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Attorneys for Plaintiff

**UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA**

(1) **Caesar Otioti**, as personal representative
of the **Estate Of Joseph Moi**, deceased;
(2) **David Abirigo** and **Rita Gale**, parents of
Joseph Moi, deceased,

Plaintiffs,

vs.

(3) **State Of Arizona**, a governmental
entity;
(4) **Roger Vanderpool**, in his individual and
official as director of the Arizona
Department of Public Safety, and
(5) **Jane Doe Vanderpool**, husband and
wife;
(6) **Travis Palmer**, in his individual and
official capacity as an officer with the
Arizona Department of Public Safety, and
(7) **Jane Doe Palmer**, husband and wife;
(8) **John Does I-X**;
(9) **Black Corporations I-V**,

Defendants.

No. CV07-443-PHX-SRB

JOINT PROPOSED PRETRIAL ORDER

Pursuant to the Scheduling Order previously entered, the following is the Joint Proposed Pretrial Order to be considered at the Final Pretrial Conference set for Monday, February 9, 2009, at 10:30 a.m.

A. TRIAL COUNSEL FOR THE PARTIES

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1
2 **B. STATEMENT OF JURISDICTION/VENUE**

3 This Court has jurisdiction over Plaintiffs' federal civil rights claim pursuant to 28
4 U.S.C. §§ 1331 and 1343. This Court has jurisdiction over Plaintiffs' claims under Title II
5 of the Americans with Disabilities Act pursuant to 28 U.S.C. §§ 1331 and 1332(a)(3) and
6 (4). This Court has supplemental jurisdiction over Plaintiffs' state law causes of action
7 pursuant to 28 U.S.C. § 1367(c).
8

9 The acts complained of occurred within Maricopa County, State of Arizona. All
10 defendants reside in Arizona. Thus, venue is proper in the District of Arizona pursuant to
11 28 U.S.C. § 1391(b).
12

13 **C. NATURE OF ACTION**

14 Joseph Moi was shot and killed by Travis Palmer, an officer with the Arizona
15 Department of Public Safety, on February 26, 2005. Plaintiffs – the parents and estate of
16 Mr. Moi – allege in the present matter that Palmer acted unreasonably and used
17 unreasonable force, through and including both an unreasonable use of a Taser and the
18 subsequent use of deadly force. Plaintiffs further allege that Palmer's actions were
19 negligent and/or an assault, entitling them to recovery under Arizona's wrongful death
20 statute. Finally, Plaintiffs claim that the Arizona Department of Public Safety violated the
21 Americans with Disabilities Act, in that it failed to adequately train its officers to deal with
22 mentally disabled persons.
23
24

25 **D. JURY/NON-JURY**

26 All parties made timely demands for jury trial, none of which is contested.
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1 **E. CONTENTIONS OF THE PARTIES**

2 **1. Plaintiffs**

3 (1) 42 U.S.C. § 1983. Plaintiffs must show that (1) the defendants acted
4 under color of state law, and (2) the defendants deprived plaintiff of rights secured by the
5 Constitution or federal statute. *Sanchez v. City of Santa Ana*, 936 F.2d 1027, 1038 (9th
6 Cir. 1990). Mr. Moi's family may recover based solely on their relationship and the
7 underlying allegations of excessive force against Mr. Moi. *See Smith v. City of Fontana*,
8 818 F.2d 1411, 1420 (9th Cir. 1987) ("Therefore, the same allegation of excessive force
9 giving rise to Mr. Smith's substantive due process claim based on his loss of life also gives
10 the children a substantive due process claim based on their loss of his companionship"),
11 *overruled on other grounds, Hodgers-Durgin v. de la Vina*, 199 F.3d 1037 (9th Cir.
12 1999).¹

13 In the present matter, the Estate of Joseph Moi may recover for all damages
14 proximately caused by Defendants' violation of the Fourth Amendment, which prohibits
15 unreasonable seizures. In light of the de minimus governmental interest at stake in the
16 present matter, Palmer's use of force, including both his initial decision to fire the Taser at
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22 1 Plaintiffs dispute Defendant State of Arizona's reliance on *Moreland v. Las Vegas*
23 *Metropolitan Police*, 159 F.3d 365 (9th Cir. 1998). In *Moreland*, police used legitimate
24 lethal force to end a gunfight in the parking lot of a local bar. The primary assailant was
25 shot and killed. However, an innocent bystander was also killed in the cross-fire, with the
26 fatal shot coming from an officer's bullet. In holding that the use of force against the
27 primary assailant was proper and justified, the Ninth Circuit held that the family of the
28 innocent bystander had to demonstrate that the accidental shooting was independently
unconstitutional in order to recover for loss of familial relations. Since Mr. Moi was the
direct target of Palmer's force, and that force excessive, *Moreland* does not apply to the
case at hand.

1 Joseph and his subsequent use of deadly force, was objectively unreasonable under the
 2 circumstances of this case. *See Davis v. City of Las Vegas*, 478 F.3d 1048, 1053-54 (9th
 3 Cir. 2007) (quotations omitted).

4
 5 Joseph Moi's parents, Plaintiffs David Abirigo and Rita Gale, are also entitled to
 6 recover through incorporation of Arizona's wrongful death statute pursuant to 42 U.S.C. §
 7 1988. *See Rentz v. Spokane County*, 438 F.Supp.2d 1252, 1263 (E.D.Wash. 2006)
 8 ("[R]ecover by decedent's parents under Washington's wrongful death statutes is
 9 appropriate to further the goals of § 1983") (citing *Brazier v. Cherry*, 293 F.2d 401 (5th
 10 Cir.), *cert. denied*, 368 U.S. 921, 82 S.Ct. 243 (1961); *Carringer v. Rodgers*, 331 F.3d 844,
 11 850 (11th Cir. 2003)).

12
 13 In addition, Plaintiffs David Abirigo and Rita Gale may also recover under
 14 substantive due process. *See Smith v. City of Fontana, supra*. There is some confusion
 15 over the proper standard for such a claim. Many courts and practitioners reasonably
 16 understood the *Fontana* due process doctrine to provide a "derivative" constitutional claim
 17 for the actual victims – family members -- of a constitutional violation resulting in death.
 18 *See, e.g., Estate of Gonzales v. Hickman*, 2007 WL 3237727, 12-13 (C.D.Cal. 2007). The
 19 *Hickman* Court noted that "[t]hese claims [of familial association] are derivative of the
 20 Estate's claim and are **consequently governed by the same substantive standard.**" *Id.* at
 21 *13 (emphasis added); *see also Estate of Torres v. Terhune*, 2002 WL 32107950, *10
 22 (E.D.Cal. 2002) ("Plaintiffs' Fourteenth Amendment rights to the companionship of
 23 Torres, however, derive from the decedent's constitutional rights"); *Johnson v. City of*
 24 *Oakland*, 1997 WL 776368, *4 (N.D.Cal. 1997) ("Survivors' Fourteenth Amendment
 25 rights to the companionship of a decedent derive from the decedent's constitutional rights.

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1 **Therefore the elements of any due process claim brought by survivors incorporate**
 2 **those of the decedent's underlying constitutional claim”**) (citation to *Fontana* omitted;
 3 emphasis added). However, the Ninth Circuit has apparently held that a parents’
 4 constitutional claim is governed by the “deliberate indifference” test typical of substantive
 5 due process claims. *See Byrd v. Guess*, 137 F.3d 1126, 1134 (9th Cir.), *cert. denied*, 525
 6 U.S. 963, 119 S.Ct. 405 (1998) (A family member “had to prove that the Officers acted
 7 with deliberate indifference to the [family members’] rights of familial relationship and
 8 society by using excessive force against [the decedent]”).

11 (2) *Americans with Disabilities Act*, 42 U.S.C. § 12131, *et seq.*, and the
 12 *Rehabilitation Act of 1973*, 29 U.S.C. § 794, *et seq.* Generally, under Title II of the
 13 Americans with Disabilities Act and Rehabilitation Act of 1973, a plaintiff must show that
 14 (1) the plaintiff is an individual with a disability; (2) the plaintiff is otherwise qualified to
 15 participate in or receive the benefit of some public entity's services, programs, or activities;
 16 (3) the plaintiff was either excluded from participation in or denied the benefits of the
 17 public entity's services, programs, or activities, or was otherwise discriminated against by
 18 the public entity; and (4) such exclusion, denial of benefits, or discrimination was by
 19 reason of the plaintiff's disability. *Weinreich v. L.A. County Metro. Transp. Auth.*, 114
 20 F.3d 976, 978 (9th Cir.1997). “Quite simply, the ADA's broad language brings within its
 21 scope anything a public entity does.” *Lee v. City of Los Angeles*, 250 F.3d 668, 691 (9th
 22 Cir. 2001). In particular, a law enforcement agency has the duty to its “the tools and
 23 resources to handle the situation peacefully” involving mentally challenged individuals.
 24 *Schorr v. Borough of Lemoyne*, 243 F.Supp.2d 232 (M.D.Pa. 2003).

1 In order to receive compensatory damages under both Title II of the ADA and the
 2 Rehabilitation Act, a plaintiff must also show that the state actor's culpability was at least
 3 that of deliberate indifference. *Lovell v. Chandler*, 303 F.3d 1039, 1056 (9th Cir. 2002);
 4 *Duvall v. County of Kitsap*, 260 F.3d 1124, 1129 (9th Cir.2001).

6 In order to recover under the Rehabilitation Act, a plaintiff must also show that the
 7 defendant was a recipient of federal funds. *Weinreich, supra*.

8 (3) *Wrongful death*. In Arizona, the statutory beneficiaries of a decedent,
 9 including the decedent's parents, are entitled to maintain an action for the decedent's
 10 wrongful death. *See A.R.S. § 12-612.*² In the present matter, Defendant Palmer's conduct
 11 leading to Joseph's death was negligent, requiring a showing of duty, breach of duty,
 12 causation, and damages. *See, e.g., Phillips v. Clancy*, 152 Ariz. 415, 418, 733 P.2d 300,
 13 303 (App. 1986). In addition Defendant Palmer committed the tort of assault, "intentional
 14 creation of an apprehension of immediate physical harm by means of an overt gesture,"
 15 Nolan and Sartori, Tort Law § 12, at 5-10 (2002); Restatement (Second) of Torts § 21
 16 (1965), and battery, the intentional, unauthorized touching of another person, *Cathemer v.*
 17 *Hunter*, 27 Ariz.App. 780, 784, 558 P.2d 975, 980 (1977). Plaintiffs further contend that
 18 the State of Arizona is also liable on the wrongful death count because, as Officer Palmer's
 19 employer, the State of Arizona, is vicariously liable for his acts or omissions.
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26 2 Although an estate may be a statutory beneficiary, this is true only if there are no
 27 other living statutory beneficiaries. *See Carrasco v. State*, 199 Ariz. 494, 498, 19 P.3d
 28 635, 639 (App. 2001). Since Mr. Moi's parents are alive, Plaintiffs do not bring any
 common law claims on behalf of the Estate.

1 **2. Defendant Palmer**

2 Count One of the First Amended Complaint alleges a claim for wrongful death
3 pursuant to A.R.S. § 12-611, et seq., against the State of Arizona and Officer Travis
4 Palmer by the Estate of Joseph Moi and David Abirigio and Rita Gale, the parents of
5 Joseph Moi.
6

7 A.R.S. §-611 provides that when a death is caused by a wrongful act, neglect or
8 default that would have, if the injured party had not died, entitled the injured party to
9 recover damages, the person or corporation that would have been liable for damages shall
10 be liable for damages notwithstanding the death of the injured person. A.R.S. § 12-612(A)
11 prescribes the persons and entity, i.e., the estate, who can bring the action. A.R.S. § 12-
12 612(C) limits the persons who can recover to those who have the right to bring the action.
13 However, the estate is a beneficiary only if none of the other named beneficiaries survive.
14 *Solomon v. Harmon*, 107 Ariz. 429, 430, 489 P.2d 236, 240 (1971); *Knauss v. DND*
15 *Neffson Company*, 192 Ariz. 192, 200, 963 P.2d 271, 279 (App. 1998). Because Moi's
16 parents survive, the estate has no claim under A.R.S. § 12-621.
17
18
19

20 The wrongful death statute requires proof of "a wrongful act, neglect or default." In
21 this case the death of Joseph Moi resulted from a shot fired by Officer Palmer. The
22 "wrongful act" upon which the claim is predicated is therefore the shooting. The shooting
23 was an intentional rather than a negligent act and constituted a battery. However, a battery,
24 including battery involving the use of deadly physical force, is justified if a reasonable
25 person in Officer Palmer's situation would have believed that the use or threatened use of
26 deadly physical force was necessary to protect himself from Moi's unlawful use of deadly
27 physical force. A.R.S. §§ 13-404(A) and 13-405, because Moi was fleeing from justice or
28

1 resisting arrest with physical force and using or able to use physical force of deadly
2 physical force against a peace officer who believed such force was necessary for self-
3 protection, A.R.S. § 13-410, and because Officer Palmer reasonably believed that deadly
4 physical force was immediately necessary to prevent the crime of aggravated assault.13-
5 411(A). Officer Palmer reasonably believed that his use of deadly physical force was
6 necessary to protect himself from the rocks being thrown by Moi.
7

8 Count One makes reference to assault, battery, and intentional infliction of emotional
9 distress. Although A.R.S. § 14-3110 provides that most causes of action survive the death
10 of the person entitled to bring the action, and that the personal representative of a deceased
11 person can bring those claims on behalf of the estate, Count One does not allege that any
12 claim is brought pursuant to the statute. It alleges only wrongful death. Moreover, A.R.S. §
13 14-3110 specifically excludes pain and suffering from the damages that can be recovered
14 in a survival action.
15

16
17 Moi was at fault in his death in that he assaulted Officer Palmer both physically and
18 by throwing rocks at him. If the jury finds that Officer Palmer was also at fault, and if the
19 jury decides to apply the defense of contributory negligence, the damages recoverable by
20 David Abrigio and Rita Gale must be reduced in proportion to the relative degree of Moi's
21 fault. A.R.S. § 12-2505; Gibson v. Boyle, 139 Ariz. 512, 515, 679 P. 2d 535 (App. 1984).
22

23 Count Four of the First Amended Complaint alleges that:
24

- 25 1. Moi was denied his Fourth Amendment right to be free of
26 unreasonable seizure by the deployment of the Taser.
- 27 2. Moi was denied his Fourth Amendment right to be free of
28 unreasonable seizure by the shooting.

1 3. David Abirigio and Rita Gale were denied their Fourteenth
2 Amendment right to substantive due process by the shooting of Moi.

3 The claims that Moi was denied his Fourth Amendment right to be free of unreasonable
4 seizures by the deployment of the Taser and the shooting are both to be judged by whether
5 the action of the officer was objectively reasonable under the circumstances. *Graham v.*
6 *Connor*, 490 U.S. 386, 395, 109 S. Ct. 1865 (1989); *Tennessee v. Garner*, 471 U.S. 1, 7,
7 105 S.Ct 1694 (1985).
8

9 With respect to the deployment of the Taser, Officer Palmer first encountered Moi
10 when he saw a vehicle swerve to avoid hitting him. When Officer Palmer directed Moi to
11 move further from the travel lanes of the interstate highway on which he had been walking,
12 Moi refused. Officer Palmer had not only the common sense duty to control a person found
13 walking on the edge of the travel lanes of an interstate highway, he had probable cause to
14 effectuate an arrest of Moi for violations of A.R.S. 13-2906(A) (obstructing a highway or
15 other public thoroughfare) and A.R.S.28-622(A) (failure to comply with police officer)
16 pursuant to A.R.S. §13-3883(A). Officer Palmer was alone in the median of a high speed
17 highway with an individual who was not responding to reasonable direction for his safety
18 and the safety of others. Officer Palmer's deployment of the Taser was reasonable under
19 these circumstances.
20

21 With respect to the shooting, Officer Palmer's attempt to take control of the situation
22 by deploying the Taser prompted Moi to physically attack him. When Officer Palmer was
23 successful in resisting that attack, Moi picked up rocks and threw them at Officer Palmer at
24 close range. Moi persisted even in the face of a drawn weapon and verbal directions from
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Officer Palmer to stop. Officer Palmer's use of deadly force in response to the attack by Moi was reasonable under these circumstances.

The claims that David Abirigio and Rita Gale were denied their Fourteenth Amendment right to substantive due process by the shooting of Moi are to be judged by whether Officer Palmer's purpose was to cause harm unrelated to any legitimate law enforcement objective. *Porter v. Osborn*, 546 F. 3d 1131, 1140 (2008). Officer Palmer's effort to control the situation by deploying his Taser not only was unsuccessful, Moi responded to it by physically attacking him. When Moi's attack was successfully resisted, Moi began to throw rocks at Officer Palmer. Officer Palmer's purpose was to protect himself from the threat of death or serious physical injury posed by Moi. Officer safety is unquestionably a legitimate law enforcement objective. "A police officer may reasonably use deadly force where he 'has probable cause to believe that the suspect poses a threat of serious physical harm, either to the officer or others.'" *Billington v. Smith*, 292 F.3d 1177, 1184, (9th Cir. 2002), quoting *Tennessee v. Garner*, 471 U.S. 1, 11, 105 S. Ct. 1694 (1985).

3. Defendant State of Arizona

(1) The State does not have the burden of proof as to any claim or defense in this matter.

(2) The State objects that Plaintiffs have not acknowledged the differing standards of liability that apply to the Estate's Fourth Amendment claim under §1983 versus the parents' Fourteenth Amendment claim. *Compare Billington v. Smith*, 292 F.3d 1177 (9th Cir. 2002) (re 4th Amendment), with *Moreland v. Las Vegas Metropolitan*

1 *Police*, 159 F.3d 365 (9th Cir. 1998) and *Porter v. Osborn*, 546 F.3d 1131 (9th Cir., 2008)
2 (re 14th Amendment).

3 (3) The State objects to the Plaintiffs' incorrect assertion that 42 U.S.C.
4 §1983 "incorporates" a state law cause of action for wrongful death in favor of decedent's
5 parents, based upon the alleged violations of decedent's Fourth Amendment rights.
6 Plaintiffs rely on the case of *Rentz v. Spokane County*, 438 F.Supp.2d 1252 (E.D. Wash.,
7 2006). To the extent that *Rentz* actually stands for the proposition asserted by the
8 Plaintiffs, it was wrongly decided. The Ninth Circuit Court of Appeals has clearly stated
9 that Fourth Amendment rights are personal to the decedent and cannot be vicariously
10 asserted. *Moreland v. Las Vegas Metropolitan Police, supra*, 159 F.3d at 369. ". . . [T]he
11 general rule is that only the person whose Fourth Amendment rights were violated can sue
12 to vindicate those rights. [Citation omitted.] In §1983 actions, however, the survivors of
13 an individual killed as a result of an officer's excessive use of force may assert a Fourth
14 Amendment claim on that individual's behalf if the relevant state's law authorizes a
15 survival action. [Citation omitted.] The party seeking to bring a survival action bears the
16 burden of demonstrating that a particular state's law authorizes a survival action and that
17 the plaintiff meets that state's requirements for bringing a survival action. [Citation
18 omitted.]" *Id.* A survival action is a vehicle which allows for recovery on claims which
19 accrued to the decedent before death; damages arising from the death itself cannot be
20 recovered in such an action. *Gandy v. United States*; 437 F.Supp.2d 1085, 1087 (D.Ariz.,
21 2006); *Katz v. Filandro*, 153 Ariz. 601, 604, 739 P.2d 822 (App., 1987).

22 (4) The Plaintiffs correctly set forth the basic elements of a cause of action
23 under Title II of the Americans With Disabilities Act and the Rehabilitation Act, as
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1 outlined in *Weinreich v. Los Angeles County Metro. Transportation Authority*, 114 F.3d
2 976 (9th Cir. 1997). To recover on their ADA and Rehabilitation Act claims, the
3 Plaintiffs must establish that the Department of Public Safety engaged in intentional
4 discrimination, which is proven by a showing of deliberate indifference. *Duvall v. County*
5 *of Kitsap*, 260 F.3d 1124, 1138-1139 (9th Cir. 2001).

7 (5) The State disagrees with the Plaintiffs' assertion that negligence is a
8 viable theory of liability in support of the wrongful death cause of action. The acts by
9 which Officer Palmer caused injury to Joseph Moi were not negligent; they were clearly
10 and admittedly intentional. Palmer either committed intentional torts or he committed no
11 torts at all. The issue of whether or not Palmer's conduct was tortious turns on the
12 application of Arizona's self-defense statutes. *See* Title 13, Chapter 4, A.R.S.

14 **F. STIPULATIONS AND UNDISPUTED FACTS**

15 1. Joseph Moi's biological parents are Plaintiffs David Abirigo and Rita
16 Gale.

17 2. Joseph was, at all times relevant to the present matter, a citizen of the
18 United States.

19 3. On February 26, 2005, at approximately 5:30 p.m., Joseph Moi was
20 walking northbound along Interstate 17 near Anthem, Arizona.

21 4. Travis Palmer, an officer with the Department of Public Safety,
22 traveling southbound on Interstate 17, stopped along the median to speak with Mr. Moi.

23 5. At the time of his encounter with Joseph Moi, Officer Palmer was in
24 the course and scope of his employment for the Department of Public Safety.
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G. PLAINTIFF'S CONTENTIONS OF DISPUTED FACT

1. Whether an objectively reasonable officer would recognize that Joseph Moi was mentally disabled at the time that Joseph said that he was going to be killed?

2. Whether the Department of Public Safety properly trained Defendant Travis Palmer in dealing and communicating with persons with mental incapacities.

3. Whether Palmer received adequate training prior to his employment.

4. Whether an objectively reasonable officer would have or should have perceived that Joseph Moi did not pose an immediate threat to Palmer or others through the time that Palmer used his Taser on Joseph.

5. Whether Travis Palmer unreasonably escalated the encounter to the point where he used unjustified deadly force.

6. Whether Travis Palmer wrongfully drew and displayed his Taser in light of Joseph Moi's clear fearfulness.

7. Whether Palmer intended to use his Taser against Joseph Moi as he (Palmer) had told DPS dispatch, even if Joseph Moi did not do anything that would justify the use of a Taser.

8. Whether Palmer's drawing of his Taser exacerbated Mr. Moi's fear.

9. Whether Palmer's express promise that he would not use the Taser was made with Palmer's knowledge that he would in fact use the Taser.

10. Whether Palmer unreasonably used the Taser without any prior warning, particularly in light of his promise not to utilize the Taser.

11. Whether Joseph Moi did any action, or failed to take any action, that warranted the use of a Taser.

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1 12. Whether Palmer's deployment of the Taser on Joseph Moi was an
 2 unreasonable use of force.

3 13. Whether Palmer's unreasonable use of force caused Joseph Moi to act
 4 in self defense.
 5

6 14. Whether the objects thrown by Joseph Moi were thrown at speeds
 7 which presented no meaningful risk of harm to Palmer.
 8

9 15. Whether Palmer decided that he was going to shoot and kill Joseph Moi
 10 after Moi threw the first object at Palmer, even if Moi did not continue in activity that
 11 might cause injury to Palmer.

12 16. Whether a reasonable officer would have feared for his life or bodily
 13 injury by the objects thrown by Joseph Moi as Moi moved away from Palmer.
 14

15 17. Whether Palmer's first shot was an unreasonable use of force.

16 18. Whether Joseph Moi was running away from Travis Palmer at the time
 17 Palmer first his second and third shots.
 18

19 **H. DEFENDANT'S CONTENTIONS OF DISPUTED FACT**

20 **1. Defendant Palmer**

21 A. Officer Palmer agrees that all of the matters listed by Plaintiffs
 22 are disputed.
 23

24 B. The Estate of Joseph Moi has no claim under A.R.S. §12-612.

25 C. Officer Palmer's use of deadly physical force was justified under
 26 A.R.S. §§ 13-404(A), 13-405, 13-410, 13-411(A), and 13-413.
 27
 28

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1 D. Any damages awarded to David Abrigio and Rita Gale on their
2 wrongful death claim should be reduced in proportion to the relative degree of Moi's fault.
3 A.R.S. § 12-2505.

4
5 E. Officer Palmer's deployment of the Taser was objectively
6 reasonable under the circumstances for purposes of Moi's Fourth Amendment excessive
7 force claim.

8
9 F. Officer Palmer's use of deadly force was objectively reasonable
10 under the circumstances for purposes of Moi's Fourth Amendment excessive force claim.

11 G. Officer Palmer's use of deadly force was not the result of a
12 purpose to cause harm unrelated to any legitimate law enforcement objective for purposes
13 of David Abrigio and Rita Gale's Fourteenth Amendment substantive due process claim.

14
15 H. Officer Palmer had probable cause to arrest Moi for violation of
16 A.R.S. § 13-2906(A) – obstructing a highway or other public thoroughfare.

17 I. Officer Palmer had probable cause to arrest Moi for violation of
18 A.R.S. § 28-622(A) – failure to comply with a police officer.

19
20 J. Officer Palmer had probable cause to believe that Moi posed a
21 threat of serious physical harm to him when he used deadly force against Moi.

22 K. Moi was not justified in either threatening the use of or using or
23 physical force or deadly physical against Officer Palmer even if the attempted arrest had
24 been unlawful.

25
26 L. Officer Palmer did not have time to perceive and react to Moi's
27 change of position between the second and third shots
28

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1 **2. Defendant State of Arizona**

2 a. The State agrees that all of the matters listed above by Plaintiffs
3 are disputed.

4 b. The nature and degree of Joseph Moi's fault in the incident.

5 c. The type, nature and degree of damages, if any, sustained by
6 Joseph Moi's estate.

7 d. The type, nature and degree of damages sustained by Plaintiffs
8 David Abirigo and Rita Gale.

9 e. Whether there were shortcomings in the Department of Public
10 Safety's training of its officers in regard to interactions with mentally disabled persons.

11 f. Whether the alleged shortcomings in the Department of Public
12 Safety's training of its officers caused any harm to Joseph Moi.

13 g. Whether alleged shortcomings in the Department of Public
14 Safety's training of its officers amounted to intentional discrimination.

15 h. Whether alleged shortcomings in the Department of Public
16 Safety's training of its officers amounted to intentional discrimination.

17 i. Whether the circumstances of the incident were such as to
18 provide justification for Officer Palmer's uses of force.

19 j. Whether Officer Palmer acted reasonably in self-defense in
20 using deadly force against Joseph Moi.

21 k. If Joseph Moi was retreating at the time Officer Palmer fired his
22 third shot, had there been sufficient time for Palmer to perceive and react to Moi's retreat.

1 1. Whether the expert witnesses are appropriately qualified, and
2 whether their opinions and conclusions are supported by actual facts and reliable scientific,
3 technical or professional principles.
4

5 **I. ISSUES OF LAW IN CONTROVERSY**

6 1. Whether Plaintiffs David Abirigo and Rita Gale can recover for
7 the wrongful death of their son under 42 U.S.C. ' 1983 under the Fourth Amendment by
8 incorporating Arizona's wrongful death statute pursuant to 42 U.S.C. ' 1988.
9

10 2. Whether, under Plaintiffs David Abirigo and Rita Gale's
11 Fourteenth Amendment claim of interference with their right of familial association, the
12 standard is one of deliberate indifference or a purpose to harm, terrorize or kill Mr. Moi
13 that was unrelated to legitimate law enforcement objectives.
14

15 3. Whether Plaintiffs David Abirigo and Rita Gale can recover for
16 wrongful death by proving negligence on the part of Travis Palmer, or whether Plaintiffs
17 David Abirigo and Rita are limited to recovery for intentional torts.
18

19 4, Whether there are any damages that are legally recoverable by
20 the Estate of Joseph Moi under the Americans With Disabilities Act, in light of the fact
21 that Arizona's survival statute, ARS 14-3110, excludes recovery of damages for pain and
22 suffering.
23

24 5. Whether there are any damages that are legally recoverable by
25 the Estate of Joseph Moi under 42 U.S.C. 1983, in light of the fact that Arizona's survival
26 statute, ARS 14-3110, excludes recovery of damages for pain and suffering.
27

28 6. All issues raised in the parties' motions in limine

7. Potentially, issues raised in the parties' summary judgment motions.

J. SEPARATE TRIAL OF ISSUES

A separate trial on issues is neither advisable nor feasible.

K. WITNESSES

1. Plaintiffs

a. Will Be Called At Trial

NAME	SHORT DESCRIPTION OF TESTIMONY	OBJECTIONS
David Abirigo	David Abirigo is Joseph Moi's father, and will testify about his relationship with Joseph.	
Rita Gale	Rita Gale is Joseph Moi's mother, and will testify about her relationship with Joseph.	
Ceaser Otiti	Mr. Otiti was Joseph Moi's uncle, and executor of Mr. Moi's estate. Mr. Otiti will testify about Mr. Moi's life and character.	State of AZ: Relevance, as to decedent's character.
Robert Steven West	Mr. West was a motorist who witnessed some of the exchange between Defendant Palmer and Mr. Moi, and will testify regarding his observations.	
Rick Phillips	Mr. Phillips was a motorist who witnessed some of the exchange between Defendant Palmer and Mr. Moi, and will testify regarding his observations.	
Linda Von Pahlen-Federoff	Ms. Von Pahlen-Federoff was a motorist who witnessed some of the exchange between Defendant Palmer and Mr. Moi, and will testify regarding his observations.	
Gerold Von Pahlen-Federoff	Mr. Von Pahlen-Federoff was a motorist who witnessed some of the exchange between Defendant Palmer and Mr. Moi, and will testify regarding his	

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1		observations.	
2	Stephanie Von Pahlen-Federoff	Ms. Von Pahlen-Federoff was a motorist who witnessed some of the exchange between Defendant Palmer and Mr. Moi, and will testify regarding his observations.	
3			
4			
5	Tina Dion	Ms. Dion was a motorist who witnessed some of the exchange between Defendant Palmer and Mr. Moi, and will testify regarding his observations.	
6			
7	Pastor Cosmas Madile	Pastor Madile is a friend and confidant of Joseph's parents in Uganda/Sudan, and will testify about Pastor Abirigo's and Rita Gale's loss as a result of their son.	State of AZ: Hearsay (potentially)
8			
9			
10	Kennedy Patrick	Mr. Patrick is a friend of Joseph Moi, and will testify regarding Mr. Moi's character and nature.	State of AZ: Relevance.
11			
12	Anthony Victor	Mr. Victor is a friend of Joseph Moi, and will testify regarding Mr. Moi's character and nature.	State of AZ: Relevance
13			
14	Major William R. Reutter	Major Reutter chaired the Critical Incident Review Board which oversaw the review of Palmer's shooting, and will provide foundation for the report of the Board.	State of AZ: Admissibility depends on Court's ruling on motion in limine.
15			
16			
17	Silvestro Bakhiet	Mr. Bakhiet is a member of the Madi tribe (the same as Joseph and his parents), and will testify regarding Madi/African customs and cultures.	State of AZ: Relevance; foundation
18			
19			
20	Kimberly Williams	Ms. Williams was a motorist on Interstate 17 on the day of the incident at issue, and saw Mr. Moi shortly before the incident.	
21			
22			
23	Kandi Beaman	Ms. Beaman works for Advocates for the Disabled, and will testify regarding her role in handling Joseph's income, as well as her personal knowledge regarding Joseph.	State of AZ: Relevance.
24			
25			
26	Sherri Whitener	Ms. Whitener works for Advocates for the Disabled, and will testify regarding its role in handling Joseph's income.	State of AZ: Relevance, disclosure
27			
28	Colin Formichella	Mr. Formichella was assaulted by Officer Palmer, resulting in Palmer's	State of AZ: Relevance; Rule 403.

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	arrest for assault.	
Janice Lee Formichella	Ms. Formichella witnessed Palmer's assault of her husband, Colin.	State of AZ: Relevance; Rule 403.
Detective J. Brudnock	Detective Brudnock arrested Palmer for assault, and witnessed Palmer's anger and inappropriate behavior directed at police officers.	State of AZ: Relevance; Rule 403.
Detective F. Amezquita	Detective Amezquita arrested Palmer for assault, and witnessed Palmer's anger and inappropriate behavior directed at police officers.	State of AZ: Relevance; Rule 403.
Vladimir Shvarts, MD	Dr. Shvarts performed the autopsy of Joseph Moi.	
James Gira	James Gira is Joseph Moi's brother, and knows about the emotional distress suffered by his parents.	State of AZ: Hearsay and foundation (potentially).
Anthony Bread	Anthony Bread is a DPS officer who can testify about an earlier incident involving a pedestrian along the freeway, and who can testify regarding the DPS' failure to train.	State of AZ: Relevance; Rule 403; foundation (as to DPS training); disclosure
Bruce Naumann	Bruce Naumann is a DPS officer who can testify about an earlier incident involving a pedestrian along the freeway, and who can testify regarding the DPS' failure to train.	State of AZ: Relevance; Rule 403; foundation (as to DPS training); disclosure
Matthew Ratcliffe	Deputy Ratcliffe is an MCSO deputy who arrived on the scene about 45 seconds after Palmer fired his fatal shots at Moi	
Custodian of Records	Any witness required to provide foundation for any Exhibit listed in section M, below.	

b. May Be Called At Trial

NAME	SHORT DESCRIPTION OF TESTIMONY	OJBECTIONS
David Vasconi	Mr. Vasconi was a motorist on Interstate 17 on the day of the incident, and observed Joseph and Palmer interacting.	
Silvia Arceo	Ms. Arceo was Joseph's landlord.	State of AZ:

		Relevance.
Travis Palmer	Palmer was the officer who shot and killed Joseph.	
Matthew J. Murray	Matthew Murray was the Department of Public Safety Officer charged with the investigation of Joseph Moi's shooting.	
Keith Mulvihill	DPS Officer Mulvihill was present at the shooting scene, and has knowledge regarding the DPS' training (or lack thereof) for mentally challenged individuals.	State of AZ: Foundation, as to DPS' training programs.
Beatrice Ayuru	Beatrice Ayuru is Joseph Moi's sister, and knows about the emotional distress suffered by her parents.	State of AZ: Hearsay and foundation (potentially).
Flora Guru	Flora Guru is Joseph Moi's sister, and knows about the emotional distress suffered by her parents.	State of AZ: Hearsay and foundation (potentially).
Foundational witnesses	Any witness necessary to establish foundation, including private investigators and/or process servers to establish the unavailability of a witness	

c. Probably Will Not Be Called At Trial

NAME	SHORT DESCRIPTION OF TESTIMONY	OBJECTIONS
Howard Grodman	Mr. Grodman was a motorist on Interstate 17 on the day of the incident, and observed Joseph and Palmer interacting.	
Dale Elmer Engstrom	Mr. Engstrom was a motorist on Interstate 17 on the day of the incident, and observed Joseph and Palmer interacting.	
Wilma Berghaus	Ms. Berghaus was a motorist on Interstate 17 on the day of the incident, and observed some of the events involving Mr. Moi and Palmer.	
David Lesnick	Mr. Lesnick was a motorist on Interstate 17 on the day of the incident, and observed Joseph and Palmer interacting.	

1	Everett Parks	Mr. Parks was a motorist on Interstate 17 on the day of the incident at issue, and saw Mr. Moi shortly before the incident.	
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2

3

4 **2. Defendant Travis Palmer**

5 a. **Will Be Called at Trial**

6	NAME	SHORT DESCRIPTION OF TESTIMONY	OBJECTIONS
7	Gustav "Bud" Clark	Officer Clark is the Senior Master instructor in Taser and downloaded the DF. Palmer's Taser information.	Disclosure; see Plaintiff's motion <i>in limine</i> ; relevance.
8	Tina Dion	Ms. Dion was traveling southbound on I-17 and witnessed certain events of the incident	
9	Dale Elmer Engstrom	Mr. Engstrom was traveling southbound on I-17 and witnessed Defendant Palmer with his gun drawn.	
10	Gerald Von Pahlen-Federoff	Mr. Pahlen-Federoff was traveling south on I-17 in the left lane when he witnessed certain events of the incident.	
11	Linda Von Pahlen-Federoff	Mrs. Pahlen-Federoff was a passenger in a vehicle driving south on I-17. Mrs. Pahlen-Federoff witnessed certain events of the incident.	
12	Stephanie Gabriel Von-Pahlen-Federoff	Ms. Gabriel Von-Pahlen-Federoff was a back seat passenger in a vehicle driving south on I-17. Ms. Gabriel witnessed certain events of the incident.	
13	Caesar Otioti	Mr. Otioti is the deceased Plaintiff Joseph Moi's uncle and will testify regarding his background with the deceased Plaintiff and his loss value.	
14	Travis Palmer	Mr. Palmer is the Defendant and will testify regarding his knowledge of the incident.	
15	Dan Ryan	Sgt. Ryan assisted in the investigation of the shooting.	
16	Roger Vanderpool	Mr. Vanderpool will testify regarding policies and procedure practices of the Arizona Department of Public Safety and his participation in the Critical Incident Review of this shooting.	
17	Robert Stephen West	Mr. West was traveling south on I-17 in the left lane when he witnessed certain events of the incident.	

b. May Be Called at Trial

NAME	SHORT DESCRIPTION OF TESTIMONY	OBJECTIONS
Silvia Arceo	Ms. Arceo was the manager of the apartment complex where the deceased Moi lived. Ms. Arceo will testify regarding her interactions and knowledge of the deceased Moi.	
Kandi Beaman	Ms. Beaman is employed by Advocates for the Disabled and managed the deceased Moi's disability benefits. Ms. Beaman will testify regarding her interactions and knowledge with the deceased Moi.	
Gary Berghaus	Mr. Berghaus was driving southbound from Prescott to Anthem and witnessed the scuffle between the deceased Moi and Defendant Palmer.	
Wilma Nelson-Berghaus	Ms. Berghaus was a passenger in a vehicle on the roadway where the incident occurred and witnessed a scuffle with the deceased Moi and Defendant Palmer.	
Alta Janes	Ms. Janes was a passenger in a vehicle traveling southbound on I-17 to Anthem and witnessed scuffle between deceased Moi and Defendant Palmer.	
Roy Janes	Mr. Janes was traveling south on I-17 and witnessed a scuffle between the deceased Moi and Defendant Palmer.	
Rick Phillips	Mr. Phillips was traveling north on I-17 and saw the deceased Moi walking northbound. A few hours later Mr. Phillips was returning to Phoenix and traveling south on I-17 and witnessed certain events of the shooting.	
Matt L. Ratcliffe	Deputy Ratcliffe was present at the shooting scene.	
Scott Rex	Officer Rex was dispatched and/or reported to the shooting scene.	
K. Rowe	Deputy Rowe was dispatched and/or reported to the shooting scene.	
Barbie Jo Townsend	Ms. Townsend was traveling north on I-17 and witnessed certain events of the incident.	
James Woodhull	Officer Woodhull was present at the shooting scene and assisted with the investigation of the shooting.	

c. Probably Will Not Be Called at Trial

NAME	SHORT DESCRIPTION OF TESTIMONY	OBJECTIONS
David Abirigo	Mr. Abirigo is the father of the deceased Moi and resides in Sudan, Africa. He will testify regarding his relationship with Moi and his grief and how his death has affected his life.	
Bill V. Amato	Mr. Amato is a deputy county Attorney who will testify regarding County's review of the shooting and its findings and conclusions.	Relevance.
David Barter	Captain Barter was a firefighter with the Daisy Mountain Fire Dept. and was dispatched and/or reported to the shooting scene.	
Jim Benitez	Det. Benitez assisted in the investigation of the shooting incident.	
Jim Boerner	Sgt. Boerner was dispatched and/or reported to the shooting scene.	
Ethan Buller	Mr. Buller assisted in the autopsy of the deceased Moi.	
Dan Cassels	Mr. Cassels was a firefighter with the Daisy Mountain Fire Department that was dispatched and/or reported to the shooting scene.	Relevance.
C. Church	Sgt/ Church was present at the scene.	Relevance.
Sara Clayton	Officer Clayton assisted with the traffic control on I-17.	Relevance.
Penny Dechant	Ms. Dechant is an Associate Criminalist who was dispatched and/or reported to the shooting scene.	
Kyle Deforest	Officer Deforest responded to Defendant Palmer's radio call and assisted in traffic control and bystander watch.	
Russ Dodge	Officer Dodge was one of the attending paramedics who arrived via helicopter and took Palmer's vitals.	
Dawn Duran	Ms. Duran is a firefighter with Daisy Mountain Fire Department who was dispatched and/or reported to the shooting scene.	
Brent Fenton	Mr. Fenton is a firefighter with the Daisy Mountain Fire Department who was dispatched and/or reported to the shooting scene.	
David Fewkes	Officer Fewkes assisted in traffic control at the scene.	

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1	Eric Flannery	Mr. Flannery was a firefighter with the Daisy Mountain Fire Department who was dispatched and/or reported to the shooting scene.	
2			
3	Colin Formichella	Mr. Formichella was involved in an altercation on March 25, 2006, with Defendant Palmer.	
4	Janice Lee Formichella	Ms. Formichella witnessed the altercation between Colin Formichella and Defendant Palmer on March 25, 2006.	
5			
6	Robert Frederick	Officer Frederick is an officer involved in the investigation of the shooting who assisted in interviews of witnesses.	
7			
8	Rita Gale	Rita Gale/Nazireo is the mother of the deceased Moi and resides in Sudan, Africa. She will testify regarding her relationship with Moi and her grief and how his death has affected her life.	
9			
10	Frank Grinnelman	Mr. Grinnelman is an MCSO posse member who was dispatched and/or reported to the shooting scene.	
11			
12	Howard Grodman	Mr. Grodman was traveling north on the I-17 and observed Defendant Palmer and the deceased Moi on the median.	
13			
14	T. Heimgartner	Deputy Heimgartner is an MCSO deputy sheriff who was dispatched and/or reported to the shooting scene.	
15			
16	Christopher J. Kalkowski	Officer Kalkowski was dispatched and/or reported to the shooting scene.	
17			
18	Roger Keeling	Det. Keeling assisted in the search for evidence at the crime scene and assisted w/interviews of Defendant Palmer and Woodhull.	
19			
20	Ron King	Mr. King is a firefighter with the Daisy Mountain Fire Department that was dispatched and/or reported to the shooting scene.	
21			
22	Jerry Knorr	Captain Knorr is a firefighter with the Daisy Mountain Fire Department that was dispatched and/or reported to the shooting scene.	
23			
24	W. Kuepher	Deputy Kuepher was present at the scene.	
25	David Lesnick	Mr. Lesnick was traveling south on I-17 in the left lane and witnessed certain events of the incident.	
26			
27	Jack Machado, #2970	Det. Machado was dispatched and/or reported to the shooting scene.	
28			

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1	(GITEM)		
2	G.R. Manera	Detective Manera assisted in the investigation of	
3		the shooting.	
4	Tony Mapp	Sgt. Mapp was dispatched and/or reported to the	
5		shooting scene.	
6	Michael Mattingly	Mr. Mattingly is a firefighter with the Daisy	
7		Mountain Fire Department that was dispatched	
8		and/or reported to the shooting scene.	
9	Robbie Milam	Sgt. Milam removed the in-car videotape and	
10		personal items and closed the roadway until MCSO	
11		arrived.	
12	Randy Moran	Officer Moran assisted in the investigation of the	
13		shooting.	
14	Kevin Mulvihill	Detective Mulvihill assisted in the investigation of	
15		the shooting.	
16	Matthew J. Murray	Detective Murray assisted in the investigation of	
17		the shooting.	
18	Susan Al-Nashi	Ms. Al-Nashi is the fingerprint technician and was	
19		dispatched and/or reported to the shooting scene.	
20	Mark Nichols	Deputy Nichols was the second backup to arrive at	
21		the scene.	
22	Keith Paffrath	Mr. Paffrath is a firefighter with the d Daisy	
23		Mountain Fire Department that was dispatched	
24		and/or reported to the shooting scene.	
25	Richard Parkans	Officer Parkans was dispatched and/or reported to	
26		the shooting scene.	
27	Everett Parks	Mr. Parks was traveling north on I-17 and saw the	
28		deceased Moi walking with a briefcase. Mr. Parks	
		stopped and asked Moi if he wanted a ride.	
	Linda Petersen	Officer Petersen was dispatched and/or reported to	
		the shooting scene.	
	Jeffrey Pittman	Mr. Pittman was traveling south on I-17 and	
		witnessed the deceased Moi's interactions with the	
		Defendant Palmer.	
	Mike Ruiz	Detective Ruiz assisted in locating evidence at the	
		scene.	
	J. Scott	Deputy Scott assisted in securing the scene with	

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1		crime tape.	
2	John Seeley, #5308	Det. Seeley was dispatched and/or reported to the shooting scene.	
3			
4	Paul Sennett	Det. Sennett was dispatched and/or reported to the shooting scene.	
5	Vladimir Shvarts, M.D.	Dr. Shvarts conducted the autopsy of Mr. Moi and will testify regarding his observations and facts/findings.	
6			
7	Kimberly Spykes	Det. Spykes completed yellow tag on suspect and helped Mulvihill transport Defendant Palmer's car to evidence yard.	
8			
9	Ken Stapleton	Mr. Stapleton was dispatched and/or reported to the shooting scene.	
10			
11	Richard Wayne Tripetta	Mr. Tripetta conducted an autopsy on March 10, 2005 of the deceased Moi.	
12			
13	David Vasconi	Mr. Vasconi is a truck driver and was traveling south on I-17 in the right slow lane who saw the deceased Moi and Defendant Palmer talking.	
14			
15	Adrian Vildusea	Det. Vildusea was dispatched and/or reported to the shooting scene.	
16			
17	Jason Walker	Mr. Walker is a firefighter with the Daisy Mountain Fire Department that was dispatched and/or reported to the shooting scene.	
18			
19	Wade Webb	Sgt. Webb was present at the scene and assisted in the investigation of the shooting.	
20			
21	Todd C. Whittard	Officer Whittard was present at the scene and inked the prints of Moi.	
22			
23	Kimberly Williams	Ms. Williams was traveling north on I-17 when she saw the deceased Moi standing on the fog line and carrying a briefcase.	
24			
25	Lindsey Williams	Officer Williams was dispatched and/or reported to the shooting scene.	
26			
27	David K. Worthen	Officer Worthen was dispatched and/or reported to the shooting scene.	
28			
	Alan Zangle	Mr. Zangle is a firefighter with the Daisy Mountain Fire Department that was dispatched and/or reported to the shooting scene.	

1 **3. Defendant State of Arizona**

2 **a. Will Be Called at Trial**

3

4

NAME	SHORT DESCRIPTION OF TESTIMONY	OBJECTIONS
Roger Vanderpool	Director of DPS. Expected to testify as to policies, procedures, practices, programs and training of DPS; also expected to testify about his role and actions in the Critical Incident Review of this officer-involved shooting; and, to the extent it is relevant, his background, experience and expertise in law enforcement.	
DPS Det. Matthew Murray	Detective Murray was the lead detective in the investigation of this officer-involved shooting, and is expected to testify about the investigation, the evidence collected or observed, and information contained in investigative reports; as to interviews conducted with Officer Palmer and other witnesses; as to the activities and work product of other officers involved in the investigation; and, to the extent it is relevant, his background, experience and expertise in law enforcement.	
DPS Sgt. Gustav "Bud" Clark	Sgt. Clark (also identified as an expert below) has been a DPS instructor on the use of force, including firearms and tasers. He is expected to testify as to DPS's relevant policies and training; as to his communications with Ofc. Palmer in connection with the shooting at issue; as to his involvement in the Critical Incident Review of this shooting; and, to the extent it is relevant, his background, experience and expertise in law enforcement.	Disclosure; see Plaintiff's motion <i>in limine</i>

22

23

24 **b. May Be Called at Trial**

25

NAME	SHORT DESCRIPTION OF TESTIMONY	OBJECTIONS
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26

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28

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1	NAME	SHORT DESCRIPTION OF TESTIMONY	OBJECTIONS
2	DPS Officer Travis Palmer	Officer Palmer is expected to testify regarding all aspects of the shooting incident at issue and relevant events before and after the shooting; his participation and cooperation in the investigation that followed the incident; his participation in the Critical Incident Review process; his training as a police officer; DPS policies and procedures; and, to the extent it is relevant, his background, experience and expertise in law enforcement.	
3			
4			
5			
6			
7			
8	DPS Sgt. Dan Ryan (retired)	Former DPS Sgt. Ryan (also identified as an expert below) has been a DPS instructor on the use of force, including firearms and tasers. He is expected to testify as to DPS's relevant policies and training; as to his involvement in the Critical Incident Review of this shooting; and, to the extent it is relevant, his background, experience and expertise in law enforcement.	
9			
10			
11			
12			
13			
14	Caesar Otioti	Mr. Otioti was Joseph Moi's uncle, and is the Personal Representative of Mr. Moi's estate. He is expected to testify as to his knowledge of Joseph Moi and Joseph Moi's family; as to Mr. Moi's background, character, behavior and activities; as to his knowledge of events before the shooting incident; and as to costs and expenses incurred after Mr. Moi's death.	
15			
16			
17			
18			
19	DPS Major William R. Reutter (retired)	Major Reutter chaired the Critical Incident Review Board in this case. He is expected to testify as to the activities, deliberations and findings of the Board; as to DPS's policies, training and procedures; and, to the extent it is relevant, his background, experience and expertise in law enforcement.	
20			
21			
22			
23	Lt. David Myers	Lt. Myers was the Training Lieutenant and a member of the Critical Incident Review Board. He is expected to testify as to the activities, deliberations and findings of the Board; as to the dissenting opinion summary he authored; as to DPS's policies, training and procedures; and, to the extent it is relevant, his background, experience and expertise in law enforcement.	Disclosure
24			
25			
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1	NAME	SHORT DESCRIPTION OF TESTIMONY	OBJECTIONS
2	DPS Sgt. Wade Webb	Sgt. Webb was one of the officers that investigated the shooting incident. He is expected to testify as to his role and activities in the investigation of the incident; as to evidence he collected or produced; as to witness interviews; and, to the extent it is relevant, his background, experience and expertise in law enforcement.	Relevance; disclosure to the extent that testimony exceeds that of witness' reports
3			
4			
5			
6			
7	DPS Det. Jim Benitez	Det. Benitez was one of the officers that investigated the shooting incident. He is expected to testify as to his role and activities in the investigation of the incident; as to evidence he collected or produced; as to witness interviews; and, to the extent it is relevant, his background, experience and expertise in law enforcement.	Relevance; disclosure to the extent that testimony exceeds that of witness' reports
8			
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12	DPS Det. Robert Frederick	Detective Frederick was one of the officers that investigated the shooting incident. He is expected to testify as to his role and activities in the investigation of the incident; as to evidence he collected or produced; as to witness interviews; and, to the extent it is relevant, his background, experience and expertise in law enforcement.	Relevance; disclosure to the extent that testimony exceeds that of witness' reports
13			
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17	DPS Det. Roger Keeling	Detective Keeling was one of the officers that investigated the shooting incident. He is expected to testify as to his role and activities in the investigation of the incident; as to evidence he collected or produced; as to witness interviews; and, to the extent it is relevant, his background, experience and expertise in law enforcement.	Relevance; disclosure to the extent that testimony exceeds that of witness' reports
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21			
22	DPS Det. G.R. Manera	Det. Manera was one of the officers that investigated the shooting incident. He is expected to testify as to his role and activities in the investigation of the incident; as to evidence he collected or produced; as to witness interviews; and, to the extent it is relevant, his background, experience and expertise in law enforcement.	Relevance; disclosure to the extent that testimony exceeds that of witness' reports
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1	NAME	SHORT DESCRIPTION OF TESTIMONY	OBJECTIONS
2	DPS Sgt. Robbie Milam	Sgt. Milam is expected to testify as to his arrival on the scene of the shooting incident; contacts with Officer Palmer; his assumption of scene command duties from Officer Woodhull; and, to the extent it is relevant, his background, experience and expertise in law enforcement.	Relevance; disclosure to the extent that testimony exceeds that of witness' reports
6	DPS Det. Kevin Mulvihill	Det. Mulvihill was one of the officers that investigated the shooting incident. He is expected to testify as to his role and activities in the investigation of the incident; as to evidence he collected or produced; as to witness interviews; and, to the extent it is relevant, his background, experience and expertise in law enforcement.	Relevance
11	DPS Det. Mike Ruiz	Det. Ruiz was one of the officers that investigated the shooting incident. He is expected to testify as to his role and activities in the investigation of the incident; as to evidence he collected or produced; as to witness interviews; and, to the extent it is relevant, his background, experience and expertise in law enforcement.	Relevance; disclosure to the extent that testimony exceeds that of witness' reports
16	DPS Det. Kimberly Spykes	Det. Spykes was one of the officers that investigated the shooting incident. She is expected to testify as to her role and activities in the investigation of the incident; as to evidence she collected or produced; as to witness interviews; and, to the extent it is relevant, her background, experience and expertise in law enforcement.	Relevance; disclosure to the extent that testimony exceeds that of witness' reports
21	Bill V. Amato, Maricopa County Attorney's Office	Mr. Amato is expected to testify about the County Attorney's review of this shooting and its findings and conclusions.	Relevance
23	Vladimir Shvarts, M.D.	Dr. Shvarts is expected to testify as the autopsy he conducted on the body of Joseph Moi.	
25	Wilma Nelson-Berghaus	Ms. Nelson-Berghaus witnessed some of the events of the shooting incident, and is expected to testify as to her observations and perceptions.	
27	Gary Berghaus	Mr. Berghaus witnessed some of the events of the shooting incident, and is expected to testify	

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1	NAME	SHORT DESCRIPTION OF TESTIMONY	OBJECTIONS
2		as to his observations and perceptions.	
3	Dale Elmer Engstrom	Mr. Engstrom was a motorist on I-17 and	
4		witnessed some of events of the shooting	
5		incident, and is expected to testify as to his	
6		observations and perceptions.	
7	Howard Grodman	Mr. Grodman was a motorist on I-17 and	
8		witnessed some of events of the shooting	
9		incident, and is expected to testify as to his	
10		observations and perceptions.	
11	Alta Janes	Ms. Janes was a passenger in the vehicle	
12		driven by her son, Gary Berghaus, and	
13		witnessed some of the events of the shooting	
14		incident, and is expected to testify as to her	
15		observations and perceptions.	
16	Roy Janes	Mr. Janes was a passenger in the vehicle	
17		driven by his son, Gary Berghaus, and	
18		witnessed some of the events of the subject	
19		incident, and is expected to testify as to his	
20		observations and perceptions.	
21	David Lesnick	Mr. Lesnick was a motorist on I-17 and	
22		witnessed some of events of the shooting	
23		incident, and is expected to testify as to his	
24		observations and perceptions.	
25	Everett Parks	Mr. Parks was a motorist on I-17 and	
26		witnessed Joseph Moi shortly before the	
27		shooting incident; he is expected to testify as	
28		to his observations of Mr. Moi, including that	
		he did not offer Moi a ride due to Moi's	
		peculiar behavior.	
	Jeffrey Pittman	Mr. Pittman was a motorist on I-17 and	
		witnessed some of events of the shooting	
		incident, and is expected to testify as to his	
		observations and perceptions, including the	
		fact that he observed Mr. Moi rush in the	
		general direction of the officer in an	
		aggressive fashion that made him concerned	
		for the officer's safety	
	David Vasconi	Mr. Vasconi was a motorist on I-17 and	
		witnessed some of events of the shooting	
		incident, and is expected to testify as to his	
		observations and perceptions.	

NAME	SHORT DESCRIPTION OF TESTIMONY	OBJECTIONS
Barbie Jo Townsend	Ms. Townsend was a motorist on I-17 and witnessed some of events of the shooting incident, and is expected to testify as to her observations and perceptions, including that she observed Mr. Moi throwing several large fist-sized rocks at the officer while approaching the officer.	
Custodian of records, Northern Arizona Regional Training Academy	Is expected to testify as to the records of Officer Palmer's Academy training; also as to the course description and outline of the class "Mental Illness."	
Custodians of records	As necessary to provide foundation for documents or records.	
All witnesses listed in this Proposed Pretrial Order by Plaintiffs or by Defendant Palmer.		

c. Probably Will Not Be Called at Trial

NAME	SHORT DESCRIPTION OF TESTIMONY
DPS Officer Sarah Clayton	Officer Clayton's duties at the shooting scene included maintaining the incident command log and assisting with traffic control.
DPS Officer Kyle Deforest	Officer Deforest's duties at the shooting scene included assisting with traffic control and keeping bystanders away.
DPS Paramedic Russ Dodge	Officer Dodge's duties at the shooting scene consisted of rendering medical treatment to Officer Palmer and transporting Palmer to the hospital.
DPS Officer David Fewkes	Officer Fewkes's duties at the shooting scene included relieving Officer Clayton with the incident command log and assisting with traffic control
DPS Officer James Woodhull	Officer Woodhull took command of the incident response, and his duties at the scene included assisting with traffic control and setting up a landing zone for the DPS Ranger Helicopter, he eventually turned control of the shooting scene to Sgt. Milam.
Maricopa Sheriff's Deputy W.	Deputy Kuepher arrived at the shooting scene

NAME	SHORT DESCRIPTION OF TESTIMONY
Kuepher	after the incident and assisted with securing the scene.
Maricopa Sheriff's Deputy J. Scott	Deputy Scott arrived at the shooting scene after the incident and assisted with securing the scene.
Maricopa Sheriff's Deputy M. Ratcliffe	Deputy Ratcliffe was the first officer to arrive on scene after the shooting incident, and assisted with securing the scene.
Maricopa Sheriff's Deputy M. Nichols	Deputy Nichols arrived at the shooting scene after the incident and assisted with securing the scene.
Phoenix P.D. Sgt. C. Church	Sgt. Church arrived at the shooting scene after the incident and assisted with securing the scene.
Phoenix P.D. Officer Randy Moran	Officer Moran arrived at the shooting scene after the incident, and assisted with traffic control.

L. EXPERTS

1. Plaintiffs

EXPERT	QUALIFICATIONS	NATURE OF TESTIMONY
Richard Trippetta, M.D.	Medical doctor and certified pathologist	Conducted independent autopsy on Joseph Moi
Judith Becker, Ph.D.	Doctorate in psychology and professor of psychology at University of Arizona	Psychological assessment of mental and emotional issues involving Joseph Moi
Lou Reiter	Career police officer and former assistant chief of Los Angeles Police Department; researcher and author regarding police interaction with mentally handicapped individuals	Expert opinions regarding police procedures used by Palmer during stop, reasonableness of use of force, and training issues by Department of Public Safety
Bryan Neumeister	Audio engineer, utilized by numerous Hollywood productions and government agencies	Amplification of dash-cam video, and use of dash-cam to determine speed of objects thrown by Joseph Moi
Simon Crisp, Ph.D.	Physicist	Calculation of speed of objects thrown by Joseph using video data provided by Bryan Neumeister

2. Defendant Palmer

EXPERT	QUALIFICATIONS	NATURE OF TESTIMONY
Bennie Click	Mr. Click is a retired police chief who was in law enforcement from 1965 until 1999. He was employed by the Phoenix Police Department from 1965 to 1993. During that time he held positions in field operations, criminal investigations, supervisory, administrative, command and executive functions. Mr. Click concluded his career with the Phoenix Police Department as Executive Assistant Police Chief. After his retirement from the Phoenix Police Department he was the police chief for the Dallas Police Department from 1993 to 1999. He also was Acting Assistant City Manager for Public Safety from August, 1998, to February, 1999. He has been Chairman for the National Council on Law Enforcement and Training, Rio Salado College – Model Curriculum Development from 2000 to present.	Mr. Click will testify that Defendant Palmer's use of force was consistent with standard police practices and training and that it complied with ADPS policy and A.R.S. § 13-410. He will also testify that Defendant Palmer's conduct in his contact with the deceased Moi met the standard of care.
		Plaintiff's Objection: <i>Daubert</i> ; see Plaintiff's Motion In Limine
William J. Lewinski, Ph.D.	Dr. Lewinski is a psychologist who has done extensive research into human factors relating to use of force by law enforcement officers. He	Dr. Lewinsky will testify that perception and cognition of events always lags behind those events. Dr. Lewinsky will also testify that stress results in

	teaches at Mankato State University where he is the director of the Force Science Research Center.	an increase in selective inattention that can further delay perception and cognition of events. These delays account for Defendant Palmer's inability to immediately stop shooting when deceased Moi turned away from him.
		Plaintiff's Objection: <i>Daubert.</i>

3. Defendant State of Arizona

EXPERT	QUALIFICATIONS	NATURE OF TESTIMONY
Grant Fredericks	Forensic Video Analyst - Forensic Video Solutions, LLC	Mr. Fredericks is expected to testify as to the contents of his report, dated 11/13/06, concerning the "dash cam" videotape; as to his review and opinions concerning the work of the Plaintiffs' experts; as to his attempts to enhance the audio portion of the "dash cam" recording, and his preparation of a transcript of the recording; as to his preparation of a copy of the "dash cam" videotape with visible transcribed dialog; as to the contents of the video recording made by the "dash cam"; as to the electronic properties of the video recording; and as to his background, knowledge, experience and expertise.

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EXPERT	QUALIFICATIONS	NATURE OF TESTIMONY
Sgt. Gustav "Bud" Clark	Instructor/trainer for DPS	Sgt. Clark has been a DPS instructor on the use of force, including firearms and tasers. He is expected to testify as to DPS's relevant policies and training; as to his communications with Ofc. Palmer in connection with the shooting; as to his involvement in the Critical Incident Review of this shooting; as to his opinions concerning the incident; and as to his background, knowledge, experience and expertise.
		Plaintiffs' Objections: Disclosure; relevance. <i>See Motion In Limine</i>
Sgt. Dan Ryan (Retired)	Formerly DPS's Firearms Training Unit Supervisor	Sgt. Ryan has been a DPS instructor on the use of force, including firearms and tasers. He is expected to testify as to DPS's relevant policies and training; as to his involvement in the Critical Incident Review of this shooting; as to his opinions concerning the incident; and as to his background, knowledge, experience and expertise.
		Plaintiffs' Objections: Disclosure; relevance. <i>See Motion In Limine</i>

M. EXHIBITS AND DEPOSITIONS

1. Plaintiff

a. Exhibits

NUMBER	EXHIBIT	OBJECTION
1	Dash-cam video from Palmer's squad car	
2	Critical Incident Review Board findings	Defendants' Objection: Admissibility depends on Court's ruling on motion in limine
3	Diagram of shooting scene prepared by DPS investigators	
4	Photographs of scene taken by DPS investigators, Report No. 2005-010845	State of AZ: Foundation as to what is depicted (potentially)
5	Aerial photograph of scene of shooting	State of AZ: Disclosure; foundation
6	Maricopa County Sheriff's Office Computer Aided Dispatch log	State of AZ: Hearsay; foundation
7	Taser Download for Taser X26, Serial No. X00-006688 (AZOTI 57-58)	State of AZ: Relevance
8	Arizona Department of Public Safety, Dr. No. 2005-010845, Evidence Recovery Log (AZOTI 00170-176)	
9	Travis Palmer Employee Time Accounting Summary (AZOTI 779)	State of AZ: Relevance
10	Travis Palmer Employee Time Accounting Summary Mobile Video Supplement (AZOTI 781)	State of AZ: Relevance
11	DPS General Order 4.1.10, Use of Force	
12	DPS General order 4.1.11, Electrical Energy Device	
13	DPS General order 22.03	State of AZ: Relevance depends on Court's ruling on motion in limine
14	Summary of DPS Manuals (MOI 286-288)	State of AZ: Relevance; superseded material.
15	Travis Palmer's personnel file (AZOTI 703-748)	Defndants: Rule 402 – Relevance
16	Employee Training Report, AZOTI-900-904	Palmer: Rule 402 –

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		Relevance
17	Northern Arizona Regional Training Academy, Class 9 (August 21-December 15, 2000), Instructor Roster & Training Calendar (AZOTI 1407-1428)	Palmer: Rule 402 – Relevance
18	Northern Arizona Regional Training Academy, Police Certification Program, Lesson Plan & Outline (AZOTI 1457-1490)	Palmer: Rule 402 – Relevance
19	Northern Arizona Regional Training Academy, Stop & Approach Week, Scenario Evaluation Instructions (AZOTI 1500-1501)	Palmer: Rule 402 – Relevance
20	Arizona Department of Public Safety, - Training (Lesson Plan Cover Sheet), MOI 325-332)	State of AZ: Relevance (potentially); foundation; Rule 106
21	Taser Training Materials, “Weapon Safety 101,” AZOTI 00434	State of AZ: Relevance (potentially); foundation; Rule 106
22	DPS Training Plan, Close Quarter Battle (AZOTI 317-324)	State of AZ: Relevance (potentially); foundation; Rule 106
23	DPS Training Plan, Use of Force Review (AZOTI 325-344)	State of AZ: Relevance (potentially); foundation; Rule 106
24	DPS Training Plan, Advance Air Taser Operator (AZOTI 362-368)	State of AZ: Relevance (potentially); foundation; Rule 106
25	DPS Training Plan, Use of Force, Advanced Basic Class (AZOTI 930-938)	State of AZ: Relevance (potentially); foundation; Rule 106
26	DPS – Training Lesson Plan, CQB Level 2 (AZOTI 1005-1010)	State of AZ: Relevance (potentially); foundation; Rule 106
27	Taser Training, Scenario Development Form (AZOTI 369-374)	State of AZ: Relevance (potentially); foundation; Rule 106
28	Taser Training, “First Responder Tool” (AZOTI 508)	State of AZ: Relevance (potentially); foundation; Rule 106
29	Taser Training, “Emotionally Disturbed Persons” (AZOTI 535)	State of AZ: Relevance (potentially); foundation; Rule 106
30	Taser Training, “Tactical Considerations” (AZOTI 579-581)	State of AZ: Relevance (potentially); foundation; Rule 106
31	Tempe Police Department Report, dated March 25,	Defendants: Rule 402 –

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1		2006, re. Travis Palmer	Relevance; Rule 403 (Prejudice); Rule 404 (Character evidence) (Palmer only); hearsay (State of AZ only)
2			
3			
4	32	Transcript of Travis Palmer's statement to DPS investigators	
5	33	Report on Joseph Moi's autopsy, Maricopa County Medical Examiner's Office	
6			
7	34	Photographs from Joseph Moi's autopsy (from CD-rom)	Palmer: Rule 402 – Relevance; Rule 403 – Prejudice; State of AZ: Foundation as to what is depicted (potentially)
8			
9			
10	35	Arizona Department of Public Safety, DR No. 2005010845, Scientific Examination Reports, Alcohol Analysis & Drug Screen (AZOTI 242, 244)	State of AZ: Relevance; foundation
11			
12	36	Social Security records regarding Joseph Moi	State of AZ: Relevance; hearsay; foundation
13			
14	37	Payee information from Advocates for the Disabled	State of AZ: Relevance; hearsay; foundation
15			
16	38	Fry's employment records regarding Joseph Moi	
17	39	Apartment Rental Agreement (AZOTI 92-93)	State of AZ: Relevance; hearsay; foundation.
18			
19	40	2003 letter from Joseph Moi to family in Uganda	Defendants: Rule 402 – Relevance; State of AZ: hearsay; foundation; authentication
20			
21			
22	41	Graduation card and post card sent by Joseph to family in Uganda	Defendants: Rule 402 – Relevance; State of AZ; hearsay; foundation; authentication.
23			
24			
25	42	Photographs of Joseph Moi with father in Africa	
26	43	Joseph Moi's Certificate of Naturalization	State of AZ: Relevance
27			
28	44	Receipt form for money from Western Union, dated March 19, 2004, for funds wired to David Abirigo from Joseph Moi	State of AZ: Disclosure; relevance; hearsay; foundation;

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1			authentication
2	45	Receipt form for money from Western Union, dated December 10, 2003, for funds wired to David Abirigo from Joseph Moi	State of AZ: Disclosure; relevance; hearsay; foundation; authentication
3			
4	46	Western Union's response to Plaintiff's subpoena for documents	Defendants: Rule 402 – Relevance;
5	47	Photograph of Joseph Moi's grave	Defendants: Rule 402 – Relevance; State of AZ: foundation
6			
7	48	Ceaser Otioti e-ticket, New York JFK to Entebbe and back, April 13, 2005 to May 16, 2005	Defendants: Rule 402 – Relevance; State of AZ: hearsay, foundation
8			
9	49	Ceaser Otioti Expedia travel confirmation, New York to Entebbe and return, April 9 to May 16, 2005	Defendants: Rule 402 – Relevance; State of AZ: foundation; hearsay
10			
11	50	Ceaser Otioti e-ticket, Phoenix to New York JFK, April 6, 2005 to May 17, 2005	Defendants: Rule 402 – Relevance; State of AZ: foundation; hearsay
12			
13	51	Cash advance credit card receipt, \$3,000.00, for Ceaser Otioti on April 8, 2005, prior to trip to Uganda to meet with Joseph's parents	Defendants: Rule 402 – Relevance; State of AZ: foundation; hearsay
14			
15	52	At Need Purchase Agreement, Catholic Cemeteries, 3-30-05	
16	53	Before Need Purchase Agreement, Catholic Cemeteries, 6-11-05, for Joseph's memorial	
17	54	Memorial order form	
18	55	Hansen Mortuaries Statement of Funeral Goods and Services Selected	
19	56	Hansen Mortuaries, Addendum to Original Contract	
20	57	Holy Cross Cemetery, Receipt for Memorial	
21	58	Desert Schools Federal Credit Union credit card statements for Ceaser Otioti, reflecting payments to Hansen Mortuaries, Holy Cross Cemetery, Hertz Rental Car, and other payments relating to Joseph Moi's death	State of AZ: As to material related to Ceaser Otioti's travel to Africa: relevance; hearsay; foundation.
22	59	Map of Southern Sudan	Defendants: Rule 402 – Relevance
23	60	Map showing location of Alere 2 refugee camp	Defendants: Rule 402 –

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		Relevance
61	Photographs of David Abirigo and Rita Gale from Africa	State of AZ: Relevance; foundation
62	Photographs of church David Abirigo pastored and adjacent orphanage	Defendants: Rule 402 – Relevance; foundation
63	Photographs of other members of Joseph Moi's family in Africa	Defendants: Rule 402 – Relevance; foundation
64	Photographs of Alere 2 Refugee Camp	Defendants: Rule 402 – Relevance; foundation
65	David Abirigo's Uganda Refugee Identification Card	Defendants: Rule 402 – Relevance; State of AZ: foundation, authentication
66	Rita Gale's 1987 Uganda Refugee Identification Card	Defendants: Rule 402 – Relevance; State of AZ: hearsay, foundation, authentication
67	David Abirigo's 2000 Uganda Refugee Identification Card	Defendants: Rule 402 – Relevance; State of AZ: hearsay, foundation, authentication
68	Student identification cards for David Abirigo and Rita Gale for Youth With A Mission, Arua, Uganda	Defendants: Rule 402 – Relevance; State of AZ: hearsay, foundation, authentication
69	Certificate from Lira Technical Institute for David Abirigo, dated 12/7/1973	Defendants: Rule 402 – Relevance; State of AZ: hearsay, foundation, authentication
70	Diploma from Imatong Bible School to David Abirigo Nazario dated December 15, 1990	Defendants: Rule 402 – Relevance; State of AZ: hearsay, foundation, authentication
71	Certificate of Attendance to David Abirigo at Participatory Rural Appraisal Training Course	Defendants: Rule 402 – Relevance; State of AZ: hearsay, foundation, authentication
72	Certificate from All Nations Theological College,	Defendants: Rule 402 –

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	Kampala, to David Abirigo regarding completion of one year program in theology	Relevance; State of AZ: hearsay, foundation, authentication
73	Certificate of Marriage, Pastor David Abirigo and Ritta Gale Abirigo, from Africa Inland Church, dated September 7, 2002	Defendants: Rule 402 – Relevance; State of AZ: hearsay foundation, authentication
74	Certificate of Completion from University of the Nations, to Rita Gale Abirigo, dated December 16, 2006, re. Crossroads Discipleship Training School	Defendants: Rule 402 – Relevance; State of AZ: hearsay, foundation, authentication
75	Certificate of Completion from University of the Nations, to David Abirigo Mazario, dated December 16, 2006, re. Crossroads Discipleship Training School	Defendants: Rule 402 – Relevance; State of AZ: hearsay, foundation, authentication
76	Sudanese Gospel Mission, Licensing Certificate and Ordination of David Abirigo, dated December 18, 2004	Defendants: Rule 402 – Relevance; State of AZ: foundation, authentication
77	C.V. of Lou Reiter	State of AZ: hearsay; relevance
78	C.V. of Dr. Judith Becker	State of AZ: hearsay; relevance
79	C.V. of Dr. Trippeta	State of AZ: hearsay; relevance
80	C.V. of Bryan Neumeister	State of AZ: hearsay; relevance
81	C.V. of Simon Crisp	State of AZ: hearsay; relevance

b. Depositions

Plaintiffs

1. Gerold von Pahlen-Fedoroff

P. 5, lines 21-23

P. 6, lines 10-22

P. 7, lines 21-25

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1 P. 8, lines 4-18
 2 P. 9, lines 3-15, 23-25
 3 P. 10, lines 5-20
 4 P. 11, lines 2-7
 5 P. 11, line 12 through P. 14, line 3
 6 P. 14, lines 5-9, 11-16
 7 P. 14, line 25 through P. 18, line 4
 8 P. 18, line 7 through P. 19, lines 6
 9 P. 19, line 11 through P. 20, line 8
 10 P. 26, line 25 through P. 27, line 18
 11 P. 28, line 14 through P. 29, line 1
 12 P. 29, lines 11-14

2. Robert Steven West

10 P. 4, lines 11-12
 11 P. 6, line 18 through P. 7, line 2
 12 P. 7, line 8 through P.8, line 8
 13 P. 8, lines 15-22
 14 P. 10, lines 1-8
 15 P. 11, line 10 through p. 13, line 6
 16 P. 13, line 8 through P. 14, line 6
 17 P. 14, lines 8-21
 18 P. 15, lines 7-8, 10-24
 19 P. 16, lines 1-2
 20 P. 16, line 4 through p. 17, line 10
 21 P. 17, line 16 through P. 18, line 4
 22 P. 18, lines 6-15
 23 P. 18, line 17 through P. 19, line 16
 24 P. 19, line 18 through P. 20, line 9
 25 P. 20, lines 11-16, 19-20
 26 P. 20, line 22 through P. 21, line 6
 27 P. 21, line 8 through p. 23, line 14
 28 P. 23, line 16 through p. 24, line 16
 P. 47, line 5 through P. 48, line 8

3. Colin Formichella

25 P. 4, line 10 through P. 19 line 15
 26 P. 21, lines 18-24

4. Anthony Bread (from *Walen* matter)

28 P. 8, lines 3-10

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P. 40, lines 4-12

5. Bruce Naumann (from *Walen* matter)

P. 4, lines 11-13
 P. 12, lines 8-9, 15-16
 P. 28, lines 3-12
 P. 130, lines 9-10, 15

Defendant Palmer objects to the use of the deposition testimony of Anthony Bread and Bruce Naumann against him, as Palmer was not a party to the *Walen* matter.

6. David Abirigo

P. 7, line 2 through P. 44, line 4
 P. 52, line 21 through P. 53, line 15

7. Rita Gale

P. 5 line 25 through P. 20, line 9
 P. 21 line 1 through P. 22, line 14

8. Linda von Pahlen-Federoff

P. 5, line 20 through P. 19, line 13

Objection by State of Arizona: Plaintiff has not provided information indicating that the foundational requirements for use of deposition testimony at trial have been met. See Rule 32(a)(4), Federal Rules of Civil Procedure. Without waiving this objection, the State makes the following additional designations for the deposition testimony of witnesses whose depositions have been designated by the Plaintiffs:

1. Gerold von Pahlen-Federoff

p. 7, lines 1-20
 p. 10, lines 1-4
 p. 11, lines 8-11
 p. 18, lines 5-6
 p. 20, line 16 through p. 26, line 24
 p. 27, line 19 through p. 28, line 13
 p. 29, lines 2-10
 p.29, line 15 through p. 42, line 13

p. 42, line 23 through p. 44, line 19.

2. Robert Steven West

p. 7, lines 3-7
 p. 9, lines 2-7, 9-25
 p. 10, lines 9-24
 p. 14, lines 22-25
 p. 15, lines 1-6, 25
 p. 24, line 18 through p. 25, line 25
 p. 33, lines 14-19, 21-25
 p. 34, lines 1-2
 p. 35, line 6 through p. 41, line 21
 p. 42, lines 6-25
 p. 43, line 1 through p. 47, line 4
 p. 48, lines 9-12, 23-25
 p. 49, line 1 through p. 51, line 10
 p. 51, lines 20-25
 p. 52, lines 1-11.

3. Colin Formichella

p. 19, lines 16-18
 p. 22, line 21 through p. 26, line 5

6. David Abirigo

p. 44, line 9 through p. 47, line 19
 p. 48, line 4 through p. 52, line 20
 p. 53, line 16 through p. 59, line 8
 p. 59, line 17 through p. 61, line 4

7. Rita Gale

p. 20, line 14-25
 p. 22, line 15 through p. 25, line 2
 p. 25, line 19 through p. 28, line 25
 p. 29, line 2 through p. 31, line 21

8. Linda von Pahlen-Federoff

p. 19, line 23 through p. 27, line 16
 p. 28, line 4 through p. 33, line 17
 p. 34, lines 8-18

The State may also offer portions of each witness' transcribed witness interview by DPS to impeach portions of their deposition testimony.

2. Defendant Palmer

NUMBER	EXHIBIT	OBJECTION
200	Offense Reports from Dallas TX PD Regarding MOI	Relevance; hearsay; unfair prejudice; foundation
201	State of Texas vs. Joseph Abio Moi documents	Relevance; hearsay; unfair prejudice; foundation
202	Expert Report and CV by Bennie R. Click	Relevance; hearsay
203	DPS Criminal Investigation Report and findings	Hearsay; relevance (potentially, as to parts of report)
204	DPS Criminal Investigation Interviews	Hearsay
205	Criminal Investigation Offense Reports from Richardson, TX, PD re: Moi	Relevance; hearsay; unfair prejudice; foundation
206	DPS Criminal Investigation Offense Reports from Dallas, TX	Relevance; hearsay; unfair prejudice; foundation
207	DPS Training Manuals/Policies	Overbroad
208	Dash Camera videotape of Moi Shooting	
209	Expert Report and CV by William Lewinski, Ph.D.	Hearsay; relevance

b. Depositions

No deposition designations.

3. Defendant State of Arizona

a. Exhibits

NUMBER	EXHIBIT	OBJECTION
100	Arizona Department of Public Safety Report No. 2005-010845, including autopsy report, criminal history check, and other supporting documents (AZOTI-00001 – AZOTI-00283)	Hearsay

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NUMBER	EXHIBIT	OBJECTION
101	CD of media coverage-KPHO Channel 5 News, 4/20/05 (MOI 01019)	Hearsay; relevance
102	Excerpt of CD of media coverage of the shooting of Joseph Moi (interviews by the media presumed to be of Gerald Van Pahlen Federoff) (MOI 01021)	Hearsay; relevance
103	CD of the media coverage concerning the filing of wrongful death lawsuit against the State. (AZOTI-00286)	Hearsay; relevance
104	DPS Training Lesson Plan Outline and materials for Use of Force Review dated March 31, 2003. (AZOTI-00325 – AZOTI-00361)	
105	DPS Training Lesson Plan Outline for Advanced Air Taser Operator. (AZOTI-00362 – AZOTI-00368)	
106	Additional documents regarding Taser Training. (AZOTI-00369 – AZOTI-00702)	
107	Transcript of the audio-taped interview of Howard Grodman. (AZOTI-00749)	Hearsay
108	Transcript of the audio-taped interview of Kimberly Williams. (AZOTI-00750)	Hearsay
109	Transcript of the audio-taped interview of Travis Palmer. (AZOTI-00751 and AZOTI-00759)	
110	Transcript of the audio-taped interview of DPS Officer James Woodhull. (AZOTI-00752)	Hearsay
111	Transcript of the audio-taped interview of Jeffrey Pittman. (AZOTI-00753)	Hearsay
112	Transcript of the audio-taped interview of Everett Parks. (AZOTI-00754)	Hearsay
113	Transcript of the audio-taped interview of Dale Engstrom. (AZOTI-00755)	Hearsay
114	Transcript of the audio-taped interview of Roy Janes. (AZOTI-00756)	Hearsay
115	Transcript of the audio-taped interview of Cesar Otioti. (AZOTI-00757)	

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NUMBER	EXHIBIT	OBJECTION
116	Transcript of the audio-taped interview of David Lesnick. (AZOTI-00758)	Hearsay
117	Transcript of the audio-taped interview of Wilma Nelson Berghaus. (AZOTI-00760)	Hearsay
118	Transcript of the audio-taped interview of Gary Berghaus. (AZOTI-00761)	Hearsay
119	Transcript of the audio-taped interview of MCSO Deputy Ratcliffe. (AZOTI-00762)	Hearsay
120	Transcript of the audio-taped interview of Barbie Jo Townsend. (AZOTI-00763)	Hearsay
121	Transcript of the audio-taped interview of David Vasconi. (AZOTI-00764)	Hearsay
122	Transcript of the audio-taped interview of Steve West. (AZOTI-00765)	
123	Transcript of the audio-taped interview of Stephanie Van Pahlen Federoff. (AZOTI-00766)	
124	Transcript of the audio-taped interview of Linda Van Pahlen Federoff. (AZOTI-00767)	
125	Transcript of the audio-taped interview of Gerold Van Pahlen Federoff. (AZOTI-00768)	
126	Copy of the audio-tape titled "Cambridge Court Apartments" (AZOTI-00770)	Hearsay
127	Transcript of the audio-tape titled "911 Calls" (AZOTI-00776)	
128	Transcript of the audio-taped interview of Alta Janes. (AZOTI-00777)	Hearsay

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NUMBER	EXHIBIT	OBJECTION
129	Letter dated October 10, 2005 from Bill V. Amato, Maricopa County Attorney Law Enforcement Liaison to Director Vanderpool, informing him that the County Attorney is of the opinion that Officer Palmer did not commit any act that warrants criminal prosecution. (AZOTI-00899)	Hearsay; relevance
130	Officer Palmer's Training Report dated November 21, 2005. (AZOTI-00900-AZOTI -00904)	
131	Advocates for the Disabled Inc. records concerning Joseph Moi. (AZOTI-01123- AZOTI-01127)	
132	Arizona Department of Public Safety Critical Incident Manual, dated March 1, 2002. (AZOTI-01196-AZOTI-01237)	Relevance
133	Records from the Department of Public Safety, Internal Affairs Investigation file. (AZOTI-01238-AZOTI-01252)	Relevance
134	Expert Report dated 11/13/06, authored by Grant Fredericks, Forensic Video Solutions (AZOTI-01253-AZOTI-01262)	Hearsay
135	Transcript of recorded verbal communications between Officer Palmer and Joseph Moi, as well as the DPS radio traffic, prepared by Grant Fredericks (AZOTI-01263-AZOTI-01268)	
136	Grant Fredericks' CV (AZOTI-01269-AZOTI-01278)	Hearsay, relevance
137	DVD copy produced by Grant Fredericks of dash cam video, including transcribed audio (AZOTI-01279)	Hearsay, relevance, unfairly prejudicial
138	CD containing PDF images (frame-by-frame) from dash cam video, prepared by Grant Fredericks	
139	Transcript of audio-taped interview of Tina Dion (AZOTI-01280)	Hearsay

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NUMBER	EXHIBIT	OBJECTION
140	Records of Officer Travis Palmer's training at the Northern Arizona Regional Training Academy (AZOTI-01407- AZOTI-01456; AZOTI-1496-AZ-OTI- 1503)	
141	Northern Arizona Regional Training Academy course descriptions and outline of class on "Mental Illness" (AZOTI-01457- AZOTI-01495)	
142	Critical Incident Review Board Memos: Memorandum from Major Reutter to Director Vanderpool, dated 1/17/06 (AZOTI-01132-AZ-OTI-01136), including the attached "Dissenting Opinion Summary" dated 1/12/06 authored by Lt. Dave Myers (AZOTI-01137-AZ-OTI-01139)	
143	Memorandum for the Record dated 4/10/06 authored by DPS Director Roger Vanderpool (AZOTI-01130-AZOTI-01131)	Hearsay
144	All records reviewed by Plaintiffs' expert Judith Becker.	
145	All records/evidence reviewed by any expert witness in this action.	Vague, ambiguous
146	Any item disclosed by any party to this action.	Vague, ambiguous
147	Transcripts of depositions given in this case and/or other cases, by witnesses testifying in this case	Vague, ambiguous, disclosure
148	Demonstrative aids to illustrate the testimony of witnesses - e.g., displays of electronic information, drawings, charts, diagrams, etc.	Potentially irrelevant or prejudicial; disclosure
149	Videotape copy of original "dash cam" videotape from Officer Palmer's patrol car.	
150	DVD copy of original "dash cam" videotape from Officer Palmer's patrol car	
151	DPS General Order 4.1.40, "Critical Incident Management."	

1	NUMBER	EXHIBIT	OBJECTION
2	152	DPS Critical Incident Manual (3/1/02 update).	
3	153	All exhibits listed by Plaintiffs and/or Defendant Palmer in this Proposed Pretrial Order.	

6

7 **N. MOTIONS IN LIMINE AND REQUESTED EVIDENTIARY RULINGS**

8 1. Plaintiffs

- 9 a. To preclude State's experts Dan Ryan and Gustav Clark.
- 10 b. To preclude Palmer's expert Bennie Click.
- 11 c. To preclude evidence of 1996 arrests of Joseph Moi.

12 2. Defendants Palmer and State (joint motions)

- 13 a. To preclude evidence of the report and conclusions of the DPS
- 14 Critical Incident Review Board.
- 15 b. To preclude evidence and/or argument concerning damages
- 16 sustained by Joseph Moi before death.

17 3. Defendant Palmer

- 18 a. To preclude evidence of assertion of 5th Amendment rights by
- 19 Officer Palmer.
- 20 b. To preclude evidence of the arrest and/or investigation of
- 21 Officer Palmer in connection with a subsequent event.
- 22 c. To preclude evidence that Officer Palmer fathered a child
- 23 outside of marriage.

24 4. Defendant State

- 25 a. To preclude evidence relating to a separate case, Walen v.
- 26 Vanderpool.
- 27 b. To preclude evidence of subsequent remedial measures.
- 28

c. Conditional motion in limine involving testimony and evidence relating to dismissed claims.

d. Joinder in motions in limine filed by co-defendant Palmer.

O. PROBABLE LENGTH OF TRIAL

Three weeks.

P. TRIAL DATE

February 24, 2009

Q. STIPULATED PROPOSED STATEMENT OF THE CASE, JURY INSTRUCTIONS, VOIR DIRE QUESTIONS, JUROR QUESTIONNAIRES, IF ANY, FORMS OF VERDICT AND TRIAL MEMORANDUM OF LAW

To be filed separately.

R. MISCELLANEOUS

State of Arizona:

Plaintiffs have not yet identified the person or persons they intend to use at trial as a language interpreter for witnesses who do not speak English. Before a person can be an interpreter there must be a finding by the Court that he or she is appropriately qualified, per Rule 604, Federal Rules of Evidence.

S. MODIFICATION OF ORDER

The Court may, in order to prevent manifest injustice or for good cause shown, at the trial of the action or prior thereto upon application of counsel for either party, made in good faith, or upon the motion of the Court, modify the **Final Pretrial Order** upon such conditions as the Court may deem just and proper.

1 RESPECTFULLY SUBMITTED: February 9, 2009

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3 **APPROVED AS TO FORM AND CONTENT:**

4 **ROBBINS & CURTIN, p.l.l.c.**

5
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7 Joel B. Robbins
8 301 E. Bethany Home Road, Suite B-100
9 Phoenix, Arizona 85012
10 *Attorney for Plaintiff*

11 **TIDMORE & LERMA, L.L.P.**

12 By: s/Mick Levin
13 Mick Levin
14 301 E. Bethany Home Road, Suite B-140
15 Phoenix, Arizona 85012
16 *Attorney for Plaintiff*

17 **OFFICE OF THE ATTORNEY GENERAL**

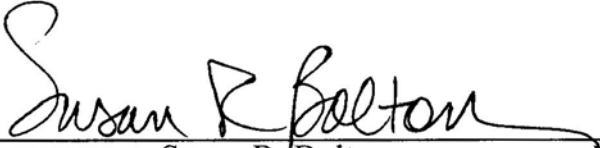
18 By: /s/Michael Hinson
19 Michael Hinson
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22 *Attorney for Defendants State of Arizona*
23 *and Vanderpool*

24 **IAFRATE & ASSOCIATES**

25 By: /s/ Richard Stewart
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Attorney for Defendant Palmer

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1 **THIS JOINT PRETRIAL ORDER IS HEREBY APPROVED ON THIS 9th DAY OF**
2 **FEBRUARY, 2009.**

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7 _____
8 Susan R. Bolton
9 United States District Judge
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