

SCOTTSDALE CITY ATTORNEY'S OFFICE

3939 North Drinkwater Boulevard

Scottsdale, Arizona 85251

(480) 312-2405 (T)

(480) 312-2548 (F)

Lori S. Davis (SBN: 027875)

legal@scottsdaleaz.gov

Attorneys for City Defendants

IN THE UNITED STATES DISTRICT COURT

DISTRICT OF ARIZONA

Byron Dean Tolson,

Plaintiff,

vs.

City of Scottsdale Police Department; T. Jones
and Jane Doe Jones; ABC-XYZ ENTITIES and
JOHN AND JANE DOES I-X,

Defendants.

Case No.:

NOTICE OF REMOVAL

(Maricopa County Superior Court Case
No.: CV2016-054920)

Pursuant to 28 U.S.C. § 1441 *et seq.*, Defendants City of Scottsdale Police Department, T. Jones, and Jane Doe Jones (hereinafter collectively referred to herein as “Defendants”), by counsel, files this Notice of Removal and shows the Court the following:

Plaintiff filed his Complaint on November 23, 2016. Over 90 days thereafter, Plaintiff “served” the Summons and Complaint upon the City of Scottsdale Police Department on February 24, 2017, and upon T. Jones on February 27, 2017. As Plaintiff failed to timely serve the Summons and Complaint within the deadline prescribed by the Arizona Rules of Civil Procedure, Defendants moved to dismiss the Complaint without prejudice. Plaintiff responded. To date, no Order has been entered by the Superior Court on this motion.

1 Pursuant to 28 U.S.C. § 1446(b), this Notice of Removal is filed within thirty days after
2 the Defendants were provided with a copy of the Summons and Complaint, and therefore this
3 removal is timely. To the Defendants' knowledge, no other pleadings have been filed in the
4 Maricopa County Superior Court. Copies of the Summons, Complaint, and other documents
5 which have been filed in Superior Court, are attached as Exhibit A.

6 4. This Court has supplemental jurisdiction over any state claims pursuant to 28
7 U.S.C. § 1367.

8 5. The City of Scottsdale Police Department is a non-jural department of the City of
9 Scottsdale, a municipality organized under the laws of Arizona. T. Jones and Jane Done Jones
10 are citizens of Arizona. Plaintiff is believed to be a citizen of Arizona. Accordingly, there is
11 no diversity of citizenship between the parties pursuant to 28 U.S.C. § 1332.

12 6. Pursuant to 28 U.S.C. § 1441, *et seq.*, the Defendants remove this action
13 currently pending in the Maricopa County Superior Court to this Court, which is the District
14 Court of the United States for the district in which the State Court action is pending. Pursuant
15 to 28 U.S.C. § 1441(a) and 28 U.S.C. § 1331, this action may be removed to this Court by the
16 Defendants because this Court has original jurisdiction, pursuant to 28 U.S.C. § 1331, over
17 Plaintiff's claims arising under the U.S. Constitution and laws of the United States.

18 7. Plaintiff's claims arising exclusively under Arizona state law, if any, may also be
19 removed to this Court in accordance with 28 U.S.C. § 1441(c) and 28 U.S.C. § 1367.

20 8. Pursuant to 28 U.S.C. § 1446(d), the Defendants will give written notice of filing
21 this Notice of Removal to all parties promptly after this Notice of Removal is filed with the

1 Court. A copy of this Notice of Removal has been filed with the Clerk of the Maricopa County
2 Superior Court.

3 9. Pursuant to Rule 81(c)(2)(A), the Defendants request the Court order that any
4 party seeking a jury trial must submit a Demand for Jury Trial within a specified time frame set
5 by the Court.

6 10. I certify that a copy of this Notice of Removal to the United States District Court
7 and for the District of Arizona was served this 27th day of March, 2017, by U.S. Mail, with
8 adequate postage, to the following parties:

9 Honorable John Hannah
10 Maricopa County Superior Court
18380 N. 40th Street
Phoenix, AZ 85032

11 Lyndon B. Steimel
12 Law Office of Lyndon B. Steimel
14614 N. Kierland Blvd., Suite N-135
13 Scottsdale, AZ 85251
Counsel for Plaintiff

14 Nathan A. Finch
15 Catalyst Legal Group, PLLC
1820 E. Ray Road
16 Chandler, AZ 85225
Counsel for Plaintiff

17
18 WHEREFORE, Defendant removes this action to the District Court.

19 ///

20 ///

1 RESPECTFULLY SUBMITTED this 27th day of March, 2017.

2 **SCOTTSDALE CITY ATTORNEY'S OFFICE**

3 /s/ Lori S. Davis

4 Lori S. Davis, Senior Assistant City Attorney
3939 North Drinkwater Boulevard
5 Scottsdale, Arizona 85251
Attorneys for Defendants

6 **CERTIFICATE OF SERVICE**

7 I hereby certify that on this 27th day of March, 2017, I electronically transmitted the
8 City's Notice of Removal to the Clerk's office using the CM/ECF System for filing, and copies
9 mailed to:

10 Honorable John Hannah
Maricopa County Superior Court
11 18380 N. 40th Street
Phoenix, AZ 85032

12 Lyndon B. Steimel
13 Law Office of Lyndon B. Steimel
14614 N. Kierland Blvd., Suite N-135
14 Scottsdale, AZ 85251
Counsel for Plaintiff

15 Nathan A. Finch
16 Catalyst Legal Group, PLLC
1820 E. Ray Road
17 Chandler, AZ 85225
Counsel for Plaintiff

18 /s/ Brittany Leonard

19 An Employee of the Scottsdale City Attorney's Office

EXHIBIT A

[Skip To MainContent](#)

**ADVERTENCIA:** Estafa por medio de llamadas telefónicas y correo electrónico. [Leer Mas...](#)

Civil Court Case Information - Case History

Case Information	
Case Number: CV2016-054920	Judge: Hannah, John
File Date: 11/23/2016	Location: Northeast
Case Type: Civil	

Party Information			
Party Name	Relationship	Sex	Attorney
Byron Dean Tolson	Plaintiff	Male	Lyndon Steimel
City Of Scottsdale Police Department	Defendant		Lori Davis
T Jones	Defendant	Unknown	Pro Per
Tony Jones	Defendant	Male	Pro Per

Case Documents			
Filing Date	Description	Docket Date	Filing Party
3/22/2017	NAR - Notice Of Appearance	3/23/2017	
NOTE: NOTICE OF APPEARANCE			
3/22/2017	RES - Response	3/23/2017	
NOTE: RESPONSE TO MOTION TO DISMISS FOR INSUFFICIENCY OF SERVICE			
3/6/2017	CAN - Credit Memo Appearance Fee Paid	3/6/2017	
NOTE: Credit Memo/Appearance Fee Paid			
3/3/2017	MTD - Motion To Dismiss	3/6/2017	
NOTE: Special Appearance Defendants' Motion to Dismiss for Insufficiency of Service			
3/2/2017	AFS - Affidavit Of Service	3/4/2017	
NOTE: TONY JONES			
2/28/2017	AFS - Affidavit Of Service	3/3/2017	
NOTE: CITY OF SCOTTDALE POLICE DEPARTMENT			
2/28/2017	SUM - Summons	3/1/2017	
2/22/2017	322 - ME: Notice Of Intent To Dismiss	2/22/2017	
11/23/2016	COM - Complaint	11/29/2016	
11/23/2016	CCN - Cert Arbitration - Not Subject	11/29/2016	
11/23/2016	CSH - Coversheet	11/29/2016	

Case Calendar

There are no calendar events on file

Judgments

There are no judgments on file

ORIGINAL

OFFICE OF THE
CITY CLERK

2017 FEB 24 PM 3:07

1 Lyndon B. Steimel - 011733
2 **Law Office of Lyndon B. Steimel**
3 14614 N. Kierland Blvd., Suite N-135
4 Scottsdale, AZ 85254
5 (480) 367-1188
6 (480) 367-1174 fax
7 lyndon@steimellaw.com
8 Attorney for Plaintiff

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

11 **IN AND FOR THE COUNTY OF MARICOPA**

12 **BYRON DEAN TOLSON,**

13 Plaintiff,

14 vs.

15 City of Scottsdale Police Department; T. Jones and

16 Jane Doe Jones; ABC-XYZ ENTITIES and JOHN

17 AND JANE DOES I-X.

18 Defendants.

Case No. CV

SUMMONS CV2016-054920

(§1983; Negligent Infliction of Emotional Distress)

If you would like legal advice from a lawyer,
contact the Lawyer Referral Service at
602-257-4434

or

www.maricopalawyers.org

Sponsored by the
Maricopa County Bar Association

19 THE STATE OF ARIZONA TO THE ABOVE NAMED DEFENDANT:

20 ☒ **City of Scottsdale Police Department**
21 **8401 E. Indian School Road**
22 **Scottsdale, AZ 85251**

23 ☐ **Officer T. Jones Badge # 788**
24 **8401 E. Indian School Road**
25 **Scottsdale, AZ 85251**

YOU ARE HEREBY SUMMONED AND REQUIRED TO APPEAR AND
DEFEND WITHIN TWENTY (20) DAYS IF SERVED WITHIN THIS STATE, WITHIN
THIRTY (30) DAYS IF SERVED OUTSIDE OF THIS STATE AFTER SERVICE OF THE
SUMMONS AND COMPLAINT UPON YOU.

1 You are hereby notified that in case of your failure to appear and defend
2 within the time applicable, judgment by default will be rendered against you for the relief demanded
3 in the Complaint.

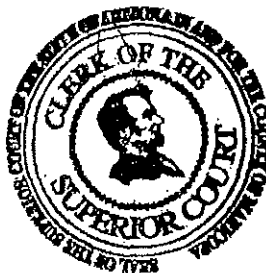
4 YOU ARE FURTHER ADVISED THAT ARIZONA RULES OF COURT
5 REQUIRE THAT YOU SERVE A COPY OF YOUR RESPONSE TO THIS COMPLAINT
6 UPON THE PLAINTIFF'S ATTORNEYS WHOSE NAMES AND ADDRESS APPEAR
7 HEREON.

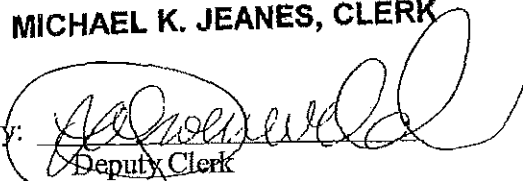
8 SIGNED AND SEALED THIS ____ DAY OF November, 2016.

9 NOV 23 2016

10 CLERK

11 MICHAEL K. JEANES, CLERK



By: 

Deputy Clerk

L. Groeneveld

12 REQUESTS FOR REASONABLE ACCOMMODATION FOR PERSONS WITH DISABILITIES MUST BE MADE TO THE
13 DIVISION ASSIGNED TO THE CASE BY PARTIES AT LEAST 3 JUDICIAL DAYS IN ADVANCE OF A SCHEDULED
14 COURT PROCEEDING.

1 Lyndon B. Steimel - 011733
2 **Law Office of Lyndon B. Steimel**
3 14614 N. Kierland Blvd., Suite N-135
4 Scottsdale, AZ 85254
5 (480) 367-1188
6 (480) 367-1174 fax
7 lyndon@steimellaw.com
8 Attorney for Plaintiff

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17 AND JANE DOES I-X.

18 Defendants.

Case No. CV

CV 2016-054920

SUMMONS

(§1983; Negligent Infliction of Emotional
Distress)

19 THE STATE OF ARIZONA TO THE ABOVE NAMED DEFENDANT:

20 ☐ **City of Scottsdale Police Department**
21 **8401 E. Indian School Road**
22 **Scottsdale, AZ 85251**

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24 **8401 E. Indian School Road**
25 **Scottsdale, AZ 85251**

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1 You are hereby notified that in case of your failure to appear and defend
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4 REQUIRE THAT YOU SERVE A COPY OF YOUR RESPONSE TO THIS COMPLAINT
5 UPON THE PLAINTIFF'S ATTORNEYS WHOSE NAMES AND ADDRESS APPEAR
HEREON.

6 SIGNED AND SEALED THIS ____ DAY OF November, 2016.

7 CLERK

COPY

8 NOV 23 2016

9 By:



10 MICHAEL K. JEANES, CLERK
11 E. GROENEVELD
DEPUTY CLERK

12 REQUESTS FOR REASONABLE ACCOMMODATION FOR PERSONS WITH DISABILITIES MUST BE MADE TO THE
13 DIVISION ASSIGNED TO THE CASE BY PARTIES AT LEAST 3 JUDICIAL DAYS IN ADVANCE OF A SCHEDULED
COURT PROCEEDING.

COPY

NOV 23 2016



MICHAEL K. JEANES, CLERK
L. GROENEVELD
DEPUTY CLERK

Lyndon B. Steimel - 011733
Law Office of Lyndon B. Steimel
14614 N. Kierland Blvd., Suite N-135
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(480) 367-1188
(480) 367-1174 fax
lyndon@steimellaw.com
Attorney for Plaintiff

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF MARICOPA

BYRON DEAN TOLSON,

Plaintiff,

vs.

City of Scottsdale Police Department; T. Jones
and Jane Doe Jones; ABC-XYZ ENTITIES and
JOHN AND JANE DOES I-X,

Defendants.

Case No. CV CV2016-054920

COMPLAINT

(Constitutional Deprivation of Civil Rights;
Negligent Infliction of Emotional Distress)

Plaintiff, Byron Dean Tolson, for his Complaint alleges as follows:

1. Jurisdiction of this cause is conferred upon this Court by Article 6 of the Constitution of the State of Arizona. The Defendants have caused acts to occur in the County of Maricopa, State of Arizona, giving rise to this action.
2. Defendant, City of Scottsdale Police Department is a department of the City of Scottsdale, a political subdivision of the State of Arizona.
3. Defendant, T. Jones, is a police officer of the City of Scottsdale who restrained Plaintiff and issued a Trespass Warning on November 25, 2016.
4. Defendant, Jane Doe Jones is believed to be the spouse of Officer T. Jones and all acts by T. Jones caused the marital community to be liable.
5. Fictitious Defendants' names will be added if and when they become known.
6. Plaintiff, Byron Dean Tolson is a citizen of the State of Arizona who is a motivational speaker, author, disabled Veteran and former NBA basketball player.

- 1 7. Tolson was a customer of Terri's Consign and Design and made several purchases and
2 visits to the Scottsdale store leading up the events in question on November 25, 2015.
- 3 8. Tolson had friendly conversations with Terri Bowersock, reputed owner of the store, and
4 employees Cheryl Sieck and Dorothy Adkins in the visits leading up to November 25,
5 2015.
- 6 9. On November 25, 2015 Tolson visited the store in the early afternoon to pick up a bed that
7 he had ordered.
- 8 10. He was told by employees that the bed would have to be assembled and that he would have
9 to wait for this to be done.
- 10 11. While waiting Tolson sat on a couch and spoke to a business associate on his cell phone
11 about a pending book deal.
- 12 12. Tolson has a hearing impairment from his days with the Army and as a result tends to
13 speak loudly.
- 14 13. During his conversation Dorothy loudly instructed him to "take his phone call to the back
15 of the store or outside to the parking lot."
- 16 14. When he understood what was being yelled at him, Tolson got up and stated the Dorothy
17 should not "talk to him like that" and he left the store immediately and went to the back of
18 the parking lot by the loading dock.
- 19 15. While waiting only a few minutes at the dock area a City of Scottsdale patrol car
20 approached with a backup car and Officer T. Jones questioned Tolson about the incident.
21 Tolson is African American man and feared for his life at the moment and was worried due
22 to the recent spate of police involved shootings. He also was concerned that the Officers
23 might mistake his cell phone for a weapon. Tolson continued with his conversation with
24 the business associate and the associate overheard the exchange between the Officers and
25 Tolson.
16. Officer T. Jones stated that "he should have never been called for something like this."

1 17. Tolson is a disabled Veteran who suffers from PTSD, depression from not only his days in
2 the military but also from an incident in Tacoma, Washington in 1983 when he and his
3 friends were pulled over in a case of mistaken identity by police with guns drawn for a
4 drive-by shooting and was detained, searched with guns drawn and released.

5 18. Officer T. Jones then went into the store and spoke with Dorothy and Cheryl while Tolson
6 was detained by another officer.

7 19. Officer T. Jones then returned and stated to Tolson that he "had to issue something"
8 because Dorothy and Cheryl wanted something issued.

9 20. Officer T. Jones then wrote out a Scottsdale Police Department Trespass Warning effective
10 for one year or until November 25, 2016 and forced Tolson to take the Trespass Warning
11 or he would have to arrest Tolson and handcuff him and take him to the police station.

12 21. The incident created a flashback to the Tacoma incident when police had 12 guns to
13 Tolson's head and his vehicle and person was thoroughly searched. The incident also
14 triggered Tolson's PTSD and other mental ailments and his fear of the police.

15 22. Tolson is a nationally known motivational speaker and author, having played basketball for
16 the University of Arkansas and the Seattle Super Sonics but was illiterate.

17 23. Tolson however returned to the University of Arkansas to attain his undergraduate degree
18 and a graduate degree over the ensuing years of tutoring and study.

19 24. Tolson used this experience to speak nationally to audiences and school children about his
20 struggles and overcoming them to provide motivation to persons and children in similar
21 situations. He also authored a book and was in the process of publishing another book at
22 the time.

23 25. Due to his career as speaker often in schools, Tolson has to undergo a thorough
24 background check and clearance. Due to the existence of the Trespass Warning Tolson
25 could not respond to numerous invitations and opportunities to speak over the year and had
to put his book deal on hold causing him to lose potential income.

1 26. Tolson went to the City of Scottsdale Police Department to see if he could have the
 2 Trespass Warning removed on November 30, 2015 and was told that the persons who
 3 asked for the Warning to be issued would have to authorize it. Tolson was told that the
 4 Department would contact these persons. Tolson was told by Terri Bowersock that her
 5 employee(s) would agree to have the Warning removed. However, the Warning was never
 6 removed.

7 **Count I – Deprivation of Civil Rights; 42 USC §1983**

8 27. The above paragraphs are incorporated.

9 28. Pursuant to 42 USC §1983 [e]very person who under color of statute, ordinance,
 10 regulation, custom, or usage of any State or Territory of the District of Columbia, subjects,
 11 or causes to be subjected, any citizen of the United States or persons within the jurisdiction
 12 thereof to the deprivation of rights, privileges, or immunities secured by the Constitution
 13 and laws, shall be liable to the party injured in an action at law, suit in equity, or other
 14 proper proceeding for redress.

15 29. Pursuant to 42 USC §1988(b) any person who prevails in a matter under §1983 may be
 16 entitled to recover his or her reasonable attorney's fees and costs.

17 30. Tolson's First, Fourth and Fourteenth Amendment rights were violated when the police
 18 detained him, did not allow him to leave and issued a Trespass Warning with the condition
 19 that if he did not accept it he would be handcuffed, arrested and taken to jail.

20 31. Tolson did not trespass in the store and left when asked.

21 32. Tolson's right of free speech, right to be secure against any unreasonable search or seizure
 22 and had the right of equal protection under the law.

23 33. Tolson suffered grievous emotional and mental anguish and flashbacks as a result of the
 24 incident and as a result of the violation of his rights, privileges and immunities conferred
 25 upon him under the laws and Constitution of the United States.

Count II – Negligent Infliction of Emotional Distress

34. The above paragraphs are incorporated.

1 35. Tolson suffered from flashbacks, re-triggering of his PTSD and other documented
2 symptoms, and distress from being unable to continue his career as a motivational speaker
3 and author as a result of the incident and Trespass Warning.

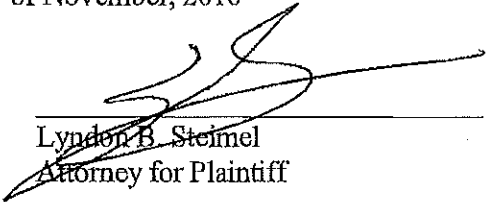
4 36. Officer T. Jones was negligent in his handling of the situation by siding with the
5 employees of the store and stating the he had to issue something although agreeing that he
6 should have never been called for something like this.

7 37. The result of these actions has caused Tolson to suffer both mentally and financially.

8 38. The City of Scottsdale Police Department is liable for its employee's actions.

9 WHEREFORE, Plaintiff demands judgment against the Defendants for violation(s) of 42
10 USC §1983, for violation(s) of his First, Fourth and Fourteenth Amendment rights and for
11 negligent infliction of emotional distress in an amount to be determined at trial but in no
12 case less than \$1.5 Million, and for recovery of his reasonable attorney's fees and costs
13 pursuant to 42 USC §1988(b).

14 DATED this 23rd day of November, 2016

15
16 
17 Lyndon B. Steimel
18 Attorney for Plaintiff
19

20 /s/ lbs
21 1276.01.TOLSONCoSCompl
22
23
24
25

COPY

NOV 23 2016



MICHAEL K. JEANES, CLERK
L. GROENEVELD
DEPUTY CLERK

1 Lyndon B. Steimel - 011733
2 **Law Office of Lyndon B. Steimel**
3 14614 N. Kierland Blvd., Suite N-135
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7 lyndon@steimellaw.com
8 Attorney for Plaintiff

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

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16 ABC-XYZ ENTITIES and JOHN AND JANE
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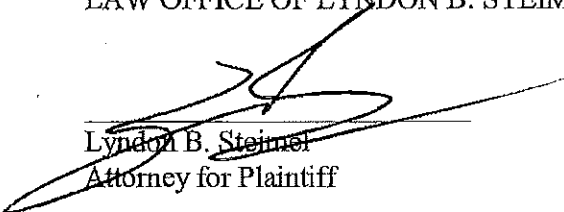
Case No. CV CV2016-054920

**CERTIFICATE OF COMPULSORY
ARBITRATION**

19 The undersigned certifies that the largest award sought by the complainant, including
20 punitive damages, but excluding interest, attorney's fees, and costs does not exceed limits set by
21 Local Rule for compulsory arbitration. This case is not subject to the Uniform Rules of Procedure
22 for Arbitration.

23 Dated this 23rd day of November, 2016.

LAW OFFICE OF LYNDON B. STEIMEL

24 
25 Lyndon B. Steimel
Attorney for Plaintiff

127601ran. D01

Integrity Attorney Services
P.O. Box 33123
Phoenix, Arizona 85067-3123

IAS#: 59871
 Atty#: 127201

MICHAEL R. JEALES, CLERK
 BY *D. Rodriguez*
 FILED
 2017 FEB 28 PM 4:11

**IN THE SUPERIOR COURT OF THE STATE OF
 ARIZONA IN AND FOR THE COUNTY OF MARICOPA**

BYRON DEAN TOLSON,
 Plaintiff(s),

Case No. CV2016-054920

vs.

CITY OF SCOTTSDALE POLICE DEPARTMENT,
 et al,
 Defendant(s).

**AFFIDAVIT OF
 SERVICE OF PROCESS**

BRYAN CURRY, being duly sworn, states: That I am qualified to serve process in this cause, having been so appointed by the court in Maricopa County, Arizona. I received the following documents in this action:

SUMMONS; COMPLAINT; CERTIFICATE OF COMPULSORY ARBITRATION

From LAW OFFICE OF LYNDON B. STEIMEL, Lyndon B. Steimel, SBN 011733 on 2/24/2017, and in each instance I, personally, served a copy of each document listed above on those named below at the time and place shown, that all services, except where noted, were made within Maricopa County, Arizona.

Upon CITY OF SCOTTSDALE POLICE DEPARTMENT, at 3939 N. Drinkwater Blvd., Scottsdale, Arizona 85251, on 2/24/2017 at 3:07 PM, by leaving one set of the above listed documents with Christopher Feltz, City Clerk Assistant, who stated he is authorized to accept. Description: Male, Caucasian, 35-40 years old, 6'1", 275 lbs, black hair.

Bryan Curry
 Bryan Curry

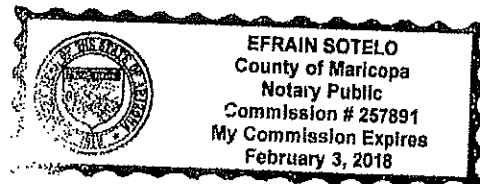
SUBSCRIBED AND SWORN to me this 24th day of February, 2017.

Notary Public: *Efrain Sotelo*

Efrain Sotelo

My Commission Expires: February 3, 2018

\$16.00	Service(s)
\$32.50	Mileage (13)BC
\$25.00	Rush Service
\$9.00	Preparation of Affidavit/Notary
\$ 82.50	Total



Integrity Attorney Services
P.O. Box 33123
Phoenix, Arizona 85067-3123

IAS#: 59872
Atty#: 127201

MICHAEL K. JEANES, CLERK
BY *Y. Barraza* DEP

Y. BARRAZA, FILED

17 MAR -2 AM 8:48

IN THE SUPERIOR COURT OF THE STATE OF
ARIZONA IN AND FOR THE COUNTY OF MARICOPA

BYRON DEAN TOLSON,
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Upon OFFICER TONY JONES, personally, at 20363 N Pima Rd, Scottsdale, Arizona 85255, on 2/27/2017 at 7:59 PM. Description: Male, Caucasian, 40-45 years old, 5'9", 220 lbs, Brown hair.

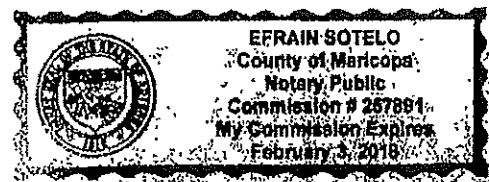
Bryan Curry
Bryan Curry

SUBSCRIBED AND SWORN to me this 28th day of February, 2017.

Notary Public: *Efrain Sotelo*
Efrain Sotelo

My Commission Expires: February 3, 2018

\$16.00	Service(s)
\$75.00	Mileage (30)BC
\$25.00	Rush
\$19.00	Time Spent (19)
\$9.00	Preparation of Affidavit/Notary
\$ 144.00	Total



Michael K Jeanes, Clerk of Court
*** Electronically Filed ***
M. Cain, Deputy
3/3/2017 12:02:00 PM
Filing ID 8142751

SCOTTSDALE CITY ATTORNEY'S OFFICE

3939 North Drinkwater Boulevard

Scottsdale, Arizona 85251

(480) 312-2405 (T)

(480) 312-2548 (F)

Lori S. Davis (SBN: 027875)

legal@scottsdaleaz.gov

Attorneys for City Defendants

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

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Plaintiff,

vs.

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and Jane Doe Jones; ABC-XYZ ENTITIES and
JOHN AND JANE DOES I-X,

Defendants.

Case No.: CV2016-054920

**SPECIAL APPEARANCE
DEFENDANTS' MOTION TO
DISMISS FOR INSUFFICIENCY
OF SERVICE**

(Honorable John Hannah)

Defendants Scottsdale Police Department, Officer T. Jones, and Jane Doe Jones (hereinafter collectively referred to herein as "Defendants"), by counsel, hereby make a Special Appearance in the above captioned matter to move to dismiss pursuant to Rule 12(b)(5) of the Arizona Rules of Civil Procedure because service of process was not timely made upon Defendants. Defendants specifically object to, and do not consent to, jurisdiction in this Court at this time as they have not been properly and timely served in accordance with the Arizona Rules of Civil Procedure.

On November 23, 2016 counsel for plaintiff Byron Dean Tolson filed the instant Complaint against Defendants. Pursuant to Rule 4(i), *Ariz.R.Civ.P.*, the Plaintiff had 90 days to

1 serve the summons and complaint. Ninety days from November 23, 2016 is February 21, 2016.
2 Plaintiff did not serve the summons and complaint upon Defendants within that time period.

3 Accordingly, Defendants appearing specially hereby move the Court to dismiss the
4 Complaint without prejudice pursuant to the Arizona Rules of Civil Procedure.

5 RESPECTFULLY SUBMITTED this 3rd day of March, 2017.

6 **SCOTTSDALE CITY ATTORNEY'S OFFICE**

7 /s/ Lori S. Davis

8 Lori S. Davis, Senior Assistant City Attorney
3939 North Drinkwater Boulevard
Scottsdale, Arizona 85251
9 Attorneys for Defendants

10 **ORIGINAL** of the foregoing electronically
11 filed with the Clerk of the Court this 3rd day of March, 2017:

12 Clerk of Superior Court / Maricopa County
101 W. Jefferson
Phoenix, AZ 85003

13 **COPY** of the foregoing mailed this 3rd day of March, 2017 to:

14 Honorable John Hannah
15 Maricopa County Superior Court
18380 N. 40th Street
16 Phoenix, AZ 85032

17 Lyndon B. Steimel
Law Office of Lyndon B. Steimel
18 14614 N. Kireland Blvd., Suite N-135
Scottsdale, AZ 85251
19 *Counsel for Plaintiff*

20 /s/ Brittany Leonard
An Employee of the Scottsdale
21 City Attorney's Office

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4 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**

5 **IN AND FOR THE COUNTY OF MARICOPA**

6 BYRON DEAN TOLSON,

7 Plaintiff,

8 vs.

9 City of Scottsdale Police Department; T. Jones
10 and Jane Doe Jones; ABC-XYZ ENTITIES and
JOHN AND JANE DOES I-X,

Defendants.

Case No.: CV2016-054920

PROPOSED ORDER

(Honorable John Hannah)

11 IT IS HEREBY ORDERED dismissing the Complaint without prejudice based upon
12 Plaintiff's failure to timely serve the summons and complaint upon the defendants in accordance
13 with Rule 4(i) of the Arizona Rules of Civil Procedure.

14 DATED this ____ day of March, 2017.

15
16 _____
Honorable John Hannah

Nathan A. Finch (#031279)
Catalyst Legal Group, PLLC
 1820 East Ray Rd.
 Chandler, AZ 85225
 Email: Nathan@Catalyst.Lawyer
 602.456.2233
Attorneys for Plaintiff

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF MARICOPA

BYRON DEAN TOLSON,

Plaintiff,

vs.

City of Scottsdale Police Department; T.
 Jones and Jane Doe Jones; ABC-XYZ
 ENTITIES and JOHN AND JANE
 DOES I-X,

Defendants.

Case No. CV2016-054920

**RESPONSE TO MOTION TO
 DISMISS FOR INSUFFICIENCY
 OF SERVICE**

(Assigned to Hon. John R. Hannah)

Plaintiff, Byron Dean Tolson, for his Response to the City of Scottsdale Police Department's Special Appearance/ Defendant's Motion to Dismiss for Insufficiency of Service, hereby states as follows:

The Defendant's Motion to Dismiss for Insufficiency of Process is based upon the 90 day deadline for service of process imposed under Arizona Rules of Procedure, Rule 4(i) *effective* January 1, 2017. As stated in the Motion, the Complaint was filed on November 23, 2016, thereby imposing the previous rule of 120 days for service of process under Rule 4(i). The service was effective upon the City of Scottsdale Police Department as of February 24, 2017 and upon Officer Jones as of February 27, 2017, both well within the 120 day rule in effect for matters filed before January 1, 2017.

1 Pursuant to Rule 81 of the Arizona Rules of Civil Procedure, a rule or
2 amendment governs upon the effective date of the rule. Therefore, the 120 rule
3 governed upon the filing of the Complaint in November 2016. Rule 81. Effective
4 Date; Applicability, Currentness:

5 (a) Effective Date. These rules and any amendments take effect at the time specified
6 by the Supreme Court.

7 (b) Applicability. Upon the effective date, a rule or amendment governs:

8 (1) proceedings in an action commenced after its effective date;

9 Therefore, the rule that applied for service at the time of filing was the 120
10 day rule, not the 90 day rule effective for actions filed after January 1, 2017.

11 WHEREFORE, Plaintiff requests that the Motion to Dismiss be denied and
12 that Defendants be ordered to file an Answer to the Complaint within 10 days of this
13 Court's Order, and requests recovery of reasonable attorney's fees and costs
14 incurred in filing this Response.

15
16 DATED this 22nd day of March, 2017

17
18 **CATALYST LEGAL GROUP**

19 By: /s/Nathan A. Finch
20 Nathan A. Finch
21 *Attorney for Plaintiff*
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24
25

1 Original efiled with Clerk of
2 Superior Court and copy emailed to:

3 Lori S. Davis
4 Scottsdale City Attorney's Office
5 3939 North Drinkwater Blvd.
6 Scottsdale, AZ 85251
7 legal@scottsdaleaz.gov

8 By: /s/NAF

1 Nathan A. Finch (#031279)
2 **Catalyst Legal Group, PLLC**
3 1820 East Ray Rd.
4 Chandler, AZ 85225
5 Email: Nathan@Catalyst.Lawyer
6 602.456.2233
7 *Attorneys for Plaintiff*

8 **IN THE MARICOPA COUNTY SUPERIOR COURT**
9 **STATE OF ARIZONA**

10 **BYRON DEAN TOLSON,**

11 **Plaintiff,**

12 **vs.**

13 **City of Scottsdale Police Department; T.**
14 **Jones and Jane Doe Jones; ABC-XYZ**
15 **ENTITIES and JOHN AND JANE**
16 **DOES I-X,**

17 **Defendants.**

Case No.: CV2016-054920

NOTICE OF APPEARANCE

18 Nathan A. Finch of Catalyst Legal Group, PLLC gives notice of his appearance as
19 attorney of record for Plaintiff, Byron Dean Tolson and hereby requests that notice of all
20 proceedings and copies of all pleadings in the above entitled proceeding be served upon
21 counsel as follows:

22
23 Nathan Finch
24 Catalyst Legal Group, PLLC
25 1820 E. Ray Rd.
Chandler, AZ 85225
602.456.2233

/

/

1 Respectfully submitted this 22nd day of March, 2017.

2 **CATALYST LEGAL GROUP**

3
4 By: /s/Nathan A. Finchl
5 Nathan A. Finch
6 *Attorney for Plaintiff*

7 Original efiled with Clerk of
8 Superior Court and copy emailed to:

9 Lori S. Davis
10 Scottsdale City Attorney's Office
11 3939 North Drinkwater Blvd.
12 Scottsdale, AZ 85251
13 legal@scottsdaleaz.gov

14 By: /s/NAF
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**UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA**

Civil Cover Sheet

This automated JS-44 conforms generally to the manual JS-44 approved by the Judicial Conference of the United States in September 1974. The data is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. The information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is authorized for use only in the District of Arizona.

The completed cover sheet must be printed directly to PDF and filed as an attachment to the Complaint or Notice of Removal.

Plaintiff **Byron Dean Tolson**
(s):

County of Residence: Maricopa

County Where Claim For Relief Arose: Maricopa

Plaintiff's Atty(s):

Lyndon B. Steimel (Byron Dean Tolson)
Law Office of Lyndon B. Steimel
14614 N. Kierland Blvd., Suite N-135
Arizona 85251
480-367-1188

Defendant , **City of Scottsdale Police**
(s): **Department; T. Jones ; Jane Doe**
Jones

County of Residence: Maricopa

Defendant's Atty(s):

Lori S. Davis (, City of Scottsdale Police
Department; T. Jones ; Jane Doe Jones)
Scottsdale City Attorney's Office
3939 North Drinkwater Boulevard
Arizona 85251
480-312-2405

REMOVAL FROM MARICOPA COUNTY, CASE #CV2016-054920

II. Basis of Jurisdiction: **3. Federal Question (U.S. not a party)**

III. Citizenship of Principal
Parties (Diversity Cases Only)

Plaintiff:- **1 Citizen of This State**
Defendant:- **1 Citizen of This State**

IV. Origin : **2. Removed From State Court**

V. Nature of Suit: **440 Other Civil Rights**

VI.Cause of Action: **42 USC §1983**

VII. Requested in ComplaintClass Action: **No**

Dollar Demand:

Jury Demand: **No**VIII. This case is not related to another case.Signature: /s/ Lori S. DavisDate: 3/27/17

If any of this information is incorrect, please go back to the Civil Cover Sheet Input form using the *Back* button in your browser and change it. Once correct, save this form as a PDF and include it as an attachment to your case opening documents.

Revised: 01/2014

**SUPPLEMENTAL CIVIL COVER SHEET
FOR CASES REMOVED FROM ANOTHER JURISDICTION**

This form must be attached to the Civil Cover Sheet at the time
the case is filed in the United States District Clerk's Office

Additional sheets may be used as necessary.

1. Style of the Case:

Please include all Plaintiff(s), Defendant(s), Intervenor(s), Counterclaimant(s), Crossclaimant(s) and Third Party Claimant(s) still remaining in the case and indicate their party type. Also, please list the attorney(s) of record for each party named and include their bar number, firm name, correct mailing address, and phone number (including area code).

<u>Party</u>	<u>Party Type</u>	<u>Attorney(s)</u>
City of Scottsdale Police Department; T. Jones and Jane Doe Jones.	Defendant	Lori S. Davis Scottsdale City Attorney's Office 3939 North Drinkwater Boulevard Scottsdale, Arizona 85251 (480) 312-2405
Byron Dean Tolson	Plaintiff	Lyndon B. Steimel Law Office of Lyndon B. Steimel 14614 N. Kierland Blvd., Suite N-135 Scottsdale, AZ 85251 (480) 367-1188

2. Jury Demand:

Was a Jury Demand made in another jurisdiction? Yes ☐ No ☒

If "Yes," by which party and on what date?

3. Answer:

Was an Answer made in another jurisdiction? Yes ☐ No ☒

If "Yes," by which party and on what date?

4. Served Parties:

The following parties have been served at the time this case was removed:

<u>Party</u>	<u>Date Served</u>	<u>Method of Service</u>
City of Scottsdale Police Department	2/24/2017	Process server
Officer T. Jones	2/27/2017	Process server

5. Unserved Parties:

The following parties have not been served at the time this case was removed:

<u>Party</u>	<u>Reason Not Served</u>
Jane Doe Jones.	

6. Nonsuited, Dismissed or Terminated Parties:

Please indicate changes from the style of the papers from another jurisdiction and the reason for the change:

<u>Party</u>	<u>Reason for Change</u>
N/A	

7. Claims of the Parties:

The filing party submits the following summary of the remaining claims of each party in this litigation:

<u>Party</u>	<u>Claims</u>
Plaintiff	Deprivation of Civil Rights 42 USC §1983
Plaintiff	Negligent Infliction of Emotional Distress

Pursuant to 28 USC § 1446(a) a copy of all process, pleadings, and orders served in another jurisdiction (State Court) shall be filed with this removal.