

MICHAEL K. JEANES
Clerk of the Superior Court
By Victor Canisales, Deputy
Date 12/28/2016 Time 15:38:44

Description	Amount
CASE# CV2016-010461	
CIVIL NEW COMPLAINT	319.00
TOTAL AMOUNT	319.00
Receipt# 25652851	

HONOR LAW GROUP, PLLC

James M. Cool, State Bar No. 028023
Benjamin L. Rundall, State Bar No. 031661
1850 N. Central Ave., Suite 1150
Phoenix, AZ 85004
(602) 282-0233
Attorney E-mail: cool@aztrialattorneys.com
Attorney E-mail: rundall@aztrialattorneys.com

Attorneys for Plaintiffs

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF MARICOPA

Case No. **CV2016-010461**

GAM ENTERPRISES, LLC, an Arizona
Limited Liability Company; BAB
HOLDINGS, LLC, an Arizona Limited
Liability Company; 3 SL FAMILY, LLC,
an Arizona Limited Liability Company,
Black and White Companies I-X, Jane and
John Does 1-10,

Plaintiffs,

vs.

STATE OF ARIZONA, a governmental
entity; DOUG DUCEY, Governor of the
State of Arizona; ARIZONA
DEPARTMENT OF HEALTH SERVICES
(ADHS), an Arizona administrative
agency; and CARA CHRIST, Director of
ADHS, in her official capacity, Black and
White Companies I-X, Jane and John Does
1-10,

Defendants.

SPECIAL ACTION COMPLAINT

**(Mandamus; Declaratory Relief;
Injunction; Constitutional Violations:
Equal Protection; Due Process)**

For their Special Action Complaint ("Complaint"), plaintiffs allege as follows:

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26

2
3
4

4
5
6

6
7
8

8
9
0

10
11
12

13
14
15

16
17
18
19
20
21

21
22
23

23
24
25
26

1 and administering the AMMA. *See* Ariz. Rev. Stat. §§ 36-2801 *et seq.* Defendant Christ
2 was at all relevant times acting in her official capacity.

3 10. Defendants State of Arizona, Ducey, ADHS, and Christ are hereinafter
4 referred to collectively as “defendants” or the “government defendants.”

5 11. Plaintiffs and Defendants “Black and White Companies I-X” and “Jane
6 and John Does,” are fictitious entities who are properly included as parties to this
7 lawsuit to assert or defend the claims asserted herein, but who true identities are
8 unknown. Plaintiffs will seek to amend this complaint when and if the true identities of
9 such people or entities become known.

10 12. Venue is proper in this court pursuant to Rule 4(b) of the *Arizona Rules of*
11 *Procedure for Special Actions.*

12 13. This Court has subject matter jurisdiction to hear this Special Action
13 Complaint and to grant the relief requested by authority of Art. VI, Sect. 18 of the
14 Arizona Constitution, Rules 1, 2, and 4 of the *Arizona Rules of Procedure for Special*
15 *Actions*; and Ariz. Rev. Stat. § 36-2818.

16 14. This Complaint is a “statutory special action” under Rule 1(b) of the
17 *Arizona Rules of Procedure for Special Actions.*

18 15. In a statutory special action, the claims and questions presented are not
19 limited by Rule 3 of those Rules. *See Primary Consultants, LLC v. Maricopa Cnty.*
20 *Recorder*, 210 Ariz. 393, 402, n.1, 111 P.3d 435, 444 (Ariz. App. 2005).

21 16. Plaintiffs have no other equally plain, speedy, and adequate remedy and
22 the allegations in this Special Action Complaint demonstrate that the action raises
23 questions cognizable in a special action under Rules 1 and 3 of the *Arizona Rules of*
24 *Procedure for Special Actions.* Because these claims raise statutory and constitutional
25 questions of statewide importance, they must be decided as quickly as possible.

26 17. Plaintiffs request, among other relief, an order of *mandamus*, which was

1 formerly included among the common law writs, but is now governed by the *Arizona*
2 *Rules of Procedure for Special Actions*.

3 **GENERAL FACTUAL ALLEGATIONS**

4 ***Proposition 203's Mandate to Provide Public Access to Medical Marijuana***

5
6 18. Proposition 203 was a Ballot Initiative designed to remove the State of
7 Arizona's legal impediments to the sale, cultivation, and personal use of marijuana for
8 medical purposes.

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

12 20. 252,000 Arizonans signed petitions in support of Proposition 203.

13 21. The stated goals of Proposition 203 included, *inter alia*, to permit
14 qualifying patients to obtain medical marijuana from licensed, non-profit medical
15 marijuana dispensaries regulated by ADHS, to permit cultivation of medical marijuana
16 by individual patients where no licensed dispensary is reasonably available, and to
17 provide strict oversight of the ownership and operations of non-profit medical marijuana
18 dispensaries regulated by ADHS, including imposing application requirements and
19 restrictions on the number and location of dispensaries.

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

22 23. Pursuant to the AMMA, ADHS promulgated rules and regulations to
23 administer Arizona's medical marijuana program. Those rules are codified in the
24 Arizona Administrative Code at A.A.C. R9-17-101 *et seq.* ("ADHS Rules")

25 24. Beginning in 2013, and each calendar year thereafter, the AMMA has
26 required ADHS to review current valid dispensary registration certificates to determine

1 if the Department may issue additional dispensary registration certificates based on
2 patient population and demand. *See* Ariz. Admin. Code R9-17-303(A).

3 ***Plaintiffs Apply for a Dispensary Registration Certificate***
4

5 25. In calendar year 2016, ADHS determined that the number and location of
6 registered patients warranted the licensure of additional medical marijuana dispensaries.

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

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

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

16 29. Each of plaintiffs timely applied to ADHS for a non-profit medical
17 marijuana dispensary license and submitted substantively complete and compliant
18 application materials as required by ADHS Rules.

19 30. ADHS Rules divide the State of Arizona into 126 geographical regions
20 based on population; each region is called a Community Health Analysis Area or
21 "CHAA". *See* Ariz. Rev. Stat. § 36-2804(C); Ariz. Admin. Code R9-17-101(7).

22 31. DRCs issued by ADHS correspond to specific CHAAs and the
23 authorization for a given applicant to operate a medical marijuana dispensary is limited
24 to the CHAA for which the applicant was awarded a DRC.

25 32. Originally, ADHS imposed a limitation of one licensed medical marijuana
26 dispensary per CHAA. ADHS has since lifted that restriction, but nonetheless limits the

1 number of licensed medical marijuana dispensaries in each CHAA based on data
2 reflecting the total number of patients and the geographic concentration of patients. *See*
3 *Ariz. Admin. Code R9-17-303(A)*.

4 33. If ADHS determines it may issue additional DRCs, ADHS must publish
5 that information on their website at least thirty (30) calendar days before ADHS begins
6 accepting DRC applications. *See Ariz. Admin. Code R9-17-303(A)(1)(a)*.

7 34. Once ADHS begins accepting DRC applications, prospective dispensary
8 owners have ten (10) working days to submit completed application packets to ADHS.
9 *See Ariz. Admin. Code R9-17-303(A)(1)(b)*.

10 35. After the application period closes, ADHS has established a mandatory
11 timeframe for reviewing DRC applications to ensure their compliance with the AMMA,
12 ADHS rules, Arizona statutes, and local zoning ordinances as may apply both to
13 dispensaries themselves and to a given applicant.

14 36. Specifically, ADHS has five (5) working days to complete an
15 "Administrative Review" of DRC applications and twenty-five (25) working days to
16 complete a "Substantive Review" of the same. *Ariz. Admin. Code R9-17-107*.

17 37. During the substantive review process, ADHS may inspect a proposed
18 dispensary site multiple times. *Ariz. Admin. Code R9-17-107(D)(2)*.

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

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

25 40. In accordance with the AMMA, no dispensary may be located "within
26 five hundred feet of a public or private school existing before the date of the nonprofit

1 medical marijuana dispensary application.” Ariz. Rev. Stat. § 36-2804(B)(1)(b)(ii).

2 41. Applications reflecting a proposed dispensary location within five
3 hundred feet of a private or public school are prohibited by the AMMA and must be
4 denied by ADHS. *See* Ariz. Admin. Code R9 17-322(A)(1).

5 42. Additionally, ADHS requires DRC applicants to submit documentation
6 from the proposed site’s local zoning authority that “there are no local zoning
7 restrictions for the dispensary’s location” or that “[t]he dispensary’s location is in
8 compliance with any local zoning restrictions.” Ariz. Admin. Code R9-17-304(C)(6).

9 43. Following the deadline to submit DRC applications, ADHS “shall
10 determine if the Department received more [DRC] applications that are complete and in
11 compliance with the [AMMA and associated regulations] to participate in the allocation
12 process than the Department is allowed to issue.” Ariz. Admin. Code. R9-17-
13 303(A)(1)(c).

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

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

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

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

3 ***Plaintiff's Challenges to ADHS's Allocation of DRCs in CHAAs 40, 58, and 78***
4

5 48. In mid-2016, ADHS announced it would accept DRC applications for 31
6 select CHAAS during the ten working days from July 18 through July 29, 2016.

7 49. GAM, BAB, and 3SL each applied to ADHS for DRCs in three separate
8 CHAAs during the application period from July 18 – July 29, 2016,

9 50. GAM applied for a DRC in South Scottsdale—CHAA No. 58.

10 51. BAB applied for a DRC in North Scottsdale—CHAA No. 40.

11 52. 3SL applied for a DRC in Ahwatukee—CHAA No. 78.

12 53. GAM submitted a timely and substantively complete and compliant DRC
13 application for CHAA 58.

14 54. BAB submitted a timely and substantively complete and compliant DRC
15 application for CHAA 40.

16 55. 3SL submitted a timely and substantively complete and compliant DRC
17 application for CHAA 78.

18 56. ADHS received other timely applications for DRCs in each of CHAAs 40,
19 58, and 78 and evaluated plaintiffs' application against those others in order to
20 determine which applicant would be awarded a DRC.

21 57. In doing so, ADHS failed to exclude applications that did not
22 substantively comply with the AMMA and or ADHS rules.

23 58. ADHS's failure to exclude substantively deficient applications resulted in
24 the acceptance of applications that could never be approved for operation as a medical
25 marijuana dispensary in compliance with Arizona law and ADHS rules.

26 59. For example, DHS failed to disqualify certain DRC applications

1 identifying a proposed dispensary location that would violate local zoning regulations
2 and / or the AMMA.

3 60. Upon information and belief, in CHAA 40, ADHS awarded a DRC to an
4 entity whose application should have been rejected for failing to comply with the
5 AMMA and ADHS regulations.

6 61. Upon information and belief, in CHAA 58, ADHS awarded a DRC to an
7 entity whose application should have been rejected for failing to comply with the
8 AMMA and ADHS regulations.

9 62. Upon information and belief, in CHAA 78, ADHS awarded a DRC to an
10 entity whose application should have been rejected for failing to comply with the
11 AMMA and ADHS regulations.

12 **CHAA No. 78 (Ahwatukee)**

13 63. CHAA 78 covers the "urban village" of Ahwatukee, which is located
14 within the municipal boundaries of City of Phoenix.

15 64. In order to qualify for a use permit issued by the City of Phoenix, the
16 prospective medical marijuana dispensary must comply with the City's zoning
17 ordinances.

18 65. City of Phoenix mandates that a DRC holder obtain a use permit from the
19 City before the City will permit the DRC holder to operate a medical marijuana
20 dispensary in City limits. *See* Phoenix Zoning Ord. § 307.

21 66. According to City of Phoenix zoning ordinances, a medical marijuana
22 dispensary may not be located within 500 feet of a district zoned residential. *See*
23 Phoenix Zoning Ord. § 623(D)(122)(f).

24 67. City of Phoenix zoning laws also state a medical marijuana dispensary
25 "shall not be located within 1,320 feet of a preschool, kindergarten, elementary,
26 secondary or high school, public park, public community center, dependent care facility,

1 homeless shelter, or youth community center.” Phoenix Zoning Ord. § 623(D)(122)(g).

2 68. City of Phoenix zoning laws state a medical marijuana dispensary shall
3 not be located within 1,320 feet of a “place of worship.” Phoenix Zoning Ord. §
4 623(D)(122)(h).

5 69. Finally, the zoning ordinances require all dispensaries to be at least 5,280
6 feet from any other licensed medical marijuana dispensary. Phoenix Zoning Ord. §
7 623(D)(122)(e).

8 70. Upon information and belief, ADHS awarded a DRC in the most recent
9 round of allocations to an applicant who proposed locating its dispensary at 10835 S.
10 48th St. in Phoenix, Arizona.

11 71. A medical marijuana dispensary located at 10835 South 48th St. in
12 Phoenix, Arizona cannot comply with City of Phoenix zoning laws because, at a
13 minimum:

- 14 a. It located is within 500 feet of two residential districts; R3 and R1-6.
15 *See Exhibit 1 – Ahwatukee CHAA No. 78, Map 1.*
16 b. It is located within 5,280 feet of another medical marijuana dispensary
17 licensed by ADHS: Sunflower Meds Dispensary, which is located at
18 10827 S. 51st St. #104, Phoenix, AZ 85044. *See Exhibit 1.*
19 c. It is located within 1,320 feet of a place of worship: Mountain View
20 Lutheran Church, which is located at 11002 S. 48th St., Phoenix, AZ
21 85044. *See Exhibit 1.*
22 d. It is located within 20 feet from (next door to) Grace Garden Christian
23 Preschool, which is located at 10841 S. 48th St., Phoenix, AZ 85044,
24 and within 350 feet of Ahwatukee Preschool at Mountain View
25 Lutheran Church, which is located at 11002 S. 48th St., Phoenix, AZ
26

1 85044; both are private pre-schools as defined in ARS Sec. 15-
2 101(21). *See Exhibits 1 and 7.*

3 72. Upon information and belief, no zoning variance has been issued by City
4 of Phoenix to the DRC applicant selected by ADHS; nor could any variance be granted.

5 73. As recently as August 11, 2016, City of Phoenix officially expressed its
6 position that the property located at 10835 South 48th St. does not comply with local
7 zoning laws and could not serve as a medical marijuana dispensary site without the
8 issuance of zoning variances by City authorities.

9 74. In addition to any City of Phoenix zoning requirements, the AMMA
10 specifically requires every dispensary location to be at least 500 feet away from a public
11 or private school. *See Ariz. Rev. Stat. § 36-2804(B)(1)(b)(ii).*

12 75. ADHS allocated a DRC for CHAA No. 78 to an applicant without first
13 ensuring that the applicant's proposed location could lawfully serve as the site for a
14 nonprofit medical marijuana dispensary.

15 76. In failing to ensure the winning applicant's proposed dispensary location
16 was lawful and viable, ADHS failed to implement and frustrated the purpose of the
17 AMMA in violation of its statutory obligations and ADHS' own rules.

18
19 **CHAA Nos. 40 & 58 (North & South Scottsdale)**
20

21 77. City of Scottsdale requires a prospective medical marijuana dispensary
22 owner to obtain a conditional use permit from the City before an applicant will be
23 allowed to operate a medical marijuana dispensary within City limits.

24 78. To be eligible to receive a conditional use permit, any licensed medical
25 marijuana dispensary must meet certain City of Scottsdale zoning requirements.
26

1 79. The Scottsdale Board of Adjustment oversees and enforces City zoning
2 laws and has the exclusive power to grant variances from the provisions of the City's
3 zoning requirements.

4 80. The Board of Adjustment cannot grant variances "inconsistent with the
5 limitations upon other properties in the vicinity and zone in which such property is
6 located." Scottsdale Basic Zoning Ord. § 1.804(A). Such variances would constitute an
7 impermissible "special privilege" disallowed by City of Scottsdale ordinances.

8 81. Accordingly, if a medical marijuana dispensary does not comply with the
9 City's zoning code, an exception or variance cannot be relied upon to bring the
10 dispensary into compliance with City zoning laws because that would constitute an
11 impermissible "special privilege."

12 82. Scottsdale's zoning ordinances require all dispensaries to be at least one
13 thousand five hundred (1,500) feet from a residential district, any elementary, secondary
14 or pre-school, any place of worship, any day care facility, or any public park. *See* City
15 of Scottsdale Basic Zoning Ordinance § 1.403(2)(b).

16 83. City of Scottsdale also requires that all dispensaries must be at least 2,640
17 feet from any existing dispensary. *See* Scottsdale Basic Zoning Ordinance § 1.403(2)(c).

18 84. Upon information and belief, ADHS awarded a DRC for CHAA 40
19 (North Scottsdale) in the most recent round of allocations to an applicant who proposed
20 locating its dispensary at 14405 N. Scottsdale Road in Scottsdale, Arizona.

21 85. The dispensary applicant allocated a DRC by ADHS in CHAA No. 40
22 does not meet the requirements of Scottsdale's zoning ordinances because at a
23 minimum:

- 24 a. It is located within 1,500 feet of two places of worship: Desert Valley
25 Church, which is located at 7575 E. Redfield Rd. #101 in Scottsdale,
26 AZ 85260, and Arizona Conference of Seventh-day Adventists, which

1 is located at 13405 N. Scottsdale Rd., Scottsdale, AZ 85254. See
2 **Exhibit 2 – N. Scottsdale CHAA No. 40, Map 1.**

3 b. It is located within 1,500 feet of a secondary school: Thunderbird
4 Adventist Academy, a private secondary boarding school, which is
5 located at 7410 E. Sutton Dr. in Scottsdale, AZ 85260. See **Exhibit 2.**

6 c. It is located within 1,500 feet of an elementary school: Thunderbird
7 Christian Elementary School, a private K-8 school, which is located at
8 7440 E. Sutton Dr. in Scottsdale, AZ 85260. See **Exhibit 2.**

9 d. It is located within 1,500 feet of a preschool and daycare facility:
10 Children's Learning Adventure – Scottsdale, which is located at 14775
11 N. Scottsdale Rd. in Scottsdale, AZ 85260. See **Exhibit 3 – Scottsdale**
12 **CHAA No. 40, Map 2.**

13 e. It is located within 2,640 feet of another medical marijuana dispensary:
14 Arizona Natural Selections, which is located at 7320 E. Butherus Dr.
15 #100 in Scottsdale, AZ 85260. See **Exhibit 4 – Scottsdale CHAA No.**
16 **40, Map 3.**

17 86. Upon information and belief, ADHS awarded a DRC for CHAA 58
18 (South Scottsdale) in the most recent round of allocations to an applicant who proposed
19 locating its dispensary at 6710 E. Camelback Road in Scottsdale, Arizona.

20 87. The dispensary applicant allocated a DRC by ADHS in CHAA No. 58
21 (South Scottsdale), which is located at 6710 E. Camelback Road in Scottsdale, Arizona
22 does not meet the requirements of Scottsdale's zoning ordinances because, at a
23 minimum:

24 a. It is located within 1,500 feet of three zones reserved exclusively for
25 residential use. See **Exhibit 5 – Scottsdale CHAA No. 58, Map 1.**
26

1 b. It is located within 1,500 feet of a public park ("Lafayette Park"). *See*
2 **Exhibit 6 – Scottsdale CHAA No. 58, Map 2.**

3 88. Upon information and belief, the dispensary applicant allocated a DRC by
4 ADHS in CHAA No. 40 has not received a conditional use permit from the City of
5 Scottsdale.

6 89. Upon information and belief, the dispensary applicant allocated a DRC by
7 ADHS in CHAA No. 58 has not received a conditional use permit from the City of
8 Scottsdale.

9 90. By allocating DRCs to the dispensary applicants in CHAA Nos. 40 & 58
10 without first ensuring that these dispensaries had identified proposed locations in
11 compliance with State law and local zoning restrictions, ADHS failed to implement and
12 frustrated the purpose of the AMMA and ADHS rules in derogation of its duties.

13
14 **CLAIMS FOR RELIEF**

15 **COUNT I**

16 **(Mandamus)**

17 91. Plaintiffs incorporate all previous allegations of this Special Action
18 Complaint as if alleged fully below.

19 92. Governor, Doug Ducey, is the State of Arizona's chief executive and
20 responsible for overseeing operations of the State's executive branch agencies.

21 93. The ADHS is a department of the executive branch, directed by the
22 Governor and/or his appointee. Governor Ducey had at all relevant times delegated
23 direction and management of ADHS to its Director, Defendant Christ.

24 94. Defendant Ducey is required by Article V, Section 4 of the Arizona
25 Constitution to ensure that the laws of Arizona are faithfully implemented and executed.

26 95. As the Governor's designee and Director of ADHS, Defendant Christ has

1 a duty to ensure that the laws of Arizona are faithfully implemented and executed.

2 96. By authority of the Arizona Constitution, the power of the people to
3 legislate by Initiative is as great or greater than the power of the legislature.

4 97. The Arizona Constitution denies the Governor power to veto or amend
5 statutory enactments that have been approved through the popular Initiative process.

6 98. The Arizona constitution requires the Governor to faithfully execute the
7 laws enacted by the people through ballot Initiative, such as the AMMA.

8 99. In 2010, the people of Arizona enacted the AMMA by a ballot Initiative.

9 100. The AMMA requires ADHS to promulgate administrative regulations for
10 the allocation and award of nonprofit medical marijuana dispensary licenses in
11 accordance with ADHS rules and Arizona law.

12 101. In turn, ADHS created an application procedure, selection process, and
13 sanctioning criteria. See Ariz. Admin. Code. R9-17-101 et seq.

14 102. The AMMA requires ADHS to allocate DRCs only to applicants who
15 meet the requirements of Ariz. Rev. Stat. § 36-2804 *et seq.* and any corresponding
16 regulations promulgated by ADHS. See Ariz. Admin. Code R9-17-302(A).

17 103. By allocating DRCs to non-qualifying applicants in CHAA Nos. 40, 58,
18 and 78, Defendants failed to perform the duties required of them by the AMMA and
19 ADHS rules.

20 104. The decision to allocate DRCs to non-compliant prospective dispensaries
21 in CHAA's Nos. 40, 58, and 78 over Plaintiffs' dispensaries who are compliant with the
22 AMMA and all other corresponding regulations, including City zoning codes, is
23 arbitrary and capricious action, which constitutes an abuse of discretion.

24 105. By failing to apply and enforce the requirements of the AMMA and
25 ADHS rules in its allocation of DRCs to non-qualifying applicants, Defendants have
26 failed to discharge their mandatory statutory duty to implement and enforce the AMMA

1 and have, in doing so, frustrated and / or defeated the objective of the AMMA.

2 106. Plaintiffs have no equally plain, speedy, or adequate remedy to compel
3 ADHS and the other Defendants to abide by AMMA's statutory mandates, which were
4 designed to ensure that medical marijuana is accessible and available to patient
5 cardholders.

6 107. No administrative remedies exist for Plaintiffs to exhaust; even if such
7 remedies existed, but were promulgated by the ADHS, exhaustion would be futile as a
8 matter of law.

9 108. This Court has jurisdiction to hear this Special Action and should order
10 Defendants to fully implement the AMMA and revoke DRCs issued to those dispensary
11 applicants allocated a DRC in CHAA's Nos. 40, 58, and 78.

12 109. This Court should also order ADHS to conduct a new allocation process
13 in compliance with the AMMA and all ADHS rules.

14 **COUNT II**

15 **(Declaratory Judgment)**

16 110. Plaintiffs incorporate all previous allegations of this Special Action
17 Complaint as if alleged fully below.

18 111. Ariz. Rev. Stat. § 12-1832 authorizes any person whose rights, status or
19 legal relations are affected by a statute to have determined any question of construction
20 or validity arising thereunder and to obtain a declaration of rights, status or other legal
21 relations thereunder.

22 112. A dispute has arisen over the legality and constitutionality of certain
23 actions taken by Defendants in the context of the AMMA and ADHS' rules.

24 113. Plaintiffs request the Court declare the legality and constitutionality of
25 Defendants' actions in allocating DRCs to nonqualifying applicants in alleged violation
26

1 of the AMMA and ADHS rules.

2 114. Plaintiffs request that the Court declare ADHS exceeded its authority
3 under the AMMA and frustrated the purpose of the statute by allocating DRCs to
4 prospective nonprofit medical marijuana dispensaries for locations that are not suitable
5 as a medical marijuana dispensary because they violate the AMMA, ADHS rules, local
6 zoning ordinances, or any other applicable authority.

7 115. Plaintiffs request that the Court declare the results of the October, 6, 2016,
8 lottery and DRC allocation invalid because it resulted in the award of DRCs to
9 applicants whose applications should have been rejected by ADHS during ADHS's
10 review of applications for not complying with the AMMA and ADHS rules.

11 **COUNT III**

12 **(Equal Protection – State and Federal)**

13 116. Plaintiffs incorporate all previous allegations of this Special Action
14 Complaint as if alleged fully below.

15 117. The Equal Protection Clause of the United States Constitution provides
16 that "no state shall deny any person within its jurisdiction the equal protection of the
17 laws." U.S. Const. Amend. XIV.

18 118. The Equal Protection provision of the Arizona Constitution is set forth in
19 Art. 2, Section 13 and provides that: "No law shall be enacted granting to any citizen,
20 class of citizens, or corporation other than municipal, privileges or immunities which,
21 upon the same terms, shall not equally belong to all citizens or corporations."

22 119. ADHS had a Constitutional duty to apply its rules and Arizona law
23 equally and impartially to each DRC application.

24 120. ADHS had a Constitutional duty to evaluate each DRC application
25 utilizing the same objective criteria.
26

121. Because ADHS utilizes a single-blind application process in which ADHS has complete access to all applications, but applicants have access only to their own submission, ADHS had a Constitutional duty to ensure that it awarded DRCs only to applicants who substantively complied with all relevant provisions of the AMMA and ADHS rules.

122. ADHS violated Plaintiffs' equal protection rights when it awarded DRCs to noncompliant applications for locations that violate the AMMA, ADHS rules, and municipal zoning laws.

123. By awarding DRCs to applicants utilizing noncompliant proposed locations, ADHS created an uneven playing field in which it allowed applicants to benefit from choosing a location that cannot lawfully house a medical marijuana dispensary whenever such locations were located in closer proximity to the largest number of patients than any lawful and compliant location.

124. By failing to reject non-compliant applications, defendants denied plaintiffs access to a DRC and, in doing so, denied plaintiffs and plaintiffs' principal owners their Constitutional right to pursue a lawful occupation, despite submitting application fees and application materials that complied with the AMMA and ADHS rules in all material respects.

COUNT IV

(Procedural Due Process – State and Federal)

125. Plaintiffs incorporate all previous allegations of this Special Action Complaint.

126. The 14th Amendment of the United States Constitution provides that no state shall “deprive any person of life, liberty, or property, without due process of law.” U.S. Const. Amend. XIV.

127. The Due Process provision of the Arizona Constitution is set forth in Art.

1 2, Section 4 and provides that: "No person shall be deprived of life, liberty, or property
2 without due process of law."

3 128. Plaintiffs have a vested and protectable property interest in obtaining a
4 DRC because it acts as a license to operate and own a nonprofit medical marijuana
5 dispensary, a lawful occupation under Arizona law.

6 129. By failing to perform its duty to investigate and eliminate deficient
7 applications, ADHS wrongfully awarded DRCs to noncompliant dispensaries in
8 CHAAs Nos. 40, 58, and 78.

9 130. By awarding DRCs to non-compliant applicants in these CHAAs,
10 Defendants and ADHS denied Plaintiffs their right to a lawful DRC allocation as
11 proscribed in the AMMA and ADHS's own regulations.

12 131. By awarding DRCs to facially non-compliant applications, Defendants
13 created an unfair process and a competitive disadvantage for applicants like plaintiffs
14 who complied fully with ADHS rules and the AMMA.

15 132. ADHS further violated plaintiffs' Constitutional rights by utilizing a
16 system for allocating DRCs that was fundamentally unfair inasmuch as it advantaged as
17 applicants existing dispensary owners in a given CHAA over applicants who did not
18 already operate a medical marijuana dispensary.

19 133. Specifically, ADHS allocated DRCs to the applicant in each CHAA
20 whose proposed address was located closest to the greatest concentration of patients
21 within a 10 mile radius of the dispensary.

22 134. ADHS did not make the patient registration data utilized by ADHS in
23 making its allocation decisions public or accessible to applicants.

24 135. However, owner operators of existing dispensaries in a given CHAA have
25 access to patient database information, including patient addresses, which access is
26 gained incident to providing services to those patients as a licensed medical marijuana

1 dispensaries in the course of verifying each patient's status as a cardholder.

2 136. As a result, existing dispensary owners applying for a new DRC in their
3 same CHAA had unfairly superior information regarding patient registration and patient
4 location than did applicants who did not already own and operate a medical marijuana
5 dispensary.

6 **COUNT V**

7 **(Substantive Due Process – State and Federal)**

8 137. Plaintiffs incorporate all previous allegations of this Special Action
9 Complaint as if alleged fully below.

10 138. The 14th Amendment to the United States Constitution provides that no
11 state shall "deprive any person of life, liberty, or property, without due process of law."
12 U.S. Const. Amend. XIV.

13 139. The Due Process provision of the Arizona Constitution is set forth in Art.
14 2, Section 4, and provides that: "No person shall be deprived of life, liberty, or property
15 without due process of law."

16 140. Plaintiffs have a fundamental due process right under the Arizona and
17 federal Constitutions to pursue a lawful occupation.

18 141. Owning and operating a non-profit medical marijuana dispensary is a
19 lawful occupation in the State of Arizona for anyone that holds a DRC and has ADHS
20 approval to operate.

21 142. Plaintiffs' substantive right to pursue a lawful occupation was abridged
22 and violated by Defendants when they failed to eliminate non-compliant DRC
23 applications from the allocation process that culminated on October 6, 2016.

24 143. Defendants' and ADHS's failure to perform their duties to investigate and
25 eliminate deficient applications denied plaintiffs access to a DRC and, thus, denied
26 plaintiffs the right to pursue a lawful occupation.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

COUNT VI

(Injunction)

144. Plaintiffs incorporate all previous allegations of this Special Action Complaint as if alleged fully below.

145. Plaintiffs seek injunctive relief prohibiting Defendants and ADHS from issuing approvals to operate to dispensaries awarded a DRC in the October 6, 2016, allocation in and for CHAA Nos. 40, 58, and 78 until such time as the Court can adjudicate plaintiffs' claims and, if appropriate and necessary, ADHS can devise a system for reviewing DRC applications to ensure substantive and legal compliance.

146. The relief requested is necessary because Plaintiffs are likely to endure irreparable harm and have no other adequate remedy at law if and once ADHS approves the non-compliant DRC applicants to operate.

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

148. Plaintiffs have made substantial investments of capital and time in reliance on Defendants' duty to fairly and consistently apply the AMMA and ADHS rules to ensure that only lawful and compliant applications are awarded a DRC.

149. If defendants are not enjoined, Plaintiffs will suffer irreparable injury by not being allowed the opportunity to practice and pursue a lawful occupation and applicants who were improperly awarded a DRC will incur additional and unnecessary costs associate with operations and preparations to operate.

1 RESPECTFULLY SUBMITTED: December 28, 2016

2
3
4 HONOR LAW GROUP, PLLC

5
6
7 By: _____

8 James M. Cool
9 Benjamin L. Rundall
10 1850 N. Central Ave.
11 Suite 1150
12 Phoenix, AZ 85004
13 *Attorneys for Plaintiff*
14
15
16
17
18
19
20
21
22
23
24
25
26

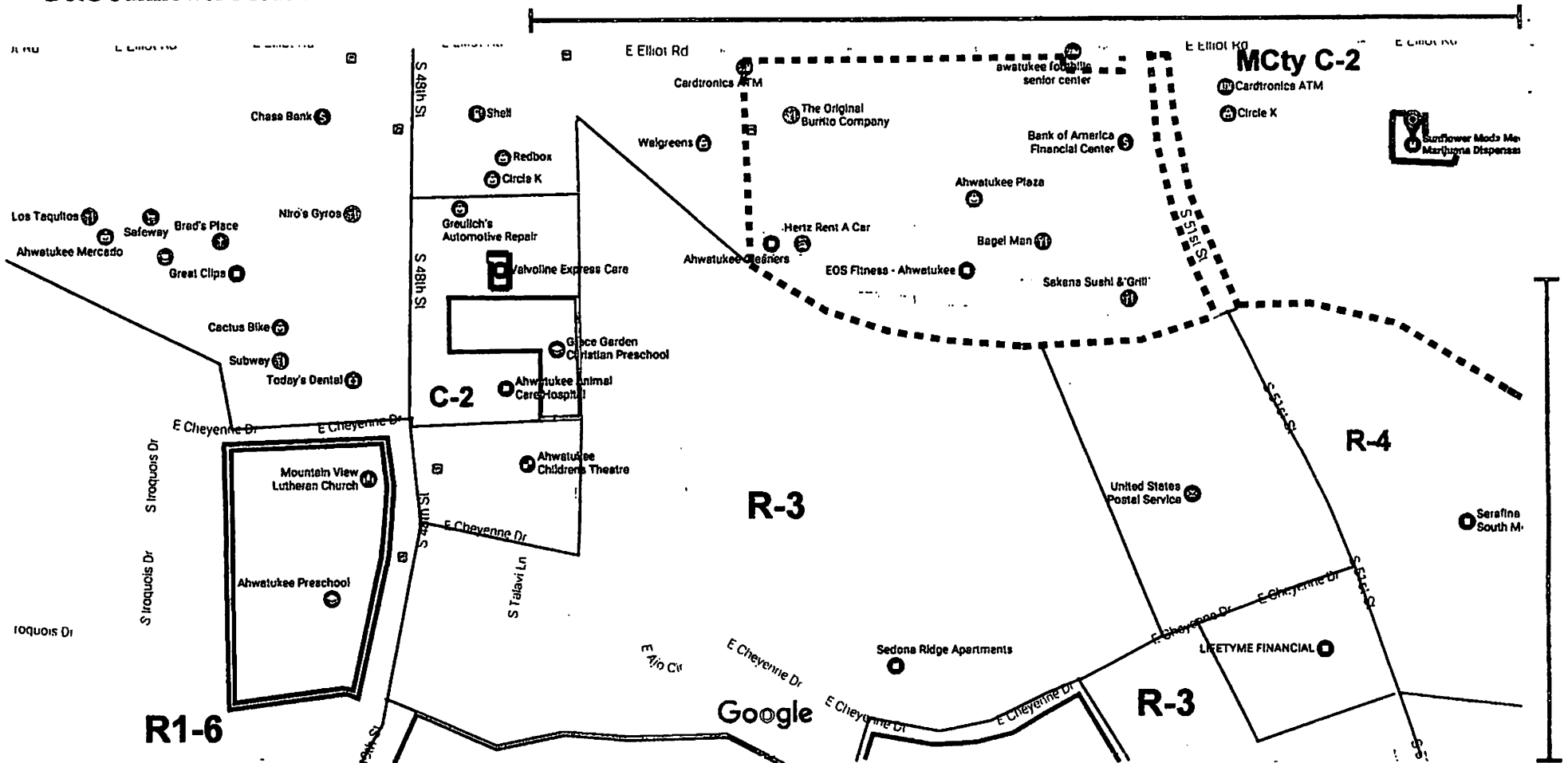
EXHIBIT 1

Ahwatukee CHAA Compliance Analysis

DRC Sunflower Meds and DRC 10835 S. 48th Street

100ft = 0.662"

1000ft



Green = DRC Dispensary

Black = Phoenix Zoning

Red = Preschool

Blue = Church

Yellow = Park or Cmty

Ctr

= Maricopa County

Phoenix Zoning § 623(D)(122)

- *A dispensary cannot exceed 2000sq/ft
- *Must be 5,280 ft away from any dispensary
- *Must be 500 ft away from residential neighborhood
- *Must be 1,320ft away from preschool, park, public community center, dependent care facility, youth community center, or place of worship.

*Distances measured from wall of dispensary to property line of protected place.

Maricopa County Zoning § 804.2(45)^{500ft}

- *A dispensary cannot exceed 2000sq/ft
- *Must be 1,500 ft away from any dispensary
- *Must be 500 ft away from residential neighborhood
- *Must be 1,500ft away from preschool, park, playground, adult business.

*Distances measured from closest exterior wall of dispensary to the closest boundary line of protected location.

Attorney Work Product

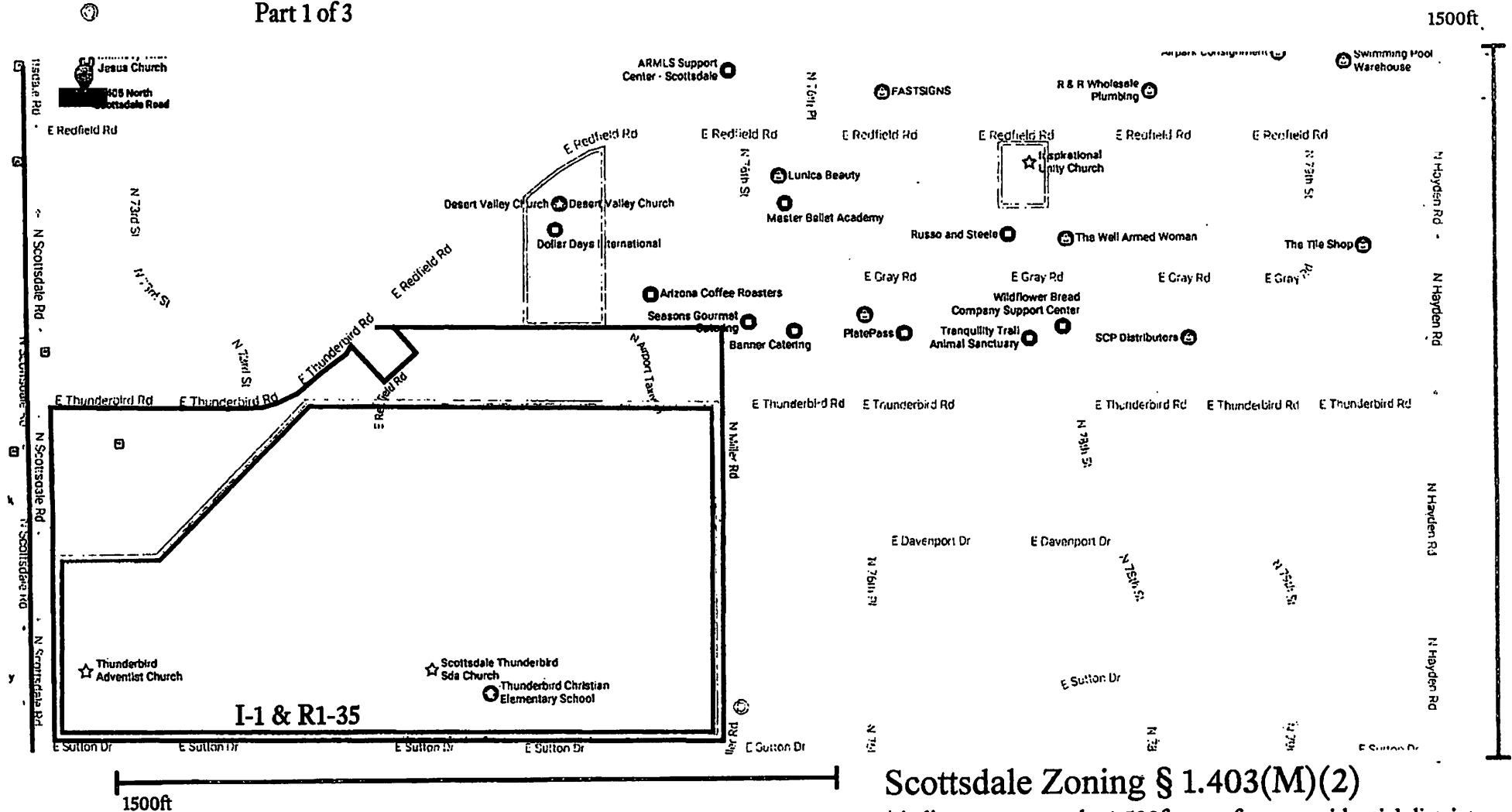
EXHIBIT 2

North Scottsdale CHAA Compliance Analysis

DRC 14405 North Scottsdale Road

Part 1 of 3

200ft = 0.662"



Green = DRC Dispensary
Red = School
Black = Scottsdale Zoning
Yellow = Church
Blue = Scottsdale City Limit

Scottsdale Zoning § 1.403(M)(2)

*A dispensary must be 1,500ft away from a residential district, preschool, elementary school, or secondary school, place of worship, daycare and public park located within the City limits.

*Must be 2,640ft from an existing dispensary.

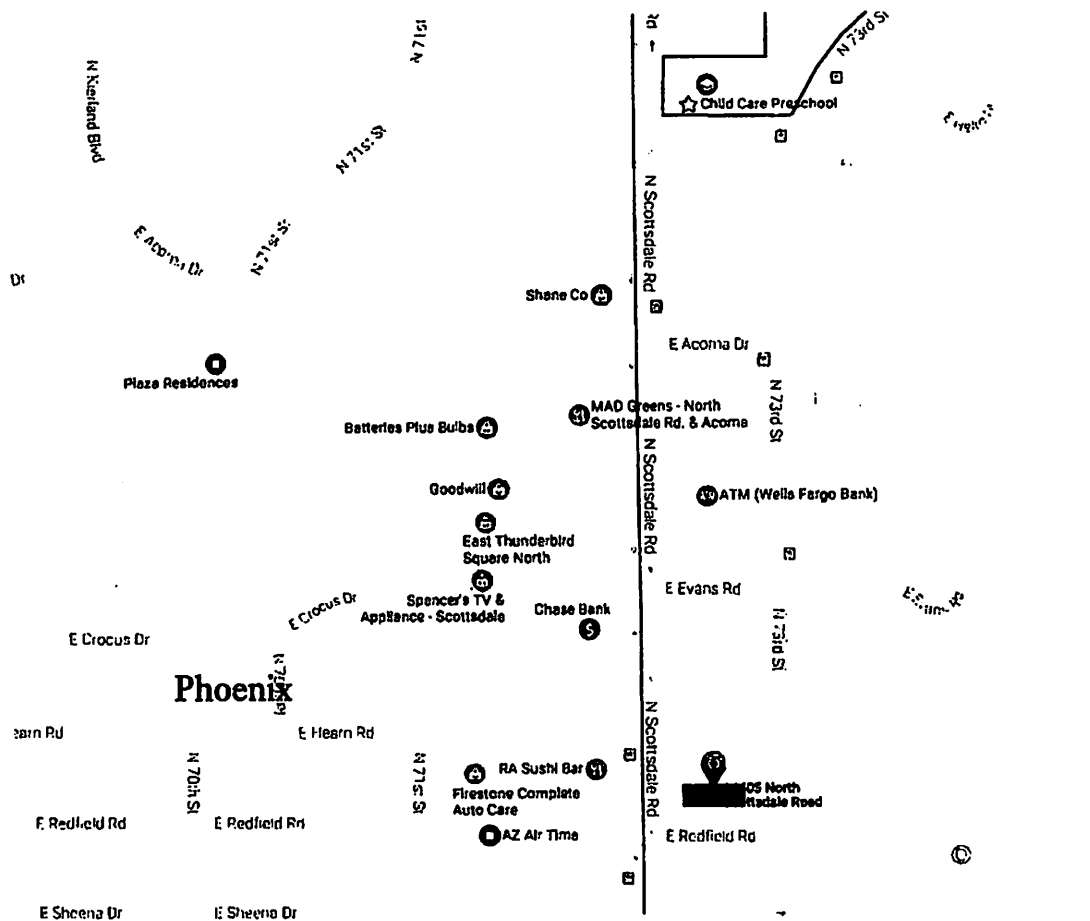
*All distances are measured from the wall of the dispensary nearest to the protected district, to the nearest property line of the protected district.

EXHIBIT 3

200ft = 0.662"

500ft

1500ft



North Scottsdale CHAA Compliance Analysis

DRC 14405 North Scottsdale Road
Part 2 of 3

Scottsdale Zoning § 1.403(M)(2)

- *A dispensary must be 1,500ft away from a residential district, preschool, elementary school, or secondary school, place of worship, daycare and public park located within the City limits.
- *Must be 2,640ft from an existing dispensary.

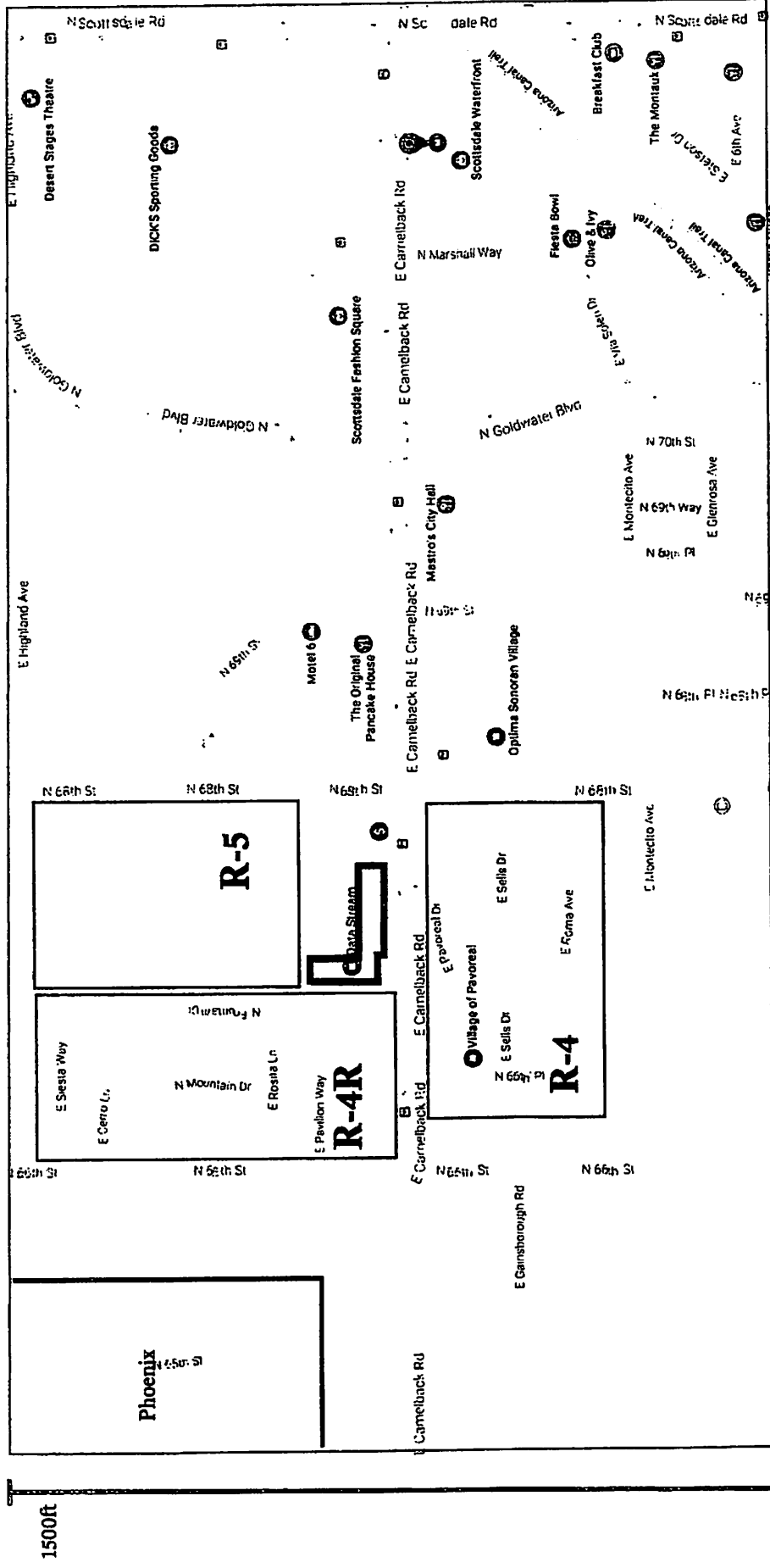
*All distances are measured from the wall of the dispensary nearest to the protected district, to the nearest property line of the protected district.

Green = DRC Dispensary
Red = School/Preschool
Blue = Scottsdale City Limit

EXHIBIT 4

EXHIBIT 5

200ft = 0.662"



*A dispensary must be 1,500ft away from a residential district, preschool, elementary school, or secondary school, place of worship, daycare and public park located within the City limits.

*** All distances are measured from the wall of the dispensary nearest to the protected district, to the nearest property line of the protected district.**

Attorney Work Product

EXHIBIT 6

Part 2 of 2

Phoenix

Camelback Christian Church

Bloch Communications

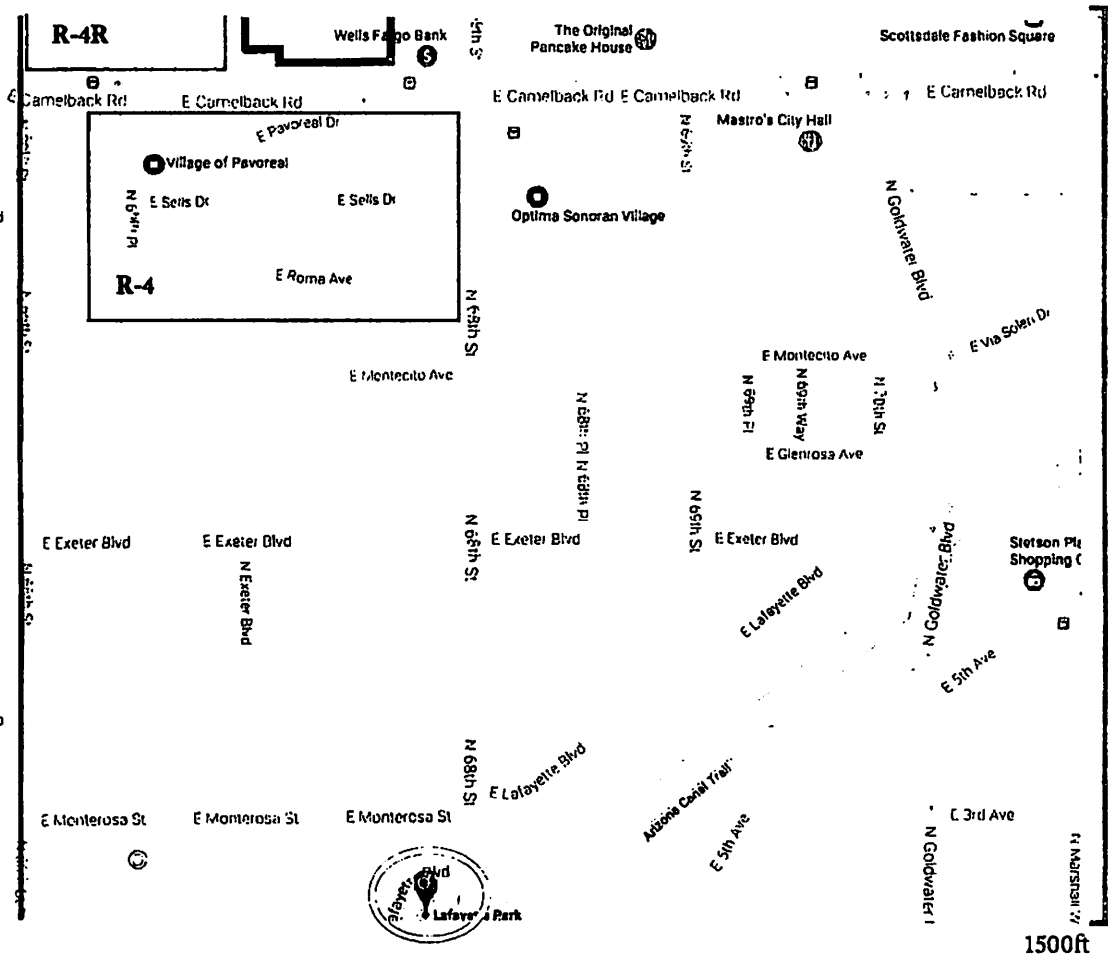
Nance Construction

Hayland Group

Central Park Zoo

Southwest Advertising & Promotions

***All distances are measured from the wall of the dispensary nearest to the protected district, to the nearest property line of the protected district.**



Green = DRC Dispensary
Yellow = Public Park
Black = Scottsdale Zoning
Blue = Scottsdale City Limit

Attorney Work Product

EXHIBIT 7

