

BARBARA LAWALL
PIMA COUNTY ATTORNEY
CIVIL DIVISION

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10 *Attorney for Defendants Napier, Pima County Board of Supervisors, Nanos, Roher, and*
11 *Kunze*

12 **UNITED STATES DISTRICT COURT**
13 **DISTRICT OF ARIZONA**

14 Terrence Bressi,
15 Plaintiff,
16 vs.
17 Pima County Board of Supervisors, et. al.,
18 Defendants.

No. 18-CV-00186-DCB

**ANSWER TO BRESSI’S SECOND
AMENDED COMPLAINT (Doc. # 42)**

19 Defendants Napier, Pima County Board of Supervisors, Nanos, Roher, and Kunze
20 (collectively referred to as “the County Defendants”) hereby admit, deny, and
21 affirmatively allege the following with respect to Plaintiff Terrence Bressi’s (“Bressi’s”)
22 Second Amended Complaint (“SAC”), *Doc. # 42*:

23 **JURISDICTION AND VENUE**

24 1. Deny that this Court has subject matter jurisdiction over Bressi’s claims for
25 injunctive and declarative relief against the County defendants; admit that the Court has
26 jurisdiction over the other federal claims.

As to paragraph 2, neither admits or denies because this paragraph is alleged
against the federal government defendants only. In the event an answer is required, it is
denied.

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1 3. Admit in part and deny in part with respect to paragraph 3. Admit that this Court
2 has supplemental jurisdiction over Bressi's state-law claims against the County
3 Defendants.

4 4. Deny paragraph 4 because the Court lacks jurisdiction over Bressi's claims for
5 injunctive and declaratory relief as set forth in the County's Defendants' pending partial
6 motion to dismiss.

7 5. Deny paragraph 5 on the basis that plaintiff is only entitled to a reasonable
8 attorney fee under 42 U.S.C. § 1988 if he is the prevailing party in this action.

9 6. As to paragraph 6, admit that venue is proper.

10 PARTIES

11 6. Note that in his SAC, Bressi numbers this paragraph # 6 even though the
12 foregoing paragraph is numbered 6. Are without information to form a belief as to the
13 truth or falsity of this paragraph 6 and, therefore, deny the same.¹

14 7. Are without information to form a belief as to the truth or falsity of Bressi's SAC
15 paragraph 7 and, therefore, deny the same.

16 8. As to Bressi's SAC paragraph 8, affirmatively allege that Defendants Ryan Roher
17 and Bryan Kunze are employees of the Pima County Sheriff; deny the remaining
18 allegations.

19 9. As to Bressi's SAC paragraph 9, admit that Mark Napier is the current Sheriff of
20 Pima County.

21 10. As to Bressi's SAC paragraph 10, admit that Defendant Napier was the Sheriff of
22 Pima County on April 10, 2017.

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26 ¹ The County Defendants note the duplicate number 6, and will Answer the SAC using the numbering used by Bressi in an effort to avoid further confusion.

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- 1 11. As to Bressi’s SAC paragraph 11, admit only that Defendant Napier, as the Pima
2 County Sheriff is a county officer; affirmatively allege that the Board of Supervisors has
3 no control over the Sheriff’s execution of law-enforcement duties.
- 4 12. As to Bressi’s SAC paragraph 12, admit.
- 5 13. As to Bressi’s SAC paragraph 13, deny because the allegation sets forth a purely
6 legal conclusion without reference to any facts.
- 7 14. As to Bressi’s SAC paragraph 14, deny because the allegation that Defendant
8 Napier acted under color of state law sets forth a purely legal conclusion without
9 reference to any facts. Affirmatively allege that Sheriff Napier could not act under color
10 of law for conduct undertaken as a private citizen.
- 11 15. As to Bressi’s SAC paragraph, admit only that Bressi has alleged individual and
12 official capacity claims. Affirmatively allege that said allegations fail to state a claim as
13 set forth in the County Defendants’ partial motion to dismiss and may fail to state a claim
14 on other grounds.
- 15 16. As to Bressi’s SAC paragraph 16, admit.
- 16 17. As to Bressi’s SAC paragraph 17, admit that Defendant Nanos was an officer of
17 Pima County during his tenure as Sheriff, but deny that the Board of Supervisors had any
18 control over Sheriff’ Nanos’ execution of law-enforcement duties.
- 19 18. As to Bressi’s SAC paragraph 18, admit only that Defendant Nanos would have
20 been acting under color of law for all actions taken as the Sheriff, but deny that said
21 conduct was unlawful or violated Bressi’s constitutional rights, and deny that Nanos
22 would have been acting under color of law for acts not taken as Sheriff.
- 23 19. As to Bressi’s SAC paragraph 19, admit. Affirmatively allege that the conduct at
24 issue in this lawsuit occurred in April of 2017, well after Sheriff Nanos stopped holding
25 the office of Pima County Sheriff and further affirmatively allege that Bressi has failed to
26 connect any conduct of former Sheriff Nanos to his claims regarding the April 10, 2017

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1 incident, and affirmatively allege that any allegations arising prior to January 1, 2016 are
2 barred by the applicable statute of limitations and, as to state law claims, by Bressi's
3 failure to file a notice of claim. Further affirmatively allege that deputies are employed by
4 the Sheriff, not the PCSD.

5 20. As to Bressi's SAC paragraph 20, admit only that Bressi's SAC alleges his claims
6 against Sheriff Nanos are individual capacity claims.

7 21. As to Bressi's SAC paragraph 21, admit.

8 22. As to Bressi's SAC paragraph 22, deny. The individual County Defendants Roher
9 and Kunze were employed by the Pima County Sheriff, not the PCSD. The PCSD is a
10 nonjural entity. Further allege that Sheriff Napier was the elected Sheriff of Pima County
11 and that Defendant Nanos stopped being Sheriff of Pima County as of December 31,
12 2016.

13 23. As to Bressi's SAC paragraph 23, admit that the individual County Defendants
14 had legal authority to enforce Arizona's criminal statutes, but deny there were employed
15 by the PCSD for the reasons set forth in the Answer to paragraph 22 above.

16 24. As to Bressi's SAC paragraph 24, admit only that A.R.S. § 13-3883 allows for
17 warrantless arrests for misdemeanor and felony crimes where probable cause exists to
18 believe the person arrested committed such crime.

19 25. As to Bressi's SAC paragraph 25, admit only that Sheriff Napier, Roher, and
20 Kunze were acting under color of law with respect to the April 10, 2017 incident at issue
21 in this case. Deny that Defendant Nanos was acting under color of law at that time as he
22 was no longer the Pima County Sheriff and because Bressi does not allege any personal
23 participation by Nanos with respect to the subject incident.

24 26. As to Bressi's SAC paragraph 26, admit.

25 27. As to Bressi's SAC paragraph 27, deny because it sets forth a purely legal
26 conclusion. Affirmatively allege that the Board does not have the lawful authority to

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1 supervise or direct the conduct of the Pima County Sheriff in the execution of the
2 Sheriff's statutorily-imposed law enforcement duties.

3 28. As to Bressi's SAC paragraph 28, deny that A.R.S. § 11-444 states what Bressi
4 alleges and further deny on the basis that the allegations sets forth a purely legal
5 conclusion without application to fact.

6 29. As to Bressi's SAC paragraph, admit paragraph 29.

7 30. As to Bressi's SAC paragraph 30, admit that the Board has some authority, but
8 deny that the Board of Supervisors has supervisory authority over the Sheriff's execution
9 of statutorily-imposed law-enforcement duties.

10 31. As to Bressi's SAC paragraph 31, deny because this is a purely legal conclusion.

11 32. As to Bressi's SAC paragraph 32, admit only that the Board has exercised such
12 authority in the past with respect to Operation Stonegarden. Deny any other allegations
13 and legal conclusions.

14 33. As to Bressi's SAC paragraph 33, deny because the term "supervised" is not
15 defined, nor is the precise conduct at issue defined in this allegation. Deny that Border
16 Patrol could supervise individual County defendants or County employees for purposes
17 of the conduct at issue in this case, including the enforcement of Arizona's traffic and
18 criminal laws.

19 34. As to Bressi's SAC paragraph 34, this paragraph pertains to the federal
20 Defendants. Thus, the County Defendants are without sufficient information to admit or
21 deny and, therefore, deny the same.

22 35. As to Bressi's SAC paragraph 35, this paragraph pertains to the federal
23 Defendants. Thus, the County Defendants are without sufficient information to admit or
24 deny and, therefore, deny the same.

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1 36. As to Bressi's SAC paragraph 36, this paragraph pertains to the federal
2 Defendants. Thus, the County Defendants are without sufficient information to admit or
3 deny and, therefore, deny the same.

4 37. As to Bressi's SAC paragraph 37, this paragraph pertains to the federal
5 Defendants. Thus, the County Defendants are without sufficient information to admit or
6 deny and, therefore, deny the same.

7 38. As to Bressi's SAC paragraph 38, this paragraph pertains to the federal
8 Defendants. Thus, the County Defendants are without sufficient information to admit or
9 deny and, therefore, deny the same.

10 39. As to Bressi's SAC paragraph 39, this paragraph pertains to the federal
11 Defendants. Thus, the County Defendants are without sufficient information to admit or
12 deny and, therefore, deny the same.

13 40. As to Bressi's SAC paragraph 40, this paragraph pertains to the federal
14 Defendants. Thus, the County Defendants are without sufficient information to admit or
15 deny and, therefore, deny the same.

16 41. As to Bressi's SAC paragraph 41, this paragraph pertains to the federal
17 Defendants. Thus, the County Defendants are without sufficient information to admit or
18 deny and, therefore, deny the same.

19 42. As to Bressi's SAC paragraph 42, this paragraph pertains to the federal
20 Defendants. Thus, the County Defendants are without sufficient information to admit or
21 deny and, therefore, deny the same.

22 **FACTUAL ALLEGATIONS**

23 **Arizona State Route 86 Checkpoint**

24 43. As to Bressi's SAC paragraph 43, are without information to form a belief as to
25 the truth or falsity of this paragraph and, therefore, deny the same.

26 44. Admit Bressi's SAC paragraph 44.

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- 1 45. As to Bressi's SAC paragraph 45, are without information to form a belief as to
- 2 the truth or falsity of this paragraph and, therefore, deny the same.
- 3 46. As to Bressi's SAC paragraph 46, are without information to form a belief as to
- 4 the truth or falsity of this paragraph and, therefore, deny the same.
- 5 47. As to Bressi's SAC paragraph 47, are without information to form a belief as to
- 6 the truth or falsity of this paragraph and, therefore, deny the same.
- 7 48. As to Bressi's SAC paragraph 48, are without information to form a belief as to
- 8 the truth or falsity of this paragraph and, therefore, deny the same.
- 9 49. As to Bressi's SAC paragraph 49, are without information to form a belief as to
- 10 the truth or falsity of this paragraph and, therefore, deny the same.
- 11 50. As to Bressi's SAC paragraph 50, admit.
- 12 51. As to Bressi's SAC paragraph 51, are without information to form a belief as to
- 13 the truth or falsity of this paragraph and, therefore, deny the same.
- 14 52. As to Bressi's SAC paragraph 52, are without information to form a belief as to
- 15 the truth or falsity of this paragraph and, therefore, deny the same.
- 16 53. As to Bressi's SAC paragraph 53, are without information to form a belief as to
- 17 the truth or falsity of this paragraph and, therefore, deny the same.
- 18 54. As to Bressi's SAC paragraph 54, are without information to form a belief as to
- 19 the truth or falsity of this paragraph and, therefore, deny the same.
- 20 55. As to Bressi's SAC paragraph 55, are without information to form a belief as to
- 21 the truth or falsity of this paragraph and, therefore, deny the same.
- 22 56. As to Bressi's SAC paragraph 56, are without information to form a belief as to
- 23 the truth or falsity of this paragraph and, therefore, deny the same.
- 24 57. As to Bressi's SAC paragraph 57, are without information to form a belief as to
- 25 the truth or falsity of this paragraph and, therefore, deny the same.
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- 1 58. As to Bressi's SAC paragraph 58, are without information to form a belief as to
2 the truth or falsity of this paragraph and, therefore, deny the same.
- 3 59. As to Bressi's SAC paragraph 59, are without information to form a belief as to
4 the truth or falsity of this paragraph and, therefore, deny the same.
- 5 60. As to Bressi's SAC paragraph 60, are without information to form a belief as to
6 the truth or falsity of this paragraph and, therefore, deny the same.
- 7 61. As to Bressi's SAC paragraph 61, are without information to form a belief as to
8 the truth or falsity of this paragraph and, therefore, deny the same.
- 9 62. As to Bressi's SAC paragraph 62, are without information to form a belief as to
10 the truth or falsity of this paragraph and, therefore, deny the same.
- 11 63. As to Bressi's SAC paragraph 63, are without information to form a belief as to
12 the truth or falsity of this paragraph and, therefore, deny the same.
- 13 64. As to Bressi's SAC paragraph 64, are without information to form a belief as to
14 the truth or falsity of this paragraph and, therefore, deny the same.
- 15 65. As to Bressi's SAC paragraph 65, are without information to form a belief as to
16 the truth or falsity of this paragraph and, therefore, deny the same.
- 17 66. As to Bressi's SAC paragraph 66, are without information to form a belief as to
18 the truth or falsity of this paragraph and, therefore, deny the same.
- 19 67. As to Bressi's SAC paragraph 67, are without information to form a belief as to
20 the truth or falsity of this paragraph and, therefore, deny the same.
- 21 68. As to Bressi's SAC paragraph 68, are without information to form a belief as to
22 the truth or falsity of this paragraph and, therefore, deny the same.
- 23 69. As to Bressi's SAC paragraph 69, are without information to form a belief as to
24 the truth or falsity of this paragraph and, therefore, deny the same.

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Plaintiff's Interactions at the SR-86 Checkpoint

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2 70. As to Bressi's SAC paragraph 70, are without information to form a belief as to
3 the truth or falsity of this paragraph and, therefore, deny the same.

4 71. As to Bressi's SAC paragraph 71, are without information to form a belief as to
5 the truth or falsity of this paragraph and, therefore, deny the same.

6 72. As to Bressi's SAC paragraph 72, are without information to form a belief as to
7 the truth or falsity of this paragraph and, therefore, deny the same.

8 73. As to Bressi's SAC paragraph 73, are without information to form a belief as to
9 the truth or falsity of this paragraph as to the federal Defendants and therefore deny the
10 same. Deny as to the County defendants.

11 74. As to Bressi's SAC paragraph 74, deny.

12 75. As to Bressi's SAC paragraph 75, are without information to form a belief as to
13 the truth or falsity of this paragraph as to the federal Defendants and therefore deny the
14 same.

15 76. As to Bressi's SAC paragraph 76, are without information to form a belief as to
16 the truth or falsity of this paragraph and, therefore, deny the same.

17 77. As to Bressi's SAC paragraph 77, are without information to form a belief as to
18 the truth or falsity of this paragraph and, therefore, deny the same.

19 78. As to Bressi's SAC paragraph 78, are without information to form a belief as to
20 the truth or falsity of this paragraph and, therefore, deny the same.

21 79. As to Bressi's SAC paragraph 79, are without information to form a belief as to
22 the truth or falsity of this paragraph and, therefore, deny the same.

23 80. As to Bressi's SAC paragraph 80, are without information to form a belief as to
24 the truth or falsity of this paragraph and, therefore, deny the same.

25 81. As to Bressi's SAC paragraph 81, are without information to form a belief as to
26 the truth or falsity of this paragraph and, therefore, deny the same.

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1 82. As to Bressi's SAC paragraph 82, are without information to form a belief as to
2 the truth or falsity of this paragraph and, therefore, deny the same.

3 83. As to Bressi's SAC paragraph 83, are without information to form a belief as to
4 the truth or falsity of this paragraph and, therefore, deny the same.

5 84. As to Bressi's SAC paragraph 84, are without information to form a belief as to
6 the truth or falsity of this paragraph and, therefore, deny the same.

7 85. As to Bressi's SAC paragraph 85, are without information to form a belief as to
8 the truth or falsity of this paragraph and, therefore, deny the same.

9 Operation Stonegarden in Pima County

10 86. As to Bressi's SAC paragraph 86, admit only that PCSD deputies have worked
11 under Operation Stonegarden, deny the remaining allegations.

12 87. As to Bressi's SAC paragraph 87, admit only that Operation Stonegarden has
13 consisted of saturation patrols; deny the remaining allegations.

14 88. As to Bressi's SAC paragraph 88, admit.

15 89. As to Bressi's SAC paragraph 89, admit only that PCSD deputies work overtime
16 under Stonegarden.

17 90. As to Bressi's SAC paragraph 90, admit.

18 91. As to Bressi's SAC paragraph 91, are without information to form a belief as to
19 the truth or falsity of paragraph 91 and, therefore, deny the same.

20 92. As to Bressi's SAC paragraph 92, admit.

21 93. As to Bressi's SAC paragraph 93, admit only that deputies contact border patrol as
22 to where their services are needed on any particular date and affirmatively allege that the
23 process has changed over time.

24 94. As to Bressi's SAC paragraph 94, admit only that deputies contact border patrol as
25 to where their services are needed on any particular date and affirmatively allege that the
26 process has changed over time.

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- 1 95. As to Bressi’s SAC paragraph 95, are without information to form a belief as to
2 the truth or falsity of the allegations and, therefore, deny the same.
- 3 96. As to Bressi’s SAC paragraph 96, are without information to form a belief as to
4 the truth or falsity of the allegations and, therefore, deny the same.
- 5 97. As to Bressi’s SAC paragraph 97, are without information to form a belief as to
6 the truth or falsity of the allegations and, therefore, deny the same.
- 7 98. As to Bressi’s SAC paragraph 98, are without information to form a belief as to
8 the truth or falsity of the allegations and, therefore, deny the same.
- 9 99. As to Bressi’s SAC paragraph 99, are without information to form a belief as to
10 the truth or falsity of the allegations and, therefore, deny the same.
- 11 100. As to Bressi’s SAC paragraph 100, admit only that some traffic citations were
12 issued at various times, but are without information to form a belief as to the truth or
13 falsity of the remaining allegations and, therefore, deny the same.
- 14 101. As to Bressi’s SAC paragraph 101, admit only that some traffic citations were
15 issued at various times, but are without information to form a belief as to the truth or
16 falsity of the remaining allegations and, therefore, deny the same.
- 17 102. As to Bressi’s SAC paragraph 102, admit only that Deputy Roher has issued
18 traffic citations in the vicinity of the checkpoint, but are without information to form a
19 belief as to the truth or falsity of the allegations and because the term routinely is vague
20 and, therefore, deny the same.
- 21 103. As to Bressi’s SAC paragraph 103, deny because “PCSD” does not issue citations,
22 only individual deputies issue citations, and are without sufficient information to admit or
23 deny the remaining allegations and, therefore, deny the same.
- 24 104. As to Bressi’s SAC paragraph 104, admit only that some traffic citations were
25 issued at various times, but are without information to form a belief as to the truth or
26 falsity of the remaining allegations and, therefore, deny the same.

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- 1 105. As to Bressi's SAC paragraph 105, admit only that Deputy Roher has issued
2 traffic citations, but are without information to form a belief as to the truth or falsity of
3 the allegations because no date is given and, therefore, deny the same.
- 4 106. As to Bressi's SAC paragraph 106, admit only that Deputy Roher has issued
5 traffic citations, but are without information to form a belief as to the truth or falsity of
6 the allegations because no date is given and, therefore, deny the same.
- 7 107. As to Bressi's SAC paragraph 107, Deputy Roher admits. The remaining
8 defendants are without sufficient information to admit or deny this allegation and,
9 therefore, deny the same.
- 10 108. As to Bressi's SAC paragraph 108, Deputy Roher admits. The remaining
11 defendants are without sufficient information to admit or deny this allegation and,
12 therefore, deny the same.
- 13 109. As to Bressi's SAC paragraph 109, Deputy Roher admits. The remaining
14 defendants are without sufficient information to admit or deny this allegation and,
15 therefore, deny the same.
- 16 110. As to Bressi's SAC paragraph 110, admit.
- 17 111. As to Bressi's SAC paragraph 111, admit.
- 18 112. As to Bressi's SAC paragraph 112, admit.
- 19 113. Upon information and belief, admit paragraph 113 of Bressi's SAC.
- 20 114. Upon information and belief, admit paragraph 114 of Bressi's SAC.
- 21 115. Upon information and belief, admit paragraph 115 of Bressi's SAC.
- 22 116. Upon information and belief, admit paragraph 116 of Bressi's SAC.
- 23 117. As to Bressi's SAC paragraph 112, are without sufficient information to form a
24 belief as to the truth or falsity of this allegation and, therefore, deny the same.

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1 Training and Supervision of Pima County Sheriff's Deputies

2 118. As to Bressi's SAC paragraph 118, are without sufficient information to form a
3 belief as to the truth or falsity of this allegation and, therefore, deny the same.

4 Affirmatively allege that the department has written guidelines and policies in place
5 regarding various aspects of law-enforcement duties. Further affirmatively allege that the
6 standard law-enforcement training, protocols, and policies applied to the execution of
7 law-enforcement duties.

8 119. As to Bressi's SAC paragraph 119, are without sufficient information to form a
9 belief as to the truth or falsity of this allegation and, therefore, deny the same.

10 Affirmatively allege that the department has current guidelines and policies in place.
11 Further affirmatively allege that the standard law-enforcement training, protocols, and
12 policies applied to the execution of law-enforcement duties.

13 120. As to Bressi's SAC paragraph 120, are without sufficient information to form a
14 belief as to the truth or falsity of this allegation and, therefore, deny the same.

15 Affirmatively allege that the department has current guidelines and policies in place.
16 Further affirmatively allege that the standard law-enforcement training, protocols, and
17 policies applied to the execution of law-enforcement duties.

18 121. As to Bressi's SAC paragraph 121, are without sufficient information to form a
19 belief as to the truth or falsity of this allegation and, therefore, deny the same.

20 122. As to Bressi's SAC paragraph 122, are without sufficient information to form a
21 belief as to the truth or falsity of this allegation and, therefore, deny the same.

22 123. As to Bressi's SAC paragraph 123, are without sufficient information to form a
23 belief as to the truth or falsity of this allegation and, therefore, deny the same.

24 124. As to Bressi's SAC paragraph 124, are without sufficient information to form a
25 belief as to the truth or falsity of this allegation and, therefore, deny the same.

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- 1 125. As to Bressi's SAC paragraph 125, are without sufficient information to form a
2 belief as to the truth or falsity of this allegation and, therefore, deny the same.
- 3 126. As to Bressi's SAC paragraph 126, are without sufficient information to form a
4 belief as to the truth or falsity of this allegation and, therefore, deny the same.
- 5 127. As to Bressi's SAC paragraph 127 and Defendant Roher, admit. Affirmatively
6 allege that Defendant Roher was trained for the law-enforcement duties he was exercising
7 while working under the Stonegarden grant.
- 8 128. As to Bressi's SAC paragraph 128, are without sufficient information to form a
9 belief as to the truth or falsity of this allegation and, therefore, deny the same.
10 Affirmatively allege that deputies assigned to Stonegarden were not engaged in Border
11 Patrol duties, but were engaged in law-enforcement duties for which they did have
12 training.
- 13 129. As to Bressi's SAC paragraph 129, are without sufficient information to form a
14 belief as to the truth or falsity of this allegation and, therefore, deny the same.
15 Affirmatively allege that Defendant Nanos did have policies and procedures regarding
16 deputies' law-enforcement duties.
- 17 130. As to Bressi's SAC paragraph 130, are without sufficient information to form a
18 belief as to the truth or falsity of this allegation and, therefore, deny the same.
19 Affirmatively allege that Defendant Nanos did have policies and procedures regarding
20 deputies' law-enforcement duties.
- 21 131. As to Bressi's SAC paragraph 131, are without sufficient information to form a
22 belief as to the truth or falsity of this allegation and, therefore, deny the same.
- 23 132. As to Bressi's SAC paragraph 132, are without sufficient information to form a
24 belief as to the truth or falsity of this allegation and, therefore, deny the same.
- 25 133. As to Bressi's SAC paragraph 133, are without sufficient information to form a
26 belief as to the truth or falsity of this allegation and, therefore, deny the same.

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- 1 134. As to Bressi’s SAC paragraph 134, are without sufficient information to form a
2 belief as to the truth or falsity of this allegation and, therefore, deny the same.
- 3 135. As to Bressi’s SAC paragraph 135, admit that the PCSD maintains a Rules and
4 Regulation Manual on the PCSD website. Are without sufficient information to form a
5 belief as to the phrase “issues to some of its employees” because said phrase is vague.
6 Thus, the County Defendants deny that aspect of paragraph 135.
- 7 136. As to Bressi’s SAC paragraph 136, admit.
- 8 137. As to Bressi’s SAC paragraph 137, admit.
- 9 138. As to Bressi’s SAC paragraph 138, are without sufficient information to form a
10 belief as to the truth or falsity of this allegation and, therefore, deny the same.
- 11 139. As to Bressi’s SAC paragraph 139, are without sufficient information to form a
12 belief as to the truth or falsity of this allegation and, therefore, deny the same.
- 13 140. As to Bressi’s SAC paragraph 140, are without sufficient information to form a
14 belief as to the truth or falsity of this allegation and, therefore, deny the same.
- 15 141. As to Bressi’s SAC paragraph 141 and the time of the subject incident, admit.
- 16 142. As to Bressi’s SAC paragraph 142, admit.
- 17 143. As to Bressi’s SAC paragraph 143, admit.
- 18 144. As to Bressi’s SAC paragraph 144, are without sufficient information to form a
19 belief as to the truth or falsity of this allegation and, therefore, deny the same.
- 20 145. As to Bressi’s SAC paragraph 145, are without sufficient information to form a
21 belief as to the truth or falsity of this allegation and, therefore, deny the same.
- 22 146. As to Bressi’s SAC paragraph 146, are without sufficient information to form a
23 belief as to the truth or falsity of this allegation and, therefore, deny the same.
- 24 147. As to Bressi’s SAC paragraph 147, are without sufficient information to form a
25 belief as to the truth or falsity of this allegation and, therefore, deny the same.
26

April 10, 2017 Incident at SR-86 Checkpoint

1
2 148. As to Bressi's SAC paragraph 148, admit only that there were 3 citations with
3 respect to the allegations of paragraph 139 (2013, 2014, and 2017), but deny that it was in
4 collaboration with U.S. Border Patrol.

5 149. As to Bressi's SAC paragraph 149, admit.

6 150. As to Bressi's SAC paragraph 150, admit.

7 151. As to Bressi's SAC paragraph 151, admit.

8 152. As to Bressi's SAC paragraph 152, are without information to form a belief as to
9 the truth or falsity of this allegation and, therefore, deny the same.

10 153. As to Bressi's SAC paragraph 153, admit only that at one point Agent Frye asked
11 whether Bressi was a citizen, but affirmatively alleged that based on the video of the
12 incident as recorded by Bressi Agent Frye initially asked Bressi to pull over to secondary
13 before asking him about his citizenship.

14 154. As to Bressi's SAC paragraph 154, are without information to form a belief as to
15 the truth or falsity of this allegation and, therefore, deny the same.

16 155. As to Bressi's SAC paragraph 155, are without information to form a belief as to
17 the truth or falsity of this allegation and, therefore, deny the same.

18 156. As to Bressi's SAC paragraph 156, are without information to form a belief as to
19 the truth or falsity of this allegation and, therefore, deny the same.

20 157. As to Bressi's SAC paragraph 157, are without information to form a belief as to
21 the truth or falsity of this allegation and, therefore, deny the same.

22 158. As to Bressi's SAC paragraph 158, are without information to form a belief as to
23 the truth or falsity of this allegation and, therefore, deny the same.

24 159. As to Bressi's SAC paragraph 159, admit only that at some point Deputy Roher
25 approached Plaintiff's vehicle while it was stopped.

26 160. As to Bressi's SAC paragraph 160, admit.

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- 1 161. As to Bressi's SAC paragraph 161, deny.
- 2 162. As to Bressi's SAC paragraph 162, deny because Agent Frye also indicated that
3 Bressi refused to pull his vehicle over into secondary.
- 4 163. As to Bressi's SAC paragraph 163, deny.
- 5 164. As to Bressi's SAC paragraph 160, admit based on the video provided by Bressi.
- 6 165. As to Bressi's SAC paragraph 165, deny. Bressi's video shows that Deputy Roher
7 asked Bressi to move his vehicle to the secondary inspection lane. After Deputy Roher
8 indicated that Bressi was blocking traffic and after Bressi again asked what law he was
9 violating, Deputy Roher told Bressi to leave in an effort to get traffic moving through the
10 checkpoint.
- 11 166. As to Bressi's SAC paragraph 166, are without information to form a belief as to
12 the truth or falsity of this allegation and, therefore, deny the same.
- 13 167. As to Bressi's SAC paragraph 167, admit.
- 14 168. As to Bressi's SAC paragraph 168, admit that Deputy Roher jogged to his vehicle,
15 but are without information to form a belief as to the truth or falsity of the remainder of
16 this allegation and, therefore, deny the same.
- 17 169. As to Bressi's SAC paragraph 169, are without information to form a belief as to
18 the truth or falsity of this allegation and, therefore, deny the same.
- 19 170. As to Bressi's SAC paragraph 170, admit only that Plaintiff stopped his vehicle at
20 some point outside of the primary inspection lane checkpoint.
- 21 171. As to Bressi's SAC paragraph 171, admit only that Deputy Roher drove to where
22 Bressi had stopped his vehicle.
- 23 172. As to Bressi's SAC paragraph 172, admit.
- 24 173. As to Bressi's SAC paragraph 173, admit.
- 25 174. As to Bressi's SAC paragraph 174, admit.
- 26 175. As to Bressi's SAC paragraph 175, admit.

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1 176. As to Bressi's SAC paragraph 176, admit.

2 177. As to Bressi's SAC paragraph 177, admit.

3 178. As to Bressi's SAC paragraph 178, deny. Deputy Roher placed Bressi in handcuffs
4 because Deputy Roher felt he had probable cause to do so. Deputy Roher denies he
5 handcuffed Bressi because Bressi did not answer Deputy Roher's questions.

6 179. As to Bressi's SAC paragraph 179, deny.

7 180. As to Bressi's SAC paragraph 180, admit only that after Bressi had handed Deputy
8 Roher his driver's license, Deputy Roher recognized Bressi's name and had heard of
9 Bressi, and on that basis, indicated he knew who Bressi was. Deny the remaining
10 allegations.

11 181. As to Bressi's SAC paragraph 181, admit only that after Bressi had handed Deputy
12 Roher his driver's license, Deputy Roher recognized Bressi's name and had heard of
13 Bressi, and on that basis, indicated he knew who Bressi was. Deny the remaining
14 allegations.

15 182. As to Bressi's SAC paragraph 182, admit only that Deputy Roher was aware
16 Bressi was proceeding through the checkpoint. Deny the remaining allegations.

17 183. As to Bressi's SAC paragraph 183, admit only that Plaintiff was in handcuffs
18 when Kunze arrived. Deny the remaining allegations and affirmatively allege that
19 ratification is a legal conclusion.

20 184. As to Bressi's SAC paragraph 184, admit. Affirmatively allege that prior to April
21 10, 2017, Deputy Roher could not have identified Bressi on sight.

22 185. As to Bressi's SAC paragraph 185, deny the PCSD is a defendant and admit that
23 claims were served on PCBOS, Sheriff Napier, Deputy Roher and Deputy Kunze.

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COUNT I

**Violation Of First And Fourteenth Amendment Rights (Free Speech)
Against All County and Federal Defendants**

186. As to Bressi’s SAC paragraph 186, Defendants re-allege and incorporate by reference their Answer to allegations 1-185 set forth herein.

187. As to Bressi’s SAC paragraph 187, are without information to form a belief as to the truth or falsity of the first part of paragraph 187 and, therefore, deny the same. Affirmatively allege that Bressi does not have a constitutional right to not answer a citizenship question at a Border Patrol immigration checkpoint.

188. As to Bressi’s SAC paragraph 188, are without information to form a belief as to the truth or falsity of this allegation and, therefore, deny the same.

189. As to Bressi’s SAC paragraph 189, are without information to form a belief as to the truth or falsity of this allegation and, therefore, deny the same.

190. As to Bressi’s SAC paragraph 190, deny.

191. As to Bressi’s SAC paragraph 191, deny.

192. As to Bressi’s SAC paragraph 192, deny.

193. As to Bressi’s SAC paragraph 193, deny.

194. As to Bressi’s SAC paragraph 194, deny.

195. As to Bressi’s SAC paragraph 195, admit only that Bressi has asked for compensatory damages and declaratory and injunctive relief against all Defendants. Deny that Bressi is entitled to such relief.

COUNT II

**Violation Of Fourth And Fourteenth Amendment Rights Within The Checkpoint
Primary Inspection Lane (City of Indianapolis v. Edmond,) Against all County and
Federal Defendants**

196. Defendants re-allege and incorporate by reference their Answer to allegations 1-195 set forth herein.

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1 197. As to Bressi's SAC paragraph 197, deny on the basis that these allegations consist
2 purely of legal conclusions.

3 198. As to Bressi's SAC paragraph 198, admit.

4 199. As to Bressi's SAC paragraph 199, deny on the basis that these allegations consist
5 purely of legal conclusions.

6 200. As to Bressi's SAC paragraph 200, deny on the basis that these allegations consist
7 purely of legal conclusions.

8 201. As to Bressi's SAC paragraph 201, are without information to form a belief as to
9 the truth or falsity of the allegations and, therefore, deny the same.

10 202. As to Bressi's SAC paragraph 202, are without information to form a belief as to
11 the truth or falsity of the allegations and, therefore, deny the same.

12 203. As to Bressi's SAC paragraph 203, deny.

13 204. As to Bressi's SAC paragraph 204, deny on the basis that these allegations consist
14 purely of legal conclusions.

15 205. As to Bressi's SAC paragraph 205, deny.

16 206. As to Bressi's SAC paragraph 206, deny.

17 207. As to Bressi's SAC paragraph 207, admit only that Bressi is seeking declaratory
18 and injunctive relief in this Court. Deny that he is entitled to such relief.

19 **COUNT III**

20 **Violation Of Fourth And Fourteenth Amendment**
21 **Rights For Arrest Absent Probable Cause**
22 **Against Defendants Roher and Kunze**

23 208. Defendants re-allege and incorporate by reference their Answer to allegations 1-
24 207 set forth herein.

25 209. As to Bressi's SAC paragraph 209, deny.

26 210. As to Bressi's SAC paragraph 210, deny.

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- 1 211. As to Bressi’s SAC paragraph 211, admit that Roher arrested Bressi for a
- 2 suspected violation of A.R.S. § 13-3906, but deny the remaining allegations.
- 3 212. As to Bressi’s SAC paragraph 212, deny.
- 4 213. As to Bressi’s SAC paragraph 213, admit.
- 5 214. As to Bressi’s SAC paragraph 214, admit only that this is a general statement of
- 6 law, but deny that Roher and/or Kunze violated clearly-established law.
- 7 215. As to Bressi’s SAC paragraph 215, admit only that Bressi is seeking damages.
- 8 Deny that Bressi’s arrest lacked probable cause. Deny that Kunze ratified an unlawful
- 9 arrest. Affirmatively allege that Roher and Kunze did not violated Bressi’s constitutional
- 10 rights.

COUNT IV

Violation Of Constitutional Rights Pursuant to
Monell v. New York City Department of Social Services
Against Defendant Napier, In His Official Capacity

- 14 216. Defendants re-allege and incorporate by reference their Answer to allegations 1-
- 15 215 set forth herein.
- 16 217. As to Bressi’s SAC paragraph 217, deny for the reason that this sets forth a purely
- 17 legal conclusion without any reference to any specific facts.
- 18 218. As to Bressi’s SAC paragraph 218, deny.
- 19 219. As to Bressi’s SAC paragraph 219, deny.
- 20 220. As to Bressi’s SAC paragraph 220, deny.
- 21 221. As to Bressi’s SAC paragraph 221, deny.

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COUNT V

Failure To Train, 42 U.S.C. § 1983
Against Defendant Napier In His Individual Capacity, and Against Defendants
Nanos, Kunze, and Pima County Board Of Supervisors

222. Defendants re-allege and incorporate by reference their Answer to allegations 1-221 set forth herein.

223. As to Bressi’s SAC paragraph 223, deny.

224. As to Bressi’s SAC paragraph 224, deny.

225. As to Bressi’s SAC paragraph 225, deny.

226. As to Bressi’s SAC paragraph 226, deny.

227. As to Bressi’s SAC paragraph 227, deny.

228. As to Bressi’s SAC paragraph 228, deny.

229. As to Bressi’s SAC paragraph 229, deny.

COUNT VI

Failure To Supervise, 42 U.S.C. § 1983
Against Defendant Napier, In His Individual Capacity, And Against Defendants
Nanos, Kunze, And Pima County Board Of Supervisors

230. Defendants re-allege and incorporate by reference their Answer to allegations 1-229 as set forth herein.

231. As to Bressi’s SAC paragraph 231, admit only hat Sheriff Napier when undertaking law-enforcement duties acts under color law, admit that Kunze was acting under color of law on April 10, 2017 during his interaction with Bressi, but deny the remaining allegations.

232. As to Bressi’s SAC paragraph 232, deny.

233. As to Bressi’s SAC paragraph 233, deny.

234. As to Bressi’s SAC paragraph 234, deny.

235. As to Bressi’s SAC paragraph 235, deny.

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- 1 236. As to Bressi's SAC paragraph 236, deny.
- 2 237. As to Bressi's SAC paragraph 237, deny.
- 3 238. As to Bressi's SAC paragraph 238, deny.
- 4 239. As to Bressi's SAC paragraph 239, deny.
- 5 240. As to Bressi's SAC paragraph 240, deny.

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7 **COUNT VII**

8 **False Imprisonment, Arizona State Law**
9 **Against Defendants Roher And Kunze**

- 10 241. Defendants re-allege and incorporate by reference their Answer to allegations 1-
11 240 set forth herein.
- 12 242. As to Bressi's SAC paragraph 242, deny.
- 13 243. As to Bressi's SAC paragraph 243, deny for the reason that this paragraph sets
14 forth a statement of law without any application to fact.
- 15 244. As to Bressi's SAC paragraph 244, deny.
- 16 245. As to Bressi's SAC paragraph 245, deny.
- 17 246. As to Bressi's SAC paragraph 246, deny.
- 18 247. As to Bressi's SAC paragraph 247, deny.
- 19 248. As to Bressi's SAC paragraph 243, the County Defendants are without sufficient
20 information to admit or deny because this allegation refers to Bressi's statement of mind
21 and, therefore, they deny the same.
- 22 249. As to Bressi's SAC paragraph 249, deny.
- 23 250. As to Bressi's SAC paragraph 250, deny.

COUNT VIII

**False Imprisonment (FTCA), 28 U.S.C. § 1346(b),
Against the United States of America**

251. Defendants re-allege and incorporate by reference their Answer to allegations 1-250 set forth herein.

252. As to Bressi's SAC paragraph 252, the County Defendants are without sufficient information to admit or deny because this allegation is alleged solely against the Federal Defendants. Therefore, the County Defendants deny this paragraph.

253. As to Bressi's SAC paragraph 253, the County Defendants are without sufficient information to admit or deny because this allegation is alleged solely against the Federal Defendants. Therefore, the County Defendants deny this paragraph.

254. As to Bressi's SAC paragraph 254, the County Defendants are without sufficient information to admit or deny because this allegation is alleged solely against the Federal Defendants and pertains to Bressi's knowledge of consent. Therefore, the County Defendants deny this paragraph.

255. As to Bressi's SAC paragraph 255, the County Defendants are without sufficient information to admit or deny because this allegation is alleged solely against the Federal Defendants. Therefore, the County Defendants deny this paragraph.

256. As to Bressi's SAC paragraph 256, the County Defendants are without sufficient information to admit or deny because this allegation is alleged solely against the Federal Defendants. Therefore, the County Defendants deny this paragraph.

257. As to Bressi's SAC paragraph 257, the County Defendants are without sufficient information to admit or deny because this allegation is alleged solely against the Federal Defendants. Therefore, the County Defendants deny this paragraph.

258. As to Bressi's SAC paragraph 258, the County Defendants are without sufficient information to admit or deny because this allegation is alleged solely against the Federal Defendants. Therefore, the County Defendants deny this paragraph.

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AFFIRMATIVE DEFENSES

1. All allegations not specifically admitted are denied.
2. The County Defendants affirmatively allege the FAC fails to state a claim for which relief may be granted.
3. The County Defendants assert that this Court lacks subject matter jurisdiction over Bressi's claims for injunctive and declarative relief.
4. The County Defendants assert Qualified Immunity on behalf of all individually-named defendants.
5. The County Defendants assert the existence of probable cause and reasonable suspicion.
6. Statute of Limitations with respect to any and all claims against Defendant Nanos that arise out of conduct that occurred prior to April 10, 2017.
7. Statute of Limitations with respect to any conduct complained of about any and all other County Defendants that occurred prior to the applicable statute of limitations.
8. Possible statute of limitations with respect to the state-law claim against Roher and Kunze if the state-law claim is found not to relate back.
9. The PCBOS lacks legal authority over the Sheriff and his deputies regarding the execution of statutorily-imposed law enforcement duties and the Sheriff's promulgation of Rules and Regulations, including those relative to law-enforcement duties.
10. The BOS authority regarding grants is set forth by statute and that statute does not require the BOS to accept or approve grants with conditions.
11. The County Defendants reserve the right to amend their Answer to include any additional affirmative defenses that may be revealed through disclosure and discovery.

WHEREFORE, the Pima County Defendants request the following relief in their favor and against Plaintiff Terrence Bressi:

- A. That Plaintiff's SAC be dismissed, with prejudice;

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- B. That Plaintiff taking nothing by his SAC;
- C. That the Court award Defendants their costs and fees incurred in defending this action, including under Rule 11, Fed. R. Civ. P., and/or 42 U.S.C. § 1988 if appropriate.
- D. Other such further relief as the Court may deem just and proper.

DATED July 5, 2019.

BARBARA LAWALL
PIMA COUNTY ATTORNEY

By /s/ Nancy J. Davis
Nancy J. Davis
Deputy County Attorney

CERTIFICATE OF SERVICE

I hereby certify that on July 5, 2019, I electronically transmitted the attached document to the Clerk's Office using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing to the following ECF registrants:

Ralph E. Ellinwood
Ralph E. Ellinwood Attorney at Law PLLC
PO Box 40158
Tucson, AZ 85717
Attorney for Plaintiff

By: V. Chavarria

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