation, desires to pursue a medical dispensary license and is exploring the possibility of serving as Medical Director of other dispensaries once they are opened.

Respondent Will Humble ("Respondent") is the Director of the Arizona Department of Health Services ("AZDHS"), a political subdivision of the State of Arizona, pursuant to A.R.S. §36-102. In that capacity, Respondent is responsible for the AZDHS employees who are implementing and overseeing the AMMA, A.R.S. §§36-2801, *et seq.*, including but not limited to the issuance of qualified patient, designated caregiver, and not-for-profit medical marijuana dispensary agent registration cards and the registration of not-for-profit medical marijuana dispensary licenses.

Respondent The Arizona Department of Health Services ("AZDHS") is a political subdivision of the State of Arizona, pursuant to A.R.S. §36-102. It has been tasked with the responsibility of implementing and overseeing the AMMA, A.R.S. §§36-2801, *et seq.*, including but not limited to the drafting of the Act, establishing the rules and regulations related to the issuance of qualified patient, designated caregiver, and not-for-profit medical

marijuana dispensary agent registration cards and the registration of not-for-profit medical marijuana dispensary licenses.

Respondents John Doe and Jane Doe I-X are adult citizens of the State of Arizona, and are subject to service of process.

Respondents Black Corporations I-X are Arizona corporations, organized under the laws of the State of Arizona, and are subject to service of process by and through their registered agents.

On November 2, 2010, Arizona voters passed Proposition 203, an initiative measure now identified as the AMMA, envisioned to decriminalize medical marijuana use by people with certain chronic and debilitating medical conditions. Proposition 203 provided that its purpose "is to protect patients with debilitating medical conditions, as well as their physicians and providers, from arrest and prosecution, criminal and other penalties and property forfeiture if such patients engage in the medical use of marijuana." Arizona Governor Jan Brewer signed Proposition 203 into law on December 14, 2010.

The Act requires AZDHS to be responsible for implementing and overseeing the Act and provides for the registration and certification of "nonprofit medical marijuana dispensaries," "nonprofit medical marijuana dispensary agents," "qualifying patients," and "designated caregivers."

Under the Act, AZDHS is mandated to adopt rules governing the registration and certification process within 120 days after the effective date of the AMMA and to adopt rules establishing the form and content of applications, the manner in which applications will be considered, the amount of application and renewal fees within certain maximum limits, and specific rules governing dispensaries, a key component of the AMMA.

As required by the Act, AZDHS filed its Rules with the Arizona Secretary of State on April 13, 2011.

On April 14, 2011, AZDHS began accepting applications from persons who sought to be certified as Qualifying Patients and Designated Caregivers. As of June 1, 2011, 4,390 Qualifying Patients and 126 Designated Caregivers had been certified by AZDHS.

Under the Act, AZDHS is required to register nonprofit medical marijuana dispensaries and to issue a registration certificate within 90 days after receiving an application.

AZDHS is also required to register medical marijuana dispensary agents and to issue registry identification cards to qualifying patients and designated caregivers within certain time frames after receipt of information and documents as set forth in the AMMA.

AZDHS was to begin accepting applications for medical marijuana dispensaries and medical marijuana dispensary agents on June 1, 2011. Medical marijuana dispensaries and medical marijuana dispensary agents must be registered by the AZDHS before they can lawfully operate under the Act.

Upon information and belief, as early as January 10, 2011, Carolyn Short ("Short"), an attorney who was licensed by the State Bar of Arizona participated in a meeting with Arizona Attorney General Tom Horne ("Horne") and former U.S. Attorney General Paul Charlton ("Charlton") to discuss a legal scheme to file for a declaratory judgment to delay implementation of the state's medical marijuana law. Incredulously, on February 16, 2011 Short, the Executive Director of Keep AZ Drug Free, wrote an email to Respondent Humble (**SEE** Appendix Document 1 attached to Petitioners' Emergency Petition for Writ of Mandamus previously filed with this Court).

In her February 16th email, Short misrepresented the Controlled Substances Act ("CSA") to Humble. Although the CSA makes no reference to the *facilitation* of any action and no state employee has been prosecuted for implementation of its state law in any jurisdiction, Short further contended that "there is no question but that AZDHS employees

and representatives, by virtue of actions taken as required by Prop 23 will facilitate the possession, manufacture and distribution of marijuana, all of which are illegal under the CSA".

Moreover, any prosecution of an Arizona state employee is at the discretion of the US Attorney, Dennis Burke ("Burke") who has indicated he has no intention of prosecuting state officials for implementation of the AMMA.

Although Short apologized "for the threatening tone" of her email, she advised Respondent Humble that "If I don't hear from you, I will assume that you did in fact instruct Tom Horne not to seek declaratory relief. We then will advise your employees of your stance on the matter and the risks associated with implementing this program".

Short concluded, "... we are running out of options and it is time for someone to take a stand on this issue." Short ignores the fact that the voters of Arizona had taken a stand on the issue more than two (2) months earlier -- they voted to pass Proposition 203 and Respondent Humble was simply performing his legal obligation in good faith as a government official.

Upon information and belief, on or about April 18, 2011, Respondent Humble spoke by telephone with Assistant U.S. Attorney Patrick Cunningham inquiring whether the Arizona United States Attorney's Office would consider sending a letter regarding medical marijuana, and if so, if that letter could address whether state employees would be at risk of federal prosecution for implementation of the AMMA.

On May 2, 2011, Burke issued a letter addressed to Respondent Humble, pursuant to Humble's request, regarding the State's implementation and oversight of the Act (SEE Appendix Document 2 attached to Petitioners' Emergency Petition for Writ of Mandamus previously filed with this Court).The letter addressed the growing, distribution and possession of marijuana, but notably omitted any reference to the prosecution of state

employees. Burke's letter cites an October 2009 memorandum from then-Deputy Attorney General Ogden who provided guidance that," in districts where a state had enacted medical marijuana programs, a U.S. Attorney's Office ("USAO") ought not focus their limited resources on those seriously ill individuals who use marijuana as part of a medically recommended treatment regimen and are in clear and unambiguous compliance with such state laws." He continues, "**And, as has been our policy, this USAO will continue to follow that guidance**," (*emphasis added*).

On May 27, 2011, five (5) days prior to the date AZDHS was scheduled to begin accepting dispensary applications, Janice Brewer, ("Brewer") in her capacity as the Governor of the State of Arizona, filed a Complaint for Declaratory Judgment in the United States District Court in Arizona (**SEE** Appendix Document 3 attached to Petitioners' Emergency Petition for Writ of Mandamus previously filed with this Court).The complaint asked the Court to determine whether strict compliance and participation by citizens and state employees in the AMMA provides a safe harbor from federal prosecution, or in the alternative, whether the AMMA is preempted by the Controlled Substances Act ("CSA") and federal law. Brewer did not seek (or obtain) any injunctive relief enjoining state employees from continuing to issue patient and caregiver cards under the AMMA.

Because of the May 27, 2011 lawsuit and legal advice from the Attorney General, AZDHS suspended its acceptance of dispensary applications which was to begin on June 1. However, since state employees continue to issue caregiver cards and patient cards, under Brewer's theory, they could be subject to prosecution for implementing any component of the AMMA. Consequently, issuance of one component of the AMMA -- dispensary licenses -- will not create any more or any less liability for state employees.

On June 1, 2011, OF&C, Inc., dba the Virtue Center, attempted to submit an application and business plan for a dispensary license, however, it was unilaterally and

publicly rejected by Respondents. Moreover, Respondent AZDHS has unequivocally stated on its website that it won't accept any dispensary applications based upon the filing for declaratory judgment. AZDHS's website specifically states:

> "**ALERT:** The Attorney General filed for declaratory judgment in federal court about the legality of the Arizona Medical Marijuana Act and our Rules. Because of the court filing and legal advice from the Attorney General, AZDHS won't accept dispensary applications in June. However, we will continue to process applications for Patient and Caregiver cards".

(**SEE** Appendix Document 4 attached to Petitioners' Emergency Petition for Writ of Mandamus previously filed with this Court).

ARGUMENT

Respondents have willfully, wrongfully, and without cause, failed and refused, and still fail and refuse to accept, process dispensary license applications and issue dispensary licenses.

Horne, as legal representative for Respondents has conspired with others by willfully, wrongfully, and without cause directing his client Respondent Humble to delay the full implementation of the AMMA by refusing to process dispensary license applications and to issue dispensary licenses.

The refusal of Respondents Humble and AZDHS to process and issue dispensary licenses is arbitrary and capricious, and an abuse of discretion, for alternative reasons, including but not limited to:

> The Act has not been declared pre-empted by federal law, nor has the federal court issued any injunction against implementation of the Act;
>
> Burke, as the U.S. Attorney has not indicated that Arizona state employees are at a risk of prosecution; to the contrary, Burke has refuted Brewer's and Horne's claims.
>
> Horne, Short, *et al.* have conspired since January 2011 to delay the full Implementation of the AMMA in total disregard for the passage of the Act.
>
> Respondent Humble is refusing to process dispensary applications submitted

to AZDHS, while directing AZDHS staff to continue processing patient and caregiver applications.

Through numerous press conferences and interviews, Burke has indicated that Brewer and Horne are "intentionally misinterpreting" his May 4th letter addressed to Respondent. Burke has further stated that Arizona state employees are not at risk of being prosecuted.

In fact, during an interview with the *Arizona Daily Star* on May 27, 2011, Burke stated that "Gov. Jan Brewer and Attorney General Tom Horne are distorting the facts on the issue of medical marijuana, and the risk of federal prosecution of state workers."

The article states in *pertinent part*:

> "Burke said his letter simply spelled out the priorities his office has in going after those who sell, transport or use marijuana, and never mentioned state workers. The point his letter made is that he would not prioritize going after patients who use medical marijuana under Arizona law, Burke said. . . . Burke said if there was any confusion, Brewer and Horne could have called him or written back for clarification instead of grandstanding at a press conference and filing a lawsuit.
>
> He said a suit asking a judge to rule Arizonans can ignore federal drug laws is a waste. "A federal judge isn't going to tell a U.S. attorney what he can and can't enforce," Burke said.
>
> And Burke pointed out that Humble, whose department is charged with implementing the law, was not alarmed by the May 2 letter, or worried about how it would affect his staffers who are processing the permits for those who want to use marijuana as well as those who want to operate dispensaries or even cultivate the drug.

(**SEE** Appendix Document 5 attached to Petitioners' Emergency Petition for Writ of Mandamus previously filed with this Court).

The AMMA provides for no more than one hundred twenty five (125) highly regulated dispensary and cultivation sites. Stringent dispensary license regulations include, but are not limited to full vetting of the applicant, verification of substantial financial resources, significant zoning restrictions that limit the locale of the dispensaries,

comprehensive background checks, audited inventory controls which regulate the origin, distribution, transfer and sale of the Cannabis, and a $5,000 application fee.

Conversely, Caregivers require a set of fingerprints, verification that they have not been convicted of an "excluded felony" in the past ten (10) years, state residency and $200.00. Moreover, based upon the current AZDHS licenses, as of this filing, 3,759 applicants have requested to cultivate marijuana, which could currently result in 3,759 individual cultivation sites. Further, patients can "donate" medicine to other patients with virtually no restriction. These Caregivers and patients would be precluded from growing once the dispensaries open if their patients live less than twenty-five (25) miles from one of the 125 dispensaries in the state.

Due to the highly unregulated nature of the caregivers, Respondent has previously expressed concern about the caregiver model, publicly stating at the *Valley Partnership* breakfast on April 29th that the caregiver component of the AMMA was analogous to "the wild, wild west". Due to the recent events, time is now of the essence as the unregulated caregiver model continues to gain momentum.

Most recently, headlines reveal that a MMJ patient who was issued a patient card by AZDHS on May 25th was involved in a fatal shooting while attempting to "sell" marijuana of questionable origin on June 3rd during an alleged robbery by another "patient". These incidents will continue to evolve unless relief is granted by this Honorable Court as caregivers are able to develop collectives, growing without regulation or supervision. (**SEE** Appendix Document 6 attached to Petitioners' Emergency Petition for Writ of Mandamus previously filed with this Court).

The February 16, 2011 email transmitted by Short to Respondent Humble clearly references the intention of Short, Charlton and Horne to conspire to file for a Declaratory Judgment without basis as early as January 2011. Upon information and belief, Horne did not file a declaratory judgment because, according to Short, at the time, "his client, Will Humble did not want him to do so".

Respondent Humble's decision to fully implement the AMMA **seven (7) days** prior to the date scheduled to accept applications, pending the filing of the action for the Declaratory Judgment is a ruse perpetrated by Keep AZ Drug Free Executive Director Carolyn Short, the Attorney General Thomas Horne, and former U.S Attorney Paul Charlton to arbitrarily and without basis to delay the full implementation of the AMMA.

Pursuant to the Act, Petitioners, the Virtue Center, Elements, Protect Arizona Patients, Arizona Dispensary and AARC have relied upon AZDHS representations that dispensary applications would be accepted beginning on June 1, 2011. By delaying the dispensary application process, Petitioners are suffering significant and irreparable pecuniary harm, losing potential revenue, and/or are subjecting their prospective clients to being put in a disadvantageous competitive position. These Petitioners have collectively expended hundreds of thousands of dollars to prepare for submission of their respective plans to AZDHS, including, but not limited to payment of fees for zoning verification, nonrefundable lease deposits and/or purchase of buildings, real estate agent commissions, business plan consulting, software development, legal fees, marketing and advertising expenses, education and training fees.

Petitioners Torgerson and Johnson, pursuant to the Act, by virtue of their debilitating illnesses, relied and continue to rely upon AZDHS representations that they

will have access to quality, inventory-controlled Cannabis dispensed through highly regulated dispensary owners. As the dispensary component of the AMMA is needlessly being placed at risk by the Respondents, irreparable damage could be caused to Petitioners Torgerson and Johnson, whose primary source of Cannabis will be cultivated by highly unregulated caregivers. It is important also to note that Petitioner Torgerson voted for Proposition 203.

CONCLUSION

In conclusion, based upon the foregoing, it is in the best interests of the residents of the State of Arizona, including the patients with debilitating illnesses and the prospective dispensary licensees who have, in good faith, spent months preparing to submit dispensary licenses, that Respondent Humble direct the AZDHS to accept and process dispensary applications under the stringent regulations of the AMMA.

Time is of the essence, because, in the absence of the issuance of a maximum of one hundred and twenty five (125) dispensary licenses, the AMMA provides for the expansion of a network of thousands of caregivers and patients who are able to cultivate Cannabis without supervision, with no zoning restrictions, and with virtually no AZDHS oversight. Once this caregiver/patient network becomes entrenched in neighborhoods throughout the state, it will be virtually impossible for the Respondents to control, monitor or most importantly, shut down the network of caregivers and potentially thousands of unregulated cultivation sites.

Moreover, contrary to Brewer and Horne's allegations in their Complaint for a Declaratory Judgment, Arizona state employees do not incur any more or less liability by issuing dispensary licenses in addition to caregiver licenses and patients cards.

Accordingly, Petitioners pray that this Honorable Court enter an Order as follows:

A. In the form of an emergency Writ of Mandamus commanding Respondent to fully implement the AMMA by accepting dispensary applications within thirty (30) days of the execution of this Writ, and to process those applications and issue licenses within the timeframes outlined in the AMMA;

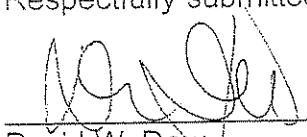
B. To find that Respondents' action in refusing to accept and process such dispensary applications and to issue dispensary licenses is arbitrary and capricious and an abuse of discretion;

C. Award Petitioners their attorney's fees and costs in bringing this action; pursuant to the provisions of A.R.S. §12-2030;

D. For such other and further relief as may be just and proper.

DATED THIS 24th day of June, 2011.

Respectfully submitted,



David W. Dow
Attorney for Petitioners

CERTIFICATE OF COMPLIANCE

Pursuant to ARCAP 14(b), I certify that the foregoing brief:

Uses proportionately spaced type of 14 points or more, is double spaced using a Roman font and contains 4,227 words; and

Does not exceed 14,000 words or 50 pages **(if an Opening or Answering Brief).**

APPENDICES ATTACHED TO ORIGINAL

PETITION FOR EMERGENCY WRIT OF MANDAMUS

1. February 16, 2011 email generated by then Attorney Carolyn Short addressed to AZDHS Executive Director Will Humble.

2. May 2, 2011 Dennis Burke ("Burke"), U.S. Attorney for the District of Arizona, letter addressed to Will Humble.

3. May 27, 2011 Declaratory Judgment filed by Governor Janice Brewer in Federal District Court.

4. June 12, 2011 Screenshot from home page of Department of Health Services website. www.azdhs.gov.

5. May 27, 2011 *Arizona Daily Star* news article quoting U.S. Attorney Dennis Burke.

6. June 6, 2011 *ABC News 15* news article entitled, "*Medical Marijuana Buy Ends in Shooting.*"

7. June 8, 2011 *Arizona New Times* news article exposing a plan to launch a legal action against the medical marijuana law in January 2011.

APPENDIX 10

U.S. Department of Justice

Office of the Deputy Attorney General

The Deputy Attorney General

Washington, D.C. 20530

October 19, 2009

MEMORANDUM FOR SELECTED UNITED STATES ATTORNEYS

FROM: David W. Ogden
Deputy Attorney General

SUBJECT: Investigations and Prosecutions in States Authorizing the Medical Use of Marijuana

This memorandum provides clarification and guidance to federal prosecutors in States that have enacted laws authorizing the medical use of marijuana. These laws vary in their substantive provisions and in the extent of state regulatory oversight, both among the enacting States and among local jurisdictions within those States. Rather than developing different guidelines for every possible variant of state and local law, this memorandum provides uniform guidance to focus federal investigations and prosecutions in these States on core federal enforcement priorities.

The Department of Justice is committed to the enforcement of the Controlled Substances Act in all States. Congress has determined that marijuana is a dangerous drug, and the illegal distribution and sale of marijuana is a serious crime and provides a significant source of revenue to large-scale criminal enterprises, gangs, and cartels. One timely example underscores the importance of our efforts to prosecute significant marijuana traffickers: marijuana distribution in the United States remains the single largest source of revenue for the Mexican cartels.

The Department is also committed to making efficient and rational use of its limited investigative and prosecutorial resources. In general, United States Attorneys are vested with "plenary authority with regard to federal criminal matters" within their districts. USAM 9-2.001. In exercising this authority, United States Attorneys are "invested by statute and delegation from the Attorney General with the broadest discretion in the exercise of such authority." *Id.* This authority should, of course, be exercised consistent with Department priorities and guidance.

The prosecution of significant traffickers of illegal drugs, including marijuana, and the disruption of illegal drug manufacturing and trafficking networks continues to be a core priority in the Department's efforts against narcotics and dangerous drugs, and the Department's investigative and prosecutorial resources should be directed towards these objectives. As a general matter, pursuit of these priorities should not focus federal resources in your States on

individuals whose actions are in clear and unambiguous compliance with existing state laws providing for the medical use of marijuana. For example, prosecution of individuals with cancer or other serious illnesses who use marijuana as part of a recommended treatment regimen consistent with applicable state law, or those caregivers in clear and unambiguous compliance with existing state law who provide such individuals with marijuana, is unlikely to be an efficient use of limited federal resources. On the other hand, prosecution of commercial enterprises that unlawfully market and sell marijuana for profit continues to be an enforcement priority of the Department. To be sure, claims of compliance with state or local law may mask operations inconsistent with the terms, conditions, or purposes of those laws, and federal law enforcement should not be deterred by such assertions when otherwise pursuing the Department's core enforcement priorities.

Typically, when any of the following characteristics is present, the conduct will not be in clear and unambiguous compliance with applicable state law and may indicate illegal drug trafficking activity of potential federal interest:

- unlawful possession or unlawful use of firearms;
- violence;
- sales to minors;
- financial and marketing activities inconsistent with the terms, conditions, or purposes of state law, including evidence of money laundering activity and/or financial gains or excessive amounts of cash inconsistent with purported compliance with state or local law;
- amounts of marijuana inconsistent with purported compliance with state or local law;
- illegal possession or sale of other controlled substances; or
- ties to other criminal enterprises.

Of course, no State can authorize violations of federal law, and the list of factors above is not intended to describe exhaustively when a federal prosecution may be warranted. Accordingly, in prosecutions under the Controlled Substances Act, federal prosecutors are not expected to charge, prove, or otherwise establish any state law violations. Indeed, this memorandum does not alter in any way the Department's authority to enforce federal law, including laws prohibiting the manufacture, production, distribution, possession, or use of marijuana on federal property. This guidance regarding resource allocation does not "legalize" marijuana or provide a legal defense to a violation of federal law, nor is it intended to create any privileges, benefits, or rights, substantive or procedural, enforceable by any individual, party or witness in any administrative, civil, or criminal matter. Nor does clear and unambiguous compliance with state law or the absence of one or all of the above factors create a legal defense to a violation of the Controlled Substances Act. Rather, this memorandum is intended solely as a guide to the exercise of investigative and prosecutorial discretion.

Finally, nothing herein precludes investigation or prosecution where there is a reasonable basis to believe that compliance with state law is being invoked as a pretext for the production or distribution of marijuana for purposes not authorized by state law. Nor does this guidance preclude investigation or prosecution, even when there is clear and unambiguous compliance with existing state law, in particular circumstances where investigation or prosecution otherwise serves important federal interests.

Your offices should continue to review marijuana cases for prosecution on a case-by-case basis, consistent with the guidance on resource allocation and federal priorities set forth herein, the consideration of requests for federal assistance from state and local law enforcement authorities, and the Principles of Federal Prosecution.

cc: All United States Attorneys

Lanny A. Breuer
Assistant Attorney General
Criminal Division

B. Todd Jones
United States Attorney
District of Minnesota
Chair, Attorney General's Advisory Committee

Michele M. Leonhart
Acting Administrator
Drug Enforcement Administration

H. Marshall Jarrett
Director
Executive Office for United States Attorneys

Kevin L. Perkins
Assistant Director
Criminal Investigative Division
Federal Bureau of Investigation

APPENDIX 11

U.S. Department of Justice

Office of the Deputy Attorney General

Washington, D.C. 20530

June 29, 2011

MEMORANDUM FOR UNITED STATES ATTORNEYS

FROM: James M. Cole
Deputy Attorney General

SUBJECT: Guidance Regarding the Ogden Memo in Jurisdictions Seeking to Authorize Marijuana for Medical Use

Over the last several months some of you have requested the Department's assistance in responding to inquiries from State and local governments seeking guidance about the Department's position on enforcement of the Controlled Substances Act (CSA) in jurisdictions that have under consideration, or have implemented, legislation that would sanction and regulate the commercial cultivation and distribution of marijuana purportedly for medical use. Some of these jurisdictions have considered approving the cultivation of large quantities of marijuana, or broadening the regulation and taxation of the substance. You may have seen letters responding to these inquiries by several United States Attorneys. Those letters are entirely consistent with the October 2009 memorandum issued by Deputy Attorney General David Ogden to federal prosecutors in States that have enacted laws authorizing the medical use of marijuana (the "Ogden Memo").

The Department of Justice is committed to the enforcement of the Controlled Substances Act in all States. Congress has determined that marijuana is a dangerous drug and that the illegal distribution and sale of marijuana is a serious crime that provides a significant source of revenue to large scale criminal enterprises, gangs, and cartels. The Ogden Memorandum provides guidance to you in deploying your resources to enforce the CSA as part of the exercise of the broad discretion you are given to address federal criminal matters within your districts.

A number of states have enacted some form of legislation relating to the medical use of marijuana. Accordingly, the Ogden Memo reiterated to you that prosecution of significant traffickers of illegal drugs, including marijuana, remains a core priority, but advised that it is likely not an efficient use of federal resources to focus enforcement efforts on individuals with cancer or other serious illnesses who use marijuana as part of a recommended treatment regimen consistent with applicable state law, or their caregivers. The term "caregiver" as used in the memorandum meant just that: individuals providing care to individuals with cancer or other serious illnesses, not commercial operations cultivating, selling or distributing marijuana.

The Department's view of the efficient use of limited federal resources as articulated in the Ogden Memorandum has not changed. There has, however, been an increase in the scope of

commercial cultivation, sale, distribution and use of marijuana for purported medical purposes. For example, within the past 12 months, several jurisdictions have considered or enacted legislation to authorize multiple large-scale, privately-operated industrial marijuana cultivation centers. Some of these planned facilities have revenue projections of millions of dollars based on the planned cultivation of tens of thousands of cannabis plants.

The Ogden Memorandum was never intended to shield such activities from federal enforcement action and prosecution, even where those activities purport to comply with state law. Persons who are in the business of cultivating, selling or distributing marijuana, and those who knowingly facilitate such activities, are in violation of the Controlled Substances Act, regardless of state law. Consistent with resource constraints and the discretion you may exercise in your district, such persons are subject to federal enforcement action, including potential prosecution. State laws or local ordinances are not a defense to civil or criminal enforcement of federal law with respect to such conduct, including enforcement of the CSA. Those who engage in transactions involving the proceeds of such activity may also be in violation of federal money laundering statutes and other federal financial laws.

The Department of Justice is tasked with enforcing existing federal criminal laws in all states, and enforcement of the CSA has long been and remains a core priority.

cc: Lanny A. Breuer
Assistant Attorney General, Criminal Division

B. Todd Jones
United States Attorney
District of Minnesota
Chair, AGAC

Michele M. Leonhart
Administrator
Drug Enforcement Administration

H. Marshall Jarrett
Director
Executive Office for United States Attorneys

Kevin L. Perkins
Assistant Director
Criminal Investigative Division
Federal Bureau of Investigations

While the U.S. Department of Justice is imminently expected to release a statement clarifying their stance toward medical marijuana, Attorney General Tom Horne said Wednesday that if the federal government's 2009 position is reiterated in the awaited clarification, the lawsuit he and Gov. Jan Brewer filed in federal court late last month challenging the legality of Arizona's new medical marijuana program could be unnecessary.

That 2009 position, widely referred to as the "Ogden Memo," states that individuals who are in clear and unambiguous compliance with state medical marijuana laws will not be a prosecutorial priority of the Justice Department. It has been largely responsible for the perceived legal protection states with medical marijuana programs have operated under in recent years.

But as confusion has percolated from the reading of letters reminding states that marijuana is still illegal from federal prosecutors in various medical marijuana states, the confidence in the Justice Department's not-quite-promise not to prosecute has eroded.

Horne and Brewer cited one such letter from Arizona's U.S. Attorney Dennis Burke in conjunction with similar letters from U.S. Attorneys in other states when they announced the lawsuit they filed on May 31 that put a halt to certain provisions of the state's new program.

"If (U.S. Attorney General Eric Holder) said they weren't going to prosecute people who are in clear and unambiguous compliance with state law - essentially a reiteration of Ogden - especially if they include an assurance that they would not prosecute, the (federal) suit could be stopped," Horne said.

The attorney general would not elaborate on what mechanism could be used to
stop the federal suit, saying that it would be determined if he found himself in that situation.