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Description	Amount
CASE# CV2017-001137	
CIVIL NEW COMPLAINT	319.00
TOTAL AMOUNT	319.00
Receipt# 25708232	

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF MARICOPA

PREMIUM LEAF, INC.,

Plaintiff,

ARIZONA DEPARTMENT OF HEALTH SERVICES; DR. CARA M. CHRIST, Director of Arizona Department of Health Services in her official capacity.

Defendants.

Case No. CV 2017-001137

COMPLAINT

(Jury Trial Demanded)

Plaintiff, Premium Leaf, Inc. by and through undersigned counsel, alleges as follows:

PARTIES AND JURISDICTION

1. Plaintiff Premium Leaf Inc. ("Plaintiff" or "Premium Leaf") at all times herein operated in Maricopa County, Arizona. It is an Arizona corporation.

2. Defendant, Arizona Department of Health Services ("ADHS") is an Arizona administrative agency with its principal place of business in Maricopa County, Arizona. It is responsible for implementing and administering the Arizona's Medical Marijuana Act ("AMMA").

1 3. For purposes of its legal liability in this case, ADHS acts by and through its
2 Director, Dr. Cara Christ, who is a jural entity capable of suing or being sued.

3 4. Defendant, Dr. Cara Christ (“Defendant Christ”), is sued in her official
4 capacity as Director of ADHS and is believed to be a resident of Maricopa County,
5 Arizona. As the Director of ADHS, Defendant Christ is responsible for implementing and
6 administering the AMMA. *See* Ariz. Rev. Stat. §§ 36-2801 *et seq.* Defendant Christ was
7 at all relevant times acting in her official capacity.

8 5. The events complained of in this Complaint occurred in Maricopa County
9 Arizona and this Court has jurisdiction over this matter under A.R.S. §§12-122 and 12-
10 123, and other applicable law.

11 6. Venue is proper in this Court under A.R.S. §12-401 and other applicable law.

12 **GENERAL FACTUAL ALLEGATIONS**

13 ***Proposition 203’s Mandate to Provide Public Access to Medical Marijuana***

14 7. Plaintiff reasserts the foregoing paragraphs as though fully alleged herein.

15 8. Proposition 203 was a Ballot Initiative designed to remove the State of
16 Arizona’s legal impediments to the sale, cultivation, and personal use of marijuana for
17 medical purposes.

18 9. Proposition 203’s passage was the culmination of a petition process and
19 grassroots campaign that lasted years and included extensive efforts to educate Arizona
20 voters about the medicinal value of marijuana.

21 10. 252,000 Arizonans signed petitions in support of Proposition 203.

22 11. The stated goals of Proposition 203 included, *inter alia*, to permit qualifying
23 patients to obtain medical marijuana from licensed, non-profit medical marijuana
24 dispensaries regulated by ADHS, to permit cultivation of medical marijuana by individual
25 patients where no licensed dispensary is reasonably available, and to provide strict
26 oversight of the ownership and operations of non-profit medical marijuana dispensaries

1 regulated by ADHS, including imposing application requirements and restrictions on the
2 number and location of dispensaries.

3 12. Arizona voters approved Proposition 203, and it codified in law as the
4 AMMA under Title 36, Chapter 28.1, Ariz. Rev. Stat. §§ 36-2801 *et seq.*

5 13. Pursuant to the AMMA, ADHS promulgated rules and regulations to
6 administer Arizona’s medical marijuana program. Those rules are codified in the Arizona
7 Administrative Code (“A.A.C.”) at A.A.C. R9-17-101 *et seq.*

8 14. Beginning in 2013, and each calendar year thereafter, the AMMA has
9 required ADHS to review current valid dispensary registration certificates to determine if
10 the Department may issue additional dispensary registration certificates based on patient
11 population and demand. *See* A.A.C. R9-17-303(A).

12 ***Plaintiff Applies for a Dispensary Registration Certificate***

13 15. In calendar year 2016, ADHS determined that the number and location of
14 registered patients warranted the licensure of additional medical marijuana dispensaries.

15 16. The process devised by ADHS for licensing non-profit medical marijuana
16 dispensaries occurs in three (3) stages: (1) Application and allocation; (2) Issuance of a
17 Dispensary Registration Certificate (“DRC”); and, (3) Inspection and approval to open.

18 17. Once ADHS approves a dispensary application, it issues the successful
19 applicant a DRC. *See* Ariz. Rev. Stat. § 36-2804(B).

20 18. Once a dispensary applicant is awarded a DRC by ADHS, the applicant can
21 apply to ADHS for approval to operate a dispensary at any point in the next twelve (12)
22 months. No medical marijuana dispensary may dispense medical marijuana
23 (notwithstanding its possession of a DRC) unless and until it receives ADHS approval.

24 19. Plaintiff timely applied to ADHS for a non-profit medical marijuana
25 dispensary license and submitted substantively complete and compliant application
26 materials as required by the A.A.C.

1 20. The A.A.C. divides the State of Arizona into 126 geographical regions based
2 on population; each region is called a Community Health Analysis Area or “CHAA”. *See*
3 *Ariz. Rev. Stat. § 36-2804(C); A.A.C. R9-17-101(7).*

4 21. DRCs issued by ADHS correspond to specific CHAAs and the authorization
5 for a given applicant to operate a medical marijuana dispensary is limited to the CHAA
6 for which the applicant was awarded a DRC.

7 22. Originally, ADHS imposed a limitation of one licensed medical marijuana
8 dispensary per CHAA. ADHS has since lifted that restriction, but nonetheless limits the
9 number of licensed medical marijuana dispensaries in each CHAA based on data
10 reflecting the total number of patients and the geographic concentration of patients. *See*
11 *A.A.C. R9-17-303(A).*

12 23. If ADHS determines it may issue additional DRCs, ADHS must publish that
13 information on their website at least thirty (30) calendar days before ADHS begins
14 accepting DRC applications. *See A.A.C. R9-17-303(A)(1)(a).*

15 24. Once ADHS begins accepting DRC applications, prospective dispensary
16 owners have ten (10) working days to submit completed application packets to ADHS.
17 *See A.A.C. R9-17-303(A)(1)(b).*

18 25. After the application period closes, ADHS has established a mandatory
19 timeframe for reviewing DRC applications to ensure their compliance with the AMMA,
20 A.A.C., Arizona statutes, and local zoning ordinances as may apply both to dispensaries
21 themselves and to a given applicant.

22 26. Specifically, ADHS has five (5) working days to complete an
23 “Administrative Review” of DRC applications and twenty-five (25) working days to
24 complete a “Substantive Review” of the same. *A.A.C. R9-17-107.*

25 27. During the substantive review process, ADHS may inspect a proposed
26 dispensary site multiple times. *A.A.C. R9-17-107(D)(2).*

1 28. ADHS may only issue a DRC to those prospective nonprofit medical
2 marijuana dispensaries that have strictly complied with the requirements set forth in the
3 AMMA. *See* Ariz. Rev. Stat. § 36-2804(B)(1-4).

4 29. Among other things, the AMMA requires each prospective dispensary to
5 submit a \$5,000 application fee and to identify the proposed physical address of the
6 dispensary site. *See* Ariz. Rev. Stat. § 36-2804(B)(1)(b)(ii).

7 30. Additionally, ADHS requires DRC applicants to submit documentation from
8 the proposed site's local zoning authority that "there are no local zoning restrictions for
9 the dispensary's location" or that "[t]he dispensary's location is in compliance with any
10 local zoning restrictions." A.A.C. R9-17-304(C)(6).

11 31. Following the deadline to submit DRC applications, ADHS "shall determine
12 if the Department received more [DRC] applications that are complete and in compliance
13 with the [AMMA and associated regulations] to participate in the allocation process than
14 the Department is allowed to issue." A.A.C. R9-17-303(A)(1)(c).

15 32. If ADHS finds that more complete and fully compliant DRC applications
16 have been submitted for a given CHAA than DRCs available to be issued, ADHS must
17 next evaluate and narrow the complete and qualifying applications to those "whose
18 proposed dispensary location will provide dispensary services to the most qualifying
19 patients" based on a ten (10) mile radius of the proposed location and the number of
20 dispensaries already servicing that ten (10) mile radius. A.A.C. R9-17-303(B)(1)(b)(i).

21 33. In the event of a tie (e.g., when two qualified and compliant DRC
22 applications for the same CHAA will serve the same number of qualifying patients) ADHS
23 shall conduct a lottery to determine the winner of the DRC for the CHAA at issue. A.A.C.
24 R9-17-303(B)(4).

25 34. Qualifying applicants who were not allocated a DRC are refunded \$1,000 of
26 their original \$5,000 fee. ADHS retains \$4,000 of each unsuccessful application fee.

1 35. There are no statutes, regulations, or policies that outline how the application
2 fee is to be applied or used by DHS other than the AMMA.

3 36. In May 2016, ADHS announced it would accept DRC applications for 31
4 DRCs in each of the highest ranked CHAAs, prioritized based on the number of qualifying
5 patients residing within the CHAA.

6 37. DRC applications for the 2016 allocation would be accepted by ADHS
7 during the ten working days from July 18 through July 29, 2016. The list of the 31 CHAAs
8 was made available by ADHS to prospective applicants on June 16, 2016. (EXHIBIT A).

9 38. Premium Leaf is an Arizona-based not-for-profit company formed in 2016
10 for the purpose of applying for and securing a DRC through the ADHS 2016 DRC
11 allocation process.

12 39. Premium Leaf's board members are Dr. Laurence David Turner, Douglas W.
13 Turner, and Adam S. Turner.

14 40. Premium Leaf submitted an application for CHAA #70, listed as number 26
15 on the ADHS list of priority CHAAs during the application period from July 28 – July 29,
16 2016. (EXHIBIT B).

17 41. CHAA #70 is located in the City of Mesa and is also known as "Mesa
18 Central". It also contains numerous county island parcels that are governed by Maricopa
19 County.

20 42. Premium Leaf's application ID was AZ0891.

21 43. Premium Leaf's application was submitted using a proposed dispensary
22 address of 98. N Power Rd, Mesa Arizona, which is on a Maricopa County island located
23 within the City of Mesa borders.

24 44. The Premium Leaf application was determined by ADHS to be
25 administratively complete in August 2016 and substantively complete in September 2016.
26 The application, therefore, was included in the ADHS 2016 DRC allocation process.

1 45. ADHS received other timely applications for DRCs in CHAA #70 and
2 evaluated plaintiff's application against those others in order to determine which applicant
3 would be awarded a DRC.

4 46. In doing so, ADHS failed to exclude applications that did not substantively
5 comply with the AMMA and or the A.A.C.

6 47. ADHS's failure to exclude substantively deficient applications resulted in the
7 acceptance of applications that could never be approved for operation as a medical
8 marijuana dispensary in compliance with Arizona law and the A.A.C.

9 48. For example, DHS failed to disqualify certain DRC applications identifying
10 a proposed dispensary location that would violate local zoning regulations and / or the
11 AMMA.

12 49. Upon information and belief, in CHAA #70, ADHS awarded a DRC to an
13 entity whose application should have been rejected for failing to comply with the AMMA
14 and the A.A.C.

15 ***Plaintiff's Challenge to ADHS's Allocation of DRC in CHAA #70***

16 50. Defendants harmed Premium Leaf by improperly denying their application
17 for a DRC and awarding it to an entity in Mesa Central that was not in compliance with
18 the A.A.C. and the AMMA.

19 51. ADHS violated the A.A.C. and the AMMA for the following reasons,
20 summarized in paragraphs 52-55:

21 52. (1) Pursuant to the Maricopa County ordinance, a dispensary located on
22 Maricopa County property cannot be within 1500 feet of another dispensary and, upon
23 information and belief, the winning applicant's proposed address is within 1500 feet of
24 another dispensary, so that applicant should be denied for failure to comply with A.A.C.
25 R9-17-304 (C)(6).

1 53. (2) Even absent the ordinance, the applicant must have misled ADHS by
2 submitting an application using a proposed property where they could never be granted
3 approval to operate, so they should have been denied pursuant to A.A.C. R9-17-322 (B).

4 54. (3) The applicant, principal officer, or board member cannot be on more than
5 one DRC application for a location in a single Community Health Analysis Area
6 (“CHAA”). Upon information and belief, the successful applicant is on more than one
7 DRC and thus should have been denied pursuant to A.A.C. R9-17-304 (A)(1).

8 55. (4) Only Premium Leaf’s proposed address meets the separation
9 requirements in the CHAA required by A.A.C. R9-17-304 (C)(6). All of the other
10 applicant’s proposed addresses do not meet zoning separation requirements so Premium
11 Leaf should have been the only applicant approved.

12 56. Pursuant to A.A.C. R9-17-304(C)(7), any administratively complete DRC
13 applications must have included a “Documentation of Compliance with Local Jurisdiction
14 Zoning ” letter (EXHIBIT C) issued by the municipality with jurisdiction over the
15 proposed address. For CHAAs located within the City of Mesa, this form could have been
16 issued by one of two municipalities depending on the jurisdiction of the applicant’s
17 proposed address: 1) the City of Mesa Planning & Zoning Division, or; 2) the Maricopa
18 County Planning & Zoning Department.

19 57. Premium Leaf’s “Documentation of Compliance with Local Jurisdiction
20 Zoning” letter was issued by Maricopa County Planning & Zoning Department.

21 58. Pursuant to A.A.C. R9-303(B)(3), all DRCs would be awarded to applicants
22 whose proposed address served the highest number of qualifying patients within a ten mile
23 radius. If the proposed address of two or more applicants served the same qualifying
24 patient population within a margin of 0.1%, then the recipient of the DRC would be
25 determined by random selection (by lottery), pursuant to A.A.C. R9-303(B)(4).

1 59. On October 5th 2016, 9 of the 31 available DRCs were allocated by the lottery
2 method described above.

3 60. CHAA #70 was not among the CHAAs whose DRC was allocated by lottery.

4 61. The remaining 22 DRC allocations, including Mesa Central #70, were
5 announced the following day, on October 6th 2016. (EXHIBIT D)

6 62. On October 6, 2016, Premium Leaf was notified via email that “while your
7 Dispensary Registration Certificate Application was determined to be complete and in
8 compliance; it was not selected for the allocation of a Dispensary Registration Certificate.
9 Please be advised that this is not a denial and is not considered a final decision of the
10 Department subject to administrative review (R9-17-107(G)(3)).” (Exhibit L).

11 63. ADHS announced that the DRC for CHAA #70, was awarded to applicant
12 #0948.

13 64. Because CHAA #70 was not allocated by lottery, ADHS must have
14 determined that applicant #0948 both: a) was deemed substantively and administratively
15 complete, and; b) used a proposed address that served a qualifying patient population that
16 exceeded the populations served by the other proposed applicant addresses in the CHAA
17 by a margin greater than 0.1%.

18 65. From earlier research in the application process, Premium Leaf board
19 member Adam Turner was aware that very few property addresses in CHAA #70 satisfied
20 the separation requirements described in the Maricopa County zoning ordinance.

21 66. From earlier research in the application process, Mr. Turner also knew that
22 CHAA #70 contained no properties that satisfied the City of Mesa zoning ordinance for a
23 medical marijuana dispensary.

24 67. Following the allocation, Mr. Turner inquired with both the Mesa Planning
25 & Zoning Board and the Maricopa County Planning and Development Department to
26 learn the address that must have been used by applicant #0948.

1 68. In a telephone conversation with City of Mesa zoning administrator Gordon
2 Sheffield on October 19, 2016, Mr. Sheffield informed Mr. Turner that his office had only
3 received a single application for CHAA #70 and it was rejected for its failure to satisfy
4 the requirements of the City of Mesa zoning ordinance. Therefore, no "Documentation of
5 Compliance with Local Jurisdiction Zoning" letter was issued by the City of Mesa for
6 Mesa Central, CHAA #70.

7 69. Mr. Sheffield further confirmed to Mr. Turner that the entire Mesa Central
8 CHAA did not contain any LI or GI zoned property, as required by the City of Mesa
9 ordinance.

10 70. Therefore, ADHS could not have received any administratively complete
11 DRC applications on a proposed address located on City of Mesa incorporated property.
12 Thus, all applicants in Mesa Central could only have applied on property under Maricopa
13 County jurisdictional authority.

14 71. The only properties under Maricopa County jurisdiction in Mesa Central can
15 be found between Power Rd. and Higley to the east and west, and between Brown Rd. and
16 Main St. to the north and south. (EXHIBIT E).

17 72. Mr. Turner next corresponded with the Deputy Director of Maricopa County
18 Planning & Development, Darren Gerard. Mr. Gerard did not know the location of
19 applicant #0948's address, but supplied Mr. Turner with a list of all addresses where
20 "Documentation of Compliance with Local Jurisdiction Zoning" letters were issued in
21 Maricopa County. (EXHIBIT F).

22 73. From this list, there are 7 properties in Mesa Central where "Documentation
23 of Compliance with Local Jurisdiction Zoning" letters were issued by Maricopa County.
24 They are: 5205 E. University Rd., 5202 E. University Rd., 55 N. Sunaire Rd., 6720 E.
25 Avalon St., 6760 E. Avalon St., 222 N. Power Rd., and 98 N. Power Rd.

26

1 74. All Mesa Central addresses listed above where “Documentation of
2 Compliance with Local Jurisdiction Zoning” letters were issued by Maricopa County can
3 be seen in EXHIBIT G.

4 75. The issuance of this letter by Maricopa County does not necessarily mean
5 that the recipient of such a letter decided to use the address for their 2016 DRC application.

6 76. The data only shows that a maximum of 7 addresses could have been used
7 for a 2016 DRC application in Mesa Central, CHAA #70. One of the addresses listed
8 above must have been the one used by applicant #0948, the recipient of the DRC in CHAA
9 #70.

10 77. In a letter dated November 7, 2016, Plaintiff requested that it be provided
11 with the location of the winning applicant’s proposed dispensary location. (EXHIBIT N).
12 Plaintiff stated that if ADHS did not provide us with applicant #0948’s proposed location,
13 Premium Leaf would assume that the DRC was not properly awarded.

14 78. There is no law protecting the disclosure of the location of the winning
15 applicant.

16 79. ADHS did not respond to Plaintiff’s November 7, 2016 letter.

17 80. As is clearly visible in EXHIBIT G, 5205 E. University Dr. and 5202 E.
18 University Dr. are closely clustered to the west and 222 N. Power Rd, 98 N. Power Rd,
19 6720 E Avalon St, 6760 E Avalon St, and 55 Sunaire Rd. are clustered to the east.

20 81. Because Premium Leaf was not included in any lottery, applicant #0948
21 could not have applied on any of the five addresses clustered to the east. If applicant
22 #0948 had used one of these addresses in the east – 222 N. Power Rd., 6720 E. Avalon
23 St., 6760 E. Avalon St., or 55 N. Sunaire – then the allocation would have been determined
24 by random selection due to the close proximity of those locations to each other and the
25 Premium Leaf proposed address at 98 N. Power Rd.
26

1 82. Therefore, 5205 E. University Dr. and 5202 E. University Dr. are the only
2 two potential addresses that could have been awarded a Mesa Central DRC in the 2016
3 ADHS allocation process. However, because ADHS did not award the CHAA #70 DRC
4 by lottery, ADHS could only have received a single application within the western cluster
5 of proposed properties in EXHIBIT G – either 5205 E. University Dr. or 5202 E.
6 University Dr.

7 83. 5205 E University Dr. is the site of an existing and operational medical
8 marijuana dispensary called “Sunflower Meds”. (EXHIBIT H).

9 84. Upon information and belief, applicant #0948 either applied on the address
10 of an existing dispensary or an address directly across the street from an existing
11 dispensary.

12 85. Neither is permissible according to the June 2016 Maricopa County Zoning
13 Ordinance.

14 86. According to Maricopa County Zoning Ordinance Article 804.2 45(a),
15 “Medical Marijuana Dispensaries shall not be located within 1,500 feet of any other
16 Medical Marijuana Dispensary.” (EXHIBIT I).

17 87. As noted in EXHIBIT J, 5205 E. University Dr. and 5202 E University Dr.
18 are separated by approximately 130 feet. Thus, regardless of which was the proposed
19 address for applicant #0948, neither could possibly meet the standard set by A.A.C. R9-
20 17-304 (C)(6) and the zoning ordinance.

21 88. During the application process, Premium Leaf contracted with The Planning
22 Group to conduct a suitability study of the proposed address at 98 N. Power Rd.

23 89. As noted in EXHIBIT M, Premium Leaf’s proposed address is the only
24 location in the CHAA #70 to meet all separation requirements in the Maricopa County
25 Ordinance.

26

1 90. According to the Deputy Director of Maricopa County Planning &
2 Development, any “Documentation of Compliance with Local Jurisdiction Zoning ” letter
3 issued by their office would clearly have noted that the address did not meet the separation
4 requirement described in Article 804.2 45(a).

5 91. ADHS was well aware of the issues of the proposed address of #0948
6 described herein. Those issues can be summarized and categorized as follows:

7 92. **(A) If applicant #0948 indeed used 5205 E. University Dr. or 5202 E.**
8 **University Dr. as their proposed address, they are in violation of A.A.C. R9-17-304**
9 **(C)(6), Maricopa County Zoning Ordinance Article 804.2 45(a), and the DRC**
10 **awarded to #0948 should be revoked and re-allocated.**

11 93. Maricopa County Zoning Ordinance Article 804.2 45(a), enforced through
12 the requirements stated in A.A.C. R9-17-304 (C)(6), require that an applicant’s proposed
13 address cannot be within 1500 feet of a dispensary.

14 94. As noted herein, 5205 E University Dr. is the site of an existing and
15 operational medical marijuana dispensary called “Sunflower Meds”. (EXHIBIT H). It is
16 within 1500 feet of itself and of 5202 E. University Dr. Thus, both addresses are not in
17 compliance with the zoning ordinance and could not be used on the application. Therefore,
18 it must have been denied and it must be reallocated.

19 95. **(B) Applicant #0948 could never have intended to operate on an address**
20 **that could never be granted approval to operate per the above item. Thus, applicant**
21 **#0948 knowingly and intentionally mislead ADHS and their DRC should be revoked**
22 **and re-allocated pursuant to A.A.C. R9-17-322(B)**

23 96. Maricopa County will not grant a variance to allow a dispensary to operate a
24 second dispensary on its own address or on an address merely 130 feet from an existing
25 dispensary.

1 97. In fact, none of the 5 existing dispensaries currently operating on Maricopa
2 County property has received a variance of any kind.

3 98. It is therefore the position of Premium Leaf that applicant #0948 should have
4 been rejected during the substantive review phase for blatantly and knowingly misleading
5 ADHS in violation of A.A.C. R9-17-322(B).

6 99. #0948 should have informed ADHS that they were proposing an address at
7 the location of an existing dispensary or across the street from it.

8 100. **(C) Applicant #0948 may be in violation of A.A.C. R9-17-304 (A)(1). If
9 so, this DRC must be revoked and re-allocated.**

10 101. Premium Leaf further seeks clarification as to whether applicant #0948 was
11 in compliance with A.A.C. R9-17-304 (A)(1), which prohibits applicants, principal
12 officers, or board members from applying for more than one DRC per CHAA.

13 102. If the board members or principal officers of Sunflower Meds submitted an
14 application in CHAA #70 and as part of applicant #0948, the application should be deemed
15 substantively incomplete and the DRC award vacated and re-allocated.

16 103. **(D) Premium Leaf's proposed address is the only property in CHAA #70
17 that is compliant with A.A.C. R9-17-304 (C)(6).**

18 104. According to the City of Mesa zoning administrator, Gordon Sheffield, there
19 are no City of Mesa incorporated properties within the Mesa Central CHAA that meet the
20 separation requirements of the Mesa ordinance for dispensaries.

21 105. The dearth of acceptable medical marijuana dispensary sites on City of Mesa
22 incorporated property within CHAA #70 is on the zoning map available on the City of
23 Mesa web-site. (EXHIBIT K).

24 106. To be granted approval to operate, a recipient of a DRC would have to select
25 a Maricopa County island property.

1 107. Based on the suitability assessment in EXHIBIT M, such an address would
2 need to be the very same address where Premium Leaf applied.

3 108. No other properly zoned addresses that comply with the Maricopa County
4 ordinance exist in CHAA #70. Thus, all of the other applications must have been rejected
5 and Premium Leaf's application must have been granted.

6 109. To operate within Mesa Central, applicant #0948 would have to relocate their
7 proposed address elsewhere within CHAA #70 and very likely to the exact address used
8 by Premium Leaf as its proposed address.

9 110. By allocating DRCs to the applicant #0948 in CHAA #70 without first
10 ensuring that the applicant had identified a location in compliance with State law and local
11 zoning restrictions, ADHS failed to implement and frustrated the purpose of the AMMA
12 and the A.A.C. in derogation of its duties.

13 **CLAIMS FOR RELIEF**

14 **COUNT I: PERMANENT INJUNCTION**

15 111. Plaintiff reasserts the foregoing paragraphs as though fully alleged herein.

16 112. Plaintiff has been irreparably harmed by the Defendants' actions in awarding
17 the DRC to another entity that did not comply with the AMMA, zoning ordinances, and
18 A.A.C. Plaintiff was not awarded a DRC when it was the only qualifying entity. Even if
19 others are found to qualify, the awarded applicant did not qualify, so the DRC must be
20 reallocated.

21 113. Plaintiff has no adequate monetary remedy.

22 114. An injunction would not be adverse to the public interest.

23 115. Based on the claims contained herein, the Court should issue a permanent
24 injunction that revokes the DRC awarded to applicant #0948 in the October 7, 2016
25 allocation in and for CHAA #70 and reallocates it to Plaintiff.
26

1 116. The relief requested is necessary because Plaintiff is likely to endure
2 irreparable harm and have no other adequate remedy at law if and once ADHS approves
3 the non-compliant DRC applicants to operate.

4 117. The balance of the hardships tips in favor of granting the requested relief
5 because defendants' allocation of DRCs to prospective dispensaries who did not comply
6 with the AMMA and other corresponding regulations, over Plaintiff (who did comply with
7 AMMA and other corresponding regulations) has jeopardized Plaintiff's ability to operate
8 and frustrated the purpose of the AMMA and other corresponding regulations.

9 118. Plaintiff has made substantial investments of capital and time in reliance on
10 Defendants' duty to fairly and consistently apply the AMMA and the A.A.C. to ensure
11 that only lawful and compliant applications are awarded a DRC.

12 119. If Defendants are not enjoined, Plaintiff will suffer irreparable injury by not
13 being allowed the opportunity to practice and pursue a lawful occupation.

14 **COUNT II: DECLARATORY RELIEF**

15 120. Plaintiff reasserts the foregoing paragraphs as though fully alleged herein.

16 121. A justiciable controversy, ripe for declaratory relief exists.

17 122. This declaratory claim is brought pursuant to A.R.S. § 12-1831 et seq.

18 123. There currently exists a controversy wherein ADHS claims to have
19 administered the AMMA according to its terms and pursuant to the A.A.C. Plaintiff claims
20 the opposite as outlined herein.

21 124. Plaintiff requests that the Court declare ADHS exceeded its authority under
22 the AMMA and frustrated the purpose of the statute by allocating a DRC to a prospective
23 nonprofit medical marijuana dispensary at a location that is not suitable as a medical
24 marijuana dispensary because it violates the AMMA, A.A.C., local zoning ordinances, or
25 any other applicable authority.
26



1 125. Based on the above allegations, a judicial determination is necessary to
2 determine whether the DRC awarded to applicant #0948 was appropriately awarded or
3 whether it should be reallocated to Plaintiff or through a lottery.

4 **PRAYER FOR RELIEF**

5 WHEREFORE, plaintiff prays that this Court accept jurisdiction of this Complaint
6 and for relief as follows:

7 A. That this Court to issue permanent injunctive relief ordering ADHS to revoke
8 its issuance of a DRC to applicant #0948 in CHAA#70 and reallocating it to Plaintiff.

9 B. For declaratory judgment as outlined herein.

10 C. For the Court to adopt an expedited briefing schedule based on the
11 importance and time-sensitive nature of these claims;

12 D. For a temporary restraining order and other injunctive relief as may be
13 necessary or appropriate to enjoin defendants from issuing approvals to operate a medical
14 marijuana dispensary to applicant #0948 awarded a DRC on or around October 2016 for
15 CHAA #70;

16 E. For a refund of their application fees submitted to ADHS and consequential
17 damages in the event the Court finds in favor of plaintiff on the substantive claims, but
18 declines to order a reallocation of DRC;

19 F. For an award of taxable costs under A.R.S. § 12-341 and any other applicable
20 authority.

21 G. For an award of attorney's fees pursuant to the public attorneys general
22 doctrine, A.R.S. § 12-341.01, A.R.S. § 12-349(A) or any other applicable authority
23 authorizing an award of attorney's fees.

24 H. For interest thereon at 10% per annum (or the highest statutory rate allowed
25 by law) from the date of entry of judgment until paid.

26 I. For trial of this matter to a jury.

1 **RESPECTFULLY SUBMITTED** this 27 day of January, 2017.

2 **WILENCHIK & BARTNESS, P.C.**

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