

EXHIBIT A

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15 Maricopa County and Joy Rich

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

18 STATE OF ARIZONA; JANICE K.
19 BREWER, Governor of the State of Arizona,
20 in her Official Capacity; WILL HUMBLE,
21 Director of the Arizona Department of
22 Health Services, in his Official Capacity;
23 ROBERT C. HALLIDAY, Director of the
24 Arizona Department of Public Safety, in his
25 Official Capacity;

26 Plaintiffs,

27 And

MARICOPA COUNTY, and JOY RICH,
Assistant Maricopa County Manager and
Director of Maricopa County Planning and
Development Department, in her official
capacity;

Plaintiffs Intervenor

Case No. CV 11-01072-PHX-SRB

**COMPLAINT IN INTERVENTION
FOR DECLARATORY JUDGMENT**

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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.

Plaintiffs Intervenor Maricopa County, in its official capacity and Joy Rich, in her official capacity as Assistant County Manager and Director of Maricopa County Planning and Development Department (collectively “County”), through undersigned counsel, bring this civil action for declaratory judgment and allege as follows:

THE AMMA

1. On November 2, 2010, Arizona voters were asked to consider whether the State should decriminalize medical marijuana. Proposition 203, an initiative measure identified as the “Arizona Medical Marijuana Act” (“The Act” or “AMMA”), envisioned decriminalizing medical marijuana for use by people with certain chronic and debilitating medical conditions. Qualifying patients would be able to receive up to 2 ½ ounces of

1 marijuana every two weeks from medical marijuana dispensaries or to cultivate their own
2 plants under certain conditions. Proposition 203 provided that its purpose “is to protect
3 patients with debilitating medical conditions, as well as their physicians and providers,
4 from arrest and prosecution, criminal and other penalties and property forfeiture if such
5 patients engage in the medical use of marijuana.”

6 2. Arizona voters passed Proposition 203 in November 2010; the Governor
7 signed it into law on December 14, 2010.

8 3. The Act requires the Arizona Department of Health Services (“ADHS”) to
9 be responsible for implementing and overseeing the Act.

10 4. However, the Act requires County and its employees/agents to perform its
11 own functions to implement the Act, including the issuance of special use and building
12 permits for such things as medical marijuana dispensaries or the cultivation of marijuana.
13 The permitting process involves the approval of building plans, the inspection of all work
14 performed in connection with those approved plans and the issuance of a certificate of
15 occupancy which authorizes the property owner to allow occupancy and, in the case of
16 commercial properties, the operation of the use identified in the application.

17 5. Without the approval by County, no new use can begin within the
18 jurisdiction of unincorporated Maricopa County. This work by the County and its
19 employees facilitates the opening and operation of any business seeking to locate within
20 unincorporated Maricopa County.

21 6. The County’s approval of special use permits and building permits for such
22 functions as dispensing and cultivating marijuana would therefore arguably facilitate the
23 growth, manufacture, dispensation and possession of marijuana by individuals and/or
24 entities seeking such permits.

25 7. To date, there are two applications pending before the County for approval
26 of a Special Use Permit; one to allow a dispensary for medical marijuana and one for
27 cultivation of medical marijuana.

1 8. County employees have participated in pre-application meetings with six
2 applicants interested in applying for dispensaries for medical marijuana and three
3 applicants interested in applying for permits for cultivation of medical marijuana.

4 9. If special use permits were to be granted to any of the pending applicants or
5 any of the projects for which pre-application meetings have occurred, building permits
6 would be required for, *inter alia*, commercial construction permits for construction of
7 walls and roof structures, or tenant improvements in an existing building for lighting and
8 plumbing, as well as a possible change of occupancy permit.

9 10. The foregoing activities by the County and its employees/agents arguably
10 facilitates the growth, manufacture, dispensation and possession of marijuana by
11 individuals and/or entities.

12 11. Under the AMMA, the County and its employees/agents are required to
13 generally maintain the confidentiality of all information they receive in the course of their
14 duties.

15 12. The AMMA provides criminal sanctions for the County employees and
16 agents who breach the confidentiality requirement. Specifically, A.R.S. § 36-2816
17 provides, “[i]t is a class 1 misdemeanor for any person, including an employee or official
18 of the Department or another state agency or local government, to breach the
19 confidentiality of information obtained pursuant to this chapter.”

20 13. On or about April 14, 2011, Jenny A. Durkan, United States Attorney for
21 the Western District of Washington and Michael C. Ormsby, United States Attorney for
22 the Eastern District of Washington issued a letter to Christine Gregoire, Washington State
23 Governor regarding medical marijuana legislative proposals (“Durkan/Ormsby Letter”).
24 A copy of this letter is attached as Exhibit A to the State Plaintiffs’ Complaint.

25 14. The Durkan/Ormsby Letter states that “state employees who conducted
26 activities mandated by the Washington legislative proposals would not be immune from
27 liability under the CSA [Controlled Substances Act].”

1 15. On or about April 18, 2011, Plaintiff Will Humble, Director of the ADHS
2 (“Director Humble”) spoke by telephone with Assistant United States Attorney Patrick
3 Cunningham inquiring whether the Arizona United States Attorney’s Office was
4 considering sending a letter regarding medical marijuana, and if so, if that letter could
5 address whether state employees would be at risk of federal prosecution for
6 implementation of the AMMA.

7 16. On May 2, 2011, Dennis Burke, the U.S. Attorney for the District of
8 Arizona, issued a letter (“Burke Letter”) addressed to Director Humble, regarding the
9 State’s implementation and oversight of the Act. In that letter, the U.S. Attorney advised
10 Director Humble that the growing, distribution, and possession of marijuana “in any
11 capacity, other than as part of a Federally authorized research program, is a violation of
12 Federal law regardless of State laws that purport to legalize such activities.” The letter
13 further provides that the U.S. Attorney will continue to vigorously prosecute individuals
14 and organizations that participate in unlawful manufacturing, distributing, and marketing
15 activities involving marijuana, even if such activities are permitted under state law.
16 Importantly, the U.S. Attorney wrote that “compliance with Arizona laws and regulations
17 does not provide a safe harbor, nor immunity from Federal prosecution.” A copy of this
18 letter is attached as Exhibit B to the State Plaintiffs’ Complaint.

19 17. The Burke Letter ultimately ignored Director Humble’s request for
20 clarification on the issue of federal liability for state employees implementing the
21 AMMA.

22 18. The actions by the Defendant United States Department of Justice (“DOJ”)
23 and its United States Attorneys demonstrate a calculated and coordinated effort on the
24 part of the federal government to threaten prosecution of individuals including state
25 employees who conduct lawful activities under a state’s medical marijuana law.

26 19. Citizens of Arizona and the United States have a right to reasonable
27 certainty with respect to the application of both state and federal law, especially with

1 regard to making medical and business decisions. Further, the County and its
2 employees/agents are at risk of being prosecuted by federal authorities if they comply
3 with and implement the AMMA in accordance with its terms.

4 20. As has been alleged, certain duties and responsibilities of the County in
5 implementing the AMMA could be construed as facilitating the growth, manufacture,
6 dispensation and possession of marijuana by individuals and/or other entities.
7 Specifically, the County's actions in issuing special use and building permits to facilitate
8 the opening of marijuana dispensaries or the cultivation of marijuana could lead to
9 prosecution by federal authorities.

10 21. On or about October 19, 2009, David W. Ogden ("Deputy AG Ogden"),
11 Deputy Attorney General for the United States Department of Justice, issued to all United
12 States Attorneys a Memorandum for Selected United States Attorneys regarding
13 investigations and prosecutions in states authorizing the medical use of marijuana
14 ("Ogden Memo"). A copy of this memorandum is attached as Exhibit C to the State
15 Plaintiffs' Complaint.

16 22. Since that time, citizens, business entities, and state entities have been
17 operating under the guidelines and assumptions of the Ogden Memo in making their
18 business and medical decisions.

19 23. Recently, the principles of the Ogden Memo have been systematically
20 modified by a series of letters from U.S. Attorneys, including the letter attached as
21 Exhibit B, which has had a negative effect and created uncertainty as to the application of
22 federal law to state medical marijuana programs, which has harmed the Plaintiffs. As set
23 forth previously, the positions set forth in Exhibits A and B pose a threat and palpable
24 harm to citizens and employees of the State of Arizona if they participate, implement and
25 carry out the provisions of the AMMA.

26 24. Plaintiffs respectfully request that the Court determine whether strict
27 compliance and participation by the County and its employees/agents in implementation

1 of the requirements of the AMMA provides a safe harbor from federal prosecution, or in
2 the alternative, whether the AMMA is preempted by the Controlled Substances Act
3 federal law.

4 THE PARTIES

5 25. Plaintiff Intervenor Maricopa County is a body politic and a separate
6 political entity within the State of Arizona.

7 26. Plaintiff Intervenor Joy Rich is the Assistant Maricopa County Manager
8 and Director of Maricopa County Planning and Development Department. In that
9 capacity, Director Rich is responsible for overseeing the department that is charged with
10 permitting construction of commercial facilities. As such, Director Rich also directs
11 County employees who are implementing and overseeing the AMMA, including but not
12 limited to, the issuance of special use and building permits for such enterprises as
13 medical marijuana dispensaries. Director Rich and her employees have already begun
14 reviewing applications for special use permits to allow dispensaries for medical
15 marijuana and to allow cultivation of medical marijuana. Director Rich has been advised
16 of the letter of May 2, 2011 by Dennis Burke, United States Attorney for Arizona. Based
17 on her understanding of that letter, she believes employees under her charge face a
18 dilemma in that they can either issue the permits they are required to issue as part of their
19 job duties and face the possibility that they could be prosecuted for violation of federal
20 law, or follow federal law and refuse to enforce state statute. Director Rich sues in her
21 official capacity and on behalf of the County employees who are following state law in
22 implementing the AMMA.

23 27. Defendant United States of America ("United States") is a sovereign
24 government of those limited enumerated powers specified in the Constitution of the
25 United States. All references in this Complaint refer to Defendant United States of
26 America in its sovereign capacity.

1 28. Defendant DOJ is an executive department of the United States
2 government. The DOJ and its subordinate agencies are responsible for enforcement of
3 the CSA, 21 U.S.C. §§ 801, *et seq.*, under the direction of the United States Attorney
4 General.

5 29. Defendant Eric H. Holder, Jr. is the Attorney General of the United States
6 of America (“U.S. Attorney General”) and, as head of the DOJ, has responsibilities
7 associated with national drug policy including but not limited to enforcement and
8 prosecution of violations of the CSA. The U.S. Attorney General is sued in his Official
9 Capacity.

10 30. Defendant Dennis K. Burke is the United States Attorney for the District of
11 Arizona (“U.S. Attorney Burke”), and as such, is the chief federal law enforcement
12 officer in the District of Arizona. U.S. Attorney Burke is charged with the responsibility
13 to prosecute violations of federal law, including violations of the CSA. U.S. Attorney
14 Burke is sued in his Official Capacity.

15 31. Defendants United States, DOJ, U.S. Attorney General, and U.S. Attorney
16 Burke are hereinafter referred to as the “Government Defendants.”

17 32. Defendant Arizona Association of Dispensary Professionals, Inc.
18 (“AZADP”) is an Arizona corporation with its principal place of business at 17233 N.
19 Holmes Boulevard, Suite 1615, Phoenix, Arizona 85053. The AZADP is an organization
20 comprised of approximately 8000 members. The AZADP membership includes patients,
21 caregivers, dispensary candidates, and other business owners whose operations are
22 directly related to the Arizona medical marijuana industry.

23 33. Numerous members of the AZADP, acting in good faith and in full
24 compliance with state laws, and in reliance upon the full faith and credit of the
25 Constitution of Arizona, have made significant personal and financial investments into
26 various medical marijuana business operations throughout Arizona.

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1 34. Defendant AZADP's standing and legal position in this action may be
2 adverse to that of the government Defendants.

3 35. The judgment obtained in this action could have far reaching adverse
4 consequences for the Defendant AZADP's members, causing severe and irreparable
5 personal and financial harm.

6 36. Upon information and belief, Defendant Joshua Levine ("Mr. Levine") is
7 and, at all times relevant hereto, has been an Arizona resident and registered Independent
8 voter. Mr. Levine has declared that he voted in favor of Proposition 203 and believes that
9 his rights, power and influence as a voter will be injured and infringed if Proposition 203
10 is not fully implemented.

11 37. Upon information and belief, Defendant Paula Pennypacker ("Ms.
12 Pennypacker") is and, at all times relevant hereto, has been an Arizona resident and
13 registered Republican voter. Ms. Pennypacker has declared that she voted in favor of
14 Proposition 203 and believes her rights, power, and influence as a voter will be injured
15 and infringed if Proposition 203 is not fully implemented.

16 38. Upon information and belief, at all times relevant hereto, Defendant Dr.
17 Nicholas Flores ("Dr. Flores") was an Arizona licensed physician specializing in
18 oncology and radiology. Upon information and belief, Dr. Flores has contractually
19 agreed to serve as a medical director for an intended dispensary applicant and believes
20 that his financial interests, contractual and other rights will be compromised and injured
21 if Proposition 203 is not fully implemented.

22 39. Upon information and belief, at all times relevant hereto, Defendant Jane
23 Christensen ("Mrs. Christensen") was an Arizona resident. Upon information and belief,
24 Mrs. Christensen is a prospective dispensary applicant and has spent significant sums in
25 pursuit of a license and believes she stands to suffer injury to her financial and other
26 interests if Proposition 203 is not fully implemented.

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1 40. Upon information and belief, at all times relevant hereto, Defendant Paula
2 Pollock (“Ms. Pollock”) was an Arizona resident. Upon information and belief, Ms.
3 Pollock was a prospective dispensary applicant and has spent significant sums in pursuit
4 of a license and believes she stands to suffer injury to her financial and other interests if
5 Proposition 203 is not fully implemented.

6 41. Upon information and belief, at all times relevant hereto, Defendant
7 Serenity Arizona, Inc. (“Serenity Arizona”) was an Arizona nonprofit corporation. Upon
8 information and belief, Defendant Serenity Arizona is a prospective dispensary applicant
9 and has spent significant sums in pursuit of a license and believes it stands to suffer
10 injury to its financial and other interests if Proposition 203 is not fully implemented.

11 42. Upon information and belief, at all times relevant hereto, Defendant
12 Holistic Health Management, Inc. (“Holistic Health”) was an Arizona nonprofit
13 corporation. Upon information and belief, Defendant Holistic Health is a prospective
14 dispensary applicant and has spent significant sums in pursuit of a license and believes it
15 stands to suffer injury to its financial and other interests if Proposition 203 is not fully
16 implemented.

17 43. Upon information and believe, at all times relevant hereto, Defendant Jeff
18 Silva (“Mr. Silva”) was an Arizona resident suffering from a debilitating condition and
19 has been advised by health care professionals that his condition would benefit from the
20 use of medical marijuana. Upon information and belief, Mr. Silva believes that he stands
21 to suffer injury if Proposition 203 is not fully implemented.

22 44. Defendant Arizona Medical Marijuana Association (“AZMMA”) is a real
23 party in interest in regard to the Act’s implementation. The AZMMA was established
24 after the 2010 passage of Proposition 203. The AZMMA’s membership includes the
25 individuals who, as the registered political committee known as the Arizona Medical
26 Marijuana Policy Project, qualified this measure for the ballot and then secured its
27 passage. The AZMMA and its members are committed to the Act’s implementation in a

1 manner that establishes a well-regulated medical marijuana program to serve the needs of
2 patients with debilitating medical conditions and furthers the intent of the Act.

3 45. Defendants DOES I-X are sued under fictitious names because their true
4 names and capacities are unknown: that DOES I-X are persons, partnerships,
5 associations, corporations, limited liability companies, limited partnerships, or some
6 other form of entity that is subject to the jurisdiction of this Court. DOES I-X assert that
7 the AMMA is a valid and enforceable law that should be fully implemented in
8 accordance with its terms; that the true names and interests of DOES I-X will be
9 determined and this Complaint amended when this information is ascertained.

10 46. Defendants DOES XI-XX are sued under fictitious names because their
11 true names and capacities are unknown: that DOES XI-XX are persons, partnerships,
12 associations, corporations, limited liability companies, limited partnerships, or some
13 other form of entity that is subject to the jurisdiction of this Court. DOES XI-XX assert
14 that the AMMA is preempted by the CSA and is not a valid and enforceable law and that
15 it should not implemented in accordance with its terms; that the true names and interests
16 of DOES XI-XX will be determined and this Complaint amended when this information
17 is ascertained.

18 **JURISDICTION AND VENUE**

19 47. This Court has jurisdiction under Article III of the Constitution of the
20 United States, and pursuant to 28 U.S.C. § 1331 because the matters in controversy arise
21 under the Constitution of the United States and laws of the United States and present a
22 federal question.

23 48. This Court also has jurisdiction pursuant to 28 U.S.C. § 1346 because the
24 United States and its agencies and officers are Defendants.

25 49. Plaintiffs are seeking relief pursuant to the Declaratory Judgment Act, 28
26 U.S.C. § 2201.

1 50. Venue lies in the District of Arizona pursuant to 28 U.S.C. § 1391 because
2 a substantial portion of the events or omissions giving rise to the claims alleged arose
3 within the jurisdiction of United States District Court for the District of Arizona.

4 51. Venue also lies in the District of Arizona pursuant to 28 U.S.C. § 1402
5 because the United States and its agencies and officers are Defendants and the Plaintiffs
6 reside in and have their principal places of business located in the District of Arizona.

7 **DECLARATORY JUDGMENT**

8 52. There is an actual controversy of sufficient immediacy and concreteness
9 relating to the legal rights and duties of the Plaintiffs and their legal relations with the
10 Defendants to warrant relief under 28 U.S.C. § 2201.

11 53. The harm to the Plaintiffs Intervenor and their County employees as a
12 direct result of the actions and threatened actions of the Defendants is sufficiently real
13 and imminent to warrant the issuance of a conclusive declaratory judgment.

14 54. It is well established that what makes a declaratory judgment action a
15 proper judicial resolution of a case or controversy rather than an advisory opinion is the
16 settling of some dispute that affects the behavior of the defendant toward the plaintiff.
17 Here, a declaration that compliance with the AMMA provides a safe harbor from federal
18 prosecution would settle the current dispute which affects the behavior of the Defendants
19 toward the Plaintiffs. Conversely, a declaration that the AMMA does not provide a safe
20 harbor from federal prosecution would likewise settle the dispute which affects the
21 behavior of the Defendants toward the Plaintiffs.

22 55. County, its officers and employees, who clearly have a role in
23 implementing the AMMA, should not be put in a position of having to act pursuant to
24 state law and then waiting to see whether or not federal drug charges will be brought
25 against them. Rather, the Court should resolve the question of the legal correctness of the
26 County's position under the AMMA without first subjecting the County, its officers and
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1 employees to potential federal prosecution. *See New Hampshire Hemp Council, Inc. v.*
2 *Marshall*, 203 F.3d 1, 5 (1st Cir. 2000).

3 **THE CONTROLLED SUBSTANCES ACT**
4 **AND FEDERAL CRIMINAL STATUTES**

5 56. The Defendant United States categorizes marijuana as a Schedule I
6 controlled substance, pursuant to the CSA, and the United States is authorized to arrest
7 and prosecute individuals and businesses that grow, possess, transport, or distribute
8 marijuana. 21 U.S.C.A. § 812.

9 57. The CSA states that under federal law it is unlawful to manufacture,
10 distribute, or dispense, or possess with intent to manufacture, distribute, or dispense, a
11 controlled substance. 21 U.S.C.A. § 841.

12 58. The CSA states that under federal law it is unlawful to use any
13 communication facility to commit felony violations of the CSA. 21 U.S.C.A. § 843(b).

14 59. A “communication facility” is defined as “any and all public and private
15 instrumentalities used or useful in the transmission of writing, signs, signals, pictures, or
16 sounds of all kinds and includes mail, telephone, wire, radio, and all other means of
17 communication. 21 U.S.C.A. § 843(b).

18 60. The CSA states that under federal law it is unlawful to conspire to commit
19 any of the violations set forth in the CSA. 21 U.S.C.A. § 846.

20 61. The CSA states that under federal law it is unlawful to knowingly open,
21 lease, rent, use, or maintain property for the manufacturing, storing, or distribution of
22 controlled substances. 21 U.S.C.A. § 856.

23 62. Under federal law, it is unlawful to aid and abet the commission of a
24 federal crime. 18 U.S.C.A. § 2.

25 63. Under federal law, it is unlawful to conspire to commit an offense against
26 the United States. 18 U.S.C.A. § 371.
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1 64. Under federal law, it is unlawful to assist an offender thereby becoming an
2 accessory to a crime. 18 U.S.C.A. § 3.

3 65. Under federal law, it is unlawful to conceal knowledge of a felony from the
4 United States. 18 U.S.C.A. § 4.

5 66. Under federal law, it is unlawful to make certain financial transactions
6 designed to promote illegal activities or to conceal or disguise the source of the proceeds
7 of that illegal activity. 18 U.S.C.A. § 1956.

8 **STATES ENACTING MEDICAL MARIJUANA LAWS AND WARNINGS /**
9 **ENFORCEMENT HISTORY OF THE FEDERAL GOVERNMENT**
10 **DEFENDANTS**

11 67. Approximately 16 States and the District of Columbia have enacted laws
12 relating to medical marijuana. Those states include: Arizona, Washington, Montana,
13 Colorado, California, Rhode Island, Hawaii, Vermont, Nevada, New Mexico, New
14 Jersey, Michigan, Alaska, Delaware, Maine, and Oregon.

15 68. At least two States, Rhode Island and Vermont, have suspended their
16 medical marijuana programs following certain acts of enforcement by the Defendants.

17 69. Growers and dispensary owners in several states with medical marijuana
18 laws have endured federal raids of their facilities operating under duly enacted state laws.
19 Such states suffering federal raids include, but are not necessarily limited to, Michigan,
20 Nevada, Montana, and California.

21 70. In Arizona, applicants for nonprofit medical marijuana dispensaries have
22 filed for Special Use Permits under the AMMA to operate such facilities.

23 71. Based upon the stated course of action that will be taken by the federal
24 government against those lawfully working in furtherance of the states' laws regarding
25 implementation of the AMMA, the property, revenue, and liberty interests of the State of
26 Arizona, Maricopa County and its citizens are at risk of seizure, forfeiture, and federal
27 prosecution while acting in compliance with state law.

1 72. The employees and officers of Maricopa County have a mandatory duty to
2 implement and facilitate certain aspects of the AMMA. Failure to faithfully implement
3 the AMMA exposes Plaintiffs Intervenor to legal action. Yet, pursuant to Exhibits A and
4 B to the State Plaintiffs' Complaint, Plaintiffs Intervenor and their employees, officers
5 and agents risk prosecution and penalties under federal criminal statutes if they faithfully
6 comply with Arizona law.

7 73. The County's employees and agents cannot comply with both the federal
8 requirements of reporting wrongdoing (18 U.S.C.A. §§ 3, 4, and 371) and with the
9 AMMA's confidentiality obligations (A.R.S. §§ 36-2810 and 2816).

10 74. In implementing and overseeing the administration of the AMMA,
11 employees and officers of the County face a very definite and serious risk that they could
12 be subjected to federal prosecution for aiding and abetting the use, possession, or
13 distribution of marijuana under the CSA.

14 75. Not only do the Plaintiffs Intervenor have a personal stake in the
15 controversy at issue, they also assert the interests of other employees, officers, and
16 citizens of Maricopa County who are or may be similarly situated.

17 76. These employees, officers, and citizens of Maricopa County would
18 otherwise have standing to sue in their own right. The interests of these employees,
19 officers, and citizens of Maricopa County are germane to the purposes of the Plaintiffs
20 Intervenor in filing this action. Neither the claims asserted nor the relief requested
21 requires the participation of these individuals in this action.

22 77. The Plaintiffs Intervenor, employees, officers, and citizens of Maricopa
23 County are presented with the certain and immediate dilemma to choose between
24 complying with Arizona state law and risking serious federal prosecution and other
25 serious penalties.

26 78. The Government Defendants have communicated a specific warning or
27 threat of criminal prosecution and other legal proceedings to Director Humble, even if the

1 Plaintiffs Intervenors and employees, officers, or citizens of Maricopa County are
2 following Arizona state law. The federal government has made clear its intent to threaten
3 and eventually eliminate any business or enterprise related to the medical use of
4 marijuana. As such, these actions qualify as pre-enforcement warnings or threats to
5 initiate proceedings against Plaintiffs Intervenor, and those similarly situated.

6 79. The Government Defendants have a history of enforcement against those
7 acting under state law with regard to the medical marijuana laws of other states.

8 80. County, its officers and employees should not be put in a position of having
9 to act pursuant to state law and then waiting to see whether or not federal drug charges
10 will be brought against them. Rather, the Court should resolve the question of the legal
11 correctness of the County's position under the AMMA without first subjecting the
12 County, its officers and employees to potential federal prosecution.

13 81. The property of the Plaintiffs and that of citizens are at risk of seizure and
14 forfeiture. Maricopa County and its residents stand to lose revenue. The employees,
15 officers, and citizens of Maricopa County are at risk of prosecution and other penalties if
16 they follow the duly enacted AMMA in compliance with the laws of Arizona.

17 82. With all due respect to the Government Defendants, the actions of these
18 Government Defendants serve to undermine efforts of the Plaintiffs to implement state
19 law in accordance with the will of the people of the State of Arizona.

20 83. In addition, upon information and belief, the remaining Defendants contend
21 that AMMA should be implemented in accordance with its terms and that such
22 implementation will not constitute a violation of the CSA.

23 CONCLUSION

24 84. By virtue of the foregoing, the federal government's position places the
25 AMMA in conflict with the CSA as well as the policies of the DOJ that have been
26 implemented to enforce the CSA.

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1 85. Defendants DOES I-X, contrary to the federal government, contend that the
2 AMMA does not violate federal law and that it should be strictly implemented in
3 accordance with its terms.

4 86. Defendants DOES XI-XX, in accordance with the federal government,
5 contend that the AMMA does violate federal law and that it should not be implemented.

6 87. A controversy has arisen and now exists between Plaintiffs Intervenor and
7 Defendants and, indeed among Defendants, relating to their rights and duties.

8 88. In light of this controversy and the competing claims of the parties,
9 Plaintiffs Intervenor desire a declaration of their rights with respect to whether the
10 AMMA complies with federal law and should be implemented and enforced in
11 accordance with its terms, or whether the AMMA should be declared preempted in whole
12 or in part because of an irreconcilable conflict with federal law.

13 89. Such a declaration is necessary so that Plaintiffs Intervenor may ascertain
14 their rights and duties because of the unsettled and competing claims of the parties.

15 **PRAYER FOR RELIEF**

16 WHEREFORE, Plaintiffs Intervenor respectfully request a declaratory judgment
17 as follows:

18 A. The Court declare the respective rights and duties of the Plaintiffs
19 Intervenor and the Defendants regarding the validity, enforceability, and implementation
20 of the AMMA.

21 B. The Court determine whether strict compliance and participation in the
22 AMMA provides a safe harbor from federal prosecution.

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

Dated this 14th day of July, 2011.

WILLIAM G. MONTGOMERY
MARICOPA COUNTY ATTORNEY

BY: /s William G. Montgomery
WILLIAM G. MONTGOMERY
Attorneys for Plaintiffs Intervenor
Maricopa County and Joy Rich