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11 Attorneys for Plaintiffs

12 **IN THE UNITED STATES DISTRICT COURT**
13 **FOR THE DISTRICT OF ARIZONA**

14 ARIZONA CONTRACTORS)
15 ASSOCIATION, INC., an Arizona non-)
16 profit corporation, ARIZONA)
17 EMPLOYERS FOR IMMIGRATION)
18 REFORM, INC., an Arizona non-profit)
19 corporation, CHAMBER OF COMMERCE)
20 OF THE UNITED STATES OF AMERICA,)
21 a Washington D.C. non-profit corporation,)
22 ARIZONA CHAMBER OF COMMERCE,)
23 an Arizona non-profit corporation,)
24 ARIZONA HISPANIC CHAMBER OF)
25 COMMERCE, INC., an Arizona non-profit)
26 corporation, ARIZONA FARM BUREAU)
27 FEDERATION, an Arizona non-profit)
28 corporation, ARIZONA RESTAURANT)
AND HOSPITALITY ASSOCIATION, an)
Arizona non-profit corporation,)
ASSOCIATED MINORITY)
CONTRACTORS OF AMERICA, an)
Arizona non-profit limited liability)
company; ARIZONA ROOFING)
CONTRACTORS ASSOCIATION, an)
Arizona non-profit corporation,)
NATIONAL ROOFING CONTRACTORS')
ASSOCIATION, an Illinois not-for-profit)
corporation, WAKE UP ARIZONA! INC.,)
an Arizona non-profit corporation,)
ARIZONA LANDSCAPE)
CONTRACTORS' ASSOCIATION, an)
Arizona non-profit corporation.)

Case No. CV07-2496-PHX-EHC

**MOTION FOR TEMPORARY
RESTRAINING ORDER AND
PRELIMINARY INJUNCTION**

Plaintiffs,

1 v.)
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Defendants.

15 Plaintiffs Arizona Contractors Association, Inc., Arizona Employers for
16 Immigration Reform, Chamber of Commerce of the United States of America, Arizona
17 Chamber of Commerce and Industry, Arizona Hispanic Chamber of Commerce, Arizona
18 Farm Bureau, Arizona Restaurant and Hospitality Association, A.M.C.A., LLC dba
19 Arizona Minority Contractors Association, Arizona Roofing Contractors Association,
20 National Roofing Contractors' Association, Wake Up Arizona!, and the Arizona
21 Landscape Contractors' Association (collectively referred to as "Plaintiffs"), by and
22 through counsel undersigned, pursuant to Rule 65, Fed. R. Civ. P., hereby respectfully
23 move that the Court enter a Temporary Restraining Order ("TRO") and a Preliminary
24 Injunction to enjoin enforcement of the Legal Arizona Workers Act until the Court
25 conducts a trial in this action to adjudicate the claims of Plaintiffs. This Motion is
26 supported by Plaintiffs' Legal Brief in Support of Motion for TRO and Preliminary
27 Injunction filed simultaneously herewith.

1 Plaintiffs' Complaint seeks a declaratory judgment that the Legal Arizona Workers
2 Act, A.R.S. § 23-211 to 23-214 (the "Act"), is unconstitutional and seeks a permanent
3 injunction to enjoin enforcement of the Act. Plaintiffs previously filed suit against the
4 Honorable Janet Napolitano, Governor of Arizona, and the Honorable Terry Goddard,
5 Attorney General of the State of Arizona, seeking a declaratory judgment and injunctive
6 relief. *Arizona Contractors Association et al. v. Napolitano et al.*, Cause No. 07-1355-
7 PHX-NVW. On December 7, 2007, after a consolidated hearing on the Motion for
8 Preliminary Junction and trial on the merits, the Court dismissed the lawsuit without
9 prejudice on the grounds of standing, holding that the County Attorneys charged with
10 enforcement of the Act were proper Defendants, rather than an action exclusively against
11 the Attorney General and Governor. Plaintiffs, therefore, on December 9, 2007 filed this
12 action against the 15 County Attorneys in Arizona, plus the Attorney General and
13 Director of the Arizona Registrar of Contractors, seeking to enjoin enforcement of the
14 Act.

15 The Legal Arizona Workers Act took effect on September 19, 2007. Certain
16 provisions of the Act become effective on January 1, 2008, including (1) requiring that all
17 Arizona employers must use the federal government's Basic Pilot Program, now known
18 as the E-Verify Program, and (2) subjecting Arizona employers to suspension or
19 revocation of their business licenses if they are found to have knowingly employed an
20 unauthorized alien on or after January 1, 2008.

21 The Temporary Restraining Order and Preliminary Injunction are necessary to
22 preserve the status quo and to prevent irreparable injury while this case is pending.
23 Plaintiffs and their members, in the absence of a TRO and preliminary injunction, would
24 be required to enroll in the E-Verify Program, undertake training, change their hiring
25 procedures, change their personnel records and retention procedures, and utilize the E-
26 Verify Basic Pilot Program, all within the next 20 days. In some cases, that compliance
27 would require businesses to purchase a computer and internet service. The Act is
28 undoubtedly unconstitutional, and the TRO and preliminary injunction are necessary to

1 prevent the Act's violation of Plaintiffs' constitutional rights and to prevent the injury of
2 requiring that Plaintiffs and their members utilize the E-Verify Program.

3 The wisdom and desirability of a TRO and Preliminary Injunction to enjoin the E-
4 Verify requirement in this case is even more compelling than in the previous lawsuit
5 against the State of Arizona because, unlike the State, the County Attorney Defendants in
6 this action can be liable for monetary damages. If the Act is not enjoined, the County
7 Attorneys in Arizona could be liable for money damages to all Arizona businesses for the
8 costs incurred by them for their coerced actions in signing up for the E-Verify Program in
9 compliance with the Act, despite the unconstitutional nature of requiring Arizona
10 businesses to do so. The issuance of a TRO and Preliminary Injunction, therefore, would
11 save the taxpayers of the counties of Arizona potential liability for a massive amount of
12 damages. Once this case is adjudicated on the merits and the requirement to enroll in the
13 E-Verify Program is declared unconstitutional, every business that signed up for the E-
14 Verify Program because of the unconstitutional law could bring an action against the
15 County Attorneys for its damages. With 150,000 businesses in Arizona, if the cost of
16 utilizing the E-Verify system averaged \$1,000 per business, the County Attorneys in this
17 case would be subjected to \$150,000,000 of potential liability if the injunction is not
18 issued and the E-Verify system is ruled unconstitutional after January 1, 2008.

19 In addition, an injunction is necessary to prevent Plaintiffs' constitutional rights
20 from being violated through enforcement against Plaintiffs of the license
21 suspension/revocation provisions of the Legal Arizona Workers Act. Adjudication of the
22 constitutionality of the license revocation provision is necessary to prevent Plaintiffs and
23 their members from being subjected to the risks and costs of enforcement actions. In
24 response to issues raised by the Court regarding standing in the earlier case against the
25 Governor and Attorney General, Plaintiffs are submitting, on a John Doe basis,
26 Declarations from members of at least one Plaintiff association of businesses that do not
27 intend to comply with the Act, one of whom has been specifically threatened with
28 prosecution.

1 Plaintiffs respectfully suggest that the following is a sensible
2 procedural/scheduling sequence for this case:

3 The Court should issue an Order to Show Cause why a Temporary
4 Restraining Order should not be issued in this case, with a return date within 72
5 hours.

6 The Court should issue a Temporary Restraining Order to enjoin the
7 requirement of the law that Arizona employers enroll in and utilize the E-Verify
8 Basic Pilot Program. The Temporary Restraining Order should remain in effect
9 until a hearing on a Motion for Preliminary Injunction may be heard. The Court is
10 well-familiar with the issues regarding the Basic Pilot Program as a result of the
11 Court's consideration of the Motion for Preliminary Injunction and trial in *Arizona*
12 *Contractors Association Inc. et al. v. Napolitano et al.* Cause No. CV07-1355-PHX-
13 NVW.

14 Because of the number of Defendants in this action, the hearing on Plaintiffs'
15 Motion for Preliminary Injunction should be heard after the first of the year. Entering an
16 injunction until that date will reduce the uncertainty for the Arizona business community,
17 particularly in view of the upcoming holidays. It will permit the briefing and evidentiary
18 hearing regarding the Preliminary Injunction to be held after the holidays.

19 The Court should also issue an injunction to enjoin enforcement of A.R.S. § 23-
20 212 until after a preliminary injunction hearing can be held. Plaintiffs suggest that the
21 hearing on the preliminary injunction regarding A.R.S. § 23-212 be held after the
22 holidays. That will prevent irreparable injury from occurring to Plaintiffs and others from
23 the potential enforcement of A.R.S. § 23-212, including subjecting them to possible
24 suspension/revocation of business licenses, and violation of their Constitutional rights.

25 If Defendants are unwilling or unable to agree collectively to the above procedural
26 schedule or if the Court declines to issue a TRO, then Plaintiffs are prepared to go
27 forward with a hearing on the Motion for Preliminary Injunction at any time, and the
28 hearing should be held no later than next week, the week of December 17, 2007.

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RESPECTFULLY SUBMITTED this 10th day of December, 2007.

BALLARD SPAHR ANDREWS &
INGERSOLL, LLP

By: /s/ David A. Selden

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I hereby certify that on the 10th day of
December, 2007, I caused the foregoing document:

**MOTION FOR TEMPORARY RESTRAINING
ORDER AND PRELIMINARY INJUNCTION**

To be filed electronically with the Clerk of
Court through ECF; and that ECF will send
an e-notice of the electronic filing to the
following ECF participants:

And to be delivered as a courtesy hard copy
to:

/s/ Kathleen Reynolds