IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR COUNTY OF PIERCE

MMH, LLC, a limited liability company,

Plaintiff,

v.

CITY OF FIFE,

Defendant.

NO. 14-2-10487-7

MOTION TO INTERVENE

I. RELIEF REQUESTED

Pursuant to CR 24(a), Downtown Cannabis Company, LLC, Monkey Grass Farms, LLC, and JAR MGMT, LLC dba Rainier on Pine, each a state-licensed marijuana producer-processor or retailer (together, "Proposed Plaintiff-Intervenors"), jointly move for leave to intervene as of right as Plaintiff-Intervenors in this action. In the alternative, Proposed Plaintiff-Intervenors request permission to intervene under CR 24(b). Counsel for Proposed Plaintiff-Intervenors has communicated with counsel for Plaintiff MMH, LLC ("Plaintiff") and Defendant-Intervenor the Attorney General of the State of Washington ("the Attorney General"), and neither opposes this motion to intervene. Plaintiff-Intervenors' proposed Complaint in Intervention is attached hereto as Exhibit 1. A proposed order accompanies this motion.

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Proposed Plaintiff-Intervenors have significant interests in this action that are threatened by this lawsuit. They are all state-licensed business owners who have expended substantial financial and personal resources to participate in Washington's regulated marijuana market. Their expenses thus far include upfront costs for business formation and facility build-out, as well as ongoing costs for the operation of legally compliant facilities for marijuana production, processing, and sales. If Washington's new statutory and regulatory provisions governing production, processing, and sales were enjoined or invalidated, Proposed Plaintiff-Intervenors would lose the value of their investments, resulting in serious economic harms. They would also lose protection from arrest and prosecution under state law. Because the Proposed Plaintiff-Intervenors have unique, particularized interests, they will not be adequately represented by the current parties. For the reasons set forth below, this timely motion to intervene should be granted.

II. STATEMENT OF FACTS

Voters passed Washington State Initiative Measure No. 502 ("I-502") by a double-digit margin, 56 to 44 percent, in the November 6, 2012 general election.[1] I-502 amended the Washington State Uniform Controlled Substances Act, Chapter 69.50 RCW, to exempt individuals engaged in certain marijuana-related activities, who also meet strict regulatory requirements, from criminal and civil liability under Washington state law. Laws of 2013, ch. 3, § 1 *et seq*.; WAC 314-55, *et seq*. More than 99 percent of marijuana arrests are conducted by state and local law

[1] WASH. SEC. OF STATE, *Nov. 6, 2012 General Election Results*, "Initiative Measure No. 502 Concerns marijuana," available at (http://vote.wa.gov/results/20121106/Initiative-Measure-No-502-Concerns-marijuana.html).

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officers enforcing state marijuana laws; less than one percent are conducted by federal agents enforcing federal law.[2]

Thousands of Washington residents have invested significant time and resources to apply for producer, processor, and retailer licenses under Washington's new marijuana law, build out facilities, and equip their premises to meet the rigorous safety, security, and sanitation requirements imposed pursuant to I-502's mandates.[3] Dozens of applicants have been granted licenses and begun business operations.[4] Two of the Proposed Plaintiff-Intervenors are among the applicants who have been licensed and begun operations. Declaration of Mary Cooper (hereinafter "Dec. of Mary Cooper") at ¶¶ 3, 4; Declaration of Don Muridan (hereinafter "Dec. of Don Muridan") at ¶¶ 3, 4. The third Proposed Plaintiff-Intervenor has received a state license but is prevented from beginning operations due to a local moratorium on licensing marijuana businesses, imposed months after the business owners had secured property, initiated the state licensing process, and put the mayor on notice of their application. Declaration of James Dusek (hereinafter "Dec. of James Dusek ") at ¶¶ 4-6, 8. The moratorium was extended an additional six months last week.[5] Dec. of James Dusek at ¶ 10. All three of these businesses and individuals have a substantial stake in the full and continued implementation of I-502's regulatory provisions and in ensuring that I-

[2] In 2010, law enforcement agencies made 853,839 arrests for marijuana offenses in the United States. FEDERAL BUREAU OF INVESTIGATION, U.S. DEP'T OF JUSTICE, UNIFORM CRIME REPORTS, available at http://www.fbi.gov/about-us/cjis/ucr/crime-in-the-u.s/2010/crime-in-the-u.s.-2010. Of these, federal law enforcement agencies were responsible for only 8,108. U.S. CENSUS BUREAU, STATISTICAL ABSTRACT OF THE UNITED STATES: 2012 at 207, available at https://www.census.gov/compendia/statab/2012/tables/12s0328.pdf.

[3] *See, e.g.*, WASHINGTON STATE LIQUOR CONTROL BOARD, "Marijuana License Applicants" spreadsheet, available at http://www.liq.wa.gov/publications/Public_Records/2014-MJ%20Applicants/MarijuanaApplicants%20072914.xls.

[4] *Id*.; *see also*, C.R. Roberts and Jordan Schrader, *Marijuana Sales Begin Throughout State*, THE NEWS TRIBUNE, July 8, 2014, available at http://www.thenewstribune.com/2014/07/08/3279069/marijuana-sales-begin-throughout.html.

[5] *See* Shawn Skager, *Pacific Considers Outright Ban on Pot Businesses*, AUBURN REPORTER, July 30, 2014, available at http://www.auburn-reporter.com/news/269284441.html#.

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502's system for exempting compliant licensees from state criminal and civil penalties is neither enjoined nor invalidated. Dec. of Mary Cooper at ¶ 6; Dec. of Don Muridan at ¶ 6; Dec. of James Dusek at ¶ 12.

This lawsuit was filed by MMH, LLC ("Plaintiff"), a business seeking to become a licensed marijuana retailer in the City of Fife ("Defendant"). Complaint for Declaratory and Injunctive Relief, and Writ of Mandamus ("Complaint") at ¶ 2. On July 8, 2014, Defendant adopted an ordinance banning all marijuana production, processing, and retail businesses in all zoning districts within the City of Fife, regardless of whether the business had been duly licensed by the state and met all other requirements to be eligible for a Fife business license. Defendant's Memorandum in Support of Its Motion for Summary Judgment ("Defendant's Summary Judgment Memo") at 8 and accompanying Dec. of David Osaki at ¶¶ 21, 22. Defendant argues that I-502's licensing and regulation of marijuana production, processing, and retailing under state law are preempted by the federal Controlled Substances Act. Defendant's Summary Judgment Memo at 21-23. This argument not only frustrates Plaintiff's efforts to obtain state and local licenses to operate a marijuana business in Fife, it threatens the entire statewide system for exempting compliant businesses from state criminal and civil penalties and bringing Washington's marijuana market under tight regulatory control as intended by the voters when they passed I-502. A ruling in favor of Defendant's position would invalidate the state business licenses issued to Proposed Plaintiff-Intervenors and every other licensee in Washington.

Defendant also argues that allowing all of Washington's counties, cities, towns and townships to adopt blanket bans on businesses licensed by the state pursuant to state law would not "conflict with general laws" as prohibited by Article XI, section 11 of the Washington State Constitution. In other words,

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Defendant sees no constitutional problem with allowing Washington's local jurisdictions to render a state law null and void as a practical matter. A ruling in favor of Defendant's position would likely ensure that Proposed Plaintiff-Intervenor Downtown Cannabis Company, LLC, would never receive a local business license and would put the local licenses of Proposed Plaintiff-Intervenors Monkey Grass Farms, LLC, and JAR MGMT, LLC, at risk.

The Attorney General has also filed a Motion to Intervene in this action. As will be discussed below, Proposed Plaintiff-Intervenors' interests are distinct and at odds with those of the Attorney General and will not be adequately represented by existing parties.

III. STATEMENT OF ISSUES

A. Should this Court grant Proposed Plaintiff-Intervenors' Motion to Intervene when Proposed Plaintiff-Intervenors have substantial, material interests in the full and continued implementation and enforcement of state laws and rules regarding the licensing and regulation of marijuana businesses, and Defendant's argument that the federal Controlled Substances Act preempts Washington state law on these matters threatens those interests?

B. Should this Court grant Proposed Plaintiff-Intervenors' Motion to Intervene when Proposed Plaintiff-Intervenors have substantial, material interests in the full and continued implementation and enforcement of state laws and rules regarding the licensing and regulation of marijuana businesses, and Defendant's and the Attorney General's arguments that counties, cities, towns and townships may prohibit implementation of state law via local ordinance threatens those interests?

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C. Should this Court grant Proposed Plaintiff-Intervenors' Motion to Intervene when Proposed Plaintiff-Intervenors' claims and Defendant's defenses have questions of law and fact in common?

IV. EVIDENCE RELIED UPON

This motion is based upon the accompanying Declarations of James Dusek, Mary Cooper, and Don Muridan, and the pleadings and records on file with this Court.

V. AUTHORITY

A. Proposed Plaintiff-Intervenors Should Be Granted Intervention as a Matter of Right.

The requirements of CR 24(a) are liberally construed in favor of intervention. *Olver v. Fowler*, 161 Wn.2d 655, 664, 168 P.3d 348, 353 (2007). A party is allowed to intervene as a matter of right if it can be shown that: (1) the application for intervention is timely; (2) the applicant claims an interest that is a subject of the action; (3) the disposition of the action may impair the applicant's ability to protect that interest; and (4) the interest may not be adequately represented by existing parties. *Westerman v. Cary*, 125 Wn.2d 277, 303, 892 P.2d 1067, 1081 (1994). Proposed Plaintiff-Intervenors satisfy each of these requirements.

1. <u>This motion is timely.</u>

A motion to intervene is considered timely "unless it would work a hardship on one of the original parties." *Loveless v. Yantis*, 82 Wn.2d 754, 759, 513 P.2d 1023, 1026 (1973). The timeliness requirement is liberally construed. *Columbia Gorge Audubon Soc'y v. Klickitat Cnty.*, 98 Wn. App. 618, 623-24, 989 P.2d 1260, 1263-64 (1999). A motion to intervene made prior to trial is considered timely. *Amer. Discount Corp. v. Saratoga West, Inc.*, 81 Wn.2d 34,

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44, 499 P.2d 869, 874 (1972) (motion to intervene was filed twenty-three days after action was filed, an amended complaint in intervention was filed two months later, but still preceded trial and judgment and was thus timely). Here, Plaintiff's Complaint was filed on July 15, 2014, just three weeks ago, and Defendant filed its Answer yesterday. Granting intervention to Proposed Plaintiff-Intervenors would not work a hardship on the original parties. This motion is timely.

2. Proposed Plaintiff-Intervenors have an interest that is a subject of this action: the full and continued implementation and enforcement of state laws and rules regarding the licensing and regulation of marijuana businesses.

An applicant claiming an interest in the action must be allowed to intervene if "the disposition of the action may as a practical matter impair or impede his ability to protect that interest." CR 24(a); *Vashon Island Comm. for Self-Gov't v. Wash. State Boundary Review Bd.*, 127 Wn.2d 759, 765, 903 P.2d 953, 956 (1995). Under the criteria for intervention, "[n]ot much of a showing is required … to establish an interest. And insufficient interest should not be used as a factor for denying intervention." *Columbia Gorge Audubon Soc'y*, 98 Wn. App. 618, 629, 989 P.2d 1260, 1266 (1999) (citing *Amer. Discount Corp*, 81 Wn.2d at 41, 499 P.2d at 873 (1972)). A party with an economic interest in an action has been permitted to intervene under CR 24(a) in the past. *See Amer. Discount Corp*, 81 Wn.2d at 42, 499 P.2d at 874 (creditor with substantial economic interest in outcome of the action entitled to intervene); *Loveless*, 82 Wn.2d at 758, 513 P.2d at 1026 (homeowners have adequate interest in protecting the value of their property).

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Here, Proposed Plaintiff-Intervenors are state- and locally-licensed business owners who have expended significant resources to participate in Washington's newly regulated marijuana market. Dec. of James Dusek at ¶¶ 9, 12; Dec. of Mary Cooper at ¶¶ 3, 6; Dec. of Don Muridan at ¶¶ 3, 6. Their investments include the costs of business formation and facility build-out, equipment and regulatory compliance measures, and for the two operational Plaintiff-Intervenors, the costs of screening, hiring, and training employees and financing daily operations. Dec. of James Dusek at ¶¶ 12; Dec. of Mary Cooper at ¶¶ 4-6; Dec. of Don Muridan at ¶¶ 4-6. Proposed Plaintiff-Intervenors would lose the value of those investments and prospective earnings, as well as protection from arrest and prosecution under state law, if Washington's laws and rules regarding the licensing and regulation of marijuana businesses were enjoined or invalidated. Proposed Plaintiff-Intervenors satisfy the low threshold for intervention. *See Columbia Gorge Audubon Soc'y*, 98 Wn. App. at 629, 989 P.2d at 1266 ("The determination [of CR 24's interest requirement] is … fact specific").

3. <u>Disposition of this action will impair Proposed Plaintiff-Intervenors' ability to protect their interests.</u>

Proposed Plaintiff-Intervenors also meet the requirement, for intervention as a matter of right, that "the disposition of the action may as a practical matter impair or impede his ability to protect that interest." CR 24(a).
Defendant asserts that the federal Controlled Substances Act preempts provisions of Washington state law creating a robust system of licensing and regulating the production and distribution of marijuana. If successful, this argument would invalidate the state licenses issued to Proposed Plaintiff-Intervenors, causing them significant economic damage and eliminating their

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protections from arrest and prosecution under state law for engaging in marijuana production, processing, and retailing. Implementation and enforcement of state marijuana licensing, regulation, and taxation would cease, as would Proposed Plaintiff-Intervenors' ability to continue operations. Defendant and the Attorney General also assert that local ordinances imposing outright bans on businesses authorized, licensed, and regulated under state law do not exceed the authority granted to counties, cities, towns and townships under the state constitution to adopt "local police, sanitary and other regulations *as are not in conflict with general laws*." Const. art. XI, § 11 (emphasis supplied). Followed to its logical conclusion, Defendant and the Attorney General's argument elevates the political decisions of local council members over the will of the voters as expressed through a duly adopted statewide ballot initiative. Every local council could adopt a ban and render the state law unenforceable and meaningless.

The city council of Pacific, Washington, where Proposed Plaintiff-Intervenor Downtown Cannabis Company, LLC, is located, has adopted a moratorium on licensing marijuana businesses and is considering a permanent ban. Dec. of James Dusek at ¶¶ 8, 10, 11. If this Court were to adopt Defendant and the Attorney General's position that local bans do not conflict with the general law, Proposed Plaintiff-Intervenor Downtown Cannabis Company, LLC's ability to protect its interests in securing a local license and commencing business operations would be significantly impaired. Intervention is appropriate.

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4. <u>Proposed Plaintiff-Intervenors' interests are not adequately represented.</u>

An intervenor "need only make a minimal showing that its interests may not be adequately represented." *Columbia Gorge Audubon Soc'y*, 98 Wn. App. at 629, 989 P.2d at 1266. The Washington State Court of Appeals articulated several "relevant questions" for making this determination. *Id*. at 630, 989 P.2d at 1266-67. The "relevant questions" were:

> "Will the Audubon Society *undoubtedly* make *all* the Yakima Nation's arguments? That is, is the Audubon Society able and willing to make those arguments? Will the Yakama Nation more effectively articulate any aspect of its interest? *It is only necessary that the interest may not be adequately articulated and addressed*. When in doubt, intervention should be granted."

Id. (citations omitted, emphasis added).

Proposed Plaintiff-Intervenors have already been licensed by the state and are at various levels of operation. Two have also been licensed at the local level and are fully functioning, unlike the Plaintiff in this case. They will be better positioned to articulate, in concrete terms, the interests of operational business owners, as well as those of employees, suppliers, and customers who could also be impacted by the outcome of this litigation. Since a significant risk exists that the interests and arguments of the Proposed Plaintiff-Intervenors may not be adequately articulated by Plaintiff, intervention is warranted in this case.

Proposed Plaintiff-Intervenors' interests are also at odds with those of the Attorney General, who "denies that RCW 69.50.608 preempts the local legislation at issue" and "alleges that Initiative 502 does not preempt the local legislation challenged in this action." Attorney General's Answer to Complaint

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for Declaratory and Injunctive Relief and Writ of Mandamus ("Attorney General's Answer") at 6, 7. Additionally, on January 16, 2014, the Attorney General released a formal opinion that argues local jurisdictions have authority to ban state-licensed marijuana businesses.[6] In the Attorney General's view, "I-502 as drafted and presented to the voters does not prevent local governments from regulating or banning marijuana businesses in Washington."[7] The Attorney General's position clearly is at odds with the position of Proposed Plaintiff-Intervenors and could increase the likelihood that Plaintiff-Intervenor Downtown Cannabis Company, LLC, will never be able to open for business.

B. Proposed Plaintiff Intervenors Also Meet the Requirements for Permissive Intervention.

Permissive intervention should be granted if: (1) the motion to intervene is timely; (2) the intervenor's claim or defense has a question of law or fact in common with the main action; and (3) the intervention will not cause undue delay or prejudice. *See* CR 24(b). Proposed Plaintiff-Intervenors have satisfied these requirements.

1. <u>The motion to intervene is timely.</u>

The determination of whether a motion for permissive intervention is timely is determined on a case-by-case basis, with considerations of whether the timing will effect an undue delay or prejudice taken into account. *See e.g.*, *Ford v. Logan*, 79 Wn.2d 147, 150-51, 483 P.2d 1247, 1249 (1971) (holding that a motion to intervene after judgment was entered was not an abuse of discretion because the intervenor agreed to accept the court's decision regarding certain aspects of the

[6] Declaration of Jared Van Kirk (hereinafter Dec. of Jared Van Kirk), Ex. A (AGO 2014 No. 2 (Jan. 16, 2014), available at http://atg.wa.gov/AGOOpinions/opinion.aspx?section=archive&id=31773#.U-B0aPmzF9U).

[7] Dec. of Jared Van Kirk, Ex. B (Attorney General News Release, *In Response to Request from Liquor Control Board Chair, AG's Office Releases Formal Opinion on Marijuana Businesses*, Jan. 16, 2014, available at http://www.atg.wa.gov/pressrelease.aspx?&id=31774#.U91jnfldV8H).

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case). Here, the motion to intervene has been filed only three weeks after the action commenced. The existing parties have ample time to prepare for Proposed Plaintiff-Intervenors' participation in the lawsuit. Intervention at this early stage will not delay or prejudice the adjudication of the rights of the original parties. This motion is timely.

2. Proposed Plaintiff-Intervenors' claim has a question of law or fact in common with the main action.

Under Washington law, "exact parallelism between the original action and the intervention action is not required" in order to find a common question of law or fact according to CR 24(b). *State ex rel. Keeler v. Port of Peninsula*, 89 Wn.2d 764, 767, 575 P.2d 713, 715 (1978). Here, Defendant has argued that local jurisdictions may ban state-licensed marijuana businesses and that I-502 is preempted by federal law. Proposed Plaintiff-Intervenors seek to ensure that state-licensed marijuana businesses are not barred from operating in local jurisdictions and not enjoined or invalidated on federal preemption grounds. State and federal preemption are common questions of law and fact between this motion for intervention and the original action between Plaintiff and Defendant.

3. The motion to intervene will not cause undue delay or prejudice.

When considering whether intervention would cause undue delay or prejudice, a court shall take into account the facts of the case and weigh any delay or prejudice against the interests of the parties. *See, e.g., Nelson v. Pacific County*, 36 Wn. App. 17, 25, 671 P.2d 785, 790 (1983) (allowing permissive intervention and finding that the intervention may have delayed the lawsuit, but that it did not prejudice the parties' interests because they would have had to deal with the intervenors' claims eventually). Here, Defendant has raised the

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affirmative defense of federal preemption of Washington's regulatory system for marijuana. This is a mixed question of law and fact that will require extensive discovery and briefing to address. Allowing Proposed Plaintiff-Intervenors into the litigation at this early date – just days after Defendant filed its Answer – will not cause any significant delay or prejudice to the interest of any party.

For the reasons set forth above, Proposed Plaintiff-Intervenors respectfully request that this Court grant their motion to intervene in this action pursuant to CR 24.

DATED this 7th day of August, 2014.

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Respectfully submitted,

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EXHIBIT 1
PROPOSED COMPLAINT IN INTERVENTION

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR COUNTY OF PIERCE

MMH, LLC, a limited liability company, Plaintiff, v. CITY OF FIFE, Defendant.	NO. 14-2-10487-7 COMPLAINT IN INTERVENTION

Plaintiffs-Intervenors Downtown Cannabis Company, LLC, Monkey Grass Farms, LLC, and JAR MGMT, LLC allege:

I. Introduction and Summary of Case

1. Congress passed the Controlled Substances Act ("CSA") in 1970. The purpose of the CSA is "to combat the international and interstate traffic in illicit drugs."[1] Its "main objectives … were to conquer drug abuse and to control the legitimate and illegitimate traffic in controlled substances."[2] As a means to achieve these objectives, Congress declared the possession, production, and distribution of many drugs, including marijuana, a violation of federal law. Congress did not and

[1] *Gonzales v. Raich*, 545 U.S. 1, 12 (2005).
[2] *Id.*

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could not declare that the possession, production, or distribution of such drugs violated state law.

2. Washington has not left drug enforcement to the federal government. Instead, Washington has consistently worked in partnership with the federal government, with laws on the books that pursue the same objectives as the CSA, namely "to conquer drug abuse and to control the legitimate and illegitimate traffic in controlled substances." Historically, Washington employed an approach similar to the methods pursued under the CSA, declaring all marijuana possession, production, and distribution illegal under state law.

3. In 2012, after concluding that the State's previous efforts to prevent and reduce marijuana abuse and control the traffic in marijuana had been unsuccessful, Washington voters adopted a new approach to marijuana regulation and enforcement under state law and approved Initiative 502. I-502, as enacted, replaced Washington's prior prohibition scheme, which left marijuana in "the hands of illegal drug organizations," and replaced it with "a tightly regulated, state-licensed system similar to that for controlling hard alcohol."[3] The State's objectives remain the same: conquering drug abuse and controlling drug-trafficking. But its tactics have changed.

4. The City of Fife, defendant in this civil action, now seeks to disrupt the State's efforts to regulate marijuana in a manner consistent with its partnership with the federal government. As set forth more fully below, the City has done so by enacting City of Fife Ordinance No. 1872, which prohibits any production, processing, or retail sales of marijuana in the City of Fife, regardless of whether these activities are authorized by and lawful under State law and under regulations promulgated by the Washington State Liquor Control Board. The City

[3] Laws of 2013, ch. 3, § 1.

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further seeks to invalidate I-502 across Washington by claiming that it is preempted by the federal CSA.

II. Parties

5. Plaintiff-Intervenor Downtown Cannabis Company, LLC is a Washington Limited Liability Company with business operations located in Pacific, Washington. Downtown Cannabis Company, LLC has received state licenses to produce and process marijuana in compliance with state laws and regulations but has thus far been denied a local business license due to a local moratorium on licensing marijuana businesses.

6. Plaintiff-Monkey Grass Farms, LLC is a Washington Limited Liability Company with business operations located in Wenatchee, Washington. Monkey Grass Farms, LLC has been licensed by the state to produce and process marijuana in compliance with state laws and regulations and has also received a local business license. Monkey Grass Farms, LLC has been conducting marijuana wholesale transactions since July 8, 2014.

7. Plaintiff-Intervenor JAR MGMT, LLC dba Rainier on Pine is a Washington Limited Liability Company with business operations located in Tacoma, Washington. Rainier on Pine has received state licenses to engage in retail sales of marijuana to adults aged twenty-one and older in compliance with state laws and regulations and has also received a local business license. Rainier on Pine has been conducting retail sales since August 1, 2014.

III. Jurisdiction and Venue

8. This Court has subject matter jurisdiction under RCW 2.08.010 and 7.24.010.

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9. Venue is proper under RCW 4.12.025, which provides for civil actions to be brought in the county where the defendant resides.

IV. Operative Facts

A. Washington Has Adopted a New Approach to Marijuana Regulation, One That Will More Effectively Pursue Enforcement Priorities That Are Consistent with Those of the Federal Government

10. Congress passed the Controlled Substances Act ("CSA") in 1970. The CSA was designed "to combat the international and interstate traffic in illicit drugs. [Its] main objectives … were to conquer drug abuse and to control the legitimate and illegitimate traffic in controlled substances.[4]

11. In passing the CSA, Congress made clear that it did not intend to preempt the field of drug regulation or preempt state law that regulated drugs. Section 903 of the CSA provides: "No provision in this title shall be construed as indicating an intent on the part of the Congress to occupy the field in which that provision operates, including criminal penalties, to the exclusion of any State law on the same subject matter which would otherwise be within the authority of the State, *unless there is a positive conflict between that provision of this title and that State law so that the two cannot consistently stand together*."

12. The Congressional Record surrounding passage of the CSA confirms that the CSA was expressly designed not to preempt state laws, but in fact was intended to strengthen cooperation between the two levels of government while leaving local law enforcement issues in the hands of states.

13. Since the passage of the CSA, states have implemented a variety of laws regarding the possession, production and distribution of marijuana. Throughout that time, the federal and state governments have operated within the framework of the federal-state partnership contemplated by the CSA. Specifically,

[4] *Gonzales v. Raich*, 545 U.S. 1, 12 (2005).

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the federal government enforces federal law, focusing on certain enforcement priorities, which have been identified as including: the prevention of violence and unlawful firearm possession and use; sales to minors; money laundering; the possession and sale of other controlled substances; trafficking across state or international borders, as well as the targeting of marijuana producers and sellers with ties to criminal enterprises, gangs, and cartels. Meanwhile state governments manage intrastate and local approaches to marijuana regulation and law enforcement through a variety of criminal, civil, and regulatory strategies.

14. The intended operation of this federal-state partnership has also been detailed by the U.S. Department of Justice (DOJ) in a series of memos from Deputy Attorney Generals David W. Ogden and James M. Cole. In 2009, Deputy Attorney General Ogden addressed the increase in the number of states adopting medical marijuana laws by publishing a memorandum (the "Ogden Memo") informing U.S. Attorneys that "pursuit of [DOJ] priorities should not focus federal resources in [their] States on individuals whose actions are in clear and unambiguous compliance with existing state laws providing for the medical use of marijuana."

15. The Ogden Memo listed several federal enforcement priorities, including: unlawful possession and use of firearms; violence; sale to minors; money laundering; amounts of marijuana inconsistent with state laws; possession and sale of other controlled substances; and ties to criminal enterprises.

16. Following up on the Ogden Memo, Deputy Attorney General James M. Cole published another memorandum in 2011 (the "First Cole Memo") emphasizing the DOJ's important role in the federal-state partnership. The First Cole Memo was issued amid concerns regarding California's burgeoning and loosely regulated marijuana industry, and it reminded U.S. Attorneys that they

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remained obligated to enforce the CSA, especially focusing on those situations where there is "an increase in the scope of commercial cultivation, sale, distribution, and use of marijuana" in a manner that implicates federal enforcement priorities.

17. Most recently, Deputy Attorney General Cole published a second memorandum in 2013 (the "Second Cole Memo") that again emphasized the DOJ enforcement priorities and their place in the federal-state partnership. The Second Cole Memo was issued as Washington and Colorado embarked on their recent and broader legalization of marijuana possession and direct regulation of marijuana production and sale for uses lawful under state law. The Second Cole Memo reminded U.S. Attorneys, "Outside of these [federal] enforcement priorities, the federal government has traditionally relied on states and local law enforcement agencies to address marijuana activity through enforcement of their own narcotics laws."

18. The Second Cole Memo addresses the impact of state-level legalization and regulation, noting that such laws affect the "traditional joint federal-state approach to narcotics enforcement." It explains that "a robust [state regulatory] system may affirmatively address [federal] priorities by, for example, implementing effective measures to prevent diversion of marijuana outside of the regulated system and to other states, prohibiting access to marijuana by minors, and replacing an illicit marijuana trade that funds criminal enterprises with a tightly regulated market in which revenues are tracked and accounted for."

19. As the text of the CSA itself, the historical activities of the DOJ, and the Ogden and Cole Memos make clear, the CSA was not intended to be—and has not ever become—a binding declaration of the exclusive means for federal, state, and local governments to regulate marijuana. Nor could the CSA be interpreted to

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bind states to federal marijuana policies or federal means for regulating marijuana. The federal government may not constitutionally compel state governments to either adopt federal policy in state law or to participate in the enforcement of federal law.[5] Instead, the CSA expressly leaves to states the task of creating their own laws and developing their own tactics for marijuana regulation.

20. In the 1970s, 12 U.S. states decriminalized marijuana: Alaska, California, Colorado, Maine, Minnesota, Mississippi, Nebraska, New York, North Carolina, Ohio, Oregon, and South Dakota. There are currently 18 states in which marijuana possession has been decriminalized. Decriminalization generally entails eliminating criminal laws prohibiting possession of marijuana, sometimes coupled with the imposition of civil penalties. Because state governments cannot be forced to implement federal criminal prohibitions like those contained in the CSA, these states were free to choose not to prohibit the possession of marijuana within their borders.

21. Since 1996, 23 states and the District of Columbia have passed laws creating varying degrees of legal protection for growing, sharing, selling, and possessing marijuana for medical purposes, among them Washington. In 1998, Washington voters passed Initiative 692—the Medical Use of Marijuana Act—which provided an affirmative defense to state criminal charges for qualifying patients with certain terminal and debilitating medical conditions.

22. More than half of these states' medical marijuana laws create regulatory frameworks for the production and/or distribution of marijuana for medical purposes. Others impose little to no regulation.

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[5] *See New York v. United States*, 505 U.S. 144, 188 (1992); *Printz v. United States*, 521 U.S. 898 (1997).

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23. In Washington, at least, criminalization, prohibition, and incarceration have proven to be ineffective means to prevent marijuana abuse and its illicit distribution. These tactics have driven marijuana distribution underground where it has escaped effective control and where it has fueled dangerous criminal organizations. Consistent with federal enforcement priorities, combating these organizations represents an enforcement priority under Washington law. Criminalization, prohibition, and incarceration have also resulted in serious unintended consequences including black market marijuana being made available to minors and the large collateral consequences of incarceration and criminal records on those incarcerated, their families, and their communities.

24. In 2012, Washington voters decided to adopt a new approach to marijuana regulation and enforcement by passing I-502. In so doing, they rejected complete and unregulated legalization, which would lack safeguards against the proliferation of marijuana in ways inconsistent with federal and Washington enforcement priorities. Instead, Washington voters concluded that limited legalization subject to a robust regulatory system governing the possession, production, processing, and sale of marijuana by and to adults over the age of 21 would be a more effective way to combat drug abuse and control drug-trafficking, redirect Washington's limited law enforcement resources towards high-priority criminal activity, and produce better public health and safety outcomes than have been achieved through complete criminal prohibition.

25. I-502 fulfills Washington's role within the traditional federal-state partnership by creating state-centered law designed to protect the health and welfare of Washington citizens. The initiative also remains consistent with federal enforcement priorities by accounting for revenues, prohibiting the sale of

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marijuana to children and young adults, and reducing the risk of violence by taking marijuana business out of the hands of criminal enterprises.

26. As enacted, I-502 committed the task of regulating marijuana production, processing, and sale to the Washington State Liquor Control Board. Acting under this grant of authority, in 2013 the Liquor Control Board promulgated regulations codified at Chapter 314-55 WAC.

27. Consistent with RCW 69.50.325 and 69.50.354, the Liquor Control Board's regulations concern the issuance of licenses for the lawful production, processing, or retail sale of marijuana under Washington State law.

28. Downtown Cannabis Company, LLC applied for state licenses to produce and process marijuana in Pacific, Washington on November 18, 2013. Plaintiff-Intervenor secured a lease for a location to produce and process marijuana on November 19. Plaintiff-Intervenor received state licenses to produce and process marijuana on March 6, 2014. Plaintiff-Intervenor still has not received a local business license, and as of July 28, 2014, the City of Pacific is now considering adopting a permanent ban on licensing marijuana businesses.

29. Plaintiff-Intervenor Monkey Grass Farms, LLC applied for state licenses to produce and process marijuana in Wenatchee, Washington. Plaintiff-Intervenor received state licenses to produce and process marijuana on March 6, 2014. Plaintiff-Intervenor began transacting business on July 8, 2014.

30. Plaintiff-Intervenor JAR MGMT, LLC applied for a state license to sell marijuana at retail in Tacoma, Washington. Plaintiff-Intervenor received a state marijuana retailer license on July 7, 2014. Plaintiff-Intervenor began transacting business on August 1, 2014

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B. The City of Fife Has Adopted an Ordinance That Disrupts Washington's Statewide Enforcement Approach and Deprives Lawful Businesses of Their Financial and Property Interests in Operating State-Licensed Marijuana Production, Processing, and Retail Outlets

31. On July 24, 2014, the Fife City Council approved Ordinance No. 1872. As enacted, that Ordinance prohibits any production, processing, or retail sales of marijuana in the City of Fife, regardless of whether it is lawful under State law and under regulations promulgated by the Washington State Liquor Control Board.

32. On July 15, 2014, plaintiff MMH, LLC filed this action to overturn Ordinance No. 1872 as an unlawful and unconstitutional exercise of the City of Fife's power.

33. In response to the filing of this civil action, the City of Fife has alleged that its actions are consistent with and required by federal law, specifically the CSA, which the City alleges preempts I-502. The City of Fife further alleges that state law does not occupy the field of marijuana regulation in the State of Washington and that there is no conflict between state law and Ordinance No. 1872.

34. In response to the filing of this civil action, the Washington State Attorney General has moved to intervene in this action. The Attorney General has taken the position that there is no conflict between state law and Ordinance No. 1872.

35. By virtue of their applications for or receipt of licenses to produce, process, or sell marijuana, Plaintiff-Intervenors each have a clear and direct economic interest in the outcome of this case. A ruling in this case that the CSA preempts I-502 would declare all State-granted licenses to produce, process, or sell marijuana, including those held by Plaintiff-Intervenors, to be void and of no

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effect. It would also terminate the application process for all businesses that are lawfully seeking to obtain these licenses. Plaintiff-Intervenors would suffer economic harm through the loss of time and resources invested in their businesses to date, as well as through lost potential earnings.

36. Likewise, a ruling by this Court that local jurisdictions have the right to prohibit local licensing of state-licensed marijuana businesses whose actions would be lawful and authorized under state law, would impair the rights of Plaintiff-Intervenors. Plaintiff-Intervenor Downtown Cannabis Company, LLC will be placed at increased risk of not receiving a local business license. Plaintiff-Intervenors Monkey Grass Farms, LLC, and JAR MGMT, LLC would be put at greater risk of losing their local licenses, if the local jurisdictions in which they operate chose to prohibit local licensing of marijuana businesses. Each Plaintiff-Intervenor, therefore, is at risk of suffering economic harm through the loss of time and resources invested in their businesses to date, as well as through lost potential earnings.

37. Plaintiff-Intervenors are state and locally licensed business owners who have expended significant resources to participate in Washington's newly regulated marijuana market. If the Court invalidates I-502, or upholds it while allowing local governments to prevent duly licensed marijuana businesses from operating within their jurisdictions, Plaintiff-Intervenors stand to incur substantial damages. Their damages would consist both of their lost future earnings through a licensed business as well as the loss of the significant funds each has invested in reliance on I-502's passage. These investments include both the costs to prepare facilities for marijuana production, processing, and sales, and to ensure that those facilities are in compliance with applicable state and local regulations.

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38. By virtue of their applications for or receipt of licenses to produce, process, or sell marijuana, Plaintiff-Intervenors each have a clear and direct non-economic interest in the outcome of this case as well. In addition to the economic losses they would incur should the Court rule in the City's favor, Plaintiff-Intervenors would lose the protection from arrest and prosecution under state law if the Court declared I-502 void or unconstitutional. As a consequence, Plaintiff-Intervenors would be faced with a real and substantial threat of the deprivation of personal liberty, if I-502's regulatory provisions were enjoined or invalidated.

V. Causes of Action

A. First Cause of Action—Statutory Preemption

39. Plaintiff-Intervenors re-allege and incorporate by reference all of the allegations contained in the preceding paragraphs.

40. The State of Washington fully occupies and preempts the entire field of setting penalties for violations of the State's controlled substances act.

41. Cities, towns, and counties or other municipalities may enact only those laws and ordinances relating to controlled substances that are consistent with RCW 69.50, *et seq*., and such local ordinances shall have the same penalties as provided for by state law.

42. Local laws and ordinances that are inconsistent with the requirements of state law are preempted in accordance with RCW 69.50.608.

43. The City is statutorily preempted from enforcing Ordinance No. 1872, as the Ordinance is inconsistent with and preempted through application of RCW 69.50.608.

44. Plaintiff-Intervenors are each a person whose rights, status or other legal relations are affected by a statute and municipal ordinance. Accordingly, RCW 7.24.010 and 7.24.020 entitle Plaintiff-Intervenors to bring suit to have

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determined any question of construction or validity arising under the statute or ordinance and to obtain a declaration of rights, status or other legal relations thereunder.

B. Second Cause of Action—Constitutional Preemption

45. Plaintiff-Intervenors re-allege and incorporate by reference all of the allegations contained in the preceding paragraphs.

46. Article XI, Section 11, of the Washington State Constitution provides that "[a]ny county, city, town, or township may make and enforce within its limits all such local police, sanitary, and other regulations as are not in conflict with general laws."

47. An ordinance is in conflict with general laws if it forbids that which the statute permits.

48. Defendant's prohibition of marijuana businesses through Ordinance No. 1872 directly conflicts with state law providing for the licensed production, processing, or retail sale of marijuana in designated localities by barring local access to legal, regulated marijuana.

49. Defendant is constitutionally preempted from enforcing Ordinance No. 1872, as the Ordinance conflicts with the general laws.

50. Plaintiff-Intervenors are each a person whose rights, status or other legal relations are affected by a statute and municipal ordinance. Accordingly, RCW 7.24.010 and 7.24.020 entitle Plaintiff-Intervenors to bring suit to have determined any question of construction or validity arising under the statute or ordinance and to obtain a declaration of rights, status or other legal relations thereunder.

C. Third Cause of Action—Declaration of Non-Preemption by Federal Law

51. Plaintiff-Intervenors re-allege and incorporate by reference all of the

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allegations contained in the preceding paragraphs.

52. The CSA, 21 U.S.C. 903, provides that "No provision in this title shall be construed as indicating an intent on the part of the Congress to occupy the field in which that provision operates, including criminal penalties, to the exclusion of any State law on the same subject matter which would otherwise be within the authority of the State, unless there is a positive conflict between that provision of this title and that State law so that the two cannot consistently stand together."

53. Congress has evidenced no intent to preempt any Washington law regulating marijuana absent a "positive conflict" between a provision of the CSA and the State law "so that the two cannot consistently stand together."

54. The United States Constitution enumerates the limited powers of the federal government and, in the Tenth Amendment thereto, specifically reserves all other powers to the states, or to the people. Under these provisions and applicable Supreme Court authority, the federal government may not compel or coerce Washington State to adopt federal marijuana policy or marijuana regulation in State law or to enforce the CSA.

55. Protecting the health and safety of state citizens, regulating drugs, and licensing of commercial activity are all areas of state authority traditionally reserved to the states.

56. Through I-502 the people of Washington have exercised their state authority to eliminate criminal and civil penalties for certain production, processing, sale, and possession of marijuana that is consistent with the limits and regulations set forth in RCW 69.50 and WAC 314-55.

57. I-502 as codified is not in "positive conflict" with CSA "so that the two cannot consistently stand together" and is not otherwise preempted by federal law.

58. Plaintiff-Intervenors are each a person whose rights, status or other

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legal relations are affected by a statute and municipal ordinance. Accordingly, RCW 7.24.010 and 7.24.020 entitle Plaintiff-Intervenors to bring suit to have determined any question of construction or validity arising under the statute or ordinance and to obtain a declaration of rights, status or other legal relations thereunder.

VI. Relief Requested

Plaintiff-Intervenors request the following relief:

1. A declaration that City of Fife Ordinance No. 1872 is unconstitutional and preempted by state law, and that its actions to prevent businesses from applying for and obtaining the permits and licenses necessary to operate marijuana businesses that are lawful under state law within its jurisdiction are unlawful violations of RCW 69.50.608 and Article XI, Section 11, of the Washington State Constitution.

2. A declaration that I-502 as codified is not preempted by federal law.

3. Injunctions, preliminary and permanent, enjoining Defendant City of Fife from the acts set forth above, including any: refusal to accept, process, and approve applications for required permits and licenses; attempt to impede the state licensing process by improperly objecting to licenses granted by the Liquor Control Board; or other action against, or that harms the interests of, any applicant for business licenses from the City merely because the applicant has applied for or obtained a license from the Liquor Control Board to operate a marijuana production, processing, or retail sales license.

4. Any additional and further relief as the Court deems just and equitable.

DATED this 7th day of August, 2014.

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Respectfully submitted,

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