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11 **IN THE UNITED STATES DISTRICT COURT**
12 **IN AND FOR THE DISTRICT OF ARIZONA**

13 Johnny Wheatcroft and Anya Chapman, as
14 husband and wife, and on behalf of minors J.
15 W. and B. W.,

Case No.: 2:18-cv-02347-SMB

16 Plaintiffs,

**JOINT CASE
MANAGEMENT REPORT**

v.

17 City of Glendale, a municipal entity; Matt
18 Schneider, in his official and individual
19 capacities; Mark Lindsey, in his official and
20 individual capacities; and Michael Fernandez,
21 in his official and individual capacities;

22 Defendants.

23 The Parties, by and through counsel undersigned, hereby submit their Joint Case
24 Management Report pursuant to the Court's Order dated November 30, 2018 [Doc. 14].

25 **1. The parties who attended the Rule 26(f) meeting and assisted in developing the Joint**
26 **Case Management Report;**

For Plaintiffs:

Jody L. Broaddus
ATTORNEYS FOR FREEDOM
3185 South Price Road
Chandler, Arizona 85248

For Defendants:

Joseph J. Popolizio
Justin M. Ackerman
JONES, SKELTON & HOCHULI, P.L.C.
40 North Central Avenue, Suite 2700
Phoenix, Arizona 85004

1 **2. A list of the parties in the case, including any parent corporations or entities (for**
2 **recusal purposes);**

3 Plaintiffs: Johnny Wheatcroft
4 Anya Chapman
5 J.W., a minor¹
6 B.W., a minor²

7 Defendants: City of Glendale
8 Matt Schneider
9 Mark Lindsey
10 Michael Fernandez

11 **3. Any parties which have not been served and an explanation of why they have**
12 **not been served, and any parties which have been served but have not answered**
13 **or otherwise appeared;**

14 All parties have been served and have appeared in this action.

15 **4. A statement of whether any party expects to add additional parties to the case or**
16 **otherwise to amend pleadings;**

17 At this time, the Parties do not anticipate the addition of other parties or any other amended
18 pleadings in this case.

19 **5. The names of any parties not subject to the Court's personal (or *in rem*) jurisdiction;**

20 None.

21 **6. A description of the basis for the Court's subject matter, citing specific jurisdictional**
22 **statutes;**

23 This lawsuit involves Plaintiffs' claims under 42 U.S.C § 1983, which involve federal law
24 questions for which this Court has original jurisdiction pursuant to 28 U.S.C. § 1331. In addition,
25 this action involves claims of violations of Plaintiffs' civil rights, and jurisdiction is appropriate
26 under 28 U.S.C. § 1343.

7. A short statement of the nature of the case (3 pages or less), including a
description of each claim and defense;

A. Plaintiffs' position: This case involves federal claims for violations of the

¹ The Parties are contemplating a potential Motion for a Protective Order since discovery relating to certain items, information, documents, photographs, and body-worn camera footage pertaining to J.W., a minor, may be confidential.

² The Parties are contemplating a potential Motion for a Protective Order since discovery relating to certain items, information, documents, photographs, and body-worn camera footage pertaining to B.W., a minor, may be confidential.

1 Plaintiffs' civil rights and rights guaranteed under the U.S. Constitution. On July 26, 2017, the
2 Plaintiffs went to a motel in Glendale, Arizona, to reserve a room so they could enjoy some family
3 time together. Immediately after the family arrived at the motel and before they exited their
4 vehicle, they were accosted by Defendants Schneider and Lindsey, who are police officers
5 employed by Defendant City of Glendale. Plaintiff Johnny Wheatcroft ("Mr. Wheatcroft"), who
6 was a front seat passenger in the vehicle, committed no crime and there was no reasonable basis
7 to suspect him of any illegal activity. Further, he did not display any aggression or give the
8 officers any reason to be concerned for their safety. Regardless, Defendant Schneider began an
9 unlawful attack on Mr. Wheatcroft simply because Mr. Wheatcroft questioned why he needed to
10 provide his identification when he had not done anything wrong. Indeed, an individual is not
11 required to provide identification for merely being a passenger in a vehicle.

12 Defendants Schneider, Lindsey, and Fernandez, all officers with Defendant City of
13 Glendale, unlawfully assaulted Mr. Wheatcroft by repeatedly tasing his chest, back, and testicles
14 while he was restrained as he wrapped in his seatbelt and/or handcuffed. Defendant Schneider's
15 conduct was so egregious that he even went as far as to pull down Mr. Wheatcroft's shorts to
16 directly tase his testicles and perineum while he was handcuffed and prone on the ground.
17 Defendant Schneider placed his taser on Mr. Wheatcroft's penis while threatening to again tase
18 Mr. Wheatcroft while he was handcuffed on the ground.

19 The horrifying events all transpired in front of Plaintiffs Anya Chapman and minors J.W.
20 and B.W. (who are Mr. Wheatcroft's wife and children), and they were overwhelmingly terrified,
21 screaming, and traumatized by the Defendants' atrocious conduct. To add insult to injury, Mr.
22 Wheatcroft was wrongfully arrested and charged with resisting arrest and aggravated assault,
23 which he spent months in jail. Those charges were ultimately dismissed given the lack of any
24 basis to support the claims. The events have had, and will continue to have, an extremely
25 detrimental impact on the Plaintiffs, and their damages are significant.

1 Plaintiffs' Amended Complaint asserts claims against Defendants as follows:

2 1. COUNT I: 42 U.S.C. § 1983 - Excessive Force in Violation of the Fourth,
3 and Fourteenth Amendments Against Defendants Schneider, Lindsey, and Fernandez for their use
4 of unlawful, excessive, and extremely painful force against Plaintiff Johnny Wheatcroft.

5 2. COUNT II: 42 U.S.C. § 1983 - Retaliation in Violation of the First
6 Amendment Against Defendant Schneider for retaliating against and punishing Plaintiff Johnny
7 Wheatcroft for exercising his constitutionally protected right to free speech, which included
8 simply questioning why he was being requested to provide identification, and such speech did not
9 warrant a search of his property or unlawful police conduct.

10 3. COUNT III: 42 U.S.C. § 1983 – Wrongful Arrest in Violation of the Fourth
11 and Fourteenth Amendments against Defendants Schneider, Lindsey, and Fernandez for the
12 unlawful and wrongful arrest of Plaintiff Johnny Wheatcroft.

13 4. COUNT IV: 42 U.S.C. § 1983 – Malicious Prosecution in Violation of the
14 Fourth and Fourteenth Amendments against Defendants Schneider, Lindsey, and Fernandez with
15 regard to their malicious prosecution of Plaintiff Johnny Wheatcroft and the violation of his right
16 to familial association under the Fourth and Fourteenth Amendments.

17 5. COUNT V: Civil Rights Violations - 42 U.S.C. § 1983 against Defendants
18 Schneider, Lindsey, and Fernandez for violations of Plaintiffs' constitutionally protected liberty
19 interests under the First, Fourth, and Fourteenth Amendments. Defendants' wrongful acts and
20 omissions constitute violations of the First, Fourth, and Fourteenth Amendments of the United
21 States Constitution, and Plaintiffs have been deprived of their constitutional rights, including the
22 familial companionship between parents and children.

23 6. COUNT VI: 42 U.S.C. § 1983 – Municipal Liability against Defendant City
24 of Glendale, which is liable under § 1983 for execution of its governmental policies and/or
25 customs, whether made by its lawmakers or by those whose edicts or acts may fairly be said to
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1 represent official policy, that inflicts injuries or policies which amount to a deliberate indifference
2 to Plaintiffs' constitutional rights. In addition, Plaintiffs contend Defendant City of Glendale had
3 policies, customs, and/or patterns and practices of failing to properly discipline, train, and
4 supervise its police officers, including the individual Defendants named in this Complaint, in the
5 proper use force, probable cause, and the execution of arrests. The City of Glendale failed to
6 ensure its police officers could and would conduct themselves in a manner to avoid violating the
7 constitutional rights of individuals, such as the Plaintiffs.

8 **B. Position of Defendants City of Glendale, Matt Schneider, Mark Lindsey, and**
9 **Michael Fernandez:**

10 On July 26, 2017, Glendale Police Officers were at 5900 W. Myrtle Avenue conducting
11 intensive patrol due to increased crime reported in the area. At approximately 7:30 p.m., Officers
12 Matt Schneider and Mark Lindsey, members of the Glendale Police Department Neighborhood
13 Response Squad ("NRS"), contacted the occupants of a Ford Taurus in the parking lot of Motel 6
14 at 7116 N. 59th Avenue after having reasonable suspicion that a traffic violation had occurred.
15 Glendale Police also have a blanket trespassing authorization on file with hotel management.
16 Officers Schneider and Lindsey both approached the Ford Taurus, which was backed into a
17 parking space, which was suspicious due to the amount of crime on the property and consistent
18 with those who try to hide license plates from law enforcement. Officer Schneider approached
19 the passenger side, while Officer Lindsey approached the driver's side of the vehicle.

20 The Officers Schneider and Lindsey found that the Ford Taurus was occupied by three
21 adults and two children. One of those adults, a male in the front passenger seat, was later, but not
22 during his presence at the scene, determined to be Johnny Wheatcroft (37). Mr. Wheatcroft was
23 observed not to be wearing his seatbelt, but merely hugging it with his right arm. The male driver,
24 Shawn Blackburn (34), did not have proof of a valid driver's license in his possession. Officer
25 Schneider requested identification from Mr. Wheatcroft, who not only refused to produce any
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1 identification, but also refused to provide his name to Officer Schneider. In the rear passenger
2 seat, was the third adult in the vehicle, Anya Chapman (34). Upon information and belief, at the
3 time of this incident, Ms. Chapman was and still is the spouse of Johnny Wheatcroft, as well as
4 the mother of the two children beside her, J.W. (11) and B.W. (6).

5 During the officers' contact at the vehicle, Anya Chapman asked whether she could step
6 out of the vehicle due to the heat. The Officers allowed her to do so, as they spoke to Johnny
7 Wheatcroft and Shawn Blackburn. Mr. Wheatcroft immediately exhibited verbal non-compliance
8 by refusing to identify himself.

9 Importantly, both Officers noted that Johnny Wheatcroft was reaching down below the
10 seat—behavior that causes any officer great concern in any traffic stop. Officer Schneider
11 instructed Mr. Wheatcroft not to reach down in the car or in any backpack within the car.
12 Nevertheless, Mr. Wheatcroft did not obey Officer Schneider's instructions to stop reaching his
13 hands beneath the seat and about the vehicle in the area of the center console. Johnny Wheatcroft's
14 refusal to follow lawful commands and reaching into a backpack and the area of the center console
15 of the vehicle, even after being told not to do so, jeopardized officer safety and necessitated his
16 removal from the vehicle. For officer safety and the safety of those around them, including the
17 minor children, the officers attempted to remove Mr. Wheatcroft from the vehicle, to maintain a
18 safe eye on him for the duration of the traffic stop and to conduct a pat down for weapons.

19 Instead of cooperating with the officers, Mr. Wheatcroft immediately displayed physical
20 resistance, and refused to exit the vehicle, while he continued to place his hands where officers
21 could not see them. Officer Schneider asked Plaintiff Wheatcroft if he was going to fight and
22 displayed his Taser to gain Johnny Wheatcroft's compliance and to deter Mr. Wheatcroft from
23 physically resisting. However, Mr. Wheatcroft continued to physically yell and physically resist
24 Officer Schneider's control hold and attempt to remove him from the vehicle. Due to the physical
25 resistance from Mr. Wheatcroft, Officer Lindsey had come around from the driver side of the
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1 vehicle to the front passenger door area to assist Officer Schneider with the physically resisting
2 Johnny Wheatcroft. Although Officer Schneider applied a control hold to Johnny Wheatcroft, he
3 was unable to remove him from the vehicle. Officer Lindsey assisted Defendant Schneider in
4 beginning to physically remove Plaintiff Wheatcroft from the vehicle. While Officer Schneider
5 attempted to remove Plaintiff Wheatcroft from the vehicle while applying a control hold, Officer
6 Lindsey placed his Taser on Johnny Wheatcroft's shoulder and warned him that if he continued
7 to resist he would be tased. However, Johnny Wheatcroft continued to resist, despite this warning.
8 Thus, Officer Lindsey then used his Taser in short drive stun mode capacity in an attempt to gain
9 compliance from, control of, and to avoid physical injury to Johnny Wheatcroft. Plaintiff became
10 tangled in the seatbelt as he physically resisted the officers.

11 While Officers Schneider and Lindsey attempted to detain the resisting Johnny Wheatcroft,
12 Anya Chapman, who had re-entered the rear passenger compartment of the vehicle, yelled at and
13 argued with the Officers. But Anya Chapman did not limit her participation to mere words.
14 Suddenly, intentionally, and without any warning, Anya Chapman violently struck Officer
15 Lindsey with an object, specifically with a plastic bag filled with soft drinks, from her position
16 within the vehicle. Neither officer saw that coming. When Ms. Chapman was allowed to get out
17 of the vehicle due to her complaint regarding the heat, she had nothing in her hands. Nevertheless,
18 Ms. Chapman acquired this object and used it to knock Officer Lindsey unconscious and to fall
19 backward to the pavement on the passenger side of the vehicle. Seeing his partner unconscious,
20 coupled with Mr. Wheatcroft's continued resistance and the unknown threat from within the
21 vehicle, Officer Schneider deployed his Taser, striking Mr. Wheatcroft.

22 Outnumbered and with Officer Lindsey lying on the pavement unconscious, Officer
23 Schneider made a call over the radio that an officer was down. As a result, additional officers
24 quickly responded to the scene. Before and as they arrived, Officer Lindsey was trying earnestly
25 to regain his faculties and get up from the ground to assist Officer Schneider. Realizing the
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1 seriousness of Officer Lindsey's condition, Officer Schneider repeatedly told him to stay down.
2 However, in his altered state from the severe blow that Anya Chapman delivered to his head,
3 Officer Lindsey continued to struggle, but was unable to assist either Officer Schneider or any
4 responding officer, other than to provide instruction that Ms. Chapman was to be arrested for
5 assaulting him.

6 Officer Fernandez was first to arrive at the scene. He immediately assisted Officer
7 Schneider with the combative Mr. Wheatcroft. First, he unsuccessfully attempted to physically
8 to remove Johnny Wheatcroft from the vehicle, but then deployed his Taser in an attempt to
9 control him. Officer Fernandez, in an attempt to restrain the combative, resisting and non-
10 compliant Johnny Wheatcroft, put him chest down on the pavement.

11 Even when the officers finally managed to handcuff the combative Johnny Wheatcroft, Mr.
12 Wheatcroft continued to scream at and physically resist the officers who attempted to control him.
13 Despite being handcuffed, and as Ms. Chapman was being arrested for her aggravating assault on
14 Officer Lindsey, Mr. Wheatcroft continued to kick, scream at, and resist the officers. As Johnny
15 Wheatcroft fought, Officer Schneider drive stun tased and kicked him due to his resisting,
16 combative, assaultive conduct. Mr. Wheatcroft received another drive stun Taser application.

17 Eventually, Johnny Wheatcroft and Anya Chapman were taken into custody. Per
18 department policy, officers removed the Taser probes from Johnny Wheatcroft. Fire personnel
19 responded to the scene to evaluate Mr. Wheatcroft and Officer Lindsey. Officer Lindsey was
20 transported to a local valley hospital for medical treatment. Mr. Wheatcroft refused medical
21 treatment, though he now complains he was not provided any.

22 Anya Chapman protested her arrest at the scene, denying that she ever struck Officer
23 Lindsey. Also at the scene, Mr. Wheatcroft initially stated that Ms. Chapman did not hit Officer
24 Lindsey, but then immediately changed his position to claim that she did not mean to hit him. The
25 minor children were understandably upset and scared, but the Officers treated them with kindness
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1 from the beginning of the contact with the occupants within, to the removal of the children from
2 the car.

3 Mr. Wheatcroft and Ms. Chapman were arrested and charged with Aggravated Assault due
4 to their actions. The County Attorney's Office dropped the charges against Johnny Wheatcroft,
5 but proceeded against Anya Chapman. Ms. Chapman pled guilty to a lesser charge for her assault
6 on Officer Lindsey.

7 Never during this entire encounter did any officer place a gun to Johnny Wheatcroft's head,
8 as Plaintiffs erroneously claim. Moreover, no officer retaliated against Mr. Wheatcroft for any
9 exercise of his First Amendment right to free speech, either. In fact, Officers Schneider, Lindsey,
10 and Fernandez, and any other employee-police officer involved in the subject incident of this
11 action, used only reasonable and necessary force under the totality of the circumstances. Indeed,
12 no Defendant in this action acted with a purpose to harm or with deliberate indifference to the
13 rights of any Plaintiff for reasons unrelated to the legitimate law enforcement objectives.

14
15 **8. A listing of contemplated motions and a statement of the issues to be decided by these motions;**

16 Depending on information revealed through discovery, summary judgment motions may
17 be filed in this matter as to liability.

18 **9. Whether the case is suitable for reference to a United States Magistrate Judge for a settlement conference;**

19 The parties elect to mediate this matter before a private mediator.

20
21 **10. The status of related cases pending before other courts or other judges of this Court;**

22 There are no related pending cases.

23
24 **11. A discussion of the parties' compliance with the MIDP, including a list of dates on which each party served its MIDP discovery responses, a list of dates when MIDP responses are due for the parties that have not yet served them, whether any issues have arisen under the MIDP, and, if issues have arisen, a description of those issues so the Court may resolve them at Case Management Conference. If the Joint Case Management Report raises MIDP issues for the Court to resolve, copies of**

1 **the parties' MIDP disclosures should be attached to the report.**

2 The Parties will provide their MIDP discovery responses by no later than December 26,
3 2018. At this time, there are no issues necessitating judicial intervention.

4 **12. A discussion of any issues relating to preservation, disclosure, or discovery of**
5 **electronically stored information ("ESI"), including the parties' preservation of ESI**
6 **and the form or forms in which it will be produced;**

7 The Parties do not believe there are any issues as to disclosure or discovery of electronically
8 stored information. The Parties agree to preserve any electronically stored information that may
9 relate in any way to the claims and defenses in this matter. The Parties agree to produce such
10 information in either paper form, on a cd, or electronic, secure file sharing via the internet. The
11 Parties do not anticipate any issues with regard to disclosure or discovery of such information.

12 **13. A discussion of any issues relating to claims of privilege or work product;**

13 At this time, the Parties are unaware of any issues related to claims of privilege or work
14 product. The Parties agree to work together in good faith to try to resolve any issues that may
15 arise regarding claims of privilege or work product.

16 **14. A discussion of necessary discovery, which should take into account the December 1,**
17 **2015 amendments to Rule 26(b)(1), and should include:**

18 **a. The extent, nature, and location of discovery anticipated by the parties and**
19 **why it is proportional to the needs of the case;**

20 The Plaintiff and Defendants anticipate that discovery will include testimonial,
21 documentary, and tangible evidence, and to obtain such discovery the parties will conduct
22 depositions, produce written discovery including requests for admissions, requests for production,
23 uniform and non-uniform interrogatories, and serve subpoenas duces tecum, as needed. The
24 parties anticipate the scope of discovery will be proportionally limited to obtain information
25 relating to liability and damages in this matter.

26 **b. Suggested changes, if any, to the discovery limitations imposed by the Federal**
Rules of Civil Procedure;

1 The Parties do not anticipate and, therefore, at this time do not request any changes from
2 the limitations set forth in the Federal Rules of Civil Procedure.

3 **c. The number of hours permitted for each deposition. The parties should**
4 **consider whether a total number of depositions hours should be set in the case,**
5 **such as 30 total hours for Plaintiff and 30 total hours for Defendants. Such overall**
6 **time limits have the advantage of providing an incentive for each side to be as**
7 **efficient as possible in each deposition, while also allowing parties to allocate time**
8 **among witnesses depending on the importance and complexity of subjects to be**
9 **covered with the witnesses.**

10 The Parties agree to the limits set forth in Fed. R. Civ. P. 30. and will endeavor to be as
11 efficient as possible in deposition practice.

12 **15. Proposed deadlines for the following events. In proposing deadlines the parties should**
13 **keep in mind that civil trials should occur within 18 months of filing the complaint. 28**
14 **U.S.C. § 473(a)(2)(B). The Case Management Order will specify trial scheduling up**
15 **to the final pretrial conference. Once the dates have been set in the Case Management**
16 **Order, the Court will not vary them without good cause, even if the parties would**
17 **otherwise stipulate to do so. The Court does not consider settlement talks or the**
18 **scheduling of mediations to constitute good cause for an extension:**

19 **a. A deadline for the completion of fact discovery, which will also be the deadline**
20 **for final supplementation of discovery responses under the MIDP and pretrial**
21 **disclosures pursuant to Rule 26(a)(3). This deadline is the date by which all discovery**
22 **must be completed. Discovery requests must be served and depositions noticed**
23 **sufficiently in advance of this date to ensure reasonable completion by the deadline,**
24 **including time to resolve discovery disputes. Absent disputes extraordinary**
25 **circumstances, the Court will not entertain discovery disputes after this deadline;³**

26 The Parties agree to complete fact discovery by no later than **January 31, 2020.**

b. Dates for full and complete expert disclosures and rebuttal expert disclosures,
if any;

Plaintiffs will disclose her experts and their anticipated testimony by no later than
September 30, 2019. Defendants will disclose their experts and their anticipated testimony by
no later than **November 2, 2019.** Plaintiff will disclose any rebuttal expert disclosures by no later
than **February 14, 2020.**

³ The Parties appreciate the Court's Order (Doc. 14) that civil trials should occur within 18 months of the filing of the
Complaint. However, the parties submit that this suggested time constraint is unrealistic in this case given the number of
fact witnesses and prospective experts, and the corresponding amount of anticipated written discovery and depositions.

1 **c. A deadline for completion of all expert depositions;**

2 The Parties will complete expert depositions by April 24, 2020.

3 **d. A date by which any Rule 35 physical or mental examination will be noticed if**
4 **such examination is required by any issues in the case;**

5 The Parties will notice any Rule 35 examinations by no later than June 21, 2019.

6 **e. A deadline for filing dispositive motions.**

7 Dispositive motions shall be filed no later than June 12, 2020.

8 **f. Case-specific deadlines and dates, such as the deadline to file a motion for class**
9 **certification or date on which parties are available for a Markman (patent claim**
10 **construction) hearing;**

10 Not applicable.

11 **g. A date by which the parties shall have engaged in face-to-face good faith**
12 **settlement talks;**

13 The Parties will engage in good faith settlement talks by July 17, 2020. Plaintiffs add that
14 Plaintiff Johnny Wheatcroft is currently incarcerated. Should he be incarcerated at the time of
15 any settlement conference, and the Parties stipulate and agree that his personal appearance will
16 not be required, and Plaintiff's counsel will ensure that proper settlement authority will be
17 obtained by Plaintiff's counsel to engage in good faith settlement talks with regard to Plaintiff
18 Johnny Wheatcroft.

18 **h. A date on which the parties are available for a pretrial conference (at least 120**
19 **days after the dispositive motion deadline);**

20 The Parties are available for a pretrial conference after October 14, 2020.

21 **i. Whether a jury trial has been requested and whether the request for a jury**
22 **trial is contested (if the request is contested, briefly set forth the reasons);**

23 The Parties have requested a trial by jury in this matter.

24 **j. The estimated length of trial and any suggestions for shortening the trial;**
25 **and,**

26 The Parties estimate the length of trial to be 7-10 days.

k. Any other matters that will aid the Court and parties in resolving this case in

1 **a just, speedy, and inexpensive manner as required by Federal Rule of Civil**
2 **Procedure 1.**

3 None at this time.

4 DATED this 21st day of December, 2018.

5 ATTORNEYS FOR FREEDOM

6 By: /s/ Jody L. Broaddus

7 Jody L. Broaddus, Esq.

8 *Attorneys for Plaintiffs*

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

10 By: /s/ Joseph J. Popolizio (with permission)

11 Joseph J. Popolizio

12 Justin M. Ackerman

13 40 North Central Avenue, Suite 2700

14 Phoenix, Arizona 85004

15 *Attorneys for Defendants*

16 **CERTIFICATE OF SERVICE**

17 I hereby certify that on this 21st day of December, 2018, I electronically transmitted the
18 foregoing to the Clerk's office using the CM/ECF system for filing and transmittal of a Notice
19 of Electronic filing to the following registrants, and a copy was also sent by first class mail to:

20 Joseph J. Popolizio

21 Justin M. Ackerman

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

23 40 North Central Avenue, Suite 2700

24 Phoenix, Arizona 85004

25 By: /s/ Alexandria Thompson