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8 **SUPERIOR COURT OF ARIZONA**
9 **IN MARICOPA COUNTY**

10 WHITE MOUNTAIN HEALTH CENTER,
INC., an Arizona non-profit corporation,

11 Plaintiff,

12 v.

13 COUNTY OF MARICOPA; WILLIAM
14 MONTGOMERY, ESQ., Maricopa County
Attorney, in his official capacity;
15 ARIZONA DEPARTMENT OF HEALTH
SERVICES, as agency of the State of
16 Arizona; WILL HUMBLE, Director of the
Arizona Department of Health Services, in
17 his Official Capacity; and DOES I-X,

18 Defendants.

No. CV2012- 053585

**STATE'S MOTION
TO INTERVENE**

(Assigned to the Hon. Michael D. Gordon)

19
20 The State of Arizona ex rel. Thomas C. Horne in his official capacity as the Attorney
21 General, by undersigned counsel, hereby moves this Court, pursuant to Rule 24(a) of the Rules
22 of Civil Procedure, for leave to intervene in this action, for the purpose of seeking a

1 declaration that the relief Plaintiff has sought is preempted by the laws of the United States.
2 The grounds for this motion are fully stated in the accompanying Memorandum of Points and
3 Authorities, but may be briefly summarized as follows.

4 Under A.R.S. § 41-193(A)(2), the Attorney General has the power to appear in a
5 Superior Court to prosecute or defend any proceeding in which the State or an officer thereof
6 is a party or has an interest. The Attorney General also has a justiciable interest under A.R.S.
7 § 41-193(A)(4) in many of the actions affecting county attorneys of the several counties.
8 Since this action seeks to force public officials, including the county attorney, to engage in
9 actions upon grounds that are preempted by federal law, this is an appropriate case for
10 intervention.

11 The Attorney General also has the power to intervene as a matter of right in this case
12 under A.R.S. § 12-1841, since there has been an allegation that the AMMA is unconstitutional
13 as it is preempted by federal law. (*See Answer of Defendants Maricopa County and William
14 Montgomery*["Cnty Defs' Answer"], at 9, ¶ 8.)

15 **MEMORANDUM OF POINTS AND AUTHORITIES**

16 **SUMMARY OF RELEVANT FACTS**

17 Plaintiff brought this action on or about June 20, 2012 seeking various declaratory and
18 injunctive relief under the "Arizona Medical Marijuana Act," which the Plaintiff refers to as
19 the "AMMA." Plaintiff forthrightly asserts that its goal is to operate a medical marijuana
20 dispensary including marijuana cultivation. Compl., ¶ 2. Defendants Maricopa County and
21 William Montgomery have asserted in their Answer that the AMMA is unconstitutional as it is
22 preempted by federal law. (Cnty Defs' Answer at 9, ¶ 8)

On August 6, 2012, as the result of a request by a member of the Legislature and
thirteen of Arizona's fifteen county attorneys, the Attorney General issued a formal Opinion
(No. I12-001, R12-008, attached hereto as Exhibit 1 and referred to as "A.G. Opin.")
concluding that the AMMA is preempted in part by federal law. The Attorney General

1 concluded that the provisions of the AMMA and related rules that pertain to the issuance of
2 registry identification cards for patients and caregivers are not preempted because they merely
3 serve to identify those individuals for whom the possession or use of marijuana has been
4 decriminalized under State law, and they are therefore not “authorizations” to violate federal
5 law. A.G. Opin. At 6.7.) However, all AMMA provisions and related rules that authorize any
6 cultivating, selling and dispensing of marijuana are preempted by federal law, particularly the
7 federal Controlled Substances Act. *Id.* at 7.

7 **LEGAL AUTHORITY AND ARGUMENT**

8 Since the Plaintiff seeks declaratory and injunctive relief to the effect that State and
9 county officials must enforce the AMMA in full, including those provisions that are clearly
10 preempted by Federal law, the State has an interest in the outcome of this action. Moreover,
11 the Attorney General has a practical interest in the outcome of this action, to the extent that it
12 seeks to order a county attorney to take steps that are preempted by Federal law. Finally,
13 applicable statutes give the Attorney General the right to intervene because this case concerns
14 the constitutionality of a State law.

14 It is the intention of the Attorney General to promptly file a motion for summary
15 judgment raising the preemption issue. A proposed answer and counterclaim are filed with
16 this Motion, along with the proposed summary judgment motion and separate statement of
17 facts, as Exhibits 2 through 2-4. Should the Court grant this Motion, the Attorney General
18 respectfully requests that the proposed answer, summary judgment motion and separate
19 statement of facts be ordered filed and admitted to the case record at that time.
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1
2 **CONCLUSION**

3 For all the foregoing reasons, the Court should enter an order allowing the intervention
4 sought by this Motion.

5 RESPECTFULLY SUBMITTED this 23rd day of August, 2012.

6 THOMAS C. HORNE
7 Attorney General

8 /s/ Charles A. Grube
9 Charles A. Grube
10 Senior Agency Counsel
11 Attorneys for the State ex rel.
12 Thomas C. Horne

13 This Motion was
14 electronically filed with the Court
15 and copies transmitted
16 by regular U.S. Mail
17 and email on this 23rd day of
18 August, 2012, as follows:

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1 I also transmitted courtesy copies to
2 the above attorneys via electronic
3 transmission this date.

4
5 /s/ Charles A. Grube

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