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18 * *Pro Hac Vice Applications Submitted to the Arizona State Bar*
19 *Attorneys for Plaintiffs Zander, Jacob and Jennifer Welton*

20 **ARIZONA SUPERIOR COURT**
21 **MARICOPA COUNTY**

22 ZANDER WELTON, as represented by)
23 JACOB WELTON and JENNIFER) NO. CV 2013-014852
24 WELTON,)
25 Plaintiffs,) **PLAINTIFFS' MOTION FOR**
26 v.) **PRELIMINARY INJUNCTION**
27)
28 STATE OF ARIZONA, a governmental) **The Hon. Katherine Cooper**
entity; JANICE BREWER, Governor of the)
State of Arizona in her official capacity,) **(Oral Argument Requested)**
ARIZONA DEPARTMENT OF HEALTH)
SERVICES, an Arizona administrative)
agency; WILLIAM HUMBLE, Director of)
Arizona Department of Health Services in)
his official capacity; and WILLIAM)
MONTGOMERY, Maricopa County)
Attorney in his official capacity,)
Defendants.)
_____)

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PRELIMINARY STATEMENT

Pursuant to A.R.S. §12-1801, *et seq.*, Plaintiffs Jacob and Jennifer Welton, by their undersigned attorneys, hereby apply for a Preliminary Injunction so that they can resume treating their five-year old son Zander with a medical marijuana extract that was effective in controlling his severe seizure disorder without having to fear that they may be criminally prosecuted. Plaintiffs seek a Preliminary Injunction to prevent Defendants and their employees from taking any adverse action against Plaintiffs based on Defendants’ stated position that the Arizona Medical Marijuana Act’s (“AMMA’s”) decriminalization of marijuana for medicinal purposes does not include products, such as extracts, adapted from marijuana. The voters of Arizona clearly did not intend to allow seriously ill patients or their caregivers to be criminally prosecuted based on their use of the form of medical marijuana that is most beneficial to them. This application is supported by Plaintiffs’ complaint, attached exhibits, and the following Memorandum of Points and Authorities, and sworn declarations attached thereto.

MEMORANDUM OF POINTS AND AUTHORITIES

The voters of Arizona passed the AMMA to “protect patients with debilitating medical conditions . . . from arrest and prosecution, criminal and other penalties . . . if such patients engage in the medical use of marijuana.” Prop. 203 § 2(G). Patients covered by the act include those suffering from, e.g., cancer, glaucoma, seizures, and multiple sclerosis. A.R.S. § 36-2801(3). Only by ignoring the plain language and clear intent of this law can Defendants maintain that patients may only use un-manipulated plant material for their medicine and that they remain subject to criminal prosecution under an older law if they use medicinal extracts prepared from the same plant.

Plaintiffs Jacob and Jennifer Welton filed this case because, soon after they found an effective medicine for their five-year old son Zander’s severe seizure disorder, they learned that certain state and county officials have asserted that Plaintiffs are at risk of criminal prosecution for providing their son with this effective medicine. *See* Complaint

1 Exhibits A-D. Fearing the consequences of criminal prosecution on their family,
2 including the potentially devastating impact on their three young sons, Jacob and
3 Jennifer decided that until this legal uncertainty is resolved, they would stop giving
4 Zander the medicine that had helped him dramatically. Depriving Zander of this
5 medicine endangers the progress and improvement he experienced very soon after
6 beginning to take this medicine, and thwarts Zander's potential to live as full a life as
7 possible despite his significant developmental limitations. Accordingly, Jacob and
8 Jennifer seek preliminary injunctive relief so that they can, without fear of criminal
9 prosecution, provide Zander with the medical treatment that is in his best interests as
10 soon as possible.

11 **FACTUAL BASIS FOR CLAIM**

12 *1. Zander's Medical Condition And Treatment History*

13 Jacob and Jennifer Welton live in Maricopa County with their three sons: five-
14 year old Zander, seven-year old Marcus, and two-year old Graham. Jennifer Welton
15 Declaration ("Welton Declaration") ¶ 3, attached hereto as Exhibit 1. Since Zander was
16 nine months old, he has suffered from numerous periods of extremely active seizures.
17 *Id.* at ¶ 4-5. During these periods, Zander has multiple seizures every night. *Id.* ¶ 5.
18 Zander has been diagnosed with focal cortical dysplasia type 2A, which is a congenital
19 condition that prevents cells from migrating to the proper area in utero. *Id.* at ¶ 6.
20 Because his brain did not develop the correct pathways, he has epilepsy, global
21 developmental delays, and autism. *Id.* Zander has been treated by doctors from a
22 number of different specialties including: neurology, neurosurgery, genetics,
23 developmental psychology, occupational therapy, physical therapy, and speech therapy.
24 *Id.* at ¶ 7.

25 Under the supervision of his doctors and parents, Zander has taken many different
26 pharmaceutical medications to address his seizures and developmental limitations. *Id.* at
27 ¶ 8. The majority of these medications had little or no positive effect for Zander, while
28

1 other medications have brought only limited relief. *Id.* Zander has suffered debilitating
2 side effects from some of these pharmaceutical medications. *Id.* at ¶ 9.

3 Because of the limited relief pharmaceutical medications have provided to
4 Zander, his doctors recommended brain surgery at the end of 2011. *Id.* at ¶ 11. During
5 this surgery, doctors removed Zander's hippocampus and a small portion of his left
6 temporal lobe. *Id.* Soon after this surgery, Zander's seizures began again. *Id.* at ¶ 12.

7 Zander's second brain surgery occurred in two stages in May 2012. *Id.* at ¶ 13.
8 Surgeons removed Zander's remaining left temporal lobe, a portion of his left parietal
9 love, and a portion of his left frontal lobe. *Id.* at ¶ 14. Several months after this surgery,
10 Zander's seizures returned. *Id.* at ¶ 16. With his seizures still uncontrolled, Zander had
11 surgery to implant a vagus nerve stimulator device in his chest on February 7, 2013. *Id.*
12 at ¶ 17. The device did not reduce the incidence of Zander's seizures. *Id.*

13 In July 2013, Zander's neurologist told Jacob and Jennifer that the only remaining
14 option was a third brain surgery. *Id.* at ¶ 18. During this surgery, doctors would remove
15 the entire remaining left hemisphere of Zander's brain. *Id.* Zander's neurologist told his
16 parents that this surgery could leave him partially or fully paralyzed, comatose, or in a
17 vegetative state. *Id.*

18 In early August 2013, Jacob and Jennifer learned about Charlotte Figi, another
19 child suffering from intractable epilepsy, from Sanjay Gupta's CNN documentary,
20 "Weed." *Id.* at ¶ 19. According to the documentary, Charlotte has Dravet Syndrome, a
21 rare and severe form of intractable epilepsy that caused her to have 300 grand mal
22 seizures per week. *Id.* Charlotte's parents tried all the traditional forms of treatment her
23 doctors recommended but nothing worked. *Id.* After doctors told Charlotte's parents
24 that there was nothing more to be done, they decided to try medical marijuana. *Id.*
25 Charlotte's parents had heard about a boy in California who suffered from Dravet and
26 was being successfully treated with medical marijuana. *Id.* Charlotte experienced
27 stunning improvement after her parents obtained a medical marijuana card in Colorado
28 for Charlotte and started treating her with a strain of marijuana that is low in the

1 cannabinoid tetrahydrocannabinol (THC) and high in the cannabinoid cannabidiol
2 (CBD). *Id.* Approximately one year later, Charlotte only has seizures two to three times
3 per month and almost only in her sleep. *Id.*

4 After learning about Charlotte’s story and faced with the possibility of a third
5 brain surgery for Zander, Jacob and Jennifer decided to try giving Zander medical
6 marijuana. *Id.* at ¶ 20. They discussed the possibility of giving Zander medical
7 marijuana with his neurologist, who told them that there was nothing else left for Zander
8 to try if they did not want him to undergo the proposed third brain surgery. *Id.* at ¶ 21.

9 Jacob and Jennifer applied for Zander’s medical marijuana card in mid-August
10 2013. *Id.* at ¶ 23. In late August, the Arizona Department of Health Services (“ADHS”)
11 approved the application and provided Zander with a patient identification card and
12 Jacob with a caregiver identification card. *Id.*

13 After consulting with medical marijuana experts, Jacob and Jennifer determined
14 that marijuana very high in CBD and very low in THC would be ideal for Zander’s
15 treatment, but when they were ready to starting treating Zander with medical marijuana,
16 they were unable to find a sustainable supply of this kind of marijuana. *Id.* at ¶ 24-25.

17 2. *CBD Oil and its Efficacy*

18 In the last two decades, medical research has identified an endocannabinoid
19 system in most living organisms, including humans, that marijuana stimulates. William
20 Troutt Declaration (“Troutt Declaration”) ¶ 16, attached hereto as Exhibit 2. This
21 research has shown that stimulating the endocannabinoid system has a fundamental role
22 in balancing the human nervous and immune systems. *Id.* This provides an explanation
23 of how marijuana can subdue a hyperactive nervous system that is associated with many
24 seizure disorders. *Id.* Indeed, published medical studies dating back to the 1950s
25 demonstrate that cannabinoids have anti-seizure effects. *Id.* at ¶ 14. The majority of
26 marijuana studies that show benefits for patients with seizure disorders focus on the
27 cannabinoid CBD. *Id.*

1 A safe and effective dosage of CBD has been validated through many human and
2 animal studies. *Id.* at ¶ 15. This dosage is referred to as a safe therapeutic dosage range.
3 *Id.* To obtain a therapeutic dosage of the CBD, THC must only be present in a small
4 quantity to avoid any side effects associated with the euphoria or sedation that is caused
5 by a high dose of THC. *Id.* Marijuana strains above 20:1 CBD to THC have been
6 identified that allow for a therapeutic dose of CBD to be achieved without any of the
7 side effects that may be associated with large doses of THC. *Id.* Since the passage of
8 medical marijuana laws in many states, physicians and parents have reported that
9 extracts from these 20:1 and above ratio strains have effectively controlled seizure
10 disorders in children. *Id.*

11 3. *Extracts from Marijuana*

12 An extraction generally refers to a method by which certain constituents are
13 removed from a plant. *Id.* at ¶ 8. Cannabinoids, as well as other medicinal constituents,
14 are extracted from marijuana. *Id.* Marijuana preparations that are consumed as food or
15 drink typically involve marijuana extracts rather than just plant material. *Id.*

16 Extractions are important for patients because they enable medical marijuana
17 producers to create products that are tailored to different types of patients' specific
18 needs. *Id.* at ¶ 11. By using extraction methods, a manufacturer can isolate the
19 particular parts of the plant that the manufacturer wants to use, test it for proper and
20 precise dosing, and provide different types of patients with medicine specifically
21 designed for their condition. *Id.* By contrast, simply testing raw plant material does not
22 provide patients with as accurate a picture of the actual cannabinoid constituents in their
23 medicine, and does not provide patients with medicine specifically tailored to their
24 needs. *Id.* at ¶ 12. Flowers from the same plant test differently. *Id.*

25 Extractions also increase the delivery options for patients so that they neither have
26 to inhale marijuana nor eat bulky and fibrous dried plant material to get the medicine
27 they need. *Id.* at ¶ 11. For example, patients suffering from the advanced stage of ALS
28 (also known as Lou Gehrig's disease) have great difficulty breathing and swallowing.

1 *Id.* For those patients, eating raw plant material, or smoking and/or inhaling medical
2 marijuana, is physically impossible. *Id.* These patients can, however, consume an
3 extract. *Id.*

4 If a seizure patient cannot access marijuana that has a minimum of a 20:1 CBD to
5 THC ratio, he or she should use marijuana with a lower ratio and supplement it with an
6 extract typically called CBD oil. *Id.* at ¶ 17. CBD oil contains high levels of CBD but
7 does not contain many of the other cannabinoids found in the marijuana plant. *Id.* As
8 such, the CBD oil has no measureable THC, but is high in CBD. *Id.* This combination
9 of CBD oil and plant material can provide patients with a dose of CBD and ratio of CBD
10 to THC that is very similar to the known therapeutic dose, which other children with
11 seizure disorders are using and getting significant benefit from. *Id.*

12 Because they could not access a marijuana plant with a 20:1 CBD to THC ratio
13 when they were ready to start treating Zander with medical marijuana, Jacob and
14 Jennifer were advised to treat him with CBD oil in combination with plant material. Ex.
15 1 (Welton Declaration) at ¶ 25.

16 4. *Zander's use of CBD Oil and its Efficacy*

17 Jacob and Jennifer have seen significant positive changes in Zander since he
18 began taking medical marijuana. *Id.* at ¶ 27. He is showing signs of wanting emotional
19 stimulation and notices that people are people, not inanimate objects. *Id.* Zander is
20 seeking attention and climbs into his parents' laps when he wants comfort or love. *Id.*
21 He is actively trying to play with his brothers and he recognizes his parents' laughter and
22 responds with his own laughter. *Id.* Zander's physical development has also improved.
23 *Id.* at ¶ 28. Before Jacob and Jennifer started treating Zander with medical marijuana,
24 his development of physical skills had been stunted. *Id.* In the short amount of time that
25 he has been taking medical marijuana, Zander's physical skills have improved
26 considerably. *Id.* His gait has narrowed, and he stands up straighter; he can walk
27 backwards, avoid objects without needing support, and is nearly able to run. *Id.* For the
28 first time, Zander has been able to stack more than two blocks at a time. *Id.*

1 In addition to Zander's intellectual, emotional, and physical improvements since
2 he started taking medical marijuana, his seizures have significantly decreased. *Id.* at ¶
3 29. Amazingly, Zander has had only two confirmed seizures since he started taking
4 medical marijuana and both were considerably shorter than the seizures he experienced
5 before. *Id.* In the past, Zander's seizures have been especially bad when his immune
6 system is compromised and he has an infection or a virus. *Id.* at ¶ 30. Since starting the
7 medical marijuana, Zander has been sick more than once but has not experienced
8 multiple seizures as a result. *Id.*

9 In September 2013, Jacob and Jennifer learned that certain state and county
10 officials have opined that the CBD oil they were giving Zander is not allowed under the
11 AMMA. *Id.* at ¶ 31. Despite the significant improvements they had observed in Zander
12 since starting to treat him with medical marijuana, including CBD oil, they felt they had
13 no choice but to change Zander's treatment regimen because of the legal uncertainty
14 surrounding the CBD oil and their fear of prosecution. *Id.* at ¶ 32.

15 Instead of taking the marijuana plant in conjunction with the CBD oil, Zander is
16 currently taking a high-level CBD marijuana plant. Zander takes 660mg of dried plant
17 per day, broken into three portions that his parents mix into pudding or applesauce. *Id.*
18 at ¶ 33. This is significantly more dried plant per day than Zander had to consume when
19 his parents were treating him with CBD oil in conjunction with dried plant material and
20 it is difficult for him to eat so much. *Id.* at ¶ 33-34. In addition, this plant's CBD to THC
21 ratio is lower than the ratio Zander was getting from the combination of plant material
22 and CBD oil. *Id.*

23 Because of the difficulty plant material poses for accurately dosing and effective
24 and comfortable ingestion for Zander, Jacob and Jennifer want to go back to treating him
25 with a combination of CBD oil and plant material. *Id.* at ¶ 35. In addition, eventually a
26 marijuana plant will likely be available in Arizona that has a minimum CBD to THC
27 ratio of 20:1. *Id.* An extract from this type of plant would be the best form of medical
28 marijuana for Zander. *Id.* An extract from this plant, rather than just the plant itself,

1 would allow Jacob and Jennifer to give Zander precise doses of the medicine. *Id.* In
2 addition, an extract is much easier for him to take so his parents would know that he is
3 getting all the medicine he needs. *Id.* Jacob and Jennifer want to be able to give Zander
4 this type of extract when it becomes available without fear of prosecution. *Id.*

5 Jacob and Jennifer are asking this Court to resolve the existing legal uncertainty
6 and confirm that they are permitted, under the AMMA, to treat their son with medical
7 extracts adapted from marijuana, without fear of criminal prosecution.

8 ARGUMENT

9 In order to obtain a preliminary injunction, the moving party must demonstrate:

10 (1) a strong likelihood of success on the merits, (2) the possibility of
11 irreparable injury if the requested relief is not granted, (3) a balance of
12 hardships favoring that party, and (4) public policy favoring a grant of
13 the injunction. A court applying this standard may apply a “sliding
14 scale.” In other words, “the moving party may establish either 1)
15 probable success on the merits and the possibility of irreparable injury;
16 or 2) the presence of serious questions and [that] ‘the balance of
17 hardships tip[s] sharply’ in favor of the moving party.”

18 *Arizona Ass’n of Providers for Persons with Disabilities v. State*, 223 Ariz. 6, 12, 219
19 P.3d 216, 222 (App. 2009) (internal citations omitted). Plaintiffs Jacob and Jennifer
20 Welton easily meet these standards.

21 I. ZANDER WELTON AND HIS PARENTS ARE LIKELY 22 TO SUCCEED ON THE MERITS.

23 This case presents a straightforward issue of statutory construction: whether the
24 provisions of the AMMA apply equally to the marijuana plant and to extracts adapted
25 from the marijuana plant. When interpreting a voter initiative, the court’s “primary
26 purpose is to effectuate the intent of those who framed it and the electorate that adopted
27 it.” *State ex rel. Montgomery v. Woodburn ex rel. County of Maricopa*, 231 Ariz. 215,
28 216, 292 P.3d 201, 202 (App. 2012), quoting *State v. Pereyra*, 199 Ariz. 352, 354, 18
P.3d 146, 148 (App. 2001). On November 2, 2010, a majority of Arizona voters passed
the AMMA for “the purpose of . . . protect[ing] patients with debilitating medical
conditions, as well as their physicians and providers, from arrest and prosecution,
criminal and other penalties and property forfeiture if such patients engage in the

1 medical use of marijuana.” Prop. 203 § 2(G). The AMMA decriminalizes, under state
2 law, certain activities associated with the medical use of marijuana for patients and
3 caregivers to whom ADHS has issued identification cards. A.R.S. § 36-2801 *et seq.*
4 The AMMA also decriminalizes activities associated with cultivating, packaging, and
5 selling medical marijuana for individuals to whom ADHS has issued appropriate
6 licenses. *Id.* Both the plain language of the AMMA and the proponents’ and voters’
7 broad intent in passing it demonstrate that Plaintiffs are likely to succeed in obtaining a
8 declaratory judgment that the AMMA protects patients’ ability to treat their debilitating
9 medical conditions with marijuana extracts.¹

10 A. *The Plain Language of the AMMA Includes Extracts from the*
11 *Marijuana Plant.*

12 The AMMA defines “marijuana” as “all parts of any plant of the genus cannabis
13 whether growing or not, and the seeds of such plant.” A.R.S. § 36-2801(8). The law
14 provides that “[u]sable marijuana’ means the dried flowers of the marijuana plant, *and*
15 *any mixture or preparation thereof*, but does not include the seeds, stalks and roots of
16 the plant and does not include the weight of any non-marijuana ingredients combined
17 with marijuana and *prepared for consumption as food or drink.*” A.R.S. § 36-2801(15)
18 (emphasis added).

19 According to its plain language, the AMMA allows patients to use “any mixture
20 or preparation” made from the dried flowers of the marijuana plant. The AMMA also
21 plainly provides that patients can combine marijuana with “non-marijuana ingredients”
22 and “prepare[]” those combinations “for consumption as food or drink.” Webster’s
23 Dictionary defines “preparation” as “[t]hat which is prepared, made, or compounded by
24 a certain process or for a particular purpose; a combination” including “any medicinal

25 ¹ “To plead a viable claim under the Declaratory Judgments Act, one need merely establish a
26 protectible interest and a justiciable controversy over that interest between the parties.” *See*
27 *Arizona Soc. Of Pathologists V. AHCCCS*, 201 Ariz. 553, 38 P.3d 1218 (App. 2002) (citations
28 omitted). Here, Plaintiffs have a protectable interest in providing medical treatment for their
child without fear of criminal prosecution, and the proper interpretation of the AMMA is in
dispute due to Defendants’ position with respect to extracts.

1 substance fitted for use.”² “Prepared,” in turn, is defined as “made fit or suitable;
2 adapted.”³ The inclusion of these words in the AMMA demonstrates that the law’s
3 proponents and voters intended for patients to be able to employ “certain process[es]” to
4 “adapt[]” marijuana “for a particular purpose.”

5 Moreover, the statute explicitly contemplates that these marijuana combinations
6 can be prepared for consumption as food or drink. Marijuana preparations that are
7 consumed as food or drink typically involve marijuana extracts. Ex. 2 (Troutt
8 Declaration) at ¶ 9. An extraction generally refers to a method by which certain
9 constituents—usually cannabinoids from marijuana—are removed from the plant. *Id.* at
10 ¶ 8. Extractions are important for patients because they enable medical marijuana
11 producers to create products that are tailored to different types of patients’ specific
12 needs. *Id.* at ¶ 11. By using extraction methods, a manufacturer can isolate the
13 particular parts of the plant that the manufacturer wants to use, test it for proper and
14 precise dosing, and provide different types of patients with medicine specifically
15 designed for their condition. *Id.* The process of removing certain constituents from a
16 plant so that medicine can be tailored to different types of patient needs is consistent
17 with employing “certain process[es]” to “adapt[]” marijuana “for a particular purpose”
18 and with “any medicinal substance fitted for use.” This is precisely the language of
19 extraction and clearly demonstrates that the proponents and voters intended for patients
20 to be able to use extracts prepared from marijuana and tailored to address their particular
21 medical needs.

22 Moreover, interpreting the statute to mean that patients can only use un-
23 manipulated plant material would violate the rule against surplusage and render
24 meaningless the phrase “any mixture or preparation thereof.” *See Williams v. Thude*,
25 188 Ariz. 257, 259, 934 P.2d 1349, 1351 (1997) (when interpreting a statute, courts

26 ² *See* definition of “preparation,” available at: [http://www.webster-](http://www.webster-dictionary.net/definition/preparation)
27 [dictionary.net/definition/preparation](http://www.webster-dictionary.net/definition/preparation) (last visited November 3, 2013).

28 ³ *See* definition of “prepared,” available at: [http://www.webster-](http://www.webster-dictionary.net/definition/Prepared)
[dictionary.net/definition/Prepared](http://www.webster-dictionary.net/definition/Prepared) (last visited November 3, 2013).

1 presume legislature intended each word and clause to have meaning); *State v. Deddens*,
2 112 Ariz. 425, 429, 542 P.2d 1124, 1128 (1975) (“Statutes are to be given, whenever
3 possible, such an effect that no clause, sentence or word is rendered superfluous, void,
4 contradictory or insignificant.”). Thus, the statute’s plain language allows patients to use
5 extracts adapted from marijuana.

6 *B. The Proponents’ and Voters’ Broad and Protective Purpose in*
7 *Passing the AMMA Favors a Statutory Construction that Includes*
8 *Extracts from the Marijuana Plant.*

9 Even if the Court concludes that the AMMA’s plain language does not clearly
10 support Plaintiffs’ reading of the statute, the Court should resolve any ambiguity in
11 Plaintiffs’ favor because the provisions of the AMMA and its ballot materials
12 demonstrate that the proponents and voters intended to reduce seriously ill patients’
13 suffering and protect their medical options. In order to do so, extracts must be allowed
14 because patients who are limited to edible or drinkable marijuana preparations made
15 from un-manipulated plant material have fewer, less precise, and less palatable options
16 available to them than patients who have access to edible or drinkable marijuana
17 preparations made using extracts from plant material. Ex. 2 (Troutt Declaration) at ¶ 13.
18 Indeed, for Zander to obtain the best results possible from his medical marijuana
19 treatment, he needs to be able to use an extract, not just plant material. *Id.* at ¶ 17-18;
20 Ex. 1 (Welton Declaration) at ¶ 25, 27-29, 33-35.

21 The Descriptive Title voters read before casting their vote on the AMMA stated
22 that the law “allows the use of marijuana for people with debilitating medical conditions
23 who obtain a written certification from a physician and [it] establishes a regulatory
24 system governed by the Arizona Department of Health Services for establishing and
25 licensing medical marijuana dispensaries.”⁴ The November 2, 2010 ballot further stated
26 that “[a] ‘yes’ vote shall have the effect of authorizing the use of marijuana for people

27 ⁴ Available at <http://www.azsos.gov/election/2010/info/pubpamphlet/english/Prop203.htm> (last
28 visited October 14, 2013).

1 with debilitating medical conditions who obtain a written certifications from a physician
2 and [of] establishing a regulatory system governed by the Arizona Department of Health
3 Services for establishing and licensing medical marijuana dispensaries. A ‘no’ vote shall
4 have the effect of retaining current law regarding the use of marijuana.”⁵ Nothing in
5 these materials suggests that patients should or would be limited to using un-manipulated
6 plant material for their medical needs.

7 The voters of Arizona decriminalized medical marijuana use for patients who
8 suffer from ailments including: cancer, glaucoma, positive status for human
9 immunodeficiency virus, acquired immune deficiency syndrome, hepatitis C,
10 amyotrophic lateral sclerosis (ALS), Crohn’s disease, agitation of Alzheimer’s disease,
11 and chronic or debilitating medical conditions or treatments that produce cachexia or
12 wasting syndrome, severe and chronic pain, severe nausea, seizures, including those
13 characteristic of epilepsy, or severe and persistent muscle spasms, including those
14 characteristic of multiple sclerosis. A.R.S. § 36-2801(3). It would be illogical to
15 interpret the AMMA as allowing people with these very serious and debilitating
16 conditions to use medical marijuana to ease their suffering, but only if they take it in one
17 particular form that may not be as beneficial to them as other forms. Similarly, there are
18 patients who suffer from debilitating medical conditions that are explicitly included in
19 the AMMA who can benefit from medical marijuana but who can neither eat plant
20 material nor inhale smoke. For example, patients suffering from the advanced stage of
21 Lou Gehrig’s disease have great difficulty breathing and swallowing. Ex. 2 (Troutt
22 Declaration) at ¶ 11. It is physically impossible for these patients to eat raw plant
23 material or inhale medical marijuana, but they can consume an extract from medical
24 marijuana. *Id.*

25 In addition, the AMMA limits the amount of “useable marijuana” a patient may
26 possess at any given time, A.R.S. § 36-2801(1), but the law is carefully crafted to avoid

27
28 ⁵ *Id.*

1 creating an oppressive limit on patients’ access to their medicine. The definition of
2 “usable marijuana” explicitly excludes “the weight of any non-marijuana ingredients
3 combined with marijuana and prepared for consumption as food or drink.” A.R.S. § 36-
4 2801(15). In addition, the “allowable amount of marijuana” means “[t]wo-and-one-half
5 ounces of usable marijuana,” and explicitly excludes “[m]arijuana that is incidental to
6 medical use, but is not usable marijuana as defined in this chapter.” A.R.S. § 36-
7 2801(1). These exclusions demonstrate that the proponents and the voters did not intend
8 to establish a system under which patients have narrowly limited delivery options. The
9 language of the statute indicates an approach that is focused on giving patients latitude to
10 maximize their treatment options and choices.

11 There is no language in the AMMA or its ballot materials that explicitly or
12 implicitly suggests that the proponents and voters intended to limit patients’ medical
13 marijuana use to un-manipulated plant material. Indeed, constraining patients’ medical
14 marijuana options is directly at odds with the broad purpose of the AMMA to “protect
15 patients with debilitating medical conditions . . . from arrest and prosecution, criminal
16 and other penalties and property forfeiture if such patients engage in the medical use of
17 marijuana.” Prop. 203 § 2(G). The voters of Arizona clearly did not intend to allow
18 seriously ill patients or their caregivers to be criminally prosecuted based on their use of
19 the form of medical marijuana that is most beneficial to them.

20 Thus, the plain language of the AMMA, in addition to its broad and protective
21 purpose, demonstrates that the proponents and the voters intended to allow qualifying
22 patients like Zander to use medical extracts prepared from the marijuana plant. Plaintiffs
23 are therefore likely to succeed on the merits of their claim.

24 **II. ZANDER WELTON IS LIKELY TO SUFFER IRREPARABLE**
25 **INJURY IF HIS PARENTS CANNOT TREAT HIM WITH**
26 **MARIJUANA EXTRACT WITHOUT FEAR OF CRIMINAL**
PROSECUTION.

27 In the short time that Zander was taking CBD oil along with dried marijuana
28 plant, he experienced unprecedented improvement in his physical and emotional

1 development. Ex. 1 (Welton Declaration) at ¶ 27-28. He started showing signs of
2 wanting emotional stimulation and notices that people are people, not inanimate objects.
3 *Id.* at ¶ 27. Zander is seeking physical attention from his parents when he wants comfort
4 or love. *Id.* He actively tries to play with his brothers and he recognizes his parents'
5 laughter and responds with his own laughter. *Id.* Zander's physical development has
6 also improved. *Id.* at ¶ 28. His gait has narrowed and he stands up straighter. *Id.* For
7 the first time, Zander can walk backwards, avoid objects when walking without needing
8 support, is nearly able to run, and has been able to stack more than two blocks at a time.
9 *Id.* In addition, Zander's seizures have significantly decreased. *Id.* at ¶ 29. Amazingly,
10 Zander has had only two confirmed seizures since he started taking marijuana and CBD
11 oil and both were considerably shorter than the seizures he experienced before. *Id.*

12 Because his parents are afraid that they may be criminally prosecuted for giving
13 Zander CBD oil, they have stopped doing so and are instead treating him only with plant
14 material that is unlikely to be as beneficial for Zander. *Id.* at ¶ 31-34. This is because
15 Zander is not getting the same amount of CBD as when he was taking CBD oil. *Id.* at ¶
16 33. Additionally, it is difficult for Zander to ingest the large amounts of fibrous plant
17 material needed to reach the dose of CBD he needs. *Id.* at ¶ 34. As a result, Zander's
18 prospects for experiencing basic emotional interactions with his parents and brothers,
19 improving his physical abilities, and living as full a life as possible are now at risk. Ex.
20 2 (Troutt Declaration) at ¶ 11-17. This potential injury cannot be adequately remedied
21 through damages and therefore constitutes irreparable harm. *See Shoen v. Shoen*, 167
22 Ariz. 58, 63 804 P.2d 787, 792 (App. 1990) (irreparable harm is that which is not
23 remediable by money damages).

24 **III. THE BALANCE OF HARDSHIPS STRONGLY FAVORS** 25 **GRANTING THE PRELIMINARY INJUNCTION.**

26 If Jacob and Jennifer have to continue treating Zander with an inferior medical
27 marijuana regimen, there is no adequate remedy that may be applied at a later date
28 sufficient to repair the harm to Zander's well-being. Zander faces a great potential

1 hardship if his seizures increase in frequency or intensity or if his development regresses.
2 There will be no adequate remedy if Zander’s health deteriorates because he cannot take
3 CBD oil. In stark contrast to the profound potential hardship Zander faces if his parents
4 have to continue treating him with an inferior medical marijuana regimen, Defendants
5 would not suffer the slightest hardship if Zander returned to taking CBD oil. This case
6 clearly presents an important question of law regarding the interpretation of the AMMA
7 and the balance of hardships tips entirely in Plaintiffs’ favor, making the grant of a
8 preliminary injunction a proper result. *Arizona Ass’n of Providers*, 223 Ariz. at 12, 219
9 P.3d at 222.

10 **IV. PUBLIC POLICY FAVORS THE PROTECTION OF ZANDER**
11 **WELTON’S ABILITY TO TAKE MEDICINE THAT WAS**
12 **EFFECTIVELY CONTROLLING HIS SEIZURES AND**
13 **IMPROVING HIS OVERALL QUALITY OF LIFE.**

13 Public policy favors the fullest implementation of the AMMA as envisioned by
14 the proponents of the law and the majority of Arizonans who voted in favor of it. That
15 full implementation clearly includes protecting “patients with debilitating medical
16 conditions . . . from arrest and prosecution, criminal and other penalties . . . if such
17 patients engage in the medical use of marijuana.” Prop. 203 § 2(G). Thus, public policy
18 favors protecting Zander’s ability to use the form of medical marijuana that is most
19 beneficial to him without fear of criminal and other penalties. In addition, public policy
20 favors the safeguarding of Arizonans’ health and well-being. At this time, Zander’s
21 health and well-being will be best ensured if he is permitted to use extracts prepared
22 from marijuana in addition to plant material. Ex. 2 (Troutt Declaration) at ¶ 11-17.

23 **CONCLUSION**

24 For the foregoing reasons, the Court should grant preliminary injunctive relief to
25 Plaintiffs that prevents Defendants and their employees from taking any action based on
26 Defendants’ stated position that the AMMA’s decriminalization of marijuana for
27 medicinal purposes does not include products, such as extracts, adapted from marijuana.
28

1 Respectfully submitted this 13th day of November, 2013.

2
3 /s/ Daniel J. Pochoda

4 Daniel J. Pochoda (SBN 021979)

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21 **Hac Vice Applications Submitted to*
22 *the Arizona State Bar*

23 *Attorneys for Plaintiffs*
24
25
26
27
28

CERTIFICATE OF SERVICE

I hereby certify that on November 13, 2013, I caused the foregoing document to be electronically transmitted to the Clerk's Office and

COPY mailed this same date to:

Hon. Katherine Cooper
Judge of the Superior Court
Maricopa County East Court Building-514
101 West Jefferson
Phoenix, AZ. 85003-2243

COPY emailed and mailed this same date to:

Kevin D. Ray,
Assistant Attorney General
Education and Health Section
1275 West Washington Street
Phoenix, Arizona 85007-2926

WILLIAM G. MONTGOMERY
MARICOPA COUNTY ATTORNEY
222 North Central Avenue, Suite 1100
Phoenix, Arizona 85004

/s/ Gloria A. Torres

EXHIBIT 1

Declaration of Jennifer Welton

Declaration of Jennifer Welton

1. I, Jennifer Welton, do hereby swear that: I am over the age of 18 and am a resident of the State of Arizona and the County of Maricopa. I have personal knowledge of the facts herein, and, if called as a witness, could testify completely thereto.

2. I declare under penalty of perjury that, to the best of my knowledge and belief, the information herein is true and correct. In addition, I declare under penalty of perjury that I have read the Complaint in this case, I know the contents thereof, and it is true of my own knowledge, except the matters stated therein on information and belief, and that as to those matters, I believe the Complaint to be true.

3. My name is Jennifer Welton. I live in Maricopa County with my husband Jacob Welton and our three sons: five-year old Zander, seven-year old Marcus, and two-year old Graham.

4. My husband and I thought that Zander would develop normally until he experienced his first seizure at nine months old.

5. Since then, Zander has suffered from numerous periods of extremely active seizures. During these periods, Zander has multiple seizures every night. Every year between 2009 and 2012, Zander was hospitalized because of his seizures. In April 2013, Zander suffered from extreme seizures for several weeks. We treated Zander at home during this time rather than hospitalizing him again.

6. Zander has been diagnosed with focal cortical dysplasia type 2A, which is a congenital condition that prevents cells from migrating to the proper area in utero. Because Zander's brain did not develop the correct pathways, he has epilepsy, global developmental delays, and autism. He also has multiple intracranial

cavernomas, which are enlarged blood vessels in the brain. In addition, Zander's immune system is compromised, resulting in frequent infections and sickness.

7. Since his first seizure at nine months old, Zander has received consistent medical care. Zander has been treated by doctors from a number of different specialties including: neurology, neurosurgery, genetics, developmental psychology, occupational therapy, physical therapy, and speech therapy.

8. Under the supervision of his doctors, and me and my husband, Zander has taken many different pharmaceutical medications to address his seizures and developmental limitations. The majority of these medications had little or no positive effect for Zander, while other medications have brought only minimal relief.

9. Zander has suffered debilitating side effects from some of these pharmaceutical medications. One of the medications caused Zander to experience organ failure. Another medication suppressed his appetite so severely that he refused to eat.

10. Even the pharmaceutical medication that has had some positive impact on Zander's seizures has harmful side effects, including destabilizing his mood and causing irrational behavior.

11. Because of the limited relief pharmaceutical medications have provided to Zander, his doctors recommended brain surgery at the end of 2011. Zander had his first brain surgery on January 19, 2012. During this surgery, doctors removed Zander's hippocampus and a small portion of his left temporal lobe.

12. Soon after this surgery, Zander's seizures began again and it became clear that the surgery was unsuccessful.

13. Zander's second brain surgery occurred in two stages. In the first stage on May 15, 2012, surgeons drilled holes in Zander's skull and placed intracranial grids, or sensors, on the left hemisphere of his brain. The grids were buried in

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numerous different places in Zander's brain and, over the next week, these grids provided a map of where his seizures were coming from.

14. In the second stage of this brain surgery on May 22, 2012, surgeons removed the grids and Zander's remaining left temporal lobe, a portion of his left parietal lobe, and a portion of his left frontal lobe.

15. Zander's recovery from his second brain surgery was extremely difficult. His abilities to eat, drink, sit up, stand, and walk were all compromised.

16. After several months, Zander's seizures returned.

17. With his seizures still uncontrolled, Zander had surgery to implant a vagus nerve stimulator device in his chest on February 7, 2013. Signals emitted from this device to the brain can help prevent the electrical bursts that cause seizures. The device did not reduce the incidence of Zander's seizures.

18. In July 2013, Zander's neurologist told my husband and me that the only remaining option was a third brain surgery. During this surgery, doctors would remove the entire remaining left hemisphere of Zander's brain. We were told that this surgery could potentially leave Zander partially or fully paralyzed, comatose, or in a vegetative state.

19. In early August 2013, my husband and I learned about Charlotte Figi, another child suffering from intractable epilepsy, from Sanjay Gupta's CNN documentary, "Weed." According to the documentary I viewed, Charlotte has Dravet Syndrome, a rare and severe form of intractable epilepsy that caused her to have 300 grand mal seizures per week. Charlotte's parents tried all the traditional forms of treatment her doctors recommended but nothing worked. After doctors told Charlotte's parents that there was nothing more to be done, they decided to try medical marijuana. Charlotte's parents had heard about a boy in California who suffered from Dravet and was being successfully treated with medical marijuana. Charlotte experienced stunning improvement after her parents obtained a medical

marijuana card in Colorado for Charlotte and started treating her with a strain of marijuana that is low in the cannabinoid tetrahydrocannabinol (THC) and high in the cannabinoid cannabidiol (CBD). Approximately one year later, Charlotte only has seizures two to three times per month and almost only in her sleep.

20. After learning about Charlotte's story and faced with the possibility of a third brain surgery that could leave Zander partially or fully paralyzed, comatose, or in a vegetative state, and having already endured years of agonizing and largely unsuccessful treatment, we decided to try giving Zander medical marijuana.

21. My husband and I discussed the possibility of giving Zander medical marijuana with his neurologist. The neurologist told us that there was nothing else left for Zander to try if we did not want him to undergo the proposed third brain surgery.

22. We also consulted with a family friend who is a Bishop in the Mormon Church to which I belong. The Bishop told us that the church would approve of our giving Zander marijuana for medical purposes. The Bishop cited The Book of Mormon, Doctrine and Covenants Section 89: 10 -- 11: "And again, verily I say unto you, all wholesome herbs God hath ordained for the constitution, nature, and use of man— Every herb in the season thereof, and every fruit in the season thereof; all these to be used with prudence and thanksgiving."

23. My husband and I applied for Zander's medical marijuana card in mid-August 2013. In late August, the Arizona Department of Health Services approved the application and provided Zander with a patient identification card and my husband Jacob with a caregiver identification card.

24. After consulting with medical marijuana experts, we determined that marijuana very high in cannabidiol (CBD) and very low in tetrahydrocannabinol (THC) would be ideal for Zander's treatment.

25. When we were ready to start treating Zander with medical marijuana, we were unable to find a sustainable supply of marijuana with the proper characteristics. As an alternative, we were advised to start treating Zander with a hemp extract, which is typically called CBD oil.

26. Experts advised us that medical marijuana patients tend to experience better results from extractions that come from the marijuana plant than extractions that do not. Accordingly, we combined CBD oil with available marijuana plant material that was relatively high in CBD and relatively low in THC.

27. We have seen significant positive changes in Zander since he began taking medical marijuana. He is showing signs of wanting emotional stimulation and notices that people are people, not things. Zander is seeking attention and climbs up into our laps when he wants comfort or love. He actively tries to play with his brothers and he recognizes our laughter and responds with his own laughter.

28. Zander's physical development has also improved. Before we started treating Zander with medical marijuana, his development of physical skills had been stunted. In the short amount of time that he has been taking medical marijuana, Zander's physical skills have improved considerably. His gait has narrowed, and he stands up straighter. He can walk backwards, avoid objects without needing support, and is nearly able to run. For the first time, Zander has been able to stack more than two blocks at a time.

29. In addition to Zander's intellectual, emotional, and physical improvements since he started taking medical marijuana, his seizures have significantly decreased. Amazingly, Zander has had only two confirmed seizures since he started taking medical marijuana and both were considerably shorter than the seizures he experienced before.

30. In the past, Zander's seizures have been especially bad when his immune system is compromised and he has an infection or a virus. Since starting the medical marijuana, Zander has been sick more than once but has not experienced multiple seizures as a result.

31. In September 2013, we learned that certain state and county officials believe that the CBD oil we were giving to Zander is not allowed under the Arizona Medical Marijuana Act. As a result, we feared that we might be criminally prosecuted for continuing to treat Zander with the combination of CBD oil and marijuana plant that had been so effective in reducing his seizures and improving his development.

32. Despite the significant improvements we had observed in Zander since starting to treat him with medical marijuana and CBD oil, we reluctantly decided to change Zander's treatment regimen because of the legal uncertainty surrounding the CBD oil and our fear of prosecution.

33. Instead of the marijuana plant in conjunction with the CBD oil, Zander is currently taking a high-level CBD marijuana plant. Zander takes 660mg of dried plant per day, broken into three doses that we mix into pudding or applesauce. This is significantly more dried plant per day than he had to consume when we were treating him with CBD oil in conjunction with dried plant material. In addition, this plant's CBD to THC ratio is lower than the ratio Zander was getting from the combination of plant material and CBD oil.

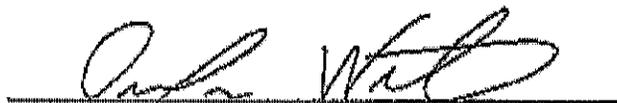
34. Zander frequently has difficulty eating as much plant material as is necessary for this new treatment regimen but we do not want Zander to smoke or otherwise inhale the marijuana because that form of delivery would activate the THC's psychoactive properties.

35. Because of the difficulty plant material poses for accurate dosing and effective and comfortable ingestion for Zander, my husband and I want to go back

to treating him with a combination of CBD oil and plant material, or another marijuana extract. Eventually, a marijuana plant will likely be available in Arizona that has a minimum CBD to THC ratio of 20:1. An extract from this type of plant would be the best form of medical marijuana for Zander. An extract from this plant, rather than just the plant itself, would allow us to give Zander precise doses of the medicine. In addition, an extract is much easier for him to take so we would know that he is getting all the medicine he needs. We want to be able to give him this type of extract when it becomes available without fear of prosecution.

36. My husband and I have decided that until the legal uncertainty surrounding extracts is resolved, we will treat Zander only with plant material even though it is a less effective medicine for our son.

Executed this 6th day of November 2013.



Jennifer Welton

EXHIBIT 2

Declaration of William Trout, NMD

Declaration of William Troutt, NMD

1. I, William Troutt, do hereby swear that: I am over the age of 18 and am a resident of the State of Arizona and the County of Pinal. I have personal knowledge of the facts herein, and, if called as a witness, could testify completely thereto.

2. I declare under penalty of perjury that, to the best of my knowledge and belief, the information herein is true and correct.

3. My name is William Troutt. I was born, raised and educated in the State of Arizona. I received a Bachelor of Science degree in biology and graduated Magna Cum Laude from Arizona State University in 1999. I graduated from Southwest College of Naturopathic Medicine in 2003 and was licensed to practice medicine in the State of Arizona in 2004.

4. Naturopathic Physicians are the only primary care physicians trained in the preparation of, and treatment with, medications prepared from raw botanicals. This training specifically includes the extraction of medicinal constituents from botanical plant medicines, which is standard practice in botanical medicine today.

5. In addition to my naturopathic studies, I have developed expertise and specialization in medical cannabis. I have been studying the historic and scientific literature on medical cannabis for the last two decades. During the last three years, marked by the passage of the Arizona Medical Marijuana Act (AMMA), I have exclusively worked in the field of medical cannabis. I have consulted with and learned from hundreds of medical cannabis patients, top physicians and researchers in the field, and public servants and industry leaders.

6. After the AMMA passed in November 2010, I performed medical evaluations for patients who were interested in using medical cannabis, and I completed certifications for patients who qualified under the AMMA. I focused these evaluations on counseling patients about the benefits and risks of using medical cannabis as well as dosage and methods of administration.

7. In December 2012, I became the medical director for the first state-licensed medical cannabis dispensary in Arizona. As part of my duties, outlined by the Arizona Department of Health Services, I generate educational materials for dispensary patients and training materials for dispensary agents including dosage and methods of administration. I have acted as a consultant for other dispensary medical directors as well as physicians who recommend medical cannabis to their patients.

8. An extraction generally refers to a method by which certain constituents are removed from a plant. Cannabinoids, as well as other medicinal constituents, are extracted from cannabis.

9. There are many ways that different parts of the plant can be removed. Historically, people have used relatively simple ways to isolate parts of the plant for different preparations, including edible preparations. Cannabis preparations that are consumed as food or drink typically involve cannabis extracts rather than just plant material.

10. As medical cannabis producers have become more sophisticated, the extraction methodology they use to create edible preparations has also become more sophisticated. Many edible preparation producers now utilize extraction technology developed for large-scale food preparation.

11. Extractions are important for patients because they enable medical cannabis producers to create products that are tailored to different types of patients' specific needs. By using extraction methods, a manufacturer can isolate the particular parts of the plant that the manufacturer wants to use, test it for proper and precise dosing, and provide different types of patients with medicine specifically designed for their condition. Extractions also increase the delivery options for patients so that they neither have to inhale cannabis nor eat bulky and fibrous dried plant material to get the medicine they need. Indeed, patients suffering from the advanced stage of amyotrophic lateral sclerosis, also known as ALS or Lou Gehrig's Disease, have great difficulty breathing and swallowing. For these patients, eating raw plant material, or smoking and/or inhaling medical marijuana, is physically impossible. These patients can, however, consume an extract from medical marijuana.

12. By contrast, simply testing raw plant material as opposed to extracting parts of the plant does not provide patients with as accurate a picture of the actual cannabinoid constituents in their medicine, and does not provide patients with medicine specifically tailored to their needs. Flowers from the same plant test differently. Multiple tests can provide an average, but each dose of plant material will vary.

13. Patients who are limited to edible or drinkable cannabis preparations made from un-manipulated plant material have fewer, less precise, and less palatable options available to them than patients who have access to edible or drinkable cannabis preparations made using extracts from plant material.

14. Published medical studies dating back to the 1950s demonstrate that cannabinoids have anti-seizure effects. Many of these studies note common knowledge and anecdotal reports about the cannabis plant effectively treating

seizure disorders since antiquity. The majority of cannabis studies that show benefits for patients with seizure disorders focus on the cannabinoid cannabidiol (CBD). However, there are also studies showing anti-seizure activity with the cannabinoid tetrahydrocannabinol (THC) as well as other cannabinoids.

15. A safe and effective dosage of CBD has been validated through many human and animal studies. This dosage is referred to as a safe therapeutic dosage range. To obtain a therapeutic dosage of the CBD, THC must only be present in a small quantity to avoid any side effects associated with the euphoria or sedation that is caused by a high dose THC. Cannabis strains above 20:1 CBD to THC have been identified that allow for a therapeutic dose of CBD to be achieved without any of the side effects that may be associated with large doses of THC. Since the passage of medical cannabis laws in many states, physicians and parents have reported that extracts from these 20:1 and above ratio strains have effectively controlled seizure disorders in children.

16. The last two decades of medical research has identified an endocannabinoid system in most living organisms that is stimulated by cannabis. This research has shown that stimulating the endocannabinoid system has a fundamental role in balancing the human nervous and immune systems. This understanding brings clarity to the physiological explanation of how cannabis can subdue a hyperactive or erratic nervous system that is associated with many seizure disorders.

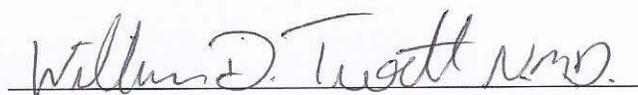
17. If a seizure patient cannot access cannabis that has a minimum of a 20:1 CBD to THC ratio, I would recommend using cannabis with a lower ratio and supplementing it with an extract typically called CBD oil. The CBD oil has no measurable THC, but is high in CBD. CBD oil contains high levels of cannabidiol but does not contain many of the other cannabinoids found in the cannabis plant.

The purpose of this recommendation is to come as close as possible to matching the known therapeutic dose of CBD as well as reports of what other children with seizure disorders are currently using to get the best results.

18. Medical cannabis patients tend to experience better results from extractions that come from the cannabis plant and contain some or all of the naturally occurring cannabinoids than from CBD oil, which contains a far less robust cannabinoid profile.

19. I was introduced to the Welton family in the context of my work as a medical director for a dispensary. I spoke with Jennifer and Jacob Welton about the benefits and risks associated with the medical cannabis dosages that are appropriate for a patient like Zander. I have also consulted with a physician who recommended and certified Zander as having a qualifying medical condition under the AMMA. I am consulting with the Weltons and this physician on a regular basis to provide educational guidance for safe and effective dosing for Zander.

Executed this 7th day of November 2013.


William Troutt, NMD