

EXHIBIT 2

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8 **SUPERIOR COURT OF ARIZONA**
9 **IN MARICOPA COUNTY**

10 WHITE MOUNTAIN HEALTH CENTER,
INC., an Arizona non-profit corporation,

11 Plaintiff,

12 v.

13 COUNTY OF MARICOPA; WILLIAM
14 MONTGOMERY, ESQ., Maricopa County
Attorney, in his official capacity;
15 ARIZONA DEPARTMENT OF HEALTH
SERVICES, as agency of the State of
16 Arizona; WILL HUMBLE, Director of the
Arizona Department of Health Services, in
17 his Official Capacity; and DOES I-X,

18 Defendants.

No. CV2012- 053585

**STATE'S ANSWER AND
COUNTERCLAIM FOR
DECLARATORY RELIEF**

(Assigned to the Hon. Michael D. Gordon)

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20 The State of Arizona ex rel. Thomas C. Horne in his official capacity as the Attorney
21 General, by undersigned counsel, hereby provides its Intervenor's Answer and Counterclaim
22 for Declaratory Relief.

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2 **ANSWER**

3 No allegation of the Plaintiff's complaint mentions or appears to attempt to state a
4 claim against the Attorney General, so no answer is required. Should the Plaintiff attempt to
5 state a claim for relief against the Attorney General, the Attorney General hereby reserves the
6 right to file an amended answer.

7 **COUNTERCLAIM FOR DECLARATORY RELIEF**

8 1. This counterclaim is made by the State of Arizona ex rel. Thomas C Horne in his
9 official capacity as the Attorney General, for a declaration that the relief sought by the Plaintiff
10 in this case is preempted by the operation of federal law.

11 2. Thomas C. Horne is the duly-elected Attorney General of the State of Arizona, and
12 as such has numerous powers granted by the Constitution and Laws of the State of Arizona.

13 3. Venue is proper in this county because Plaintiff commenced this action in this
14 county, wishes declaratory and injunctive relief pertaining to future activities within this
15 county, and specifically sought relief against officials of Maricopa County.

16 4. This Court has subject matter jurisdiction pursuant to the Arizona Declaratory
17 Judgment Act, A.R.S. § 12-1831 through -1846, and relevant portions of the Arizona
18 Constitution.

19 5. In its Complaint in this action, the Plaintiff has sought declaratory and injunctive
20 relief to the effect that Plaintiff has a legal right to operate a medical marijuana dispensary and
21 thus to cultivate, possess and distribute marijuana pursuant to an initiative and statutes,
22 commonly referred to as the "Arizona Medical Marijuana Act." In particular, Plaintiff wants
this Court to order Maricopa County, William Montgomery in his official capacity as the
Maricopa County Attorney, the Arizona Department of Health Services and Will Humble in
his official capacity as Director of that Department, to take affirmative steps to authorize the
Plaintiff to run its medical marijuana business.

1 6. At all times relevant hereto, federal statutes have prohibited the possession,
2 distribution, and cultivation of marijuana. Any operation of a medical marijuana dispensary
3 will immediately violate the laws of the United States.

4 7. On August 6, 2012, as the result of a request by a member of the Arizona
5 Legislature and by thirteen of Arizona's fifteen county attorneys, the Attorney General issued
6 a formal Opinion concluding that the AMMA is preempted in part by federal law. That formal
7 Opinion is appended hereto as Exhibit 1 and fully incorporated herein by this reference.

8 8. Since the AMMA is preempted in part by federal law, those portions in conflict
9 with federal law or which stand as an obstacle to the purposes of federal law are preempted
10 and of no force and effect. All portions of the AMMA relevant to Plaintiff's operation of its
11 proposed dispensary are so preempted.

12 9. The Court should not award the Plaintiff any relief based upon the portions of the
13 AMMA that are preempted by federal law.

14 10. It is apparent from Plaintiff's Complaint that the Plaintiff contests the conclusion
15 that portions of the AMMA are preempted by federal law. Therefore, there is a present,
16 existing and concrete controversy between the parties that is appropriate for resolution by this
17 Court in the form of a declaratory judgment.
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1 **PRAYER FOR RELIEF**

2 Wherefore, the Attorney General requests this Court enter appropriate orders to deny
3 Plaintiff the relief sought in the Complaint, to award a declaratory judgment that the relief
4 sought by Plaintiff is preempted by the operation of Federal law, and for such other and further
5 relief as the Court may deem appropriate in the premises, including without limitation an
6 award of costs and attorneys fees in favor of the Attorney General.

7 DATED this 23rd day of August, 2012.

8 THOMAS C. HORNE
Attorney General

9 /s/ Charles A. Grube
10 Charles A. Grube
Senior Agency Counsel
Attorneys for the State ex rel.
11 Thomas C. Horne

12 This Answer and Counterclaim was
13 electronically filed with the Court
and copies transmitted
14 by regular U.S. Mail
and email on this 23rd day of
August, 2012, as follows:

15 Jeffrey S. Kaufman, Ltd.
16 5725 North Scottsdale Road, Suite 190
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17 Kevin D. Ray
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3 I also transmitted courtesy copies to
4 the above attorneys via electronic
transmission this date.

5 /s/ Charles A. Grube

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