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20
21 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**
22
23 **IN AND FOR THE COUNTY OF MARICOPA**

24 STATE OF ARIZONA, ex rel. MARK
25 BRNOVICH, Attorney General, and the CIVIL
26 RIGHTS DIVISION OF THE ARIZONA
DEPARTMENT OF LAW,

Plaintiff,

vs.

OBRIGIS, LLC, d/b/a O'BRIEN'S SPORTS
BAR,

Defendant.

Case No.: CV2019-014008

PROPOSED CONSENT DECREE

(Tier 2 Case)

(Assigned to Honorable Daniel Kiley)

The State of Arizona *ex rel.* Mark Brnovich, the Attorney General, and the Civil Rights
Division of the Arizona Department of Law (“the State”) filed this action against Defendant,

1 O'brigs, LLC d/b/a O'Brien's Sports Bar ("Defendant" or "O'Brien's"), to enforce the
2 Arizonans with Disabilities Act, A.R.S. § 41-1492 et seq. ("AzDA"). In the State's Complaint,
3 the State alleged that Defendant discriminated against aggrieved party, Billy Larson, by
4 denying him the full and equal enjoyment of Defendant's goods, services, facilities,
5 advantages, or accommodations on the basis of his disability in violation of A.R.S. § 41-
6 1492.02(A) and by failing to make a reasonable modification to allow Mr. Larson to remain at
7 O'Brien's with his service animal (the "Claims"). A.R.S. § 41-1492.02(A); A.R.S. § 41-
8 1492.02(G)(1); A.R.S. § 41-1492.02(G)(2); and A.R.S. § 41-1492.02(G)(3).

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11 The State and Defendant (collectively "the Parties") desire to resolve the issues raised
12 in the Complaint in order to avoid the time, expense, and uncertainty of further contested
13 litigation. The Parties expressly acknowledge that this Consent Decree is the compromise of
14 the Claims and that there has been no adjudication of any claim or finding of any liability, or
15 lack thereof, on the part of Defendant. The Parties agree to be bound by this Consent Decree
16 and agree not to contest that it was validly entered into in any subsequent proceeding to
17 implement or enforce its terms. Accordingly, the Parties stipulate to the entry of this Consent
18 Decree, do not object to the jurisdiction of the Court over this action and waive a hearing and
19 the entry of Findings of Fact and Conclusions of Law.
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22 It appearing to the Court that entry of this Consent Decree will fairly resolve the
23 Claims, **IT IS HEREBY ORDERED, ADJUDGED AND DECREED** as follows:

24 **JURISDICTION**
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1 1. This Court has jurisdiction over the subject matter of this action and over the
2 parties, and venue in Maricopa County is proper. The allegations of the Complaint, if proved,
3 are sufficient to state claims upon which relief could be granted against Defendant under the
4 AzDA.
5

6 2. The Court will retain jurisdiction over the subject matter of this Consent Decree,
7 the State, and Defendant for two (2) years from the date of its entry to effectuate and enforce
8 this Consent Decree. Any time after one (1) year, the Parties may stipulate to reduce the
9 timeframe for this Consent Decree. The Parties may, for good cause shown, petition this
10 Court for compliance with this Consent Decree at any time during the period that this Court
11 maintains jurisdiction over this action. Should the Court determine that Defendant has not
12 complied with its terms, appropriate relief, including extension of this Consent Decree for such
13 period as may be necessary to remedy Defendant's non-compliance, may be ordered. In the
14 event the Parties have not stipulated and the court has not ordered an extension of this Consent
15 Decree, the Consent Decree will automatically expire and the Court will lose jurisdiction over
16 this action two (2) years after entry of the Consent Decree.
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19 **RESOLUTION OF THE LAWSUIT**
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21 3. The Consent Decree is made between the State of Arizona *ex rel.* Mark
22 Brnovich, the Attorney General, and the Civil Rights Division of the Arizona Department of
23 Law ("the State") and Defendant Obris, LLC d/b/a O'Brien's Sports Bar ("Defendant" or
24 "O'Brien's"), collectively the Parties.
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1 4. This Consent Decree resolves all issues and claims set forth in the State's
2 Complaint (CV2019-014008) related to Mr. Larson's Charge with the State (P18-0084).

3 5. Except for the obligations of Defendant that are expressly set forth in this
4 Consent Decree, Defendant, its agents, employees, successors, assigns and all persons in active
5 concert or participation with Defendant, are released from any and all civil liability to the State
6 for the counts alleged in the State's Complaint.

7 6. Subject to Defendant's fulfillment of the obligations set forth in this Consent
8 Decree, the State agrees to dismiss with prejudice the civil lawsuit (CV2019-014008) based on
9 the matters raised in the charge No. P18-0084 two (2) years from the date of entry of the
10 Consent Decree, unless otherwise stipulated. However, the Division retains its right to file an
11 enforcement action should it believe that Defendant has not complied with the terms of the
12 Consent Decree. Except for violations of Sections 8 and 12(a) of this Consent Decree, prior to
13 filing an enforcement action relating to a breach of this Consent Decree, the State shall provide
14 notice of the breach to Defendant through U.S. Mail at the address indicated in Section 16 and
15 shall offer Defendant ten (10) business days from the mailing date of the Notice to cure the
16 breach. Upon Defendant's fulfillment of the obligations set forth in this Consent Decree, the
17 Division agrees to close charge No. P18-0084. Although the Division does not waive its right
18 to process any other charge against Defendant, the Division does waive its right to file a
19 Divisional charge against Defendant relating to the matters that were alleged in charge No.
20 P18-0084.
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1 7. By entering into this Consent Decree, the Parties do not intend to resolve any
2 charges of discrimination currently pending before the State other than those that formed the
3 foundation for the Complaint against the Defendant in this case, and the State does not waive
4 or in any manner limit its right to process or seek relief from the Defendant in any other charge
5 or investigation that may arise. The Defendant and its officers, agents, employees, successors,
6 and all other persons in active concert or participation with any of them will not interfere with
7 the relief herein ordered, but shall cooperate in the implementation of this Consent Decree.
8

9 **INJUNCTIVE RELIEF**

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11 8. **Compliance with the Arizonans with Disabilities Act.** Defendant and its
12 employees, managers, supervisors, officers, members, and owners agree not to engage in, and
13 are permanently enjoined from engaging in, discrimination on the basis of disability, in
14 violation of the Arizonans with Disabilities Act, A.R.S. § 41-1492, et seq. Specifically,
15 Defendant and its managers, supervisors, officers, members, and owners are permanently
16 enjoined from failing or refusing to make reasonable modifications in policies, practices, and
17 procedures when necessary to avoid discrimination against persons with disabilities, including
18 persons who use service animals, in violation of A.R.S. § 41-1492.02(G)(2), Ariz. Admin.
19 Code R10-3-404, 28 C.F.R. §§ 36.104 and 36.302(c). Defendant agrees to provide training to
20 its employees, managers, supervisors, members, owners, and officers and further agrees that
21 Defendant and its employees, managers, supervisors, members, owners, and officers will not
22 directly or indirectly engage in coercion, intimidation, threats or interference against any
23 individual because he/she has opposed any practice reasonably believed by him/her to be
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1 unlawful under A.R.S. § 41-1492, et seq., or because he/she has filed a complaint, given
2 testimony or assistance, or participated in any manner in any investigation or proceeding under
3 the AzDA.

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5 9. **Poster.** Defendant agrees to keep posted at all times in a conspicuous,
6 well-lighted place frequented by its customers, at its O'Brien's Sports Bar, located at 7829 N.
7 35th Avenue, Phoenix, Arizona 85051 (the "Subject Location"), a poster which specifically
8 states "Service Animals Welcome." The poster shall cite the Arizonans with Disabilities Act,
9 A.R.S. § 41-1492, et seq, and its prohibition against discrimination based on disability. The
10 sign shall further include the language, "service animal means any dog or miniature horse
11 individually trained to do work or perform tasks for the benefit of an individual with a
12 disability." Within thirty (30) calendar days of the effective date of this Consent Decree,
13 Defendant agrees to (a) certify that such poster has been posted at the location set forth in this
14 Consent Decree; and (b) provide by email to leslie.ross@azag.gov a photograph evidencing
15 that such a poster has been posted and specifying in detail the placement of the poster.
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18 10. **Anti-Discrimination Policies.**

19 a. Within thirty (30) calendar days of the effective date of this Consent Decree,
20 Defendant shall create a policy: (a) that prohibits discrimination based upon disability; (b)
21 prohibits discrimination based on a failure to reasonably modify Defendant's policies,
22 practices, and procedures when necessary to avoid discrimination against persons with
23 disabilities, including persons who use service animals; and (c) prohibits coercion,
24 intimidation, threats or interference against any individual because a person has opposed any
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1 practice reasonably believed by him/her to be unlawful under A.R.S. § 41-1492, et seq., or
2 because a person has filed a complaint, given testimony or assistance, or participated in any
3 manner in any investigation or proceeding under the AzDA (collectively, the "Policies").
4

5 b. At a minimum, the Policies will contain: (i) a commitment to these anti-
6 discrimination, reasonable modification, and anti-retaliation provisions; (ii) a process by which
7 a person can complain of alleged discrimination and/or retaliation to a specific agent of
8 Defendant; (iii) the job title(s) of Defendant's employee(s) responsible for accepting
9 complaints of discrimination and/or retaliation; and (iv) a statement that unlawful
10 discrimination and/or retaliation violates state and federal civil rights laws.
11

12 c. Within thirty (30) calendar days of the effective date of this Consent Decree,
13 Defendant shall submit the Policies to the Attorney General's Office, Civil Rights Division,
14 c/o Leslie Ross, 2005 North Central Avenue, Phoenix, Arizona 85004 or by e-mail to
15 leslie.ross@azag.gov for review.
16

17 d. Within seventy (70) calendar days of the effective date of this Consent Decree,
18 Defendant shall provide a copy of the Policies to each of Defendant's managers, supervisors,
19 officers, members, owners, and employees and shall obtain a signed acknowledgement of
20 receipt of the Policies obtained from each such person. Defendant shall maintain such signed
21 acknowledgements in Defendant's records for the term of this Consent Decree.
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23 e. Defendant agrees to adopt and implement a policy through which Defendant
24 provides a copy of the Policies to each of Defendant's newly hired employees and shall obtain
25 a signed acknowledgement of receipt of the Policies from each such employee within ten (10)
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1 business days after the employee begins duties that involve work in Defendant's Subject
2 Location. Defendant shall maintain such signed acknowledgements in Defendant's records for
3 the term of this Consent Decree.

4
5 11. **Training.**

6 a. Within ten (10) calendar days of the effective date of this Consent Decree,
7 Defendant shall submit to the State, an attestation from Defendant's owner, Alan Swenson,
8 affirming that he has read and understands the Department of Justice Frequently Asked
9 Questions about Service Animals and the ADA.

10
11 b. Within forty-five (45) calendar days of the effective date of this Consent Decree,
12 Defendant shall submit its planned educational training in accordance with the specifications
13 of this Section and the name and qualifications of Defendant's intended trainer to the Attorney
14 General's Office, Civil Rights Division, c/o Leslie Ross, 2005 North Central Avenue,
15 Phoenix, Arizona 85004 or by e-mail to leslie.ross@azag.gov for review. Any intended trainer
16 and training requires approval of the State prior to implementation of Defendant's training.

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18 c. Within seventy (70) calendar days of the effective date of this Consent Decree,
19 Defendant's current employees, managers, supervisors, officers, members, and owners, shall
20 attend a two-hour program of educational training regarding Defendant's obligations under the
21 AzDA and Title III of the Americans with Disabilities Act ("ADA") and their regulations set
22 forth in 28 C.F.R., Part 36, including but not limited to the obligations to ensure effective
23 communication with individuals with disabilities; to remove barriers to access when it is
24 readily achievable to do so, to maintain accessible features; and to make reasonable
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1 modifications in policies, practices, and procedures, including ones pertaining to service
2 animals, as well as Defendant's obligations under this Consent Decree, including the Policies.
3 Such training shall include a question and answer period.
4

5 d. Throughout the term of this Consent Decree, any of Defendant's managers,
6 supervisors, officers, members, and employees hired after the above-described initial training
7 session will attend a two hour educational training program, with content and format as
8 described above, within their first thirty (30) calendar days of work for Defendant. All training
9 will be provided at Defendant's expense by a qualified trainer knowledgeable of the
10 requirements of AzDA and Title III of the ADA and approved by the State. The person who
11 conducts each training session will provide a written certification stating the date on which
12 training was provided and the name of each person who attended and completed each such
13 training.
14

15 e. Within ten (10) business days of the completion of any training specified in this
16 Section, Defendant shall provide such certification of training to the Attorney General's
17 Office, Civil Rights Division, c/o Leslie Ross, 2005 North Central Avenue, Phoenix, Arizona
18 85004 or by e-mail to leslie.ross@azag.gov affirming that Defendant has complied with the
19 training obligations as set forth in this Consent Decree. Defendant agrees that the certification
20 of training will contain at a minimum the following: (i) confirmation that the training
21 occurred; (ii) the date, time, and location of the training; (iii) a list of the names and positions
22 of those persons who attended the training; and (iv) the name of the agency or individual that
23 provided the training. Defendant may satisfy the requirement of identifying the attendees by
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1 attaching a copy of a registration list that includes the printed name and position of the person
2 registering his/her attendance.

3 12. **Notifications and Retention Obligations.**

4 a. During the term of this Consent Decree, Defendant will notify the State of any
5 allegation or complaint, whether oral or written, alleging that Defendant, or any of its agents
6 or employees discriminated on the basis of disability against any individual(s) in violation of
7 the AzDA and/or Title III of the ADA. Defendant will send each notification to the State,
8 within fifteen (15) calendar days of the date Defendant reasonably has notice of such
9 allegation or complaint. The notification shall include, at a minimum, the name, address, and
10 other contact information of the individual(s) who made the allegation or complaint, a
11 summary of the facts involved in the allegation or complaint, all documents within
12 Defendant's possession, custody, or control relating to the allegation, complaint, and
13 underlying conduct that is claimed to be discriminatory, and a description of any actions that
14 Defendant has taken to address the allegation or complaint. Throughout the term of this
15 Consent Decree, Defendant shall retain records of all such allegations and complaints,
16 including documents relating in any way to the facts and contentions at issue in such
17 allegations and complaints.

18 b. During the term of this Consent Decree, Defendant shall preserve all records
19 related to this Consent Decree. Upon reasonable notice to Defendant, the State shall be
20 permitted to inspect and copy any records of Defendant's pertaining to this Consent Decree or
21 inspect any premises under Defendant's control bearing on compliance with this Consent
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1 Decree at any and all reasonable times, provided, however, the State shall endeavor to
2 minimize any inconvenience to Defendant from such inspections. Within sixty (60) calendar
3 days after the entry of this Consent Decree, and thereafter, on each yearly anniversary of the
4 date of entry of this Consent Decree, Defendant will submit a written notice to the State
5 describing any training(s) provided or policies implemented and/or modified in accordance
6 with this Consent Decree.
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8 **MONETARY RELIEF AND CIVIL PENALTY**
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10 13. On the date Defendant signs this Proposed Consent Decree, Defendant shall
11 submit a certified check made payable to Billy Larson in the amount of seven thousand five
12 hundred dollars (\$7,500.00) to the Attorney General's Office, Civil Rights Division, c/o Leslie
13 Ross, 2005 North Central Avenue, Phoenix, Arizona 85004 for safekeeping. The check will
14 be released to Billy Larson only after (a) the Proposed Consent Decree has been approved by
15 the Court and (b) the effective date of the separate Agreement and Release between Billy
16 Larson and Defendant.
17

18 14. On the date Defendant signs this Proposed Consent Decree, Defendant shall
19 submit a certified check made payable to the Arizona Attorney General's Civil Rights Division
20 in the amount of two thousand five hundred dollars (\$2,500) as a civil penalty pursuant to
21 A.R.S. § 41-1492.09(C). Defendant will deliver the certified check to the Attorney General's
22 Office, Civil Rights Division, c/o Leslie Ross, 2005 North Central Avenue, Phoenix, Arizona
23 85004.
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1 **GENERAL PROVISIONS**

2 15. When this Consent Decree requires submission of payments, reports, notices, or
3 materials to the State, they shall be mailed to: the Attorney General's Office, Civil Rights
4 Division, Attn: Leslie Ross, 2005 North Central Avenue, Phoenix, Arizona 85004 or by e-mail
5 to leslie.ross@azag.gov, or her successor.
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7 16. When this Consent Decree requires notice to Defendant, they shall be mailed to
8 7829 N. 35th Avenue, Phoenix, Arizona 85051 and emailed to Defendant at the email address
9 provided to the State at the time of Defendant's signing this Proposed Consent Decree.
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11 17. This Consent Decree may be signed in counterparts, including facsimile copies,
12 and when so signed, each counterpart shall be deemed an original and all counterparts shall
13 constitute one instrument. The Parties agree, however, that they will also execute original
14 documents and promptly send them to the Division so that it may have an entire set of original
15 documents.
16

17 18. This Consent Decree is final and binding on the heirs, assigns, successors,
18 successors-in-interest, receivers, trustees in bankruptcy, and personal representatives of
19 Defendant. Each party has a duty to inform any successor in interest of the obligations of this
20 Consent Decree during its duration.
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22 19. If any term of this Consent Decree is determined by any court to be
23 unenforceable, the other terms of this Consent Decree shall nonetheless remain in full force
24 and effect.
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1 20. Failure by any party to seek enforcement of this Consent Decree pursuant to its
2 terms with respect to any provision or instance shall not be construed as a waiver to such
3 enforcement with regard to other instances or provisions.
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5 21. The Parties represent that they have read this Consent Decree in its entirety, have
6 had an opportunity to consult with counsel of their own choice, are satisfied that they
7 understand and agree to all of its provisions, and have freely signed this Consent Decree
8 without coercion.

9 22. A signatory to this document in a representative capacity for each party
10 represents that he or she is authorized to bind that party to this Consent Decree.
11

12 23. This Consent Decree constitutes the entire agreement between the State and
13 Defendant on the matters raised herein and no other statement, promise or agreement, either
14 written or oral, made by any party or agents of any party, that is not contained in this written
15 agreement, including its attachments, shall be enforceable.
16

17 24. This Consent Decree does not remedy any other potential violations of the
18 AzDA or any other law that is not specifically addressed in this Consent Decree.

19 25. This Consent Decree in no ways limits Defendant's continuing responsibility to
20 comply with all aspects of the AzDA and Title III of the ADA, including but not limited to the
21 obligations under Title III of the ADA to ensure effective communication, remove barriers to
22 access when it is readily achievable to do so, and make reasonable modifications in policies,
23 practices, and procedures when necessary to avoid discrimination on the basis of disability,
24 including those related to service animals.
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1 26. A copy of this Consent Decree and any information contained in it, including the
2 Policies implemented by Defendant will be made available to any person by Defendant or the
3 State upon request.

4 27. Any time limits for performance imposed by this Consent Decree may be
5 extended by the mutual written agreement of Defendant and the State.
6

7 28. Each of the Parties to this litigation will bear its own costs and attorneys' fees
8 associated with this litigation through the filing of this Consent Decree.
9

10 **EFFECTUATING CONSENT DECREE**

11 29. The parties agree to the entry of this Consent Decree upon final approval by the
12 Court. The effective date of this Consent Decree will be the date that it is entered by this
13 Court.
14

15 **ENTERED AND ORDERED** this _____ day of _____ 2020.
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18 _____
19 The Honorable Daniel Kiley
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1 **CONSENT TO DECREE**

2 1. On behalf of Defendant, Obrigis, LLC d/b/a O'Brien's Sports Bar
3 ("Defendant"), I acknowledge that I have read the foregoing Consent Decree, and that
4 Defendant is aware of its right to a trial in this matter and has waived that right.
5

6 2. Defendant, agrees to the jurisdiction of the Court, and consents to entry of this
7 Consent Decree.
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9 3. Defendant, states that no promise of any kind or nature whatsoever (other than
10 the terms of this Consent Decree) was made to induce it to enter into this Consent Decree, that
11 it has entered into this Consent Decree voluntarily, and that this Consent Decree constitutes the
12 entire agreement between the parties.
13

14 4. I, ALAN SWENSON, am the OWNER of Obrigis, LLC d/b/a O'Brien's
15 Sports Bar, and as such, am authorized by Obrigis, LLC d/b/a O'Brien's Sports Bar to enter
16 into this Consent Decree for and on its behalf.
17

18 5. I further state that Defendant, Obrigis, LLC d/b/a O'Brien's Sports Bar has been
19 represented by counsel in this case, and that the terms of this Consent Decree have been
20 explained to me to my satisfaction, and are fully understood by me.
21

Obrigis, LLC d/b/a O'Brien's Sports Bar.

22 By: Alan Swenson
23 Alan Swenson
24

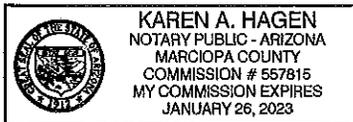
25 Its: OWNER
26

1 State of Arizona)
2) SS.
3 County of Maricopa)

4 SUBSCRIBED AND SWORN to before me this 27th day of Feb.,
5 2020, by Alan Swenson.

6 Karen A. Hagen
7 Notary Public
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11 My Commission Expires: 1-26-2023
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APPROVED AS TO FORM AND CONTENT:

MARK BRNOVICH
Attorney General

ASU Law Group

By Leslie Ross
Leslie Ross
Assistant Attorney General
Attorneys for Plaintiff State of Arizona

By Adam Weiner
Adam Weiner
Andrew S. Jacob
Attorneys for Defendant Obriggs, LLC
d/b/a O'Brien's Sports Bar

Date: 2/27/2020

Date: 02-27-2020

1 **COPY** of the foregoing mailed
2 this 27 day of February, 2020 to:

3 Adam Weiner
4 Andrew S. Jacob
5 ASU Law Group
6 111 E Taylor St, Suite 120
7 Phoenix, AZ 85004
8 Attorneys for Defendant

9 
Annette Sexton-Ruiz
#PHX8500074 v1

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