

1 Michele Molinario, Bar #020594
Derek R. Graffious, Bar #033486
2 JONES, SKELTON & HOCHULI P.L.C.
40 N. Central Avenue, Suite 2700
3 Phoenix, Arizona 85004
Telephone: (602) 263-1746
4 Fax: (602) 200-7831
mmolinario@jshfirm.com
5 dgraffious@jshfirm.com
minuteentries@jshfirm.com
6

Attorneys for Defendants City of Sierra Vista,
7 Officer E. Slusser, Officer R. Hertman, Officer
S. McHunting, and Officer W. Partridge
8

9 **SUPERIOR COURT OF THE STATE OF ARIZONA**

10 **COUNTY OF COCHISE**

11 ELI DALTON-WEBB,

12 Plaintiff,

13 v.

14 CITY OF SIERRA VISTA, a municipal
corporation in Arizona, OFFICER E.
15 SLUSSER, R. HERTMAN, OFFICER S.
MCHUNTTING, M. PARTIDGE, peace
16 officers of the Sierra Vista Police Department,

17 Defendants.
18

NO. S0200CV202400628

**DEFENDANT'S RESPONSE TO
PLAINTIFF'S MOTION FOR SANCTIONS**

(Assigned to the Honorable David Thorn)

19 Defendant City of Sierra Vista, by and through undersigned counsel, hereby
20 responds to Plaintiff's Motion for Sanctions. Without any basis in law or fact, Plaintiff moves for
21 sanctions in the same pleading responding to the Individual Officers' objection to Plaintiff's
22 Application for Default Judgment. It appears that Plaintiff's Motion for Sanctions is directed at
23 defense counsel, and not any particular defendant. As such, the City of Sierra Vista—the only

1 properly served Defendant—files this response on behalf of all Defendants.¹ Not only has Plaintiff
2 failed to establish any conduct that would warrant sanctions, he also entirely failed to comply with
3 the procedural requirements for bringing such a motion. The City considered filing a Motion for
4 Sanctions against Plaintiff for having brought this frivolous motion, but does not wish to
5 needlessly increase litigation costs. To the extent Plaintiff files additional frivolous motions, the
6 City may reconsider its position. For the following reasons, Defendant requests that Plaintiff's
7 Motion be denied.

8 **I. THE COURT SHOULD SUMMARILY DENY PLAINTIFF'S MOTION FOR**
9 **SANCTIONS**

10 Plaintiff's Motion for Sanctions provides zero factual or legal argument as the basis
11 for which Plaintiff is moving for sanctions. In fact, the word sanction only appears in the requested
12 relief section of his Response to the Motion to Deny the Application for Default Judgment. [See
13 Plaintiff's December 13, 2024 Response at pp. 1-5]. Defendant is therefore without any
14 information as to what the alleged basis is for Plaintiff's sanctions request. This alone warrants
15 the court summarily denying Plaintiff's Motion.

16 Because Plaintiff does not provide any legal authority for the basis for his Motion
17 for Sanctions, Defendant can only presume that he is bringing his purported motion under Rule
18 11. As an initial matter, a Rule 11 motion for sanctions must be made separately from any other
19 motion. Ariz. R. Civ. P. 11(c)(3). Here, Plaintiff's Motion for Sanctions, to the extent it can even
20 be construed as one, is buried within Plaintiff's Response to the Individual Officers' Objection to
21 his Application for Entry of Default Judgment and included with a Motion for Alternative Service.
22 Because he has not separately moved for sanctions, he has failed to comply with Rule 11 and his
23 Motion should be denied.

24
25 ¹ Nothing within this response should be construed as the Individual Officers making a
general appearance or otherwise waiving their right to be properly served in this lawsuit.

1 Likewise, under Arizona Rule of Civil Procedure 11(c)(2), before filing a motion
2 under Rule 11, the moving party must: (1) attempt to resolve the matter by good faith consultation
3 as provided in Rule 7.1(h), and (2) serve the opposing party with written notice of the specific
4 conduct that allegedly violates Rule 11(b) and provide the party with a 10-day grace period to
5 withdraw or correct the alleged violations. None of that occurred here. Rule 7.1(h) provides in
6 pertinent part that “the movant *must* attach to the motion a separate statement certifying and
7 demonstrating that the movant has tried in good faith to resolve the issue by conferring with—or
8 attempting to confer with—the party or person against whom the motion is directed.” (Emphasis
9 added). Plaintiff’s Motion lacks this certification of conferral because it never occurred. The first
10 time that undersigned counsel became aware that Plaintiff was seeking sanctions against
11 Defendant and/or defense counsel was when it received his purported “motion.” The Court must
12 dismiss Plaintiff’s Motion for that reason alone.

13 Conferral notwithstanding, Plaintiff’s Motion also failed to comply with the other
14 requirements of Rule 11. Specifically, Plaintiff never served Defendant with written notice of the
15 conduct that allegedly violates Rule 11(b). Not only did Plaintiff fail to give Defendant written
16 notice ahead of the motion, the motion itself also does not provide notice as to what conduct
17 allegedly violates Rule 11. Plaintiff has wholly failed to comply with any of the requirements for
18 bringing a Motion for Sanctions. This is a separate basis for which the Court must deny Plaintiff’s
19 Motion for Sanctions.

20 **II. PLAINTIFF’S MOTION LACKS ANY MERIT**

21 Even if Plaintiff had complied with the procedural requirements for bringing a Rule
22 11 Motion for Sanctions, which he clearly did not, his Motion would still fail on the merits.
23 Assuming arguendo that Plaintiff’s basis for his response is the same conduct that allegedly
24 violates Rule 11, he is wrong. Rule 11(b) requires that an attorney or party certify that to the best
25 of the person’s knowledge, information, and belief, any filing is not being presented for any

1 improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of
2 litigation. Ariz. R. Civ. P. 11(b)(1). Plaintiff appears to contend that challenging an Application
3 for Entry of Default Judgment because service was not properly completed is unnecessarily
4 delaying the lawsuit. Defendant incorporates the arguments raised in the Individual Officers'
5 Objection and Reply in support of their Objection to Plaintiff's Application for Entry of Default.
6 As explained in detail therein, Defendant has not caused any unnecessary delays. Defendants are
7 requiring that Plaintiff comply with the rules for service and properly serve them. Additionally,
8 as previously mentioned, Defendants informed Plaintiff that the Individual Officers would agree
9 to waive service if Plaintiff voluntarily withdrew the pending Application for Entry of Default
10 Judgment. Plaintiff ultimately refused—thereby requiring the Individual Officers to make a
11 limited appearance for purposes of Objecting the Application for Entry of Default Judgment
12 against them, needlessly increasing the cost of this litigation.

13 **III. CONCLUSION**

14 For the foregoing reasons, Defendant respectfully request that the Court deny
15 Plaintiff's improper Motion for Sanctions.

16 DATED this 26th day of December, 2024.

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

18
19 By /s/ Derek R. Graffious

20 Michele Molinario
21 Derek R. Graffious
22 40 N. Central Avenue, Suite 2700
23 Phoenix, Arizona 85004
24 Attorneys for Defendants City of Sierra Vista,
25 Officer E. Slusser, Officer R. Hertman, Officer S.
McHunting, and Officer W. Partridge

ORIGINAL of the foregoing electronically filed
this 26th day of December, 2024.

COPY of the foregoing mailed and emailed
this 26th day of December, 2024, to:

Eli Dalton-Webb
5009 E. Ironwood Circle
Sierra Vista, AZ 85650
dw4az@proton.me
Plaintiff, in Pro Per

/s/ *Cindy Castro*