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IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF MARICOPA

KELLI WARD,

Plaintiff;

vs.

**CONSTANCE JACKSON; FELICIA
ROTELLINI; FRED YAMASHITA;
JAMES MCLAUGHLIN; JONATHAN
NEZ; LUIS ALBERTO HEREDIA; NED
NORRIS; REGINA ROMERO; SANDRA D.
KENNEDY; STEPHEN ROE LEWIS; and
STEVE GALLARDO;**

Defendants.

Case No. CV 2020-015285

**VERIFIED PETITION FOR
RULE 27 DISCOVERY**

(Elections Contest)

Petitioner/Plaintiff, for her Verified Petition for Rule 27 Discovery against the above-named Defendants (hereinafter referred to as the "Petition" or "Complaint"), allege as follows:

INTRODUCTION

1. Petitioner expects to be a party to an action cognizable in this Court but cannot presently bring it or cause it to be brought.

JEFF FINE
Clerk of the Superior Court
By Eufemia Vazquez-Fregoso, Deputy
Date 11/24/2020 Time 16:55:08
Description Amount
CASE# CV2020-015285
ELECTION CONTEST:NEW 333.00
TOTAL AMOUNT 333.00
Receipt# 28034632

1 2. The subject matter of the action is an elections contest pursuant to A.R.S. § 16-672
2 *et seq.* (hereinafter referred to as the “Elections Contest”). Plaintiff is expected to be plaintiff in
3 the Elections Contest.

4 3. The Elections Contest cannot be presently brought, because A.R.S. § 16-676
5 provides that “[t]he elector contesting a state election shall, within five days after completion of
6 the canvass of the election and declaration of the result thereof by the secretary of state or by the
7 governor, file in the court in which the contest is commenced a statement [of the election
8 contest]...” *See also Nicol v. Superior Court, Maricopa Cty.*, 106 Ariz. 208, 211–12, 473 P.2d
9 455, 458–59 (1970)(finding that elections contest filed before statewide candidate is officially
10 declared nominated is premature: “[t]he legislature, in its wisdom, has throughout these years
11 evidently refrained from passing legislation permitting such actions as in the instant case....The
12 machinery and the time for bringing such proceedings is plainly set forth in the statute. The
13 action of the respondent is therefore premature, and proper procedure has not been followed.”)

14 4. The statewide canvass and declaration of the result thereof has not occurred as of
15 this filing and is not expected to occur until November 30th, 2020. Therefore, the Elections
16 Contest cannot presently be brought.

17 5. The subject matter of the Elections Contest is set forth in the proposed Complaint
18 attached as Exhibit “1” hereto, which is hereby incorporated as if set forth herein.

19 **PARTIES, JURISDICTION AND VENUE**

20 6. The name and residence of the person who expects to be party to the Elections
21 Contest is as follows:

22 Kelli Ward
23 3619 Desert Rose Lane
24 Lake Havasu City, AZ 86404
25
26

1 7. The expected adverse parties to the Elections Contest are:

2 Constance Jackson
3 Felicia Rotellini
4 Fred Yamashita
5 James McLaughlin
6 Jonathan Nez
7 Luis Alberto Heredia
8 Ned Norris
9 Regina Romero
10 Sandra D. Kennedy
11 Stephen Roe Lewis
12 Steve Gallardo¹

13 8. The foregoing persons are hereinafter referred to as the “Biden Electors.”

14 9. Jurisdiction and venue are appropriate pursuant to A.R.S. § 16-672(B) *inter alia*.

15 **GENERAL ALLEGATIONS**

16 10. The foregoing allegations are reincorporated as if set forth herein.

17 11. As set forth in the proposed Elections Contest, and in accordance with the Civil
18 Rules and/or A.R.S. § 16-677, Plaintiff intends to seek the following items:

- 19 (a) An inspection of “mail-in” ballots including signed envelopes (and/or scans
20 thereof). Given the large number of ballots and limited timeframes, Plaintiff
21 requests a reasonable inspection (sampling) of the signatures that can be
22 performed in the appropriate statutory timeframes (hereinafter referred to as
23 the “inspection/discovery”), and to compare the mail-in ballot signatures to
24 the signatures on file. By the proposed inspection/discovery, Plaintiff
25 wishes to determine whether the failure by election officials to allow legal
26 observation of the mail-in ballot signature-verification process – which is
the only “check” that is performed by elections officials to ensure that mail-

¹ To the extent known or surmised, the addresses for the Defendant-electors are identified in the summonses, which are hereby incorporated as if set forth herein.

1 in ballots were actually filled out by the voter – resulted in insufficiently or
2 falsely verified ballots being approved and tabulated (as detailed in Exhibit
3 1, the proposed Complaint). Because the envelopes are not available for
4 public inspection, legal inspection/discovery is the only means by which
5 Plaintiff may seek this information. Such inspection is provided for by
6 A.R.S. § 16-677 and is relevant to prove that as a result of misconduct by
7 elections officials, the outcome of the election is fundamentally uncertain
8 and therefore Defendants’ election may be annulled and set aside pursuant
9 to A.R.S. § 16-676(B). The names and addresses of each person from
10 whom discovery is sought are Maricopa County Supervisors Clint
11 Hickman, Jack Sellers, Steve Chucuri, Bill Gates, and Steve Gallardo, as
12 well as the officer(s) in charge of the Maricopa County Elections
13 Department (the “Maricopa County Board and Elections Officials”) located
14 at 301 W. Jefferson St. #10, Phoenix AZ 85003.

- 15 (b) An inspection to compare “duplicate” ballots to the original ballots from
16 which they were “duplicated,” for Congressional District 5 inclusive of all
17 Queen Creek vote centers/polling places in particular. As detailed in the
18 proposed Elections Contest, legal observation of the process by which
19 ballots were “duplicated” was also not allowed, since the process occurred
20 off-site. Further, there was an unusually high number of duplicate ballots in
21 Congressional District 5/Queen Creek; and the results there were strongly
22 inconsistent with both voter registration data (for party affiliation) and
23 historical voting data (voting in previous elections including the 2016
24 Presidential election). The names and addresses of each person from whom
25
26

1 discovery is sought are given above (the Maricopa County Board and
2 Elections Officials) at the address above, incorporated as if set forth herein.

3 12. The reasons for perpetuating the evidence in advance of the expected action are
4 that (1) given the potential magnitude of the inspection/discovery, as well as the ten to fifteen
5 day window in which a trial on the elections contest must be statutorily conducted (*see*
6 A.R.S. § 16-676(A)), Plaintiff may not be able to conduct any much less all of the requested
7 discovery in time for trial, unless they are able to start now. (2) Despite the express provisions in
8 A.R.S. §§ 16-676, 16-677 that an Elections Contest may only be filed after certification of the
9 vote, and that Plaintiff is entitled to have inspections made “before preparing for trial,” Plaintiff
10 wishes to avoid any argument (no matter how infirm or unfair) that inspection/discovery may be
11 denied on grounds of laches of any kind.

12 13. The evidence Plaintiff expects to obtain from the discovery is a reasonable
13 inspection (sampling) of mail-in ballots, specifically including their signed envelopes (and/or
14 scans thereof) and to compare them to the signatures on file; as well as an inspection to compare
15 “duplicate” ballots to the original ballots from which they were “duplicated,” for Congressional
16 District 5/Queen Creek in particular.

17 14. Plaintiff therefore asks for an order directing the clerk to issue a subpoena under
18 Rule 45 to obtain the foregoing inspection/discovery in order to perpetuate the evidence.

19 15. Plaintiff further asks for the Court to hold an immediate hearing on the relief that
20 this Petition seeks, pursuant to Rule 27(a)(2).

21 16. Because Plaintiff believes that service on the Defendants/expected adverse parties
22 cannot be made with reasonable diligence, Plaintiff asks the court to order service by
23 publication.

24 17. Pursuant to Rule 27(a)(5)(A), “[i]f satisfied that perpetuating the testimony or
25 preserving other evidence may prevent a failure or delay of justice, the court must enter an order
26

1 that: (i) identifies each person who may be served with a subpoena under Rule 45 to obtain
2 testimony or for the inspection of documents or premises and specifies the subject matter of the
3 permitted examination...”

4 18. In order to prevent a failure or delay of justice, Plaintiff asks the Court to enter an
5 order providing that the Maricopa County Board and Elections Officials may be served with a
6 subpoena to obtain a reasonable inspection of mail-in ballots (including their signed envelopes
7 and/or scans thereof) to compare them to the signatures on file; and that the Maricopa County
8 Board and Elections Officials may be served with a subpoena to compare “duplicate” ballots to
9 the original ballots from which they were “duplicated,” for Congressional District 5/Queen
10 Creek in particular; either as discovery under the Civil Rules and/or in accordance with
11 A.R.S. § 16-677.

12 **PRAYER FOR RELIEF**

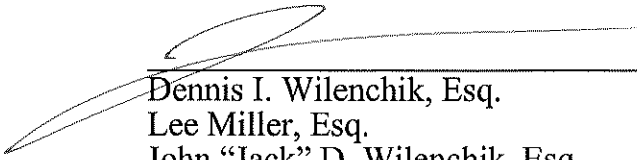
13 WHEREFORE, Plaintiff requests the following relief:

- 14 A. That the Court enter an order providing that the Maricopa County Board and
15 Elections Officials may be served with a subpoena to obtain a reasonable
16 inspection of mail-in ballots (including their signed envelopes and/or scans
17 thereof) to compare them to the signatures on file; and that the Maricopa County
18 Board and Elections Officials may be served with a subpoena to compare
19 “duplicate” ballots to the original ballots from which they were “duplicated,” for
20 Congressional District 5/Queen Creek in particular; either as discovery under the
21 Civil Rules and/or in accordance with A.R.S. § 16-677.
- 22 B. For such injunctive, declaratory, mandamus (special action) or other relief as may
23 be proper or necessary to effect these ends;
- 24 C. For Plaintiff’s taxable costs under A.R.S. § 12-341;
- 25
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1 D. For such other and further relief that the Court may deem proper in the
2 circumstances.

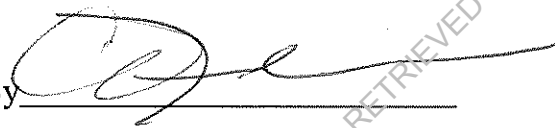
3 **RESPECTFULLY SUBMITTED** this 24th day November, 2020.

4 **WILENCHIK & BARTNESS, P.C.**

5 
6 Dennis I. Wilenchik, Esq.
7 Lee Miller, Esq.
8 John "Jack" D. Wilenchik, Esq.
9 The Wilenchik & Bartness Building
10 2810 North Third Street
11 Phoenix, Arizona 85004
12 jackw@wb-law.com
13 admin@wb-law.com
14 *Attorneys for Plaintiff*

11 **ORIGINAL** of the foregoing filed
12 this 24th day of November, 2020, with:

13 The Clerk of the Superior Court
14 Maricopa County Superior Court
15 201/101 West Jefferson Street
16 Phoenix, Arizona 85003

16 By 
17
18
19
20
21
22
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24
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26

VERIFICATION

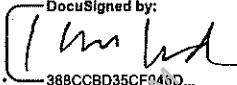
(Rule 80(i), Ariz.R.Civ.P.)

I, Kelli Ward, declare as follows:

I have read the foregoing Verified Petition for Rule 27 Discovery, and the statements made therein are true and correct to the best of my knowledge, information, and belief.

I declare under penalty of perjury that the foregoing is true and correct.

DATED 11/24/2020

DocuSigned by:

By: 388CCBD35CF045D...

Kelli Ward

EXHIBIT 1

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Attorneys for Plaintiff/Contestant

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF MARICOPA

KELLI WARD,

Contestant;

vs.

**CONSTANCE JACKSON; FELICIA
ROTELLINI; FRED YAMASHITA;
JAMES MCLAUGHLIN; JONATHAN
NEZ; LUIS ALBERTO HEREDIA; NED
NORRIS; REGINA ROMERO; SANDRA D.
KENNEDY; STEPHEN ROE LEWIS; and,
STEVE GALLARDO;**

Contestees.

Case No. _____

**[PROPOSED]
VERIFIED STATEMENT OF
ELECTIONS CONTEST
PURSUANT TO A.R.S. § 16-673**

**(Elections Matter)
(Expedited Relief Requested)**

Plaintiff/Contestant ("Plaintiff"), for her Verified Statement of Elections Contest against the above-named Contestees/Defendants ("Defendants"), alleges as follows:

INTRODUCTION

1. This is an elections contest pursuant to A.R.S. § 16-672 *et seq.*

PARTIES, JURISDICTION AND VENUE

2. The name and residence of the party contesting the election is as follows:

Kelli Ward
3619 Desert Rose Lane
Lake Havasu City, AZ 86404

3. The foregoing person is referred to herein as the "Plaintiff."

4. Plaintiff is an elector of the state and county in which she resides.

5. The name of the persons whose right to office is contested, as they appeared upon the official ballot, are:

Constance Jackson
Felicia Rotellini
Fred Yamashita
James McLaughlin
Jonathan Nez
Luis Alberto Heredia
Ned Norris
Regina Romero
Sandra D. Kennedy
Stephen Roe Lewis
Steve Gallardo

6. The foregoing persons are hereinafter referred to as the "Biden Electors."

7. Anthony Kern, Greg Safsten, Jake Hoffman, James Lamon, Kelli Ward, Lorraine Pelligrino, Michael Ward, Nancy Cottle, Robert Montgomery, Samuel Moorhead, and Tyler Bowyer are the presidential electors for Donald J. Trump (the "Trump Electors").

8. Jurisdiction and venue are appropriate pursuant to A.R.S. § 16-672(B).

GENERAL ALLEGATIONS

9. The foregoing allegations are reincorporated as if set forth herein.

10. Presidential elector is the office to which election is contested.

Mail-in Ballot Signature Verification

11. While Arizona has been using mail-in voting since 1992, the process has comparatively few safeguards to ensure the integrity of mail-in ballots and to protect against mistake or fraud. In fact, as the EPM acknowledges, "Arizona's method of proving identity for

1 mail-in early voters (signature comparison) is not expressly permitted” under federal law, which
2 may require voters to provide more stringent proof of identity (e.g. for first time voters). *See* p.
3 25 of the EPM; 52 U.S.C. § 21083(b).

4 12. To vote in-person in the State of Arizona, voters must prove their identity at the
5 voting location with a valid photo ID that matches their registered name and address, or with
6 two forms of valid non-photo ID that match their registered address, or with one valid photo ID
7 that does not match plus a non-photo valid ID that does. A.R.S. § 16-579(A)(1)(a)-(c); *see also*
8 p. 181 of the EPM.

9 13. In contrast, for mail-in ballots, a county worker—who typically has fewer than six
10 hours of training (and as little as two, for handwriting analysis)—decides only whether a
11 signature that was scanned from the mail-in ballot envelope looks like the voter’s scanned
12 signature(s) on file. Further, in Arizona, copies of a registered voter’s scanned signature are
13 publicly available from the Department of Motor Vehicles, if they have a driver’s license, among
14 other places—making a voter’s signature relatively easy to reproduce. County workers typically
15 spend very little time evaluating a given signature, a matter of seconds.

16 14. Further, when a signature is questioned by elections officials, Arizona law
17 provides for a fairly rigorous process by which a bipartisan team (of one Republican and/or one
18 Democrat and/or one “Other”) participates in an “adjudication” of whether the signature was
19 actually valid. However, if a county worker does *not* question a signature, then there is no
20 “adjudication” or further review, much less by a bipartisan team—which again makes it easier
21 for false or otherwise insufficient signatures to escape detection.

22 15. Further, because when county workers review the signatures they are not
23 reviewing original “wet” signatures but rather electronic scans, they cannot genuinely follow
24 basic methodology for detecting false or copied signatures, such as analyzing pen pressure.
25
26

17. Neither the signed envelopes, nor images of the signed envelopes, are available for public inspection.

18. As a result of all the foregoing, it is crucially important that independent legal observers be present and able to fully observe the process by which county workers review and approve signatures from the ballot envelopes.

19. During this general election, at least approximately one million six hundred two thousand eight hundred eight (1,602,808) mail-in ballots were processed at the central Maricopa County Tabulation Election Center (or “MCTEC”).

20. The Defendants were named as candidates on all of them.

21. By multiple accounts, election officials completely failed and/or refused to allow legal observers to fully observe the verification of signatures at MCTEC.

22. Legal observers were told to remain at a card table which was at least ten to twelve feet away from the majority of the computer monitors and screens, and the computer monitors and screens were mostly turned away – with the few visible screens still being effectively unreadable, due to the distance.

23. After observers officially complained about being unable to observe, election officials allowed observers only to use binoculars; but the signatures on even the few screens that were not turned away remained almost completely unreadable, even with binoculars.

Duplicate Ballots

24. A number of ballots that were delivered to MCTEC were too damaged or illegible for the tabulation machines to read, or were otherwise rejected by the machines.

26. However, official observers were neither present nor invited to be present for the activities of the offsite company. As a result, official observers were unable to observe, for example, whether the “electronic” ballots were being accurately and properly received by the print company, that the company was printing the correct ballots, or that it was delivering the correct ballots back to MCTEC.

27. Further, when county workers filled in the “electronic” ballot, they used software called “Novus 6.0.0.0” which would try to “prefill” the ballot, by “reading” an optical scan of the original rejected ballot. However, the software was highly inaccurate, and it often flipped the vote—leaving it up to county workers or on-site observers to “catch it” or else effectively reverse the person’s vote. It was also observed that, for whatever reason, the software would erroneously prefill “Biden” much more often (apparently twice as often) as it did “Trump.”

28. There was an unusually high number of “duplicate” ballots in Congressional District 5 (“CD5”), inclusive of the vote centers/polling places in Queen Creek. Further, the results in CD5/Queen Creek were strongly inconsistent with voter registration data (party affiliation) and with historical voting data (voting in previous elections including the 2016 Presidential election).

COUNT ONE – ELECTIONS CONTEST

(A.R.S. § 16-673)

29. The foregoing allegations are incorporated as if set forth herein.

1 30. A.R.S. § 16-672 provides that “[a]ny elector of the state may contest the election
2 of any person declared elected to a state office...upon any of the following grounds:” “[f]or
3 misconduct on the part of election boards or any members thereof in any of the counties of the
4 state, or on the part of any officer making or participating in a canvass for a state election...”

5 31. The statute also provides other grounds for an elections contest, including but not
6 limited to “[o]n account of illegal votes,” or “[t]hat by reason of erroneous count of votes the
7 person declared elected...did not in fact receive the highest number of votes for the office....”

8 32. A.R.S. § 16-621 provides that “[a]ll proceedings at the counting center shall be
9 under the direction of the board of supervisors or other officer in charge of elections and shall be
10 conducted in accordance with the approved instructions and procedures manual issued pursuant
11 to § 16-452 under the observation of representatives of each political party and the public.”
12 (Emphasis added.)

13 33. A.R.S. § 16-552 also provides that “[p]arty representatives and alternates may be
14 appointed...to be present” when election officials count early ballots, “and to challenge the
15 verification of questioned ballots pursuant to § 16-584...”

16 34. The Secretary of State’s Elections Procedures Manual (“EPM”), which carries the
17 force of law pursuant to A.R.S. § 16-452, further provides:

18 Political party representatives are permitted to observe at voting locations
19 and central counting places for partisan elections....Such observation (and
20 observation at early voting locations, emergency voting centers, and County
21 Recorder processing procedures, where permitted by the County Recorder or
22 other officer in charge of elections) are subject to the procedures described
23 below...

24 The County Recorder or other officer in charge of elections may develop
25 additional local procedures governing political party observation. Additional
26 procedures shall allow political party observers to effectively observe the
 election process....

EPM, page 139.

1 35. The EPM also provides:

2 Political party representatives may observe at a central counting place and
3 at each point where ballots are handled or transferred from one election
4 official to another, including areas where the following activities take place:
5 [r]eceiving the ballots at the County Recorder's office or central counting
6 place; [i]nspecting the ballots; [r]eviewing ballots by the Write-in Tally
7 Board; [d]uplicating ballots by the Ballot Duplication Board; [a]djudicating
8 ballots by the Electronic Vote Adjudication Board; [r]eceiving electronic
9 media or processing voting results by the Accuracy Certification Board;
10 [t]abulation of ballots; and/or [a]ny other significant tabulation or
11 processing activities at a central counting place provided that it does not
12 interfere with or impede the election procedures or staff.

13 EPM, page 141.

14 36. The language in A.R.S. § 16-672 (the elections contest statute) is similar to a
15 California statute, Cal. Elec. Code § 16100. *See Henderson v. Carter*, 34 Ariz. 528, 533, 273 P.
16 10, 11 (1928)(noting similarity of Arizona elections-contest statute to California code, and
17 analogizing to California caselaw interpreting it). While there is no authority in Arizona squarely
18 interpreting the meaning of "misconduct" in A.R.S. § 16-672(A)(1), the California courts have
19 interpreted their statute (which uses even harsher words, "guilty of misconduct") as being
20 intended "to broadly include erroneous conduct without wrongful intention."

21 37. Election officials' failure and/or refusal to allow legal observers to observe
22 signature-verification constitutes "misconduct on the part of...officer[s] making or participating
23 in a canvass for a state election," pursuant to A.R.S. § 16-672(A)(1).

24 38. Because Arizona's method of proving identity for mail-in early voters relies
25 entirely on signature verification, and because election officials did not allow legal observation
26 of signature verification to occur—potentially allowing falsely or insufficiently verified ballots
to be counted—then the result of the election is fundamentally uncertain.

39. Further, because the signed envelopes (or scans thereof) are not available for
public inspection, Plaintiff has no way of knowing without a court-ordered inspection pursuant
to A.R.S. § 16-677 and/or the Civil Rules whether falsely or insufficiently verified ballots were

1 counted, and therefore Plaintiff cannot properly prepare for trial without such inspection, in
2 satisfaction of the foregoing statute and/or court rules.

3 40. Given the large number of ballots and limited timeframes, Plaintiff requests a
4 reasonable inspection (sampling) of the signatures that can be performed in the appropriate
5 statutory timeframes.

6 41. Plaintiff also request to inspect "duplicate" ballots and compare them to the
7 original ballots from which they were "duplicated," for Congressional District 5/Queen Creek in
8 particular.

9 42. Pursuant to A.R.S. § 16-677 and/or court rules, Plaintiff is entitled to have the
10 inspection/discovery done before preparing for trial. If and as the Court deems it appropriate,
11 Plaintiff ask to file a bond, approved by the clerk, with two sureties, in the principal amount of
12 three hundred dollars, conditioned that they will pay the costs and expenses of the inspection if
13 they fail to maintain the contest. Thereupon the Court shall appoint three persons, one selected
14 by each of the parties and one by the Court, by whom the inspection shall be made. If either
15 party fails to name a person to act in making the inspection, the Court shall make the
16 appointment. The inspection of the ballots shall be made in the presence of the legal custodian
17 of the ballots, and the compensation of the inspectors shall be fixed by the court and taxed as
18 costs against the losing party.

19 **PRAYER FOR RELIEF**

20 WHEREFORE, Plaintiff requests the following relief:

21 A. That the Court order a reasonable inspection (sampling) of mail-in ballots
22 (including their signed envelopes and/or scans thereof) in order to compare them
23 to the signatures on file; and to compare "duplicate" ballots to the original ballots
24 from which they were "duplicated," for Congressional District 5/Queen Creek in
25 particular; as discovery under the Civil Rules and/or in accordance with
26 A.R.S. § 16-677;

- 1 B. That the Court declare that the certificate of election of the Biden Electors is of no
2 further legal force or effect, and that the election is annulled and set aside in
3 accordance with A.R.S. § 16-676(B);
- 4 C. That, if an inspection of the ballots should so prove, the Court declare that the
5 Trump Electors have the highest number of legal votes and declare those persons
6 elected;
- 7 D. For such injunctive, declaratory, mandamus (special action) or other relief as may
8 be proper or necessary to effect these ends;
- 9 E. For Plaintiff's taxable costs under A.R.S. § 12-341 and fees under any applicable
10 authority;
- 11 F. For such other and further relief that the Court may deem proper in the
12 circumstances.

13 **RESPECTFULLY SUBMITTED** this 24th day November, 2020.

14 **WILENCHIK & BARTNESS, P.C.**

15
16 Dennis I. Wilenchik, Esq.
17 Lee Miller, Esq.
18 John "Jack" D. Wilenchik, Esq.
19 The Wilenchik & Bartness Building
20 2810 North Third Street
21 Phoenix, Arizona 85004
22 jackw@wb-law.com
23 admin@wb-law.com
24 *Attorneys for Plaintiff*

25 **ORIGINAL** of the foregoing filed
26 this ___ day of November, 2020, with:

The Clerk of the Superior Court
Maricopa County Superior Court
201/101 West Jefferson Street
Phoenix, Arizona 85003

By _____

