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2 **PIMA COUNTY ATTORNEY**
3 **CIVIL DIVISION**
4 Nancy J. Davis, SBN 017197
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10 *Attorney for Defendants Dupnik, Kunze, Nanos, Napier, Pima County Board of*
11 *Supervisors, Pima County Sheriff's Department, and Roher*

8 **UNITED STATES DISTRICT COURT**
9 **DISTRICT OF ARIZONA**

11 Terrence Bressi,

12 Plaintiff,

13 vs.

14 Pima County Board of Supervisors, et. al.,

15 Defendants.

No. 18-CV-00186-DCB

**DEFENDANTS' RESPONSES TO
MANDATORY INITIAL DISCOVERY**

(The Honorable David C. Bury)

17 Defendants Napier, Pima County Board of Supervisors, Dupnik, Nanos, Roher,
18 and Kunze (collectively referred to as "Defendants" or "the Pima County Defendants"),
19 pursuant to General Order 17-08 and the Court's Order dated April 10, 2018, provide the
20 following mandatory initial discovery responses:

21
22 **1. State the names and, if known, the addresses and telephone numbers of all**
23 **persons who you believe are likely to have discoverable information relevant to**
24 **any party's claims or defenses, and provide a fair description of the nature of the**
25 **information each such person is believed to possess.**

- 26 1. Terrence Bressi, Plaintiff
c/o Ralph E. Ellinwood
Ralph E. Ellinwood Attorney at Law PLLC
PO Box 40158

1 Tucson, AZ 85717

2 Plaintiff is expected to testify about his recollection of the events in question, the
3 claims alleged in this case, and his claimed damages. It is anticipated he will
4 testify consistent with any prior statements and deposition testimony given in this
5 case, his prior interactions with any sheriff's deputies or border patrol, his research
6 regarding the same and Stonegarden, the materials and statements contained on his
7 website, and any related matters.

- 8 2. Deputy Ryan Roher
9 c/o Pima County Attorney's Office
10 Nancy J. Davis
11 32 N. Stone Ave., Suite 2100
12 Tucson, AZ 85701
13 **May only be contacted through undersigned counsel.*

14 Dep. Ryan Roher works as deputy in the Pima County Sheriff's Department's
15 Traffic Unit. He is familiar with PCSD's policies and practices regarding traffic
16 stops, the issuance of citations and other law-enforcement duties he is responsible
17 for carrying out. He will testify about how he became involved in this matter and
18 his recollection of the April 2017 incident. He denies having committed any
19 violation of Bressi's constitutional rights. He is expected to testify about his
20 recollection of the events in question and any reports he has written regarding the
21 same. It is anticipated he will also testify consistent with any deposition testimony
22 given in this case.

- 23 3. Sergeant Brian Kunze
24 c/o Pima County Attorney's Office
25 Nancy J. Davis
26 32 N. Stone Ave., Suite 2100
Tucson, AZ 85701
**May only be contacted through undersigned counsel.*

Sgt. Brian Kunze works as sergeant with the Pima County Sheriff's Department.
He is familiar with PCSD's policies and practices regarding law-enforcement
duties. He will testify about how he became involved in this matter and his
recollection of the April 2017 incident. He denies having committed any violation
of Bressi's constitutional rights. He is expected to testify that he did not ratify or
otherwise approve of any unconstitutional conduct by Deputy Roher. It is
anticipated he will also testify consistent with any deposition testimony given in
this case.

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4. Sheriff Mark Napier
c/o Pima County Attorney's Office
Nancy J. Davis
32 N. Stone Ave., Suite 2100
Tucson, AZ 85701
**May only be contacted through undersigned counsel.*

Mark Napier has been the Sheriff of Pima County since January 1, 2017. He may be called to testify about his knowledge of this matter, his department's policies and procedures, and any matters relating to Operation Stonegarden to the extent that issue is relevant to the case. He denies having committed any violation of Bressi's constitutional rights. It is anticipated he will also testify consistent with any deposition testimony given in this case.

5. Custodians of Records
Defendants may call, as witnesses, custodians of records from organizations inside and outside of Pima County and the Pima County Sheriff's Department. Those custodians will provide foundation for documents obtained from the other parties or from subpoenas.

6. Other Individuals
Additionally, Defendants may call as witnesses:
- any witness disclosed by the other parties in this case to testify about the subject matter for which they were disclosed by those other parties;
 - any witnesses whose depositions were taken in this case to testify about the subject matter on which they testified during their depositions; and
 - any witness who answered written discovery requests propounded in this case to testify about the subject matter of their answers.

Defendants are not required to supplement their disclosure to include those witnesses, as long as they have "been made known to the other parties during the discovery process." See Fed. R. Civ. P. 26(e)(1)(A).

1 2. State the names and, if known, the addresses and telephone numbers of all
2 persons who you believe have given written or recorded statements relevant to
3 any party's claims or defenses. Unless you assert a privilege or work product
4 protection against disclosure under applicable law, attach a copy of each such
5 statement if it is in your possession, custody, or control. If not in your possession,
6 custody, or control, state the name and, if known, the address and telephone
7 number of each person who you believe has custody of a copy.

8 See response to No. 1 above and response to No. 3 below. Dep. Roher was
9 interviewed by defense attorney Steve Sherick in Bressi's criminal case *CR17-706020-MI*
10 on January 25, 2018 and Plaintiff has a transcript of this interview in his possession.
11 Dep. Roher and Sgt. Kunze prepared reports regarding their activities in this investigation
12 and those reports are included with this mandatory initial discovery response.

13 3. List the documents, electronically stored information ("ESI"), tangible things,
14 land, or other property known by you to exist, whether or not in your possession,
15 custody or control, that you believe may be relevant to any party's claims or
16 defenses. To the extent the volume of any such materials makes listing them
17 individually impracticable, you may group similar documents or ESI into
18 categories and describe the specific categories with particularity. Include in your
19 response the names and, if known, the addresses and telephone numbers of the
20 custodians of the documents, ESI, or tangible things, land, or other property that
21 are not in your possession, custody, or control. For documents and tangible
22 things in your possession, custody, or control, you may produce them with your
23 response, or make them available for inspection on the date of the response,
24 instead of listing them. Production of ESI will occur in accordance with
25 paragraph C.2 below.

- 17 1. PCSD Incident Report 170410284 [Bates: Pima County 000001-000014].¹
- 18 2. PCSD 170410284 Evidence Control Forms [Bates: Pima County 000015-
19 000018].
- 20 3. PCSD 170410284 Radio Traffic (Audio) [Bates: Pima County 000019].
21 **Will provide a copy once it has been redacted.*
- 22 4. PCSD 170410284 CAD Master Call Table – Call Narrative [Bates: Pima
23 County 000020].
- 24 5. PCSD 170410284 Radio Log Summary Report [Bates: Pima County 000021].

26 ¹ PCSD refers to Pima County Sheriff's Department.

- 1 6. PCSD 170410284 – Sgt. Brian Kunze Recording (Audio) [Bates: Pima County
- 2 000022].
- 3 7. USBP Recording – KF-1394152/Lane Drive 4-10-2017 (Video) [Bates: Pima
- 4 County 000023].²
- 5 8. USBP Recording – KF-1394152/Lane Front 4-10-2017 (Video) [Bates: Pima
- 6 County 000024].
- 7 9. USBP Recording – KF-1394152/Lane Rear 4-10-2017 (Video) [Bates: Pima
- 8 County 000025].
- 9 10. Any and all documents disclosed by Plaintiff.
- 10 11. All video taken and disclosed by Plaintiff.

11
12 *Defendants are also providing a privilege log regarding the redactions*
13 *from the listed documents and audio recordings to the extent redactions*
14 *have been made.*

15 Other Documents, Electronically Stored Information, and Tangible Things

16 Additionally, Defendants may use as evidence:

- 17 • any pleadings filed in this case;
- 18 • any document, audio, or video disclosed by the other party in this case;
- 19 • any document, audio, or video produced in response to a written discovery
- 20 request;
- 21 • any document, audio, or video produced in response to a subpoena issued in
- 22 this case; and
- 23 • any document, audio, or video attached as an exhibit to a deposition in this
- 24 case.
- 25

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² USBP refers to United States Border Patrol.

1 Defendants are not required to supplement their disclosure to include those
2 documents, as long as they have “been made known to the other parties during the
3 discovery process.” See Fed. R. Civ. P. 26(e)(1)(A).

4
5 **4. For each of your claims or defenses, state the facts relevant to it and the legal theories upon which it is based.**

- 6
7 a. Failure to state a claim –The lawsuit fails to state a claim for the reasons set forth
8 below. Moreover, neither Dupnik nor Nanos were sheriff at the time of the
9 conduct at issued in this case—the citation and cuffing of Mr. Bressi in April of
10 2017. Further, the Board of Supervisors has no authority over the Sheriff’s
11 execution of statutorily-imposed law-enforcement duties set forth in A.R.S. 11-
12 441.
- 13 b. Qualified Immunity – Applies to the claims against all individually-named
14 Defendants. Qualified immunity applies if there was no constitutional violation or
15 if the conduct complained of did not violate clearly-established law.
- 16 c. The existence of probable cause and reasonable suspicion – Applies to the claims
- 17 d. Statute of Limitations – Applies to all claims against Defendants Dupnik and
18 Nanos that arise out of conduct that occurred prior to April 10, 2017.
- 19 e. Statute of Limitations – Applies to any conduct complained of about any and all
20 other Defendants that occurred prior to the applicable statute of limitations.
- 21 f. Possible Statute of Limitations re state-law claim – Applies to the state-law claim
22 against Roher and Kunze if the state-law claim is found not to relate back.

23 **5. Provide a computation of each category of damages claimed by you, and a description of the documents or other evidentiary material on which it is based, including materials bearing on the nature and extent of the injuries suffered. You may produce the documents or other evidentiary materials with your response instead of describing them.**

24
25
26 Not applicable.

1 Defendants do not have a counterclaim and are not pursuing any compensatory or
2 punitive damages. Defendants will, however, pursue taxable costs and attorney fees if it
3 prevails in this case.

4
5 **6. Specifically identify and describe any insurance or other agreement under which**
6 **an insurance business or other person or entity may be liable to satisfy all or part**
7 **of a possible judgment in the action or to indemnify or reimburse a party for**
8 **payments made by the party to satisfy the judgment. You may produce a copy of**
9 **the agreement with your response instead of describing it.**

10 Not applicable. Pima County is self-insured up to \$2.5 million for each occurrence.
11 Pima County also has excess liability insurance over the self-insured amount.

12 **7. A party receiving the list described in Paragraph 3, the description of materials**
13 **identified in Paragraph 5, or a description of agreements referred to in**
14 **Paragraph 6 may request more detailed or thorough responses to these**
15 **mandatory discovery requests if it believes the responses are deficient. A party**
16 **may also serve requests pursuant to Rule 34 to inspect, copy, test, or sample any**
17 **or all of the listed or described items, to the extent not already produced in**
18 **response to these mandatory discovery requests, or to enter onto designated land**
19 **or other property identified or described.**

20 See responses to Nos. 3 and 5 above including the exhibits attached hereto on CD,
21 and any supplements hereto.

22 DATED: September 28, 2018.

23 BARBARA LAWALL
24 PIMA COUNTY ATTORNEY

25 By 
26 Nancy J. Davis
Deputy County Attorney

1 Copy Mailed September 28, 2018 to:
2 Ralph E. Ellinwood
3 Ralph E. Ellinwood Attorney at Law PLLC
4 PO Box 40158
5 Tucson, AZ 85717
6 ree@yourbestdefense.com
7 *Attorney for Plaintiff*

8 By: V. Chavania

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Defendants' MIDP

Privilege Log

Bressi v. PC, et al.

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ITEM	PRIVILEGE	BATES
PCSD 170410284 Evidence Control Forms	Redaction of personal identifying information (Phone number)	Pima County 000017
PCSD 170410284 Radio Log Summary Report	Redaction of personal identifying information (License plate numbers)	Pima County 000021

BARBARA LA WALL
PIMA COUNTY ATTORNEY
CIVIL DIVISION

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VERIFICATION

STATE OF ARIZONA }
County of Pima } ss.

Ryan Roher, being first duly sworn, upon his oath, deposes and states as follows:

I am an employee of the Pima County Sheriff and hold the position of Deputy Sheriff. I am a defendant in *Bressi v. Pima County Board of Supervisors, et al.*, Case No. CV 18-00186-DCB. I have read the Mandatory Initial Discovery Responses in this case. To the best of my knowledge, information, and belief formed after a reasonable inquiry, the Responses to Mandatory Initial Discovery are complete and correct as of the time they were made.


Ryan Roher

SUBSCRIBED AND SWORN TO before me on Sep 28th, 2018, by
Ryan Roher.


Notary Public

