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IN THE SUPERIOR COURT FOR THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF YAVAPAI

ELI DALTON-WEBB, Plaintiff, v. CITY OF PRESCOTT, a municipal corporation in Arizona; OFFICER CARON (#517); OFFICER TRUILLO; SGT. GERLACH; LT. NOVAK; OFFICER BRAMBILA; CHIEF BONNEY, peace officers of the Prescott Police Department, JOHN DOESI-X; JANE DOES I-X; ABC CORPORATIONS 8-X; XYZ PARTNERSHIPS I-X; UNKNOWN ENTITIES I-X, Defendants.	Case No. S1300CV202500445 **DEFENDANTS' REPLY IN SUPPORT OF MOTION TO DISMISS** (Assigned to Honorable Kristyne M. Schaaf-Olson) **(Oral Argument Requested)**

Defendants Officer Tanner Caron, Officer Nathan Trujillo, Sgt. Brandon Gerlach, Lt. Novak, Officer Jon Brambila, and Chief Amy Bonney (the "Individual Defendants"), by and through undersigned counsel, hereby submit their Reply in support of their Motion to Dismiss the claims against them pursuant to Rule 12(b)(6), Arizona Rules of Civil Procedure because: 1) the individual Defendants were not properly served with a notice of

claim; 2) there is no private right of action for money damages based on an alleged violation of the Arizona Constitution; 3) punitive damages are not authorized, and 4) any claim of injunctive, equitable, or declaratory relief is properly directed at the City of Prescott, and not at any of the Individual Defendants. The Individual Defendants start by noting that Plaintiff failed to respond to the last two arguments: that punitive damages are not authorized against any Individual Defendant, and that the Individual Defendants are unnecessary parties to any claim for injunctive, equitable, or declaratory relief as the City of Prescott is able to provide any such relief. Accordingly, this Reply focuses on the first two arguments: whether Plaintiff is foreclosed from seeking monetary relief from the Individual Defendants due to a failure to properly serve a notice of claim, and whether a private right of action for monetary relief exists for alleged violations of the Arizona Constitution.

MEMORANDUM OF POINTS AND AUTHORITIES

A. Plaintiff Eli Dalton-Webb's Response Fails to Show Why Arizona Law Does Not Apply to Indigent Litigants with Respect to Pre-Litigation Notices of Claim.

As stated in the Individual Defendants' Motion to Dismiss, Plaintiff Eli Dalton-Webb alleges various violations of the Arizona Constitution arising out of brief encounters with Prescott Police officers on May 22, 2024 as he illegally went door-to-door attempting to solicit roofing repairs or installation.[1] No arrests were made, no citations issued, and the allegations are devoid of specific conduct giving rise to individual liability. That being said, the legal issues presented to the Court at the moment, do not require a factual assessment of Plaintiff's unlawful behavior.

Under Arizona law, a plaintiff must file a notice of claim with a public entity and/or public employee within 180 days of the incident from which the claim arose. Ariz. Rev. Stat. § 12-821.01(A); *Crum v. Superior Court in and for the County of Maricopa*, 186 Ariz.

[1] Plaintiff's Response is a bit schizophrenic as he spends a good deal of breath talking about federal constitutional principles and then dials back the rhetoric to remind the Court, and the Defendants, that he is not bringing a federal constitutional claim. *Compare,* Response, pgs. 1-5 to Complaint, pg. 22 of 33, nt. 3.

351, 352 (App. 1996.) The statute provides, in relevant part:

> Persons who have claims against a public entity, public school or a *public employee* shall file claims with the person or persons authorized to accept service for the public entity public school *or public employee as set forth in the Arizona rules of civil procedure* within one hundred eighty days after the cause of action accrues ... Any claim that is not filed within one hundred eighty days after the cause of action accrues is barred and no action may be maintained thereon.

Arizona Revised Statute § 12-821.01(A) (emphasis added). Arizona Rule of Civil Procedure 4.1(d) outlines the requirements of service of process of an individual as follows:

> [A]n individual may be served by: (1) delivering a copy of the summons and the pleading being served to that person individually; (2) leaving a copy of each at that individual's dwelling or usual place of abode with someone of suitable age and discretion who resides there; or (3) delivering a copy of each to an agent authorized by appointment or by law to receive service of process.

Plaintiff has not, and cannot, show the strict compliance with the statute as to the individual Defendants because he did not timely or properly serve them with a Notice of Claim. While Plaintiff did deliver a copy of the notice of claim to the City Clerk (Exhibit B to the Individual Defendants' Motion to Dismiss), Plaintiff failed to individually serve any of the Individual Defendants, instead dropping off the notice of claim at the Prescott Police Department front-counter. (Exhibit C to the Individual Defendants' Motion to Dismiss).

A.R.S. § 12-821.01 provides, in part, that "[p]ersons who have claims against a public entity or a public employee shall file claims with the person or persons authorized to accept service for the public entity or public employee as set forth in the Arizona rules of civil procedure within one hundred eighty days after the cause of action accrues." This means that where a claimant wishes to bring suit against both a public entity and public employee, the notice of claim must be directed and served on the public employee, or else

the notice is not effective as to the individual public employee. *Crum*, 186 Ariz. at 353 (App. 1996). "A claimant who asserts that a public employee's conduct giving rise to a claim for damages was committed within the course and scope of employment must give notice of the claim to *both* the employee individually and to his employer." *Id., citing Johnson v. Superior Court,* 158 Ariz. 507, 509 (App.1988). Arizona courts have repeatedly held a prospective plaintiff must furnish a copy of the notice on "both the employee individually and to his employer" within 180 days. *Crum,* 186 Ariz. at 352; *see also Johnson v. Superior Court*, 158 Ariz. 507, 509 (App. 1988).

If a Notice of Claim is not properly maintained within the statutory time limits, a plaintiff's claim is barred by statute. *See, e.g., Falcon ex. rel. Sandoval v. Maricopa County*, 213 Ariz. 525, 528 (Ariz. 2006). Arizona's notice of claim statute originally contained an exception for "excusable neglect," which provided claimants some flexibility in complying with the procedural requirements. In 1994, however, the Arizona Legislature amended the statute to remove the exception of "excusable neglect." A.R.S. 12-821.01; *see Simon v. Maricopa Med. Ctr.*, 225 Ariz. 55, 62 (App. 2010). Following this amendment, "actual notice and substantial compliance do not excuse failure to comply with the statutory requirements of A.R.S. 12-821.01(A)." *Falcon,* 213 Ariz. at 527. Substantial compliance is now insufficient. *Simon,* 225 Ariz. at 61-62. Post-amendment, courts have consistently required *strict* compliance with the notice of claim statute as a prerequisite to filing suit. *See, Simon, supra.; Chen v. Maricopa County*, 2013 WL 1045484 (D. Ariz. 2013) (noting that substantial compliance is insufficient to satisfy the requirements of A.R.S. § 12-821.01).

Plaintiff argues a number of points, none of which have been endorsed by the Arizona Supreme Court, or any Arizona appellate court. First, Plaintiff argues his "indigent" status allows him to circumvent the statutory notice of claim requirement. *See,*

Response, pgs. 6-12 of 17. Putting aside for the moment that he has not actually shown he is "indigent," Plaintiff cites no authority for the proposition that indigent plaintiffs are excused from compliance with the notice of claim statute. Additionally, the argument posited by Plaintiff falls well-outside the statutory language, and the Arizona Supreme Court's affirmance of strict compliance. *City of Mesa v. Ryan in & for Cnty. of Maricopa*, 258 Ariz. 297, 300 (2024) ("To further these goals [of the notice of claim statute], claimants must strictly comply with the statute"). If Plaintiff wishes to deviate from the strict compliance-model, he must address that with the State's highest court. In the meantime, we mere mortals are bound by what the Arizona Supreme Court dictates. Second, Plaintiff argues that "strict compliance" is not required because the notice of claim statutes does not use that language. *See,* Response, pg. 10. Again, this is an issue for the Arizona Supreme Court, and the parties, and this Court, are bound to follow the current state of the law from higher authority. Third, Plaintiff argues that serving police officers with a notice of claim is too difficult to require statutory compliance. However, this argument, too, falls flat, as Plaintiff never alleges he even tried for personal service of a notice of claim on any defendant, or availed himself of court-approved alternative service. *See,* Response, pgs. 12-16.

None of Plaintiff's arguments are supported by statutory or case authority, and all of them are contrary to existing statutory or case authority. In short, Plaintiff's failure to timely or properly serve the Individual Defendants mandates that they be dismissed from the action as to any claim for monetary damages. The fact that Plaintiff fails to argue that the City is incapable of supplying equitable relief also justifies the dismissal of the Individual Defendants as to all forms of non-monetary relief.

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B. <u>In the Absence of an Enabling Statute, no Monetary Relief May be Found for an Alleged Violation of the Arizona Constitution</u>.

Unlike the U.S. Constitution, the Arizona Constitution does not contain provisions providing for a private cause of action, or an enabling statute (like 42 U.S.C. § 1983) allowing for a suit to claim money, as opposed to prospective injunctive relief. Plaintiffs' Response assumes, without providing authority, that a private right of action exists and that monetary damages (even of a nominal nature) untethered to prospective injunctive relief may be obtained. *See,* Response, pgs. 16-17. Plaintiff does locate no Arizona case expressly addressing, much less providing for, a private cause of action to obtain nominal damages under the Arizona Constitution. A number of courts from other jurisdictions have refused to find an implied cause of action in the absence of an enabling constitutional or statutory provision. *Katzberg v. Regents,* 29 Cal. 4th 300, 127 Cal.Rptr.2d 482, 58 P.3d 339 (2002) (no implied remedy for damages from state constitutional due process clause) (fn. 9, citing a greater number of cases from Alaska, Colorado, Connecticut, Florida, Michigan, Missouri, New Hampshire, New York, North Carolina, Ohio, Oregon, Texas, and Utah in agreement).

Plaintiff argues that the Arizona Constitution at Article 2, § 1, Article 2, § 2, Article 2, § 5, Article 2, § 32, and Article 3 provide express authority for the award of monetary damages for an alleged violation of the Arizona Constitution. *See,* Response, pg. 16. None of these Articles or Paragraphs makes any mention of the availability of monetary damages in a private action based on an alleged violation of the Arizona Constitution.

C. <u>Even a Demand for $1 Requires a Pre-Litigation Notice of Claim.</u>

Plaintiff argues that the Ninth Circuit decision in *Platt v. Moore,* 15 F.4th 895 (9th Cir. 2021) standards for the proposition that a $1 nominal damage amount need not be preceded by a state law notice of claim. Defendants are well aware of where the Ninth Circuit Court of Appeals came down on this issue, but the Ninth Circuit's decision is merely a prediction of what the federal court "thinks" the Arizona Supreme Court will do. The *Platt* decision ignored Arizona law in this conclusion. Arizona's notice of claim

statute must be strictly adhered to before a claim for $1 nominal damages may be pursued. *See, Platt v. Moore,* 15 Fed.4th 895, 912-918 (9th Cir. 2021) (Collins dissenting); *see also, Arpaio v. Maricopa Cty. Bd. of Supervisors,* 225 Ariz. 358, 362 (App. 2010) (holding notice of claim statute applies for recovery of all, or any portion, of a monetary claim for relief). *See also, City of Mesa v. Ryan in & for Cnty. of Maricopa*, 258 Ariz. 297, 300 (2024) (affirming strict compliance with the notice of claim statute as to monetary relief).

CONCLUSION

For all of the foregoing reasons, as well as those contained in Defendants' Motion to Dismiss, Plaintiff's Complaint as to Officer Tanner Caron, Officer Nathan Trujillo, Sgt. Brandon Gerlach, Lt. Novak, Jon Brambila and Chief Amy Bonney must be dismissed in its entirety under Rule 12(b)(6), with this matter proceeding as to the Plaintiff and City of Prescott only.

RESPECTFULLY SUBMITTED this 11th day of September, 2025.

JELLISON LAW OFFICES, PLLC

/s/ James M. Jellison

James M. Jellison, Esq.
Counsel for the City of Prescott and the Individual Defendants

CERTIFICATE OF FILING & SERVICE

I hereby certify that on September 11, 2025. I electronically transmitted the attached document to the Clerk's Office using the TurboCourt System for filing with e-service and mail on the following:

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By: /s/ Valerie Hall