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9  
10 Attorneys for Plaintiffs

11 **IN THE UNITED STATES DISTRICT COURT**

12 **FOR THE DISTRICT OF ARIZONA**

13 STATE OF ARIZONA; JANICE K.  
14 BREWER, Governor of the State of Arizona,  
15 in her Official Capacity; WILL HUMBLE,  
Director of the Arizona Department of  
16 Health Services, in his Official Capacity;  
17 ROBERT C. HALLIDAY, Director of the  
Arizona Department of Public Safety, in his  
18 Official Capacity;

19 Plaintiffs,

20 vs.

21 UNITED STATES OF AMERICA; UNITED  
22 STATES DEPARTMENT OF JUSTICE;  
23 ERIC H. HOLDER, JR., Attorney General of  
the United States of America, in his Official  
24 Capacity; DENNIS K. BURKE, United  
States Attorney for the District of Arizona, in  
25 his Official Capacity; ARIZONA  
26 ASSOCIATION OF DISPENSARY  
PROFESSIONALS, INC., an Arizona  
27 corporation; JOSHUA LEVINE; PAULA

Case No.

**COMPLAINT FOR  
DECLARATORY JUDGMENT**

1 PENNYPACKER; DR. NICHOLAS  
2 FLORES; JANE CHRISTENSEN; PAULA  
3 POLLOCK; SERENITY ARIZONA, INC.,  
4 an Arizona nonprofit corporation;  
5 HOLISTIC HEALTH MANAGEMENT,  
6 INC., an Arizona nonprofit corporation;  
7 JEFF SILVA; ARIZONA MEDICAL  
8 MARIJUANA ASSOCIATION; DOES I-X;  
9 DOES XI-XX;

Defendants.

10 Plaintiffs, State of Arizona; Janice K. Brewer, Governor of the State of Arizona, in  
11 her Official Capacity; Will Humble, Director of Arizona Department of Health Services,  
12 in his Official Capacity; and Robert C. Halliday, Director of Arizona Department of  
13 Public Safety, in his Official Capacity, through undersigned counsel, bring this civil  
14 action for declaratory judgment and allege as follows:

**THE AMMA**

15 1. On November 2, 2010, Arizona voters were asked to consider whether the  
16 State should decriminalize medical marijuana. Proposition 203, an initiative measure  
17 identified as the “Arizona Medical Marijuana Act” (“The Act” or “AMMA”), envisioned  
18 decriminalizing medical marijuana for use by people with certain chronic and debilitating  
19 medical conditions. Qualifying patients would be able to receive up to 2 ½ ounces of  
20 marijuana every two weeks from medical marijuana dispensaries or to cultivate their own  
21 plants under certain conditions. Proposition 203 provided that its purpose “is to protect  
22 patients with debilitating medical conditions, as well as their physicians and providers,  
23 from arrest and prosecution, criminal and other penalties and property forfeiture if such  
24 patients engage in the medical use of marijuana.”

25 2. Arizona voters passed Proposition 203 in November 2010; the Governor  
26 signed it into law on December 14, 2010.  
27

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

3           4.     Specifically, the Act provides for the registration and certification by the  
4 ADHS of “nonprofit medical marijuana dispensaries,” “nonprofit medical marijuana  
5 dispensary agents,” “qualifying patients,” and “designated caregivers.”

6           5.     Under the Act, the ADHS is mandated to adopt rules governing the  
7 registration and certification process within 120 days after the effective date of the  
8 AMMA.

9           6.     Under the Act, the ADHS is required to adopt rules establishing the form  
10 and content of applications, the manner in which applications will be considered, the  
11 amount of application and renewal fees within certain maximum limits, and rules  
12 governing dispensaries.

13          7.     As required by the Act, the ADHS promulgated final rules that were filed  
14 with the Secretary of State on April 13, 2011.

15          8.     On April 14, 2011, the ADHS began accepting applications from persons  
16 who sought to be certified as Qualifying Patients and Designated Caregivers. As of May  
17 24, 2011, 3,696 Qualifying Patients and 69 Designated Caregivers were certified by the  
18 ADHS.

19          9.     Under the Act, the ADHS is required to register nonprofit medical  
20 marijuana dispensaries and to issue a registration certificate within 90 days after  
21 receiving an application.

22          10.    Under the Act, the ADHS is required to register nonprofit medical  
23 marijuana dispensary agents and to issue registry identification cards to qualifying  
24 patients and designated caregivers within certain time frames after receipt of information  
25 and documents as set forth in the AMMA.

26          11.    The ADHS will begin accepting applications for nonprofit medical  
27 marijuana dispensaries and nonprofit medical marijuana dispensary agents on June 1,

1 2011. Nonprofit medical marijuana dispensaries and nonprofit medical marijuana  
2 dispensary agents must be registered by the ADHS before they can lawfully operate  
3 under the Act.

4 12. Beginning August 2011, the ADHS will begin issuing registration  
5 certificates for nonprofit medical marijuana dispensaries and registry identification cards  
6 for nonprofit medical marijuana dispensary agents.

7 13. Under the Act, a qualified patient, designated caregiver, or nonprofit  
8 medical marijuana dispensary agent with a registry card is allowed to acquire, possess,  
9 cultivate, manufacture, use, administer, deliver, transfer, and transport marijuana.

10 14. Under the Act, registered nonprofit medical marijuana dispensaries and  
11 certain qualified patients and designated caregivers are allowed to cultivate marijuana.

12 15. Under the Act, registered nonprofit medical marijuana dispensaries are  
13 allowed to dispense marijuana to qualifying patients and designated caregivers.

14 16. Under the Act, the ADHS is required to maintain a web-based verification  
15 system that can be accessed on a 24-hour basis by law enforcement personnel and  
16 nonprofit medical marijuana dispensaries to verify registry identification cards.

17 17. Under the Act, the ADHS is required to receive a full set of fingerprints  
18 from certain applicants for the purpose of obtaining a state and federal criminal  
19 background check. The ADHS has contracted with the Arizona Department of Public  
20 Safety (“DPS”) to perform these background checks.

21 18. Under the rules for the Act, applicants submitting an application for a  
22 registry identification card or to amend, change, or replace a registry identification card  
23 for a qualifying patient, designated caregiver, or nonprofit medical marijuana dispensary  
24 agent must submit the application electronically through a web-based system created by  
25 the ADHS.

26 19. Under the Act, the ADHS is allowed to inspect nonprofit medical marijuana  
27 dispensaries after reasonable notice.

1           20. Under the Act, the ADHS is required to generally maintain the  
2 confidentiality of all information it receives in the course of its duties.

3           21. The Act provides criminal sanctions for the ADHS employees and agents  
4 who breach the confidentiality requirement. Specifically, A.R.S. § 36-2816 provides,  
5 “[i]t is a class 1 misdemeanor for any person, including an employee or official of the  
6 Department or another state agency or local government, to breach the confidentiality of  
7 information obtained pursuant to this chapter.”

8           22. On or about April 14, 2011, Jenny A. Durkan, United States Attorney for  
9 the Western District of Washington and Michael C. Ormsby, United States Attorney for  
10 the Eastern District of Washington issued a letter to Christine Gregoire, Washington State  
11 Governor regarding medical marijuana legislative proposals (“Durkan/Ormsby Letter”).  
12 Attached hereto as Exhibit A.

13           23. The Durkan/Ormsby Letter states that “state employees who conducted  
14 activities mandated by the Washington legislative proposals would not be immune from  
15 liability under the CSA.”

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

22           25. On May 2, 2011, Dennis Burke, the U.S. Attorney for the District of  
23 Arizona, issued a letter (“Burke Letter”) addressed to Director Humble, regarding the  
24 State’s implementation and oversight of the Act. In that letter, the U.S. Attorney advised  
25 Director Humble that the growing, distribution, and possession of marijuana “in any  
26 capacity, other than as part of a Federally authorized research program, is a violation of  
27 Federal law regardless of State laws that purport to legalize such activities.” The letter

1 further provides that the U.S. Attorney will continue to vigorously prosecute individuals  
2 and organizations that participate in unlawful manufacturing, distributing, and marketing  
3 activities involving marijuana, even if such activities are permitted under state law.  
4 Importantly, the U.S. Attorney wrote that “compliance with Arizona laws and regulations  
5 does not provide a safe harbor, nor immunity from Federal prosecution.” A copy of this  
6 letter is attached as Exhibit B.

7         26. The Burke Letter ultimately ignored Director Humble’s request for  
8 clarification on the issue of federal liability for state employees implementing the  
9 AMMA.

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

14         28. Citizens of Arizona and the United States have a right to reasonable  
15 certainty with respect to the application of both state and federal law, especially with  
16 regard to making medical and business decisions. Further, employees of the ADHS are at  
17 risk of being prosecuted by federal authorities if they comply with and implement the  
18 AMMA in accordance with its terms.

19         29. On or about October 19, 2009, David W. Ogden (“Deputy AG Ogden”),  
20 Deputy Attorney General for the United States Department of Justice, issued to all United  
21 States Attorneys a Memorandum for Selected United States Attorneys regarding  
22 investigations and prosecutions in states authorizing the medical use of marijuana  
23 (“Ogden Memo”). Attached hereto as Exhibit C.

24         30. Since that time, citizens, business entities, and state entities have been  
25 operating under the guidelines and assumptions of the Ogden Memo in making their  
26 business and medical decisions.

27



1 medical marijuana dispensaries and nonprofit medical marijuana dispensary agents.  
2 Activity surrounding a state's authorization and/or licensing of medical marijuana  
3 dispensaries has garnered the attention of U.S. Attorneys in other states. Director  
4 Humble sues in his Official Capacity and on behalf of the ADHS employees who are  
5 following state law in implementing the AMMA.

6 36. Plaintiff Robert C. Halliday ("Director Halliday") is the Director of the  
7 DPS. The DPS employees, under the direction of Director Halliday, perform criminal  
8 background checks and use the web-based verification system to verify registry  
9 identification cards as contemplated under the AMMA. Director Halliday sues in his  
10 Official Capacity and on behalf of the DPS employees who are following state law in  
11 implementing the AMMA. Additionally, the DPS, as a state law enforcement entity,  
12 faces conflicts, as do other law enforcement entities, between the activity permitted by  
13 the AMMA and not permitted by federal law which places those law enforcement  
14 employees in an untenable position.

15 37. Defendant United States of America ("United States") is a sovereign  
16 government of those limited enumerated powers specified in the Constitution of the  
17 United States. All references in this Complaint refer to Defendant United States of  
18 America in its sovereign capacity.

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

23 39. Defendant Eric H. Holder, Jr. is the Attorney General of the United States  
24 of America ("U.S. Attorney General") and, as head of the DOJ, has responsibilities  
25 associated with national drug policy including but not limited to enforcement and  
26 prosecution of violations of the CSA. The U.S. Attorney General is sued in his Official  
27 Capacity.

1           40. Defendant Dennis K. Burke is the United States Attorney for the District of  
2 Arizona (“U.S. Attorney Burke”), and as such, is the chief federal law enforcement  
3 officer in the District of Arizona. U.S. Attorney Burke is charged with the responsibility  
4 to prosecute violations of federal law, including violations of the CSA. U.S. Attorney  
5 Burke is sued in his Official Capacity.

6           41. Defendants United States, DOJ, U.S. Attorney General, and U.S. Attorney  
7 Burke are hereinafter referred to as the “Government Defendants.”

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

14           43. Numerous members of the AZADP, acting in good faith and in full  
15 compliance with state laws, and in reliance upon the full faith and credit of the  
16 Constitution of Arizona, have made significant personal and financial investments into  
17 various medical marijuana business operations throughout Arizona.

18           44. Defendant AZADP’s standing and legal position in this action may be  
19 adverse to that of the government Defendants.

20           45. The judgment obtained in this action could have far reaching adverse  
21 consequences for the Defendant AZADP’s members, causing severe and irreparable  
22 personal and financial harm.

23           46. Upon information and belief, Defendant Joshua Levine (“Mr. Levine”) is  
24 and, at all times relevant hereto, has been an Arizona resident and registered Independent  
25 voter. Mr. Levine has declared that he voted in favor of Proposition 203 and believes that  
26 his rights, power and influence as a voter will be injured and infringed if Proposition 203  
27 is not fully implemented.

1           47.    Upon information and belief, Defendant Paula Pennypacker (“Ms.  
2 Pennypacker”) is and, at all times relevant hereto, has been an Arizona resident and  
3 registered Republican voter. Ms. Pennypacker has declared that she voted in favor of  
4 Proposition 203 and believes her rights, power, and influence as a voter will be injured  
5 and infringed if Proposition 203 is not fully implemented.

6           48.    Upon information and belief, at all times relevant hereto, Defendant Dr.  
7 Nicholas Flores (“Dr. Flores”) was an Arizona licensed physician specializing in  
8 oncology and radiology. Upon information and belief, Dr. Flores has contractually  
9 agreed to serve as a medical director for an intended dispensary applicant and believes  
10 that his financial interests, contractual and other rights will be compromised and injured  
11 if Proposition 203 is not fully implemented.

12           49.    Upon information and belief, at all times relevant hereto, Defendant Jane  
13 Christensen (“Mrs. Christensen”) was an Arizona resident. Upon information and belief,  
14 Mrs. Christensen is a prospective dispensary applicant and has spent significant sums in  
15 pursuit of a license and believes she stands to suffer injury to her financial and other  
16 interests if Proposition 203 is not fully implemented.

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

22           51.    Upon information and belief, at all times relevant hereto, Defendant  
23 Serenity Arizona, Inc. (“Serenity Arizona”) was an Arizona nonprofit corporation. Upon  
24 information and belief, Defendant Serenity Arizona is a prospective dispensary applicant  
25 and has spent significant sums in pursuit of a license and believes it stands to suffer  
26 injury to its financial and other interests if Proposition 203 is not fully implemented.  
27

1           52.    Upon information and belief, at all times relevant hereto, Defendant  
2 Holistic Health Management, Inc. (“Holistic Health”) was an Arizona nonprofit  
3 corporation. Upon information and belief, Defendant Holistic Health is a prospective  
4 dispensary applicant and has spent significant sums in pursuit of a license and believes it  
5 stands to suffer injury to its financial and other interests if Proposition 203 is not fully  
6 implemented.

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

12           54.    Defendant Arizona Medical Marijuana Association (“AZMMA”) is a real  
13 party in interest in regard to the Act’s implementation. The AZMMA was established  
14 after the 2010 passage of Proposition 203. The AZMMA’s membership includes the  
15 individuals who, as the registered political committee known as the Arizona Medical  
16 Marijuana Policy Project, qualified this measure for the ballot and then secured its  
17 passage. The AZMMA and its members are committed to the Act’s implementation in a  
18 manner that establishes a well-regulated medical marijuana program to serve the needs of  
19 patients with debilitating medical conditions and furthers the intent of the Act.

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

27





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

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

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

8           72.    Under federal law, it is unlawful to conspire to commit an offense against  
9 the United States. 18 U.S.C.A. § 371.

10          73.    Under federal law, it is unlawful to assist an offender thereby becoming an  
11 accessory to a crime. 18 U.S.C.A. § 3.

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

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

17                   **STATES ENACTING MEDICAL MARIJUANA LAWS AND WARNINGS /**  
18                   **ENFORCEMENT HISTORY OF THE FEDERAL GOVERNMENT**  
19                   **DEFENDANTS**

20          76.    Approximately 16 States and the District of Columbia have enacted laws  
21 relating to medical marijuana. Those states include: Arizona, Washington, Montana,  
22 Colorado, California, Rhode Island, Hawaii, Vermont, Nevada, New Mexico, New  
23 Jersey, Michigan, Alaska, Delaware, Maine, and Oregon.

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

26          78.    Growers and dispensary owners in several states with medical marijuana  
27 laws have endured federal raids of their facilities operating under duly enacted state laws.

1 Such states suffering federal raids include, but are not necessarily limited to, Michigan,  
2 Nevada, Montana, and California.

3 79. In Arizona, applicants for nonprofit medical marijuana dispensaries have  
4 filed for Special Use Permits under the AMMA to operate such facilities.

5 80. Based upon the stated course of action that will be taken by the federal  
6 government against those lawfully working in furtherance of the states' laws regarding  
7 implementation of the AMMA, the property, revenue, and liberty interests of the State of  
8 Arizona and its citizens are at risk of seizure, forfeiture, and federal prosecution while  
9 acting in compliance with state law.

10 81. The employees and officers of the State of Arizona have a mandatory duty  
11 to implement and oversee the administration of the AMMA. Failure to faithfully  
12 implement the AMMA exposes Plaintiffs to legal action. Yet, pursuant to Exhibits A and  
13 B, the Plaintiffs and their employees and officers risk prosecution and penalties under  
14 federal criminal statutes if they faithfully comply with Arizona law.

15 82. The ADHS' employees and agents cannot comply with both the federal  
16 requirements of reporting wrongdoing (18 U.S.C.A. §§ 3, 4, and 371) and with the  
17 AMMA's confidentiality obligations (A.R.S. §§ 36-2810 and 2816).

18 83. In implementing and overseeing the administration of the AMMA,  
19 employees and officers of the State of Arizona face a very definite and serious risk that  
20 they could be subjected to federal prosecution for aiding and abetting the use, possession,  
21 or distribution of marijuana under the CSA.

22 84. Not only do the Plaintiffs have a personal stake in the controversy at issue,  
23 they also assert the interests of other employees, officers, and citizens of the State of  
24 Arizona who are or may be similarly situated.

25 85. These employees, officers, and citizens of the State of Arizona would  
26 otherwise have standing to sue in their own right. The interests of these employees,  
27 officers, and citizens of the State of Arizona are germane to the purposes of the Plaintiffs

1 in filing this action. Neither the claims asserted nor the relief requested requires the  
2 participation of these individuals in this action.

3 86. The Plaintiffs, employees, officers, and citizens of the State of Arizona are  
4 presented with the certain and immediate dilemma to choose between complying with  
5 Arizona state law and risking serious federal prosecution and other serious penalties.

6 87. The Government Defendants have communicated a specific warning or  
7 threat of criminal prosecution and other legal proceedings to Director Humble, even if the  
8 Plaintiffs and employees, officers, or citizens of the State of Arizona are following  
9 Arizona state law. The federal government has made clear its intent to threaten and  
10 eventually eliminate any business or enterprise related to the medical use of marijuana.  
11 As such, these actions qualify as pre-enforcement warnings or threats to initiate  
12 proceedings against Plaintiffs, and those similarly situated.

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

15 89. The property of the Plaintiffs and that of citizens are at risk of seizure and  
16 forfeiture. The State of Arizona and its citizens stand to lose revenue. The employees,  
17 officers, and citizens of the State of Arizona are at risk of prosecution and other penalties  
18 if they follow the duly enacted AMMA in compliance with the laws of Arizona.

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

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

#### 25 THE OGDEN MEMO

26 92. On or about October 19, 2009, (“Deputy AG Ogden”), Deputy Attorney  
27 General for the United States Department of Justice, issued to all United States Attorneys

1 a Memorandum for Selected United States Attorneys regarding investigations and  
2 prosecutions in states authorizing the medical use of marijuana. *See* Exhibit C.

3 93. The stated purpose of the Ogden Memo was to provide “clarification and  
4 guidance to federal prosecutors in States that have enacted laws authorizing the medical  
5 use of marijuana” and to “provide uniform guidance to focus federal investigations and  
6 prosecutions in these States on core federal enforcement priorities.”

7 94. The Ogden Memo states, *inter alia*, that “[t]he Department of Justice is  
8 committed to the enforcement of the Controlled Substances Act in all States.”

9 95. The Ogden Memo states that “Congress has determined that marijuana is a  
10 dangerous drug, and the illegal distribution and sale of marijuana is a serious crime. . . .”

11 96. The Ogden Memo states that “[i]n general, United States Attorneys are  
12 vested with ‘plenary authority with regard to federal criminal matters’ within their  
13 districts. USAM 9-2.001. In exercising this authority, United States Attorneys are  
14 ‘invested by statute and delegation from the Attorney General with the broadest  
15 discretion in the exercise of such authority.’ *Id.* This authority should, of course, be  
16 exercised consistent with Department priorities and guidance.”

17 97. The Ogden Memo states that “[t]he prosecution of significant traffickers of  
18 illegal drugs, including marijuana, and the disruption of illegal drug manufacturing and  
19 trafficking networks continues to be a core priority in the Department’s efforts against  
20 narcotics and dangerous drugs, and the Department’s investigative and prosecutorial  
21 resources should be directed toward these objectives.”

22 98. The Ogden Memo states that “[a]s a general matter, pursuit of these  
23 priorities should not focus federal resources in your States on individuals whose actions  
24 are in clear and unambiguous compliance with existing state laws providing for the  
25 medical use of marijuana. For example, prosecution of individuals with cancer or other  
26 serious illnesses who use marijuana as part of a recommended treatment regimen  
27 consistent with applicable state law, or those caregivers in clear and unambiguous

1 compliance with existing state law who provide such individuals with marijuana, is  
2 unlikely to be an efficient use of limited federal resources.”

3 99. The Ogden Memo states that “prosecution of commercial enterprises that  
4 unlawfully market and sell marijuana for profit continues to be an enforcement priority of  
5 the Department. To be sure, claims of compliance with state or local law may mask  
6 operations inconsistent with the terms, conditions, or purposes of those laws, and federal  
7 law enforcement should not be deterred by such assertions when otherwise pursuing the  
8 Department’s core enforcement priorities.”

9 100. The Ogden Memo states that “[o]f course, no State can authorize violations  
10 of federal law.”

11 101. The Ogden Memo states that “[i]ndeed, this memorandum does not alter in  
12 any way the Department’s authority to enforce federal law, including laws prohibiting the  
13 manufacture, production, distribution, possession, or use of marijuana on federal  
14 property.”

15 102. The Ogden Memo states that “[t]his guidance regarding resource allocation  
16 does not ‘legalize’ marijuana or provide a legal defense to a violation of federal law, nor  
17 is it intended to create any privileges, benefits, or rights, substantive or procedural,  
18 enforceable by any individual, party or witness in any administrative, civil, or criminal  
19 matter. Nor does clear and unambiguous compliance with state law or the absence of one  
20 or all of the above factors [unlawful possession or unlawful use of firearms, violence,  
21 sales to minors, financial and marketing activities inconsistent with the terms, conditions,  
22 or purposes of state law, including evidence of money laundering activity and/or financial  
23 gains or excessive amounts of cash inconsistent with purported compliance with state or  
24 local law, amounts of marijuana inconsistent with purported compliance with state or  
25 local law, illegal possession or sale of other controlled substances, or ties to other  
26 criminal enterprises] create a legal defense to a violation of the Controlled Substances  
27 Act.”



1 AMMA will not protect them from federal criminal prosecution, asset forfeiture and  
2 other civil penalties. This compliance with Arizona laws and regulations does not provide  
3 a safe harbor, nor immunity from federal prosecution.”

4 THE STATE OF WASHINGTON

5 108. In or about 1998, the State of Washington first enacted a law to  
6 decriminalize medical marijuana.

7 109. On or about April 14, 2011, Jenny A. Durkan, United States Attorney for  
8 the Western District of Washington and Michael C. Ormsby, United States Attorney for  
9 the Eastern District of Washington issued a letter to Christine Gregoire, Washington State  
10 Governor regarding medical marijuana legislative proposals (“Durkan/Ormsby Letter”).  
11 *See* Exhibit A.

12 110. The Durkan/Ormsby Letter states, *inter alia*, that “we maintain the  
13 authority to enforce the CSA vigorously against individuals and organizations that  
14 participate in unlawful manufacturing and distribution activity involving marijuana, even  
15 if such activities are permitted under state law.”

16 111. The Durkan/Ormsby Letter states that “[t]he Washington legislative  
17 proposals will create a licensing scheme that permits large-scale marijuana cultivation  
18 and distribution. This would authorize conduct contrary to federal law and thus, would  
19 undermine the federal government’s efforts to regulate the possession, manufacturing,  
20 and trafficking of controlled substances. Accordingly, the Department [of Justice] could  
21 consider civil and criminal legal remedies regarding those who set up marijuana growing  
22 facilities and dispensaries as they will be doing so in violation of federal law.”

23 112. The Durkan/Ormsby Letter states that “[o]thers who knowingly facilitate  
24 the actions of the licensees, including property owners, landlords, and financiers should  
25 also know that their conduct violates federal law.”





1 dispensaries, as well as property owners, as they will be acting in violation of federal  
2 law.”

3 127. The Walsh Letter states that “[a]s the Attorney General has repeatedly  
4 stated, the Department of Justice remains firmly committed to enforcing the federal law  
5 and the Controlled Substances Act in all states.”

6 128. The Attorney General of Colorado issued a letter dated April 26, 2011, to  
7 the Governor of Colorado, John Hickenlooper and Members of the Colorado General  
8 Assembly regarding the federal enforcement of marijuana laws (“COAG Letter”).  
9 Attached hereto as Exhibit F.

10 129. The COAG Letter states “[o]f great concern is the fact that some . . . U.S.  
11 Attorneys do not consider state employees who conduct activities under state medical  
12 marijuana laws to be immune from liability under federal law.”

### 13 THE STATE OF CALIFORNIA

14 130. In or about 1996, the State of California first enacted a law to decriminalize  
15 medical marijuana.

16 131. On or about February 1, 2011, Melinda Haag, United States Attorney for  
17 the Northern District of California issued a letter to the Oakland City Attorney, John A.  
18 Russo (“Haag Letter”). Attached hereto as Exhibit G.

19 132. The Haag Letter states, *inter alia*, that “[t]he prosecution of individuals and  
20 organizations involved in the trade of any illegal drugs and the disruption of drug  
21 trafficking organizations is a core priority of the Department. This core priority includes  
22 prosecution of business enterprises that unlawfully market and sell marijuana.”

23 133. The Haag Letter states that “we will enforce the CSA vigorously against  
24 individuals and organizations that participate in unlawful manufacturing and distribution  
25 activity involving marijuana, even if such activities are permitted under state law. The  
26 Department’s investigative and prosecutorial resources will continue to be directed  
27 toward these objectives.”











1 result demonstrates the need for judicial intervention and a declaration of rights regarding  
2 the AMMA and federal law.

3 165. Further, the deliberate and ominous shift in tone of the more recent U.S.  
4 Attorneys' Letters, including Exhibit B, has had a negative and palpable effect and  
5 created uncertainty as to the application of federal law to state medical marijuana  
6 programs, and in particular, the AMMA. The Court should resolve this uncertainty by  
7 declaring whether the AMMA complies with federal law and should be implemented in  
8 accordance with its terms, or conversely, whether the AMMA is preempted by the CSA  
9 and therefore void.

### 10 CONCLUSION

11 166. By virtue of the foregoing, the federal government's position places the  
12 AMMA in conflict with the CSA as well as the policies of the DOJ that have been  
13 implemented to enforce the CSA.

14 167. Defendants DOES I-X, contrary to the federal government, contend that the  
15 AMMA does not violate federal law and that it should be strictly implemented in  
16 accordance with its terms.

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

19 169. A controversy has arisen and now exists between Plaintiffs and Defendants  
20 and, indeed among Defendants, relating to their rights and duties.

21 170. In light of this controversy and the competing claims of the parties,  
22 Plaintiffs desire a declaration of Plaintiffs' rights with respect to whether the AMMA  
23 complies with federal law and should be implemented and enforced in accordance with  
24 its terms, or whether the AMMA should be declared preempted in whole or in part  
25 because of an irreconcilable conflict with federal law.

26 171. Such a declaration is necessary so that Plaintiffs may ascertain their rights  
27 and duties because of the unsettled and competing claims of the parties.

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**PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs respectfully request a declaratory judgment as follows:

- A. The Court declare the respective rights and duties of the Plaintiffs and the Defendants regarding the validity, enforceability, and implementation of the AMMA.
- B. The Court determine whether strict compliance and participation in the AMMA provides a safe harbor from federal prosecution.
- C. The Court grant such other and further relief as it deems appropriate and proper.

Dated this 27th day of May, 2011.

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