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4 John Stuart, *Sui Juris*
Authorized Representative

6 UNITED STATES DISTRICT COURT
7 DISTRICT OF ARIZONA

8 JOHN STUART,
9 Plaintiff,

10 vs.

11 **Paul McMurdie**, individually, and in his
official capacity as a Judge of the Maricopa
12 County Superior Court, State Of Arizona;
13 and **Susie Charbel**, individually, and in her
official capacity as a Prosecutor of the
14 County of Maricopa, State Of Arizona; and
15 **Paul Dalton**, individually, and in his
official capacity as a Police Detective of the
16 City of Phoenix, State of Arizona; and **Al**
17 **Shearer**, individually, and in his official
capacity as a Police Detective of the City of
18 Phoenix, State of Arizona; and **John**
19 **Johnson**, individually, and in his official
capacity as a Public Defender of the
20 Maricopa County Superior Court, State Of
21 Arizona; and **Tyler Harrison**, individually,
22 and in his official capacity as a Public
23 Defender of the Maricopa County Superior
24 Court, State Of Arizona; and **Robert E.**
25 **Lyon, DO**, individually, and in his official
capacity as Maricopa County Medical
26 Examiner, State Of Arizona

27 Defendants

Case No. CV-10-44-PHX-ROS

RESPONSE TO DEFENDANTS
CHARBEL AND LYON'S MOTION TO
DISMISS COMPLAINT;
AND
PETITION FOR SUMMARY
JUDGMENT IN FAVOR OF
PLAINTIFF

(Trial by Jury Demanded)

(Assigned to the Hon. Roslyn O. Silver)

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Court errs if court dismisses the *pro se* litigant without instruction of how pleadings are deficient and how to repair pleadings.
See *Platsky v. C.I.A.*, 953 f.2d. 25.

Litigants' constitutional (guaranteed) rights are violated when courts depart from precedent where parties are similarly situated.
See *Anastasoff v. United States*, 223 F.3d 898 (8th Cir. 2000);

Governing Rules of this Case

This case is governed by, *inter alia*, the Federal Rules of Civil Procedure and, *inter alia*, the United States Code, *inter alia*, the united States Constitution, *inter alia*, the Arizona Constitution, *inter alia*, the Treaty of Paris of 1781, *inter alia*, the Hague Convention, *inter alia*, ALL other human rights treaties, and all estoppels on government agencies and/or agents, and others. These Rules and Laws have not been abrogated.

Invocation of Rights

Plaintiff invokes ALL Rights; including but not limited to, God granted Rights, Constitutionally Protected Rights, and Human Rights as defined and Protected by ALL Treaties enforced by the United States and/or THE UNITED STATES and/or THE UNITED STATES OF AMERICA.

Declaration of Status and Character

JOHN STUART is the *ens legis* created *vi et armis* by the “State” and John Chester of the family Stuart (“John Stuart”) is a natural flesh and blood bondservant of God authorized to represent the interest of JOHN STUART. John Stuart, *a natural living man*, cannot by Constitution, Law and/or Treaty be held liable in any court anywhere in anyway for JOHN STUART, *ens legis*.

1 Pursuant to, *inter alia*, 42 U.S.C.A. § 1983, JOHN STUART, [STUART or
2 “Plaintiff”] through undersigned agent, *sui juris*, declares and alleges for the record the
3 following in response to Defendant’s Motion to Dismiss:
4

5 Any and all claims by Defendant(s) of Plaintiff’s violation of time limits are
6 nullified by Defendants’ ongoing persecution of Plaintiff that has greatly limited and
7 interfered with Plaintiff’s ability to bring any action against Defendant(s). Plaintiff has
8 been falsely imprisoned for eight months for a crime that has a maximum sentence of four
9 months. Plaintiff has also been threatened numerous times by Defendant(s) with being
10 held in contempt of court if He files any pleadings in an attempt to secure His
11 constitutional and/or Substantive Rights. In essence, Defendant(s) have unlawfully used
12 their authority under color of state law to deprive Plaintiff of His Civil Rights, and
13 Defendant(s) have unlawfully used their authority under color of state law to prevent
14 Plaintiff from obtaining remedy for Defendant(s) violations.
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17 The absurdness of Defendant(s)’ actions are beyond what any reasonable person
18 could possibly comprehend. Defendant(s) have conducted themselves as a criminal
19 enterprise using threats, kidnapping, perjury, and torture under color of state law to protect
20 their previous and ongoing criminal activities.
21

22 As recently as on or about February 4, 2010, the new Judge Maria del Mar Verdin
23 that was assigned to the case on or about January 29, 2010, entered an unsigned Minute
24 Entry into the court’s record unlawfully purging ALL Petitions entered by Plaintiff
25 (*Defendant in that matter, Superior Court case CR2008-106594-001DT*) in an effort to
26 assist the prosecution. Plaintiff had no attorney of record in that matter at that time and
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1 was therefore pro se. The new judge's first action in the matter is a criminal act in
2 furtherance of Defendant(s) previous criminal acts. The purged Petitions cannot possibly
3 be answered truthfully by the prosecution and therefore the new judge in the case is also
4 conspiring with Defendant(s) to deprive Plaintiff of His Civil Rights under color of state
5 law and color of authority.
6

7 The behavior of EVERY judge in this matter has been part of the criminal
8 conspiracy to deprive Plaintiff of His Civil Rights. Plaintiff hereby informs this court of
9 the actions of previous judges as an "offer of proof" for the record, and Plaintiff Declares
10 the allegations are true:
11

- 12 1. Judge Ryan, without cause and without reason raised Plaintiff's bond, even
13 though Plaintiff had not violated ANY aspect of the bond, on order's from
14 County Attorney Andrew Thomas who stated publicly that He would see to
15 it that Plaintiff's bond was raised;
16
- 17 2. Judge Stienle ordered that ALL attorneys MUST file a Notice of Appearance
18 BEFORE representing Plaintiff yet ALL other judge's after Baca allowed
19 attorneys to Trespass on Plaintiff's case in detriment to Plaintiff, without
20 filing a Notice of Appearance;
21
- 22 3. Judge Baca issued a fraudulent arrest warrant for Plaintiff based on
23 perjurious statements made by Charbel during the "investigatory
24 phase" whereas Charbel was acting as an "investigator" and not as a
25 "prosecutor" and therefore are **not** protected by "absolute and/or qualified
26 immunity";
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- 4. Commissioner Mroz said in open court “this is not a crime, why is he here” yet did not dismiss the case against Plaintiff (concerning prosecuting Plaintiff for his attorney entering documents into the case);
- 5. Judge Stienle signed and issued an order “releasing Defendant from ALL liability” concerning the murder charge then allowed the prosecution to seal the order;
- 6. Judge McMurdie repeatedly threatened Plaintiff to prevent Plaintiff from speaking in open court;
- 7. Judge McMurdie refused to allow Plaintiff to waive His Sixth Amendment Right to counsel and forced Plaintiff to have counsel;
- 8. Judge McMurdie unlawfully continued the case numerous times after the “last day of trial” had lapsed;
- 9. Judge McMurdie unlawfully forced Plaintiff into a Rule 11 Examination without cause and in violation of A.R.Crim.P Rule 11.2;

The extent of the conspiracy reaches to and also includes County Attorney Andrew Thomas who has made inappropriate and prejudicial statements to the media concerning Plaintiff. The obvious fact that Thomas is personally involved and directing the conspiracy yet can shield himself unlawfully using the power of his office, has made it impossible for the Plaintiff to receive any justice and/or Due Process in the matter.

Defendant(s) have thus made it completely impossible for the Plaintiff to receive a fair and impartial trial and remove any possibility Plaintiff has of securing a viable defense against the prosecutorial misconduct. It is obvious the new judge is attempting to prevent

1 any future appeal by purposely not signing the Minute Entry. Such is prima facie evidence
2 of the new judge's desire to continue the conspiracy started by the previous judge.

3
4 Prosecutor Charbel is as repugnant to justice and human rights as was Saddam
5 Hussein. Charbel's attempted use of "absolute immunity" outside of its scope is prima
6 facie evidence of her evil intent. For Defendant(s) to allow the numerous violations
7 committed by Charbel to continue unfettered is tantamount to Defendant(s)' admission
8 that prosecutors are above the law and the government is nothing more than a sadistic
9 master to the citizen slaves.

10
11 There appears to be some confusion on the Defendant(s)' part as to where Maricopa
12 County Superior Court is located. Plaintiff will therefore attempt to clarify the location and
13 jurisdiction of Maricopa County Superior Court:

14
15 Maricopa County Superior Court is an Article IV, *not an Article III*, court and is
16 convened on land within Arizona, one of these United States as defined in the constitution
17 for these United States of America, *circa 1781*.

18
19 There is Nothing Constitutional about Immunity: In *Mason v. Melendez*, 525 F.
20 Supp. 270 at 275 (USDC Wisconsin, 1981), Judge Doyle opined:

21 *"Immunity from damages, whether absolute or qualified, represents a sharp*
22 *departure from the principle that persons are responsible for the harm they inflict*
23 *upon one another, and that the victims may seek compensation from the*
perpetrators."

24 **Maricopa County Superior Court is NOT in IRAN, IRAQ, CHINA, or any**
25 **other such totalitarian nation**, and accordingly "immunity" is ONLY available to
26 persons acting within the confines of the law and while conducting themselves within the
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1 confines of their job description. While it is true that in **IRAN, IRAQ, and China**, state
2 agents have immunity for their unlawful acts, no such immunity exists in Arizona.

3
4 Defendant Charbel also appears to be confused as to when “Absolute Immunity”
5 applies to prosecutor’s actions. SCOTUS decisions are clear that “absolute immunity”
6 ONLY applies to effects in and of trial, and NEVER to investigations. Since there was no
7 trial concerning the confiscation of bond caused by Charbel’s perjury there can be no
8 “absolute immunity” for Charbel in that matter. Charbel may have been able to claim
9 “qualified immunity” as any investigator may, but “qualified immunity” does not protect
10 an investigator that knowingly commits perjury under color of state law and/or color of
11 authority. Charbel did not claim “qualified immunity” for her criminal acts.

12
13 Although it may seem strange to laymen that prosecutors are protected when they
14 commit perjury to falsely convict an innocent man, yet they are not protected when they
15 only have the innocent man arrested, such has been the decisions by SCOTUS.
16 Irrespective of how abhorrent the fact that prosecutors are allowed to falsely convict
17 thousands of innocent people with impunity, prosecutors are still not allowed to commit
18 felonies to have innocent people falsely arrested pursuant to numerous SCOTUS
19 decisions.

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21
22 Charbel will accordingly claim that she can commit perjury to have innocent people
23 falsely arrested, yet her claim cannot stand in light of the appropriate SCOTUS decisions.

24
25 The phrases "absolute immunity," “qualified immunity” and/or “immunity” do not
26 appear in the Constitution, nor does it appear in Title 42 Section 1983, a part of the federal
27 criminal code that provides a way for citizens to collect damages against the government.

1 The Court read absolute immunity into the law in the 1976 case *Imbler v. Pachtman* yet
2 some of the Justices that have looked at this as an original matter have tended to be “quite
3 reluctant in recognizing absolute immunity because it lacks support in the text.”
4

5 Justice Breyer stated:

6 “a prosecutor would be liable for investigatory acts until he found uncontrived
7 probable cause to proceed with a trial.”

8 Charbel was unable to discover “uncontrived probable cause to proceed with a
9 trial” due the complete lack of substantiation for any charges, in the IRS letter matter, as
10 Charbel’s perjurous statements were wholly without merit.
11

12 There was no trial, only an investigation, Charbel was acting as an “investigator”
13 and therefore did not have “absolute immunity”. Charbel has never claimed “qualified
14 immunity” only “absolute immunity” and therefore cannot use “qualified immunity”
15 which she acquiesced to the loss of by failing to claim such. Even if Charbel did claim
16 qualified immunity it would not apply in the matter discussed, as qualified immunity does
17 not reach to an agent’s criminal acts such as perjury when said act is committed to a judge
18 in furtherance of and/or to commit another unlawful and heinous act.
19

20 Immunity reaches to the person ONLY through the position, AND NEVER to the
21 position through the person. Absolute immunity is granted to a person “prosecuting” and
22 not to a person “investigating.” When a person is “investigating”, *even if that person is*
23 *also at times a prosecutor*, absolute immunity cannot reach them. The crimes committed
24 by Charbel were committed while Charbel was acting as an investigator, and not as a
25 prosecutor, therefore absolute immunity cannot reach to Charbel in this instance.
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1 Qualified immunity does not protect an investigator when the acts committed by the
2 investigator are felonious and lead to heinous acts committed against the victim.

3 Charbel's numerous felonious acts as an investigator lead to the destruction of Plaintiff's
4 personal life, financial life, loss of Liberty, and other heinous events. In fact, Charbel's
5 crimes caused the alienation of Plaintiff's wife, family and friends, crimes which all tolled
6 together are in some ways worse than murder.
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8 Prosecutors are normally immune from suit for their official actions during a trial,
9 but investigators are not. Accordingly, when a prosecutor is acting as an investigator they
10 do not have "absolute immunity" any more than any other investigator does. Since
11 Charbel's perjury to obtain the warrant was committed during the investigatory phase of
12 the case and not the trial, and Charbel was the sole investigator, Charbel cannot claim
13 absolute immunity.
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16 Qualified immunity does not reach to the criminal act of perjury to secure a warrant
17 under false pretense and therefore Charbel MUST be held liable for her criminal act
18 individually. Immunity was not created for, nor does it reach to, blatant criminal and
19 treasonous acts committed under color of state law. Just as a prosecutor cannot come into
20 court and shoot a defendant she knows is innocent as a means to win the case, a prosecutor
21 cannot use perjury to frame a defendant she knows is innocent to win the case.
22

23 The Sixth and Fourteenth Amendments stipulate to the people's Right to Due
24 Process of Law. There is no greater deprivation of Due Process for an obviously innocent
25 man than being framed by perjurous statements made under color of state law and color of
26 authority by one of the people paid to protect the man's Right to Due Process. Although
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1 Charbel would apparently claim otherwise, a man does have the constitutionally protected
2 Right to not be framed while being investigated, as being framed by a State agent is the
3 ultimate violation of Due Process of Law.
4

5 A cursory examination of a famous investigation during the years 2006 and 2007
6 will give this court a good example of the lack of “absolute immunity” during the
7 investigatory phase of a case, even if the investigation is being lead by a person that is
8 normally a prosecutor.
9

10 In that case DA Nifrong protected a prostitute who falsely charged three innocent
11 men with rape. In this case, prosecutor Charbel is protecting a kidnapper by falsely
12 charging an innocent assault and kidnapping victim with murder.
13

14 **Duke Office of News & Communications:**

15 “On the legal front, in June 2007 a N.C. State Bar disciplinary panel
16 concluded after a trial that DA Nifong had made inflammatory and
17 prejudicial comments about the case, intentionally withheld DNA evidence
18 and lied to court officials. The panel called for his disbarment and Nifong
19 resigned his office.”

20 Similarly, Andrew Thomas, with Charbel concurring, has “made prejudicial
21 comments about the case” to the media, Charbel has assisted and/or concealed the fact
22 Dalton “withheld”/destroyed/lost/not recovered exculpatory evidence, and Charbel on
23 numerous occasions “lied to court officials.”

24 Charbel’s criminal acts are very similar to Nifrong’s criminal acts and the court
25 decided that Nifrong’s criminal acts were not protected by either “absolute’ and/or
26 “qualified” immunity.
27
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1 **There is no claim by Charbel in this case that Charbel believed the IRS had**
2 **confiscated Plaintiff's bond, and therefore it stands as an uncontested fact that**
3 **Charbel knew there was not even a possibility the IRS had confiscated Plaintiff's**
4 **bond. Charbel knowingly, willingly, and with malice aforethought committed**
5 **perjury to have Plaintiff falsely imprisoned. Charbel's crime rises to the levels of**
6 **both kidnapping and treason and there is no immunity for either crime.**

7
8 **PRECEDENTS AS THEY APPLY**

9
10 In Pottawattamie County v. McGhee, McGhee and Harrington were falsely
11 convicted for murder on witness testimony fabricated by a prosecutor. After their
12 release, McGhee and Harrington sued the prosecutors and the county officers under
13 42 U.S.C. § 1983. The district court ruled that the prosecutors could be held liable
14 for violating McGhee and Harrington's substantive due process rights, and the
15 Eighth Circuit affirmed that conclusion.

16 In their brief on the merits, the prosecutors characterize the substantive due
17 process claim raised by McGhee and Harrington as a "right not to be framed" – a
18 right, they emphasize, that the Court has never recognized. In their view, any
19 violation of a constitutional right requires a deprivation of liberty, not merely an
20 intent to deprive someone of liberty. Therefore, a prosecutor's fabrication of
21 testimony cannot violate the Constitution until the perjury is presented at trial and is
22 instrumental in securing a conviction.

23 Yet in the issue being discussed, Plaintiff was deprived of liberty due to Charbel's
24 felonious act of perjury.

25 Our courts and our government have become so corrupt that it is now acceptable for
26 prosecutors to frame innocent people, but at least our courts are not so corrupt as to allow
27 investigators to frame innocent people. Accordingly, when a prosecutor acts as an
28 investigator, the prosecutor is personally liable for framing an innocent person.

 In 1976, the Supreme Court held in Imbler v. Pachtman that prosecutors
have absolute immunity from liability for their official actions during trial but no
such immunity reaches to the investigators.

1
2 Plaintiff does not claim Charbel caused him to be convicted by her perjury. Plaintiff
3 ONLY claimed Charbel’s perjury to Judge Baca caused Plaintiff to be falsely arrested and
4 falsely imprisoned. The false arrest and false imprisonment did not stem from effects of a
5 conviction and/or trial, but only stem from perjury committed during the “investigatory”
6 process which is not protected under absolute immunity.
7

8 Represented at the merits stage by former Solicitor General Paul Clement,
9 respondents McGhee and Harrington reiterate – as they did in their brief in
10 opposition – that the fabrication of perjured testimony against them violated their
11 substantive due process rights to a fair trial. On their interpretation, prosecutorial
12 misconduct that is “so ill-motivated as to shock the conscience” violates substantive
13 due process whenever it occurs. In this case, the prosecutors’ intent to use the
14 perjured testimony at trial, regardless whether they ever presented it, demonstrates
15 that they were in fact “ill-motivated.”

16 McGhee and Harrington dispute the prosecutors’ contention that Imbler
17 immunity extends to pre-trial investigation and preparation. Allowing immunity for
18 trial acts to “wash back” to absolve prior wrongdoing would, they contend,
19 encourage malicious prosecutors to use falsified evidence in court to shield
20 themselves from suit for its procurement. They criticize the inconsistencies that
21 would result from the prosecutors’ construction of the “functional test,” pursuant to
22 which police officers – but not prosecutors – could be held liable for falsifying
23 evidence during an investigation. Immunity should attach to types of conduct, they
24 posit, rather than to particular officeholders.

25 Like the prosecutors, McGhee and Harrington argue that Buckley is
26 significant, but for a different reason: although the Court in Buckley held that
27 prosecutors have “absolute immunity” for conduct that “occurs in the course of [the
28 prosecutor’s] role as an advocate for the State,” it also made clear that prosecutors
29 have only “qualified immunity” for certain investigative acts. Contrary to what the
30 prosecutors contend, however, procuring testimony is not conduct that occurs in the
31 course of the prosecutor’s role as advocate.

32 The Eighth Circuit held, the prosecutors’ procurement of false testimony
33 violated respondents’ right to substantive due process; moreover, prosecutors were
34 not entitled to immunity for that violation “where the prosecutor was accused of
35 both fabricating evidence and then using the fabricated evidence at trial.”
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1 Eighth Circuit properly applied the functional approach in determining whether
2 petitioners were entitled to immunity: “Absolute immunity does not apply to prosecutors’
3 actions taken outside the advocatory functions.”
4

5 Respondent McGhee added that relief should be available under Section
6 1983 in cases such as this one to deter prosecutorial misconduct: otherwise,
7 “[p]rosecutors would be free to fabricate evidence during criminal investigations
8 because they would know there was virtually no possibility of ever being punished
9 for it.”

10 If prosecutors are allowed to make perjurous statements to judges to have innocent
11 people fraudulently arrested and falsely imprisoned absent any accountability then we as a
12 country have in essence converted our system of justice into the *de facto* administration
13 department for the largest concentration camp system since the fall of Nazi Germany.

14 Criminal acts committed by State agents under color of law and/or color of
15 authority by State agents are NOT protected by “immunity” and therefore the acts
16 committed by Defendants that are criminal in nature are still crimes. Immunity does NOT
17 apply to criminal acts even if the criminal acts where performed by State agents during
18 their regular course of business, in Arizona.

19 In fact, the concept of “under color of state law” requires that the person
20 committing the criminal acts do so under the guise of their authority and/or position as a
21 state agent and that the act was committed as part of their job.
22

23
24 **Color of law: Black’s Law Sixth Edition:**

25 The appearance or semblance, without the substance, of legal right. Misuse
26 of power, possesses by virtue of state law and made possible only because
27 wrongdoer is clothed with authority of state, is action taken under “color of state
28 law.” *Atkins v. Lanning*, D.C.Okla., 415 F.Supp. 186, 188

1 When used in the context of federal civil rights statutes or criminal law, the
2 term is synonymous with the concept of “state action” under the Fourteenth
3 Amendment, *Timson v. Weiner*, D.C.ohio, 395 F.Supp. 1344, 1347; and means
4 pretense of law and includes actions of officers who undertake to perform their
5 official duties. *Thompson v. Baker*, D.C.Ark., 133 F. Supp. 247; 42 U.S.C.A. §
6 1983.

7 Action taken by private individuals may be “under color of state law” for
8 purposes of 42 U.S.C.A. § 1983 governing deprivation of civil rights when
9 significant state involvement attaches to action. *Wagner v. Metropolitan Nashville*
10 *Airport Authority*, C.A.Tenn., 772 F.2d 227, 229.

11 Acts “under color of any law” of a State include not only acts done by State
12 officials within the bounds or limits of their lawful authority, but also acts done
13 without and beyond the bounds of their lawful authority; provided that, in order for
14 unlawful acts of an official to be done while such official is purporting or
15 pretending to act in the performance of his official duties: that is to say, the
16 unlawful acts must consist in an abuse or misuse of power which is possessed by
17 the official only because he is an official; and the unlawful acts must be of such a
18 nature or character, and be committed under such circumstances, that they would
19 not have occurred but for the fact that the person committing them was an official
20 then and there exercising his official powers outside the bounds of lawful authority.
21 42 U.S.C.A. § 1983.

22 **ARIZONA LAW:**

23 Perjury is not now, and never has been, protected by immunity;

24 False imprisonment is not now, and never has been, protected by immunity;

25 Destruction of evidence is not now, and never has been, protected by immunity;

26 Kidnapping is not now, and never has been, protected by immunity;

27 Malicious prosecution is not now, and never has been, protected by immunity;

28 Torture is not now, and never has been, protected by immunity;

 Treason against the constitution is not now, and never has been, protected by
immunity.

/

//

1 **CLAIMS:**

2 Plaintiff did state a claim upon which relief can be granted. In the interest of
3 expediency, Plaintiff will restate His claim and the relief that can be granted, for clarity so
4 as to not confuse Defendant(s).
5

6 Paragraphs 14 through 199 in the original Complaint state claims upon which relief
7 can be granted and Plaintiff incorporates herein by reference all the allegations and/or
8 claims and/or statements, etc., made in the Complaint as though each
9 allegation/claim/statement, etc., is fully set forth herein.
10

11 Especially the following claim for which there is no controversy, *this statement*
12 *does NOT represent that Defendant has controversy with the other claims and is stated*
13 *only to prove the obviousness of Defendants' ability to conceal and "get away with*
14 *heinous crimes"*,
15

16 Prosecutor Charbel, "under color of *state law*" and/or "under color of
17 authority" committed perjury on or about February 13, 2008, to Judge Baca to have a
18 warrant issued against Plaintiff and caused Plaintiff to be "fraudulently arrested" and
19 "falsely imprisoned".
20

21 Plaintiff was harmed greatly by Charbel's criminal acts. Plaintiff's losses include,
22 without limitations, alienation of affection from His wife, His children, His friends, loss of
23 real property, loss of personal property, destruction of financial stability, financial loss of
24 \$2,000,000, loss of future earning ability, loss of Liberty, deprivation of Rights, physical
25 pain by torture while in jail, starvation, asphyxiation by deprivation of oxygen and
26 "gassing" while in custody, and other heinous experiences.
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1 Charbel “claimed” the Internal Revenue Service “confiscated” Plaintiff’s bond
2 according to a letter sent to Charbel by the Internal Revenue Service. Said letter made no
3 such claim and in fact did not even allude to the confiscation of Plaintiff’s bond.
4

5 A cursory inspection of the IRS letter in question will prove Charbel has no defense
6 for her criminal acts in said matter, as also evidenced by the charged being dismissed at
7 the first hearing concerning the false charges.
8

9 **In direct response to Defendant’s**

10 **MEMORANDUM OF POINTS AND AUTHORITES**

11 **FACTS:**

12 A. **ABSOLUTE IMMUNITY:**

13 Plaintiff has incontrovertibly proven His allegations of Charbel’s violations of
14 Plaintiff’s Civil Rights as evidenced by the court’s own record.
15

16 (1) Charbel is required to “seek justice, not conviction” which the grand jury
17 transcripts prove she violated;

18 (2) A kidnapper, by law, is not a victim;

19 (3) Charbel is now claiming the kidnapper (Ms. Beasley) is a kidnapping victim of
20 a man who never left His vehicle even while the kidnapper (Mr. Beasley) was strangling
21 Him;
22

23 (4) Again, the kidnapper (Ms. Beasley) is not a kidnapper victim, but an active
24 participant in the kidnapping event, as the witness testimony shows;

25 (5) Charbel twice refused to allow Plaintiff to appear before the grand juries;

26 (6) Charbel’s own contradictory statements evidence her false reporting;
27
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1 (7) The court's own record evidences several violations by Charbel of the Rules of
2 evidence:

3 (8) The court did decide the warrant issued due to Charbel's perjurous statements
4 was invalid;

5 (9) The court's record evidences numerous violations of Arizona criminal
6 procedures by Charbel;

7 (10) Charbel not only ignored several witness statements, she attempted to coerce at
8 least one witness into changing her testimony;

9 (11) Plaintiff's allegation is incontrovertible and as evidence of such the court only
10 need know that Charbel has concealed the interview of said witness from the defense;

11 (12) Charbel's perjurous statements are evidenced by the court's record.

12 **LAW AND ANALYSIS:**

13 **Issue:**

14 Charbel is not protected from suits for damages by the doctrine of absolute
15 immunity because Charbel was acting outside of the scope of her duties as a
16 prosecutor. It must therefore be Charbel's claim that prosecutor's duties include,
17 without limitations, treason, perjury, obstruction of justice, wrongful imprisonment,
18 destruction of evidence, etc.

19 The evidence and record of the court makes it patently clear Charbel has violated
20 numerous laws and deprived Plaintiff of His Civil Rights under color of state law and
21 color of authority and Charbel has not presented ANY evidence to the contrary.

22 In fact, Charbel has not denied any allegation and has therefore acquiesced to
23 Plaintiff's allegations and thus has agreed with all of Plaintiff's allegations.

1 Charbel's confession and avoidance is prima facie evidence of Charbel's
2 admittance to the crimes as listed by Plaintiff.

3 Charbel's references for absolute immunity ONLY apply when the prosecutor is
4 acting in accordance with state and federal law. The precedents used are not appropriate in
5 this case as Charbel was knowingly committing felonies under color of state law and color
6 of authority.
7

8 Charbel's claim that immunity applies to the interview of witnesses may stand for
9 the interview, but has no bases in fact or law for Charbel's coercion of the witness and/or
10 use of benefits and/or threats to cause the witness to commit unlawful acts against another
11 witness as a form of "coercion by proxy" which is truly more of an act of treason and
12 terrorism as defined by federal law. The fact Charbel purposely, and with malice
13 aforethought, concealed the "interview" is prima facie evidence of Charbel's intent to
14 commit a terrorist act against a civilian in furtherance of treason. This court should note
15 that Charbel has still not informed nor admitted to the interview and has evaded any and
16 all questions concerning said interview. Immunity may ONLY, and not always, apply
17 post-indictment and NEVER during the investigation.
18

19 A prosecutor is free to investigate or not investigate, but a prosecutor choosing to
20 investigate is an investigator AND NOT a prosecutor while investigating. Although there
21 is no law to punish a corrupt prosecutor that refuses to investigate a crime in order to
22 protect someone she knows has committed a heinous crime, the prosecutor CANNOT use
23 her purposeful failure to prosecute as grounds to grant the known criminal "victim" status
24 to protect the criminal. The granting of victim status is a further act of treason as Charbel
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1 is using a constitutional amendment to protect a criminal that may be prosecuted under
2 state, federal AND International Law.

3 United States Constitution Article III Section 3; and
4 Arizona Constitution Article II Section 28:

5 Treason against the United States [state], shall consist only in levying War
6 against them, or in adhering to their Enemies, **giving them Aid and**
7 **Comfort**. No Person shall be convicted of Treason unless on the Testimony
of two Witnesses to the same overt Act, or on Confession in open Court.

8 Charbel's treason also includes, without limitations, her act of using Article II
9 Section 2.1 to protect a kidnapper and preventing the victim of the assault and kidnapping
10 (Plaintiff in this matter) from access to Article II section 2.1 protection.

11
12
13 It is now too late for Charbel to deny her criminal acts as her claim of "absolute
14 immunity" cannot stand and therefore her admittance to the acts by her *tacit acquiescence*
15 and *confession and avoidance* to the allegations is all this court need for this court to grant
16 Plaintiff summary judgment.

17
18 Charbel list of precedents includes words such as "properly fulfill his function in
19 the judicial process," "post-conviction" and "use of perjured testimony." Accordingly the
20 precedents do not apply to this instant case: as Charbel did not "properly fulfill her
21 function in the judicial process" as it is not possible to properly commit perjury; and there
22 was no conviction in the matter concerning the IRS letter and in fact the case was
23 dismissed and the charge thrown out; and Charbel did not "use perjured testimony",
24 Charbel gave perjured testimony.

25
26
27 A prosecutor may be immune from criminal acts during a trial, *such a concept is so*
28 *abhorrent to society there is no way to explain how disgusting said immunity is to any*

1 *man with a conscience*, but a prosecutor has absolutely no immunity for treason and/or
2 perjury to a judge to fraudulently start a trial.

3
4 Charbel is simply trying to obfuscate the law and the facts to hide her numerous
5 criminal acts that are not protected by any facet of law, ethics, morality, or decency. She is
6 simply behaving as a heinous and evil criminal, and praying to the devil that somehow the
7 court be as corrupt as she is and hoping her corrupt affiliations and employment force this
8 court to unlawfully protect her.

9
10 The office of public prosecutor should be administered with independence and
11 courage AND justice. No prosecutor is free to commit crimes to unlawfully convict
12 innocent people. Years ago the public stopped trusting the prosecutor's office, due to the
13 criminal acts by people like Charbel. The only way for the prosecutor's office to regain the
14 public's trust is for the court to punish prosecutors like Charbel and removing them from
15 any office of power and any dealings with the Courts.

16
17 In conclusion, all of Plaintiff's allegations of wrong doing by Charbel are proven by
18 the court's own record and have been agreed to by Charbel's tacit acquiescence and
19 confession and avoidance to Plaintiff's allegation. Therefore, summary judgment should
20 be granted in the Plaintiff's favor.

21 **Elements**

22
23 Generally speaking, there are three elements required to bring an action under 42
24 U.S.C. 1983. The plaintiff must prove the following:

25
26 1) Plaintiff was deprived of a specific right, privilege, or immunity secured by the
27 Constitution or laws of the United States;

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- 2) The alleged deprivation was committed under color of state law; and
- 3) The deprivation was the proximate cause of injuries suffered by the plaintiff.

Each element was met in the matter before the court by Charbel.

1. Plaintiff was obviously deprived of His Rights to Liberty and the pursuit of Happiness as neither exists in jail nor being tethered to a GPS with curfews and travel restrictions;

2. Plaintiff was also deprived of the following constitutionally protected Rights and/or freedoms: Due Process; Speedy Trial; worship; religion; speech; redress of grievance; assembly; to be secure in His person, houses, papers and effects; be informed of the nature and cause of cause of the accusation; confront the witness against Him; not have property taken without just compensation; excessive bail not be imposed; cruel and unusual punishment not be inflicted; not be enslaved or forced into involuntary servitude; equal protection under the law; and others; Due to jail, GPS, fraudulent persecution, and etc.

There is no time limit and/or requirement enumerated in the Bill of Rights and/or the United States Code for the loss of Rights and/or Freedoms to apply, only that one be unlawfully deprived of said Rights and/or Freedoms for one to have cause for action against the agent/actor that causes the loss.

Albeit that a single day and a single night in jail may not cause one's life to end, when such a blatant act committed by a rogue agent under color of state law is so obviously unrighteous and unfounded every person familiar with the act becomes too scared to assist the victim. Charbel's false arrest of Plaintiff was so obviously heinous and

1 unfounded that one of the most respected attorneys of one of the most prestigious law
2 firms in the State decided there was no way the court was even attempting to achieve
3 justice in this matter and withdrew from the case.
4

5 Charbel's tactics come straight from any tyrant's strategy of court room tactics.
6 Basically, she violates Rights and Laws so blatantly obviously that anyone would know
7 she is capable of harming them to reach her unholy goals.
8

9 The fact Charbel could have ONLY committed her criminal acts under color of
10 state law and color of authority are without controversy as no one but a prosecutor could
11 have so blatantly lied to a judge to falsely obtain a warrant and not been immediately
12 arrested.
13

14 **3.** The false arrest of Plaintiff caused great financial harm to Plaintiff;
15 destroyed His reputation; scared His wife into leaving Him; caused two of His Children to
16 alienate Him; caused His private counsel to withdraw as they could not find any way to
17 win a case when the prosecutor was so obviously willing to violate the law to falsely arrest
18 a man so obviously innocent of a false allegation; and eventually led to Plaintiff's
19 complete financial loss and destruction.
20

21 **SUMMARY OF CASE AGAINST CHARBEL**

22 A government official is entitled to immunity unless his "*act is so obviously wrong,*
23 *in the light of preexisting law, that only a plainly incompetent officer or one who was*
24 *knowingly violating the law would have done such a thing.*"
25

26 *See all of the following:* Harlow v. Fitzgerald, 457 U.S. 800 (1982).
27 Anderson v. Creighton, 483 U.S. 635 (1987);
28 Lassiter v. Alabama A & M Trustees, 28 F.3d 1146 (11th Cir. 1994)(en banc).
Harlow, 457 U.S. at 817; Lassiter, 28 F.3d at 1149.

1 Lassiter, 28 F.3d at 1149;
2 Ensley v. Soper, 142 F.3d 1402, 1406 (11th Cir. 1998)
3 Crawford-El v. Britton, 523 U.S. 574 (1998);
4 Anderson v. Creighton, 483 U.S. 635, 641 (1987);
5 Harlow v Fitzgerald, 457 U.S. 800 (1982).
6 Siegert v. Gilley, 500 U.S. 226, 232 (1991).
7 Ansley v. Heinrich, 925 F.2d 1339, 1345 (11th Cir. 1991).

8 Knowingly committing perjury to a judge to have a man that one knows by the
9 witness statements is innocent falsely arrested and wrongfully imprisoned is as “obviously
10 wrong” as any one person can possibly be.

11 As the court is aware, claiming immunity is an affirmative defense, and as such
12 requires the one attempting to cloth themselves in the immunity to admit to the
13 commission of the alleged act. Charbel’s attempt to fraudulently claim “absolute
14 immunity” is also Charbel’s voluntary confession to the alleged crimes. Charbel cannot
15 now go back and recant her confession. Thus, Charbel has confessed to the Plaintiff’s
16 allegations and yet Charbel does not meet the requisite standard for immunity.

17 In accordance with Charbel’s voluntary confession there is no controversy as to
18 whether Charbel is guilty of the crimes as alleged by Plaintiff, her own fraudulent defenses
19 have thus convicted her. At issue then, and the only issue left, is whether Charbel’s
20 fraudulent claim to “absolute immunity” may stand. The court then must decide whether it
21 should throw out the *doctrine of stare decisis* to protect the criminal just as Charbel threw
22 out the Plaintiff’s Civil Rights to protect the kidnappers. Charbel’s reasoning that she was
23 required to protect the kidnappers at the cost of an innocent man’s Civil Rights, Due
24 Process Rights, and Liberty because kidnapper Mr. Beasley had financial ties to her boss,
25
26
27
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1 Maricopa County Attorney Andrew Thomas, do not rise to the level of “in the public
2 interest” anymore than this court protecting Charbel because she is a prosecutor, does.

3
4 Charbel has no grounds and no basis to claim “absolute immunity” in the
5 investigation of a crime pursuant to numerous SCOTUS decisions and precedents, her
6 unfounded claim to “absolute immunity” is invalid. Since Charbel has not claimed
7 “qualified immunity”, nor has she denied the allegations, she has thus **voluntarily**
8 **confessed** to numerous felonies and has relinquished any protection of immunity for her
9 confessed crimes.
10

11 Accordingly, the court has no choice but to grant summary judgment in favor of
12 Plaintiff against Defendant Charbel, irrespective of any decision concerning the other
13 Defendant(s).
14

15 **FACTS:**

16 B. QUALIFIED IMMUNITY:

17 Robert Lyon, D.O. M.E. (“Lyon”) voluntarily forsook his protection of qualified
18 immunity when he chose to not do the required testing of the deceased kidnapper’s body.
19

20 **LAW AND ANALYSIS:**

21 **Issue:**

22 1. Lyon is not protected by qualified immunity.

23 Officials are only entitled to immunity while in performance of their duties, not
24 while in refusing to do their duties. Lyon had a duty to determine the “actual cause of
25 death” which requires FULL knowledge of the mental condition of the deceased
26 kidnapper. Lyon’s voluntary refusal to discover evidence of chemicals that would have
27
28

1 affected the deceased kidnapper's mental ability as a means of purposefully interfering
2 with Plaintiff's defense is a waiver of Lyon's privilege of immunity.

3
4 It is not about the constitutional duty of the Medical Examiner, it is about
5 Lyon's duty to perform His function as a Medical Examiner to ascertain what caused the
6 deceased kidnapper to act in such a manner as to cause His own death that violates the
7 Plaintiff's Civil Rights as a result of Lyon's dereliction of his duty. Lyon's duties require
8 Him to correctly establish the true cause of death, and NOT to use His Office to hide the
9 true cause of death in furtherance of the prosecutor's malicious prosecution of an innocent
10 man.
11

12 When Lyon refused to do his duty he refused to accept the immunity granted for
13 doing his duty.
14

15 C. 42 U.S.C.A. §1985

16 Charbel's use of her authority, her office and the people in her office, under color of
17 state law and color of authority to coerce a witness in an attempt to have that witness file
18 false charges against another witness to cause the other witness to change testimony is
19 sufficient to state said claim.
20

21 Plaintiff's claims were stated correctly and are obvious and incontrovertible and
22 therefore stand.
23

24 D. 42 U.S.C.A. § 1985(3)

25 All elements (1, 2, 3, &4) have been met. The second element was reached when
26 Charbel purposely and knowingly decided to protect a kidnapper due to the kidnapper's
27 connection to the deceased kidnapper who was financially tied to Charbel's superior,
28

1 Andrew Thomas, and the actual victim (Plaintiff in this matter) was of a “different class”
2 by not being financially involved with Charbel’s superior.

3
4 Plaintiff’s claim was stated correctly and is obvious and incontrovertible and
5 therefore stands.

6 E. 42 U.S.C.A. §1986

7 Plaintiff’s claims were stated correctly and are obvious and incontrovertible and
8 therefore stand.

9
10 F. RULE 12(b)6

11 Plaintiff’s claims were stated correctly and are obvious and incontrovertible and
12 therefore stand.

13
14 Plaintiff alleged facts (1) committed by a person and persons acting under color of
15 state law and (2) the conduct deprived Plaintiff of federal constitutional rights. Plaintiff
16 did state the affirmative link between the alleged injury and Defendants conduct. Plaintiff
17 has provided factual proof, which Defendant’s Charbel and Lyon have not rebutted and
18 ONLY attempted to unlawfully invoke immunity for their actions. Such invocation of
19 immunity absent rebuttal of the allegations is Defendant’s *tacit acquiescence* and
20 *confession and avoidance* to the allegations and is therefore Defendant’s voluntary
21 admittance and/or confession to the crimes stated in Plaintiff’s allegations.

22
23 Plaintiff’s allegations are not naked and are evidenced by Defendant’s own
24 statements and the record of Superior Court case number CR2008-106594.

25
26 Plaintiff has alleged sufficient facts supporting his claims that Charbel and Lyon
27 violated His constitutional and civil rights. Plaintiff’s complaint contains more than
28

1 enough factual allegations. In fact, the court's record evidences enough crimes committed
2 by Defendants to have Defendants charged criminally and prosecuted, if the court actually
3 ever prosecuted Maricopa County government agents when they were caught committing
4 crimes. Maricopa County has a long public history of government agent's crimes being
5 ignored.
6

7 SCOTUS decisions require the court to inform a *pro se/pro per* of deficiencies in
8 pleadings and give the *pro se/pro per* the opportunity to cure those deficiencies before the
9 court makes a determination in accordance with the pleadings. Defendants' disagreement
10 with SCOTUS is expected but has no standing in this court. Plaintiff moves this court to
11 not only draw on the court's experience and common sense, but also *Rectum Rogare*, and
12 do what is right as God is watching and will judge accordingly.
13
14

15 If Defendant is unhappy with the length of Plaintiff's pleadings, Defendant should
16 attempt to commit fewer crimes in the future as the pleadings are contingent upon the
17 number of Defendant's criminal acts. Plaintiff's claim was stated correctly and is obvious
18 and incontrovertible and therefore stands.
19

20 G. STATE TORT CLAIMS

21 Plaintiff attempted to notice Defendants of claims but was prevented by Defendant.
22 Defendant has used color of state late law and color of authority to prohibit Plaintiff from
23 any and all actions. Defendants continually conspire to threaten and intimidate Plaintiff by
24 using Defendants' authority unlawfully. Defendant has proven time and time again that
25 Defendant will falsely arrest and wrongfully imprison Plaintiff to prevent Plaintiff from
26 invoking His Rights.
27
28

1 No time limits apply in this matter as Defendants' numerous crimes to prevent
2 Plaintiff from proper access to the court is Defendants' voluntary waiving of time limits.

3
4 Plaintiff can only now state a claim upon which relief can be granted because
5 Plaintiff is no longer scared of Defendants. Defendants have committed so many crimes
6 against Plaintiff and so heinously destroyed Plaintiff's life to the point Plaintiff no longer
7 cares if Defendants conspiracy rises to the level of Defendants murdering Him.

8
9 Accordingly, Plaintiff hereby states for the record, even after being informed by
10 one of Andrew Thomas' "mobbed up" associates that if Plaintiff informs the court of this
11 fact Andrew Thomas will order Plaintiff murdered.

12 A person unknown to Plaintiff appeared at Plaintiff's home and informed Plaintiff
13 of the following:

14
15 **Mr. Beasley [*deceased kidnapper*] was an accountant that "laundered" money**
16 **through stock trades for the "mob", [*criminal syndicate*] that brought Andrew**
17 **Thomas to power and Andrew Thomas could not prosecute Mrs. Beasley [*surviving***
18 ***kidnapper*] for her crimes and the crimes of her husband as she could use the**
19 **knowledge of her husband's "connections" to intimidate Andrew Thomas. Andrew**
20 **Thomas was going to do what ever it took to put Plaintiff in prison to hide Thomas'**
21 **connection to said "mob." If Plaintiff ever revealed this information to anyone,**
22 **Thomas would order Plaintiff's execution, and due to Thomas' position, Thomas**
23 **would definitely get away with it. The person that informed Plaintiff of this, claimed**
24 **this was Plaintiff's one and only warning. Said person claimed a "working**
25 **relationship" with said "mob."**
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1 **Said person explained that Thomas used Mr. Beasley as an accountant that is**
2 **familiar with stock trades to somehow profit from the “sale of prisoners through**
3 **bonds” to increase Thomas’ and Thomas’ “friends” wealth, and that any**
4 **investigation into Mr. Beasley might show that Thomas was using His Office to**
5 **prosecute everyone he could, irrespective of people’s innocence, to put as many**
6 **people in prison as possible so he could somehow trade more bonds. This person**
7 **claimed the investigation may lead to evidence discoverable in Arizona’s**
8 **Comprehensive Annual Financial Report to the federal government.**

9
10
11 **Plaintiff kept this information secret for almost two years out of fear for His**
12 **safety and the safety of His family. Plaintiff’s family has abandoned Him because of**
13 **the constant persecution He is suffering at the hands of these criminal conspirators**
14 **and in essence has not enough left to lose to feel enough fear from death to put up**
15 **with the false and malicious prosecution.**

16
17 **Plaintiff is thus hereby informing this court if any harm comes to Plaintiff said**
18 **harm is directly or indirectly caused by an order from Andrew Thomas and Judge**
19 **McMurdie, Prosecutor Charbel, Detective Dalton, Detective Shearer and others**
20 **would therefore be accessories to the murder of Plaintiff.**

21
22 **Plaintiff’s Life and Liberty are in immediate peril and Plaintiff should be in**
23 **fear for His life, yet Plaintiff does not have enough of His life left to fear death due to**
24 **the numerous criminal acts committed against Plaintiff by Defendants.**

25
26 /

27 //

28

1 SUMMARY

2 **WHEREAS**, Plaintiff's claims were stated correctly, are obvious and
3 incontrovertible and therefore stand.
4

5 **WHEREAS**, Defendants have not rebutted Plaintiff's claims and therefore
6 Defendants have voluntarily confessed that all of Plaintiff's claims are correct and
7 Defendants are in agreement with Plaintiff's claims.
8

9 **WHEREAS**, Defendants' claims to immunity cannot stand pursuant to and in
10 accordance with law, precedent, *stare decisis*, and numerous SCOTUS decisions.

11 **WHEREAS**, Defendants have voluntarily, willfully, and the requisite knowledge,
12 have forsaken and waived their Rights to argue against Plaintiff's claims in Defendants'
13 basely claim of immunity.
14

15 **WHEREAS**, Time restrictions against Plaintiff are and were nullified by
16 Defendants' unlawful acts of using their authority under color of law and color of
17 authority to prohibit Plaintiff from pursuing any remedy for the harm caused to Plaintiff by
18 Defendants' crimes.
19

20 **WHEREAS**, In the case of any imprisonment of Plaintiff and/or the death of
21 Plaintiff and/or the "disappearance" of Plaintiff the court may ONLY presume that such
22 incident was done at the bequest of Andrew Thomas in furtherance of Thomas' desire to
23 conceal Thomas' association with a criminal syndicate, and with the assistance of
24 Defendants.
25

26 **WHEREAS**, ALL elements of the statutes listed in the Complaint have been met at
27 least once in Plaintiff's pleading.
28

1 **CERTIFICATE OF SERVICE**

2
3 **COPY** of the foregoing delivered/mailed
4 this ____ day of February 2010 to:

5 Honorable Roslyn O. Silver
6 United States District Court
7 Sandra Day O'Connor U.S. Courthouse
8 401 West Washington Street, Suite 624, SPC 59
9 Phoenix, Arizona 85003

10 **COPY** of the foregoing delivered/mailed
11 this ____ day of February 2010 to:

12 Prosecutor Susie Charbel
13 Maricopa County Attorney
14 301 W. Jefferson, 8th Floor
15 Phoenix, AZ 85003-2243

16 **COPY** of the foregoing delivered/mailed
17 this ____ day of February 2010 to:

18 Medial Examiner Robert E. Lyon, DO
19 Maricopa County Forensic Science Center
20 701 West Jefferson
21 Phoenix, Arizona 85007

22
23 By: _____, agent
24
25
26
27
28