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**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

14 S. ROWAN WILSON,
15
16 Plaintiff,

17 v.

18 ERIC HOLDER, Attorney General of the
United States, *et al.*,

19 Defendants.

Case No.: 2:11-cv-1679-GMN-(PAL)

DEFENDANTS' STATEMENT OF UNDISPUTED FACTS

22 Pursuant to Local Civil Rule 56-1, Defendants, the United States of America, the Bureau
23 of Alcohol, Tobacco, Firearms and Explosives (“ATF”), and the individual defendants in their
24 official capacities, hereby submit the following statement of material facts as to which no
25 genuine issue exists in connection with their Motion for Summary Judgment, which they seek as
26 an alternative to their Motion to Dismiss.

1 1. The Gun Control Act of 1968, as amended, provides that “[i]t shall be unlawful
2 for any person . . . who is an unlawful user of or addicted to any controlled substance (as defined
3 in section 102 of the Controlled Substances Act (21 U.S.C. § 802)) . . . to possess in or affecting
4 commerce, any firearm or ammunition; or to receive any firearm or ammunition which has been
5 shipped or transported in interstate or foreign commerce.” The Gun Control Act of 1968, Pub. L.
6 No. 90-618, § 102, 82 Stat. 1213, 1220, *codified as amended at* 18 U.S.C. § 922(g)(3).

7 2. Another provision of the Gun Control Act, as amended, makes it “unlawful for
8 any person to sell or otherwise dispose of any firearm or ammunition to any person knowing or
9 having reasonable cause to believe that such person . . . is an unlawful user of or addicted to any
10 controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C.
11 § 802)).” 18 U.S.C. § 922(d)(3).

12 3. By regulation, ATF has defined the term “[u]nlawful user of or addicted to any
13 controlled substance” as follows:

14 A person who uses a controlled substance and has lost the power of self-control
15 with reference to the use of the controlled substance; and any person who is a
16 current user of a controlled substance in a manner other than as prescribed by a
17 licensed physician. Such use is not limited to the use of drugs on a particular day,
18 or within a matter of days or weeks before, but rather that the unlawful use has
19 occurred recently enough to indicate that the individual is actively engaged in
20 such conduct. A person may be an unlawful current user of a controlled
substance even though the substance is not being used at the precise time the
person seeks to acquire a firearm or receives or possesses a firearm. An inference
of current use may be drawn from evidence of a recent use or possession of a
controlled substance or a pattern of use or possession that reasonably covers the
present time

21 27 C.F.R. § 478.11.

22 4. Section 102 of the Controlled Substances Act defines “controlled substance” as “a
23 drug or other substance, or immediate precursor, included in schedule I, II, III, IV, or V of part B
24 of this subchapter [21 U.S.C. § 812].” 21 U.S.C. § 802(6). Marijuana is classified as a Schedule
25 I drug. 21 U.S.C. § 812(c), Schedule I(c)(10). By classifying marijuana as a Schedule I drug,
26 Congress has determined that marijuana “has a high potential for abuse,” that it “has no currently
27 accepted medical use in treatment in the United States,” and that “[t]here is a lack of accepted
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1 safety for use of [marijuana] under medical supervision.” *Id.* § 812(b)(1). As such, Schedule I
2 drugs, including marijuana, cannot be legally prescribed for medical use, *see* 21 U.S.C. § 829,
3 and it is unlawful for any person to knowingly or intentionally possess marijuana, unless such
4 possession is for a federally approved research project. *See* 21 U.S.C. §§ 844(a), 823(f).

5 5. In 2001, Nevada enacted legislation that provides that, subject to certain
6 exceptions, “a person who holds a valid registry identification card . . . is exempt from state
7 prosecution for . . . [a]ny . . . criminal offense in which the possession, delivery or production of
8 marijuana . . . is an element.” Nev. Rev. Stat. § 453A.200(1)(f). This exemption only applies to
9 the extent that the holder of a registry identification card (i) engages in “the medical use of
10 marijuana in accordance with the provisions of this chapter as justified to mitigate the symptoms
11 or effects of the person’s chronic or debilitating medical condition;” and (ii) “[d]o[es] not, at any
12 one time, collectively possess, deliver or produce more than . . . [o]ne ounce of usable
13 marijuana[,] [t]hree mature marijuana plants[,] and [f]our immature marijuana plants.” *Id.*
14 § 453A.200(3).

15 6. To obtain a registry identification card from the State of Nevada, an applicant
16 must provide, inter alia, “[v]alid, written documentation from the person’s attending physician
17 stating that . . . [t]he person has been diagnosed with a chronic or debilitating medical condition”
18 and that “[t]he medical use of marijuana may mitigate the symptoms or effects of that condition.”
19 *Id.* § 453A.210(2)(a)(1)–(2).

20 7. On September 21, 2011, ATF issued an “Open Letter” to all federal firearms
21 licensees (“FFLs”) in response to “a number of inquiries regarding the use of marijuana for
22 medicinal purposes and its applicability to Federal firearms laws.” *See* First Amended
23 Complaint (“FAC”), Ex. 2-B. After summarizing the relevant provisions of federal law, the Open
24 Letter states that “any person who uses . . . marijuana, regardless of whether his or her State has
25 passed legislation authorizing marijuana use for medicinal purposes, is an unlawful user of . . . a
26 controlled substance, and is prohibited by Federal law from possessing firearms or ammunition.”
27 *Id.* The Open Letter further informed FFLs that “if you are aware that the potential transferee is
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1 in possession of a card authorizing the possession and use of marijuana under State law, then you
2 have ‘reasonable cause to believe’ that the person is an unlawful user of a controlled substance”
3 and “you may not transfer firearms or ammunition to the person.” *Id.* (quoting 18 U.S.C. §
4 922(d)(3)).

5 8. On October 18, 2011, Plaintiff S. Rowan Wilson filed suit against the United
6 States, ATF, U.S. Attorney General Eric Holder, ATF Acting Director B. Todd Jones, and ATF
7 Assistant Director Arthur Herbert. Attached to Plaintiff’s First Amended Complaint is a copy of
8 a registry identification card issued to her by the State of Nevada that identifies her as a “medical
9 marijuana patient.” FAC., Ex. 1-B. That card expired in March 2013. *Id.*

10 Dated: January 31, 2013

Respectfully submitted,

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