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11 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**
12 **IN AND FOR THE COUNTY OF MARICOPA**

13 SERENITY ARIZONA, INC., an Arizona
14 nonprofit corporation; and MEDZONA
15 GROUP, INC., an Arizona nonprofit
16 corporation; JANE CHRISTENSEN, a
17 married woman;

18 Plaintiffs,

19 v.

20 THE ARIZONA DEPARTMENT OF
21 HEALTH SERVICES, an agency of the
22 State of Arizona; WILL HUMBLE,
23 Director of the Arizona Department of
24 Health Services, in his Official Capacity.

25 Defendants.

No.

26 **COMPLAINT FOR SPECIAL ACTION
AND APPLICATION FOR ORDER TO
SHOW CAUSE**

For their Complaint and Application for Order to Show Cause pursuant to Rule 4 of the Rules of Procedure for Special Actions, Plaintiffs Serenity Arizona, Inc. ("Serenity") and Medzona Group, Inc. ("Medzona"), and Jane Christensen ("Christensen") ("collectively "Plaintiffs"), hereby allege as follows:

1 **PARTIES AND JURISDICTION**

2 1. Serenity is, and at all times relevant hereto was, an Arizona nonprofit
3 corporation authorized to transact and do business in the State of Arizona. Serenity is an
4 aspiring nonprofit medical marijuana dispensary.

5 2. Medzona is, and at all times relevant hereto was, an Arizona nonprofit
6 corporation authorized to transact and do business in the State of Arizona. Medzona is an
7 aspiring nonprofit medical marijuana dispensary.

8 3. Christensen is, and at all times relevant hereto was, a married woman
9 residing in Maricopa County, Arizona and an Arizona citizen within the meaning of
10 A.R.S. § 36-2818.

11 4. Defendant Arizona Department of Health Services (the “Department”) is,
12 and at all times relevant hereto was, an agency of the State of Arizona, established by
13 A.R.S. § 36-102(A) with its principal place of business in Maricopa County, Arizona.

14 5. Defendant Will Humble is the Director (the “Director”) of the Arizona
15 Department of Health Services with his principal place of business in Maricopa County,
16 Arizona.

17 6. As Director of the Department, the Director is responsible for the direction,
18 operation and control of the Department.

19 7. The Department and the Director may collectively be referred to as “the
20 Defendants.”

21 8. In accordance with the allegations set forth below, the Department is
22 improperly refusing to perform their obligations and non-discretionary duties under the
23 terms of the Arizona Medical Marijuana Act (the “AMMA”).

24 9. Defendants have caused events to occur out of which the subject of this
25 Complaint arose. In particular, Defendants have:
26

1 a. Failed to properly exercise their discretion under the AMMA and the
2 corresponding rules, which are set forth in the Arizona Administrative
3 Code;

4 b. Failed to perform a duty required by law as to which they have no
5 discretion;

6 c. Proceeded in such a way that they are either without the legal
7 authority to do so or in excess of their legal authority to do so;

8 d. Made determinations that were arbitrary and capricious; and

9 e. Abused their discretion under the law.
10

11 10. Plaintiffs bring this special action to obtain relief against Defendants in the
12 form of an order compelling Defendants to comply with and perform their duties under
13 the AMMA and the Arizona Administrative Code that govern the Department with regard
14 to medical marijuana.

15 11. Under A.R.S. § 36-2818, any citizen may commence a mandamus action in
16 Superior Court to compel the Department to perform the actions mandated by the
17 AMMA.

18 12. Plaintiffs do not have an equally plain, speedy and adequate remedy by any
19 appellate procedure and will suffer irreparable injury and damage unless the requested
20 relief is granted by means of this special action.

21 13. Venue and jurisdiction are proper in this Court in accordance with Rule 4
22 of Arizona's Rules of Procedure for Special Actions and A.R.S. § 36-2818.

23 **ARIZONA MEDICAL MARIJUANA ACT**

24 14. On November 2, 2010, Arizona voters were asked to consider whether the
25 State should decriminalize medical marijuana. In Proposition 203, the AMMA
26 envisioned decriminalizing medical marijuana for use by people with certain chronic and

1 debilitating medical conditions. Qualifying patients would be able to obtain up to two
2 and a half ounces of marijuana every two weeks from nonprofit medical marijuana
3 dispensaries or to cultivate their own plants under certain conditions.

4 15. Arizona voters passed the AMMA in November 2010; the Governor signed
5 it into law on December 14, 2010.

6 16. The AMMA requires the Department to be responsible for implementing
7 and overseeing the AMMA.

8 17. Specifically, the AMMA provides for the registration and certification by
9 the Department of “nonprofit medical marijuana dispensaries,” “nonprofit medical
10 marijuana dispensary agents,” “qualifying patients,” and “designated caregivers.”
11

12 18. Under the AMMA, the Department is mandated to adopt rules governing
13 the registration and certification process within 120 days after the effective date of the
14 AMMA.

15 19. Specifically, under A.R.S. § 36-280(B), within 120 days after the AMMA’s
16 effective date, the Department was required to adopt rules:

17 Governing nonprofit medical marijuana dispensaries, for the purpose of
18 protecting against diversion and theft without imposing an undue burden on
19 nonprofit medical marijuana dispensaries or compromising the
20 confidentiality of cardholders, including:
21

22 (a) The manner in which the Department shall consider
23 applications for and renewals of registration certificates;

24 (b) Minimum oversight requirements for nonprofit medical
25 marijuana dispensaries;
26

1 (c) Minimum recordkeeping requirements for nonprofit medical
2 marijuana dispensaries;

3 (d) Minimum security requirements for nonprofit medical
4 marijuana dispensaries, including requirements for protection of
5 each registered nonprofit medical marijuana dispensary location by a
6 fully operational security alarm system.
7

8 20. Thus, under the AMMA, the Department is obligated to receive, consider
9 and process the applications for nonprofit medical marijuana dispensaries.
10

11 21. As required by the Act, the Department promulgated final rules (the
12 "Rules") that were filed with the Secretary of State on April 13, 2011. The Rules are set
13 forth in the Arizona Administrative Code.

14 22. Under AAC R9-17-304(D)(1) of the Rules, an applicant must submit to the
15 Department an application that includes certain information specified at AAC R9-17-
16 304(D).

17 23. Under the AMMA, the Department is required to register nonprofit medical
18 marijuana dispensaries and to issue registration certificates within 90 days after receiving
19 an application.

20 24. Under the AMMA, the Department is required to register nonprofit medical
21 marijuana dispensary agents and to issue registry identification cards to qualifying
22 patients and designated caregivers within certain time frames after receipt of information
23 and documents from the applying agents, patients and caregivers.

24 25. Nonprofit medical marijuana dispensaries and nonprofit medical marijuana
25 dispensary agents must be registered by the Department before they can lawfully operate
26 under the AMMA. Accordingly, under the Rules, the Department was required to

1 receive, consider and process applications for nonprofit medical marijuana dispensaries
2 and nonprofit medical marijuana dispensary agents on June 1, 2011.

3 26. Under the Rules, beginning August, 2011, the Department must begin
4 issuing registration certificates for nonprofit medical marijuana dispensaries and registry
5 identification cards for nonprofit medical marijuana dispensary agents.

6 **DEFENDANTS FAILED TO COMPLY WITH THE ACT**
7 **AND THE RULES**

8 27. On June 13, 2011, Serenity, in accordance with the AMMA and the Rules
9 attempted to submit an application for a nonprofit medical marijuana dispensary
10 registration certificate to the Department.

11 28. On June 14, 2011, Medzona, in accordance with the AMMA and the Rules
12 attempted to submit an application for a nonprofit medical marijuana dispensary
13 registration certificate to the Department.

14 29. The Serenity application and the Medzona application may be referred to
15 collectively as the Applications.

16 30. In violation of the AMMA and the Rules, the Department refused to
17 receive, consider, and process the Applications and rejected and failed to process them.

18 31. The Director provided a letter to Serenity and Medzona stating that it is not
19 accepting applications for "nonprofit medical marijuana dispensary registration
20 certificates." A true and correct copy of those letters are attached as **Exhibit A** and
21 incorporated herein by reference.

22 32. In that letter, the Director stated that:

23 Arizona Administrative Code R9-17-304(D)(1) requires an applicant for a
24 nonprofit medical marijuana dispensary registration certificate to submit an
25 application to the Department in a Department-provided format.
26

1 Consistent with the requirement in the rule, the Department will only accept
2 applications that are submitted in a Department-provided format. Because
3 of the Governor's request for a declaratory judgment from a federal court
4 regarding the legality of the AMMA, the Department has not provided a
5 format for the nonprofit medical marijuana dispensary registration
6 certificate application.
7

8 **DEFENDANTS HAVE FAILED TO COMPLY WITH THE AMMA**
9

10 33. Under A.R.S. §§ 36-2803 and 2804, the Department had the
11 nondiscretionary duty to receive and consider applications for registration certificates.

12 34. By not receiving and accepting the Applications, and failing to consider the
13 Applications, the Department is in direct violation of its duties under A.R.S. §§ 36-2803
14 and 2804.

15 35. Under A.R.S. § 36-2803, the Department had the non-discretionary duty to
16 establish the form of registration certificate application for the AMMA and to set forth
17 the "manner" in which the Department shall consider applications.

18 36. By not receiving or accepting the Applications, and by failing to consider
19 and process the Applications, because the Department "has not provided a format for the
20 nonprofit medical marijuana dispensary registration certificate application," the
21 Department is in direct violation of its non-discretionary duties set forth in A.R.S. §§ 36-
22 2803 and 2804.
23

24 37. Under A.R.S. § 32-2803 the Department is to govern nonprofit medical
25 marijuana dispensaries, but not impose "an undue burden on nonprofit medical marijuana
26 dispensaries."

1 38. By failing to provide a format for a nonprofit medical marijuana dispensary
2 registration certificate application, the Department is in breach of its non-discretionary
3 duty of “not imposing an undue burden on nonprofit medical marijuana dispensaries,”
4 which is set forth in A.R.S. § 32-2803.

5 39. Defendants’ actions constitute: (1) a failure to properly exercise discretion;
6 (2) a failure to perform duties required under the AMMA; (3) actions without legal
7 authority or in excess of their legal authority; (4) determinations that were arbitrary and
8 capricious; and (5) an abuse of discretion.

9
10 **DEFENDANTS HAVE FAILED TO COMPLY WITH THE RULES**

11 40. Under the AMMA, Defendants are required by law to consider and process
12 applications from aspiring nonprofit medical marijuana dispensaries, to process those
13 applications and issue nonprofit medical marijuana dispensary registration certificates in
14 accordance with the Rules.

15 41. Under AAC R9-17-304(D)(1) of the Rules, the Department had the non-
16 discretionary duty to format an application for nonprofit medical marijuana dispensary
17 registration certificates.

18 42. The Department is in direct violation of AAC R9-17-304(D)(1) by not
19 formatting the nonprofit medical marijuana dispensary registration certificate application.

20 43. Under the Rules, the Department “shall accept dispensary registration
21 certificate applications for thirty calendar days beginning June 1, 2011.” AAC R9-17-
22 303(D).

23 44. Serenity and Medzona attempted to submit the Applications to the
24 Department on or after June 1, 2011, but the Department refused to receive, consider, and
25 process the Applications.
26

1 45. The Department is in direct violation of AAC R9-17-303(D) by not
2 accepting the Applications.

3 46. Under AAC R9-17-107(A) of the Rules:

4 Within the administrative completeness review time-frame for each type of
5 approval in Table 1.1 [of AAC R9-17-107(A)], the Department shall:

- 6 1. Issue a registry identification card or dispensary registration certificate;
- 7 2. Provide a notice of administrative completeness to an applicant; or
- 8 3. Provide a notice of deficiencies to an applicant, including a list of the
9 information or documents needed to complete the application.
10

11 47. Therefore, under AAC R9-17-107(A) of the Rules, upon receipt of an
12 application, the Department must consider and process the application and either: (1)
13 issue a dispensary registration certificate; (2) provide a notice of administrative
14 completeness to Applicant; or (3) provide a notice of deficiency to an Applicant.
15

16 48. Serenity and Medzona provided the Applications to the Department, but the
17 Department refused to receive, consider, and process the Applications, and otherwise
18 refused to comply with its obligations under AAC R9-17-303(D) and AAC R9-17-
19 107(A) to either issue a dispensary registration certificate; or provide a notice of
20 administrative completeness; or provide a notice of deficiency.
21

22 49. By not receiving, considering, or processing the Applications, the
23 Defendants have: (1) failed to properly exercise their discretion under the AMMA and
24 the Rules; (2) failed to perform their duties required under the AMMA and the Rules to
25 which they have no discretion; (3) proceeded without legal authority and in excess of
26 their legal authority under the AMMA and the Rules; (4) acted in an arbitrary and

1 capricious manner with regard to their obligations and duties under the AMMA and the
2 Rules; and (5) abused their discretion with regard to their obligations and duties under the
3 AMMA and the Rules.

4 50. Plaintiffs do not have an equally plain, speedy and adequate remedy by any
5 appellate procedure and will suffer irreparable injury and damage unless the requested
6 relief is granted by means of this special action.

7 THEREFORE, Plaintiffs request the following relief:

8 A. An order compelling the Department to provide an application format for
9 nonprofit medical marijuana dispensary registration certifications applications;

10 B. An order compelling the Department to receive, consider, and process the
11 Applications in accordance with the AMMA and the Rules;

12 C. An order compelling the Department to receive, consider, and process all
13 other applications submitted in accordance with the AMMA and the Rules;

14 D. An order compelling the Department to implement and perform all its
15 obligations and duties under the AMMA and the Rules;

16 E. An Order awarding to Plaintiffs their reasonable attorneys' fees and costs
17 incurred pursuant to R.4(g) of the Rules for Special Actions and other Governing Laws;

18 F. Judgment for such other relief as the Court deems just and proper;

19 G. An order issued pursuant to Rule 4 of the Rules for Special Actions
20 directing the Defendants to appear before this court and show cause, if any, why the relief
21 requested should not be granted.
22
23
24
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26

1 Respectfully submitted this 14th day of June, 2011.
2

3 **ROSE LAW GROUP PC**

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10 *Attorneys for Plaintiffs*
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EXHIBIT A



Office of the Director

150 N. 18th Avenue, Suite 500
Phoenix, Arizona 85007-3247
(602) 542-1025
(602) 542-1062 FAX
Internet: www.azdhs.gov

JANICE K. BREWER, GOVERNOR
WILL HUMBLE, DIRECTOR

Date: 6/13/11

Time: 9:11 am

Dear Serenity AZ, Pmc:

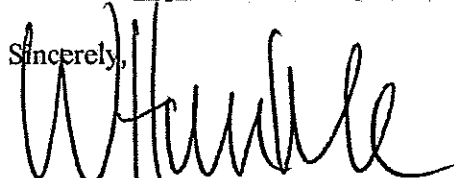
Thank you for your interest in applying for a nonprofit medical marijuana dispensary registration certificate.

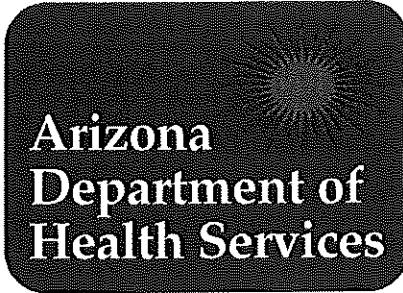
Based on the Governor's request for a declaratory judgment from a federal court regarding the legality of the Arizona Medical Marijuana Act (Act), the Arizona Department of Health Services (Department) is not accepting applications for nonprofit medical marijuana dispensary registration certificates at this time.

As required by the Act in § 36-2803(A), the Department promulgated rules for the Medical Marijuana Program within 120 days after the effective date of the Act. The rules were submitted to the Office of the Secretary of State and took effect on April 14, 2011.

Arizona Administrative Code R9-17-304(D)(1) requires an applicant for a nonprofit medical marijuana dispensary registration certificate to submit an application to the Department in a Department-provided format. Consistent with the requirement in the rule, the Department will only accept applications that are submitted in a Department-provided format. Because of the Governor's request for a declaratory judgment from a federal court regarding the legality of the Act, the Department has not provided a format for the nonprofit medical marijuana dispensary registration certificate application.

For updated information about nonprofit medical marijuana dispensary registration certificate applications, please refer to the Department's Medical Marijuana Program website at <http://www.azdhs.gov/medicalmarijuana>.

Sincerely,

Will Humble
Director



Office of the Director

150 N. 18th Avenue, Suite 500
Phoenix, Arizona 85007-3247
(602) 542-1025
(602) 542-1062 FAX
Internet: www.azdhs.gov

JANICE K. BREWER, GOVERNOR
WILL HUMBLE, DIRECTOR

Date: 6/14/2011

Time: 8:30 A

Dear Medzonia, Inc.:

Thank you for your interest in applying for a nonprofit medical marijuana dispensary registration certificate.

Based on the Governor's request for a declaratory judgment from a federal court regarding the legality of the Arizona Medical Marijuana Act (Act), the Arizona Department of Health Services (Department) is not accepting applications for nonprofit medical marijuana dispensary registration certificates at this time.

As required by the Act in § 36-2803(A), the Department promulgated rules for the Medical Marijuana Program within 120 days after the effective date of the Act. The rules were submitted to the Office of the Secretary of State and took effect on April 14, 2011.

Arizona Administrative Code R9-17-304(D)(1) requires an applicant for a nonprofit medical marijuana dispensary registration certificate to submit an application to the Department in a Department-provided format. Consistent with the requirement in the rule, the Department will only accept applications that are submitted in a Department-provided format. Because of the Governor's request for a declaratory judgment from a federal court regarding the legality of the Act, the Department has not provided a format for the nonprofit medical marijuana dispensary registration certificate application.

For updated information about nonprofit medical marijuana dispensary registration certificate applications, please refer to the Department's Medical Marijuana Program website at <http://www.azdhs.gov/medicalmarijuana>.

Sincerely,

A handwritten signature in black ink, appearing to read "Will Humble".

Will Humble
Director