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SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF MARICOPA

WENDY KNIGHT, an individual,
Plaintiff; and
STATE OF ARIZONA, *ex rel.*
KRISTIN K. MAYES, Attorney General,
Plaintiff-Intervenor,

v.

SUNWEST CHOICE HEALTH AND
REHAB, an Arizona Corporation;
APACHE TRAIL HEALTHCARE, INC.,
an Arizona Corporation; BANDERA
HEALTHCARE, LLC, a Foreign
Corporation; THE ENSIGN GROUP,
INC., a Foreign Corporation; JOHN and
JANE DOES I-X; BLACK and WHITE
PARTNERSHIPS I-X; and ABC
CORPORATIONS I-X,

Defendants.

Case No.: CV2024-007103

**MOTION FOR LIMITED PURPOSE
INTERVENTION**

(Assigned to Hon. Rodrick Coffey)

1 Pursuant to A.R.S. § 46-455(M) and Rule 24(a)(1) of the Arizona Rules of Civil Procedure,
2 the State of Arizona *ex rel.* Kristin K. Mayes, the Attorney General (the “State”), hereby moves
3 the Court for an order naming the State as an intervenor for the limited purpose of challenging the
4 legality of the arbitration agreement that was the subject of Defendants’ motion to compel filed
5 April 30, 2024. This Motion is accompanied by the Attorney General’s certification that this case
6 is of special public importance as required by A.R.S. § 46-455(M) (attached hereto as **Exhibit A**)
7 and a copy of the proposed Complaint-In-Intervention as required by Rule 24(c)(1)(B) (attached
8 hereto as **Exhibit B**). This Motion is supported by the record in this case and the following
9 memorandum of points and authorities.

10 **MEMORANDUM OF POINTS AND AUTHORITIES**

11 Plaintiff Wendy Knight filed this lawsuit on April 1, 2024 on behalf of herself and all
12 statutory beneficiaries. Plaintiff’s Complaint alleges, *inter alia*, elder abuse and elder neglect
13 under the Adult Protective Services Act, A.R.S. § 46-451 *et seq* (“APSA”). According to the
14 Complaint, decedent Robert Knight was a patient at the Sun West Choice facility, and during his
15 time there he developed a bed sore so horrific it led to his death by bacterial pneumonia and
16 osteomyelitis (bone infection). Defendants subsequently filed a motion asking the Court to
17 enforce an arbitration agreement executed by Plaintiff on behalf of Mr. Knight at the time of Mr.
18 Knight’s admission to the Sun West Choice facility (the “Arbitration Agreement”).

19 As set forth at length in the proposed Complaint-In-Intervention, the Arbitration
20 Agreement violates Arizona law and policy because it forces claims of vulnerable adult abuse into
21 secret proceedings, thereby eliminating the important role of the Attorney General under APSA.
22 The Attorney General therefore files this intervention motion for the specific purpose of
23 presenting the illegality arguments to the Court and obtaining a Rule 54(b) declaratory judgment
24 that the Arbitration Agreement is void *ab initio*, along with all similar agreements executed by
25 Defendants.

26 Because the issues raised in this limited purpose intervention are pure questions of law

1 arising from facts already established in this proceeding, no discovery will be necessary to resolve
2 the State’s claims. The State intends to file the proposed Complaint-In-Intervention as soon as
3 the Court authorizes the filing, and then file a motion for summary judgment on the State’s
4 pleading as soon as permitted by the Arizona Rules of Civil Procedure.

5 **ARGUMENT**

6 **I. THE ADULT PROTECTIVE SERVICES ACT GRANTS THE ATTORNEY
7 GENERAL THE ABSOLUTE RIGHT TO INTERVENE IN THIS ACTION.**

8 APSA establishes a cause of action for any vulnerable adult whose life or health is being
9 or has been endangered or injured by neglect, abuse or exploitation. An affected person may file
10 an action in superior court against any person or enterprise that has been employed to provide
11 care, that has assumed a legal duty to provide care, or that has been appointed by a court to provide
12 care to such vulnerable adult for having caused or allowed such conduct. A.R.S. § 46-455(B).

13 In addition to this private right of action, the statute expressly grants the Arizona Attorney
14 General the right to bring a civil action for the State on behalf of persons endangered or injured
15 in the manner described above in order to prevent, restrain or remedy the conduct prohibited by
16 APSA. A.R.S. § 46-455(E). The statute also gives the Attorney General the right to intervene in
17 a civil case filed by a private plaintiff alleging abuse, neglect, or exploitation of a vulnerable adult
18 “if the attorney general certifies that in his [sic] opinion the action is of special public importance.”
19 A.R.S. § 46-455(M).

20 The Attorney General already certified that the above-numbered action is of special public
21 importance. *See* Exhibit A. Therefore the Attorney General has an absolute statutory right to
22 intervene in this matter. Ariz. R. Civ. P. 24(a)(1).

23 **A. The State’s right to intervene is absolute because the requirement for
24 certification of “special public importance” is not a condition.**

25 APSA requires the Attorney General to certify that a case is of “special public importance”
26 before seeking to intervene in a vulnerable adult case. A.R.S. § 46-455(M). This requirement is

1 not a condition, but rather a limit on the category of cases for which intervention is authorized by
2 statute, no different from the requirement that a case must allege APSA violations to trigger the
3 intervention right. *See id.* Numerous courts, including the United States Supreme Court, have
4 agreed that statutory restrictions on which cases are subject to intervention do not convert the
5 intervention from “of right” to “permissive” under Rule 24.¹

6 The certification requirement cannot be a condition on intervention because conditions are
7 contingent, whereas the Attorney General’s certification is historical fact. The word “condition”
8 is defined as “a **future and uncertain event** on which the existence or extent of an obligation or
9 liability depends.” Black’s Law Dictionary (11th ed. 2019) (emphasis added). But in every
10 APSA case where the Attorney General seeks to intervene, the certification requirement will have
11 already been met because the Attorney General has the unilateral power to certify the case, and
12 indeed must do so before filing a Rule 24 motion. No uncertain future events can interfere with
13 the Attorney General’s certification, so certification cannot be a condition. Decades of case law
14 support this view of the “unconditional right to intervene” in Rule 24(a)(1).

15 The United States Supreme Court spoke to this in a railroad dispute where rail workers
16 exercised a statutory right to intervene. *Brotherhood of R. R. Trainmen v. Baltimore & O. R. Co.*,
17 331 U.S. 519 (1947). The rail workers sought intervention under a provision of the Interstate
18 Commerce Act that granted the right to intervene to “[r]epresentatives of employees of a carrier,
19 duly designated as such.” *Id.* at 526. Despite this “duly designated” requirement, the Supreme
20 Court ruled that the statute gave the rail workers “an absolute right to intervene . . . within the
21 meaning of Rule 24(a)(1)” because the fact that the intervenors had already been duly designated
22 to represent the employees was “unquestioned.” *Id.* The Supreme Court also held that “[t]he
23 statutory term ‘may intervene’ thus means ‘may intervene if the employees’ representative so
24

25 ¹ The State is unaware of any Arizona case law examining these questions, but the Court
26 may look to federal courts’ interpretations of their rules for guidance because the federal and
Arizona versions of Rule 24 are “substantively indistinguishable.” *Heritage Vill. II Homeowners
Ass’n v. Norman*, 246 Ariz. 567, 572, ¶ 19 (App. 2019), *as amended* (May 22, 2019).

1 chooses' rather than 'may intervene in the discretion of the court.'" *Id.* at 531 (emphasis added).
2 The Supreme Court concluded that "if the representative does choose to intervene, it may do so
3 as a matter of right within the meaning of Rule 24(a)(1)." *Id.* Similarly, if the Attorney General
4 chooses to certify an APSA case as being of special public importance, she may do so as a matter
5 of right under ARCP 24(a)(1).

6 The Ninth Circuit Court of Appeals applied the same reasoning in a case arising from a
7 dispute between shareholders and a corporation under the Securities Exchange Act of 1934.
8 *Pellegrino v. Nesbit*, 203 F.2d 463 (9th Cir. 1953). In *Pellegrino*, the corporation filed suit to
9 claw back profits gained by corporate officers in an allegedly improper stock transaction. *Id.* at
10 464-65. The corporation lost the lawsuit and decided not to appeal. *Id.* Section 16(b) of the Act
11 gave shareholders the right to intervene in such lawsuits if the corporation "failed 'diligently to
12 prosecute' the suits." *Id.* at 466. Because the corporation chose not to appeal the loss, the Ninth
13 Circuit ruled that the statute gave the shareholder an unconditional right to intervene under Rule
14 24(a)(1). *Id.* at 468. Just as in *Brotherhood*, the so-called "condition" for intervention was not a
15 contingent future event, but an undisputed historical event, and therefore not a condition at all.
16 That requirement had already been met, and thus the statutory right to intervene was absolute.

17 Most directly on point are two cases involving an intervention right given by Congress to
18 the United States Attorney General. In *Spangler v. United States*, 415 F.2d 1242 (9th Cir. 1969),
19 parents and students of three racially segregated high schools in California filed a class action
20 lawsuit alleging denial of rights guaranteed by the equal protection clause of the Fourteenth
21 Amendment. *Id.* at 1243. The United States sought to intervene in the case under Section 902 of
22 the Civil Rights Act of 1964, which states that the United States "may intervene in such action[s]
23 upon timely application ***if the Attorney General certifies that the case is of general public***
24 ***importance.***" 42 U.S.C. § 2000h-2 (emphasis added).

25 Despite the certification requirement, the Ninth Circuit expressly held that "[t]he right to
26 intervention by the United States in Sec. 902 is an absolute and not a permissive one." *Spangler*,

1 415 F.2d at 1244. Far from being a “condition” on the right to intervene, the Ninth Circuit viewed
2 the Attorney General’s certification as dispositive proof that the case involved a public interest to
3 be vindicated by the government. *Id.* at 1246 (“The underlying policy of Sec. 902 is to promote
4 the strong public interest in obtaining compliance with the equal protection clause of the
5 constitution. Sec. 902 requires that the Attorney General certify ‘that the case is of general public
6 importance.’ This demonstrates the public interest involved.”).

7 A district court in Louisiana examining the same statute reached the same conclusion in
8 another school desegregation case. In *Carter v. School Board of West Feliciana Parish*, 569 F.
9 Supp. 568, 570 (M.D. La. 1983), the district court granted the United States’ request for
10 intervention of right under Rule 24(a). In holding that the government had an unconditional
11 statutory right to intervene, the district court simply treated the certification as an established fact
12 rather than a condition requiring Rule 24(b) permissive intervention. *Id.* (quoting Section 902 and
13 noting “[t]he Attorney General has in fact certified that this case is of general public importance,
14 as evidenced by the certificate dated March 3, 1983, attached to the proposed complaint in
15 intervention.”)

16 Taken together, these authorities demonstrate that statutory restrictions on what kinds of
17 cases are subject to intervention do not convert an unconditional statutory intervention right into
18 a conditional right. This is particularly true when the so-called “condition” in question is a
19 certification of public importance by an attorney general, which presents to a court as historical
20 fact rather than an uncertain future event. The State has an absolute right to intervene in this case
21 under Rule 24(a)(1).

22 **B. The Attorney General’s certification of special public importance is not subject**
23 **to judicial review.**

24 APSA gives the Attorney General alone the right to certify whether an action brought under
25 the statute is of “special public importance” and thus triggers an unconditional right to intervene.
26 Her certification in this action will remain an unchangeable historical fact because Defendants

1 have no right to challenge the certification and this Court has no authority to de-certify the case.

2 Under Arizona law, when a statute commits a determination to the sole discretion of an
3 individual or entity, the courts may not second-guess that determination. *Cooper v. Arizona Board*
4 *of Pardons & Paroles*, 149 Ariz. 182 (1986). *Cooper* consolidated several cases by inmates who
5 challenged their parole denials. *Id.* at 183-185. The Arizona Supreme Court noted that “[t]he
6 legislature has given the Board ‘sole discretion’ in determining whether an applicant is suitable
7 for parole.” *Id.* at 185 (citing A.R.S. § 31-412(A)). Although the inmates vehemently disagreed
8 with the reasons given for their parole denials, the Supreme Court held that by giving the Board
9 sole discretion “the legislature has foreclosed us from reviewing those reasons.” *Id.* at 186.

10 The parties opposing intervention in the Louisiana desegregation case similarly argued that
11 the court should overrule the public importance certification, and the district court rejected it,
12 applying the same reasoning as the Arizona Supreme Court:

13 The statute itself incorporates no specific standards for the guidance of the
14 Attorney General and apparently leaves the matter solely within the discretion
15 of that official. ***The Attorney General may well have many factors to***
16 ***consider in making a determination that a case is of general public***
17 ***importance, many of which may well be of a non-public nature. It is even***
18 ***possible that a case could be of general public importance, though the***
19 ***presiding judge were ignorant of that situation.*** [. . .] As I read the statute,
20 the Congress intended to grant the Attorney General—whoever occupies that
office—an unconditional right to intervene in those cases which he certifies
are of general public importance. ***The court has no more authority to review***
his motives for such certification than it does to review the fact of
certification.

21 *Carter*, 569 F. Supp. at 571 (emphasis added). Just as Congress did with the Civil Rights Act, the
22 Arizona legislature has given the Attorney General sole discretion to certify her opinion that an
23 APSA case is of “special public importance.”

24 Moreover, APSA authorizes the Attorney General to “assert any available claim” after
25 intervention. A.R.S. § 46-455(M). This is the corollary to the Attorney General’s independent
26 discretion to certify the “special public importance” of an intervention case. The Attorney General

1 may determine that any claim under APSA is of special public importance, and issue a
2 certification to intervene in any case implicating that claim. This authority represents a policy
3 determination by the legislature that the Attorney General should have broad power under APSA
4 to protect vulnerable adults, and that determination should not be questioned by the Court. By
5 giving the Attorney General sole discretion to make the certification, the legislature forecloses the
6 courts from reviewing the reasons for doing so. *Cooper*, 149 Ariz. at 186.

7 For these reasons, the State has an unconditional statutory right to intervene, and the only
8 question for decision by the Court is whether this Motion is timely. *See Winner Enterprises, Ltd.*
9 *v. Superior Court in & for Cnty. of Yavapai*, 159 Ariz. 106, 108 (App. 1988) (“[W]e find [the
10 intervenor] had an absolute right to intervene. Our inquiry is therefore limited to one question:
11 Was the motion to intervene timely?”)

12 **II. THE MOTION TO INTERVENE IS TIMELY.**

13 The Attorney General’s Motion to Intervene in this case is timely, as required by A.R.S. §
14 46-455(M) (“timely application”) and Ariz. R. Civ. P. 24(a) (“timely motion” requirement).
15 “Because an intervenor of right may be seriously harmed if not permitted to intervene, the court
16 should be reluctant to dismiss a request for intervention as untimely.” *Winner Enterprises*, 159
17 Ariz. at 109. Generally, a trial court must assess the timeliness of a motion by considering the
18 stage of the proceedings when the intervention is sought, whether the applicant could have
19 attempted to intervene sooner, and most importantly, whether the delay in moving to intervene
20 will prejudice the existing parties. *State ex rel. Napolitano v. Brown & Williamson Tobacco Corp.*,
21 196 Ariz. 382, 384 ¶ 5 (2000). All three of these elements favor granting intervention in this
22 matter.

23 **First**, the stage of proceedings is appropriate. The Court has not yet ruled on Defendants’
24 motion to compel arbitration, but to the extent that the Arbitration Agreement is void *ab initio*,
25 that motion must be denied. This is the stage of the case at which the Court should decide on the
26 legality of the Arbitration Agreement, before ruling on the motion to compel.

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CERTIFICATE OF SERVICE

Document electronically transmitted
to the Clerk of the Court for filing using
AZTurboCourt this 20th day of May, 2024.

COPY of the foregoing served via *AZTurboCourt*
and courtesy copy e-mailed this 20th day of May, 2024 to:

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