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21  
22 SUPERIOR COURT OF THE STATE OF ARIZONA  
23 COUNTY OF MARICOPA

24 COMPASSION FIRST, L.L.C., dba  
25 Compassion First AZ, an Arizona limited  
26 liability company; SCOTT TIDEMANN,  
27 a single man; KIMBERLY REARDON, a  
28 single woman; MARK BROOKMAN, a  
single man; KEITH LOWELL RABIN,  
a single man and DANIEL MEDINA, a  
single man,

Plaintiffs,

v.

STATE OF ARIZONA, a governmental  
entity; JANET K. BREWER, Governor of  
the State of Arizona, in her official  
capacity; ARIZONA DEPARTMENT OF  
HEALTH SERVICES (ADHS), an  
Arizona administrative agency; and  
WILLIAM HUMBLE, Director of ADHS,  
in his official capacity,

Defendants.

No. CV2011 011290

**COMPLAINT  
FOR SPECIAL ACTION**

**(Mandamus; Declaratory Relief;  
Injunction; Constitutional Violations;  
Privilege & Immunities; Commerce Clause;  
Equal Protection; Substantive Due Process;  
Procedural Due Process)**

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CLERK OF SUPERIOR COURT  
MARICOPA COUNTY, ARIZONA

1 For their Complaint for Special Action (“Special Action Complaint”), Plaintiffs  
2 Compassion First, L.L.C. (d/b/a Compassion First AZ), Scott Tidemann, Kimberly Reardon,  
3 Daniel Medina, Keith Lowell Rabin and Mark Brookman allege the following:

4 **PARTIES, JURISDICTION AND VENUE**

5 1. Plaintiff Compassion First, L.L.C. is an Arizona limited liability company  
6 which is doing business under the name Compassion First AZ. Its principal place of  
7 business is in Maricopa County, Arizona.

8 2. Plaintiff Scott Tidemann is a single man and a resident and citizen of Maricopa  
9 County, Arizona.

10 3. Plaintiff Kimberly Reardon is a single woman and has been a resident and  
11 citizen of Arizona for less than three years.

12 4. Plaintiff Mark Brookman is a married man and a resident and citizen of  
13 Maricopa County, Arizona.

14 5. Plaintiff Keith Lowell Rabin is a single man and a resident and citizen of  
15 Colorado.

16 6. Plaintiff Daniel Medina is a single man and a resident and citizen of Maricopa  
17 County, Arizona.

18 7. Each of the plaintiffs is an aspiring applicant for a non-profit medical  
19 marijuana dispensary license who will be excluded from the dispensary selection process  
20 based upon specific regulations in the regulatory scheme as a whole that are: (1) prohibited  
21 by the Arizona Medical Marijuana Act (“AMMA”), (2) unconstitutional or, (3) otherwise  
22 illegal.

23 8. Defendant State of Arizona is a sovereign state of the United States of  
24 America.

25 9. Defendant Janet K. Brewer is the governor of the State of Arizona (named in  
26 her official capacity only) and is believed to be a resident of Maricopa County, Arizona.  
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28

1           10. In her capacity as Governor, Defendant Brewer is vested with the supreme  
2 executive power of the state and is responsible for the faithful execution of its laws,  
3 including the AMMA.

4           11. Defendant Arizona Department of Health Services (“ADHS”) is an Arizona  
5 administrative agency with its principal place of business in Maricopa County, Arizona. It is  
6 responsible for implementing and administering the AMMA.

7           12. Defendant William Humble is sued in his official capacity as Director of  
8 ADHS and is believed to be a resident of Maricopa County, Arizona. As the Director of  
9 ADHS, Defendant Humble is responsible for implementing and administering the AMMA.  
10 See A.R.S. §§36-2801 *et seq.*

11           13. Defendants State of Arizona, Brewer, ADHS and Humble are hereinafter  
12 referred to collectively as “defendants” or “government defendants.”

13           14. Venue is proper in this court pursuant to Rule 4(b), *Arizona Rules of Procedure*  
14 *for Special Actions*.

15           15. This Court has jurisdiction to hear this Special Action Complaint and to grant  
16 the relief requested by authority of Art. VI, Sect. 18 of the Arizona Constitution, Rules 1, 2  
17 and 4 of the *Arizona Rules of Procedure for Special Actions*; and A.R.S. § 36-2818.

18           16. This Complaint is a “statutory special action” under Rule 1(b) of the *Arizona*  
19 *Rules of Procedure for Special Actions*. In a statutory special action, the claims and questions  
20 presented are not limited by Rule 3 of those Rules; *accord Primary Consultants, L.L.C. v.*  
21 *Maricopa Cnty. Recorder*, 210 Ariz. 393, 402, n.1, 111 P.3d 435, 444 (Ariz. App. Div. 1,  
22 2005).

23           17. Plaintiffs have no other equally plain, speedy and adequate remedy, the  
24 allegations in this Special Action Complaint demonstrate that the action raises questions  
25 cognizable in a special action under Rules 1 and 3 of the *Arizona Rules of Procedure for*  
26 *Special Actions* because these claims raise statutory and constitutional questions of statewide  
27 importance; they need to be decided as quickly as possible.



1           25. Although ADHS did “promulgate” regulations, defendants otherwise refused  
2 to accept and process applications for nonprofit medical marijuana dispensaries  
3 (“NPMMDs”). Instead defendant filed an action for declaratory relief in United States  
4 District Court asking whether the defendants were constitutionally bound to uphold and  
5 implement the AMMA.

6           26. On the basis of their lawsuit, defendants next chose not to implement the  
7 AMMA in the prompt time-frame required by the statute.

8           27. A.R.S. §36-2804(A) of the AMMA requires that NPMMDs register with  
9 ADHS.

10          28. A.R.S. §36-2806 and A.R.S. §36-2806.02 require NPMMDs to be nonprofit  
11 and sets out requirements for security measures and control of marijuana.

12          29. A.R.S. §36-2804(B) (1) states that ADHS “shall register” an applicant if the  
13 applicant has submitted a registration fee and an application setting out the dispensary’s legal  
14 name and address, the name, address and birth date of each nonprofit medical marijuana  
15 dispensary agent, and its operating procedures, including procedure to ensure adequate  
16 record-keeping and security measures, and a sworn statement that the dispensary is in  
17 compliance with local zoning restrictions.

18          30. A.R.S. §36-2804(B)(2) states that no principal officers or board members of  
19 NPMMDs may be under 21 years of age, or have been convicted of a violent felony or a  
20 felony grade state or federal controlled substance law, or have been a principal or board  
21 member of a dispensary which had its registration revoked.

22          31. A.R.S. §36-2804(C) establishes a limit of no more than one Community Health  
23 Analysis Area and one dispensary per CHAA for each ten (10) regulated pharmacies in a  
24 town/city, unless more are needed to ensure that there is at least one (1) in each county with  
25 a registered pharmacy.

26          32. These detailed statutory requirements do not contain any requirement of  
27 Arizona residence, any durational residency requirement, any requirement to provide tax  
28 returns, any durational tax-return filing requirement, any financial threshold requirements,

1 any restriction on persons who had previously filed bankruptcies, any limitation on persons  
2 owing money to the government or for child support, nor do they limit who may be a board  
3 member or principal other than establishing a minimum age, prohibition against prior  
4 felonies and a bar based on any relationship to previously revoked NPMMD registrations.  
5 They place no limitations on investors and have no requirement that lessors to a NPMMD  
6 provide letters consenting to the use of their property.

7 33. A.R.S. §§36-2804(B) and (C) of the AMMA set out in plain language the  
8 requirements of a dispensary agent and when ADHS may deny registration.

9 34. All these rules require for a dispensary application are a name, address, date of  
10 birth and application fee. The only statutory limitations are that the agent must be at least 21  
11 years of age and have never been convicted of an excluded felony.

12 35. AMMA grants ADHS no authority to establish any other and further  
13 conditions, qualifications, or requirements to the registration of a dispensary or a dispensary  
14 agent.

15 36. AMMA grants no authority to ADHS to withhold registration for any other  
16 reason if the express statutory requirements are otherwise met.

17 37. The authority of ADHS to promulgate regulations with respect to NPMMDs is  
18 limited to managerial and administrative acts with discretion given only to promulgate rules  
19 specifically to protect against diversion or theft of marijuana. A.R.S. §36-2803(A).

20 38. A.R.S. §36-2803(4)(a)-(e) sets forth the specific rule-making authority of  
21 ADHS relating to NPMMD.

22 39. ADHS is directed to adopt rules governing dispensaries for the purpose of  
23 protecting against diversion and theft without imposing an undue burden on NPMMDs or  
24 compromising the confidentiality of a cardholder. Those rules are specifically limited to: (a)  
25 the manner in which the department shall coordinate applications for and renewals of  
26 registration certificates, (b) minimum oversight requirements for NPMMDs, (c) minimum  
27 recordkeeping requirements, (d) minimum security requirements, and (e) provisions for  
28 revoking or suspending regulation of dispensaries that violate that statute or rule. A.R.S.

1 §36-2803(A)(4)

2 40. An administrative agency (such as ADHS) may not act to modify a statute or  
3 act contrary to it. Instead, its powers are limited by the enabling language of the legislation.

4 41. In this case, the final Regulations promulgated by ADHS creating various  
5 prerequisites to registration not set out in the Act and purporting to vest authority in ADHS  
6 to determine the most qualified applicants are *ultra vires* and invalid.

7 42. Administrative officers and agencies have no common law or inherent powers.  
8 An administrative agency or commission must exercise its rule-making authority within the  
9 grant of legislative power provided by the enabling statute.

10 43. ADHS' proposed Regulations were filed with the Arizona Secretary of State  
11 on April 13, 2011, and were codified in the Arizona Administrative Code ("A.A.C.") at Title  
12 9, Chapter 17.<sup>1</sup>

13 44. The inaugural NPMMD application and selection process was to begin June 1,  
14 2011, and to end June 30, 2011.

15 45. Defendant ADHS, in consultation and coordination with the other defendants,  
16 refused to accept applications for dispensary registration certificates on June 1, 2011, and has  
17 expressed its intent to refuse to accept applications until defendants' lawsuit is resolved.

18 46. The refusal by ADHS to accept applications, exceeds the limited authority  
19 granted to defendants by the AMMA, and is arbitrary, capricious and an abuse of discretion.

20 47. ADHS exceeded its rule making authority, a question of statutory  
21 interpretation, requiring *de novo* review.

22 48. ADHS' suspension of its processing of NPMMD applications and its refusal to  
23 accept applications for NPMMDs is not authorized by statute; indeed, it is contrary to the  
24 AMMA's mandate of prompt implementation thereof.

25 49. ADHS' promulgated Regulations do not authorize a total suspension and  
26 refusal to accept any applications for NPMMDs.

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28 <sup>1</sup> The challenged Regulations are in Title 9, Chapter 17 of the Arizona Administrative Code.  
Therefore, plaintiffs may cite herein only to the specific article and section of the code.



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- (a) AMMA (as codified in the A.A.C.) Section 322(A)(2)(a) provides that any applicant<sup>3</sup> must have been an Arizona resident for at least three (3) years.
  - (b) AMMA Section 322(A)(3) requires that all applications must be “complete” and in “compliance” with state law or risk disqualification.
  - (c) AMMA Section 302(A)(4) purports to allow ADHS to disqualify any applicant with a personal or corporate bankruptcy at any time in the applicant’s history.
  - (d) AMMA Section 302(A)(1) proclaims that any applicant who cannot produce three years of Arizona residential personal income tax returns will be disqualified.
  - (e) AMMA Section 302(A)(2) purportedly authorizes ADHS to reject any applicant with an overdue fine owing to the government, outstanding child support obligations, or student loans presently in default.
  - (f) AMMA Section 302(A)(3) demands that any individual with a greater than 20% ownership interest in a dispensary must be: (1) an Arizona resident of three-plus years; and (2) a board member, officer, or director of the company.
  - (g) AMMA Section 302(A)(2) excludes out-of-state residents and Arizona residents that did not live in Arizona for the three-consecutive-years prior to applying for a registration certificate (“New Residents”) from operating a medical marijuana dispensary.
  - (h) AMMA Section 304 requires applicants for dispensary certificates to produce documentation that proves either: (1) “Ownership of the physical address of the proposed dispensary;” or (2) “Permission from the owner of the physical address of the proposed dispensary.” (See R9-17-304(D)(7)). The failure to include consent documentation disqualifies an application. (See R9-17-304(D)(7)).

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27 <sup>3</sup> The Regulations prohibit these criteria with respect to any “officer, board member, or principal” in  
28 addition to the nominal applicant. “Applicant” as used herein refers to all excluded classes of applicant, not just the nominal applicant.

1 **CLAIMS FOR RELIEF**

2 **COUNT I**  
3 **(MANDAMUS)**

4 58. Plaintiffs incorporate all previous allegations of this Special Action Complaint.

5 59. Arizona's Governor heads the executive branch of state government.

6 60. The ADHS is a department of the executive branch, directed by the Governor  
7 and/or her appointee.

8 61. ADHS is an executive branch administrative agency.

9 62. The Governor of the State of Arizona, Defendant Janet K. Brewer, has a duty  
10 under Article V, Section 4 of the Arizona Constitution to ensure that the laws of Arizona are  
11 faithfully executed.

12 63. As an Arizona executive branch department head, Defendant ADHS Director  
13 William Humble has a duty to ensure that the laws are faithfully executed.

14 64. By authority of the Arizona Constitution, the power of the people to legislate  
15 by Initiative is as great as the power of the legislature.

16 65. The Arizona Constitution denies the Governor power to veto or amend  
17 statutory enactments that have been approved through the popular Initiative process.

18 66. The Arizona Constitution requires the Governor to faithfully execute the laws  
19 enacted by the people through ballot Initiative.

20 67. In 2010, the people of Arizona enacted by Initiative Chapter 28.1 of Title 36 of  
21 Arizona Revised Statutes: the AMMA.

22 68. The AMMA, *inter alia*, directed ADHS to register NPMMDs.

23 69. The AMMA, *inter alia*, directed ADHS to promptly create administrative  
24 regulations for NPMMDs application selection among applicants, and for operational  
25 oversight of the NPMMD, for the limited purpose of preventing theft and diversion.

26 70. ADHS promulgated final regulations on April 13, 2011, and stated its intention  
27 to begin accepting applications for NPMMD registrants on June 1, 2011.<sup>4</sup>

28 <sup>4</sup> Over six (6) weeks beyond the AMMA's 120 day deadline.

1           71. On May 27, 2011, Defendants Brewer and Humble along with the Arizona  
2 Attorney General filed a declaratory judgment action in the Federal District Court for  
3 Arizona seeking the court's proclamation whether the AMMA violates federal law.

4           72. The same day, ADHS suspended its planned registration of NPMMDs pending  
5 the entry of Judgment by United States District Court.

6           73. A.R.S. § 36-2804(B) mandates that the ADHS shall register an NPMMD not  
7 later than ninety (90) days after receipt of an application.

8           74. A.R.S. § 36-2818(A) mandates that the ADHS shall adopt regulations  
9 implementing the AMMA within one-hundred and twenty (120) days of its effective date.

10          75. The AMMA became effective December 14, 2010—more than 120 days ago.

11          76. A.R.S. § 36-2818(A) also provides that if ADHS does not adopt regulations  
12 implementing the AMMA within one hundred twenty (120) days of its effective date, *any*  
13 *citizen* has the right to commence a mandamus action in Superior Court to compel ADHS to  
14 perform its duties under by the AMMA.

15          77. The failure of the Governor, ADHS, and its Director to promptly and legally  
16 implement the AMMA (by suspending its implementation and litigating the legality of the  
17 AMMA in Federal Court) violates defendants' constitutional and statutory duties under state  
18 and federal law.

19          78. The remedy of a "mandamus action" provided by A.R.S. § 36-2818(A) is a  
20 "statutory special action." Therefore, jurisdiction is mandatory, not discretionary under Rule  
21 1(b) of the *Arizona Rules of Procedure for Special Actions*.

22          79. A statutory special action does not require a showing by Plaintiffs that they  
23 lack a plain, speedy, and adequate alternative remedy. To the extent such a requirement may  
24 exist for a writ of mandamus generally, Plaintiffs herein have no equally plain, speedy, or  
25 adequate remedy to compel enforcement of the AMMA's statutory mandates other than the  
26 remedy expressly stated in A.R.S. § 36-2818(A).

27          80. No administrative remedies exist for Plaintiffs to exhaust; if such remedies  
28 existed but were promulgated by the ADHS, exhaustion would be futile as a matter of law.





1 and “New Residents” alike.

2 98. The ADHS regulations also have a discriminatory effect and incidentally  
3 burden commerce because they restrict the interstate flow of investment funds into the  
4 NPMMD industry and discourage relocation by qualified professionals to this state.

5 99. The Dormant Commerce Clause of the U. S. Constitution prohibits states from  
6 creating laws that affirmatively discriminate facially or in effect, and thereby burden  
7 interstate commerce directly or incidentally.

8 100. Where the discrimination is overt (as here), it is subject to strict scrutiny (i.e.,  
9 defendants must establish that the Regulations’ facial exclusion of non-residents serves a  
10 legitimate state interest and that such interest could not be furthered by any less restrictive  
11 means.)

12 101. There is no compelling state interest that justifies the exclusion of new and  
13 non-residents; but even if there were, the law must be narrowly tailored to serving that  
14 interest.

15 102. Plaintiff Reardon is a new resident of Arizona (less than three years), who is  
16 experienced in operating dispensaries within a regulatory framework and wishes to  
17 participate in the ownership and operation of a medical marijuana dispensary as an investor,  
18 operator, or both.

19 103. Because the durational residency requirement prohibits residents of other states  
20 and “New Arizona residents” from applying for a dispensary registration certificate, serving  
21 as officers/directors of an Arizona NPMMD, and from owning a greater than 20% interest in  
22 a dispensary, Ms. Reardon’s investment and ownership opportunities in Arizona NPMMDs  
23 and related commercial interests are unconstitutionally limited.

24 104. The durational residency (302(A)(2)) and durational tax return requirements  
25 (301(A)(1)) of the Regulations therefore violate the Dormant Commerce Clause in Article I,  
26 section 8, clause 3 of the United States Constitution and should be declared to be  
27 unconstitutional.

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**COUNT V**  
**(VIOLATION OF THE EQUAL PROTECTION CLAUSES**  
**OF THE ARIZONA AND FEDERAL CONSTITUTIONS)**

105. Plaintiffs incorporate all previous allegations of this Special Action Complaint.

106. The Equal Protection Clause of the United States Constitution provides that “No state shall . . . deny any person within its jurisdiction the equal protection of the laws.” U.S. Const. Amend. XIV.

107. The Equal Protection provision of the Arizona Constitution is set forth in Art. 2, Section 13, and provides that: “No law shall be enacted granting to any citizen, class of citizens or corporation, other than municipal, privileges or immunities, which, upon the same terms, shall not equally belong to all citizens or corporations.”

108. The Regulations exclude non-residents, “New Arizona residents”, and those who have not filed Arizona returns from NPMMD ownership.

109. The ADHS regulatory scheme excludes applicants from consideration on the basis of state residency status and the duration of their residency. Residents must also have filed “personal income tax returns for the previous three years” before applying and must include copies of their returns with their applications or risk disqualification. This differentiation between Arizona residents and non-residents/“New Residents” in the licensure process deprives Plaintiffs of their liberty and property interests in travel and in a lawful occupation.

110. The residency and tax return requirements arbitrarily foreclose residents of other states and new Arizona residents from even the *opportunity* to own or operate a NPMMD, yet they do not advance any compelling state interest.

111. State law durational residency requirements are subject to a strict scrutiny analysis, requiring them to be substantially related to a compelling state interest.

112. Restrictions on the right to pursue an otherwise legal occupation violate the Equal Protection clause if they arbitrarily foreclose the opportunity for economic security without an adequate policy justification.

1 113. There is no compelling state interest that justifies the wholesale exclusion of  
2 the broad categories of individuals mentioned, but even if there were, the residency and  
3 durational residency requirements are not narrowly tailored to such an interest and cannot  
4 withstand scrutiny.

5 114. The durational residency requirement (302(A)(2)) and durational tax return  
6 filer (301(A)(1)) requirements of the ADHS regulations restrict the fundamental right to  
7 travel and the freedom to pursue a lawful occupation in violation of the Equal Protection  
8 Clause of the United States Constitution and the Equal Protection Provision of the Arizona  
9 Constitution.

10 115. Despite her intentions, Plaintiff Kimberly Reardon is foreclosed from applying  
11 for a dispensary registration certificate, owning, or operating a medical marijuana dispensary  
12 because she does not satisfy the durational residency or tax return requirements.

13 116. As a result, the Regulations deny Ms. Reardon the freedom to pursue a lawful  
14 occupation and, consequently, equal protection under the law.

15 117. Despite their intentions, under the current Regulations, Plaintiffs Kimberly  
16 Reardon and Daniel Medina will likely be foreclosed from owning or operating an Arizona  
17 dispensary because they do not satisfy the tax return requirement; as a result, the Regulations  
18 deny them equal protection under the law.

19 **COUNT VI**  
20 **(FOURTEENTH AMENDMENT VIOLATION**  
21 **SUBSTANTIVE DUE PROCESS)**

22 118. Plaintiffs incorporate all previous allegations of this Special Action Complaint.

23 119. Plaintiffs have protected property and liberty interests in holding a dispensary  
24 registration certificate because the certificate is a pre-requisite to owning a NPMMD.

25 120. The Regulations violate Plaintiffs' rights under, among others, Article 2,  
26 sections 4 and 13 of the Arizona Constitution.

27 121. The durational residency requirement (302(A)(2)) and tax return (301(A)(1))  
28 requirements of the Regulations deny Plaintiffs substantive due process of law under the

1 Fourteenth Amendment to the United States Constitution because the requirements are  
2 arbitrary, unreasonable, not substantially related to a legitimate state interest, and restrict the  
3 fundamental right to pursue a lawful occupation.

4 122. The competitive application selection process/criteria specified in the  
5 Regulations deny Plaintiffs substantive due process because the requirements are arbitrary,  
6 unreasonable, not substantially related to promoting a legitimate state interest, and restrict  
7 the fundamental right to pursue a lawful occupation.

8 123. The limits on the number of applications an individual is allowed to submit  
9 deny Plaintiffs substantive due process because the requirements are arbitrary, unreasonable,  
10 not substantially related to promoting a legitimate state interest, and restrict the fundamental  
11 right to pursue a lawful occupation.

12 124. The Regulation ADHS crafted allowing it to deny applications solely on the  
13 basis of an unpaid parking ticket or similarly trivial debts (and the other restrictions and  
14 Regulations described herein), bears no rational relation to the furtherance of legitimate state  
15 interests.

16 125. Because these restrictions do not further legitimate state interests, they are  
17 unconstitutional.

18 **COUNT VII**  
19 **(VIOLATION OF PROCEDURAL DUE PROCESS**  
20 **U.S. CONSTITUTION)**

21 126. Plaintiffs incorporate all previous allegations of this Special Action Complaint.

22 127. The Regulations violate Plaintiffs' rights under, among others, Article 2,  
23 sections 4 and 13 of the Arizona Constitution.

24 128. Plaintiffs have a vested and protectable property interest in obtaining a  
25 dispensary registration certificate because it acts as a license to operate and own a NPMMD,  
26 a lawful occupation under Arizona law.

27 129. The Regulations function to deprive Plaintiffs of this property interest without  
28 establishing sufficient defining criteria or adequate procedural safeguards.

1           130. The Regulations deny the right to procedural due process guaranteed under the  
2 Fourteenth Amendment to the United States Constitution because significant portions of the  
3 application process are unconstitutionally vague, do not inform applicants how to comply  
4 with the Regulations, vest excessive discretion in ADHS by permitting it to subjectively  
5 deny applications without any objective reason, are arbitrary, and lack a substantial relation  
6 for legitimate governmental interests.

7           131. For example, because the Regulations (R9-17-304(D)(5)) require that a  
8 dispensary registration certificate applicant avow that the location chosen for their  
9 dispensary complies with local zoning requirements without placing any limitations on the  
10 local zoning authority in formulating those requirements, the Regulations vest unfettered and  
11 unlawfully excessive discretion in local zoning authorities.

12           132. By way of example, the City of Phoenix has adopted a policy of granting only  
13 one "letter of approval" to zoning applicants for each qualifying square mile within a given  
14 Phoenix CHAA, despite the fact that only one certificate will issue per CHAA.

15           133. Because the Regulations place no limitation on the power delegated to the  
16 Phoenix zoning authority, an irrational and arbitrary limitation on NPMMD applications has  
17 resulted, which functions to deny Plaintiffs due process of law.

18           134. ADHS' delegation of power to local zoning authorities without establishing  
19 procedural or substantive limitations on that power deprives Plaintiffs of their property  
20 interest in pursuing a lawful occupation without due process of law in violation of their  
21 constitutional rights.

22           135. Because the Regulations (R-17-304(A)(1)) limit a single applicant from  
23 submitting more than one application per CHAA and more than five applications in total  
24 (R9-17-304(A)(2)), they deny Plaintiffs due process of law in violation of their constitutional  
25 rights.

26           136. R9-17-304(B)(1-3) mandates that ADHS shall deny an application if it  
27 determines that an "applicant" appears on more than five applications throughout Arizona or  
28 on more than one application for a certificate for a given CHAA. The same rule specifies

1 that, in the event of such a denial, ADHS shall retain \$4,000 of the application fee, remitting  
2 only \$1,000 to the unsuccessful applicant.

3 137. The Regulations do not define "Applicant." *See generally* R9-17-301  
4 ("Definitions").

5 138. Therefore, the Regulations vest unlawfully excessive discretion in ADHS to  
6 define "Applicant" in a way that allows ADHS to disqualify applications and retain \$4,000  
7 of an application fee without any basis in the text of the Regulations or Proposition 203.

8 139. Any regulation permitting ADHS to deprive Plaintiffs of their money or  
9 property in pursuing a lawful occupation without specifying the criteria for that deprivation  
10 and without providing any procedural safeguards against arbitrary action by ADHS denies  
11 Plaintiffs due process and abridges their constitutional rights.

12 140. The Regulations described above vest excessive discretion in the ADHS to  
13 deny applications without defining criteria or adequate procedural safeguards to limit that  
14 discretion and to protect against arbitrary or capricious action.

15 141. As a result, the Regulations deny Plaintiffs due process of law.

16 142. Defendants' Regulations further deny Plaintiffs procedural due process  
17 because significant portions of the Regulations are unconstitutional or otherwise violate  
18 federal law.

19 **COUNT VIII**  
20 **(DUE PROCESS VIOLATION**  
**ARIZONA CONSTITUTION)**

21 143. Plaintiffs incorporate all previous allegations of this Special Action Complaint.

22 144. Article 2, Section 4 of the Arizona Constitution guarantees due process of law  
23 to Arizona residents whenever their constitutionally-protected interests are threatened.

24 145. Plaintiffs in this action are Arizona residents and are entitled to the protection  
25 of Arizona's Constitution.

26 146. Though mandated by Arizona voters to promptly formulate regulations  
27 governing NPMMDs, as an executive branch agency ADHS derives its inherent rulemaking  
28 authority from the State's police power.

1 147. A regulation is enacted through the State's police power.

2 148. The Regulations purport to establish an application fee of \$5,000 per  
3 dispensary registration certificate application. If denied, the Regulations specify that 80% of  
4 that fee (\$4,000) will be retained by ADHS and 20% (\$1,000) will be returned to the  
5 unsuccessful applicant. This is an unconstitutional taking.

6 149. ADHS has stated its intent to utilize these fees to recoup "the costs of  
7 implementing the program."

8 150. A State agency acting through the police power of the State may only impose  
9 minimal licensing fees in an amount necessary to implement or further the objective of  
10 public welfare and administer the regulatory framework. *Smith v. Mahoney*, 22 Ariz. 342,  
11 197 P. 704 (1921).

12 151. A State agency acting through police power may not impose licensing fees so  
13 excessive that they function as taxes on property, rather than regulatory fees. *Id.*

14 152. The \$5,000 fee per application imposed under the Regulations is excessive and  
15 not reasonably related to administration or enforcement of the Regulations and functions as a  
16 tax on property.

17 153. The \$5,000 fee per application functions as a property tax and denies Plaintiffs  
18 their protected property rights without due process of law in violation of the Arizona  
19 Constitution.

20 **COUNT IX**  
21 **(VIOLATION OF 11 U.S.C. § 525(A))**

22 154. Plaintiffs incorporate all previous allegations of this Special Action Complaint.

23 155. The United States Bankruptcy Code provides that: "A governmental unit may  
24 not deny . . . a license [to] a person that is or has been a debtor under this title or a bankrupt  
25 or a debtor under the Bankruptcy Act . . . solely because such bankrupt or debtor is or has  
26 been a debtor under this title . . . ." 11 U.S.C. § 525(a).

27 156. Under the Regulations, when ADHS reaches the fourth step of the application  
28 process described in R9-17-302(B)(13), any applicant with a history of bankruptcy will be

1 automatically disqualified from further consideration and will not be granted a license.

2 157. This Regulation, which clearly excludes applicants solely because of a prior  
3 bankruptcy, violates 11 U.S.C. § 525.

4 158. Plaintiff Mark Brookman is an Arizona resident who meets every application  
5 requirement stated in the Regulations except one: In 1985, he filed a personal bankruptcy.

6 159. The Regulations function to prohibit Mr. Brookman from owning or operating  
7 an Arizona NPMMD solely because he once filed a personal bankruptcy, without any further  
8 analysis of his financial responsibility.

9 160. As a result, the Regulations violate Mr. Brookman's right to be free from  
10 discrimination protected by 11 U.S.C. § 525.

11 161. The Regulation that violates 11 U.S.C. § 525(a) of the United States  
12 Bankruptcy Code also denies procedural due process because an illegal pre-condition to  
13 obtaining a state license unconstitutionally deprives Plaintiffs and others of a protectable and  
14 vested property interest in their employment.

15 **COUNT X**  
16 **(DECLARATORY RELIEF)**

17 162. Plaintiffs incorporate all previous allegations of this Special Action Complaint.

18 163. A.R.S. § 12-1832 authorizes any person whose rights, status or legal relations  
19 are affected by a statute to have determined any question of construction or validity arising  
20 thereunder and to obtain a declaration of rights, status or other legal relations thereunder.

21 164. A dispute has arisen among the parties over the legality and constitutionality of  
22 certain actions taken by defendants and the Regulations promulgated by ADHS.

23 165. Plaintiffs request that this Court declare the legality of these actions and the  
24 legality and constitutionality of the Regulations described in this Complaint.

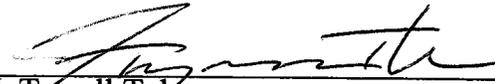
25 166. Plaintiffs request that the Court declare the following enumerated Regulations  
26 unconstitutional and/or *ultra vires* and/or invalid as violations of state and federal law: R9-  
27 17-302, R9-17-303, R17-304, and R9-17-322.



- 1 6. That the Court award Plaintiffs their costs and expenses incurred  
2 pursuing this action, including reasonable attorneys' fees under any  
3 and all applicable authorities.  
4 7. That the Court grant all other relief it deems just and proper under  
5 the circumstances.

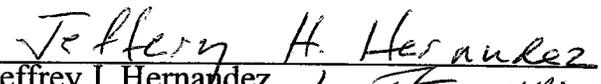
6 DATED this 1<sup>st</sup> day of July, 2011.

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