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7 **UNITED STATES DISTRICT COURT**
8 **DISTRICT OF ARIZONA**

9 Johnny Wheatcroft and Anya Chapman, as
husband and wife, and on behalf of minors
10 J.W. and B.W.,

11 Plaintiffs,

12 v.

13 City of Glendale, a municipal entity; Matt
Schneider, in his official and individual
14 capacities; Mark Lindsey, in his official and
individual capacities; and Michael Fernandez,
15 in his official and individual capacities,

16 Defendants.

NO. 2:18-cv-02347-ROS

**DEFENDANTS' ANSWER TO
PLAINTIFFS' AMENDED
COMPLAINT**

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18 Defendants, City of Glendale, Matt Schneider, Mark Lindsey and Michael
19 Fernandez, for their Answer to Plaintiffs' Amended Complaint, deny each and every, all
20 and singular, of the allegations contained in Plaintiffs' Amended Complaint and each
21 claim for relief that Defendants do not expressly admit or to which Defendants do not
22 otherwise plead. Defendants admit, deny, and allege as follows:

23 **PARTIES, JURISDICTION, AND VENUE**

24 1. In answering Paragraph 1 of Plaintiffs' Amended Complaint,
25 Defendants admit that it appears that Plaintiffs are alleging claims pursuant to 42 U.S.C.
26 §1983, and the First, Fourth, and Fourteenth Amendments of the United States
27 Constitution. However, to the extent that Plaintiffs contend that the allegations contained
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1 in Paragraph 1 or any other paragraph of Plaintiffs' Amended Complaint purport to allege
2 a viable cause of action against these answering Defendants, Defendants deny the same.

3 2. In answering Paragraph 2 of Plaintiffs' Amended Complaint,
4 Defendants admit that jurisdiction and venue are proper in this Court, but deny that
5 Plaintiffs' Amended Complaint purports to allege a viable cause of action against these
6 answering Defendants.

7 3. In answering Paragraph 3 of Plaintiffs' Amended Complaint,
8 Defendants admit that Plaintiffs' Amended Complaint alleges events that occurred in the
9 state of Arizona, but deny that the claims set forth in the Amended Complaint alleged
10 viable causes of action against these answering Defendants.

11 4. In answering Paragraph 4 of Plaintiffs' Amended Complaint,
12 Defendants lack sufficient information to form a belief as to the truth of the allegations
13 contained in Paragraph 4 and, therefore, deny the same and leave Plaintiffs to their proof.

14 5. In answering Paragraph 5 of Plaintiffs' Amended Complaint,
15 Defendants lack sufficient information to form a belief as to the truth of the allegations
16 contained in Paragraph 5 and, therefore, deny the same and leave Plaintiffs to their proof.

17 6. In answering Paragraph 6 of Plaintiffs' Amended Complaint,
18 Defendants admit that the City of Glendale is an Arizona municipality under Title 9 of the
19 Arizona Revised Statutes.

20 7. In answering Paragraph 7 of Plaintiffs' Amended Complaint,
21 Defendants admit that the City of Glendale is an Arizona municipality and, generally, as
22 may be permitted by law, that it may be subject to a civil suit, under certain
23 circumstances, and may be held vicariously liable for the wrongful conduct of its
24 employees, under certain circumstances. In further answering Paragraph 7, Defendants
25 affirmatively assert that Plaintiffs do not assert any state law claims and that vicarious
26 liability is inapplicable to § 1983 actions. In addition, to the extent that Plaintiffs contend
27 that the allegations contained in Paragraph 7 of Plaintiffs' Amended Complaint purport to
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1 allege a viable cause of action against these answering Defendants, Defendants deny the
2 same.

3 8. In answering Paragraph 8 of Plaintiffs' Amended Complaint,
4 Defendants admit the allegations therein.

5 9. In answering Paragraph 9 of Plaintiffs' Amended Complaint,
6 Defendants admit the allegations therein.

7 10. In answering Paragraph 10 of Plaintiffs' Amended Complaint,
8 Defendants admit the allegations therein.

9 11. In answering Paragraph 11 of Plaintiffs' Amended Complaint,
10 Defendants admit that Defendants Schneider, Lindsey, and Fernandez were Police
11 Officers with the Glendale Police Department, employed by the City of Glendale, and at
12 the time of the subject incident of this Amended Complaint were acting in the course and
13 scope of their employment with the City of Glendale. In further answering Paragraph 11
14 of Plaintiffs' Amended Complaint, Defendants admit that Plaintiff alleges that Plaintiffs
15 are suing Defendants Schneider, Lindsey, and Fernandez in their official capacity for
16 alleged state law claims and in his individual capacity for purposes of alleged
17 constitutional claims. However, to the extent that Plaintiffs contend that the allegations
18 contained in Paragraph 11 of Plaintiffs' Amended Complaint purport to allege a viable
19 cause of action against these answering Defendants, Defendants deny the same.

20 **GENERAL ALLEGATIONS**

21 12. In answering Paragraph 12 of Plaintiffs' Amended Complaint,
22 Defendants lack sufficient information to form a belief as to the truth of the allegations
23 contained in Paragraph 12 that Plaintiffs intended to reserve a room so they could enjoy
24 some family time together and, therefore, deny the same and leave Plaintiffs to their
25 proof. Defendants admit the remaining allegations contained in Paragraph 12 of Plaintiffs'
26 Amended Complaint.
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1 13. Upon information and belief, in answering Paragraph 13 of Plaintiffs'
2 Amended Complaint, Defendants admit that a non-family member was the driver of the
3 vehicle in which Plaintiffs were passengers. Defendants admit the remaining allegations
4 contained in Paragraph 13 of Plaintiffs' Amended Complaint.

5 14. In answering Paragraph 14 of Plaintiffs' Amended Complaint,
6 Defendants admit the allegations contained therein.

7 15. In answering Paragraph 15 of Plaintiffs' Amended Complaint,
8 Defendants deny the allegations therein.

9 16. In answering Paragraph 16 of Plaintiffs' Amended Complaint,
10 Defendants deny the allegations therein.

11 17. In answering Paragraph 17 of Plaintiffs' Amended Complaint,
12 Defendants admit that Plaintiff Wheatcroft asked Defendant Schneider why he needed to
13 produce identification. In further answering Paragraph 17 of Plaintiffs' Complaint,
14 Defendants assert that no violation of Plaintiff Wheatcroft's First Amendment right to free
15 speech occurred.

16 18. In answering Paragraph 18 of Plaintiffs' Amended Complaint,
17 Defendants deny the allegations therein.

18 19. In answering Paragraph 19 of Plaintiffs' Amended Complaint,
19 Defendants admit that Defendant Schneider stated that he would take Plaintiff Wheatcroft
20 down to the police station as Plaintiff Wheatcroft would not provide his name as asked.
21 In further answering Paragraph 19 of Plaintiffs' Amended Complaint, Defendants lack
22 sufficient information to form a belief as to the truth of the remaining allegations
23 contained in Paragraph 19 and, therefore, deny the same.

24 20. In answering Paragraph 20 of Plaintiffs' Amended Complaint,
25 Defendants affirmatively assert that Plaintiff Wheatcroft's refusal to follow lawful
26 commands and reaching into a backpack and the area of the center console of the vehicle,
27 even after being told not to do so jeopardized officer safety and necessitated his removal
28 from the vehicle. Defendants admit that during Defendant Schneider's interaction with

1 Plaintiff Wheatcroft, Defendant Schneider asked Plaintiff Wheatcroft if he was going to
2 fight. In further answering Paragraph 20, Defendants deny the remaining allegations
3 therein.

4 21. In answering Paragraph 21 of Plaintiffs' Amended Complaint,
5 Defendants admit that during his interaction with Plaintiff Wheatcroft, Defendant
6 Schneider holstered his Taser and that he justifiably administered a control hold to
7 Plaintiff Wheatcroft to remove Plaintiff Wheatcroft from the vehicle to ensure officer
8 safety. As for the remaining allegations contained in Paragraph 21 of Plaintiffs' Amended
9 Complaint, Defendants lack sufficient information to form a belief as to the truth of the
10 remaining allegations contained in Paragraph 21 and, therefore, deny the same.

11 22. In answering Paragraph 22 of Plaintiffs' Amended Complaint,
12 Defendants admit that Defendant Lindsey assisted Defendant Schneider in beginning to
13 physically remove Plaintiff Wheatcroft from the vehicle and that Defendant Lindsey
14 placed his Taser on Plaintiff Wheatcroft's shoulder while Defendant Schneider attempted
15 to remove Plaintiff Wheatcroft from the vehicle while applying a control hold. In further
16 answering Paragraph 22, Defendants affirmatively assert that Plaintiff Wheatcroft was not
17 restrained, but became tangled in the seatbelt after his physical resistance and refusal to
18 follow lawful commands. As for the remaining allegations contained in Paragraph 22,
19 Defendants lack sufficient information to form a belief as to the truth of the remaining
20 allegations contained in Paragraph 22 and, therefore, deny the same.

21 23. In answering Paragraph 23 of Plaintiffs' Amended Complaint,
22 Defendants admit that Defendant Lindsey applied three, short drive stun mode
23 applications of his Taser to Plaintiff Wheatcroft while Defendant Schneider applied a
24 control hold to Plaintiff Wheatcroft to remove him from the vehicle, and that Plaintiff
25 became tangled in his seatbelt while he resisted the officers.

26 24. In answering Paragraph 24 of Plaintiffs' Amended Complaint,
27 Defendants admit that Plaintiffs Anya Chapman, J.W., and B.W. during the subject
28 incident and that a minor presumed to be Plaintiff J.W. asked the officers to stop. As for

1 the remaining allegations set forth in Paragraph 24, Defendants lack sufficient information
2 to form a belief as to the truth of the remaining allegations contained in Paragraph 24 and,
3 therefore, deny the same.

4 25. In answering Paragraph 25 of Plaintiffs' Amended Complaint,
5 Defendants admit that Defendant Schneider backed away from Plaintiff Wheatcroft and
6 activated his Taser in dart mode on Plaintiff Wheatcroft after Plaintiff Chapman
7 committed an aggravated assault on Defendant Lindsey which rendered defendant
8 Lindsey unconscious and incapacitated.

9 26. In answering Paragraph 26 of Plaintiffs' Amended Complaint,
10 Defendants admit that Defendant Fernandez arrived on the scene and applied his Taser to
11 Plaintiff Wheatcroft. As for the remaining allegations contained in Paragraph 26,
12 Defendants deny the same.

13 27. In answering Paragraph 27 of Plaintiffs' Amended Complaint,
14 Defendants admit that Defendant Fernandez handcuffed the resisting Plaintiff Wheatcroft
15 and that when the resisting Plaintiff Wheatcroft was handcuffed he was facing the interior
16 of the front passenger area of the vehicle while his knees were on the concrete.
17 Defendants deny the remaining allegations contained in Paragraph 27.

18 28. In answering Paragraph 28 of Plaintiffs' Amended Complaint,
19 Defendants admit that Defendant Schneider deployed his Taser on the resisting Plaintiff
20 Wheatcroft while he was handcuffed. As for the remaining allegations contained in
21 paragraph 28, Defendants deny the same.

22 29. In answering Paragraph 29 of Plaintiffs' Amended Complaint,
23 Defendants admit that minor J.W. entered the front passenger area of the vehicle and
24 released Plaintiff Wheatcroft's legs from the disengaged seatbelt and that Plaintiff
25 Wheatcroft stated that he was caught in the seatbelt. Defendants further admit that
26 Defendant Schneider requested that minor J.W. get out of the vehicle, but treated him with
27 the care that any child should be afforded under the circumstances, and that minor J.W.
28 cried in the front passenger seat while consoled by the male adult driver. Defendants

1 further admit that Defendant Fernandez attempted to pull Plaintiff Wheatcroft away from
2 the open passenger compartment of the vehicle. Defendants deny the remaining
3 allegations contained in Paragraph 29 of Plaintiffs' Amended Complaint.

4 30. In answering Paragraph 30 of Plaintiffs' Amended Complaint,
5 Defendants admit that Defendant Fernandez, in an attempt to restrain the combative,
6 resisting and non-compliant Plaintiff Wheatcroft, put Plaintiff Wheatcroft chest down on
7 the pavement and that Defendant Schneider tased and kicked Plaintiff Wheatcroft due to
8 his resisting, combative, assaultive conduct. In further answering Paragraph 30 of
9 Plaintiffs' Amended Complaint, Defendants admit that passengers in the vehicle requested
10 that the officers stop. As for the remaining allegations contained in Paragraph 30 of
11 Plaintiffs' Amended Complaint, Defendants lack sufficient information to form a belief as
12 to the truth of the remaining allegations contained in Paragraph 30 and, therefore, deny the
13 same.

14 31. In answering Paragraph 31 of Plaintiffs' Amended Complaint,
15 Defendants deny the allegations therein.

16 32. In answering Paragraph 32 of Plaintiffs' Amended Complaint,
17 Defendants deny the allegations therein.

18 33. In answering Paragraph 33 of Plaintiffs' Amended Complaint,
19 Defendants admit that Defendant Schneider made the statements within the quotations set
20 forth in this paragraph. However, Defendants deny the remaining allegations contained in
21 Paragraph 33. Defendants affirmatively allege that no one, including these answering
22 Defendants, "placed a handgun to Plaintiff Johnny Wheatcroft's head," as Plaintiffs
23 erroneously allege in Paragraph 33.

24 34. In answering Paragraph 34 of Plaintiffs' Amended Complaint,
25 Defendants deny the allegations therein.

26 35. In answering Paragraph 35 of Plaintiffs' Amended Complaint,
27 Defendants admit that Defendant Schneider made the statement appearing in quotations
28 and that officers brought Plaintiff Wheatcroft to his feet and removed the Taser prongs

1 pursuant to policy and that Plaintiff Wheatcroft was screaming. As for the remaining
2 allegations contained in Paragraph 35 of Plaintiffs' Amended Complaint, Defendants lack
3 sufficient information to form a belief as to the truth of the remaining allegations
4 contained in Paragraph 35 and, therefore, deny the same.

5 36. In answering Paragraph 36 of Plaintiffs' Amended Complaint,
6 Defendants admit the allegations therein.

7 37. In answering Paragraph 37 of Plaintiffs' Amended Complaint,
8 Defendants admit that Plaintiffs Chapman and minors J.W. and B.W. were present during
9 the subject incident. In further answering paragraph 37 of Plaintiffs' Amended Complaint,
10 Defendants lack sufficient information to form a belief as to the truth of the remaining
11 allegations contained in Paragraph 37 and, therefore, deny the same.

12 38. In answering Paragraph 38 of Plaintiffs' Amended Complaint,
13 Defendants admit that all charges against Plaintiff Wheatcroft as a result of this incident
14 were dismissed. In further answering Paragraph 38 of Plaintiffs' Amended Complaint,
15 Defendants deny the remaining allegations.

16 39. In answering Paragraph 39 of Plaintiffs' Amended Complaint,
17 Defendants lack sufficient information to form a belief as to the truth of the allegation that
18 Plaintiff Wheatcroft sustained various injuries and therefore deny the same. In further
19 answering Paragraph 39 of Plaintiffs' Amended Complaint, Defendants deny the
20 remaining allegations therein and affirmatively assert that Plaintiff Wheatcroft refused
21 medical treatment.

22 40. In answering Paragraph 40 of Plaintiffs' Amended Complaint,
23 Defendants deny the allegations therein.

24 41. In answering Paragraph 41 of Plaintiffs' Amended Complaint,
25 Defendants deny the allegations therein.

26 42. In answering Paragraph 42 of Plaintiffs' Amended Complaint,
27 Defendants deny the allegations therein and affirmatively assert that no Defendant
28 "tortured" any Plaintiff.

1 49. In answering Paragraph 49 of Plaintiffs' Amended Complaint,
2 Defendants incorporate their answers to Paragraphs 1- 48 of Plaintiffs' Amended
3 Complaint, as if fully set forth herein.

4 50. In answering Paragraph 50 of Plaintiffs' Amended Complaint,
5 Defendants deny the allegations therein.

6 51. In answering Paragraph 51 of Plaintiffs' Amended Complaint,
7 Defendants deny the allegations therein.

8 52. In answering Paragraph 52 of Plaintiffs' Amended Complaint,
9 Defendants deny the allegations therein.

10 53. In answering Paragraph 53 of Plaintiffs' Amended Complaint,
11 Defendants deny the allegations therein.

12 54. In answering Paragraph 54 of Plaintiffs' Amended Complaint,
13 Defendants deny the allegations therein.

14 55. In answering Paragraph 55 of Plaintiffs' Amended Complaint,
15 Defendants deny the allegations therein.

16 56. In answering Paragraph 56 of Plaintiffs' Amended Complaint,
17 Defendants deny the allegations therein.

18 57. In answering Paragraph 57 of Plaintiffs' Amended Complaint,
19 Defendants deny the allegations therein.

20 58. In answering Paragraph 58 of Plaintiffs' Amended Complaint,
21 Defendants deny the allegations therein.

22 59. In answering Paragraph 59 of Plaintiffs' Amended Complaint,
23 Defendants deny the allegations therein.

24 60. In answering Paragraph 60 of Plaintiffs' Amended Complaint,
25 Defendants deny the allegations therein.

26 61. In answering Paragraph 61 of Plaintiffs' Amended Complaint,
27 Defendants deny the allegations therein.

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1 unlawful police conduct. As for the remaining allegations contained in Paragraph 68 of
2 Plaintiffs' Amended Complaint, Defendants lack sufficient information to form a belief as
3 to the truth of the allegations contained therein and, therefore, deny the same.

4 69. In answering Paragraph 69 of Plaintiffs' Amended Complaint,
5 Defendants deny the allegations therein.

6 70. In answering Paragraph 70 of Plaintiffs' Amended Complaint,
7 Defendants deny the allegations therein.

8 71. In answering Paragraph 71 of Plaintiffs' Amended Complaint,
9 Defendants deny the allegations therein.

10 72. In answering Paragraph 72 of Plaintiffs' Amended Complaint,
11 Defendants deny the allegations therein.

12 73. In answering Paragraph 73 of Plaintiffs' Amended Complaint,
13 Defendants deny the allegations therein.

14 74. In answering Paragraph 74 of Plaintiffs' Amended Complaint,
15 Defendants deny the allegations therein.

16 75. In answering Paragraph 75 of Plaintiffs' Amended Complaint,
17 Defendants deny the allegations therein.

18 76. In answering Paragraph 76 of Plaintiffs' Amended Complaint,
19 Defendants deny the allegations therein.

20 77. In answering Paragraph 77 of Plaintiffs' Amended Complaint,
21 Defendants deny the allegations therein.

22 78. In answering Paragraph 78 of Plaintiffs' Amended Complaint,
23 Defendants deny the allegations therein.

24
25 **COUNT III**

26 **42 U.S.C. § 1983 -Wrongful Arrest in Violation of the**

27 **Fourth and Fourteenth amendments**
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1 (Against Defendants Schneider, Lindsey, and Fernandez)

2 79. In answering Paragraph 79 of Plaintiffs' Amended Complaint,
3 Defendants incorporate their answers to Paragraphs 1- 78 of Plaintiffs' Amended
4 Complaint, as if fully set forth herein.

5 80. In answering Paragraph 80 of Plaintiffs' Amended Complaint,
6 Defendants admit that Defendants Schneider, Lindsey, and Fernandez were acting under
7 the color of law and within the course and scope of their employment with Defendant City
8 of Glendale at the time of the subject incident of this lawsuit. However, to the extent that
9 Plaintiffs contend that the allegations contained in Paragraph 80 purport to allege a viable
10 cause of action against these answering Defendants, Defendants deny the same.

11 81. In answering Paragraph 81 of Plaintiffs' Amended Complaint,
12 Defendants admit that individuals have the right under the Fourth and Fourteenth
13 Amendments to be free from wrongful arrest. However, Defendants deny that Plaintiff
14 Wheatcroft was wrongfully arrested.

15 82. In answering Paragraph 82 of Plaintiffs' Amended Complaint,
16 Defendants deny the allegations therein.

17 83. In answering Paragraph 83 of Plaintiffs' Amended Complaint,
18 Defendants deny the allegations therein.

19 84. In answering Paragraph 84 of Plaintiffs' Amended Complaint,
20 Defendants deny the allegations therein.

21 85. In answering Paragraph 85 of Plaintiffs' Amended Complaint,
22 Defendants deny the allegations therein.

23 86. In answering Paragraph 86 of Plaintiffs' Amended Complaint,
24 Defendants deny the allegations therein.

25 87. In answering Paragraph 87 of Plaintiffs' Amended Complaint,
26 Defendants deny the allegations therein.

27 88. In answering Paragraph 88 of Plaintiffs' Amended Complaint,
28 Defendants deny the allegations therein.

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COUNT IV

42 U.S.C. § 1983 -Malicious Prosecution in Violation of

The Fourth and Fourteenth Amendments

(Against Defendants Schneider, Lindsey, and Fernandez)

89. In answering Paragraph 89 of Plaintiffs’ Amended Complaint, Defendants incorporate their answers to Paragraphs 1- 88 of Plaintiffs’ Amended Complaint, as if fully set forth herein.

90. In answering Paragraph 90 of Plaintiffs’ Amended Complaint, Defendants admit that Defendants Schneider, Lindsey, and Fernandez were acting under the color of law and within the course and scope of their employment with Defendant City of Glendale at the time of the subject incident of this lawsuit. However, to the extent that Plaintiffs contend that the allegations contained in Paragraph 90 purport to allege a viable cause of action against these answering Defendants, Defendants deny the same

91. In answering Paragraph 91 of Plaintiffs’ Amended Complaint, Defendants admit that individuals, including Plaintiff Wheatcroft, have the right under the Fourth and Fourteenth Amendments to be free from malicious prosecution and the right to familial association. However, Defendants deny that Plaintiff Wheatcroft was maliciously prosecuted or that any Defendant interfered with Plaintiff Wheatcroft’s right to familial association.

92. In answering Paragraph 92 of Plaintiffs’ Amended Complaint, Defendants deny the allegations therein.

93. In answering Paragraph 93 of Plaintiffs’ Amended Complaint, Defendants deny the allegations therein.

94. In answering Paragraph 94 of Plaintiffs’ Amended Complaint, Defendants admit that plaintiff Wheatcroft was in custody for a period of time as a result of his arrest associated with the subject incident. Further answering Paragraph 94 of

1 Plaintiffs' Amended Complaint, Defendants assert that Plaintiff Wheatcroft was, and upon
2 information and belief still is, incarcerated as a result of other crimes.

3 95. In answering Paragraph 95 of Plaintiffs' Amended Complaint,
4 Defendants deny the allegations therein.

5 96. In answering Paragraph 96 of Plaintiffs' Amended Complaint,
6 Defendants lack sufficient information to form a belief as to the truth of the allegations
7 regarding any interview or employment opportunities of Plaintiff Wheatcroft and,
8 therefore, deny the same. As for the remaining allegations contained in Paragraph 96 of
9 Plaintiffs' Amended Complaint, Defendants deny the same.

10 97. In answering Paragraph 97 of Plaintiffs' Amended Complaint,
11 Defendants deny the allegations therein.

12 98. In answering Paragraph 98 of Plaintiffs' Amended Complaint,
13 Defendants deny the allegations therein.

14 99. In answering paragraph 99 of Plaintiffs' Amended Complaint,
15 Defendants admit that the charges against Plaintiff Wheatcroft were dismissed. In further
16 answering Paragraph 99 of Plaintiffs' Amended Complaint, Defendants lack sufficient
17 information to form a belief as to the truth of those remaining allegations and, therefore,
18 deny the same.

19 100. In answering Paragraph 100 of Plaintiffs' Amended Complaint,
20 Defendants deny the allegations therein.

21 101. In answering Paragraph 101 of Plaintiffs' Amended Complaint,
22 Defendants deny the allegations therein.

23 102. In answering Paragraph 102 of Plaintiffs' Amended Complaint,
24 Defendants deny the allegations therein.

25 103. In answering Paragraph 103 of Plaintiffs' Amended Complaint,
26 Defendants deny the allegations therein.

COUNT V

Civil Rights Violations - 42 U.S.C. § 1983

(Against Defendants Schneider, Lindsey, and Fernandez)

104. In answering Paragraph 104 of Plaintiffs' Amended Complaint, Defendants incorporate their answers to Paragraphs 1- 103 of Plaintiffs' Amended Complaint, as if fully set forth herein.

105. In answering Paragraph 105 of Plaintiffs' Amended Complaint, Defendants admit that, generally, parents have a constitutionally protected liberty interest under the 14th Amendment.

106. In Answering Paragraph 106 of Plaintiffs' Amended Complaint, Defendants admit that Courts have recognized that the First Amendment protects the fundamental right to intimate association, which includes the familial association between parents and children. In further answering Paragraph 106 of Plaintiffs' Amended Complaint, to the extent that Plaintiffs contend that the allegations contained in Paragraph 106 of their Amended Complaint purport to allege a viable cause of action against these answering Defendants, Defendants deny the same.

107. In answering Paragraph 107 of Plaintiffs' Amended Complaint, Defendants deny the allegations therein.

108. In answering Paragraph 108 of Plaintiffs' Amended Complaint, Defendants deny the allegations therein.

109. In answering Paragraph 109 of Plaintiffs' Amended Complaint, Defendants deny the allegations therein.

110. In answering Paragraph 110 of Plaintiffs' Amended Complaint, Defendants deny the allegations therein.

111. In answering Paragraph 111 of Plaintiffs' Amended Complaint, Defendants deny the allegations therein.

1 112. In answering Paragraph 112 of Plaintiffs' Amended Complaint,
2 Defendants lack sufficient information to form a belief as to the truth of the allegations
3 regarding the alleged loss of familial companionship due to Plaintiff Wheatcroft's
4 incarceration and, therefore, deny the same. In further answering Paragraph 112,
5 Defendants deny the remaining allegations contained therein.

6 113. In answering Paragraph 113 of Plaintiffs' Amended Complaint,
7 Defendants deny the allegations therein.

8 114. In answering Paragraph 114 of Plaintiffs' Amended Complaint,
9 Defendants deny the allegations therein.

10 115. In answering Paragraph 115 of Plaintiffs' Amended Complaint,
11 Defendants deny the allegations therein.

12 **COUNT VI**

13 **42 U.S.C. § 1983 -Municipal Liability**

14 **(Against Defendant City of Glendale)**

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17 116. In answering Paragraph 116 of Plaintiffs' Amended Complaint,
18 Defendants incorporate their answers to Paragraphs 1- 115 of Plaintiffs' Amended
19 Complaint, as if fully set forth herein.

20 117. In answering Paragraph 117 of Plaintiffs' Amended Complaint,
21 Defendants assert that under certain circumstances a custom or policy may be the moving
22 force behind a violation of constitutional rights, but that the facts of the subject lawsuit do
23 not present such a case. In further answering Paragraph 117 of Plaintiffs' Amended
24 Complaint, to the extent that Plaintiffs contend that the allegations contained in Paragraph
25 117 of their Amended Complaint purport to allege a viable cause of action against
26 Defendant City of Glendale, Defendants deny the same.

27 118. In answering Paragraph 118 of Plaintiffs' Amended Complaint,
28 Defendants assert that under certain circumstances ratification could result in municipal

1 liability for violations of constitutional rights, but the facts of the subject lawsuit do not
2 present such a case. In further answering Paragraph 118 of Plaintiffs' Amended
3 Complaint, to the extent that Plaintiffs contend that the allegations contained in Paragraph
4 118 of their Amended Complaint purport to allege a viable cause of action against
5 Defendant City of Glendale, Defendants deny the same.

6 119. In answering Paragraph 119 of Plaintiffs' Amended Complaint,
7 Defendants assert that under certain circumstances failure to train could result in
8 municipal liability for violations of constitutional rights, but the facts of the subject
9 lawsuit do not present such a case. In further answering Paragraph 119, to the extent that
10 Plaintiffs contend that the allegations contained in Paragraph 119 of their Amended
11 Complaint purport to allege a viable cause of action against Defendant City of Glendale,
12 Defendants deny the same.

13 120. In answering Paragraph 120 of Plaintiffs' Amended Complaint,
14 Defendants admits that Defendants Schneider, Lindsey, and Fernandez were Police
15 Officers with the Glendale Police Department, employed by the City of Glendale, and at
16 the time of the subject incident of this Amended Complaint were acting in the course and
17 scope of their employment with the City of Glendale and that as City of Glendale Police
18 Officers, certain City of Glendale Police Department policies are applicable to their
19 official conduct as police officers. In further answering Paragraph 120, Defendants deny
20 any deliberate indifference toward training or supervision of the defendant officers, and to
21 the extent that Plaintiffs contend that the allegations contained in Paragraph 120 of their
22 Amended Complaint purport to allege a viable cause of action against Defendant City of
23 Glendale for deliberate indifference toward training and supervision, or otherwise,
24 Defendants deny the same.

25 121. In answering Paragraph 121 of Plaintiffs' Amended Complaint,
26 Defendants deny the allegations therein.

27 122. In answering Paragraph 122 of Plaintiffs' Amended Complaint,
28 Defendants deny the allegations therein.

1 123. In answering Paragraph 123 of Plaintiffs' Amended Complaint,
2 Defendants deny the allegations therein.

3 124. In answering Paragraph 124 of Plaintiffs' Amended Complaint,
4 Defendants deny the allegations therein.

5 125. In answering Paragraph 125 of Plaintiffs' Amended Complaint,
6 Defendants deny the allegations therein.

7 126. In answering Paragraph 126 of Plaintiffs' Amended Complaint,
8 Defendants deny the allegations therein.

9 127. In answering Paragraph 127 of Plaintiffs' Amended Complaint,
10 Defendants deny the allegations therein.

11 128. In answering Paragraph 128 of Plaintiffs' Amended Complaint,
12 Defendants deny the allegations therein.

13 129. In answering Paragraph 129 of Plaintiffs' Amended Complaint,
14 Defendants deny the allegations therein.

15 130. In answering Paragraph 130 of Plaintiffs' Amended Complaint,
16 Defendants deny the allegations therein.

17 131. In answering Paragraph 131 of Plaintiffs' Amended Complaint,
18 Defendants deny the allegations therein.

19 132. In answering Paragraph 132 of Plaintiffs' Amended Complaint,
20 Defendants deny the allegations therein.

21 **Affirmative Defenses**

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23 133. As and for a separate affirmative defense, and in the alternative,
24 Defendants allege that Plaintiffs' Amended Complaint fails to state a claim upon which
25 relief may be granted against them.

26 134. As and for a separate affirmative defense, and in the alternative,
27 Defendants allege that Plaintiffs may have failed to comply with A.R.S. Section 12-
28 821.01 and if a genuine issue of material fact exists as to whether Plaintiffs complied with

1 the requirements of this section, Defendants will seek to resolve any issues before a trial
2 on the merits, at the earliest possible time.

3 135. As and for a separate affirmative defense, and in the alternative,
4 Defendant City of Glendale and its employees do not owe a general duty to the public at
5 large, rather, they only owe a duty based on “special relationship recognized by the
6 common law or relationships created by public policy,” neither of which exists in this
7 action. *Quiroz v. Alcoa Inc.*, 243 Ariz. 560, 416 P.3d 824 (2018).

8 136. As and for a separate affirmative defense, and in the alternative,
9 Defendants allege that Defendants Schneider, Lindsey, and Fernandez and any other
10 employee-police officer involved in the subject incident of this action used only
11 reasonable and necessary force under the totality of the circumstances.

12 137. As and for a separate affirmative defense, and in the alternative,
13 Defendants allege that they are entitled to all privileges and immunities extended to
14 governmental entities and their employees.

15 138. As and for a separate affirmative defense, and in the alternative,
16 Defendants allege that Plaintiffs Wheatcroft and Chapman were contributorily negligent,
17 and/or that they assumed the risk of their alleged injuries, if any, and/or any injuries that
18 they received were the result of an intervening/superseding cause or through the
19 negligence of someone other than these answering Defendants and/or any City of
20 Glendale employees, all of which bars recovery to Plaintiffs from these answering
21 Defendants.

22 139. As and for a separate affirmative defense, and in the alternative,
23 Defendants allege that Plaintiffs Wheatcroft and Chapman were negligent in whole or in
24 part, thereby reducing or eliminating any damages owing by these answering Defendants
25 by way of the doctrine of comparative negligence.

26 140. As a separate defense, and in the alternative, Defendants allege that
27 Plaintiffs’ alleged injuries were directly or proximately caused in whole or in part by acts
28 or omissions of other parties, and this answering Defendants’ liability to Plaintiff, if any,

1 should be apportioned, denied or reduced in accordance with each party's and non-party's
2 degree of fault of responsibility pursuant to A.R.S. § 12-2506.

3 141. As and for a separate affirmative defense, and in the alternative,
4 Defendants affirmatively assert that the involved police officers at all times acted
5 reasonably and appropriately under the totality of the circumstances.

6 142. As and for a separate affirmative defense, and in the alternative,
7 Defendants affirmatively assert that all or a portion of Plaintiffs' alleged damages, if any,
8 were all or partly proximately caused by the actions or inactions of Plaintiffs Wheatcroft
9 and Chapman and by operation of law are imputed to Plaintiffs, all of which either bars or
10 reduces on a comparative basis, any recovery against these answering Defendants.

11 143. As and for a separate affirmative defense, and in the alternative,
12 Defendants allege that Plaintiffs failed to follow the lawful commands of officers.

13 144. As and for a separate affirmative defense, and in the alternative,
14 Defendants allege that its employees did not act with a purpose to harm or with deliberate
15 indifference to the rights of anyone, including Plaintiffs, for reasons unrelated to the
16 legitimate law enforcement objectives.

17 145. As and for a separate affirmative defense, and in the alternative,
18 Defendants allege that it is entitled to all applicable privileges and immunities afforded to
19 it and its officers, including qualified immunity, extended to governmental employees.

20 146. As and for a separate affirmative defense, and in the alternative,
21 Defendants allege that their actions and the actions of all other Defendant City of
22 Glendale employees, at all times relevant to the allegations set forth in Plaintiffs'
23 Complaint, were objectively reasonable under the circumstances then existing.

24 147. As and for a separate affirmative defense, and in the alternative,
25 Plaintiffs may have failed to mitigate their damages, if any, thus barring or reducing any
26 recovery against Defendants.

1 148. As and for a separate affirmative defense, and in the alternative,
2 Defendant's employees' use of force was justified and privileged under *Graham v.*
3 *Connor*, 490 U.S. 386 (1989) and *Scott v. Harris*, 550 U.S. 372 (2007).

4 149. As and for a separate affirmative defense, and in the alternative,
5 Defendants allege that the interference of Plaintiffs Wheatcroft and Chapman was
6 unjustified and unlawful, and that any injuries Plaintiffs allegedly sustained were the
7 result of that interference with responding law enforcement personnel and the legal and
8 justifiable use of force by law enforcement.

9 150. As for a separate affirmative offense, Defendants assert that Plaintiffs
10 Chapman and Wheatcroft committed aggravated assault on the officers present at the
11 scene while the officers attempted to execute their official duties in violation of A.R.S. §
12 13-1204.

13 151. As and for a separate affirmative defense, and in the alternative,
14 Defendants allege that the use of force by police officers was justified and, therefore,
15 reasonable, and that there is no duty to retreat under A.R.S. §13-411.

16 152. As and for a separate affirmative defense, and in the alternative,
17 Defendants allege that neither it nor its officers are subject to civil liability for engaging in
18 justified conduct pursuant to A.R.S. § 13-413.

19 153. As and for a separate affirmative defense, and in the alternative,
20 Defendants allege that the actions of the police officers were justified and in self -defense
21 pursuant to A.R.S. §§ 13-404, 13-405, 13-406, and 13-409.

22 154. As and for a separate defense and in the alternative, Defendants
23 allege that Plaintiffs assumed the risk of their damages, acted in direct and intentional
24 violation of Arizona law, and acted intentionally and knowingly, jeopardizing their safety
25 and well-being, all of which bars recovery or reduces recovery to the Plaintiffs herein
26 from these answering Defendants.

1 155. As and for a separate defense and in the alternative, Defendants
2 allege that Plaintiff s cannot pursue punitive damages on any federal claim against a
3 governmental entity or individually named Defendants in their official capacities.

4 156. As and for a separate defense and in the alternative, Defendants
5 allege that Plaintiffs cannot establish, that Answering Defendants proximately caused the
6 deprivation of a right, privilege, or immunity protected by the United States Constitution
7 or federal law.

8 157. As and for a separate defense and in the alternative, Defendant City
9 of Glendale alleges that it did not have a policy, practice or custom requiring its
10 employees, including police officers to violate the civil rights of persons, nor did
11 Defendant City of Glendale have a policy, practice or custom of endorsing or ratifying
12 any such conduct by its employees.

13 158. As and for a separate defense and in the alternative, Defendants
14 allege that Defendant City of Glendale did not ratify any unconstitutional conduct.

15 159. As and for a separate defense and in the alternative, Defendants deny
16 that there were any constitutional violations by Defendants and, as a result, Plaintiffs
17 cannot recover under *Monell v. New York City Department of Social Services*, 436 U.S.
18 658 (1978) in the absence of a constitutional violation.

19 160. As and for a separate defense and in the alternative, Defendants
20 allege that plaintiff does not plead any facts demonstrating that the City of Glendale has a
21 policy or procedure that is the moving force behind any alleged constitutional injury.

22 161. As and for a separate defense and in the alternative, Defendant City
23 of Glendale alleges that none of its training was constitutionally deficient.

24 162. As and for a separate defense and in the alternative, the City of
25 Glendale was not callously or deliberately indifferent in its training regarding the adoption
26 of proper customs, policies and procedures for the City of Glendale Police Department.

27 163. As and for a separate defense and in the alternative, Plaintiffs cannot
28 establish that any alleged failure to train or supervise was likely to produce a wrong

1 decision as to support an inference of deliberate indifference by City of Glendale
2 policymakers to the need to train or supervise.

3 164. As and for a separate defense and in the alternative, Defendants
4 allege that vicarious liability is inapplicable to actions under 42 U.S.C. §1983.

5 165. As and for a separate defense and in the alternative, these Answering
6 Defendants are entitled to all privileges and immunities, including qualified immunity,
7 extended to governmental entities and employees under federal law.

8 166. These Answering Defendants did not act with deliberate indifference
9 or in reckless disregard of Plaintiffs' constitutional rights.

10 167. As and for a separate defense and in the alternative, Plaintiffs are not
11 entitled to attorneys' fees pursuant to 42 U.S.C § 1988 or 42 U.S.C. § 1927.

12 168. As and for a separate defense and in the alternative, Defendants
13 allege that Plaintiff Wheatcroft was lawfully detained and refused to state his true full
14 name on request of a peace officer which provided probable cause for his arrest under
15 A.R.S. § 13-2412.

16 169. Defendants put Plaintiffs on notice that further affirmative defenses
17 may be added in an amended answer after discovery. During the course of litigation,
18 named Defendants may discover facts which support one or more of the affirmative
19 defenses set forth in Rule 8(c) and/or Rule 12(b) of the Federal Rules of Civil Procedure,
20 and to avoid waiving said defenses, these answering Defendants hereby incorporate them
21 by reference.

22 WHEREFORE, having fully answered Plaintiffs' Complaint, Defendants
23 pray that Plaintiffs take nothing, that Plaintiffs' Complaint be dismissed in its entirety, and
24 that Defendants be awarded their taxable costs and attorney's fees pursuant to 42 U.S.C.
25 §1988 and 28 U.S.C. §1927, as well as any award that the Court deems necessary and
26 appropriate under the circumstances.

JURY DEMAND

Defendants respectfully request a trial by jury.

DATED this 26th day of November 2018.

JONES, SKELTON & HOCHULI, P.L.C.

By /s/ Joseph J. Popolizio

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CERTIFICATE OF SERVICE

I hereby certify that on this 26th day of November 2018, I caused the foregoing document to be filed electronically with the Clerk of Court through the CM/ECF System for filing; and served on counsel of record via the Court's CM/ECF system.

I further certify that some of the participants in the case are not registered CM/ECF users. I have mailed the foregoing document to the following non-CM/ECF participants:

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