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10
 11 **IN THE UNITED STATES DISTRICT COURT**
 12 **FOR THE DISTRICT OF ARIZONA**

13 STATE OF ARIZONA, et al.,
 14
 15 Plaintiffs,
 16 vs.
 17 UNITED STATES OF AMERICA, et al.,
 18
 19 Defendants.

Case No. 11-CV-01072-PHX-SRB
**RESPONSE AND OBJECTION
 TO MOTION TO INTERVENE**

20 Plaintiffs State of Arizona, Janice K. Brewer, Will Humble, and Robert C.
 21 Halladay, through undersigned counsel, hereby object to Carl Eric Olsen’s (“Olsen”)
 22 Motion to Intervene (“Motion”) filed June 3, 2011. Plaintiffs ask the Court to deny
 23 Olsen’s motion because he has not met the requisite burden of proof to establish his
 24 right to intervene under Rule 24 Fed. R. Civ. P.

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1 **I. Olsen failed to establish his right to intervene under Rule 24 of the Federal**
2 **Rules of Civil Procedure.**

3 **A. Olsen cannot claim an intervention of right.**

4 Olsen has not established the prerequisites for intervention under Rule 24(a),
5 Fed. R. Civ. P. An applicant seeking an intervention of right must show: (1) that it has
6 a significant protectable interest that is the subject of the action; (2) that disposition of
7 the action may impair or impede its ability to protect its interest; (3) timely
8 application; and (4) that existing parties inadequately represent applicant's interest.
9 Fed. R. Civ. P. 24(a); *see also Donaldson v. United States*, 400 U.S. 517, 531 (1971);
10 *Perry v. Schwarzenegger*, 630 F.3d 898, 903-06 (9th Cir. 2011); *Green v. U.S.*, 996
11 F.2d 973, 976-78 (9th Cir. 1993). To satisfy these requirements, the alleged interest
12 cannot be one that is "an undifferentiated, generalized interest in the outcome of an
13 ongoing action," and the applicant bears the burden of showing that each element
14 exists. *S. Cal. Edison Co. v. Lynch*, 307 F.3d 794, 803 (9th Cir. 2002) (internal
15 quotation marks omitted). Failure to establish any of the four elements is fatal to the
16 application. *Freedom From Religion Found., Inc. v. Geithner*, 2011 WL 1746137 at
17 *1, 2 (9th Cir. 2011); *Perry v. Prop. 8 Official Proponents*, 587 F.3d 947, 950 (9th Cir.
18 2009).

19 Here, Olsen provides no legally relevant basis, or facts, for the Court to grant
20 his Motion. Olsen's Motion provides only a brief history of medical marijuana in the
21 United States coupled with his opinion of how Arizona has failed to seek
22 reclassification of the drug on both a state and federal level. He seeks reclassification
23 of marijuana from Schedule I to Schedule II and argues that the federal government
24 cannot maintain a rule that would make an accepted state medical standard illegal.
25 This argument, however, fails to establish Olsen's right to intervene. It offers only a
26 superficial examination of the federalism concerns at issue without establishing the
27 elements necessary for successful intervention.

1 Olsen has failed to establish the four elements of a proper intervention of right.
2 Most notably, he has not illustrated the substance of his alleged interest. In fact, Olsen
3 resides in Iowa and has not offered any evidence suggesting he has contact with the
4 State of Arizona and its laws. His only assertion of interest is an unsupported
5 negligence claim against Arizona officials and a generalized grievance on behalf of
6 everyone in the United States. Similarly, Olsen has also failed to prove that his interest
7 is inadequately represented by the existing parties. Olsen offers no evidence
8 establishing that the existent parties to this suit inadequately represent his interest.
9 Rather, the crux of his motion advances only his opinion of the type of action that
10 should be taking place. Thus, Olsen's application for intervention must fail since he
11 has not established all four elements of a proper intervention of right under Rule 24(a)
12 Fed. R. Civ. P.

13 **B. Olsen should not be allowed to intervene through permissive**
14 **intervention.**

15 A court may grant permissive intervention if: (1) the movant shows
16 independent ground for jurisdiction, (2) the motion is timely, and (3) the applicant's
17 claim or defense with the main action shares a common question of law or fact. Fed.
18 R. Civ. P. 24(b); *see also Greene v. U.S.*, 996 F.2d 973, 978 (9th Cir. 1993). District
19 Courts have broad discretion when making the determination on a motion for
20 permissive intervention. *See Perry*, 630 F.3d at 905-906. Even if an applicant satisfies
21 threshold requirements, permissive intervention may be denied. *S. Cal. Edison Co. v.*
22 *Lynch*, 307 F.3d 794, 803 (9th Cir. 2002) (quoting *Donnelly v. Glickman*, 159 F.3d
23 405, 409 (9th. Cir. 1998)).

24 A District Court deciding an issue of permissive intervention should consider
25 several aspects, including: the nature and extent of intervenors' interest, the legal
26 position they seek to advance and its probable relation to the case, whether the
27 intervenors' interest is adequately represented by other parties, whether allowing

1 intervention will significantly contribute to the full development of underlying factual
2 issues in suit and equitable adjudication of the legal question presented, and whether
3 the party will have standing to raise relevant legal issues. Fed R. Civ. P. Rule 24(b)(1)-
4 (2); *see also Spangler v. Pasadena City Bd. of Educ.*, 552 F.2d 1326, 1329 (9th. Cir.
5 1977); *Perry*, 630 F.3d at 905. Here, allowing Olsen to intervene will not advance the
6 resolution of any factual or legal issues. As previously stated, Olsen resides in Iowa
7 and has provided no proof to establish a connection between himself and Arizona. His
8 only alleged interest is generalized and admittedly shared with the entire United States.
9 Thus, the interest alleged by Olsen is adequately represented by the parties currently
10 involved and, even if Olsen is permitted to intervene, he would not have standing to
11 raise any legal issues.

12 CONCLUSION

13 Olsen has not met his burden of proof to intervene; nor would allowing his
14 intervention further the resolution of any factual or legal issues. Olsen's motion only
15 provides a brief overview of medical marijuana history without offering any evidence
16 to support his right to intervene. As such, Olsen's motion fails to establish the
17 elements necessary to allow lawful intervention under Rule 24 Fed. R. Civ. P. Thus, as
18 a matter of law, Olsen's motion to intervene fails and he should not be permitted to
19 intervene.

20 Dated this 17th day of June, 2011.

21 THOMAS C. HORNE
22 Attorney General

23 s/ Kevin D. Ray
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1 **COPY** of the foregoing filed via ECF this 17th day of June, 2011 to all ECF registrants in the
2 instant matter.

3 I certify that I electronically
4 transmitted the attached document
5 to the Clerk's Office using the
6 CM/ECF System for filing and
7 transmittal of a Notice of Electronic
8 Filing to the following, if CM/ECF
9 registrants, and mailed a copy of
10 same to any non-registrants, this
11 this 17th day of June, 2011 to:

12 Scott Risner
13 U.S. Department of Justice
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COPY of the foregoing mailed on
June 20, 2011 to:

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s/ Phil Londen

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