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NOT FOR PUBLICATION

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

State of Arizona; Janice K. Brewer,
Governor of the State of Arizona, in her
official capacity; Will Humble, Director of
the Arizona Department of Health
Services, in his official capacity; Robert C.)
Halliday, Director of the Arizona
Department of Public Safety, in his official
capacity,

Plaintiffs,

vs.

United States of America; United States
Department of Justice; Eric H. Holder, Jr.,
Attorney General of the United States of
America, in his official capacity; Dennis
K. Burke, United States Attorney for the
District of Arizona, in his official capacity;
Arizona Association of Dispensary
Professionals, Inc., an Arizona
corporation; Joshua Levine; Paula
Pennypacker; Dr. Nicholas Flores; Jane
Christensen; Paula Pollock; Serenity
Arizona, Inc., an Arizona nonprofit
corporation; Holistic Health Management,
Inc., an Arizona nonprofit corporation; Jeff
Silva; Arizona Medical Marijuana
Association; Does I-X; Does XI-XX,

Defendants.

No. CV 11-1072-PHX-SRB

ORDER

At issue are the Motion to Intervene (“Olsen Mot.”) and Motion for Leave to File

1 Electronically filed by Carl Eric Olsen (Docs. 6, 23). The Court also resolves the Motion to
2 Intervene filed by Arizona Dispensary Solutions, LLC (“ADS Mot.”) (Doc. 7).

3 **I. BACKGROUND**

4 This lawsuit concerns Proposition 203, the Arizona Medical Marijuana Act (“the
5 Act”), which Arizona voters passed on November 2, 2010, and Governor Brewer signed into
6 law on December 14, 2010. (Doc. 1, Compl. ¶¶ 1-2.) The Act aimed to decriminalize the
7 possession and use of certain quantities of marijuana for medicinal purposes by qualified
8 patients. (*Id.* ¶ 1.) On April 14, 2011, the Arizona Department of Health Services (“ADHS”)
9 began accepting applications from people seeking certification as qualified patients. (*Id.* ¶
10 8.) The Complaint alleges that on or about April 18, 2011, ADHS Director and Plaintiff Will
11 Humble spoke to an Assistant United States Attorney to inquire about the possibility of
12 liability for state employees implementing the Act, on account of the state law’s conflict with
13 federal drug law. (*Id.* ¶ 24.) On May 2, 2011, Arizona United States Attorney Dennis Burke
14 sent a letter to Mr. Humble stating that cultivation, distribution, and possession of marijuana
15 remains illegal under federal law. (*Id.* ¶ 25.) Plaintiffs seek a declaratory judgment regarding
16 the liability under federal law of state employees who are implementing the Act. (*Id.* ¶¶ 62-
17 165.) Plaintiffs also seek a determination of whether the Act complies with federal law or is
18 preempted. (*Id.* ¶ 170.)

19 Carl Eric Olsen filed a Motion to Intervene in this matter, asserting that he has worked
20 on behalf of the legalization of medical marijuana in Iowa. (Olsen Mot. at 2.) Arizona
21 Dispensary Solutions (“ADS”), a dispensary in Tucson, Arizona, also seeks to intervene to
22 protect its asserted business interest. (ADS Mot. at 1.) Both proposed intervenors are
23 proceeding pro se. Plaintiffs oppose both Motions to Intervene. (Doc. 24, Pls.’ Resp. to Olsen
24 Mot. at 1; Doc. 25, Pls.’ Resp. to ADS Mot. at 1.)

25 **II. LEGAL STANDARDS AND ANALYSIS**

26 **A. Standards for Intervention**

27 Federal Rule of Civil Procedure 24(a) permits intervention as a matter of right on a
28 timely motion. While the Ninth Circuit Court of Appeals construes Rule 24(a) liberally in

1 favor of potential intervenors, the applicant for intervention bears the burden of
2 demonstrating that he has satisfied the elements for intervention. *See Ctr. for Biological*
3 *Diversity v. U.S. Bureau of Land Mgmt.*, 266 F.R.D. 369, 372 (D. Ariz. 2010); *see also Prete*
4 *v. Bradbury*, 438 F.3d 949, 954 (9th Cir. 2006). Applicants are required to satisfy a four-part
5 test for intervention by right:

6 “(1) the motion must be timely; (2) the applicant must claim a ‘significantly
7 protectable’ interest relating to the property or transaction which is the subject
8 of the action; (3) the applicant must be so situated that the disposition of the
9 action may as a practical matter impair or impede its ability to protect that
10 interest; and (4) the applicant’s interest must be inadequately represented by
11 the parties to the action.”

12 *United States v. Aerojet Gen. Corp.*, 606 F.3d 1142, 1148 (9th Cir. 2010) (quoting *Cal. ex*
13 *rel. Lockyer v. United States*, 450 F.3d 436, 440 (9th Cir. 2006)). “Failure to satisfy any one
14 of the requirements is fatal to the application” *Perry v. Proposition 8 Official*
15 *Proponents*, 587 F.3d 947, 950 (9th Cir. 2009) (citation omitted).

16 Federal Rule of Civil Procedure 24(b) governs permissive intervention. An applicant
17 seeking to intervene under Rule 24(b) must demonstrate three things: ““(1) independent
18 grounds for jurisdiction; (2) [that] the motion is timely; and (3) [that] the applicant’s claim
19 or defense, and the main action, have a question of law or a question of fact in common.””
20 *S. Cal. Edison Co. v. Lynch*, 307 F.3d 794, 803 (9th Cir. 2002) (quoting *United States v. City*
21 *of L.A.*, 288 F.3d 391, 403 (9th Cir. 2002)). Even where those three elements are satisfied,
22 however, the district court retains the discretion to deny permissive intervention. *Id.* (citing
23 *Donnelly v. Glickman*, 159 F.3d 405, 412 (9th Cir. 1998)). In exercising its discretion, a court
24 must consider whether intervention will unduly delay or prejudice the original parties and
25 should consider whether the applicant’s interests are adequately represented by the existing
26 parties and whether judicial economy favors intervention. *Venegas v. Skaggs*, 867 F.2d 527,
27 530-31 (9th Cir. 1998); *see also* Fed. R. Civ. P. 24(b)(3) (requiring courts to consider undue
28 delay or prejudice to original parties).

B. Mr. Olsen’s Motion

Mr. Olsen argues that he ought to be permitted to intervene because he has worked

1 on behalf of the legalization of medical marijuana in Iowa. (Olsen Mot. at 2.) Mr. Olsen
2 further argues that Arizona has not properly sought reclassification of marijuana under
3 federal drug laws. (*Id.* at 3.) Mr. Olsen does not make any arguments regarding the standards
4 for intervention as a matter of right or permissive intervention. The Court finds that Mr.
5 Olsen has not satisfied the standard to intervene under Rule 24(a) or (b). Mr. Olsen has not
6 shown that he has a significantly protectable interest in the subject matter of this litigation,
7 the protection of which might be impeded or impaired by the outcome of this case, nor has
8 he demonstrated that any such interest is not adequately represented by the current parties.
9 *See Aerojet*, 606 F.3d at 1148 (applying Fed. R. Civ. P. 24(a)). Turning to permissive
10 intervention, the Court concludes that Mr. Olsen has not demonstrated that there is an
11 independent basis for jurisdiction or that his claim (which is unclear) shares a question of law
12 or fact with the subject of this litigation. *See Lynch*, 307 F.3d at 803. Finally, even if Mr.
13 Olsen had satisfied the elements for permissive intervention, the Court would still exercise
14 its discretion to deny the Motion because, as stated above, Mr. Olsen has not shown that his
15 interests are not adequately represented by the existing parties. *See Venegas*, 867 F.2d at
16 530-31.

17 Mr. Olsen's Motion to Intervene is denied. This renders his Motion for Leave to File
18 Electronically moot.

19 C. ADS's Motion

20 ADS asserts that it "has a vested interest in Proposition 203 and believes that" this
21 lawsuit is "arbitrary" and "frivolous." (ADS Mot. at 1.) ADS argues that, as a medical
22 marijuana dispensary, its "core business" is at the heart of this litigation and that its business
23 is "suffering significant financial harm, losing potential revenue, and is being put in a
24 stressful position with its existing clients." (*Id.*) ADS has not shown that its interest in
25 protecting its business is not adequately represented by the current parties to this litigation,
26 which is fatal to intervention under either Rule 24(a) or (b). *See Aerojet*, 606 F.3d at 1148
27 (analyzing intervention as a matter of right); *Venegas*, 867 F.2d at 530-31 (discussing
28 permissive intervention). The present Defendants include the Arizona Association of

1 Dispensary Professionals (“AADP”), and ADS does not state how its interest would differ
2 or conflict with AADP’s. The Court finds that ADS has not satisfied the requirements for
3 either intervention as a matter of right or permissive intervention.

4 **IT IS THEREFORE ORDERED** denying the Motion to Intervene filed by Carl Eric
5 Olsen (Doc. 6).

6 **IT IS FURTHER ORDERED** denying as moot Carl Eric Olsen’s Motion for Leave
7 to File Electronically (Doc. 23).

8 **IT IS FURTHER ORDERED** denying the Motion to Intervene filed by Arizona
9 Dispensary Solutions, LLC (Doc. 7).

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DATED this 6th day of July, 2011.



Susan R. Bolton
United States District Judge