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1 **W. MICHAEL WALZ 011345**
4000 North Central, Suite 1250
2 Phoenix, Arizona 85012
Telephone: (602) 288-8349
3 Facsimile: (602) 288-8356
www.PotLawyer.com
4 eMail for Minute Entries: Walz@PotLawyer.com
Attorney for Plaintiffs

5 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**
6 **IN AND FOR THE COUNTY OF MARICOPA**

7 CHARISE VOSS ARFA, a married woman,)
8)
9 Plaintiff,)
10 v.)
11 STATE OF ARIZONA, a governmental)
12 entity; JANET K. BREWER, Governor of)
13 the State of Arizona in her official capacity;)
14 ARIZONA DEPARTMENT OF HEALTH)
15 SERVICES (ADHS), an Arizona)
16 administrative agency; and WILLIAM)
17 HUMBLE, Director of ADHS in his official)
18 capacity; JOHN and JANE DOES I-X; XYZ)
CORPORATIONS I-X; BLACK and)
WHITE PARTNERSHIPS I-X)

CASE NO: CV2012-014816

SUMMONS

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19 TO THE ABOVE NAMED DEFENDANTS:

20 YOU ARE HEREBY SUMMONED and required to appear and defend, within the time
21 applicable, in this action in this Court. If served within Arizona, you shall appear and defend
22 within twenty (20) days after the service of the Summons and Complaint upon you, exclusive
23 of the day of service. Where process is served upon the Arizona Director of Insurance as an
24 insurer's attorney to receive service of legal process against it in this state, the insurer shall not
25 be required to appear, answer or plead until expiration of forty (40) days after date of such
service upon the Director. Service by registered or certified mail without the State of Arizona

Law Office Of
W. Michael Walz, Esq. Walz@PotLawyer.com
4000 North Central #1250
Phoenix, AZ 85012
Phone 602.288.8349 Fax 602.288.8356

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W. Michael Walz, Esq. Walz@PotLawyer.com
4000 North Central #1250
Phoenix, AZ 85012
Phone 602.288.8349 Fax 602.288.8356

1 is complete thirty (30) days after the date of filing the receipt and affidavit of service with the
2 Court Service by publication is complete thirty (30) days after the date of first publication
3 Direct service is complete when made. Service upon the Arizona Motor Vehicle
4 Superintendent is complete thirty (30) days after filing the Affidavit of Compliance and return
5 receipt or officer's return. RCP 4; A.R.S. §§ 20-232, 28-502, 28-503

6
7 Requests for reasonable accommodation for persons with disabilities must be made to
8 the division assigned to the case by parties at least three (3) judicial days in advance of a
9 scheduled court proceeding.

10
11 YOU ARE HEREBY NOTIFIED that in the case of your failure to appear and defend
12 within the time applicable, judgment by default may be rendered against you for the relief
13 demanded in the Complaint.

14
15 YOU ARE CAUTIONED that in order to appear and defend, you must file an Answer
16 or proper response in writing with the Clerk of this Court, accompanied by the necessary filing,
17 within the time required, and you are required to serve a copy of any Answer or response upon
18 Plaintiff's attorney. R.C.P. 10(d), A.R.S. § 12-311, R.C.P. 9.

19 The names and address of Plaintiff's attorney is

20 W Michael Walz, Esq.

21 4000 North Central, Suite 1250

22 Phoenix, Arizona 85012
23 Telephone: (602) 288-8349

24 Given under my hand and seal of office this _____ day of October, 2012.

COPY

25
Clerk of the Superior Court
 OCT 09 2012
MICHAEL K. JEANES, CLERK
Y. BONDANZA-WHITTAKER
DEPUTY CLERK

COPY

W. Michael Walz, Esq, SBN 011345
4000 North Central, Suite 1250
Phoenix, Arizona 85012
Telephone: (602) 288-8349
Facsimile: (602) 288-8356

www.PotLawyer.com

Email for Minute Entries: **walz@potlawyer.com**
Attorney for Plaintiff



OCT 09 2012

MICHAEL K. JEANES, CLERK
Y. BONDANZA-WHITTAKER
DEPUTY CLERK

IN THE SUPERIOR COURT FOR THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF MARICOPA

CV 2012-014816

CHARISE VOSS ARFA, a married woman,

No.

Plaintiff,

COMPLAINT

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, JOHN and JANE DOES I-X; XYZ
CORPORATIONS I-X; BLACK and WHITE
PARTNERSHIPS I-X,

Defendants.

Plaintiff, CHARISE VOSS ARFA, by and through undersigned counsel, brings this civil
action for declaratory judgment and injunctive relief as follows:

PARTIES, JURISDICTION AND VENUE

1. Plaintiff Charise Voss Arfa, is a married woman and resident and citizen of Maricopa County, Arizona.
2. Plaintiff Charise Voss Arfa is and was at all times relevant to this Complaint, a "qualifying patient" and a "cardholder" under the Arizona Medical Marijuana Act ("AMMA").

3. Defendant State of Arizona is a sovereign state of the United States of America.
4. Defendant Janet Brewer is the Governor of Arizona (named in her official capacity only) and is believed to be a resident of Maricopa County, Arizona.
5. In her capacity as Governor, Defendant Brewer is vested with the supreme executive power of the state and is responsible for the faithful execution of its laws.
6. Defendant Arizona Department of Health Services (“ADHS”) is an Arizona administrative agency with its principal place of business in Maricopa County, Arizona. It is responsible for implementing and administering the AMMA.
7. Defendant William Humble is sued in his official capacity as Director of ADHS and is believed to be a resident of Maricopa County, Arizona. As the Director of ADHS, Defendant Humble is responsible for implementing and administering the AMMA.
8. Defendants State of Arizona, Brewer, ADHS and Humble are hereinafter referred to collectively as “Defendants.”
9. This Court has jurisdiction to hear this suit which is brought as declaratory action under the Uniform Declaratory Judgment Act, A.R.S. § 12-1831 *et seq*. All acts and events complained of occurred in Maricopa County.
10. Venue is proper in this court.

GENERAL FACTUAL ALLEGATIONS

11. The AMMA was passed by Arizona voters in November, 2010 and became law on November 29, 2010.
12. The AMMA is codified in Title 36, Chapter 28, A.R.S. §§ 36-2801 *et seq*.
13. The purpose of the AMMA was to legalize the possession, use, production, transportation, sale or transfer of marijuana for “qualifying patients,” “designated caregivers,”

“nonprofit medical marijuana dispensaries,” and “nonprofit medical marijuana dispensary agents.”

14. Pursuant to A.R.S. § 36-2801 (2) of the AMMA, a "Cardholder" means a qualifying patient, a designated caregiver or a nonprofit medical marijuana dispensary agent who has been issued and possesses a valid registry identification card.

15. Pursuant to A.R.S. § 36-2801 (8) of the AMMA, “Marijuana” means “all parts of any plant of the genus cannabis whether growing or not, and the seeds of such plant.”

16. Pursuant to A.R.S. § 36-2801 (9) of the AMMA "Medical Use" means the acquisition, possession, cultivation, manufacture, use, administration, delivery, transfer or transportation of marijuana or paraphernalia relating to the administration of marijuana to treat or alleviate a registered qualifying patient's debilitating medical condition or symptoms associated with the patient's debilitating medical condition.

17. Pursuant to A.R.S. § 36-2801 (15) of the AMMA, "Usable Marijuana" means the dried flowers of the marijuana plant, and any mixture or preparation thereof, but does not include the seeds, stalks and roots of the plant and does not include the weight of any non-marijuana ingredients combined with marijuana and prepared for consumption as food or drink.

18. The criminal code of the State of Arizona, in A.R.S. 13-3401(4) defines “cannabis” as:

the following substances under whatever names they may be designated:

(a) the resin extracted from any part of a plant of the genus cannabis, and every compound, manufacture, salt, derivative, mixture or preparation of such plant, its seeds or resin.

Cannabis does not include oil or cake made from the seeds of such plant, any fiber, compound, manufacture, salt, derivative, mixture or preparation of the mature stalks of such plant except the resin extracted from the stalks or any fiber, oil or cake or the sterilized seed of such plant which is incapable of germination.

(b) Every compound, manufacture, salt, derivative, mixture or preparation of such resin or tetrahydrocannabinol.

19. The Uniform Controlled Substances Act, at A.R.S. §36-2501 defines "cannabis" as the following substances under whatever names they may be designated:

(a) Marijuana.

(b) All parts of any plant of the genus cannabis, whether growing or not, its seeds, the resin extracted from any part of such plant, and every compound, manufacture, salt, derivative, mixture or preparation of such plant, its seeds or resin, but shall not include the mature stalks of such plant, fiber produced from such stalks, oil or cake made from the seeds of such plant, any other compound, manufacture, salt, derivative, mixture or preparation of such mature stalks (except the resin extracted therefrom), fiber, oil, or cake or the sterilized seed of such plant which is incapable of germination.

(c) Every compound, manufacture, salt, derivative, mixture or preparation of such resin, tetrahydrocannabinol (T.H.C.), or of such plants from which the resin has not been extracted.

20. Many qualifying cardholders are cognizant of the known carcinogenic effects of smoking and therefore prefer to administer medical marijuana in consumable forms such as food or drink.

21. Edible and drinkable products containing medical marijuana are allowed pursuant to ARS 36-2801(15) and the Rules of the Department of Health Services Medical Marijuana Program, pursuant to R9-17-319.

22. Qualifying cardholders have obtained medical marijuana in edible and drinkable form.

23. Qualifying cardholders have been searched and had property seized, arrested, threatened with prosecution, and prosecuted for possession and use of marijuana by the State of Arizona on the basis that the medical marijuana is “cannabis”.

24. Relying on the AMMA and Controlled Substances Act, qualifying cardholders have reason to believe that they may legally use and possess marijuana and marijuana products in specified legal quantities subject to the regulations of the AMMA.

25. It is impossible for a reasonably intelligent qualifying cardholder to determine what constitutes “cannabis” under A.R.S. §13-3401(4), because the statute is incomprehensible.

26. Plaintiff Charise Voss Arfa suffered for many years and continues to suffer from debilitating migraine headaches.

27. Plaintiff Charise Voss Arfa is able to obtain relief from migraine headaches through the medical use of a nonsmokable marijuana product authorized by the AMMA.

28. Plaintiff Charise Voss Arfa desired to avoid the dangers of inhaling smoke and preferred to use Soccer Moms Tincture, a non-alcohol, food grade glycerin liquid tincture containing medical marijuana.

29. On March 28, 2012, a search warrant was issued finding probable cause to search the home and person of Plaintiff Charise Voss Arfa (then known as Charise Voss) for “a usable amount of cannabis, a narcotic drug, to include the extracted resin and cannabis which is now in solution.”

30. During the police raid on March 28th, 2012, there was bottled liquid Cannabis tincture labeled, “Soccer Moms Tincture” confiscated by law enforcement as contraband “cannabis” and these bottles have not been made available for return to Plaintiff.

31. All Cannabis sativa based ingredients possessed by Plaintiff were believed by Plaintiff to be valid legal medical marijuana.

32. No Cannabis sativa based ingredients possessed by Plaintiff were believed, understood or comprehended by Plaintiff to be illegal "cannabis" under A.R.S. § 13-3401(4).

33. A person of ordinary intelligence could not distinguish the purview of protected medical marijuana under the AMMA from the purview of illegal "cannabis" under A.R.S. §13-3401(4).

COUNT I

DECLARATORY JUDGMENT

34. Plaintiff repeats and re-alleges Paragraphs 1 through 33 above.

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

36. A dispute has arisen between the parties over the legality and constitutionality regarding the parameters of "cannabis" under A.R.S. 13-3401(4) and related prosecution of qualifying cardholders for use and possession of marijuana as food or drink which they believe is permitted under ARS 36-2801(15).

37. A person of ordinary intelligence cannot discern the meaning of "cannabis" under A.R.S. § 13-3401(4). Therefore, the statute is facially void for vagueness because it is incomprehensible and does not define in terms that an ordinary person can understand what is required to avoid violation of the statute, and it fails to provide notice to an ordinary person of what is prohibited or illegal.

38. Plaintiff further asserts that, even if the definition of "cannabis" in A.R.S. 13-3401(4) was generally understandable, it remains void for vagueness as it applies to qualifying cardholders because it does not define in terms a qualifying cardholder can understand what remains legal or illegal for qualifying cardholders to possess under the Arizona Medical Marijuana Act, or what constitutes illegal "cannabis" under the criminal statutes.

39. Even if the definition of “cannabis” in A.R.S. § 13-3401(4) is comprehensible, a qualifying cardholder, when purchasing or manufacturing an edible medical marijuana product that appeared to be within the legal parameters of the AMMA, would still be in danger of prosecution because they would be unable to discern whether the ingredients met the statutory definition of “cannabis” under the criminal statutes.

40. A person of ordinary intelligence would believe that the medical use and possession of marijuana products in allowable amounts is legal for qualifying cardholders under the AMMA A.R.S. §36-2801 *et seq* and the Arizona Uniform Controlled Substances Act A.R.S. §36-2501.

41. A person of ordinary intelligence who became completely familiar with the AMMA would have no reason to believe there could be criminal consequences for purchasing or manufacturing medical marijuana products in various forms, and would be unable to ascertain that certain forms of medical marijuana may be considered by some law enforcement to be “cannabis” that is not covered by the Arizona Medical Marijuana Act.

42. A thorough reading of the AMMA, ARS 36 -2801 *et seq* does not invite a person of ordinary intelligence to examine law outside the statutes comprising the AMMA ARS 36-2801 *et seq*.

43. Law Enforcement officers of ordinary intelligence who became completely familiar with the AMMA may also be familiar with the terms “cannabis” and “marijuana” defined under the criminal statutes. They may be uncertain as to whether a food or drinkable product that contains marijuana is allowable under the AMMA, or is “cannabis” a Class 4 Felony under the criminal statutes.

44. Despite her status as a qualifying patient and cardholder, Plaintiff is in danger of search, arrest, prosecution, and seizure of property by the State of Arizona, for her use of Soccer Moms Tincture.

45. Plaintiff and other qualifying cardholders have a due process right to be able to ascertain whether Soccer Moms Tincture, Zonka Bars, and other food or drinkable products with Cannabis sativa based ingredients are legally permissible under the AMMA.

46. By failing to give adequate notice of the conduct it proscribes, A.R.S. § 13-3401(4) encourages and results in an impermissible degree of discretion to those with responsibility of enforcement. This poses arbitrary and discriminatory enforcement of its terms and is therefore void for vagueness and in violation of Plaintiff's right to due process.

47. Plaintiff requests that this Court declare that A.R.S. § 13-3401(4) is invalid and unconstitutionally void for vagueness as it applies to qualifying cardholders. A declaration is necessary and appropriate at this time so that the parties' respective rights and duties may be determined.

48. Plaintiff further requests supplemental relief pursuant to A.R.S. § 12-1838 and requests that the Court enjoin the Defendants from search, seizure, arrest, and prosecution of qualifying cardholders for criminal violations of ARS 13-3408 involving "cannabis" as defined in A.R.S. 13-3401(4).

COUNT TWO

INJUNCTIVE RELIEF

49. Plaintiff repeats and re-alleges Paragraphs 1 through 48 above

50. Equity authorizes an injunction when a governmental entity is poised to take an illegal or unconstitutional act.

51. Plaintiff, and every other qualifying cardholder will be subject to unlawful arrest, prosecution, loss of liberty, and loss of medicine in whatever form the qualifying cardholder believes is in their personal medical interests, potentially causing harm not compensable by money damages.

52. Because A.R.S. 13-3401(4) is void for vagueness and subject to arbitrary and discriminatory enforcement, Defendants should be restrained from enforcing it against qualifying cardholders and caregivers.

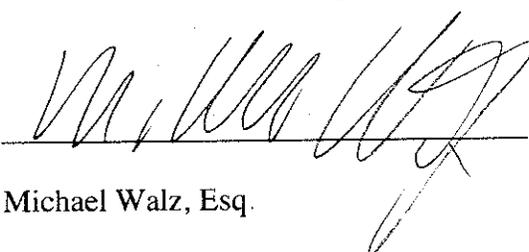
PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests declaratory and injunctive relief as follows:

- A. That the Court issue a declaratory judgment that A.R.S. § 13-3401(4) is unconstitutionally vague and therefore void as to it applies to qualifying cardholders and caregivers;
- B. For a preliminary and permanent injunction prohibiting Defendants from arresting, prosecuting, and seizing property from any qualifying cardholder or caregiver for engaging in “medical use” of marijuana protected under the AMMA for criminal violations of ARS 13-3408 involving “cannabis” as defined in A.R.S. 13-3401(4)
- C. Order the return to Plaintiff the bottled liquid cannabis tincture labeled, “Soccer Moms Tincture” that was seized by Defendant State of Arizona on March 28th, 2012.
- D. The Court award Plaintiff her costs and expenses incurred pursuing this action, including reasonable attorneys' fees under any and all applicable authorities.
- E. For such other and further relief as this Court deems appropriate and proper.

RESPECTFULLY SUBMITTED this 9th day of October, 2012.

W. MICHAEL WALZ, ESQ.

By: 

W. Michael Walz, Esq.

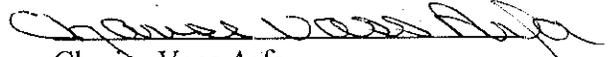
Attorney for Plaintiff

VERIFICATION

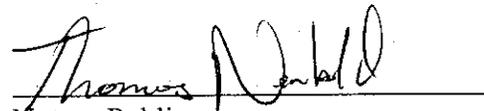
STATE OF ARIZONA)
) ss
COUNTY OF MARICOPA)

Charise Voss Arfa, being first duly sworn and under oath, deposes and says:

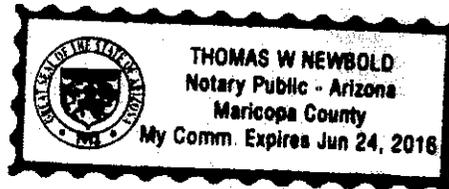
- I am the Plaintiff in this matter.
- I am over 18 years of age.
- I have read the foregoing Complaint and know the contents thereof, and that the facts contained therein are true and correct to the best of my knowledge, information and belief


Charise Voss Arfa

SUBSCRIBED AND SWORN to before me this 4TH day of October, 2012, by Charise Voss Arfa.


Notary Public

My commission expires: JUNE 24, 2016



COPY

W. Michael Walz, Esq, SBN 011345
4000 North Central, Suite 1250
Phoenix, Arizona 85012
Telephone: (602) 288-8349
Facsimile: (602) 288-8356
www.PotLawyer.com
Email for Minute Entries: walz@potlawyer.com
Attorney for Plaintiffs



OCT 09 2012
MICHAEL K JEANES, CLERK
Y BONDANZA-WHITTAKER
DEPUTY CLERK

IN THE SUPERIOR COURT FOR THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF MARICOPA

CV 2012-014816

CHARISE VOSS ARFA, a married woman,

No

Plaintiff,

**CERTIFICATE OF NON-
COMPULSORY ARBITRATION**

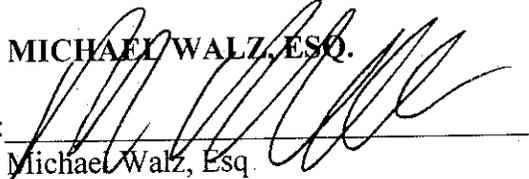
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STATE OF ARIZONA, a governmental
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HUMBLE, Director of ADHS in his official
capacity, JOHN and JANE DOES I-X; XYZ
CORPORATIONS I-X; BLACK and WHITE
PARTNERSHIPS I-X,
Defendants.

The undersigned certifies that he knows the dollar limits and any other limitations set forth by the local rules of practice for the applicable Superior Court, and further certifies that this case is not subject to compulsory arbitration, as provided by Rules 72 through 76 of the Arizona Rules of Civil Procedure.

DATED this 9th day of October, 2012

W. MICHAEL WALZ, ESQ.

By: 
W. Michael Walz, Esq.
Attorney for Plaintiff