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11 **IN THE UNITED STATES DISTRICT COURT**

12 **FOR THE DISTRICT OF ARIZONA**

13 STATE OF ARIZONA, et al.,

14 Plaintiffs,

15 vs.

16 UNITED STATES OF AMERICA, et al.,

17 Defendants.

Case No. 11-CV-01072-PHX-SRB

**PLAINTIFFS' RESPONSE TO
MOTION FOR LEAVE TO
INTERVENE AS CO-PLAINTIFFS
BY MARICOPA COUNTY AND
JOY RICH IN HER OFFICIAL
CAPACITIES**

(Honorable Susan R. Bolton)

18 Plaintiffs State of Arizona, Janice K. Brewer, Will Humble, and Robert C.
19 Halladay, through undersigned counsel, hereby file this Response to Maricopa County
20 and Joy Rich's ("County Intervenors") Motion for Leave to Intervene as Co-Plaintiffs
21 ("Motion") filed July 14, 2011. Plaintiffs submit that County Intervenors have
22 addressed the necessary elements to establish a right to permissive intervention in this
23 case under Rule 24(b)(2), Fed. R. Civ. P. As such, Plaintiffs have no objection to
24 County Intervenors' Motion filed July 14, 2011.
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1 **I. County Intervenors have established their right to permissive intervention**
2 **under Rule 24 of the Federal Rules of Civil Procedure.**

3 **A. Intervention of Right.**

4 The prerequisites for intervention of right under Rule 24(a)(2), Fed. R. Civ. P.
5 require a potential intervenor to show: (1) that it has a significant protectable interest
6 that is the subject of action; (2) that disposition of the action may impair or impede its
7 ability to protect its interest; (3) timely application; and (4) that existing parties
8 inadequately represent applicant's interest. Fed. R. Civ. P. 24(a); *See also Donaldson*
9 *v. U.S.*, 400 U.S. 517, 531 (1971); *Perry v. Schwarzenegger*, 630 F.3d 898, 903-06
10 (9th Cir. 2011); *Green v. U.S.*, 996 F.2d 973, 976-78 (9th Cir. 1993). To determine if
11 the requirements for intervention of right are met, a court normally follows practical
12 and equitable considerations and construes the governing rule broadly in favor of the
13 proposed intervenor. *See Wilderness Soc. v. U.S. Forest Service*, 630 F.3d 1173, 1179
14 (9th Cir. 2011); *U.S. v. City of Los Angeles*, 288 F.3d 391, 397 (9th Cir. 2002). Here,
15 County Intervenors have not claimed intervention of right, but arguably may meet the
16 four elements which establish intervention of right.

17 **B. Permissive Intervention.**

18 A court may grant permissive intervention if: (1) the movant shows
19 independent ground for jurisdiction, (2) the motion is timely, and (3) the applicant's
20 claim or defense with the main action shares a common question of law or fact. Fed.
21 R. Civ. P. 24(b); *See also Greene v. U.S.*, 996 F.2d 973, 978 (9th Cir. 1993). District
22 Courts have broad discretion when making the determination on a motion for
23 permissive intervention. *See Perry*, 630 F.3d at 905-06. As such, even if an applicant
24 satisfies threshold requirements, permissive intervention may be denied. *S. Cal.*
25 *Edison Co. v. Lynch*, 307 F.3d 794, 803 (9th Cir. 2002) (*quoting Donnelly v.*
26 *Glickman*, 159 F.3d 405, 409 (9th Cir. 1998)).
27

1 In this case, County Intervenors have made the requisite showings for
2 permissive intervention. County Intervenors have established an independent ground
3 for jurisdiction. (Mot. at 7-8.) County Intervenors' Motion is also timely made, as
4 "no answers have been filed, and the case is not yet at issue." (*Id.*) Additionally,
5 County Intervenors' proposed Complaint in Intervention for Declaratory Judgment
6 ("County Complaint"), currently lodged with the Court at docket number 31-1, shares
7 common questions of law and fact with Plaintiffs' Complaint for Declaratory
8 Judgment. (*Id.* at 6-7.) While it appears that the County Complaint and Plaintiffs'
9 Complaint share common questions of law and fact, County Intervenors' interests are
10 sufficiently distinct and independent so that their interests are not adequately
11 represented by any existing party. (*Id.* at 9-10.) Finally, the interests of judicial
12 economy weigh in favor of granting the County Intervenors' Motion. (*Id.* at 8.)

13 **CONCLUSION**

14 County Intervenors have articulated a sufficient interest to allow intervention in
15 the case at bar under Rule 24, F. R. Civ. P. As a result, Plaintiffs have no objection to
16 the County Intervenors' Motion for Leave to Intervene as Co-Plaintiffs filed July 14,
17 2011.

18 Dated this 27th day of July, 2011.

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CERTIFICATE OF SERVICE

I certify that I electronically transmitted the attached document to the Clerk’s Office using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing to the following, if CM/ECF registrants, and mailed a copy of same to any non-registrants, this 27th day of July, 2011 to:

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