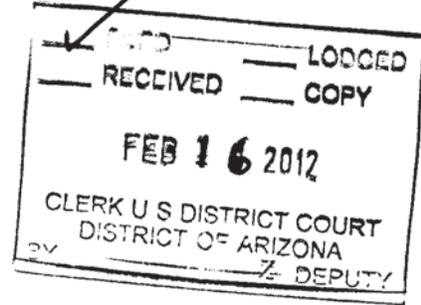


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**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA**

BILL B. HAYES, JR.

Plaintiff,

v.

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;

Defendants.

Case No.:

**CIV '12 032 2 PHX SRB**

*PLAINTIFF'S COMPLAINT &*  
**PLAINTIFF'S MOTION FOR  
PRELIMINARY INJUNCTION  
AND MEMORANDUM OF LAW  
IN SUPPORT THEREOF**

**ORAL ARGUMENT REQUESTED**

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1  
2 **COMES NOW**, The Plaintiff, Bill B. Hayes, Jr., Pro Se and hereby moves this Court to  
3 preliminarily enjoin enforcement of Arizona Revised Statute 36-2804.02(A)(3)(f), (hereafter  
4 “25-Mile Rule”) and to preserve the status quo with respect to that portion of the Arizona  
5 Medical Marijuana Act (hereafter “AMMA”) that allows for cultivation of Medical Marijuana  
6 under clearly delineated circumstances. At a minimum, the within request is advanced until such  
7 time as the matter can be litigated via Oral Argument, which is requested herein. The within  
8 challenge is specific to the 25-Mile Rule, *exclusively* and should *not* serve to forestall proceeding  
9 forward with the remainder of the Act. In support of the within, I state as follows:

10 **INTRODUCTION**

11 Although a state may adopt regulations that have an indirect or incidental effect on  
12 Medical Marijuana, a state may *not* establish state laws in a manner that interferes with Federal  
13 Equal Protection under the 14<sup>th</sup> Amendment to the United States Constitution. *See also*: U.S.  
14 Const. amend X. The State of Arizona and Janice K. Brewer have crossed this constitutional line  
15 by adopting A.R.S. 36-2804.02(A)(3)(f).

16 **A. PARTIES**

17 I, Plaintiff Bill B. Hayes, Jr. am a resident of the City of El Mirage, in the State of  
18 Arizona. I am the former Chief Executive Officer (“CEO”) of Arizona Cannabis Society  
19 (“AZCS”), a non-profit organization.

20 Defendant State of Arizona is a sovereign state of the United States.

21 Defendant Janice K. Brewer is the Governor of the State of Arizona (hereafter “Governor  
22 Brewer”). In that capacity, Governor Brewer is vested with the supreme executive power of  
23 Arizona and is responsible for the execution of all laws, including the Arizona Medical  
24 Marijuana Act (hereafter “AMMA”), as codified in A.R.S. 36-2801, et. seq.  
25

1 Defendant Director Will Humble (hereafter "Director Humble") is the Director of the  
2 Arizona Department of Human Services (hereafter "ADHS"). In that capacity Director Humble  
3 is responsible for the implementation of and overseeing of the AMMA.

4 Defendant Robert C. Halliday (hereafter "Director Halliday") is the Director of the  
5 Arizona Department of Public Safety (hereafter "DPS"). The DPS employees, under the  
6 direction of Director Halliday, perform criminal background checks and use the web-based  
7 verification system of the AMMA to verify registry identification cards, issue criminal citations,  
8 arrest suspected offenders of violations of Arizona criminal laws, etc.

9 **BACKGROUND**

10 The AMMA was passed by Arizona voters in November 2010, and became law on  
11 December 14, 2010. The same was subsequently codified in A.R.S. 36-2801, et. seq.

12 Pursuant to A.R.S. 36-2804.02 (emphasis added), Registration of Qualifying Patients and  
13 Designated Caregivers,  
14

15 A. A qualifying patient may apply to the department for a registry identification  
card by submitting:

- 16 1. Written certification issued by a physician within the ninety days  
17 immediately preceding the date of application.  
18 2. The application fee.  
19 3. An application, including:

20 (a) Name, mailing address, residence address and date of birth of the  
21 qualifying patient except that if the applicant is homeless no address is  
required.

22 (b) Name, address and telephone number of the qualifying patient's  
physician.

23 (c) Name, address and date of birth of the qualifying patient's designated  
caregiver, if any.

24 (d) A statement signed by the qualifying patient pledging not to divert  
25 marijuana to anyone who is not allowed to possess marijuana pursuant to  
this chapter.

1 (e) A signed statement from the designated caregiver, if any, agreeing to  
2 be the patient's designated caregiver and pledging not to divert marijuana  
to anyone who is not allowed to possess marijuana pursuant to this  
chapter.

3 **(f) A designation as to who will be allowed to cultivate marijuana**  
4 **plants for the qualifying patient's medical use if a registered nonprofit**  
5 **medical marijuana dispensary is not operating within twenty-five**  
6 **miles of the qualifying patient's home.**

7 B. The application for a qualifying patient's registry identification card shall ask  
8 whether the patient would like the department to notify him of any clinical studies  
needing human subjects for research on the medical use of marijuana. The  
department shall notify interested patients if it is notified of studies that will be  
conducted in the United States.

9 A.R.S. 36-2801(11) defines a "Qualifying Patient" as a person who has been diagnosed  
10 by a physician as having a debilitating medical condition.

11 The AMMA has already been the subject of litigation in the United States District Court,  
12 for the District of Arizona, Case Number CV2011-01072-PHX-SRB. *See:* Exhibit B, Order,  
13 Case Number CV 2011-01072-PHX-SRB, attached hereto and incorporated herein. That Court  
14 Granted the Defendants' Motion to Dismiss on jurisdictional grounds after the Defendants herein  
15 brought a Complaint for Declaratory Relief from compliance with the AMMA *as a whole*. The  
16 within matter is distinguishable from that litigation and should *by no means* be construed as  
17 anything other than a narrowly tailored constitutional challenge to only *one provision of the*  
18 *AMMA*; specifically, the 25-Mile Rule.

19 Upon the conclusion of the CV 2011-01072-PHX-SRB and the State cases regarding  
20 "Compassion Clubs", Governor Brewer's office stated for the record that they would no longer  
21 challenge the state's Medical Marijuana law in court and instead will cooperate to see that the  
22 voters' demands are once and for all fully enacted. Said the Governor in a press release:

24 The State of Arizona will not re-file in federal court a lawsuit that sought  
25 clarification that State employees would not be subject to federal criminal  
prosecution simply for implementing the Arizona Medical Marijuana Act.

1 **Instead, I have directed the Arizona Department of Health Services to begin**  
2 **accepting and processing dispensary applications, and issuing licenses for**  
3 **those facilities once a (separate) pending legal challenge to the Department's**  
4 **medical marijuana rules is resolved. ... With our request for clarification**  
5 **rebuffed on procedural grounds by the federal court, I believe the best**  
6 **course of action now is to complete the implementation of Proposition 203 in**  
7 **accordance with the law.**

8 *See:* Exhibit A, January 13, 2012 Statement by Governor Brewer-Medical Marijuana, Attached  
9 hereto and incorporated herein.

10 The Arizona Department of Human Services have also taken accelerative action toward  
11 full implementation of the AMMA, including the processing of applications for, and the  
12 licensing of, "Dispensaries" as defined by the AMMA. *See:* Arizona Department of Human  
13 Services Director's Blog, <http://directorsblog.health.azdhs.gov/?p=2175>. Upon the acceptance of  
14 and licensing of Dispensaries, the 25-Mile Rule of the AMMA will be triggered. I do not live in  
15 a rural area and given my current address and the DHS guidelines for Dispensary locations, my  
16 cultivation rights under the 25-Mile Rule are in direct, imminent threat as a result of Dispensary  
17 locations that will be within the 25-Mile Rule radius.

#### 18 **LEGAL STANDARD**

19 A preliminary injunction is warranted where, as here, I as the Plaintiff have established  
20 that: (1) I am likely to succeed on the merits; (2) I am likely to suffer irreparable harm in the  
21 absence of preliminary relief; (3) the balance of equities tips in the My favor; and (4) a  
22 preliminary injunction is in the public interest. *Winter v. Natural Res. Def. Council, Inc.*, 129S.  
23 Ct. 365, 374 (2008); *Stormans, Inc. v. Selecky*, 586 F.3d 1109, 1127 (9th Cir. 2009); *Sierra*  
24 *Forest Legacy v. Rey*, 577 F.3d 1015, 1021 (9th Cir. 2009); *see* Fed. R. Civ. P. 65.

**ARGUMENT**

**I. I AM LIKELY TO PREVAIL ON THE MERITS**

I am a Qualifying Patient with cultivation authorization from the State of Arizona under the AMMA. I currently possess a State of Arizona Medical Marijuana state issued identification card verifying this status which due for renewal in April of 2012. At that time, I intend to renew my cultivation authorization. However, pursuant to the AMMA, by processing Dispensary applications and the licensing of the same my ability to renew my cultivation status will be affected whereas an equally situated Qualifying Patient residing beyond 25 miles from a Dispensary will be allowed to renew their cultivation authorization unabated and without threat of criminal prosecution at the State of Arizona level.

It is important to note that with respect to cultivation under the AMMA, there are limitations codified under A.R.S. 36-2801(1)(a)(ii) (emphasis added),

If the qualifying patient's registry identification card states that the qualifying patient is authorized to cultivate marijuana, twelve marijuana plants contained in an enclosed, locked facility except that the plants are not required to be in an enclosed, locked facility if the plants are being transported because the qualifying patient is moving.

Suffice it to say, at a minimum, granting the within prayer for relief simply preserves the status quo with respect to qualified patients' rights to cultivation and will not result in some chaotic Medical Marijuana program, with the State of Arizona being over-run by Marijuana cultivation. In fact, Marijuana Cultivation has been authorized under the AMMA ever since qualifying patient information began being processed and State Issued Identification cards began being issued in early 2011 and the State of Arizona has not suffered any damages as a result. It would be difficult to imagine a scenario where preserving the status quo whilst allowing the

1 processing and licensing of Dispensaries while the within is resolved would lead to some sort of  
2 concrete (as opposed to speculative) damage(s) to the Defendants.

3 **A. SEVERABILITY/FACIAL CHALLENGE OF A.R.S. 36-2804.02(A)(3)(F), EXCLUSIVELY**

4 As a preliminary matter, it should be noted that the within challenge is being Filed as a  
5 “Facial Challenge” to A.R.S. 36-2804.02(A)(3)(f), *exclusively*. As this Court is likely aware, a  
6 facial challenge is the argument that a law is void on its face; that it is necessarily a violation of  
7 the Constitution in any and all applications. *United States v. Salerno*, 481 US 739 (1987) at 745.  
8 The proper remedy under such a case is typically not compensation but an injunction against  
9 enforcement and a declaration that the law is invalid. Such a challenge does not necessarily  
10 allege that the plaintiff was injured when the law was enacted, but rather *when the government*  
11 *acts pursuant to that law and adversely affects the plaintiff's rights*. (Emphasis added). See:  
12 Marc E. Isserles, Overcoming Overbreadth; Facial challenges and the valid rule requirement, 48  
13 AM UL Rev 359, 431 n. 319 (1998).

14  
15 As stated previously, the Defendants herein have taken active measures to act pursuant to  
16 the AMMA and such action will ultimately affect my ability to obtain State approved cultivation  
17 authorization while someone similarly situated, by pure incident of location will be able to  
18 receive State authorization without fear of, or threat of, State of Arizona criminal charges and  
19 penalties. Make no mistake, I am not seeking compensation, but rather injunctive relief against  
20 the constitutionally infirm portion of the AMMA; the 25-Mile Rule, at a minimum until such  
21 time as the matter can be argued at Oral Argument or such time as this Court deems fit to resolve  
22 the same with some degree of finality.

23  
24 When discussing the issue of the 25-Mile Rule, it is important to remember that the  
25 underlying assumption of complete, i.e., “facial,” invalidation, of the challenged statute (in this

1 instance the entirety of the AMMA) ignores the interplay of the severability doctrine (as  
2 previously addressed herein) as applied to challenged statutes and is inconsistent with the *Ayotte*  
3 *v. Planned Parenthood* decision in which the Supreme Court instructed lower courts to hesitate  
4 before completely invalidating a statute as a remedy in facial challenges. *Ayotte*, 546 U.S. 320,  
5 328–31 (2006);

6 In *Ayotte*, which involved a facial challenge to a New Hampshire abortion statute, the  
7 Court held that entirely invalidating a statute pursuant to a successful facial challenge is not  
8 always necessary or justified when lower courts can respond more narrowly, while remaining  
9 faithful to legislative intent.

10 The Court explicitly acknowledged that in the past it had invalidated in their entirety  
11 abortion statutes sharing the same constitutional flaw present in the New Hampshire statute.

12 Yet, in *Ayotte*, the Court found neither that the facial challenge failed, such that the  
13 statute should be upheld, nor that it succeeded, such that the entire statute should be invalidated.  
14 Instead, the Court found that the facial challenge was sensible in some hypothetical applications  
15 and remanded the case to the lower court to fashion a narrow remedy. *Ayotte v. Planned*  
16 *Parenthood of N. New Eng.*, 546 U.S. 320, 328–31 (2006); *see also*: Gillian E. Metzger, Facial  
17 Challenges and Federalism, 105 COLUM. L. REV. 873, 879 (2005) (“Defining facial challenges  
18 Salerno-style as leading to total invalidation . . . obscures the crucial role played by severability  
19 doctrine.”). *Id.* at 323. (The *Ayotte* Court considered a pure facial challenge—brought before the  
20 statute went into effect—to a New Hampshire abortion statute that prohibited physicians from  
21 performing an abortion on a minor until 48 hours after written notice of the abortion was  
22 delivered to her parent or guardian. *Id.* at 323–24. The statute did not provide an exception to the  
23 waiting requirement in the event of a medical emergency. *Id.* at 324. The Court found first that  
24  
25

1 “a State may not restrict access to abortions that are ‘necessary, in appropriate medical judgment,  
2 for the preservation of the life or health of the mother,’” *Id.* at 327 (quoting *Planned Parenthood*  
3 *of Se. Pa. v. Casey*, 505 U.S. 833, 879 (1992)), and that New Hampshire had conceded that “it  
4 would be unconstitutional to apply the Act in a manner that subjects minors to significant health  
5 risks,” *Id.* at 328. The Court then analyzed the question of remedy and found that despite the fact  
6 that the challenge to the statute was necessarily facial because the statute had never been applied,  
7 a lower court should nonetheless craft a narrow remedy such as a declaratory judgment and  
8 injunction prohibiting only the unconstitutional application of the statute. *Id.* (citing *Stenberg v.*  
9 *Carhart*, 530 U.S. 914, 930 (2000)).

10 Recently, the facial challenges to the national healthcare legislation have resulted in split  
11 decisions regarding severability in the lower courts that have upheld the facial challenge. The  
12 U.S. District Court for the Northern District of Florida, for example, found the individual  
13 insurance mandate unconstitutional and determined that it was not severable from the Patient  
14 Protection and Affordable Care Act; thus, the court declared the entire Act void. *Florida ex rel.*  
15 *McCollum v. U.S. Dep’t of Health & Human Servs.*, 716 F. Supp. 2d 1120, 1165 (N.D. Fla.  
16 2010).

17 By way of contrast, the U.S. District Court for the Eastern District of Virginia found the  
18 individual insurance mandate unconstitutional *but it severed that provision leaving the*  
19 *remainder of the Act in place.* *Virginia ex rel. Cuccinelli v. Sebelius*, 728 F. Supp. 2d 768, 789–  
20 90 (E.D. Va. 2010). (Emphasis added).

21 Perhaps most relevant, timely and illustrative is the facial challenge brought against the  
22 State of Arizona’s SB 1070. The U.S. District Court for the District of Arizona severed the  
23 portions of SB 1070 determined to be facially unconstitutional from the entire statute rather than  
24  
25

1 striking the statute as a whole. *United States v. Arizona*, 703 F. Supp. 2d 980, 1008 (D. Ariz.  
2 2010), *aff'd*, 641 F.3d 339 (9th Cir. 2011).

3 It appears clear that the prevailing trend is that a Federal Court should not invalidate  
4 more of a statute than necessary. *Alaska Airlines v. Brock*, 480 U.S. 678 (1987). However, this  
5 conclusion has come only after a complicated history and synthesizing of decades of case law.  
6 In doing so, the Supreme Court created three underlying principles with respect to severability.  
7 *Id.*; *Free Enterprise Fund v. Public Co. Accounting Oversight Board*, 480 U.S. at 685 (2010).

8 Under *Free Enterprise*, (1) a reviewing must determine whether all of the remaining  
9 provisions of the statute in question are still fully functional without the constitutionally infirm  
10 provision. If so, then the inquiry turns to, (2) whether the legislature would be satisfied with the  
11 remaining statute (absent the constitutionally infirm provision).

12 In assessing the *Free Enterprise* analysis, it is noteworthy that the Supreme Court has  
13 elaborated, stating that “[u]nless it is evident that the Legislature would not have enacted those  
14 provisions that are within its power, independently of that which is not, the invalid part may be  
15 dropped if what is left is fully operative as a law.” *Champlin Refining Co. v. Corp. Commission*  
16 *of Oklahoma*, 286 U.S. 210 (1932). *Champlin* further states:

17  
18 The unconstitutionality of a part of an act does not necessarily defeat or affect the  
19 validity of its remaining provisions. **Unless it is evident that the Legislature**  
20 **would not have enacted those provisions** which are within its power,  
independently of that which is not, **the invalid part may be dropped if what is**  
**left if fully operative as a law.**

21 Id. at 234-35. (*Emphasis added*).

22 In the instant case, the doctrine of severability applies and the Legislative intent  
23 requirement is satisfied simply by looking to the Defendants’ (herein, Plaintiffs therein)  
24  
25

1 Complaint in *State of Arizona, et. al. v. The 2811 Club, LLC, et. al.*, CV 2011-01129, Arizona  
2 Superior Court, the State of Arizona firmly stated that,

3 ***The purpose of the AMMA was to decriminalize*** the possession, use, ***production,***  
4 transport, sale, or transfer of marijuana for certain explicitly delineated  
5 individuals and entities, specifically ‘nonprofit medical marijuana dispensaries,’  
‘nonprofit medical marijuana dispensary agents,’ ‘***qualifying patients***’, and  
‘***designated caregivers***’.

6 See: Exhibit C, State of Arizona Complaint, Case Number CV 2011-01129, attached hereto and  
7 incorporated herein, at p. 4, para. 17, l. 23-27. (Emphasis added). By way of extrapolation, it is  
8 inarguable that by the State’s very own pleading, the 25-Mile Rule is in fact directly contrary to  
9 the intent of the State of Arizona in adopting the AMMA; that intent to decriminalize with  
10 respect to certain delineated individuals/organizations.

11 Accordingly, it is clear that the State of Arizona would have enacted those provisions  
12 which are within its power, independently of what is not. That position is further affirmed by the  
13 litigation instituted by the State of Arizona regarding a portion, or portions, of the AMMA, as  
14 opposed to the Act as a whole. As such, the 25-Mile Rule can be severed from the remainder of  
15 the AMMA for purposes of consideration by the within tribunal.

#### 17 **B. RIPENESS**

18 Having satisfied the standard regarding severability of the 25-Mile Rule as the portion of  
19 the AMMA that is being addressed herein as the constitutionally infirm portion of the Act, the  
20 inquiry next turns to “Ripeness”.

21 I am not unmindful of the fact that the federal courts may not render advisory opinions  
22 that address abstract legal questions. *United Public Workers v. Mitchell*, 330 U.S. 75, 89 (1947).  
23 Article III of the Constitution gives federal courts jurisdiction to decide only actual cases or  
24 controversies. *Wisconsin’s Environmental Decade, Inc. v. State Bar of Wisconsin*, 747 F.2d 407,  
25

1 410 (7th Cir. 1984), citing *Poe v. Ullman*, 367 U.S. 497, 502 (1961), and *Muskrat v. United*  
2 *States*, 219 U.S. 346, 354-57 (1911).

3 I maintain that there is no discernable test that exists to distinguish between an abstract  
4 question and a justiciable case or controversy, but I do believe that well-established principles  
5 have provided guidance. See: *Babbitt v. United Farm Workers National Union*, 442 U.S. 289,  
6 297-98 (1979); *J.N.S., Inc. v. Indiana*, 712 F.2d 303, 305 (7th Cir. 1983).

7 The Court has ruled, for example, that a party facing prospective injury (such as myself)  
8 has standing whenever the threat of injury is real, immediate and direct. "[a] plaintiff who  
9 challenges a statute must demonstrate a realistic danger of sustaining a direct injury as a result of  
10 the statute's operation or enforcement." *Babbitt v. Farm Workers*, 442 U.S. 289, 298 (1979). A  
11 determination of ripeness requires a court "to evaluate both the fitness of the issues for judicial  
12 decision and the hardship to the parties of withholding court consideration." *Abbott Labs. v.*  
13 *Gardner*, 387 U.S. 136, 148 (1967).

14 Or there is the Seventh Circuit which has recognized that the mere existence of a law  
15 sometimes can serve as a threat that would in and of itself make ripe a claim challenging the  
16 constitutionality of the law. *Schmidling v. City of Chicago*, 1 F.3d 494, 499-500 (7th Cir. 1993),  
17 citing *Babbitt*, 442 U.S. at 298, *New York State Club Ass'n v. City of New York*, 487 U.S. 1, 8-10  
18 (1988), and *Kucharek v. Hanaway*, 902 F.2d 513, 516 (7th Cir. 1990) (holding ripe a claim by  
19 sellers of sexually explicit materials that obscenity statute that had not been enforced violated  
20 First Amendment based on plaintiffs' assertion that they were deterred from selling materials  
21 because of fear of prosecution).

22 It is my belief that the basic question this Court should ask is whether the contentions of  
23 the parties present "a real, substantial controversy between parties having adverse legal interests,  
24 a dispute definite and concrete, not hypothetical or abstract." *Babbitt*, 442 U.S. at 298, quoting  
25 *Railway Mail Association v. Corsi*, 326 U.S. 88, 93 (1945).

1 Perhaps better illustrative, in *Abbott Laboratories v. Gardner*, the Supreme Court laid out  
2 the basic criteria for pre-enforcement ripeness. Now while in the context of a claim challenging  
3 the validity of regulations promulgated by the Commissioner of Food and Drugs, the same is not  
4 dispositive of the issues contained herein. *Abbott Labs*, 387 U.S. 136 (1967) (holding ripe for  
5 judicial review an action seeking injunctive relief and declaratory judgment that regulations were  
6 invalid), overruled on other grounds, *Califano v. Sanders*, 430 U.S. 99 (1977).

7 The Court stated that the ripeness inquiry requires an evaluation of two factors: (a) the  
8 fitness of the issues for judicial decision and (b) the hardship to the parties of withholding court  
9 consideration. *Abbott Labs*, 387 U.S. at 149.

10 (a) In determining that the claim was fit for judicial decision, the Court noted that the  
11 legal issue did not depend on additional factual development and that the regulations constituted  
12 final agency action. *Id.* at 149-52.

13 (b) In determining the hardship the parties would suffer if the courts were to withhold  
14 consideration, the Court considered whether the impact of the regulations on the plaintiffs was  
15 direct and immediate, including whether the regulations had a direct effect on the plaintiffs' day-  
16 to-day business operations. *Id.* at 152. *The Court found that the claim was ripe because the*  
17 *Commissioner of Food and Drugs expected immediate compliance with the regulations, which*  
18 *exposed the plaintiffs to serious criminal and civil penalties if they failed to comply promptly. Id.*  
19 *at 152-53. (Emphasis added).*

20 The Supreme Court has provided guidance for applying the ripeness factors from *Abbott*  
21 *Laboratories* to cases in which a plaintiff contends that a criminal statute affects his ability to  
22 exercise constitutional rights. In *Steffel v. Thompson*, 415 U.S. 452 (1974), for example, police  
23 officers threatened the plaintiff with arrest for violating Georgia's criminal trespass statute if he  
24 did not cease distributing handbills that criticized the United States' involvement in Vietnam.  
25 The plaintiff sought a declaratory judgment that enforcement of the criminal trespass statute

1 against him would violate his First and Fourteenth Amendment rights. *The Court held that*  
2 *despite the fact that the statute had not been enforced against the plaintiff, the threat of*  
3 *prosecution could not be characterized as “imaginary or speculative” and was sufficient to*  
4 *present an actual controversy. Id. at 459. (Emphasis added). Specifically stated, the Court*  
5 *reasoned that “[i]n these circumstances, it is not necessary that petitioner first expose himself to*  
6 *actual arrest or prosecution to be entitled to challenge a statute that he claims deters the exercise*  
7 *of his constitutional rights.” Id. at 459.*

8 In *Babbitt v. United Farm Workers National Union*, the plaintiffs sought an injunction  
9 and a declaratory judgment that various portions of an Arizona agricultural labor law were  
10 unconstitutional, including a provision that established criminal penalties for employers who  
11 committed unfair labor practices. *Though the criminal penalty had never been enforced, the*  
12 *Supreme Court held that the issue was ripe because there was a credible threat of prosecution.*  
13 442 U.S. at 302. (Emphasis added). The Court stated:

14  
15 When the plaintiff has alleged an intention to engage in a course of conduct  
16 arguably affected with a constitutional interest, but proscribed by a statute, and  
17 there exists a credible threat of prosecution thereunder, he “should not be required  
18 to await and undergo a criminal prosecution as the sole means of seeking relief.”

19 *Id. at 298, quoting Doe v. Bolton, 410 U.S. 179, 188(1973).*

20 In the instant case, as stated previously (and in the interest of not belaboring the obvious),  
21 there is an imminent threat of prosecution of me under the 25-Mile Rule given that the  
22 Defendants have taken active steps toward full implementation of the AMMA and by residing in  
23 a zone that will contain a Dispensary within a 25 mile radius I will no longer be authorized to  
24 cultivate Medical Marijuana without threat of State prosecution, criminal and civil penalties, the  
25 likes of which are in stark contrast to the Voter intent to protect Qualified Patients. Such  
penalties range from misdemeanor to felony charges, probation to jail time, fines and even

1 potentially State prison time. All the while I would still be a Qualified Patient for purposes of  
2 the AMMA; the class of individual the Act was designed to protect and the type of infirm that  
3 the Voters of Arizona contemplated would be utilizing Medicinal Marijuana. See: Exhibit C.

4 The analysis would not be complete without pointing out *MedImmune, Inc. v. Genentech,*  
5 *Inc.*, 549 U.S. 118, 127 S. Ct. 764 (2007). In *MedImmune*, the Court held that a private patent  
6 licensee could seek declaratory relief on patent validity and infringement without actually  
7 violating the license agreement and risking loss of the license. In explaining its decision, the  
8 Court drew on cases holding that parties could challenge the validity of criminal laws without  
9 actually violating them and risking criminal punishment:

10 Our analysis must begin with the recognition that, **where threatened action by**  
11 **government is concerned, we do not require a plaintiff to expose himself to**  
12 **liability before bringing suit to challenge the basis for the threat** – for  
13 example, the constitutionality of a law threatened to be enforced. The plaintiff's  
own action (or inaction) in failing to violate the law eliminates the imminent  
threat of prosecution, but nonetheless does not eliminate Article III jurisdiction.

14 *Id.* 127 S. Ct. at 772 (emphasis in original).

15 The Court in *MedImmune* endorsed the *Abbott Laboratories* formulation: “The dilemma  
16 posed by that coercion – **putting the challenger to the choice between abandoning his rights**  
17 **or risking prosecution** – is ‘a dilemma that it was the very purpose of the Declaratory  
18 **Judgment Act to ameliorate.’” *Id.*, (Emphasis added) quoting *Abbott Laboratories*, 387 U.S.  
19 at 152; *see also: Epperson v. Arkansas*, 393 U.S. 97 (1968) (finding ripe a claim by high school  
20 biology teacher seeking injunction and declaratory judgment that state statute prohibiting  
21 teaching of evolution and subjecting violators to criminal prosecution and termination from  
22 teaching positions violated the First Amendment, even though there had been no threat of  
23 enforcement against her).**

1           **C. A.R.S. 36-2804.02(A)(3)(F) IS UNCONSTITUTIONAL UNDER U.S. CONST. AMEND. XIV**

2           The Fourteenth Amendment to the United States Constitution provides that no State  
3 “[s]hall deprive any person of life, liberty, or property, without due process of law; nor deny to  
4 any person within its jurisdiction the equal protection of the laws.” U.S. Const. amend. XIV.

5           Under the current AMMA scheme, if allowed to proceed unabated, a Qualifying Patient  
6 that is authorized to cultivate marijuana is subject to no Arizona State criminal charges (provided  
7 they are cultivating in accordance with the terms of the AMMA) so long as they are beyond the  
8 25-Mile Rule radius of a Dispensary.

9           In turn, however, a Qualifying Patient that is *not* authorized to cultivate marijuana,  
10 simply the very nature of their location with respect to a state licensed Dispensary would be  
11 subject to the various State of Arizona criminal statutes, (e.g. A.R.S. 13-3405), with varying  
12 degrees of offense, from misdemeanor to felony (depending on the nature of the charge(s)) and  
13 subject to disastrous penalties and/or consequences. It is my belief that such action is neither  
14 what the voters of Arizona intended nor the legislature contemplated when codifying the  
15 AMMA. *See*: Exhibit C.

16           At a minimum, the statutory scheme warrants an Oral Argument to ascertain whether the  
17 same could *ever* be perceived as considerate of a Qualifying Patient’s Fourteenth Amendment  
18 Rights to Equal Protection under the laws as opposed to being a wholly infirm statutory  
19 provision.

20           **II. I WILL SUFFER IRREPARABLE HARM ABSENT A PRELIMINARY INJUNCTION**

21           Upon demonstrating a likelihood of success on the merits, a plaintiff must also establish  
22 that, absent the preliminary injunction, there is likelihood that the defendant’s conduct will cause  
23 irreparable harm. *See: Winter v. Natural Res. Def. Council, 129 S. Ct. 365, 375–76 (2008).*

24           Preliminary injunctive relief is necessary here because the 25-Mile Rule will cause  
25 irreparable harm to me in that my resources are limited and private cultivation has been crucial to

1 my medicinal regime. The minute the 25-Mile Rule is triggered, my ability to medicate per the  
2 AMMA will be greatly compromised, while the preservation of the status quo will allow me the  
3 opportunity to utilize my cultivation experience and provide the best possible medicinal program  
4 for my condition(s). Not only that, but there exists a potential litany of lawsuits and the 25-Mile  
5 Rule is completely against public policy as is indicated by the voter's approval of Prop 203  
6 which led to the formation of the AMMA. This harm will only be magnified if the law goes into  
7 effect.

8 **III. A BALANCING OF EQUITIES FAVORS ME AS THE PLAINTIFF AND DEMONSTRATES THAT**  
9 **THE PUBLIC INTEREST WOULD BE SERVED BY GRANTING INJUNCTIVE RELIEF**

10 Finally, injunctive relief is necessary because a consideration of the public interest and  
11 the balance of hardships between the parties favors the abolishment of the 25-Mile Rule. *See*  
12 *Stormans*, 586 F.3d at 1127. In this action, which seeks to protect my interests as an individual  
13 Plaintiff, the burdens that will result absent injunctive relief are directly tied to the public  
14 benefits that will be protected if this Court issues the requested injunction. *Cf. Nken v. Holder*,  
15 129 S. Ct. 1749, 1762 (2009) (stating, in the related context of criteria governing stay of  
16 removal, that the criteria of "harm to the opposing party" and "the public interest" "merge when  
17 the Government is the opposing party" because harm to the Government is harm to the public  
18 interest).

19 For example, there are thousands of similarly situated individuals such as myself. Not all  
20 of those individuals will elect to cultivate their own medicine, but for those that elect to, the  
21 same should not be disallowed as the impact could be a litany of litigation, criminal prosecutions  
22 of seriously ill patients, mass confusion for the Judicial System and the DPS, in that additional  
23 resources will need to be allocated to define these imaginary 25-Mile boundaries when  
24 responding to a criminal complaint. The cost to taxpayers alone, of the additional resources  
25 necessary to address this unconstitutional provision will be immeasurable. The same can simply

1 be stalled pending resolution of the Constitutional issues regarding the 25-Mile Rule. In the  
2 interim, the status quo, while proceeding forward with the remaining portions of the AMMA is  
3 the most pragmatic and responsible approach given the gravity of consequences that could be  
4 faced in denying the request for Preliminary Injunctive Relief from the 25-Mile Rule, pending  
5 resolution of its Constitutionality at Oral Argument, or as this Court deems fit and proper in the  
6 premises.

7 By contrast, a preliminary injunction will not meaningfully burden Arizona. The 25-Mile  
8 Rule has not yet gone into effect, so an injunction in this context would have the effect of merely  
9 preserving the status quo. *See U.S. Philips Corps. v. KBC Bank*, 590 F.3d 1091, 1094 (9th Cir.  
10 2010) (“[T]he very purpose of a preliminary injunction . . . is to preserve the status quo and the  
11 rights of the parties until a final judgment issues in the cause.”).

12 Were this Court ultimately to conclude that the 25-Mile Rule does not offend the  
13 Fourteenth Amendment to the United States Constitution, Arizona would then be able to  
14 implement and enforce the 25-Mile Rule without having suffered any substantial burden.

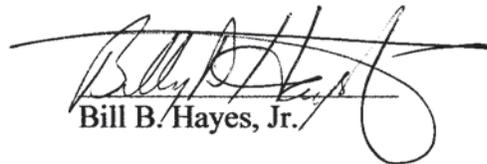
15 What is more, indeed, Arizona has no legitimate interest in the enforcement of a law that  
16 likely violates the 14<sup>th</sup> Amendment to the United States Constitution. *See Chamber of Commerce*  
17 *of U.S. v. Edmonson*, 594 F.3d 742, 771 (10th Cir. 2010) (“Oklahoma does not have an interest  
18 in enforcing a law that is likely constitutionally infirm.”).

1 **CONCLUSION**

2 For the foregoing reasons, the Court should GRANT my Motion for a Preliminary  
3 Injunction against the imposition of the 25-Mile Rule, pending resolution through an Oral  
4 Argument, requested herein (to be scheduled by the Court), and any and all other relief as this  
5 Court deems just and proper in the circumstances.

6  
7 DATED: February 16, 2011

8 Respectfully Submitted,

9   
10 Bill B. Hayes, Jr.

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12 Tel. 602.488.1899

13 *Pro Se*  
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# **EXHIBIT**

# **A**

###



**State of Arizona**

**Janice K. Brewer**  
Governor

**Office of the Governor**  
1700 West Washington Street, Phoenix, AZ 85007

**Main Phone: 602-542-4331**  
**Facsimile: 602-542-7601**

**FOR IMMEDIATE RELEASE**  
January 13, 2012

**CONTACT: Matthew Benson**  
**(602) 542-1342**  
**mbenson@az.gov**

## **Statement by Governor Brewer** *Medical Marijuana*

"The State of Arizona will not re-file in federal court a lawsuit that sought clarification that State employees would not be subject to federal criminal prosecution simply for implementing the Arizona Medical Marijuana Act (AMMA). Instead, I have directed the Arizona Department of Health Services to begin accepting and processing dispensary applications, and issuing licenses for those facilities once a pending legal challenge to the Department's medical marijuana rules is resolved.

"I also have sent a letter to Ann Birmingham Scheel, Acting U.S. Attorney for Arizona, notifying her of the State's action at this time and – once again – seeking assurance and clarification as to the federal government's position regarding State employee participation in the licensing or regulation of medical marijuana dispensaries.

"It is well-known that I did not support passage of Proposition 203, and I remain concerned about potential abuses of the law. But the State's legal challenge was based on my legitimate concern that state employees may find themselves at risk of federal prosecution for their role in administering dispensary licenses under this law. Last week, to my great disappointment, the U.S. District Court of Arizona dismissed the State's lawsuit on procedural grounds and refused to provide clarity on the likely conflict between Proposition 203 and federal drug law.

"Remember how we got to this point. The State of Arizona was fully implementing the provisions of Proposition 203 last spring. That's when Arizona was among a host of states that received letters from the U.S. Department of Justice threatening potential legal ramifications for any individual participating in a medical marijuana program, even in states where it had been legally approved. Specifically, the Arizona letter – dated May 2, 2011 – warned 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 that purport to permit such activities.'

"Would state employees at the Department of Health Services, charged with administering and licensing marijuana dispensaries, face federal prosecution? This was the basis for calling a 'time out' in order for the State to seek a straightforward answer from the court. With our request for clarification rebuffed on procedural grounds by the federal court, I believe the best course of action now is to complete the implementation of Proposition 203 in accordance with the law.

"Know this: I won't hesitate to halt State involvement in the AMMA if I receive indication that State employees face prosecution due to their duties in administering this law."

# **EXHIBIT**

# **B**

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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; William 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  
Pennypacker; Nicholas Flores; Jane  
Christensen; Paula Pollock; Serenity  
Arizona, Inc., an Arizona corporation;  
Holistic Health Management, Inc., an  
Arizona corporation; Jeff Silva; Arizona  
Medical Marijuana Association; Does I-X  
and Does XI-XX,

Defendants.

No. CV 11-1072-PHX-SRB

**ORDER**

The Court now resolves the Motion to Dismiss for Lack of Jurisdiction filed on behalf

1 of the Arizona Association of Dispensary Professionals, Inc., Joshua Levine, Paula  
2 Pennypacker, Nicholas Flores, Jane Christensen, Paula Pollock, Serenity Arizona, Inc.,  
3 Holistic Health Management, Inc., Jeff Silva, and the Arizona Medical Marijuana  
4 Association (collectively, “Non-Government Defendants”) by the Arizona Medical  
5 Marijuana Association (“NG Defs.’ MTD”) (Doc. 30) and the Motion to Dismiss for Lack  
6 of Jurisdiction filed by Dennis K. Burke, Eric H. Holder, Jr., the United States Department  
7 of Justice, and the United States of America (“Gov’t Defs.’ MTD”) (Doc. 38). At this time  
8 the Court also rules on Maricopa County and B. Joy Rich’s (collectively, “Proposed  
9 Intervenors”) Motion to Intervene (“Mot. to Intervene”) (Doc. 31) and Motion for Hearing  
10 on the Motion to Intervene and for Leave to File Brief in Opposition to the NG Defendants’  
11 Motion to Dismiss (“Mot. for Hr’g”) (Doc. 60) and Plaintiffs’ three Motions to Supplement  
12 the Record (“Mots. to Supplement”) (Docs. 54, 57-58).

### 13 **I. BACKGROUND**

14 In this case, Plaintiffs seek one of two declaratory judgments: (1) that compliance with  
15 the Arizona Medical Marijuana Act (“AMMA”) “provides a safe harbor from federal  
16 prosecution” under the federal Controlled Substances Act (“CSA”) or (2) that “the AMMA  
17 does not provide a safe harbor from federal prosecution” because it is preempted by the CSA.  
18 (Doc. 1, Compl. ¶ 64.) Arizona voters passed the AMMA, an initiative measure, in  
19 November 2010, and it was signed into law by Governor Brewer in December 2010. (*Id.* ¶¶  
20 1-2.) The AMMA decriminalizes medical marijuana under certain circumstances and requires  
21 the Arizona Department of Health Services (“ADHS”) to register and certify nonprofit  
22 medical marijuana dispensaries, dispensary agents, qualifying patients, and designated  
23 caregivers. (*Id.* ¶¶ 1, 3-4.) The AMMA provided time limitations within which the ADHS  
24 was to promulgate rules and regulations and begin accepting applications. (*Id.* ¶¶ 5-10.) The  
25 ADHS began accepting applications for qualifying patients and designated caregivers on  
26 April 14, 2011, and, as of May 24, 2011, had certified 3696 qualifying patients and 69  
27 designated caregivers. (*Id.* ¶ 8.) The ADHS was to begin accepting applications for nonprofit  
28 medical marijuana dispensaries and dispensary agents on June 1, 2011. (*Id.* ¶ 11.) This

1 lawsuit was filed on May 27, 2011. (*Id.* at 30.)

2       The CSA classifies marijuana as a Schedule I controlled substance and makes it  
3 unlawful to grow, possess, transport, or distribute marijuana. (*Id.* ¶ 65); *see also* 21 U.S.C.  
4 §§ 812, 841(a), 844(a). Pursuant to the CSA, it is also unlawful to manufacture, dispense,  
5 or possess with the intent to manufacture, distribute, or dispense a controlled substance.  
6 (Compl. ¶ 66); 21 U.S.C. § 841(a). It is also unlawful to conspire to violate the CSA. (Compl.  
7 ¶ 69); 21 U.S.C. § 846. The CSA makes it a crime to knowingly open, lease, rent, use, or  
8 maintain property for the purpose of manufacturing, storing, or distributing controlled  
9 substances. (Compl. ¶ 70); 21 U.S.C. § 856(a)(1). Federal law also criminalizes aiding and  
10 abetting another in committing a federal crime, conspiring to commit a federal crime,  
11 assisting in the commission of a federal crime, concealing knowledge of a felony from the  
12 United States, or making certain financial transactions designed to promote illegal activity  
13 or conceal the source of the proceeds of illegal activity. (Compl. ¶¶ 71-75); 18 U.S.C. §§ 2-4,  
14 371, 1956.

15       The Complaint alleges that, in other states with medical marijuana laws, the federal  
16 government has threatened to enforce the CSA against people who were acting in compliance  
17 with the state scheme. (Compl. ¶¶ 22-23, 77, 108-62.) Plaintiffs allege that they sought  
18 guidance from the Arizona United States Attorney's Office regarding the interaction between  
19 the AMMA and federal criminal law. (*Id.* ¶ 24.) On May 2, 2011, the then-United States  
20 Attorney for the District of Arizona, Defendant Burke, sent Plaintiff Humble a letter stating  
21 that growing, distributing, and possessing marijuana violates federal law no matter what state  
22 law permits. (*Id.* ¶ 25; *id.*, Ex. B ("Burke Letter").) The letter also stated that the federal  
23 government would continue to prosecute people who violate federal law and that compliance  
24 with state law does not create a "safe harbor." (Compl. ¶ 25; Burke Letter.) The letter did not  
25 address potential criminal liability for state employees working to implement the AMMA.  
26 (Compl. ¶ 26.)

27       Plaintiffs allege that "[t]he employees and officers of the State of Arizona have a  
28 mandatory duty to implement and oversee the administration of the AMMA." (*Id.* ¶ 81.)

1 However, Plaintiffs contend, in so doing, state employees “face a very definite and serious  
2 risk that they could be subjected to federal prosecution for aiding and abetting the use,  
3 possession, or distribution of marijuana under the CSA” or could face liability for failing to  
4 report wrongdoing. (*Id.* ¶¶ 82-83.) Plaintiffs seek relief under the Declaratory Judgment Act,  
5 requesting that the Court “declare the respective rights and duties of the Plaintiffs and the  
6 Defendants regarding the validity, enforceability, and implementation of the AMMA” and  
7 that the Court “determine whether strict compliance and participation in the AMMA provides  
8 a safe harbor from federal prosecution.” (*Id.*, Prayer A-B.)

9 Both the Government Defendants and the Non-Government Defendants move to  
10 dismiss the Complaint in its entirety. (NG Defs.’ MTD at 1; Gov’t Defs.’ MTD at 1.) Both  
11 pending Motions to Dismiss challenge whether Plaintiffs have sufficiently alleged a case or  
12 controversy (or, instead, whether Plaintiffs seek an improper advisory opinion from the  
13 Court) and whether Plaintiffs’ claims are ripe for review. (NG Defs.’ MTD at 5-7, 9-11;  
14 Gov’t Defs.’ MTD at 8-11, 13-17.) Both Motions also argue that the Court does not have  
15 jurisdiction over a request by state officials to declare the validity or invalidity of a state law.  
16 (NG Defs.’ MTD at 7-9; Gov’t Defs.’ MTD at 5-7.) The Court heard oral argument on the  
17 Non-Government Defendants’ Motion on December 12, 2011. (*See* Doc. 59, Minute Entry.)  
18 Ruling from the bench at the hearing, the Court dismissed all fictitious Defendants. (*Id.* at  
19 1.)

20 After the hearing, Plaintiffs filed a Notice of Intent to File a Motion for Leave to  
21 Amend Complaint (“Pls.’ Notice”). (*See* Doc. 64.) Plaintiffs informed the Court that they  
22 “will be seeking to amend their Complaint to refine their position and resolve any case or  
23 controversy issues.” (*Id.* at 1-2.) Plaintiffs stated in the Notice that they plan to file their  
24 Motion to Amend by January 9, 2012, and requested that the Court delay ruling on the  
25 pending Motions to Dismiss until after that date. (*Id.* at 2.) For the reasons stated herein, the  
26 Court declines to delay resolution of the Motions to Dismiss, which have already been  
27 pending for several months. Based on the scant detail in the Notice, the Court is unconvinced  
28 that the following defects will be corrected by Plaintiffs’ intended amended Complaint.

1 **II. LEGAL STANDARDS AND ANALYSIS**

2 **A. Motions to Dismiss: Ripeness**

3 The Court turns first to the question of ripeness, which is raised by all Defendants in  
4 the two Motions to Dismiss, pursuant to Federal Rule of Civil Procedure 12(b)(1). (NG  
5 Defs.' MTD at 9-11; Gov't Defs.' MTD at 12-17.) It is not clear from Plaintiffs' Notice  
6 whether they intend to address ripeness.<sup>1</sup> Even if Plaintiffs were to amend the Complaint as  
7 they state they intend to do, "to refine their position and resolve any case or controversy  
8 issues," the defects identified herein would remain. (See Notice at 1-2); see also *Addington*  
9 *v. U.S. Airline Pilots Ass'n*, 606 F.3d 1174, 1179 (9th Cir. 2010) ("The ripeness doctrine  
10 rests, in part, on the Article III requirement that federal courts decide only cases and  
11 controversies and in part on prudential concerns.").

12 "Because . . . ripeness pertain[s] to federal courts' subject matter jurisdiction, [it] is  
13 properly raised in a Rule 12(b)(1) motion to dismiss." *Chandler v. State Farm Mut. Auto. Ins.*  
14 *Co.*, 598 F.3d 1115, 1122 (9th Cir. 2010). "The district courts of the United States, as we  
15 have said many times, are 'courts of limited jurisdiction. They possess only that power  
16 authorized by Constitution and statute.'" *Exxon Mobil Corp. v. Allapattah Servs., Inc.*, 545  
17 U.S. 546, 552 (2005) (quoting *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377  
18 (1994)). When deciding a motion to dismiss for lack of subject matter jurisdiction under Rule  
19 12(b)(1), the court may weigh the evidence to determine whether it has jurisdiction. *Autery*  
20 *v. United States*, 424 F.3d 944, 956 (9th Cir. 2005). The burden of proof is on Plaintiffs to  
21 show that this Court has subject matter jurisdiction. See *Indus. Tectonics, Inc. v. Aero Alloy*,  
22 912 F.2d 1090, 1092 (9th Cir. 1990) ("The party asserting jurisdiction has the burden of  
23 proving all jurisdictional facts." (citing *McNutt v. Gen. Motors Acceptance Corp.*, 298 U.S.  
24 178, 189 (1936)). Unlike a Rule 12(b)(6) motion, there is no presumption of truthfulness  
25 attached to Plaintiffs' allegations. *Thornhill Publ'g Co. v. Gen. Tel. & Elecs. Corp.*, 594 F.2d

26  
27 <sup>1</sup> Much of the parties' arguments at the hearing were focused on whether Plaintiffs  
28 needed to "take a position" on the validity of the AMMA in order to create a live case or  
controversy for the Court to adjudicate.

1 730, 733 (9th Cir. 1979).

2 “The question of ripeness turns on the fitness of the issues for judicial decision and  
3 the hardship to the parties of withholding court consideration.” *Chandler*, 598 F.3d at 1122  
4 (internal alteration, quotation, and citation omitted). The main focus of the ripeness inquiry  
5 is “whether the case involves uncertain or contingent future events that may not occur as  
6 anticipated, or indeed may not occur at all.” *Richardson v. City & Cnty. of Honolulu*, 124  
7 F.3d 1150, 1160 (9th Cir. 1997) (internal quotation and citation omitted). Courts have no  
8 subject matter jurisdiction over unripe claims and must dismiss them. *See S. Pac. Transp. Co.*  
9 *v. City of L.A.*, 922 F.2d 498, 502 (9th Cir. 1990).

10 Ripeness has both constitutional and prudential components. *Portman v. Cnty. of*  
11 *Santa Clara*, 995 F.2d 898, 902 (9th Cir. 1993). “The constitutional component of ripeness  
12 overlaps with the ‘injury in fact’ analysis for Article III standing . . . [and] [w]hether framed  
13 as an issue of standing or ripeness, the inquiry is largely the same: whether the issues  
14 presented are ‘definite and concrete, not hypothetical or abstract.’” *Wolfson v. Brammer*, 616  
15 F.3d 1045, 1058 (9th Cir. 2010) (quoting *Thomas v. Anchorage Equal Rights Comm’n*, 220  
16 F.3d 1134, 1139 (9th Cir. 2000)). Analysis of the prudential component weighs “the fitness  
17 of the issues for judicial decision and the hardship to the parties of withholding court  
18 consideration.” *Abbott Labs. v. Gardner*, 387 U.S. 136, 148-49 (1967), *overruled on other*  
19 *grounds by Califano v. Sanders*, 430 U.S. 99, 105 (1977). As explained below, the Court  
20 finds that Plaintiffs have not satisfied either element of ripeness.

21 **a. Constitutional Component**

22 Defendants argue that Plaintiffs cannot satisfy the constitutional component of  
23 ripeness because they have not shown that a genuine threat of imminent prosecution exists.  
24 (NG Defs.’ MTD at 9; Gov’t Defs.’ MTD at 13.) A plaintiff making a pre-enforcement  
25 challenge must demonstrate more than the “mere existence of a proscriptive statute” or a  
26 “generalized threat of prosecution” to satisfy the case or controversy requirement. *Wolfson*,  
27 616 F.3d at 1058 (internal quotation and citation omitted). While “one does not have to await  
28 the consummation of threatened injury to obtain preventive relief,” a claim is not ripe unless

1 the plaintiff is “subject to a *genuine* threat of *imminent* prosecution.” *Id.* (internal quotations  
2 and citations omitted). To determine whether a claimed threat of prosecution is genuine,  
3 courts consider three factors: “(1) whether the plaintiff has articulated a concrete plan to  
4 violate the law in question; (2) whether the prosecuting authorities have communicated a  
5 specific warning or threat to initiate proceedings; and (3) the history of past prosecution or  
6 enforcement under the challenged statute.” *Id.*

7       The Government Defendants argue that Plaintiffs have not satisfied the first element  
8 of the test because “they do not detail any concrete plan to act in violation of the CSA.”  
9 (Gov’t Defs.’ MTD at 14.) Plaintiffs respond that “[t]he actions to be taken by the State and  
10 its officers and employees [under the AMMA] will clearly expose them to federal criminal  
11 liability, and the Federal Defendants have provided no safe harbor or immunity for actions  
12 taken in strict compliance with the AMMA.” (Pls.’ Resp. to Gov’t Defs.’ MTD (“Pls.’ Gov’t  
13 Resp.”) at 6-7.) Since Plaintiffs have not, as of yet, articulated their position with respect to  
14 the validity of the AMMA and their intentions regarding enforcement, the Complaint does  
15 not articulate a concrete plan to violate the law in question. (*See* Compl. ¶¶ 81-83 (explaining  
16 the obligations of state employees under the AMMA but not expressing a plan to enforce the  
17 dispensary provisions to their full extent).) However, even if the Complaint were amended  
18 to take a position *and* that position involved enforcement of the AMMA such that state  
19 employees might be at risk of violating the CSA, evaluation of the second two factors would  
20 still indicate that Plaintiffs’ claims are unripe.

21       The Complaint alleges that “[t]he Government Defendants have communicated a  
22 specific warning or threat of criminal prosecution and other legal proceedings to Director  
23 Humble.” (*Id.* ¶ 87.) However, the allegations in the Complaint that describe the letter sent  
24 by Defendant Burke to Director Humble are silent as to state employees.<sup>2</sup> (*See* Compl. ¶¶  
25 104-07.) Rather, the Complaint states that the United States Attorneys in Washington notified  
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27       <sup>2</sup> Plaintiffs assert that they have standing to challenge this law on behalf of the state  
28 and on behalf of state employees. (*See* Pls.’ Gov’t Resp. at 12-13.)

1 Washington's governor that state employees carrying out activities pursuant to Washington's  
2 medical marijuana law would not be immune under the CSA. (*Id.* ¶ 113; *see also id.*, Ex. A.)  
3 The Complaint also alleges that the United States Attorney in Vermont warned state  
4 lawmakers that expanding Vermont's medical marijuana law to include state-licensed  
5 dispensaries would "place the state in violation of federal law." (Compl. ¶ 153.) The actions  
6 of federal officials in relation to other states do not substantiate a credible, specific warning  
7 or threat to initiate criminal proceedings against state employees in Arizona if they were to  
8 enforce the AMMA. Even if the letters from the United States Attorneys, in Arizona or other  
9 states, are interpreted as threats or warnings, a "generalized threat" is not sufficient to satisfy  
10 this element. *Stormans, Inc. v. Selecky*, 586 F.3d 1109, 1125 (9th Cir. 2009). Plaintiffs have  
11 not shown that any action against state employees in this state is imminent or even  
12 threatened. *See id.* ("[B]ecause no enforcement action against plaintiffs is concrete or  
13 imminent or even threatened, Appellees' claims against [defendant] are not ripe for  
14 review.").

15 Moreover, the Complaint does not detail any history of prosecution of state employees  
16 for participation in state medical marijuana licensing schemes. *See Wolfson*, 616 F.3d at  
17 1058.<sup>3</sup> The Complaint fails to establish that Plaintiffs are subject to a genuine threat of  
18 imminent prosecution and consequently, the Complaint does not meet the constitutional  
19 requirements for ripeness. Therefore, Plaintiffs' claims are unripe and must be dismissed.

20 **b. Prudential Component**

21 Even if the Complaint had satisfied the constitutional component of ripeness, the  
22 Court would still find that the claims are not ripe for review for prudential reasons because  
23 the issues, as presented, are not appropriate for judicial review and because Plaintiffs have  
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25 <sup>3</sup> The information attached to Plaintiffs' three Motions to Supplement does not alter  
26 the Court's conclusions in any way. As Defendants do not oppose these Motions and they  
27 are not improper, the Court grants Plaintiffs' Motions to Supplement. However, none of the  
28 documents Plaintiffs supply relate to prosecution of state employees or to threatened  
prosecutions of anyone in Arizona. (*See Docs. 54, 57-58.*)

1 not shown that they will endure any particular hardship as a result of withholding judicial  
2 consideration at this time. *See Stormans*, 586 F.3d at 1126. “A claim is fit for decision if the  
3 issues raised are primarily legal, do not require further factual development, and the  
4 challenged action is final.” *Id.* (quoting *US W. Commc’ns v. MFS Intelenet, Inc.*, 193 F.3d  
5 1112, 1118 (9th Cir. 1999)). Although “pure legal questions that require little factual  
6 development are more likely to be ripe, a party bringing a preenforcement challenge must  
7 nonetheless present a concrete factual situation . . . to delineate the boundaries of what  
8 conduct the government may or may not regulate without running afoul of the Constitution.”  
9 *Alaska Right to Life Political Action Comm. v. Feldman*, 504 F.3d 840, 849 (9th Cir. 2007)  
10 (internal quotation and citation omitted). Plaintiffs do not challenge any specific action taken  
11 by any Defendant. Plaintiffs also do not describe any actions by state employees that were  
12 in violation of the CSA or any threat of prosecution for any reason by federal officials. These  
13 issues, as presented, are not appropriate for judicial review.

14 Furthermore, Plaintiffs have not satisfied the requirement that they demonstrate  
15 hardship in the absence of court intervention. “To meet the hardship requirement, a litigant  
16 must show that withholding review would result in direct and immediate hardship and would  
17 entail more than possible financial loss.” *US W. Commc’ns*, 193 F.3d at 1118 (internal  
18 quotation and citation omitted). “Although the constitutional and prudential considerations  
19 are distinct, the absence of any real or imminent threat of enforcement, particularly criminal  
20 enforcement, seriously undermines any claim of hardship.” *Thomas*, 220 F.3d at 1142. In  
21 fact, the Ninth Circuit Court of Appeals has observed that requiring defendants to defend a  
22 law “in a vacuum and in the absence of any particular victims” creates a hardship for the  
23 defendant. *Id.* Plaintiffs’ claims are not specific enough to satisfy this element of the  
24 prudential ripeness test. As explained above, the Complaint details no concrete or imminent  
25 threat of enforcement, nor does it describe with any credible detail a state employee at risk  
26 of federal prosecution under the CSA. Plaintiffs have not satisfied the prudential component  
27 of ripeness.

28

1           **B. Proposed Intervenor's Motions**

2           Maricopa County and B. Joy Rich seek to intervene in this matter and seek a hearing  
3 on their Motion and to oppose Defendants' Motions to Dismiss. (Mot. to Intervene at 1; Mot.  
4 for Hr'g at 1.) As the Court dismisses the Complaint in its entirety, both of the Proposed  
5 Intervenor's Motions are denied without prejudice at this time. There is currently no active  
6 case in which to intervene, and a hearing on this question would not be helpful. Briefing on  
7 Defendants' Motions to Dismiss and on the Motion to Intervene closed months ago, and the  
8 Proposed Intervenor may not now have an opportunity to respond to Defendants' arguments.

9           **III. CONCLUSION**

10           Because Plaintiffs have not satisfied either the constitutional or prudential components  
11 of ripeness, the Complaint must be dismissed. Plaintiffs' stated intention to amend the  
12 Complaint by January 9, 2011, in order to attempt to resolve "any case or controversy issues"  
13 does not appear likely to remedy this defect. The Court dismisses the Complaint without  
14 prejudice, and Plaintiffs may amend within 30 days; however, if they choose to replead their  
15 claims, Plaintiffs must resolve the problems described in this Order.

16           **IT IS THEREFORE ORDERED** granting the Motion to Dismiss for Lack of  
17 Jurisdiction filed on behalf of all named non-government Defendants by the Arizona Medical  
18 Marijuana Association (Doc. 30) and the Motion to Dismiss for Lack of Jurisdiction filed by  
19 Dennis K. Burke, Eric H. Holder, Jr., the United States Department of Justice, and the United  
20 States of America (Doc. 38) and dismissing the Complaint without prejudice.

21           **IT IS FURTHER ORDERED** granting Plaintiffs 30 days, including the date of entry  
22 of this Order, to file any amended Complaint.

23           **IT IS FURTHER ORDERED** denying without prejudice Maricopa County and B.  
24 Joy Rich's Motion to Intervene (Doc. 31) and Motion for Hearing on the Motion to Intervene  
25 and for Leave to File Brief in Opposition to the NG Defendants' Motion to Dismiss (Doc.  
26 60).

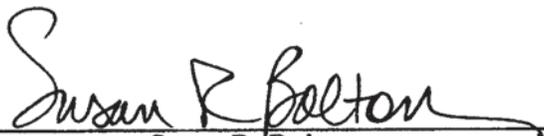
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**IT IS FURTHER ORDERED** granting Plaintiffs' Motions to Supplement the Record  
(Docs. 54, 57-58).

DATED this 4<sup>th</sup> day of January, 2012.

  
\_\_\_\_\_  
Susan R. Bolton  
United States District Judge

# **EXHIBIT**

# **C**

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 2 Firm Bar No. 14000  
 3  
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14 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**

15 **IN AND FOR THE COUNTY OF MARICOPA**

16  
17 STATE OF ARIZONA and WILL HUMBLE,  
18 Director of the Arizona Department of Health  
Services, in his Official Capacity;

19 Plaintiffs,

20 vs.

21 THE 2811 CLUB, LLC, an Arizona limited  
 22 liability company; THE ARIZONA  
 23 COMPASSION ASSOCIATION, INC., a  
 pending Arizona non-profit corporation;  
 24 MICHAEL R. MILLER, Director of the  
 Arizona Compassion Association, Inc.;  
 25 YOKI, INC. d/b/a YOKI A MÁ CLUB, an  
 26 Arizona non-profit corporation; ARIZONA  
 27 COMPASSION CLUB, LLC, an Arizona  
 limited liability company; JOHN and JANE

Case No.

**VERIFIED COMPLAINT**

1 DOES I-XX; and MYSTERY COMPANIES  
2 I-XX;

3 Defendants.

4 Plaintiffs, the State of Arizona and Will Humble, Director of the Arizona  
5 Department of Health Services, in his Official Capacity (collectively, "Plaintiffs"), by  
6 and through undersigned counsel, bring this civil action for declaratory judgment and  
7 injunctive relief as follows:

8 **INTRODUCTORY STATEMENT**

9 1. This is an action for declaratory and injunctive relief challenging the ability  
10 of cannabis clubs, cooperatives, or other persons, associations or entities that are not  
11 registered nonprofit medical marijuana dispensaries from operating or holding  
12 themselves out as though they are able to lawfully participate in the possession,  
13 production, transportation, sale, or transfer of marijuana pursuant to the Arizona Medical  
14 Marijuana Act (the "Act" or the "AMMA"), A.R.S. § 36-3801 *et seq.*

15 2. Plaintiffs seek a declaratory judgment that each of the Defendants is  
16 violating the AMMA because the AMMA does not offer any protections to cannabis  
17 clubs, cooperatives, or other persons, associations or entities that are not registered  
18 nonprofit medical marijuana dispensaries and because the AMMA does not decriminalize  
19 the possession, production, transportation, sale, or transfer of marijuana by or through  
20 cannabis clubs, cooperatives, persons, associations or other entities that are not registered  
21 nonprofit medical marijuana dispensaries.

22 3. Plaintiffs seek preliminary and permanent injunctions restraining each of  
23 the Defendants from violating the AMMA by operating or by holding themselves out as  
24 being able to lawfully operate under the AMMA and by engaging in activities that  
25 involve the possession, production, transportation, sale, or transfer of marijuana.

26 **JURISDICTION AND VENUE**

27 4. This Court has jurisdiction pursuant to A.R.S. § 12-123.





1           18. Under the AMMA, the Arizona Department of Health Services (“ADHS”)  
2 is responsible for implementing and overseeing the Act. The AMMA provides for the  
3 registration and certification by the ADHS of nonprofit medical marijuana dispensaries,  
4 nonprofit medical marijuana dispensary agents, qualifying patients, and designated  
5 caregivers.

6           19. On April 14, 2011, the ADHS began accepting applications from persons  
7 who sought to be registered as qualifying patients and designated caregivers. That  
8 registration process continues and as of July 28, 2011, the ADHS has registered 8,670  
9 qualifying patients and 347 designated caregivers.

10           20. The ADHS was scheduled to begin accepting applications for nonprofit  
11 medical marijuana dispensaries and nonprofit medical marijuana dispensary agents on  
12 June 1, 2011. However, on May 27, 2011, the ADHS suspended the application process  
13 for nonprofit medical marijuana dispensaries and nonprofit medical marijuana dispensary  
14 agents. Consequently, there are currently no registered nonprofit medical marijuana  
15 dispensaries or nonprofit medical marijuana dispensary agents in the state.

16           21. After the application process for nonprofit medical marijuana dispensaries  
17 and nonprofit medical marijuana dispensary agents was suspended, private cannabis  
18 clubs and cooperatives began emerging within the state.

19           22. Upon information and belief, generally, the cannabis clubs and  
20 cooperatives assert that, pursuant to A.R.S. § 36-2811(B)(3), registered qualifying  
21 patients and registered designated caregivers may obtain marijuana through the cannabis  
22 clubs and cooperatives so long as there is not a direct exchange of anything of value at  
23 the time the marijuana is received.

24           23. The AMMA only creates exceptions to the criminal statutes for the  
25 following individuals and entities: registered qualifying patients, registered designated  
26 caregivers, registered dispensary agents working in a registered nonprofit medical  
27

1 marijuana dispensary, and registered nonprofit medical marijuana dispensaries. A.R.S. §  
2 § 36-2801, 36-2802.

3 24. Activities involving the possession, use, production, transport, sale, or  
4 transfer of marijuana that are not in strict compliance of the AMMA remain illegal under  
5 Arizona's criminal statutes. *E.g.*, A.R.S. §§ 13-3401 & 13-3405.

6 25. Under the AMMA, a qualifying patient may designate a caregiver to assist  
7 with the qualifying patient's medical use of marijuana. A.R.S. §§ 36-2801(5) &  
8 36-2804.02. Only an individual, not an entity, may be a designated caregiver. A.R.S. §  
9 36-2801(5). Additionally, a designated caregiver may not assist more than five patients  
10 and may not be paid any fee or compensation for his service as a caregiver. *Id.*

11 26. A designated caregiver may be reimbursed for actual costs incurred for  
12 assisting a qualifying patient with his medical use of marijuana, but can only be  
13 reimbursed for the costs associated with assisting the particular qualifying patients to  
14 whom the designated caregiver is connected through ADHS' registration process. A.R.S.  
15 § 36-2801(5)(e) (A designated caregiver "[m]ay receive reimbursement for actual costs  
16 incurred in assisting a registered qualifying patient's medical use of marijuana *if* the  
17 registered designated caregiver is connected to the registered qualifying patient through  
18 [the ADHS'] registration process.") (emphasis added).

19 27. Under the AMMA, qualifying patients are permitted to possess up to two-  
20 and-one-half ounces of usable marijuana every two weeks. A.R.S. § 36-2801(1).

21 28. Under the AMMA, designated caregivers are permitted to possess up to  
22 two-and-one-half ounces of usable marijuana every two weeks per qualifying patient. *Id.*

23 29. Under the AMMA, if a qualifying patient lives more than 25 miles from a  
24 medical marijuana dispensary, and is authorized by the ADHS to do so, he, or his  
25 designated caregiver, may cultivate up to twelve marijuana plants. *Id.* A designated  
26 caregiver may cultivate up to twelve marijuana plants per qualifying patient. *Id.*

27

1           30. In addition to growing their own marijuana, the only other permissible way  
2 for qualifying patients or designated caregivers to obtain marijuana is from a nonprofit  
3 medical marijuana dispensary agent at the nonprofit medical marijuana dispensary with  
4 which the dispensary agent is affiliated, or from another qualifying patient or designated  
5 caregiver. A.R.S. §§ 36-2806.02 & 36-2811(B)(3). No other individual or entity may  
6 lawfully possess or transfer marijuana to a qualifying patient or designated caregiver.

7           31. Qualifying patients and designated caregivers may only offer or provide  
8 marijuana to another registered qualifying patient or registered designated caregiver if  
9 nothing of value is transferred in exchange for the marijuana. A.R.S. § 36-2811(B)(3).

10           32. When a qualifying patient or designated caregiver provides marijuana  
11 directly to another qualifying patient, the marijuana that was transferred can only be used  
12 by that qualifying patient who received the marijuana for his own medical use. *Id.* (A  
13 qualifying patient or designated caregiver may offer or provide marijuana “to a registered  
14 qualifying patient or registered designated caregiver *for the registered qualifying*  
15 *patient’s medical use . . .*”) (emphasis added). The secondary transfer of marijuana is  
16 prohibited.

17           33. When a qualifying patient or designated caregiver provides marijuana  
18 directly to another designated caregiver, the marijuana that was transferred can only be  
19 used for the medical use of a qualifying patient connected to that designated caregiver  
20 through ADHS’ registration process. *Id.* (A qualifying patient or designated caregiver  
21 may offer or provide marijuana “to a registered qualifying patient or registered  
22 designated caregiver *for the registered qualifying patient’s medical use . . .*”) (emphasis  
23 added). The secondary transfer of marijuana is prohibited.

24           34. The only entities (e.g., proprietorships, partnerships, corporations, limited  
25 liability companies, cooperatives) to which a qualifying patient or designated caregiver  
26 may offer or provide marijuana are registered nonprofit medical marijuana dispensaries,  
27

1 so long as they receive no compensation and nothing of value is transferred. A.R.S. §§  
2 36-2806(F) & 36-2811(B)(3).

3 35. Under the AMMA, the only individuals and entities that are permitted to  
4 acquire, possess, cultivate, manufacture, deliver, transfer, transport, supply, dispense, or  
5 use medical marijuana are those qualifying patients, designated caregivers, nonprofit  
6 medical marijuana dispensary agents, and nonprofit medical marijuana dispensaries that  
7 are registered with the ADHS.

8 **FACTUAL ALLEGATIONS**

9 **THE 2811 CLUB, LLC**

10 36. Upon information and belief, the 2811 Club is holding itself out as being  
11 able to legally operate under the AMMA.

12 37. Upon information and belief, to join the 2811 Club, members must be  
13 qualifying patients or designated caregivers registered with the ADHS and pay an initial  
14 application fee of \$25. 2811 Club, Welcome, [http://www.the2811club.com/2811-  
16 intro.html](http://www.the2811club.com/2811-<br/>15 intro.html) (last visited Aug. 4, 2011) (attached hereto as Exhibit A); 2811 Club, Fees &  
17 Dues, <http://www.the2811club.com> (last visited Aug. 4, 2011) (attached hereto as Exhibit  
18 B). Upon information and belief, thereafter, members must pay either a \$75 entrance fee  
19 each time they visit the club or an annual membership fee of \$700, which includes one  
20 club visit per month for twelve months. 2811 Club, Fees & Dues, *supra*.

21 38. Upon information and belief, as part of the application, prospective  
22 members must sign an agreement and disclose and explain if they have ever been  
23 employed by a law enforcement agency. 2811 Club, Agreements,  
24 <http://www.the2811club.com/agreements.html> (last visited Aug. 4, 2011) (attached hereto  
25 as Exhibit C); 2811 Club, Application, <http://www.the2811club.com/application.html>  
26 (last visited Aug. 4, 2011) (attached hereto as Exhibit D).

27 39. Upon information and belief, the 2811 Club states that one of the benefits  
of membership is the ability to obtain medical marijuana. 2811 Club, Welcome, *supra*

1 (“We welcome you to join our club, enjoy the numerous benefits and *obtain FREE*  
2 *supplies of Medical Marijuana.*”) (emphasis added); 2811 Club, Fees & Dues, *supra*  
3 (“Membership benefits include . . . Free samples of Medical Marijuana subject to  
4 availability.”).

5 40. Advertisements for the 2811 Club state “Free Medical Marijuana when you  
6 join the club.” 2811 Club Advertisement, The Phoenix New Times, Jul. 28, 2011, at 70;  
7 2811 Club Advertisement, The Phoenix New Times, Aug. 4, 2011, at 74 (attached hereto  
8 as Exhibit E); *see also* 2811 Club, Home, <http://www.the2811club.com/index.html> (last  
9 visited Aug. 4, 2011) (attached hereto as Exhibit F) (“Free Marijuana . . . Membership  
10 has it’s [sic] benefits!!”; additionally, a scroll above the link to the 2811 Club states,  
11 “Click here to get FREE Medical Marijuana . . . Membership has it’s [sic] benefits . . .”).

12 41. Upon information and belief, at each visit to the 2811 Club, “member[s]  
13 can obtain, FREE OF CHARGE, up to 1/8 of an ounce of high quality medical grade  
14 marijuana.” 2811 Club, Welcome, *supra*. Upon information and belief, to obtain the  
15 marijuana “free of charge,” members must first pay membership dues to enter the club.  
16 2811 Club, Fees & Dues, *supra*; *see also* Complaint for Declaratory Judgment, *Allan*  
17 *Sobol v. State of Arizona, et al.*, case no. CV2011-053246, ¶ 34 (Ariz. Sup. Ct. Jul. 18,  
18 2011) (attached hereto as Exhibit G); 2811 Club, Rules,  
19 <http://www.the2811club.com/clubrules.html> (last visited Aug. 4, 2011) (attached hereto  
20 as Exhibit H).

21 42. Upon information and belief, the 2811 Club “tests all marijuana distributed  
22 at its facilities,” 2811 Club, Welcome, *supra*; *see also* 2811 Club, Fees & Dues, *supra*,  
23 and “tracks each patient and the medicine they receive.” Letter from Allan Sobol,  
24 Marketing Agent, The 2811, Club, LLC, to Tom Horne, Arizona Attorney General,  
25 Dennis Burke, U.S. Attorney, Joe Arpaio, Maricopa County Sheriff, Joe Yahner, Chief,  
26 Phoenix Police Department (Jul. 1, 2011) (attached hereto as Exhibit I).

27

1           43. Upon information and belief, the express purpose of the 2811 Club is to  
2 provide for the transfer of marijuana. Sobol Letter, *supra* (“We were approached by  
3 numerous caregivers and patients who were looking to share their medicine with others  
4 who were unable to obtain it themselves. We helped them organize and we donated some  
5 space in our facility where they could exchange their products . . .”).

6           44. Upon information and belief, the 2811 Club donates space within its facility  
7 to allow qualifying patients and designated caregivers to transfer marijuana. Sobol  
8 Letter, *supra*.

9           45. Upon information and belief, the marijuana provided to members of the  
10 2811 Club “is donated/transferred by the Arizona Compassion Association, Inc.” 2811  
11 Club, Fees & Dues, *supra*.

12           46. Upon information and belief, the 2811 Club has entered into a written  
13 agreement with the Compassion Association to allow it “to utilize space in the club  
14 without cost” to provide marijuana to the 2811 Club’s members. Compl. ¶ 31, *supra*; *see*  
15 *also* Sobol Letter, *supra* (“[W]e donated some space in our facility where they could  
16 exchange their products . . .”).

17           47. Upon information and belief, the 2811 Club uses membership dues to make  
18 donations to the Compassion Association to offset the cost of acquiring the marijuana.  
19 2811 Club, Welcome, *supra*; 2811 Club, Fees & Dues, *supra*; 2811 Club, Agreements,  
20 *supra*; Compl. ¶ 32.

21           48. Upon information and belief, members of the 2811 Club must pay  
22 membership dues in order to obtain medical marijuana at the 2811 Club. 2811 Club,  
23 Fees & Dues, *supra*; Compl. ¶ 34, *supra*; 2811 Club, Rules, *supra*.

24           49. Upon information and belief, the 2811 Club has characterized itself as a  
25 store, Compl. ¶ 27, *supra* (the 2811 Club is “the first, of what is expected to be many[,]  
26 stores”) (emphasis added), and has stated that its members are purchasing marijuana,  
27

1 Compl. ¶ 26, *supra* (the 2811 Club’s members include “some who desire to *purchase*  
2 their medication in a safe, legal[,] and dignified manner”) (emphasis added).

3 THE ARIZONA COMPASSION ASSOCIATION, INC. AND MICHAEL R. MILLER

4 50. Upon information and belief, the Compassion Association is holding itself  
5 out as being able to legally operate under the AMMA.

6 51. Upon information and belief, the Compassion Association is a network of  
7 qualifying patients and designated caregivers who grow marijuana. Compassion  
8 Association, Home, <http://seed2success.com/compassion-ass.html> (last visited Aug. 4,  
9 2011) (attached hereto as Exhibit J).

10 52. Upon information and belief, the Compassion Association is receiving use  
11 of the 2811 Club at no charge. Compl. ¶ 31, *supra*; see also Sobol Letter, *supra*

12 53. Upon information and belief, the Compassion Association, as a corporation,  
13 is directly providing marijuana to members of the 2811 Club. 2811 Club, Fees & Dues,  
14 *supra*.

15 54. Upon information and belief, members of the 2811 Club must pay dues to  
16 the 2811 Club before they are able to obtain marijuana from the Compassion Association.  
17 2811 Club, Fees & Dues, *supra*; Compl. ¶ 34, *supra*; 2811 Club, Rules, *supra*.

18 55. Upon information and belief, the Compassion Association receives  
19 donations or reimbursements from the 2811 Club to cover the cost of acquiring or  
20 cultivating marijuana. 2811 Club, Welcome, *supra*; 2811 Club, Fees & Dues, *supra*;  
21 2811 Club, Agreements, *supra*; Compl. ¶ 32.

22 56. Upon information and belief, the Compassion Association receives  
23 marijuana from multiple qualifying patients or designated caregivers which it then  
24 redistributes to qualifying patients or designated caregivers. 2811 Club, Fees & Dues,  
25 *supra*; Compl. ¶ 29, *supra*.

26 57. Upon information and belief, the Compassion Association possesses a  
27 marijuana seed bank or a marijuana clone bank. Compassion Association, Home, *supra*.

1 Upon information and belief, Defendant Michael R. Miller is a Director of Compassion  
2 Association, and is responsible for the activities of Compassion Association.

3 YOKI, INC. DOING BUSINESS AS YOKI A MÁ CLUB

4 58. Upon information and belief, the Yoki Club is holding itself out as being  
5 able to legally operate under the AMMA.

6 59. Upon information and belief, Yoki Club charges its members a visit fee of  
7 \$65 each time they visit the club. Yoki Club, Medication,  
8 <http://yokiama.com/Medication.php> (last visited Aug. 4, 2011) (attached hereto as  
9 Exhibit K); *see also* Emily Holden, *Medical-Marijuana Clubs Pop Up as Arizona Law Is*  
10 *Debated*, *The Arizona Republic*, Jul. 18, 2011, *available at*  
11 <http://www.azcentral.com/news/articles/2011/07/18/20110718arizona-medical->  
12 [marijuana-clubs-pop-up.html](http://www.azcentral.com/news/articles/2011/07/18/20110718arizona-medical-marijuana-clubs-pop-up.html) (attached hereto as Exhibit L).

13 60. Upon information and belief, Yoki Club, as a corporation, provides  
14 marijuana to its members. Yoki Club, Medication, *supra* (“Yoki A Ma' Club has a wide  
15 variety of medical marijuana to suit your diagnosis needs. Here are some pictures of  
16 what is available . . . .”); Yoki Club, Home Page, <http://www.yokiama.com/Home.html>  
17 (last visited Aug. 4, 2011) (attached hereto as Exhibit M) (“We are giving new and old  
18 members a FREE MMJ cigarette with ever [sic] visit for the whole month of August.”).

19 61. Upon information and belief, Yoki Club members are able to receive  
20 marijuana after paying a visit fee. Yoki Club, Medication, *supra* (“Yoki A Ma' Club has  
21 a wide variety of medical marijuana . . . available to our members with a visit fee.”).

22 62. Upon information and belief, members of the Yoki Club must pay a visit  
23 fee before they are able to obtain marijuana from the Yoki Club. Yoki Club, Medication,  
24 *supra* (“Yoki A Ma' Club has a wide variety of medical marijuana . . . available to our  
25 members *with a visit fee.*”) (emphasis added).

26 63. Upon information and belief, after charging a \$65 visit fee, Yoki Club gives  
27 its members an eighth of an ounce of marijuana. Holden, *supra*.



1 Thomas Road . . . is a 'safe, comfortable' place with a professional staff who are also  
2 patients . . .").

3 72. Upon information and belief, the Compassion Club's staff members  
4 dispense marijuana to its members. Stern, *Arizona Compassion Club, supra* ("In the  
5 other room there are two tables where staff members discuss what's needed with patients  
6 and hand out the marijuana.").

7 73. Upon information and belief, members of the Compassion Club must make  
8 a donation before they are able to obtain marijuana from the Compassion Club. Stern,  
9 *Arizona Compassion Club, supra*. "Staff members tell[] patients it's not a commercial  
10 transaction." Stern, *Arizona Compassion Club, supra*.

11 74. Upon information and belief, the Compassion Club receives marijuana  
12 from multiple qualifying patients or designated caregivers which it then redistributes to  
13 qualifying patients or designated caregivers. Stern, *Arizona Compassion Club, supra*  
14 ("[A]s part of the benefits of being a member, [members] can obtain medicine that's  
15 'gifted' from other patients;" "Staff members at the Arizona Compassion Club say *their*  
16 *medicine comes from now-legal sources.*") (emphasis added).

17 **COUNT I – DECLARATORY JUDGMENT**

18 **THE 2811 CLUB, LLC**

19 75. Plaintiffs repeat and reallege paragraphs 1-74 above.

20 76. The 2811 Club is a for-profit limited liability company and, as such, the  
21 AMMA does not offer any protections to the 2811 Club and does not decriminalize its  
22 participation in the possession, production, transportation, sale, or transfer of marijuana.

23 77. Because the 2811 Club has entered into a written agreement with the  
24 Compassion Association to ensure that its members can obtain marijuana, it is involved  
25 in the transfer of marijuana and is therefore in violation of the AMMA.  
26  
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1           78. Because the 2811 Club advertises and states that a membership benefit is  
2 the ability to obtain marijuana, it is involved in the transfer of marijuana and is therefore  
3 in violation of the AMMA.

4           79. Because the 2811 Club tests all the marijuana that is brought into its  
5 facility, it is involved in the transfer of marijuana and is therefore in violation of the  
6 AMMA.

7           80. Because the 2811 Club provides space to individuals and entities for the  
8 express purpose of transferring marijuana, it is involved in the transfer of marijuana and  
9 is therefore in violation of the AMMA.

10           81. Because the 2811 Club donates space in its facility to the Compassion  
11 Association so that the Compassion Association can transfer marijuana, the 2811 Club is  
12 giving something of value for the transfer of marijuana and is therefore in violation of the  
13 AMMA.

14           82. Because the 2811 Club donates space in its facility to qualifying patients or  
15 designated caregivers so that they can transfer marijuana, the 2811 Club is giving  
16 something of value for the transfer of marijuana and is therefore in violation of the  
17 AMMA.

18           83. Because the 2811 Club donates to or reimburses the Compassion  
19 Association to offset the cost of acquiring marijuana, it is giving something of value for  
20 the transfer of marijuana and is therefore in violation of the AMMA.

21           84. Because the 2811 Club donates to or reimburses designated caregivers or  
22 qualifying patients to offset the cost of acquiring marijuana, it is giving something of  
23 value for the transfer of marijuana and is therefore in violation of the AMMA.

24           85. Because the 2811 Club receives payment, in the form of membership dues,  
25 in exchange for its members being able to obtain marijuana, it is receiving something of  
26 value in exchange for the transfer of marijuana and is therefore in violation of the  
27 AMMA.

1 THE ARIZONA COMPASSION ASSOCIATION, INC. AND MICHAEL R. MILLER

2 86. The Compassion Association is a nonprofit entity and, as such, the AMMA  
3 does not offer any protections to the Compassion Association and does not decriminalize  
4 its participation in the possession, production, transportation, sale, or transfer of  
5 marijuana.

6 87. Because the Compassion Association possesses, produces, transports, sells,  
7 or transfers marijuana, it is in violation of the AMMA.

8 88. Because the Compassion Association is not a designated caregiver and  
9 receives donations or reimbursements from the 2811 Club to offset the cost of acquiring  
10 marijuana, it is in violation of the AMMA.

11 89. Because the Compassion Association receives marijuana from qualifying  
12 patients or designated caregivers that it then retransfers to other qualifying patients and  
13 designated caregivers, it is in violation of the AMMA.

14 90. Because the Compassion Association receives use of the 2811 Club at no  
15 charge and receives donations or reimbursements from the 2811 Club, it is receiving  
16 something of value in exchange for the transfer of marijuana and therefore is in violation  
17 of the AMMA.

18 91. Because Defendant Michael R. Miller is a Director of and is responsible for  
19 the actions of the Compassion Association, he is in violation of the AMMA.

20 YOKI, INC. DOING BUSINESS AS YOKI A MÁ CLUB

21 92. Yoki Club is a nonprofit corporation and, as such, the AMMA does not  
22 offer any protections to the Yoki Club and does not decriminalize its participation in the  
23 possession, production, transportation, sale, or transfer of marijuana.

24 93. Because Yoki Club possesses, produces, transports, sells, or transfers  
25 marijuana, it is in violation of the AMMA.

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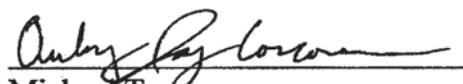


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C. The Court grants such other and further relief as it deems appropriate and proper.

Dated this 8 day of August, 2011.

THOMAS C. HORNE  
Attorney General



Michael Tryon  
Evan Hiller  
Kevin D. Ray  
Lori S. Davis  
Aubrey Joy Corcoran  
Assistant Attorneys General  
*Attorneys for Plaintiffs*

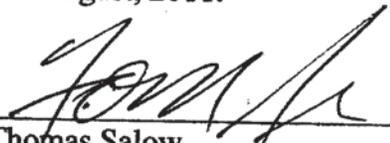
Doc # 2191595



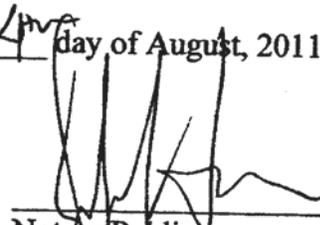
1 8. I have personally viewed the electronic version of The Arizona Republic's July  
2 18, 2011 article by Emily Holden titled *Medical-Marijuana Clubs Pop Up as Arizona*  
3 *Law is Debated* and Exhibit L is a true and correct copy of that article.

4 9. I have personally viewed the electronic version of The New Times' June 24,  
5 2011 article by Ray Stern titled *Arizona Compassion Club Helps Obtain Medical*  
6 *Marijuana for Qualified Patients* and Exhibit N is a true and correct copy of that article.

7  
8 Executed on this 4<sup>th</sup> day of August, 2011.

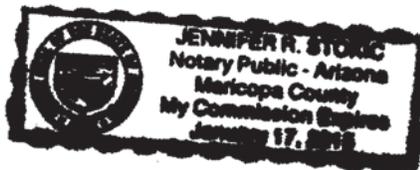
9  
10   
11 \_\_\_\_\_  
12 Thomas Salow  
13 Manager, Office of Administrative Counsel and Rules  
14 Arizona Department of Health Services

15 Subscribed and sworn before me this 4<sup>th</sup> day of August, 2011.

16  
17   
18 \_\_\_\_\_  
19 Notary Public

20 My commission expires:

21 1-17-2015



22 Doc # 2214077

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24  
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