

1 Anne C. Ronan (State Bar #006041)
2 ARIZONA CENTER FOR LAW IN THE PUBLIC INTEREST
3 202 East McDowell Road, Suite 153
4 Phoenix, Arizona 85004
5 (602) 258-8850

6 Edward L. Myers III (State Bar #0018856)
7 ARIZONA CENTER FOR DISABILITY LAW
8 5025 E. Washington Street, Suite 202
9 Phoenix, Arizona 85034

10 Steven J. Schwartz
11 Cathy E. Costanzo
12 CENTER FOR PUBLIC REPRESENTATION
13 22 Green Street
14 Northampton, Massachusetts 01060
15 (413) 584-6838

16 *Attorneys for Plaintiffs*

17 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**
18 **IN AND FOR THE COUNTY OF MARICOPA**

19 CHARLES ARNOLD, MARICOPA
20 COUNTY PUBLIC FIDUCIARY, as
21 guardian and next friend on behalf of
22 JOHN GOSS; NANCY E. ELLISTON,
23 as guardian, conservator and next friend
24 on behalf of CLIFTON DORSETT and
25 as next friend on behalf of RICHARD
26 SCHACHTERLE and SUSAN SITKO;
27 TERRY BURCH; and on behalf of all
28 others similarly situated,

Plaintiffs,

vs.

ARIZONA DEPARTMENT OF
HEALTH SERVICES, ARIZONA
STATE HOSPITAL, MARICOPA
COUNTY BOARD OF
SUPERVISORS, and JANICE K.
BREWER, Governor of Arizona,

Defendants.

No. C-432355

**STIPULATION FOR PROVIDING
COMMUNITY SERVICES AND
TERMINATING THE LITIGATION**

(Assigned to the Honorable Edward W.
Bassett)

1 Plaintiffs¹ and State Defendants Arizona Department of Health Services
2 (“ADHS”) and Governor Janice K. Brewer (“Governor”) hereby submit this Stipulation
3 for Providing Community Services and Terminating the Litigation (“Stipulation”).²

4 1. This Stipulation is designed to facilitate essential community services,
5 which the Parties agree and acknowledge are best practices for persons with serious
6 mental illness (“SMI”), including Assertive Community Treatment (“ACT”), Supported
7 Housing, Supported Employment, and Consumer Operated Services. This Stipulation
8 further provides a schedule for vacating the Judgment in this case, dismissing the lawsuit,
9 and ensuring that the community mental health system in Maricopa County continues to
10 meet the needs of persons with serious mental illness.

11 2. The Parties agree that this Stipulation, unless expressly modified by a
12 subsequent Court order, shall be the exclusive means for establishing the specific
13 obligations and requirements of the Defendants and the services and benefits to be
14 provided to Class Members.

15 3. ADHS has no obligation to take any action or fulfill any requirement of this
16 Stipulation that is solely the responsibility of Maricopa County. Similarly, Maricopa
17 County has no obligation to take any action or fulfill any requirement of this Stipulation
18 that is solely the responsibility of ADHS.

19 **ARIZONA STATE HOSPITAL**

20 4. ADHS shall make its best efforts to identify Class Members residing at the
21 Arizona State Hospital (“ASH”) who could benefit from community living arrangements
22
23

24 ¹ For purposes of this Stipulation “Plaintiffs” and/or “Class Members” are defined as adults
25 eighteen (18) years or older that reside in Maricopa County and have a serious mental illness, as
set forth in A.R.S. §§ 36-550(4) and 36-550.06.

26 ² Maricopa County will elect its new chairman on January 6, 2014, and it will review this
27 Stipulation at its January 8, 2014 meeting. Maricopa County will file a joinder if it agrees. For
28 purposes of this Stipulation, “Defendants” shall refer collectively to the Governor of the State of
Arizona, the Arizona Department of Health Services, and Maricopa County. “Parties” shall refer
collectively to Plaintiffs and Defendants.

1 and take steps to facilitate their discharge from ASH. ADHS will ensure that the census
2 at ASH does not exceed fifty-five Class Members.

3 5. ADHS will not use ASH for acute admissions, but may continue to use
4 ASH for Class Members who need long-term inpatient treatment, but only to the extent
5 the community living arrangements and services are not appropriate to meet the needs of
6 individual Class Members. Acute inpatient services for Class Members shall be provided
7 in units, programs, or facilities which are cost-effective, federally reimbursable,
8 integrated into the general medical provider system that serves nondisabled citizens as
9 close to the home communities of Class Members as practical, and not associated with
10 ASH.

11 6. ADHS will ensure that there are no admissions or readmissions of Class
12 Members directly into ASH from community mental health agencies or other entities,
13 programs, or persons. All admissions of Class Members to ASH shall follow attempts to
14 treat in one of the units, programs, or facilities described in ¶ 5.

15 7. ADHS shall make its best efforts to assure that Class Members are not
16 unnecessarily admitted to ASH and that all admissions to ASH are done in accordance
17 with Chapter 5, Title 36, Arizona Revised Statutes and Title 9 of the Arizona
18 Administrative Code.

19 **SUPERVISORY CARE AND BOARD AND CARE HOMES**

20 8. ADHS will use its best efforts to offer community living arrangements to
21 Class Members who reside in supervisory care homes.

22 9. ADHS will not encourage or recommend Class Members to reside in a
23 supervisory care home or place them in a supervisory care home.

24 **COUNTY SERVICES**

25 10. Some Class Members at the Maricopa County Jail (“Jail”) could benefit
26 from diversion prior to incarceration at the Jail. The County will make its best efforts to
27 develop programs designed to review the appropriateness and necessity for Jail admission
28 of Class Members and to divert Class Members from incarceration when appropriate.

1 **SERVICES**

2 **Crisis Services**

3 11. ADHS will make its best efforts to maintain a Crisis System, as described
4 in ¶ 12, which provides timely and accessible services and (i) is available 24 hours per
5 day, 7 days per week, to Class Members experiencing a behavioral health crisis,
6 including a crisis due to substance abuse; (ii) stabilizes individuals as quickly as possible
7 and assists them in returning to their pre-crisis level of functioning; (iii) provides
8 solution-focused and recovery-oriented interventions designed to avoid unnecessary
9 hospitalizations, incarceration, or placement in a more segregated setting; (iv) when safe
10 and clinically appropriate, provides mobile services at the site of the crisis, including the
11 Class Member’s residence; and (v) assesses the individual’s needs, identifies the supports
12 and services that are necessary to meet those needs, and connects the individual to those
13 services.

14 12. The Crisis System shall include at least the following components:

- 15 i. A Crisis Hotline that provides crisis intervention services over the
16 phone, which includes triage and referral and telephone-based
17 support to persons in crisis and which often serves as the first place
18 of access to the behavioral health system. The service may also
19 include a follow-up call to ensure the person is stabilized.
- 20 ii. Mobile Crisis Teams that provide crisis intervention services by a
21 mobile team or individual who travels to the place where the person
22 is having the crisis (e.g., person’s place of residence, emergency
23 room, jail, or community setting). Crisis intervention services
24 include services aimed at the assessment and immediate stabilization
25 of acute symptoms of mental illness, alcohol and other drug abuse,
26 and emotional distress. The purpose of this service is to stabilize
27 acute psychiatric or behavioral symptoms, evaluate treatment needs,
28 and develop plans to meet the needs of the persons served.

1 Depending on the situation, the person may be transported to a more
2 appropriate facility for further care (e.g., a crisis services center).
3 Mobile crisis teams shall have the ability to respond, on an average,
4 within one hour to a psychiatric crisis in the community (e.g. homes,
5 schools, or hospital emergency rooms).

6 iii. Crisis stabilization settings that provide short-term crisis
7 stabilization services (up to 72 hours) in an effort to successfully
8 resolve the crisis, returning the individual to the community instead
9 of transitioning to a higher level of care (i.e. an inpatient setting).
10 Crisis stabilization settings can include licensed Level I sub-acute
11 facilities, Level II facilities, and outpatient clinics offering access
12 24 hours per day, 7 days per week. Crisis stabilization settings can
13 also include home-like settings such as apartments and single family
14 homes, to the extent covered by Medicaid, where individuals
15 experiencing a psychiatric crisis can stay to receive support and
16 crisis services in the community before returning home.

17 **Supported Employment**

18 13. ADHS will make its best efforts to develop supported employment services
19 as more fully described in ¶¶ 32-38. These are services through which Class Members
20 receive assistance in preparing for, identifying, attaining, and maintaining competitive
21 employment. The services provided include job coaching, transportation, assistive
22 technology, specialized job training, and individually tailored supervision.

23 **Assertive Community Treatment Teams**

24 14. ADHS will make its best efforts to develop ACT capacity, as more fully
25 described in ¶¶ 32-38. ACT teams will be available 24 hours per day, 7 days per week,
26 and deliver comprehensive, individualized, and flexible support, services, and
27 rehabilitation to individuals in their homes and communities. An ACT team is a
28 multidisciplinary group of professionals including a psychiatrist, a nurse, a social worker,

1 a substance abuse specialist, a vocational rehabilitation specialist, and a peer specialist.
2 Services are customized to an individual’s needs and vary over time as needs change.

3 **Family and Peer Support**

4 15. ADHS will make its best efforts to develop a system of peer and family
5 support services, including peer and family-run provider organizations, as set forth in
6 ¶¶ 32-38.

7 16. Peer support services are delivered in individual and group settings by
8 individuals who have personal experience with mental illness, substance abuse or
9 dependence, and recovery to help people develop skills to aid in their recovery.

10 17. Family support services are delivered in individual and group settings and
11 are designed to teach families skills and strategies for better supporting their family
12 member’s treatment and recovery in the community. Supports include training on
13 identifying a crisis and connecting Class Members in crisis to services, as well as
14 education about mental illness and about available ongoing community-based services.

15 **Supported Housing**

16 18. ADHS shall make its best efforts to provide supported housing services,
17 consistent with the Substance Abuse and Mental Health Services Administration
18 (“SAMHSA”) definition, as set forth in ¶¶ 32-38. Supported Housing is permanent
19 housing with tenancy rights and support services that enable people to attain and maintain
20 integrated affordable housing. It enables Class Members to have the choice to live in
21 their own homes and with whom they wish to live. Supported Housing will continue to
22 be integrated, scattered site housing throughout Maricopa County.

23 19. Support services are flexible and available as needed but not mandated as a
24 condition of maintaining tenancy. Support services are provided by ACT teams for Class
25 Members who receive ACT. For all other Class Members in Supported Housing, support
26 services are provided by the Maricopa County Regional Behavioral Health Authority
27 (“RBHA”) through its Supported Housing provider.

28

1 20. Supported Housing also includes rental subsidies or vouchers and bridge
2 funding to cover deposits and other household necessities, although these items alone do
3 not constitute Supported Housing.

4 **Living Skills Training**

5 21. ADHS will make its best efforts to develop living skills training services
6 through which Class Members receive assistance and include learning independent
7 living, social, and communication skills in order to maximize their ability to live and
8 participate in the community and to function independently.

9 **Respite Care**

10 22. ADHS will make its best efforts to develop respite care services for Class
11 Members to provide rest or relief for family members or other individuals caring for
12 Class Members and may include a range of activities and may be provided in a range of
13 settings, including apartments and single family homes, to the extent covered by
14 Medicaid, to meet social, emotional, and physical needs of the Class Members during the
15 respite period.

16 **SERVICE STANDARDS**

17 23. ADHS will ensure that providers of services listed in ¶¶ 11-22 have
18 linguistic and cultural competencies to serve all individuals.

19 24. ADHS will adopt the SAMHSA models, definitions, and standards for
20 ACT, Supported Housing, Supported Employment, and Consumer Operated Services,³ by
21 incorporating these SAMHSA standards into the RBHA contract. ADHS will require,
22 through its contract with the RBHA, that all providers of ACT, Supported Housing,
23 Supported Employment, and Consumer Operated Services comply with these standards.
24 ADHS will use, and will require the RBHA to use, SAMHSA assessment tools and/or
25 instruments for evaluating providers' compliance with SAMHSA standards for each
26 service.

27 _____
28 ³ Consumer Operated Services relates to the Family and Peer Support Services set forth in
¶¶ 15-17.

1 30. ADHS will continue to contract with an independent entity to conduct the
2 QSR. During 2014, the Parties will finalize the QSR content and process, which will
3 include the data elements, collection methodology, the instrument, and the report.

4 **SERVICE CAPACITY**

5 31. During the term of this Stipulation, ADHS shall focus on assessing and
6 adjusting the network capacity of a service or services described in ¶¶ 11-22, subject to
7 available funding through legislative appropriation.

8 32. During Fiscal Years 2015 and 2016, ADHS will develop the following
9 additional service capacity:

- 10 a. Supported Housing services capable of serving 1200 Class
11 Members,
- 12 b. Supported Employment services capable of serving 750 Class
13 Members,
- 14 c. 8 ACT teams, some of which may be specialized teams, and
- 15 d. Family and Peer Support services capable of serving 1500 Class
16 Members.

17 ADHS will make reasonable progress to develop the service capacity described in ¶ 32
18 over the two year period, and will achieve the full increases in capacity by the completion
19 of Fiscal Year 2016. ADHS will meet with Plaintiffs' counsel within thirty days of the
20 enactment of the Fiscal Year 2015 budget to discuss ADHS' funding allocation strategy
21 that will be spent for each of the services set forth in ¶¶ 11-22.

22 33. For Fiscal Year 2017, unless the service capacity assessment and
23 determination described in ¶¶ 34-36 indicate that additional capacity is not needed in
24 supported housing, supported employment, and/or ACT, ADHS will develop the
25 following additional service capacity:

- 26 a. Supported Housing services capable of serving 300 Class Members;
- 27 b. Supported Employment services capable of serving 500 Class
28 Members; and

1 c. 5 ACT teams, some of which may be specialized teams.

2 34. For every year after FY 2016, ADHS will implement a reliable process to
3 assess the adequacy of community mental health services in Maricopa County for Class
4 Members, as set forth in ¶¶ 35-36, with a focus on the adequacy of Supported
5 Employment, Supported Housing, ACT, and Consumer Operated Services.

6 35. ADHS will use an independent entity like Mercer Government Human
7 Services Consulting or another similarly qualified entity to conduct the service capacity
8 assessment. This service capacity assessment set forth in ¶ 34 will include a need and
9 allocation evaluation of Supported Housing, Supported Employment, Consumer Operated
10 Services and ACT. The assessment shall utilize individual clinical reviews; an analysis
11 of service utilization data; an analysis of outcome data; and interviews with key
12 informants including Class Members, family members, providers and case managers.
13 The assessment may also utilize customer satisfaction surveys; complaint data; geo-
14 access mapping; hospital emergency room utilization; criminal justice records; homeless
15 prevalence; employment data; suicide rates; public forums; and other data as appropriate
16 that may indicate unmet need, utilization or availability of covered services. The
17 independent qualified entity shall provide ADHS with the completed assessment
18 annually.

19 36. The service capacity assessment, the QSR, and SAMHSA fidelity results
20 will be posted on ADHS' website. ADHS will collect and analyze data from the QSR,
21 the service capacity assessment, and the findings of the SAMHSA fidelity evaluations to
22 determine the appropriate capacity for each of the services described in ¶¶ 11-22 to meet
23 the needs of Class Members.

24 37. ADHS shall use the process described in ¶ 36 to develop its budget
25 recommendations to the Governor's Office of Strategic Planning and Budget ("OSP").
26 The Governor shall consider the information in ¶¶ 36-37 to develop the budget request to
27 the Legislature.

28

1 38. ADHS agrees to submit to OSPB its anticipated budgetary needs to operate
2 the behavioral health system in Maricopa County in accordance with this Stipulation and
3 to continue to meet the needs of persons with serious mental illness. The Governor
4 agrees to make best efforts to obtain this level of funding each year from the Legislature,
5 based upon the Governor's assessment of the competing funding needs and priorities of
6 all other state services. ADHS will make its best efforts to provide services, support, and
7 benefits to Class Members as set forth in this Stipulation subject to available funding
8 through legislative appropriation.

9 **ENFORCEMENT AND DISMISSAL**

10 39. Notwithstanding the provisions of this Stipulation that specifically
11 reference best efforts, Defendants agree to make reasonable progress to implement all
12 other terms of the Stipulation.

13 40. Prior to dismissal, Plaintiffs may bring any action to enforce this
14 Stipulation for failure to substantially comply with its terms, provided, however, the
15 Plaintiffs shall not allege contempt or initiate contempt proceedings prior to February 1,
16 2015. Prior to initiating any action for noncompliance, the Plaintiffs shall provide written
17 notice to the Defendants detailing their allegations of noncompliance. The Parties agree
18 to meet in person to seek a good faith resolution of these issues without court intervention
19 prior to initiating any action.

20 41. The common law doctrine of impossibility of performance may be raised as
21 a defense in any action or proceeding to enforce compliance with the terms of this
22 Stipulation. This includes an inability of one or more Defendants to obtain the funds
23 necessary to implement the requirements imposed by this Stipulation.

24 42. If any of the provisions of this Stipulation are held impossible to perform,
25 the remaining provisions of this Stipulation shall remain binding and in full force and
26 effect.

27 43. If no enforcement motion has been filed, the Parties shall file, between July
28 15 and September 1, 2014, a joint motion pursuant to Ariz. R. Civ. P. 41(a) to dismiss the

1 entire case. The motion shall attach and incorporate by reference this Stipulation, and
2 authorize the Court to retain ongoing jurisdiction to enforce the Stipulation. The motion
3 will further make clear that the Court is not vacating its order certifying the class.

4 44. After dismissal, Plaintiffs may bring any action to enforce this Stipulation
5 for failure to substantially comply with its terms. Prior to initiating any action, the
6 Plaintiffs shall provide written notice to the Defendants detailing their allegations of
7 noncompliance. The Parties agree to meet in person to seek a good faith resolution of
8 these issues without court intervention prior to initiating any action. If the Parties are
9 unable to resolve these issues, Plaintiffs may file a motion to restore the matter to the
10 Court's active docket and enforce the provisions of the Stipulation. In any action or
11 proceeding related to this Stipulation, the Court shall apply a standard of substantial
12 compliance, as defined by the Arizona Courts, to evaluate Defendants' compliance.

13 45. During the pendency of the Stipulation, no party shall engage in activities
14 which delay, prolong or frustrate performance of the obligations set forth herein.

15 46. This Stipulation and any resulting Order entered by the Court may be
16 amended, modified, or supplemented by a written agreement entered into between all
17 Parties and subsequently approved by the Court. Any party may petition the Court to
18 amend, modify or supplement this Stipulation if the Parties are unable to reach an
19 agreement.

20 47. Other than contempt as set forth in ¶ 40, nothing herein is intended to alter the
21 inherent authority of the court.

22 **ATTORNEYS' FEES**

23 48. The Parties agree that Class Members can recover reasonable and non-
24 duplicative attorneys' fees and taxable costs incurred in this matter through calendar year
25 2015. Such attorneys' fees and costs are strictly limited to those incurred through the
26 course of monitoring the implementation by Defendants regarding the obligations set
27 forth in this Stipulation.

1 49. The Parties agree that reasonable attorneys' fees and taxable costs incurred
2 by Class Members for monitoring any and all obligations set forth in this Stipulation shall
3 be paid by the Defendants subject to a maximum cap in the amount of \$225,000 for all
4 time and expenses incurred during the period July 1, 2013 to December 31, 2015. Time
5 spent on legislative lobbying is not a compensable monitoring activity. After December
6 31, 2015, there is no further right to fees for monitoring. In any judicial action brought
7 by Plaintiffs to enforce this Stipulation, Plaintiffs may seek to recover reasonable
8 attorneys' fees and taxable costs related to the enforcement action if they are the
9 prevailing party and such an award is authorized by Arizona law.

10 50. The Parties agree that Class Members are to submit to Defendants a
11 statement of attorneys' fees and taxable costs, a form of stipulation, and proposed order
12 to the Court, in order to recover for attorneys' fees and costs incurred each quarter.
13 Defendants shall be permitted a reasonable time to review each request and attempt to
14 resolve any questions or concerns they may have with Class Members regarding the
15 same. Any request for attorneys' fees and costs submitted by Class Members to
16 Defendants for their attorneys' fees and taxable costs shall be submitted no more than
17 three (3) months following the last calendar day for the three (3) month period. If a
18 request is not submitted within this time to Defendants through their respective
19 counsel(s), counsel for the Class Members shall be deemed to have waived any
20 entitlement to recover any fees or costs incurred during the applicable period.

21 51. Class Members shall have the sole discretion to determine the individual
22 lawyers who should perform work on their behalf and should therefore submit billing
23 statements that provide sufficient detail of the work performed, the lawyer who did the
24 work, and the time spent. The billing rate for Steven Schwartz shall be \$400 per hour,
25 Anne Ronan shall be \$300 per hour, and Edward Myers (ACDL) shall be \$240 per hour.
26 If additional or different lawyers or paralegals than those stated above are to be included
27 in the quarterly billings, Class Members shall notify Defendants in writing of their intent
28 to submit billing statements and their hourly rates for such lawyers/paralegals. The

1 billing rates in this paragraph shall remain fixed during the term of this Stipulation/Order
2 for all work billed. Class Members do not concede the rates represent fair market rates,
3 because the Parties arrived at the rates through a process of negotiation and compromise.

4 52. The provisions of the Stipulation regarding attorneys' fees and taxable costs
5 are applicable to proceedings brought in the Maricopa County Superior Court, the
6 Arizona Court of Appeals, and the Arizona Supreme Court.

7 53. The Parties agree that Defendants' obligation to pay Class Members'
8 attorneys' fees and taxable costs which are ordered by the Court may be satisfied by
9 making payment to counsel for Plaintiffs who are affiliated with the Arizona Center for
10 Law in the Public Interest, for deposit into that firm's trust account to be later disbursed
11 to the other attorneys or firms of record who incurred fees and taxable costs through the
12 course of their representation of Plaintiffs.

13 **ADDITIONAL PROVISIONS**

14 54. The Parties agree that Defendants' obligations under this Stipulation apply
15 only to Class Members.

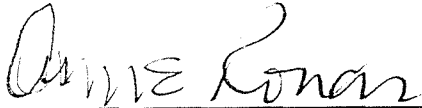
16 55. The Court shall hold a fairness hearing and provide reasonable notice to
17 Class Members pursuant to Rule 23(d)(2), Arizona Rules of Civil Procedure, before
18 entering its Order following submission of the Stipulation. The Parties will represent to
19 the Court that this Stipulation is fair and reasonable under Rule 23. The Parties retain the
20 right to appeal from any order which modifies or alters this document.

21 56. Although Defendants have agreed as part of the negotiation process, which
22 was conducted under Ariz. R. Evid. 408, to undertake certain actions, such agreement and
23 this Stipulation do not constitute an enlargement of the Judgment or an admission of any
24 matter.

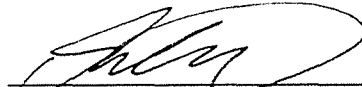
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1 57. Once this Stipulation is approved, and a corresponding Order is entered by
2 the Court, it shall be binding on all Parties.

3 RESPECTFULLY SUBMITTED this 8th day of January, 2014.

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5 _____
6 Anne Ronan
7 *Attorney for Plaintiffs*

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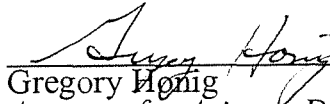
9 _____
10 Joseph Kanefield
11 *Attorney for Governor Janice K. Brewer*

12 

13 _____
14 Steven Schwartz
15 *Attorney for Plaintiffs*

16 

17 _____
18 Joseph Sciarrotta
19 *Attorney for Governor Janice K. Brewer*

20 

21 _____
22 Gregory Honig
23 *Attorney for Arizona Department of*
24 *Health Services*

1 **CERTIFICATE OF SERVICE**

2 I certify that on this 8th day of January, 2014, I electronically transmitted a PDF
3 version of this document to the Office of the Clerk of the Superior Court, Maricopa
4 County, for filing using the AZTurboCourt System.

5 COPY of the foregoing mailed
6 this 8th day of January, 2014 to:

7 Gregory Honig
8 Office of the Arizona Attorney General
9 1200 W. Washington
10 Phoenix, AZ 85007

11 Joseph Sciarrotta
12 Office of the Governor
13 1700 W. Washington, 9th Floor
14 Phoenix, Arizona 85007
15 *Counsel for Governor Janice K. Brewer*

16 Joseph Kanefield
17 Ballard Spahr, LLP
18 1 East Washington St.
19 Suite 2300
20 Phoenix, Arizona 85004
21 *Counsel for Governor Janice K. Brewer*

22 Edward L. Myers III
23 Arizona Center for Disability Law
24 5025 E. Washington Street
25 Suite 202
26 Phoenix, AZ 85034

27 Steven J. Schwartz
28 Cathy E. Costanzo
Center for Public Representation
22 Green Street
Northampton, MA 01060
Attorneys for Plaintiffs

1 Bruce P. White
Maricopa County Attorney's Office
2 222 N. Central, Suite 1100
Phoenix, AZ 85004
3 *Attorney for Maricopa County*
4 *Board of Supervisors*

5 /s/Sonya Batten

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