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6 Attorneys for Defendants City of Glendale,
Matt Schneider, Mark Lindsey, and Michael
7 Fernandez

8
9 **UNITED STATES DISTRICT COURT**
10 **DISTRICT OF ARIZONA**

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

13 Plaintiffs,

14 v.

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

18 Defendants.

NO. 2:18-cv-02347-DWL

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

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

24 **PARTIES, JURISDICTION, AND VENUE**

25
26 1. In answering Paragraph 1 of Plaintiffs' Second Amended Complaint,
27 Defendants admit that it appears that Plaintiffs are alleging claims pursuant to 42 U.S.C.
28

1 §1983, and the First, Fourth, and Fourteenth Amendments of the United States
2 Constitution. However, to the extent that Plaintiffs contend that the allegations contained
3 in Paragraph 1 or any other paragraph of Plaintiffs' Second Amended Complaint purport
4 to allege a viable cause of action against these answering Defendants, Defendants deny
5 the same.

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

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

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

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

20 6. In answering Paragraph 6 of Plaintiffs' Second Amended Complaint,
21 Defendants admit that the City of Glendale is an Arizona municipality under Title 9 of the
22 Arizona Revised Statutes.

23 7. In answering Paragraph 7 of Plaintiffs' Second Amended Complaint,
24 Defendants admit that the City of Glendale is an Arizona municipality and, generally, as
25 may be permitted by law, that it may be subject to a civil suit, under certain
26 circumstances, and may be held vicariously liable for the wrongful conduct of its
27 employees, under certain circumstances. In further answering Paragraph 7, Defendants
28 affirmatively assert that Plaintiffs do not assert any state law claims and that vicarious

1 liability is inapplicable to § 1983 actions. In addition, to the extent that Plaintiffs contend
2 that the allegations contained in Paragraph 7 of Plaintiffs' Second Amended Complaint
3 purport to allege a viable cause of action against these answering Defendants, Defendants
4 deny the same.

5 8. In answering Paragraph 8 of Plaintiffs' Second Amended Complaint,
6 Defendants admit the allegations therein.

7 9. In answering Paragraph 9 of Plaintiffs' Second Amended Complaint,
8 Defendants admit the allegations therein.

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

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

23 12. In answering Paragraph 12 of Plaintiffs' Second Amended
24 Complaint, Defendants deny the allegations therein and affirmatively assert that Plaintiffs
25 J.W. and B.W., regardless of their minor status, pursued federal claims in this lawsuit
26 which demonstrates that their state claims could have been asserted in a timely manner,
27 but were not.

GENERAL ALLEGATIONS

1
2
3 13. In answering Paragraph 13 of Plaintiffs’ Second Amended
4 Complaint, Defendants lack sufficient information to form a belief as to the truth of the
5 allegations contained in Paragraph 13 that Plaintiffs intended to reserve a room so they
6 could enjoy some family time together and, therefore, deny the same and leave Plaintiffs
7 to their proof. Defendants admit the remaining allegations contained in Paragraph 13 of
8 Plaintiffs’ Second Amended Complaint.

9 14. Upon information and belief, in answering Paragraph 14 of Plaintiffs’
10 Second Amended Complaint, Defendants admit that a non-family member was the driver
11 of the vehicle in which Plaintiffs were passengers. Defendants admit the remaining
12 allegations contained in Paragraph 14 of Plaintiffs’ Second Amended Complaint.

13 15. In answering Paragraph 15 of Plaintiffs’ Second Amended
14 Complaint, Defendants admit the allegations contained therein.

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

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

19 18. In answering Paragraph 18 of Plaintiffs’ Second Amended
20 Complaint, Defendants admit that Plaintiff Wheatcroft asked Defendant Schneider why he
21 needed to produce identification. In further answering Paragraph 18 of Plaintiffs’
22 Complaint, Defendants assert that no violation of Plaintiff Wheatcroft’s First Amendment
23 right to free speech occurred.

24 19. In answering Paragraph 19 of Plaintiffs’ Second Amended
25 Complaint, Defendants deny the allegations therein

26 20. In answering Paragraph 20 of Plaintiffs’ Second Amended
27 Complaint, Defendants admit that Defendant Schneider stated that he would take Plaintiff
28 Wheatcroft down to the police station as Plaintiff Wheatcroft would not provide his name

1 as asked. In further answering Paragraph 20 of Plaintiffs' Second Amended Complaint,
2 Defendants lack sufficient information to form a belief as to the truth of the remaining
3 allegations contained in Paragraph 20 and, therefore, deny the same.

4 21. In answering Paragraph 21 of Plaintiffs' Second Amended
5 Complaint, Defendants affirmatively assert that Plaintiff Wheatcroft's refusal to follow
6 lawful commands and reaching into a backpack and the area of the center console of the
7 vehicle, even after being told not to do so jeopardized officer safety and necessitated his
8 removal from the vehicle. Defendants admit that during Defendant Schneider's interaction
9 with Plaintiff Wheatcroft, Defendant Schneider asked Plaintiff Wheatcroft if he was going
10 to fight. In further answering Paragraph 21, Defendants deny the remaining allegations
11 therein.

12 22. In answering Paragraph 22 of Plaintiffs' Second Amended
13 Complaint, Defendants admit that during his interaction with Plaintiff Wheatcroft,
14 Defendant Schneider holstered his Taser and that he justifiably administered a control
15 hold to Plaintiff Wheatcroft to remove Plaintiff Wheatcroft from the vehicle to ensure
16 officer safety. As for the remaining allegations contained in Paragraph 22 of Plaintiffs'
17 Second Amended Complaint, Defendants lack sufficient information to form a belief as to
18 the truth of the remaining allegations contained in Paragraph 22 and, therefore, deny the
19 same.

20 23. In answering Paragraph 23 of Plaintiffs' Second Amended
21 Complaint, Defendants admit that Defendant Lindsey assisted Defendant Schneider in
22 beginning to physically remove Plaintiff Wheatcroft from the vehicle and that Defendant
23 Lindsey placed his Taser on Plaintiff Wheatcroft's shoulder while Defendant Schneider
24 attempted to remove Plaintiff Wheatcroft from the vehicle while applying a control hold.
25 In further answering Paragraph 23, Defendants affirmatively assert that Plaintiff
26 Wheatcroft was not restrained, but became tangled in the seatbelt after his physical
27 resistance and refusal to follow lawful commands. As for the remaining allegations
28 contained in Paragraph 23, Defendants lack sufficient information to form a belief as to

1 the truth of the remaining allegations contained in Paragraph 23 and, therefore, deny the
2 same.

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

8 25. In answering Paragraph 25 of Plaintiffs' Second Amended
9 Complaint, Defendants admit that Plaintiffs Anya Chapman, J.W., and B.W. during the
10 subject incident and that a minor presumed to be Plaintiff J.W. asked the officers to stop.
11 As for the remaining allegations set forth in Paragraph 25, Defendants lack sufficient
12 information to form a belief as to the truth of the remaining allegations contained in
13 Paragraph 25 and, therefore, deny the same.

14 26. In answering Paragraph 26 of Plaintiffs' Second Amended
15 Complaint, Defendants admit that Defendant Schneider backed away from Plaintiff
16 Wheatcroft and activated his Taser in dart mode on Plaintiff Wheatcroft after Plaintiff
17 Chapman committed an aggravated assault on Defendant Lindsey which rendered
18 defendant Lindsey unconscious and incapacitated.

19 27. In answering Paragraph 27 of Plaintiffs' Second Amended
20 Complaint, Defendants admit that Defendant Fernandez arrived on the scene and applied
21 his Taser to Plaintiff Wheatcroft. As for the remaining allegations contained in Paragraph
22 27, Defendants deny the same.

23 28. In answering Paragraph 28 of Plaintiffs' Second Amended
24 Complaint, Defendants admit that Defendant Fernandez handcuffed the resisting Plaintiff
25 Wheatcroft and that when the resisting Plaintiff Wheatcroft was handcuffed he was facing
26 the interior of the front passenger area of the vehicle while his knees were on the concrete.
27 Defendants deny the remaining allegations contained in Paragraph 28.

1 29. In answering Paragraph 29 of Plaintiffs' Second Amended
2 Complaint, Defendants admit that Defendant Schneider deployed his Taser on the
3 resisting Plaintiff Wheatcroft while he was handcuffed. As for the remaining allegations
4 contained in paragraph 29, Defendants deny the same.

5 30. In answering Paragraph 30 of Plaintiffs' Second Amended
6 Complaint, Defendants admit that minor J.W. entered the front passenger area of the
7 vehicle and released Plaintiff Wheatcroft's legs from the disengaged seatbelt and that
8 Plaintiff Wheatcroft stated that he was caught in the seatbelt. Defendants further admit
9 that Defendant Schneider requested that minor J.W. get out of the vehicle, but treated him
10 with the care that any child should be afforded under the circumstances, and that minor
11 J.W. cried in the front passenger seat while consoled by the male adult driver. Defendants
12 further admit that Defendant Fernandez attempted to pull Plaintiff Wheatcroft away from
13 the open passenger compartment of the vehicle. Defendants deny the remaining
14 allegations contained in Paragraph 30 of Plaintiffs' Second Amended Complaint.

15 31. In answering Paragraph 31 of Plaintiffs' Second Amended
16 Complaint, Defendants admit that Defendant Fernandez, in an attempt to restrain the
17 combative, resisting and non-compliant Plaintiff Wheatcroft, put Plaintiff Wheatcroft
18 chest down on the pavement and that Defendant Schneider tased and kicked Plaintiff
19 Wheatcroft due to his resisting, combative, assaultive conduct. In further answering
20 Paragraph 31 of Plaintiffs' Second Amended Complaint, Defendants admit that
21 passengers in the vehicle requested that the officers stop. As for the remaining allegations
22 contained in Paragraph 31 of Plaintiffs' Second Amended Complaint, Defendants lack
23 sufficient information to form a belief as to the truth of the remaining allegations
24 contained in Paragraph 31 and, therefore, deny the same.

25 32. In answering Paragraph 32 of Plaintiffs' Second Amended
26 Complaint, Defendants deny the allegations therein.

27 33. In answering Paragraph 33 of Plaintiffs' Second Amended
28 Complaint, Defendants admit that minor J.W. was in the vicinity of a portion of the

1 encounter between Officer Schneider and Plaintiff Johnny Wheatcroft. Defendants deny
2 the remaining allegations of paragraph 33.

3 34. In answering Paragraph 34 of Plaintiffs' Second Amended
4 Complaint, Defendants admit that minors J.W and B.W. were in the vicinity of a portion
5 of the encounter between Officer Schneider and Plaintiff Johnny Wheatcroft. Defendants
6 deny the remaining allegations of paragraph 34.

7 35. In answering Paragraph 35 of Plaintiffs' Second Amended
8 Complaint, Defendants deny the allegations therein.

9 36. In answering Paragraph 36 of Plaintiffs' Second Amended
10 Complaint, Defendants admit that Defendant Schneider made the statements within the
11 quotations set forth in this paragraph. However, Defendants deny the remaining
12 allegations contained in Paragraph 36. Defendants affirmatively allege that no one,
13 including these answering Defendants, "placed a handgun to Plaintiff Johnny
14 Wheatcroft's head," as Plaintiffs erroneously allege in Paragraph 36.

15 37. In answering Paragraph 37 of Plaintiffs' Second Amended
16 Complaint, Defendants deny the allegations therein.

17 38. In answering Paragraph 38 of Plaintiffs' Second Amended
18 Complaint, Defendants admit that Defendant Schneider made the statement appearing in
19 quotations and that officers brought Plaintiff Wheatcroft to his feet and removed the Taser
20 prongs pursuant to policy and that Plaintiff Wheatcroft was screaming. As for the
21 remaining allegations contained in Paragraph 38 of Plaintiffs' Second Amended
22 Complaint, Defendants lack sufficient information to form a belief as to the truth of the
23 remaining allegations contained in Paragraph 35 and, therefore, deny the same.

24 39. In answering Paragraph 39 of Plaintiffs' Second Amended
25 Complaint, Defendants admit the allegations therein.

26 40. In answering Paragraph 40 of Plaintiffs' Second Amended
27 Complaint, Defendants admit that Plaintiffs Chapman and minors J.W. and B.W. were
28 present during the subject incident. In further answering paragraph 40 of Plaintiffs'

1 Second Amended Complaint, Defendants lack sufficient information to form a belief as to
2 the truth of the remaining allegations contained in Paragraph 40 and, therefore, deny the
3 same.

4 41. In answering Paragraph 41 of Plaintiffs' Second Amended
5 Complaint, Defendants admit that all charges against Plaintiff Wheatcroft as a result of
6 this incident were dismissed. In further answering Paragraph 41 of Plaintiffs' Second
7 Amended Complaint, Defendants deny the remaining allegations.

8 42. In answering Paragraph 42 of Plaintiffs' Second Amended
9 Complaint, Defendants lack sufficient information to form a belief as to the truth of the
10 allegation that Plaintiff Wheatcroft sustained various injuries and therefore deny the same.
11 In further answering Paragraph 42 of Plaintiffs' Second Amended Complaint, Defendants
12 deny the remaining allegations therein and affirmatively assert that Plaintiff Wheatcroft
13 refused medical treatment.

14 43. In answering Paragraph 43 of Plaintiffs' Second Amended
15 Complaint, Defendants deny the allegations therein.

16 44. In answering Paragraph 44 of Plaintiffs' Second Amended
17 Complaint, Defendants deny the allegations therein.

18 45. In answering Paragraph 45 of Plaintiffs' Second Amended
19 Complaint, Defendants deny the allegations therein and affirmatively assert that no
20 Defendant "tortured" any Plaintiff.

21 46. In answering Paragraph 46 of Plaintiffs' Second Amended
22 Complaint, Defendants admit that the Defendant Officers and responding officers acted in
23 the course and scope of the officers' employment with the Glendale Police Department.
24 As for the remaining allegations contained in paragraph 46 of Plaintiffs' Second Amended
25 Complaint, Defendants deny the same.

26 47. In answering Paragraph 47 of Plaintiffs' Second Amended
27 Complaint, Defendants admit that Plaintiff Wheatcroft was appropriately charged with
28 aggravated assault and resisting arrest and that he was jailed. In further answering

1 Paragraph 47, Defendants deny that Defendants maliciously charged Plaintiff Wheatcroft
2 with any crime. As for the remaining allegations contained in Paragraph 47 of Plaintiffs'
3 Second Amended Complaint, Defendants lack sufficient information to form a belief as to
4 the truth of the allegations contained therein and, therefore, deny the same.

5 48. In answering Paragraph 48 of Plaintiffs' Second Amended
6 Complaint, Defendants deny the allegations therein.

7 49. In answering Paragraph 49 of Plaintiffs' Second Amended
8 Complaint, Defendants deny the allegations therein.

9 50. In answering Paragraph 50 of Plaintiffs' Second Amended
10 Complaint, Defendants deny the allegations therein.

11 51. In answering Paragraph 51 of Plaintiffs' Second Amended
12 Complaint, Defendants deny the allegations therein.

13 **COUNT I**
14 **42 U.S.C. § 1983 – Excessive Force in Violation of the**
15 **Fourth, and Fourteenth Amendments**
(Against Defendants Schneider, Lindsey, and Fernandez)

16 52. In answering Paragraph 52 of Plaintiffs' Second Amended
17 Complaint, Defendants incorporate their answers to Paragraphs 1- 51 of Plaintiffs' Second
18 Amended Complaint, as if fully set forth herein.

19 53. In answering Paragraph 53 of Plaintiffs' Second Amended
20 Complaint, Defendants deny the allegations therein.

21 54. In answering Paragraph 54 of Plaintiffs' Second Amended
22 Complaint, Defendants deny the allegations therein.

23 55. In answering Paragraph 55 of Plaintiffs' Second Amended
24 Complaint, Defendants deny the allegations therein.

25 56. In answering Paragraph 56 of Plaintiffs' Second Amended
26 Complaint, Defendants deny the allegations therein.

27 57. In answering Paragraph 57 of Plaintiffs' Second Amended
28 Complaint, Defendants deny the allegations therein.

1 58. In answering Paragraph 58 of Plaintiffs' Second Amended
2 Complaint, Defendants deny the allegations therein.

3 59. In answering Paragraph 59 of Plaintiffs' Second Amended
4 Complaint, Defendants deny the allegations therein.

5 60. In answering Paragraph 60 of Plaintiffs' Second Amended
6 Complaint, Defendants deny the allegations therein.

7 61. In answering Paragraph 61 of Plaintiffs' Second Amended
8 Complaint, Defendants deny the allegations therein.

9 62. In answering Paragraph 62 of Plaintiffs' Second Amended
10 Complaint, Defendants deny the allegations therein.

11 63. In answering Paragraph 63 of Plaintiffs' Second Amended
12 Complaint, Defendants deny the allegations therein.

13 64. In answering Paragraph 64 of Plaintiffs' Second Amended
14 Complaint, Defendants deny the allegations therein.

15 65. In answering Paragraph 65 of Plaintiffs' Second Amended
16 Complaint, Defendants deny the allegations therein.

17 66. In answering Paragraph 66 of Plaintiffs' Second Amended
18 Complaint, Defendants deny the allegations therein.

19 **COUNT II**
20 **42 U.S.C. § 1983 - Retaliation in Violation of the First Amendment**
21 **(Against Defendant Schneider Only)**

22 67. In answering Paragraph 67 of Plaintiffs' Second Amended
23 Complaint, Defendants incorporate their answers to Paragraphs 1- 66 of Plaintiffs'
24 Second Amended Complaint, as if fully set forth herein.

25 68. In answering Paragraph 68 of Plaintiffs' Second Amended
26 Complaint, Defendants admit that Defendant Schneider was acting under the color of law
27 and within the course and scope of his employment with Defendant City of Glendale at
28 the time of the subject incident of this lawsuit. However, to the extent that Plaintiffs'

1 contend that the allegations contained in Paragraph 68 purport to allege a viable cause of
2 action against these answering Defendants, Defendants deny the same.

3 69. In answering Paragraph 69 of Plaintiffs' Second Amended
4 Complaint, Defendants deny the allegations therein and affirmatively assert that no
5 retaliation for any exercise of free speech occurred.

6 70. In answering Paragraph 70 of Plaintiffs' Second Amended
7 Complaint, Defendants deny the allegations therein and affirmatively assert that no
8 retaliation for any exercise of free speech occurred.

9 71. In answering Paragraph 71 of Plaintiffs' Second Amended
10 Complaint, Defendants affirmatively assert that no search of Plaintiff Wheatcroft's
11 property occurred as a result of any exercise of any First Amendment right of Plaintiff
12 Wheatcroft. In further answering Paragraph 71 of Plaintiffs' Second Amended
13 Complaint, Defendants deny any unlawful police conduct. As for the remaining
14 allegations contained in Paragraph 71 of Plaintiffs' Second Amended Complaint,
15 Defendants lack sufficient information to form a belief as to the truth of the allegations
16 contained therein and, therefore, deny the same.

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

19 73. In answering Paragraph 73 of Plaintiffs' Second Amended
20 Complaint, Defendants deny the allegations therein.

21 74. In answering Paragraph 74 of Plaintiffs' Second Amended
22 Complaint, Defendants deny the allegations therein.

23 75. In answering Paragraph 75 of Plaintiffs' Second Amended
24 Complaint, Defendants deny the allegations therein.

25 76. In answering Paragraph 76 of Plaintiffs' Second Amended
26 Complaint, Defendants deny the allegations therein.

27 77. In answering Paragraph 77 of Plaintiffs' Second Amended
28 Complaint, Defendants deny the allegations therein.

1 and the right to familial association. However, Defendants deny that Plaintiff Wheatcroft
2 was maliciously prosecuted or that any Defendant interfered with Plaintiff Wheatcroft's
3 right to familial association.

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

6 96. In answering Paragraph 96 of Plaintiffs' Second Amended
7 Complaint, Defendants deny the allegations therein.

8 97. In answering Paragraph 97 of Plaintiffs' Second Amended
9 Complaint, Defendants admit that plaintiff Wheatcroft was in custody for a period of time
10 as a result of his arrest associated with the subject incident. Further answering Paragraph
11 97 of Plaintiffs' Second Amended Complaint, Defendants assert that Plaintiff Wheatcroft
12 was, and upon information and belief still is, incarcerated as a result of other crimes.

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

15 99. In answering Paragraph 99 of Plaintiffs' Second Amended
16 Complaint, Defendants lack sufficient information to form a belief as to the truth of the
17 allegations regarding any interview or employment opportunities of Plaintiff Wheatcroft
18 and, therefore, deny the same. As for the remaining allegations contained in Paragraph 96
19 of Plaintiffs' Second Amended Complaint, Defendants deny the same.

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

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

24 102. In answering paragraph 102 of Plaintiffs' Second Amended
25 Complaint, Defendants admit that the charges against Plaintiff Wheatcroft were
26 dismissed. In further answering Paragraph 102 of Plaintiffs' Second Amended Complaint,
27 Defendants lack sufficient information to form a belief as to the truth of those remaining
28 allegations and, therefore, deny the same.

1 subject lawsuit do not present such a case. In further answering Paragraph 120 of
2 Plaintiffs' Second Amended Complaint, to the extent that Plaintiffs contend that the
3 allegations contained in Paragraph 120 of their Second Amended Complaint purport to
4 allege a viable cause of action against Defendant City of Glendale, Defendants deny the
5 same.

6 121. In answering Paragraph 121 of Plaintiffs' Second Amended
7 Complaint, Defendants assert that under certain circumstances ratification 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 121 of Plaintiffs'
10 Second Amended Complaint, to the extent that Plaintiffs contend that the allegations
11 contained in Paragraph 121 of their Second Amended Complaint purport to allege a viable
12 cause of action against Defendant City of Glendale, Defendants deny the same.

13 122. In answering Paragraph 122 of Plaintiffs' Second Amended
14 Complaint, Defendants assert that under certain circumstances failure to train could result
15 in municipal liability for violations of constitutional rights, but the facts of the subject
16 lawsuit do not present such a case. In further answering Paragraph 122, to the extent that
17 Plaintiffs contend that the allegations contained in Paragraph 122 of their Second
18 Amended Complaint purport to allege a viable cause of action against Defendant City of
19 Glendale, Defendants deny the same.

20 123. In answering Paragraph 123 of Plaintiffs' Second Amended
21 Complaint, Defendants admits that Defendants Schneider, Lindsey, and Fernandez were
22 Police Officers with the Glendale Police Department, employed by the City of Glendale,
23 and at the time of the subject incident of this Second Amended Complaint were acting in
24 the course and scope of their employment with the City of Glendale and that as City of
25 Glendale Police Officers, certain City of Glendale Police Department policies are
26 applicable to their official conduct as police officers. In further answering Paragraph 123,
27 Defendants deny any deliberate indifference toward training or supervision of the
28 defendant officers, and to the extent that Plaintiffs contend that the allegations contained

1 in Paragraph 123 of their Second Amended Complaint purport to allege a viable cause of
2 action against Defendant City of Glendale for deliberate indifference toward training and
3 supervision, or otherwise, Defendants deny the same.

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

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

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

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

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

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

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

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

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

22 133. In answering Paragraph 133 of Plaintiffs' Second Amended
23 Complaint, Defendants deny the allegations therein.

24 134. In answering Paragraph 134 of Plaintiffs' Second Amended
25 Complaint, Defendants deny the allegations therein.

26 135. In answering Paragraph 135 of Plaintiffs' Second Amended
27 Complaint, Defendants deny the allegations therein.

28

1 **COUNT VII**
2 **Grossly Negligent and/or Intentional Infliction of Emotional Distress**
3 **(minors J.W. and B.W. Against Defendant City of Glendale)**

4 136. In answering Paragraph 136 of Plaintiffs' Second Amended
5 Complaint, Defendants incorporate their answers to Paragraphs 1- 135 of Plaintiffs'
6 Second Amended Complaint, as if fully set forth herein.

7 137. In answering Paragraph 137 of Plaintiffs' Second Amended
8 Complaint, Defendants deny the allegations therein.

9 138. In answering Paragraph 138 of Plaintiffs' Second Amended
10 Complaint, Defendants lack sufficient information to form a belief as to the truth of the
11 remaining allegations contained in Paragraph 138 and, therefore, deny the same.

12 139. In answering Paragraph 139 of Plaintiffs' Second Amended
13 Complaint, Defendants deny the allegations therein.

14 140. In answering Paragraph 140 of Plaintiffs' Second Amended
15 Complaint, Defendants admit that minor J.W and B.W. was in the vicinity of a portion of
16 the encounter between Officer Schneider and Plaintiff Johnny Wheatcroft. Defendants
17 deny the allegations with regard to grossly negligent, reckless and/or intentional conduct,
18 and the zone of danger . Defendants lack sufficient information to form a belief as to the
19 truth of the remaining allegations contained in Paragraph 140 and, therefore, deny the
20 same.

21 141. In answering Paragraph 141 of Plaintiffs' Second Amended
22 Complaint, Defendants deny the allegations therein.

23 142. In answering Paragraph 142 of Plaintiffs' Second Amended
24 Complaint, Defendants deny the allegations therein.

25 143. In answering Paragraph 143 of Plaintiffs' Second Amended
26 Complaint, Defendants admit that at all times relative to the subject incident, Defendants
27 Schneider, Lindsey, and Fernandez were in the course and scope of their employment
28 with the City of Glendale and that the City of Glendale may, under certain circumstances,

1 be held vicariously liable for the wrongful conduct of its employees. However ,to the
2 extent that Plaintiffs contend that the allegations set forth in paragraph 143 purport to
3 allege a viable cause of action against these answering Defendants, Defendants deny the
4 same.

5 144. In answering Paragraph 144 of Plaintiffs' Second Amended
6 Complaint, Defendants deny the allegations therein.

7 145. In answering Paragraph 145 of Plaintiffs' Second Amended
8 Complaint, Defendants deny the allegations therein.

9 **COUNT VIII**
10 **Loss of Consortium**
11 **(Minor Plaintiffs J.W. and B.W. against All Defendants)**

12 146. In answering Paragraph 146 of Plaintiffs' Second Amended
13 Complaint, Defendants incorporate their answers to paragraphs 1- 145 of Plaintiffs'
14 Second Amended Complaint, as if fully set forth herein.

15 147. In answering Paragraph 147 of Plaintiffs' Second Amended
16 Complaint, Defendants lack sufficient information to form a belief as to the truth of the
17 remaining allegations contained in paragraph 147 and, therefore, deny the same.

18 148. In answering Paragraph 148 of Plaintiffs' Second Amended
19 Complaint, Defendants deny the allegations therein.

20 149. In answering Paragraph 149 of Plaintiffs' Second Amended
21 Complaint, Defendants deny the allegations therein.

22 150. In answering Paragraph 150 of Plaintiffs' Second Amended
23 Complaint, Defendants deny the allegations therein.

24 151. In answering Paragraph 151 of Plaintiffs' Second Amended
25 Complaint, Defendants admit that at all times relative to the subject incident, Defendants
26 Schneider, Lindsey, and Fernandez were in the course and scope of their employment
27 with the City of Glendale and that the City of Glendale may, under certain circumstances,
28 be held vicariously liable for the wrongful conduct of its employees. However, to the

1 extent that Plaintiffs contend that the allegations set forth in paragraph 150 purport to
2 allege a viable cause of action against these answering Defendants, Defendants deny the
3 same.

4 152. In answering Paragraph 152 of Plaintiffs' Second Amended
5 Complaint, Defendants deny the allegations therein.

6 153. In answering Paragraph 153 of Plaintiffs' Second Amended
7 Complaint, Defendants deny the allegations therein.

8 **AFFIRMATIVE DEFENSES**

9
10 154. As and for a separate affirmative defense, and in the alternative,
11 Defendants allege that Plaintiffs' Second Amended Complaint fails to state a claim upon
12 which relief may be granted against them.

13 155. As and for a separate affirmative defense, and in the alternative,
14 Defendants allege that Plaintiffs may have failed to comply with A.R.S. Section 12-
15 821.01 and if a genuine issue of material fact exists as to whether Plaintiffs complied with
16 the requirements of this section, Defendants will seek to resolve any issues before a trial
17 on the merits, at the earliest possible time.

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

23 157. As and for a separate affirmative defense, and in the alternative,
24 Defendants allege that Defendants Schneider, Lindsey, and Fernandez and any other
25 employee-police officer involved in the subject incident of this action used only
26 reasonable and necessary force under the totality of the circumstances.

1 158. As and for a separate affirmative defense, and in the alternative,
2 Defendants allege that they are entitled to all privileges and immunities extended to
3 governmental entities and their employees.

4 159. As and for a separate affirmative defense, and in the alternative,
5 Defendants allege that Plaintiffs Wheatcroft and Chapman were contributorily negligent,
6 and/or that they assumed the risk of their alleged injuries, if any, and/or any injuries that
7 they received were the result of an intervening/superseding cause or through the
8 negligence of someone other than these answering Defendants and/or any City of
9 Glendale employees, all of which bars recovery to Plaintiffs from these answering
10 Defendants.

11 160. As and for a separate affirmative defense, and in the alternative,
12 Defendants allege that Plaintiffs Wheatcroft and Chapman were negligent in whole or in
13 part, thereby reducing or eliminating any damages owing by these answering Defendants
14 by way of the doctrine of comparative negligence.

15 161. As a separate defense, and in the alternative, Defendants allege that
16 Plaintiffs' alleged injuries were directly or proximately caused in whole or in part by acts
17 or omissions of other parties, and this answering Defendants' liability to Plaintiff, if any,
18 should be apportioned, denied or reduced in accordance with each party's and non-party's
19 degree of fault of responsibility pursuant to A.R.S. § 12-2506.

20 162. As and for a separate affirmative defense, and in the alternative,
21 Defendants affirmatively assert that the involved police officers at all times acted
22 reasonably and appropriately under the totality of the circumstances.

23 163. As and for a separate affirmative defense, and in the alternative,
24 Defendants affirmatively assert that all or a portion of Plaintiffs' alleged damages, if any,
25 were all or partly proximately caused by the actions or inactions of Plaintiffs Wheatcroft
26 and Chapman and by operation of law are imputed to Plaintiffs, all of which either bars or
27 reduces on a comparative basis, any recovery against these answering Defendants.
28

1 164. As and for a separate affirmative defense, and in the alternative,
2 Defendants allege that Plaintiffs failed to follow the lawful commands of officers.

3 165. As and for a separate affirmative defense, and in the alternative,
4 Defendants allege that its employees did not act with a purpose to harm or with deliberate
5 indifference to the rights of anyone, including Plaintiffs, for reasons unrelated to the
6 legitimate law enforcement objectives.

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

10 167. As and for a separate affirmative defense, and in the alternative,
11 Defendants allege that their actions and the actions of all other Defendant City of
12 Glendale employees, at all times relevant to the allegations set forth in Plaintiffs' Second
13 Complaint, were objectively reasonable under the circumstances then existing.

14 168. As and for a separate affirmative defense, and in the alternative,
15 Plaintiffs may have failed to mitigate their damages, if any, thus barring or reducing any
16 recovery against Defendants.

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

20 170. As and for a separate affirmative defense, and in the alternative,
21 Defendants allege that the interference of Plaintiffs Wheatcroft and Chapman was
22 unjustified and unlawful, and that any injuries Plaintiffs allegedly sustained were the
23 result of that interference with responding law enforcement personnel and the legal and
24 justifiable use of force by law enforcement.

25 171. As for a separate affirmative offense, Defendants assert that Plaintiffs
26 Chapman and Wheatcroft committed aggravated assault on the officers present at the
27 scene while the officers attempted to execute their official duties in violation of A.R.S. §
28 13-1204.

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

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

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

10 175. As and for a separate affirmative defense, and in the alternative,
11 Defendants allege that the actions of the police officers were justified and in self -defense
12 pursuant to A.R.S. §§ 13-404, 13-405, 13-406, and 13-409 and, therefore, pursuant to
13 A.R.S. § 13-420, the Court shall award reasonable attorney fees, costs, compensation for
14 lost income and all expenses incurred by a defendant, as applicable, in the defense of this
15 civil action based on justified conduct if Defendants prevail in this civil action.

16 176. As and for a separate defense and in the alternative, Defendants
17 allege that Plaintiffs assumed the risk of their damages, acted in direct and intentional
18 violation of Arizona law, and acted intentionally and knowingly, jeopardizing their safety
19 and well-being, all of which bars recovery or reduces recovery to the Plaintiffs herein
20 from these answering Defendants.

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

24 178. As and for a separate defense and in the alternative, Defendants
25 allege that Plaintiffs cannot establish, that Answering Defendants proximately caused the
26 deprivation of a right, privilege, or immunity protected by the United States Constitution
27 or federal law.

1 179. As and for a separate defense and in the alternative, Defendant City
2 of Glendale alleges that it did not have a policy, practice or custom requiring its
3 employees, including police officers to violate the civil rights of persons, nor did
4 Defendant City of Glendale have a policy, practice or custom of endorsing or ratifying
5 any such conduct by its employees.

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

8 181. As and for a separate defense and in the alternative, Defendants deny
9 that there were any constitutional violations by Defendants and, as a result, Plaintiffs
10 cannot recover under *Monell v. New York City Department of Social Services*, 436 U.S.
11 658 (1978) in the absence of a constitutional violation.

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

15 183. As and for a separate defense and in the alternative, Defendant City
16 of Glendale alleges that none of its training was constitutionally deficient.

17 184. As and for a separate defense and in the alternative, the City of
18 Glendale was not callously or deliberately indifferent in its training regarding the adoption
19 of proper customs, policies and procedures for the City of Glendale Police Department.

20 185. As and for a separate defense and in the alternative, Plaintiffs cannot
21 establish that any alleged failure to train or supervise was likely to produce a wrong
22 decision as to support an inference of deliberate indifference by City of Glendale
23 policymakers to the need to train or supervise.

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

26 187. As and for a separate defense and in the alternative, these Answering
27 Defendants are entitled to all privileges and immunities, including qualified immunity,
28 extended to governmental entities and employees under federal law.

1 188. These Answering Defendants did not act with deliberate indifference
2 or in reckless disregard of Plaintiffs' constitutional rights.

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

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

9 191. As and for a separate defense and in the alternative, Defendants
10 allege that their acts were not so outrageous in character and so extreme in degree as to go
11 beyond all possible bounds of decency, and to be regarded as atrocious and utterly
12 intolerable in a civilized community.

13 192. As and for a separate defense and in the alternative, Defendants
14 allege that their acts were not grossly negligent and were not the proximate cause of any
15 mental anguish manifested as physical injury or otherwise, as Plaintiffs allege.

16 193. As and for a separate defense and in the alternative, Defendants
17 allege that neither their acts nor omissions deprived any Plaintiff of the benefits of a
18 family relationship or caused any Plaintiff to endure loss of consortium of any family
19 member.

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

26 WHEREFORE, having fully answered Plaintiffs' Second Amended
27 Complaint, Defendants' pray that Plaintiffs take nothing, that Plaintiffs' Second Amended
28 Complaint be dismissed in its entirety, and that Defendants be awarded their taxable costs

1 and attorney's fees pursuant to 42 U.S.C. §1988 and 28 U.S.C. §1927, and reasonable
2 attorney fees, costs, compensation for lost income and all expenses incurred by
3 Defendants, as applicable, pursuant to A.R.S. § 13-420, in they prevail in the defense of
4 this civil action based on Defendants' justified conduct, as well as any award that the
5 Court deems necessary and appropriate under the circumstances.

6 **JURY DEMAND**

7 Defendants respectfully request a trial by jury.

8 DATED this 5th day of April 2019.

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

10
11 By /s/ Joseph J. Popolizio

12 Joseph J. Popolizio
13 Justin M. Ackerman
14 40 North Central Avenue, Suite 2700
15 Phoenix, Arizona 85004
16 Attorneys for Defendants

17 **CERTIFICATE OF SERVICE**

18 I hereby certify that on this 5th day of April 2019, I caused the foregoing
19 document to be filed electronically with the Clerk of Court through the CM/ECF System
20 for filing; and served on counsel of record via the Court's CM/ECF system.

21 I further certify that on the 5th day of April 2019, I have emailed and
22 mailed the foregoing document to the following:

23 Marc J. Victor
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/s/ Melissa Ward