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9
10 **SUPERIOR COURT OF ARIZONA**
11 **COUNTY OF MARICOPA**

12 WENDY H. WALKER et al.,
13 Plaintiffs,
14 v.
15 CITY OF SCOTTSDALE, an Arizona
16 municipal corporation
17 Defendants.

No. CV2023-000545

**RESPONSE IN OPPOSITION TO
APPLICATION FOR
TEMPORARY
INTERLOCUTORY STAY**

(Assigned to the Hon. Joan Sinclair)

19
20 Plaintiffs have propounded something that they have styled as a “temporary
21 interlocutory stay,”¹ seeking the Court to enter an emergency, mandatory injunction
22 requiring the City of Scottsdale (the “City”) to provide water from a particular standpipe
23 to the Plaintiffs. Because Plaintiffs have sought both a temporary restraining order as well
24 as a preliminary injunction, this response is intended to be limited to the requested
25 temporary restraining order.

26
27 ¹ It is unclear why Plaintiffs have styled this case as a special action, as opposed to
28 initiating an ordinary civil case. Regardless, the requested relief is, in form and substance,
an application for temporary restraining order under Rule 65 of the Arizona Rules of Civil
Procedure.

1 Plaintiffs claim that their ability to access water from a commercial standpipe
2 inside the City, haul it outside the City, and consume it outside the City constitutes a
3 “utility service” under A.R.S. § 9-516(C). Plaintiffs are wrong. In any event, Plaintiffs
4 have demonstrated no likelihood of irreparable harm or that public policy favors the grant
5 of a mandatory injunction that would actually *change* the status quo. This Response is
6 supported by the accompanying Memorandum of Points and Authorities.

7 MEMORANDUM OF POINTS AND AUTHORITIES

8 I. Introduction and Factual Background

9 This is a case about the allocation of dwindling municipal water, and the demands
10 of Plaintiffs who want the benefits of organized government with none of the burdens.
11 Because Plaintiffs have sought an extraordinary remedy of a mandatory injunction against
12 the City, they bear a nearly insurmountable burden. A cursory review of the facts
13 demonstrates their inability to carry their burden.

14 A. Unprecedented times and unprecedented measures

15 Arizona is facing an unprecedented water shortage after years of drought
16 conditions. Indeed, the Colorado River Basin is in a Tier 2a shortage for 2023, reducing
17 Arizona’s water supply by more than a third. Central Arizona Project, *Colorado River*
18 *Shortage*, [http://www.cap-az.com/water/water-supply/adapting-to-shortage/colorado-](http://www.cap-az.com/water/water-supply/adapting-to-shortage/colorado-river-shortage/)
19 [river-shortage/](http://www.cap-az.com/water/water-supply/adapting-to-shortage/colorado-river-shortage/). To be ready for more cuts, the Legislature has required that all municipal
20 water systems develop a drought preparedness plan. A.R.S. § 45-342(A)(2). The drought
21 preparedness plan must include “emergency response stages providing for the
22 implementation of measures in response to reduction in available water supply” as well as
23 “[s]pecific water supply or water demand management measures for each stage of drought
24 or water shortage conditions.” *Id.* at (I)(2), (3)(c). The proposed plan must be submitted
25 to the Director of the Arizona Department of Water Resources. *Id.* at (B).

26 In accordance with this legislative directive, the City drafted, considered, and
27 enacted a comprehensive drought management plan, attached as “Exhibit A” (the
28 “Drought Plan”). The current Drought Plan was approved by the City Council on April 6,

1 2021 via a resolution and ordinance. The Drought Plan has five water shortage stages,
2 triggered by the Bureau of Reclamation’s Colorado River Drought Contingency Plan
3 Tiers. Ex. A at 11. When a Tier 1 Shortage is declared by the Secretary of the Interior,
4 Stage 1 of the Drought Plan goes into effect. Ex. A at 13. In the event of a Stage 1 Shortage,
5 “[a]ny water hauling operations will cease, unless the water hauling customer . . . can
6 prove indisputably that the hauled water is being supplied directly to a City of Scottsdale
7 resident or business.” Ex. A at 15. That prohibition is motivated by, in part, the City’s
8 recycling of water that enters the City’s sewer system, which the City can use to recharge
9 aquifers or for other purposes. <https://www.scottsdaleaz.gov/water/recycled-water>. Water
10 carried out of the City is lost to its system.

11 In response to the Bureau of Reclamation declaring the first-ever Tier 1 Shortage
12 in the Colorado River Basin, the City activated Stage 1 of the Drought Plan on August 17,
13 2021.

14 **B. Rio Verde Foothills**

15 Rio Verde Foothills (“RVF”) is an unincorporated area of Maricopa County to the
16 east of the City, bordering the Tonto National Forest. [Compl. ¶ 8.] There is no water
17 service to RVF, and the City has installed no water infrastructure in RVF. [*Id.* ¶ 9.]
18 Plaintiffs claim to be residents of RVF who rely on hauled water obtained from the City.
19 [*Id.* ¶ 11.]

20 The City has previously permitted the hauling of excess water it did not need for
21 its residents, but has long warned that water-hauling arrangement was not a permanent
22 solution for RVF. [City Manager Memorandum dated Dec. 19, 2022, Application Ex. B
23 at 2.] The residents of RVF were told “the City cannot guarantee service in the future and
24 has advised the area residents to obtain a separate water source.” [*Id.*] That communication
25 was repeated in 2019, 2020, and 2021 to RVF and Maricopa County. [*Id.*]

26 RVF is uniquely challenging because its growth is unfettered. In the absence of
27 municipal government to regulate growth, the land is regulated only by Maricopa County.
28 Under the County’s regulations, subdivisions of fewer than five lots are not required to

1 demonstrate the presence of an assured 100-year water supply. Many developers in RVF
2 have exploited these regulations to build so-called “wildcat” subdivisions without
3 planning for water source or infrastructure. [*Id.* at 5.] By comparison, the City has used
4 the taxes and fees paid by its citizens to ensure an adequate 100-year assured water supply
5 for the entire City at full build-out, certified by the Arizona Department of Water
6 Resources. [*Id.* at 2.] Because it is outside its boundaries and control, the City has not (and
7 could not) factor development in RVF into its plans for an assured water supply. [*Id.*]

8 **C. Plaintiffs and alternative water solutions**

9 Virtually none of the Plaintiffs even had a direct interaction with the City in
10 connection with their taking of excess municipal water. Only *one* of the Plaintiffs—
11 Patrick Kruse—had an account with the City and paid directly with the City for water;
12 apparently, every other Plaintiff relied on commercial water haulers. [Jackman Decl. ¶¶
13 7–8.] There is no allegation that any Plaintiff has paid any tax, hookup fee, sewer fee, or
14 any other typical utility fee to the City. And it is undisputable as a matter of common sense
15 that the water hauled to RVF will not enter the City’s sewer system, where it could be
16 reclaimed and put to productive use.

17 Consistent with its years of warnings, in August 2022, the City sent notices to those
18 people who had direct accounts with the City, explaining that the City would be closing
19 their accounts effective January 1, 2023 unless they could prove residency. [Kruse Decl.
20 Ex. B.] The City limited access to its water-hauling station to all out-of-City uses and
21 users on January 1.

22 Plaintiffs not only feign surprise at that decision, but disregard the various other
23 options they have to receive water. The residents of RVF could have formed a domestic
24 water improvement district, a political entity with governmental powers designed for
25 exactly this type of situation, to obtain water. But even setting aside their opposition to
26 the formation of such a district, Plaintiffs have myriad other immediate solutions available
27 to them. By way of example only, the Apache Junction Water District has potable water
28 available to anyone who wants to haul it from its standpipe for \$7.96 *per thousand gallons*.

1 Apache Junction Water District,
2 https://www.ajwaterdistrict.org/upload/rates/potable_rates_22-23_final.pdf. And private
3 water haulers continue to accept orders to deliver water to RVF.
4 <https://www.rioverdewater.com/order-water-rv>. The City is not the *only* source from
5 which Plaintiffs can obtain water—they would simply *prefer* to piggyback off of the City’s
6 system.

7 **II. Argument**

8 Plaintiffs are not entitled to any relief, much less the extraordinary relief of a
9 mandatory temporary restraining order, for at least two reasons. First, Plaintiffs fail to
10 satisfy the traditional test for emergency injunctive relief. Second, Plaintiffs’ request is
11 procedurally defective in numerous respects.

12 **A. Plaintiffs have failed to satisfy the standard for temporary injunctive relief.**

13 Plaintiffs’ application for relief is shockingly cursory—it spans only five pages
14 with declarations from only two of the more than 60 Plaintiffs. It scarcely argues, much
15 less establishes, the presence of the factors required for entry of emergency relief.

16 As federal courts have explained in interpreting the federal analog to Rule 65,
17 “[t]he analysis for granting a TRO is substantially identical to that for a preliminary
18 injunction.” *Recovery Hous. Acad. LLC v. Candelario*, 562 F. Supp. 3d 333, 339 (D. Ariz.
19 2022) (internal quotation marks omitted). The Court is directed to consider four factors in
20 determining whether to enter emergency temporary injunctive relief: (1) whether the
21 movant has shown a strong likelihood of success on the merits; (2) the possibility of
22 irreparable injury; (3) the balance of hardships in the moving party’s favor; and (4)
23 whether public policy favors the requested relief. *Powell-Cerkoney v. TCR-Montana*
24 *Ranch Joint Venture, II*, 176 Ariz. 275, 280 (App. 1993) (citing *Shoen v. Shoen*, 167 Ariz.
25 58, 63 (App. 1990)). The scale is not absolute, but sliding, and “the moving party may
26 establish either: (1) probable success on the merits and the possibility of irreparable injury;
27 or (2) the presence of serious questions and the balance of hardships tip sharply in [the
28 party’s] favor.” *Shoen*, 167 Ariz. at 63 (internal quotation marks omitted).

1 **1. Plaintiffs have not demonstrated any likelihood of success on the**
2 **merits.**

3 **a. Water hauling is not a “utility service.”**

4 Arizona law has been clear for eighty years that a municipality not only can, but
5 **must**, provide water preferentially to its own citizens in times of shortage. *City of Phoenix*
6 *v. Kasun*, 54 Ariz. 470, 474 (1939). Indeed, the provision of water outside its boundaries
7 is “subject to the prior rights of its inhabitants in case of shortage.” *Long v. Town of*
8 *Thatcher*, 62 Ariz. 55, 65–66 (1944) (quoting *City of Phoenix v. Kasun*, 54 Ariz. 470, 475
9 (1939)). “[A]bsent either a statutory or contractual obligation, a municipality has no duty
10 to provide service to nonresidents.” *TDB Tucson Group, L.L.C. v. City of Tucson*, 228
11 Ariz. 120, 125 ¶ 17 (App. 2011).

12 Against this backdrop, Plaintiffs’ argument is reducible to a single, flawed
13 premise—that the City’s permitting an individual and commercial water haulers to
14 purchase excess water *within the municipal boundaries* constituted a “utility service”
15 under A.R.S. § 9-516 *outside the municipal boundaries* that must eternally endure. But
16 that legal premise is fundamentally incorrect. “The distinguishing characteristic of a
17 public utility is the devotion of private property by the owner to such a use that the public
18 generally . . . has the right to demand that such service, so long as it is continued, shall be
19 conducted with reasonable efficiency and under proper charges.” *Kasun*, 54 Ariz. at 475.

20 No one could reasonably view RVF as receiving a “utility service” from the City.²
21 There are no hallmarks of a water utility system in RVF: there are no pipes, force mains,
22 City-owned storage tanks, water meters, or anything else. There is no “private property”
23 dedicated to a broader public water use anywhere in RVF: there are no easements or public
24 dedications for publicly owned infrastructure. Rather than share the common burdens of
25 a public utility—paying taxes to purchase and maintain infrastructure or dedicating land

26 _____
27 ² By definition, Scottsdale does not provide domestic water service to any resident of RVF.
28 Under the City Code, “domestic water” service is defined as “water supplied through the
pipes of the water system of the City.” Scottsdale City Code § 49-16.

1 for the construction of infrastructure for common good—Plaintiffs simply want a free
2 ride.³

3 Plaintiffs’ assertions that permitting water haulers to fill their tanks from a
4 municipal source is a “utility service” would create absurd results, which is a universally
5 disfavored interpretation. *In re Estate of Zaritsky*, 198 Ariz. 599, 603 ¶ 11 (App. 2000).
6 The City has no relationship with virtually any of the Plaintiffs; its only relationships are
7 with the commercial water haulers that were filling their tanks with the City’s water. In
8 that paradigm, the City has absolutely no control over where the water tankers would take
9 its water. In Plaintiffs’ view, any person who received water from water haulers would
10 be—without the City’s knowledge—receiving utility service from the City. Even a home
11 water delivery service (like Sparkletts), or a commercial water-filling station (like
12 Watermill Express) would constitute a utility service. Such an interpretation makes no
13 sense.

14 Further, even if permitting water haulers to accept excess water from a municipal
15 standpipe constitutes “utility service,” that service is completed entirely within the City’s
16 limits. A.R.S. § 9-516(C) has nothing to say regarding the discontinuation of particular
17 types of service within City limits, and the statute simply does not apply.

18 **b. A.R.S. § 49-342 permits the City to restrict certain water uses.**

19 Even if the provision of water to water haulers is a utility service (and it is not) the
20 City is authorized as a matter of statutory construction to limit that service. “[W]hen a
21 general and a specific statute conflict, we treat the specific statute as an exception to the
22 general, and the specific statute controls.” *Mercy Healthcare Arizona, Inc. v. Arizona*
23 *Health Care Cost Containment Sys.*, 181 Ariz. 95, 100 (App. 1994).

24 As explained above, A.R.S. § 49-342 *requires* the City to enact a drought
25 management plan that contemplates the emergency response to a shortage of water. That
26

27 ³ The fees paid by the City’s citizens to maintain the water system are not insubstantial.
28 Indeed, a one-time fee for connecting to the City’s system for a single-family home is more
than \$1,600. Scottsdale City Code § 49-21.

1 statute recognizes an intractable reality that Plaintiffs do not—there is simply not enough
2 water to go around. Thus, even if A.R.S. § 9-516(C) applies—and it does not—at most it
3 *generally* prohibits a municipality from turning off utility service for outsiders. In times
4 of shortage, however, the City is going to have to cut something and its resident taxpayers
5 have first dibs to its water supply. *Kasun*, 54 Ariz. 470.

6 **c. Plaintiffs cannot obtain any relief under the anti-injunction act.**

7 Finally, Plaintiffs cannot obtain any of the relief requested in their Complaint under
8 A.R.S. § 12-1802. Pursuant to that statute, the Court is precluded from granting an
9 injunction to, *inter alia*, “prevent enforcement of a public statute by officers of the law for
10 the public benefit,” or to “prevent a legislative act by a municipal corporation.” A.R.S. §
11 12-1802(4), (7). Plaintiffs are, in sum and substance, seeking to enjoin enforcement of the
12 Drought Plan, as well as A.R.S. § 45-342 requiring the City to maintain the Drought Plan.
13 Such an injunction is not permissible.

14 **2. Plaintiffs cannot demonstrate harm, much less irreparable harm.**

15 Plaintiffs must demonstrate that, absent an injunction, *each* is faced with the
16 possibility of an immediate, irreparable injury not remediable by damages. *IB Prop*
17 *Holdings, LLC v Rancho Del Mar Apartments Ltd. P’ship*, 228 Ariz. 61, 64 ¶ 9 (2011).
18 Plaintiffs cannot do so for four reasons. First, Plaintiffs have no immediate, irreparable
19 injury because Plaintiffs have access to water. Second, to the extent it is an “injury” to use
20 a new water source, that injury is remediable by damages, which are easily quantifiable.
21 Third, there is no evidence before the Court of any harm for all but two of the Plaintiffs.
22 Finally, Plaintiffs’ delay in bringing this case militates against a finding of harm.

23 Plaintiffs have access to water. This fact is singularly dispositive of Plaintiffs’
24 request for extraordinary injunctive relief. In the short term, as noted above, Plaintiffs are
25 able to haul water from other sources. In the long term, Plaintiffs have a number of
26 alternatives available to them that do not involve the City, such as forming a domestic
27 water improvement district.
28

1 Thus, rather than the doomsday scenario Plaintiffs have contrived, the only
2 conceivable harm Plaintiffs could articulate is simple and reducible to money damages:
3 the delta between the cost of the water Plaintiffs would have acquired from the City and
4 the cost of the water Plaintiffs did acquire from another source. This is precisely the type
5 of injury for which a preliminary injunction is wholly inappropriate. *Cracchiolo v. State*,
6 135 Ariz. 243, 247; 660 P.2d 494 (1983) (holding no irreparable harm and vacating the
7 entry of an injunction where money damages constituted an adequate remedy).

8 More fundamentally, this Court cannot find the existence of immediate, irreparable
9 injury because, for the vast majority of the Plaintiffs, there is simply no evidence before
10 the Court of any harm at all; and with respect to the remaining three—Wendy Walker,
11 Patrick Kruse, and Larry Wolff—the evidence is plainly insufficient. It should go without
12 saying that to make a showing of immediate, irreparable injury, Plaintiffs must adduce
13 evidence supporting their claims. With respect to the two plaintiffs that filed affidavits,
14 those affidavits are plainly insufficient to establish the immediacy of irreparable harm
15 because they do not assert they have no other source of water. They do not because they
16 cannot.

17 Finally, the fact that Plaintiffs delayed bringing this case militates against a finding
18 of harm. *Oakland Tribune, Inc. v. Chronicle Pub. Co., Inc.*, 762 F.2d 1374 (9th Cir. 1985)
19 (“Plaintiff’s long delay before seeking a preliminary injunction implies a lack of urgency
20 and irreparable harm.”). The City informed Plaintiffs of their planned action many months
21 ago, and effectuated that plan weeks ago, but Plaintiffs inexplicably delayed in seeking
22 any judicial intervention.

23 **3. Plaintiffs cannot show that the equities or public policy favors**
24 **emergency relief.**

25 Plaintiffs must also show that the balance of hardships favors Plaintiffs and that
26 public policy favors the injunction. *IB Prop Holdings*, 228 Ariz. at 64 ¶ 9. In cases where
27 the government is a party, it is appropriate to consider these two factors together. See *Nken*
28 *v. Holder*, 556 U.S. 418 (2009). These factors overwhelmingly favor the City, which,

1 following the declaration of a drought and Tier 1 Shortage, is carrying out its Drought
2 Plan as contemplated by both state law and City ordinance.

3 There is no question that the Drought Plan is a legitimate exercise of the City’s
4 police powers. Plaintiffs would have this Court order the City to disregard the Drought
5 Plan simply because they don’t want to pay more money to access water. There is no
6 equity in enjoining the City from exercising its powers to protect its citizenry from drought
7 to save a selected handful of non-residents from the economic realities of their choice to
8 live without a regulated water supply. Public policy does not favor burdening the many
9 with the questionable decisions of a few.

10 The hyperbolic assertions of lacking a “daily domestic water supply” [App. at 5] is
11 insufficient to tip the equities. As noted repeatedly, Plaintiffs do not allege—because they
12 cannot consistent with Rule 11—that they have no other options for water. They have
13 water; they would just prefer the City’s. By contrast, Plaintiffs are demanding *thousands*
14 of gallons of water from the City, regardless of its impact on the City’s assured water
15 supply, in a manner neither contemplated nor considered in the City’s long term water
16 planning. The hardship suffered by the City’s residents if outsiders are permitted to veto
17 their considered and reasoned Drought Plan is self-evident.

18 **B. A host of procedural deficiencies prevent entry of any form of**
19 **preliminary injunctive relief.**

20 **1. The Plaintiffs’ failure to specify the parameters of any injunction**
21 **is problematic.**

22 In entering a temporary restraining order or preliminary injunction, Rule 65
23 requires that “every order granting an injunction and every restraining order . . . state [the
24 injunction or restraining order’s] terms specifically” and “describe in reasonable detail the
25 acts or acts restrained or required.” Ariz. R. Civ. P. 65(d). As explained by the Supreme
26 Court analyzing the federal analog to Rule 65, “[t]he specificity provisions of Rule 65(d)
27 are no mere technical requirements. The Rule was designed to prevent uncertainty and
28 confusion on the part of those faced with injunctive orders, and to avoid the possible

1 founding of a contempt citation on [an order] too vague to be understood.” *Schmidt v.*
2 *Lessard*, 414 U.S. 473, 476 (1974).

3 Plaintiffs have failed to provide the Court with a proposed form of order, leaving
4 the City (and the Court) to guess at the possible scope of the requested injunction. The
5 closest the Plaintiffs come to requesting a specific form of relief is in the Application for
6 Temporary Interlocutory Stay, where the Plaintiffs suggest that their injunction would
7 enjoin the City from preventing “Plaintiffs and the Rio Verde Foothills residences and
8 their agents” the ability to purchase water from the City. The basic questions of “who,
9 what, when, where, and why” of their suggested motion are not outlined by any proposed
10 form of order. This glaring omission prevents the Court from entering any injunction with
11 the requisite specificity under Rule 65 of the Arizona Rules of Civil Procedure.

12 **a. Plaintiffs have provided no meaningful geographic limitation or**
13 **quantifiable understanding of the proposed injunction.**

14 Plaintiffs’ failure to present a workable (or any) proposed form of preliminary
15 injunction means that there is no way for the City or the Court to understand precisely
16 who such an injunction would permit to purchase water from the City. The Application
17 seeks to permit not only Plaintiffs, but also “Rio Verde Foothills residences [sic] and their
18 agents” to access City water [App. at 1.] “Rio Verde Foothills” is not a defined term
19 anywhere in the Plaintiffs’ filings and does not refer to any particular or defined
20 geographic area in the state of Arizona. Indeed, as development continues RVF, there is
21 essentially no limit to the number of individuals who would fall under Plaintiffs’ proposed
22 injunction, *including individuals who have never purchased water from the City*, or who
23 have yet to purchase property in the undefined geographic area.

24 **b. Plaintiffs have proposed no time limitation to requiring the City**
25 **to provide water outside of its water system boundaries.**

26 In addition to providing absolutely no meaningful geographic boundary or
27 limitation, Plaintiffs’ proposal has no time limitation. The Complaint and its attachments
28 admit that the Plaintiffs are seeking a long-term solution elsewhere and that Plaintiffs do

1 not intend to permanently rely on the City’s limited water resources. Despite appearing to
2 demand a temporary solution, Plaintiffs seek an indefinite water pass. The Court cannot
3 enforce such an indefinite injunction.

4 **c. Plaintiffs have provided absolutely no evidence supporting**
5 **entry of an injunction.**

6 As explained above, there is no evidence to support an injunction for any Plaintiff,
7 much less all of them, the vast majority of whom have submitted nothing to support their
8 request for relief. Arizona Rules of Civil Procedure 65(d) and 52(a)(2) require this Court
9 to state all reasons for issuing a preliminary injunction or temporary restraining order. The
10 Court simply cannot do so with the limited record before it. *Miller v. Board of Sup'rs of*
11 *Pinal County*, 175 Ariz. 296, 299 (1993); *Miller v. McAlister*, 151 Ariz. 435, 437 (App.
12 1986) (holding that the trial court must make findings of fact if the remedy sought is a
13 preliminary injunction).

14 **2. Plaintiffs have failed to address the bond requirement.**

15 This court is only empowered to issue a preliminary injunction or a temporary
16 restraining order “if the movant gives security in such amount as the court considers
17 proper to pay the costs and damages sustained by any party found to have been wrongfully
18 enjoined or restrained.” Ariz. R. Civ. P. 65(c)(1). The court should give “significant
19 consideration” and set a “reasonable” bond before entering any preliminary injunction or
20 temporary restraining order. *Matter of Wilcox Revocable Tr.*, 192 Ariz. 337, 341 (App.
21 1998).

22 The Plaintiffs did not even attempt to address the bond requirement in their motion
23 seeking to enjoin the City from complying with its state-approved Drought Management
24 Plan. While the scope of the Plaintiffs’ wanted injunction is not clear,⁴ Scottsdale’s water
25

26
27 ⁴ Indeed, neither the City, nor this court, can truly conceive the amount of water the
28 Plaintiffs believe they are entitled to because nothing in the Plaintiffs’ pleadings quantifies
their water usage, present or proposed.

1 supply is finite, measurable, and only replaceable at an ever-increasing cost due to drought
2 conditions.

3 **III. Conclusion**

4 Based on the foregoing, the Court should deny the requested emergency temporary
5 restraining order. Because the Complaint is subject to dismissal for myriad reasons
6 intertwined with the reasons that preliminary injunctive relief is inappropriate, the City
7 asks that the Court set a briefing schedule on the requested injunctive relief that coincides
8 with the time for the filing of a Rule 12 motion—taking into account the requirement for
9 good faith conferral before the filing of such a motion—so that the City’s response and
10 motion are considered together.

11 **RESPECTFULLY SUBMITTED** January 20, 2023.

12 **DICKINSON WRIGHT PLLC**

13 By: /s/ Scot L. Claus

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19 Scottsdale*

20 The foregoing was **e-filed** with the Clerk of
21 the Superior Court on January 20, 2023,
22 and a copy **e-served** on:

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