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CLERK U.S. DISTRICT COURT
DISTRICT OF ARIZONA
BY *KS* DEPUTY

9 **IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

10 CHRISTOPHER J. STANNARD,
11 a single man, individually and as
natural guardian for TYLER
12 STANNARD, a minor; TYLER
STANNARD, a minor;

13 Plaintiffs,

14 v.

15 THE CITY OF PHOENIX,
16 ARIZONA, a municipal
corporation; DETECTIVE
17 TOM JONES, in his official
capacity as officer and employee
18 of the City of Phoenix Police
Department; JOHN DOES
19 1-10, fictitious individual
defendants; JANE DOES 1-10,
20 fictitious individual defendants;

21 Defendants.

No. CV **CV '04 1191 PHX** *LAC*

**PLAINTIFFS' COMPLAINT FOR
INJUNCTIVE AND DECLARATORY
RELIEF**

22
23 Plaintiffs Christopher J. Stannard, individually and as natural guardian of Tyler
24 Stannard, and Tyler Stannard, a minor, allege as follows:

25 **JURISDICTION AND VENUE**

26 1. This action arises under 42 U.S.C. § 1983 and the Fourteenth Amendment to the
27 United States Constitution. This Court has jurisdiction over this action pursuant to
28 28 U.S.C. §§ 1331 and 1343(4). Jurisdiction to grant a declaratory judgment is

1 conferred by 28 U.S.C. §§ 2201 and 2202.

2 2. Venue is proper in this District under 28 U.S.C. § 1391.

3 **THE PARTIES**

4 3. Plaintiff Christopher J. Stannard, a single man, was a resident of Maricopa County
5 at all times relevant to this Complaint. Plaintiff Christopher Stannard is bringing
6 this Complaint individually and as natural guardian of Tyler Stannard, a minor.

7 Plaintiff Tyler Stannard, a minor, is the natural son of Christopher Stannard and at
8 all times relevant herein, was a resident of Maricopa County and resided with his
9 father, Christopher Stannard.

10 4. Plaintiff Christopher Stannard pled no contest to a charge that required registration
11 as a sexual offender pursuant to A.R.S. § 13-3821, *et seq.*

12 5. Defendant City of Phoenix ("Phoenix") is a municipal entity duly organized under
13 the laws of the State of Arizona which caused an event to occur in Maricopa
14 County from which this suit arises. The City of Phoenix Police Department is a
15 department of the City of Phoenix. Defendant Detective Tom Jones acted in the
16 course and scope of his duties at all times relevant to this Complaint. Defendant
17 Phoenix is liable for the actions of Jones and other officers in the course and scope
18 of their duties.

19 6. At all times relevant herein, Defendant Detective Tom Jones ("Defendant Jones")
20 was employed with the Phoenix Police Sex Offender Evaluation Unit and caused
21 an event to occur in Maricopa County from which this suit arises. Defendant
22 Jones was acting within the scope of his authority at all times relevant to this
23 Complaint.

24 7. At all times relevant hereto, Defendants acted under color of state law in
25 connection with their enforcement of A.R.S. § 13-3825, *et seq.*

1 8. Defendants John Does 1-10 and Jane Does 1-10 are unknown defendants who may
2 be identified at some future date as having responsibility for the incidents which
3 occurred in this case. In the event their identities become known, Plaintiffs will
4 amend their Complaint accordingly.

5 **THE STATUTORY SCHEME**

6 9. Pursuant to A.R.S. § 13-3821, persons convicted of certain specified offenses are
7 designated as “sexual offenders” who must register with the sheriff of the County
8 where they reside (hereinafter, “registrants”). Registration as a “sexual offender”
9 is required solely on the basis of a conviction for one of the offenses enumerated in
10 the statute.

11 10. Persons required to register as sex offenders are required to provide information as
12 required by the Department of Public Safety. The person must also be
13 photographed and fingerprinted by the sheriff. The statement, photograph, and
14 fingerprints are then forwarded to the criminal identification section with the
15 Department of Public Safety and the Chief of Police, if any, of the place where the
16 individual resides. A.R.S. § 13-3821(H).

17 11. Upon the initial registration and every year thereafter, the person must obtain a
18 nonoperating identification license or driver license from the motor vehicle
19 division of the Department of Transportation. The license is valid for one year and
20 the person must provide proof of his or her address to the Department of
21 Transportation. A.R.S. § 13-3821(I).

22 12. If the person has a prior conviction for an offense for which registration is
23 required, the individual is required to register for life. If the person was required
24 to register for a conviction of unlawful imprisonment of a minor or kidnaping of a
25 minor, the individual must register for ten years (absent an additional or
26 subsequent conviction.) A.R.S. § 13-3821(L).

- 1 13. Within seventy-two hours after moving from the person's address within a county
2 or changing his or her name, the registrant must inform the sheriff in person and in
3 writing of the registrant's new address and/or new name. If the registrant moves to
4 a location which is not a residence and the person receives mail at a post office
5 box, the registrant must notify the sheriff of the location of the post office box and
6 its number. Within three days, the sheriff must forward this information to the
7 criminal identification section of the department of public safety and chief of
8 police from where the registrant moves. This information will then be forwarded
9 to the chief of police where the registrant has moved. A.R.S. § 13-3822(A).
- 10 14. Within seventy-two hours after moving from a county in which the person is
11 registered, the registrant shall notify in writing the sheriff of the county from
12 which the registrant moved. If the registrant is subject to community notification,
13 the sheriff shall then advise the local law enforcement agency of the county to
14 which the registrant moved. If the registrant moves out of state, the sheriff shall
15 notify the local law enforcement agency of the jurisdiction to which the registrant
16 moves. The local law enforcement agency shall then contact the Department of
17 Public Safety within ten days of being notified to determine if the person has re-
18 registered. If not, the local law enforcement agency shall notify the local law
19 enforcement agency of the county where the registrant last resided which will
20 conduct an investigation and report to the appropriate county attorney. A.R.S. §
21 13-3822(B).
- 22 15. Any person who is subject to registration and fails to comply with the requirements
23 of the aforementioned sections is guilty of a class 4 felony. A.R.S. § 13-3824.
- 24 16. Within seventy-two hours after a person who was convicted of one of the
25 enumerated offenses is released from confinement or who is accepted for
26 supervision of parolees and probationers, the agency who has custody or
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1 responsibility for the supervision of the person must provide the registrant's
2 "identifying information" to the Department of Public Safety ("D.P.S."). The
3 agency must also complete and provide a risk assessment of the registrant. D.P.S.
4 then enters the information and risk assessment into a sex offender profile and
5 notification database. A.R.S. § 13-3825(A).

6 17. Following the tenth day after the registrant is released from confinement or
7 sentenced to probation, the Department of Public Safety must forward the
8 information in Paragraph 16 to the sheriff of the county where the person is
9 registered. A.R.S. § 13-3825(B).

10 18. After receiving the information referenced in Paragraph 17, the sheriff must
11 forward it to the chief law enforcement officer of the community where the
12 registrant resides. The local law enforcement agency must then classify each
13 registrant and place him or her into a notification level. Within forty-five days, the
14 local law enforcement agency shall notify the community of the registrant
15 pursuant to "guidelines" established by a community notification guidelines
16 committee. A.R.S. § 13-3825(C).

17 19. Irrespective of the community notification guidelines, law enforcement officers are
18 still permitted to give the community notice of any "circumstances or persons that
19 pose a danger to the community[.]" A.R.S. § 13-3825(H). The statute fails to set
20 forth any standards to determine the circumstances as to when a person or
21 circumstance presents a "danger to the community." Local law enforcement is
22 also given the discretion to accept the risk assessment level already performed or
23 to complete its own risk assessment.

24 20. When an individual is assessed as a Level I offender, the local law enforcement
25 agency that is responsible for notification must maintain the offender's identifying
26 information which may be given to other law enforcement agencies and
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1 individuals with whom the offender resides. Law enforcement has the discretion
2 to notify the registrant's "community" only if the individual is a "danger to the
3 community." A.R.S. §§ 13-3825(H); 13-3826 (E)(1).

4 21. For Level II offenders, law enforcement may notify immediate neighbors, schools,
5 appropriate community groups, and prospective employers. The notification may
6 include a flyer with the offender's photograph, general address, and a summary of
7 the offender's status and criminal background. A.R.S. § 13-3826(E)(2).

8 22. For Level III registrants, notification must be given to the surrounding
9 neighborhood, area schools, community groups, and prospective employers. The
10 notification must include a flyer with the registrant's photograph, exact address,
11 summary of the registrant's status and criminal background. A press release and
12 flyer must be given to the media for the information to be published, which
13 includes the registrant's exact address. A.R.S. § 13-3826(E)(3).

14 23. Level II and Level III registrants must also have their information posted on an
15 internet sex registrant web site, maintained by the Department of Public Safety,
16 which is disseminated to the public. The information on the web site includes the
17 registrant's name, exact address, date of birth, current photograph, and information
18 on the offense committed. A.R.S. § 13-3827.

19 24. Upon information and belief, there is no procedure to permit registrants to contest
20 the assigned classification, risk assessment, or the necessity of notification to
21 protect the public or any individual in the jurisdiction from the registrant.

22 25. There is no procedure under which registrants can appeal any determination of the
23 assigned classification, risk assessment, notification level, or that it is necessary or
24 mandated. Upon information and belief, there is no review or oversight of the
25 classifications, risk assessments, or notification level determinations made by law
26 enforcement personnel.

1 26. Even after a risk assessment is conducted on a particular registrant who is then
2 assigned a specific notification level (i.e., Level I or Level II), law enforcement
3 personnel are still permitted to change and raise the notification level of the
4 registrant (i.e, from a Level I to a Level II or III). This can occur several years
5 after the date on which the original risk assessment and notification level was
6 determined, and does not have to be based on any new or additional facts related to
7 risk.

8 27. A.R.S. § 13-3821, *et seq.* does not provide any standards to determine the
9 circumstances under which notification is necessary to protect the public or any
10 individual, or when the registrant constitutes a “danger to the community.”

11 28. The system of designating persons as “sex offender” and placing them in a risk
12 assessment which then permits or mandates community notification as described
13 above suggests to the public that Arizona law enforcement officials have made an
14 objective and reasonable determination that the persons so designated pose a
15 danger to the community.

16 29. However, Plaintiffs allege that the risk assessment is arbitrary and discriminatory:
17 Persons who are subject to the community notification are unfairly stigmatized and
18 threatened with the adverse consequences resulting from public perception that
19 they pose a danger to the community.

20 COMMON ALLEGATIONS

21 30. On November 16, 1999, because he was not guilty, Defendant Christopher
22 Stannard pled no contest to two counts of Attempted Sexual Assault, class 3
23 felonies, as part of a plea agreement with the Maricopa County Attorney’s Office.
24 These are non-dangerous, non-repetitive offenses under the criminal code. As to
25 both counts, Mr. Stannard received lifetime probation and was required to register
26 as a sex offender pursuant to A.R.S. §13-3821.

1 31. Pursuant to A.R.S. § 13-3825(A)(2), the probation department assessed Mr.
2 Stannard as a Level I sex offender. As a result, pursuant to A.R.S. § 13-
3 3826(E)(3), this risk assessment was provided to the Phoenix Police Department
4 which had the discretion to accept it or complete another risk assessment and
5 change it. The Phoenix Police Department also had the discretion to notify the
6 community of Mr. Stannard's offense if it felt he was a danger to the community.
7 The Phoenix Police Department, however, did neither and thus it accepted Mr.
8 Stannard's Level I risk assessment and determined that no community notification
9 was needed. Further, due to his Level I status, D.P.S. could not place Mr. Stannard
10 on its sex offender website.

11 32. In or around 2001, Mr. Stannard was incarcerated for three months due to a
12 probation violation. The charge was failure to pay a \$40.00 probation fee.
13 After his release, another risk assessment of him was completed and he was raised
14 to a Level II sex offender.

15 33. On November 6, 2003, almost four years after the original assessment of Mr.
16 Stannard was completed and accepted by the Phoenix Police Department,
17 Detective Tom Jones of the Phoenix Police Department completed another risk
18 assessment of Mr. Stannard. Detective Jones arbitrarily and capriciously
19 determined that Mr. Stannard should be at a Level II sex offender status, for
20 reasons that are still unknown to Mr. Stannard.

21 34. Detective Jones then notified Mr. Stannard's neighbors and the schools in the area
22 where he resided, including the school which his son, Tyler, attended. The
23 notification consisted of a flyer with Mr. Stannard's photograph and information
24 of his plea of no contest to two counts of attempted sexual assault. The flyer
25 further stated that "Christopher Stannard placed animal tranquilizers in the
26 victim's drinks prior to his sexually assaulting them. His victims were known to
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28

1 him. He is currently on supervised probation.” The flyer provided the numbered
2 block and street of his residence.

3 35. Due to Detective Jones’ arbitrary determination that Mr. Stannard was a Level II
4 offender, the Department of Public Safety placed him on its sex offender website.
5 This information included Mr. Stannard’s photograph, exact address, and listed his
6 offense as “sexual assault.” It also provided identifying information about him,
7 including his height, weight, age, and gender.

8 36. Prior to Detective Jones’ November 2003 sex offender assessment, Defendants
9 never offered Mr. Stannard any opportunity to provide any input to the assessment,
10 explain the circumstances underlying his plea, or any other information.

11 37. Since Detective Jones did not investigate the original charges against Mr. Stannard
12 and was not connected to the criminal prosecution in any way, Mr. Stannard
13 requested to meet with Detective Jones to discuss the reason for his reassessment
14 and determination to raise Mr. Stannard to a Level II. Detective Jones refused.
15 Mr. Stannard subsequently reiterated this request with Detective Jones’ Supervisor,
16 Sergeant Bell, but the request was once again refused.

17 38. Detective Tom Jones has failed to give any reason for performing another
18 assessment on Mr. Stannard in 2003. Since Mr. Stannard’s plea agreement in
19 1999, Mr. Stannard has not been arrested, charged, convicted, or accused of any
20 criminal acts or sex offenses that affect risk.

21 39. Due to the arbitrary and erroneous assessment of Mr. Stannard as a Level II
22 offender and the community notification, Mr. Stannard and his son were evicted
23 from their apartment complex where they had resided for over three years without
24 incident. Mr. Stannard incurred moving costs and other expenses associated with
25 the relocation. After he moved, Detective Jones sent another community
26 notification to Mr. Stannard’s neighborhood.

1 40. After the initial community notification, Mr. Stannard's twelve year-old son, Tyler,
2 was subjected to intense teasing and harassment from his classmates at school. As
3 a result, Mr. Stannard was forced to withdraw Tyler from the public school and
4 enrolled him in a smaller, private school. Mr. Stannard incurred substantial
5 expenses and costs associated with enrolling Tyler in the private school.

6 41. After the community notification, Tyler's grades in school immediately declined.
7 Subsequently, Tyler began treating with a counselor for the trauma caused by the
8 social stigma of the community notification of his father. Tyler is still treating
9 with the counselor and Mr. Stannard has incurred substantial expenses associated
10 with the treatment.

11 42. The community notification triggered by Detective Jones' arbitrary determination
12 of Mr. Stannard as a Level II sex offender also resulted in Mr. Stannard's
13 termination from his job.

14 **IRREPARABLE HARM TO PLAINTIFFS**

15 43. Defendants' enforcement of A.R.S. § 13-3821, *et seq.* threatens Plaintiffs with
16 continuing irreparable injury for which there is no adequate remedy at law,
17 including the following:

- 18 a. Plaintiff Christopher Stannard is being publicly branded as a danger to the
19 community regardless of whether there is any basis for such as assessment;
- 20 b. Plaintiff does not have a constitutionally sufficient means of contesting the
21 change and determination of his designation to a Level II sex offender;
- 22 c. Plaintiffs are threatened with a multitude of possible adverse consequences
23 resulting from Mr. Stannard being changed to and classified as a Level II
24 sex offender, including shame, humiliation, ostracism, loss of employment,
25 decreased employment opportunities, interference with business
26 opportunities, loss of housing, interference with family and social
27

1 relationships, and possible physical harm inflicted by members of the public
2 who believe that Mr. Stannard is a danger to the public.

3 44. Unless Defendants are enjoined from further enforcement of A.R.S. § 13-3825, *et.*
4 *seq.*, Plaintiffs will continue to suffer irreparable injury for which there is no
5 adequate remedy at law.

6 **COUNT ONE: PROCEDURAL DUE PROCESS VIOLATION**

7 45. Plaintiffs re-allege and re-incorporate by reference each and every allegation
8 contained above as though fully set forth herein.

9 46. Plaintiff Christopher Stannard has a constitutionally protected liberty and property
10 interest in not being falsely designated and raised to a Level II sex offender who
11 constitutes a danger to the community. Since the date on which Defendants
12 determined Mr. Stannard to be only a Level I offender who did not present a
13 “danger to the community”, there have not been any new allegations, charges, or
14 investigations concerning Mr. Stannard. The liberty and property interests of
15 Plaintiffs arise under the Fourteenth Amendment to the United States Constitution
16 and Article 2, § 4 of the Arizona Constitution. In addition, Plaintiffs has a
17 protectible privacy interest which arises under Article 2, § 8 of the Arizona
18 Constitution.

19 47. Defendants’ conduct has stigmatized Plaintiff and harmed his son. Detective
20 Jones’ reassessment and determination that Mr. Stannard was a Level II sex
21 offender was based on the same facts and information which existed to the
22 individual who conducted the same risk assessment of Mr. Stannard in November
23 1999. In addition, in November 1999, if the Phoenix Police Department did not
24 agree that Mr. Stannard was a Level I offender and/or that community notification
25 was not needed, it could have completed another risk assessment and raised him to
26 a Level II at that time. It did not and thus the Phoenix Police Department agreed in
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1 1999 that Mr. Stannard was only a Level I offender. It further agreed, in 1999, that
2 community notification was not needed.

3 48. Now, more than four years later, Detective Jones has arbitrarily completed his own
4 risk assessment and, based on the same facts and information available in 1999,
5 determined that Mr. Stannard should be a Level II offender and that he presented a
6 “danger to the community” warranting community notification.

7 49. The aforementioned different risk assessments, which are based on the same facts
8 and information, demonstrate the arbitrariness of the entire risk assessment system.
9 There is no procedure to determine if there is any factual basis for the
10 reassessment. There is also no manner to review or appeal Detective Jones’
11 reassessment.

12 50. Defendants’ failure to provide timely and adequate notice before reclassifying Mr.
13 Stannard as a Level II offender, and before notifying his community, violates the
14 due process clause of the Fourteenth Amendment to the United States Constitution,
15 in violation of 42 U.S.C. § 1983, and Art. 2, § 4 of the Arizona Constitution.

16 51. Defendants’ failure to grant Mr. Stannard an opportunity for a hearing to contest
17 the reclassification and provide information relevant to the assessment, and/or to
18 provide for any appeal or review of the reclassification, violates the due process
19 clause of the Fourteenth Amendment to the United States Constitution, in violation
20 of 42 U.S.C. § 1983, and Art. 2, § 4 of the Arizona Constitution.

21 52. Defendants’ failure to establish objective and reasonable criteria to use in the
22 classification of sex offenders violates the due process clause of the Fourteenth
23 Amendment to the United States Constitution, in violation of 42 U.S.C. § 1983,
24 and Art. 2, § 4 of the Arizona Constitution.

25 53. Mr. Stannard and his son, Tyler, will be irreparably harmed if a Preliminary and
26 Permanent Injunction are not granted enjoining the State, through its agents, from
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1 further notifying the community of his sex offender status and posting information
2 on the sex offender web site.

3 **COUNT TWO: UNCONSTITUTIONAL DELEGATION OF LEGISLATIVE**
4 **POWER**

5 54. Plaintiffs re-allege and re-incorporate by reference each and every allegation
6 contained above as though more fully set forth herein.

7 55. Detective Jones allegedly relied upon A.R.S. § 13-3825(H) to make his
8 determination to reclassify Mr. Stannard as a Level II sex offender.

9 56. A.R.S. § 13-3825(H) is an unconstitutional delegation of legislative power as it
10 violates the "Intelligible Principle" of both the United States Constitution and
11 Arizona Constitution, both of which require the separation of powers between the
12 three branches of the government.

13 57. The aforementioned statute gives unfettered discretion to local law enforcement or
14 an individual law enforcement officer to determine the community notification
15 classification of a registered sex offender without any guidelines. Defendants
16 wrongfully reclassified Mr. Stannard because the statute provides no clear
17 guidelines to ensure a just and accurate classification. The statute allows for
18 unfettered, unchecked, biased, discriminatory, and unrestricted determinations by
19 an individual who may not have any training in the field.

20 58. The Arizona Supreme Court requires an "intelligible principle" behind any
21 delegation of legislative authority so that it is lawful under the non-delegation
22 doctrine. The Arizona Supreme Court has held that the Arizona Legislature can
23 confer authority upon an agency or department to exercise its discretion in
24 administering the law. The delegation, however, must be limited by clear
25 guidelines which define with sufficient clarity the agency's legal boundaries. The
26 intelligible principle is even more important when criminal statutes are construed
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1 and the delegation of legislative authority to an administrative agency in this
2 regard must be definite and certain.

3 59. There are no definite, certain, or clear guidelines defining the legal boundaries of
4 who constitutes a “danger to the community” pursuant to A.R.S. § 13-3825(H).

5 **COUNT THREE: UNCONSTITUTIONALLY VAGUE**

6 60. Plaintiffs re-allege and re-incorporate by reference each and every allegation
7 contained above as though more fully set forth herein.

8 61. The term “danger to the community” utilized in Section 13-3825(H) is
9 impermissibly vague in that it does not describe who or what constitutes a “danger
10 to the community.” Similarly, the classification process permitted by A.R.S. § 13-
11 3825(A) is impermissibly vague as there are no clear, objective guidelines as to
12 how the notification levels and sex offender status are to be made. Both sections
13 fail to give law enforcement agencies clear and explicit standards to utilize in
14 making the community notification and sex offender status determinations. They
15 also fail to provide notice to persons of reasonable intelligence of what constitutes
16 a “danger to the community” and what sex offender status an individual will be
17 placed in.

18 62. This vagueness invites arbitrary and discriminatory enforcement. There are no
19 objective standards and the risk assessment and community notification
20 determination is enforced according to the personal prejudices of law enforcement.

21 63. For these reasons, A.R.S. §§ 13-3825(A) and 13-3825(H) are impermissibly vague
22 in violation of the First and Fourteenth Amendments to the United States
23 Constitution, in violation of 42 U.S.C. § 1983, and the Arizona Constitution.
24 Defendants, through their employee Detective Jones, have refused to suspend any
25 community notification of Mr. Stannard. Plaintiffs are suffering irreparable harm
26 from the ongoing violation of their constitutional rights and will continue to suffer
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1 such harm unless this Court enjoins enforcement of these statutes.

2 **REQUEST FOR RELIEF**

3 Wherefore, Plaintiffs respectfully request:

4 A. Preliminary and permanent injunctive relief prohibiting Defendants from enforcing
5 the risk assessment sex offender classification scheme, authorized by A.R.S. §§
6 13-3825, *et seq.*;

7 B. A declaration that A.R.S. §§ 13-3825(A), 13-3825(H), and 13-3826(E), on their
8 face and as applied, violate the Fourteenth Amendment to the United States
9 Constitution and Art. 2, § 4, of the Arizona Constitution, by depriving individuals
10 of due process of law before they are classified into a risk level which dictates
11 community notification;

12 C. A declaration that A.R.S. §§ 13-3825(A) and 13-3825(H) are unconstitutionally
13 vague;

14 D. A declaration that the risk assessment and determination to raise Mr. Stannard to a
15 Level II offender, and to notify his community, is void;

16 E. Preliminary and permanent injunctive relief prohibiting Defendants from any
17 further community notifications concerning Mr. Stannard;

18 F. An award of attorneys' fees, expert fees, if any, and other costs pursuant to 42
19 U.S.C. § 1988(b) and (c), the private attorney general doctrine, and any other
20 applicable authority or rule of equity;

21 G. All other relief that this Court deems just and proper.

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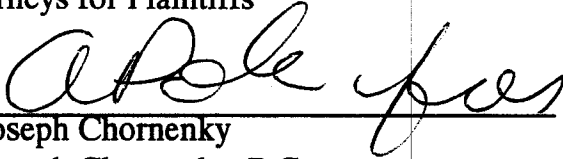
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1 DATED this 9th day of June, 2004.

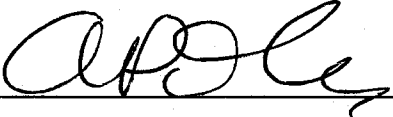
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Original and one copy of the foregoing
filed this 9th day of June, 2004, with:

Clerk of the Court
United States District Court,
District of Arizona

By: 

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