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6 Attorneys for Plaintiffs
7

8 SUPERIOR COURT OF ARIZONA

9 MARICOPA COUNTY

10 MARY C. BORUCH, an individual;
11 RYAN J. BROWN, an individual; SCOTT
DANIELS, an individual; ANDREA
12 GARCIA, an individual; RAND OLSEN,
an individual; PENNY PESHAKAI, an
13 individual; PENNY TUCKER and
JOSEPH A. JAIME, husband and wife;
14 RHETT C. UDALL and SUSAN F.
UDALL, husband and wife; ZACHARY R.
15 WEBSTER and ERIN R. WEBSTER,
husband and wife; STRAIGHT RUN, LLC,
16 an Arizona limited liability company,
JAMIE BARTLETT, an individual;
17 EDWARD CHRISTOPHER and
VIRGINIA CHRISTOPHER, husband and
18 wife; DONALD D. DREILING, an
individual; JOHN GEBHART and
19 BROOKE GEBHART, husband and wife;
JUDY KINGSLEY and HARRY J.
20 KINGSLEY, husband and wife; TODD B.
KANDARIS, an individual; CODY W.
21 PHELPS, an individual; JONATHAN
LEDLOW, an individual; VAUGHN E.
22 PELZER, an individual; 1421 ALLEN
INVESTMENT GROUP, LLC, an Arizona
23 limited liability company; 1349 ALLEN
INVESTMENT GROUP, LLC, an Arizona
24 limited liability company; 1243
HARMONY INVESTMENT GROUP,
25 LLC, an Arizona limited liability company;
1242 HARMONY INVESTMENT
26 GROUP, LLC, an Arizona limited liability

Case No.

VERIFIED COMPLAINT

(Injunctive Relief)

1 company; 1240 HARMONY
2 INVESTMENT GROUP, LLC, an Arizona
3 limited liability company; 1237
4 HARMONY INVESTMENT GROUP,
5 LLC, an Arizona limited liability company;
6 1209 HARMONY INVESTMENT
7 GROUP, LLC, an Arizona limited liability
8 company; STEVEN REGEHR and DAWN
9 REGEHR, husband and wife; ROBERT T.
10 SPELTZ, an individual; DAVID B.
11 SEIMON and HAN XIONG SEIMON,
12 husband and wife; BENJAMIN VALLEJO,
13 an individual; ALLEN M. WENDLAND
14 and VIRGINIA M. WENDLAND, husband
15 and wife; ARTHUR LYMAN, an
16 individual; SARAH MICHAL, an
17 individual; GINGER M. TEDERMAN, an
18 individual; SUSAN D. DRAKE, an
19 individual; ELIZABETH JOHNSON, an
20 individual; RICHIE WENDLAND, an
21 individual; GLENN WIGGINS, an
22 individual; GENE CIANFARANO and
23 SANDRA S. CIANFARANO, husband and
24 wife; MARIA A. CABALLERO (a/k/a
25 MARIA A. CARONADO), an individual;
26 DONNA M. HEITKOTTER, individually
and as Trustee of the HEITKOTTER
GIRLS FAMILY TRUST; THOMAS R.
FISCHER and CHERYL J. FISCHER,
husband and wife; DAGOBERTO J.
CORDOVA, an individual; KEMIA
HALL, an individual; SAUL GARCIA
(a/k/a SAUL GARCIA MERCADO), an
individual; GREGORY H. BECKETT and
JUDITH E. BECKETT, as husband and
wife; LEE A. MALTBY and THERESA
M. MALTBY, husband and wife;
THOMAS M. COLTON, an individual;
LORIN SCHNEBLY, an individual;
CAROL CONNOR, an individual;
TIMOTHY C. LASKOWSKI and LYNN
LASKOWSKI, husband and wife; ALICE
L. GIERHAHN and JEFFREY G.
GIERHAHN, husband and wife; JEREMIE
BLALACK and NINA BLALACK,
husband and wife; DAVID R.
HOEBRECKX, an individual; EDWARD
F. STEELE and KATHY L. STEELE,
husband and wife; RANDY L. CULVER
and JEANIE M. CULVER, husband and
wife; REX ETTILEMAN and SANDRA J.

1 ETTLEMAN, husband and wife;
2 BARBARA CROSS, an individual;
3 ERNESTINE HUERTA, an individual;
4 NANCY VASQUEZ, and individual;
5 KELLY HERSCHBERGER, an individual;
6 BRETT A. EDISON, an individual; PAUL
7 MORENO and LYBIA MORENO,
8 husband and wife; IRMA VALDES (a/k/a
9 IRMA MAJIA DE VALDEZ), an
10 individual; MICHAEL A. CREDIT, an
11 individual; CURTIS L. CORNILS and
12 JERRI A. CORNILS, husband and wife;
13 CONNOR CORNILS, an individual;
14 JAIMIE BUNNING, an individual; LEAH
15 BUNNING, an individual; DILLON
16 FRANSEN, an individual; JUANA E.
17 MORA, an individual; EZEQUIEL
18 ULLOA, an individual; ALISHA
19 HEITKÖTTER, an individual; THERESA
20 A. CANTALICE, an individual; EDWARD
21 SPORTELLI, an individual; WILBUR C.
22 SCHULTZ, an individual; SHANE
23 WENDLAND, an individual; JANET E.
24 CAMPBELL, individually and as Trustee
25 of the JANET E. CAMPBELL FAMILY
26 LIVING TRUST; individually and on
behalf of ALL OTHERS SIMILARLY
SITUATED,

Plaintiffs,

v.

STATE OF ARIZONA; CITY OF MESA,
an Arizona municipal corporation; JOHN
HALIKOWSKI, in his official capacity as
Director of the ARIZONA
DEPARTMENT OF
TRANSPORTATION; JOHN and JANE
DOES I-X; WHITE CORPORATIONS I-
X; BLACK LIMITED LIABILITY
COMPANIES I-X; and RED
PARTNERSHIPS I-X,

Defendants.

For their Complaint, Plaintiffs allege as follows:

...

1 OVERVIEW

2 1. The plaintiffs in this action, on behalf of themselves and as class
3 representatives for all others similarly situated (the "Class") in three subdivision – Stapley
4 Gardens, Mesa Place, and Emerald Acres Unit 2 (the "Class Area") – seek an injunction
5 against the City of Mesa (the "City"), the Arizona Department of Transportation,¹ and the
6 State of Arizona (the "State") to prevent inundation of their homes and property with
7 storm water. Plaintiffs are seeking to prevent the City, ADOT, and the State from using
8 their homes, properties, and neighborhood as overflow and storage of storm water
9 collected throughout the City of Mesa and a portion of U.S. Highway 60 (the "U.S. 60")
10 and pumped into their area. Specifically, Defendants have allowed approximately
11 20 square miles of the City and a significant portion of U.S. 60 to drain into Emerald Park,
12 which has no outlet when it overflows other than the neighborhood and homes of the
13 plaintiffs and class members.

14 2. Despite the focus of the City in the media on the magnitude of rainstorm on
15 September 8, the storm water that inundated the homes and property in the neighborhood
16 was not from the rain that naturally fell on the neighborhood, but rather had been pumped
17 or otherwise released by the City into the area several hours after the rain had stopped on
18 September 8 during clear-sky weather conditions. The storm water was diverted to an
19 area from the underground and above-ground storm sewer/drainage system feeding into
20 Emerald Park (the "Drainage System") and also through the ADOT channel adjacent to
21 U.S. 60 (the "Channel").

22 3. Defendants acted knowingly and intentionally, or with reckless disregard for
23 the rights of plaintiffs and the class members, or with simple and gross negligence, in the
24 design, maintenance, and operation of the Drainage System, the Channel, and other
25

26 ¹ John Halikowski is being sued in his official capacity as Director of the Arizona Department of
Transportation ("ADOT").

1 drainage mechanisms in a way that changed the natural flow of storm water and its
2 impoundments such that an enormous amount of storm water inundated plaintiffs' and
3 class members' homes and property on September 8, 2014. The inundation of the
4 neighborhood with storm water was the direct result of Defendants' actions in retaining,
5 concentrating, channelizing, releasing, redirecting, and diverting storm water so that it
6 overwhelmed the retention basin volume at Emerald Park.

7 4. Defendants continued to cause or allow water to be diverted into Emerald
8 Park even though they knew or should have known that there was no effective outlet for
9 the water entering Emerald Park other than in and through the plaintiffs' and class
10 members' homes and property. In other words, Defendants created and operated a system
11 and drainage mechanisms in such a way that several hours after the rain stopped,
12 plaintiffs' and class members' homes and property became the overflow storage for storm
13 water released from the U.S. 60 and retention facilities throughout the City.

14 **PARTIES, JURISDICTION AND VENUE**

15 5. Plaintiff MARY C. BORUCH is an individual who owns the home located
16 at 1253 East Harmony Circle in Mesa and suffered loss.

17 6. Plaintiff RYAN J. BROWN is an individual who owns the home located at
18 1259 East Harmony Circle in Mesa and suffered loss.

19 7. Plaintiff SCOTT DANIELS is an individual who owns the home located at
20 1405 South Allen in Mesa and suffered loss.

21 8. Plaintiff ANDREA GARCIA is an individual who resides and/or resided in
22 in the home located at 1321 South Allen in Mesa at the time of the Storm and suffered
23 loss.

24 9. Plaintiff RAND OLSEN is an individual who owns the home located at
25 1411 South Allen in Mesa and suffered loss.

26 . . .

1 10. Plaintiff PENNY PESHAKAI is an individual who resides and/or resided
2 in the home located at 1449 South Doran in Mesa at the time of the Storm and suffered
3 loss.

4 11. PENNY TUCKER and JOSEPH A. JAIME are a married couple who own
5 the home located at 1257 East Harmony Circle in Mesa and suffered loss.

6 12. Plaintiffs RHETT C. UDALL and SUSAN F. UDALL are a married couple
7 who own the home located at 1403 South Allen in Mesa and suffered loss.

8 13. Plaintiffs ZACHARY R. WEBSTER and ERIN R. WEBSTER are a married
9 couple who own the home located at 1262 East Harmony Circle in Mesa and suffered
10 loss.

11 14. Plaintiff STRAIGHT RUN, LLC is an Arizona limited liability company
12 that owns the homes located at 1339 East Hopi Circle and 1248 East Grove Circle in Mesa
13 and suffered loss.

14 15. Plaintiff JAMIE BARTLETT is an individual owns the home located at
15 1425 South Doran Drive in Mesa and suffered loss.

16 16. Plaintiffs EDWARD CHRISTOPHER and VIRGINIA CHRISTOPHER are
17 a married couple who own the home located at 1534 East Harmony Avenue in Mesa and
18 suffered loss.

19 17. Plaintiff DONALD D. DREILING is an individual who owns the home
20 located at 1333 South Allen in Mesa and suffered loss.

21 18. Plaintiffs JOHN GEBHART and BROOKE GEBHART are a married
22 couple who reside and/or resided in the home located at 1461 South Doran in Mesa at the
23 time of the Storm and suffered loss.

24 19. Plaintiffs JUDY KINGSLEY and HARRY J. KINGSLEY are a married
25 couple who own the home located at 1363 South Allen in Mesa and suffered loss.

26 . . .

1 20. Plaintiff TODD B. KANDARIS is an individual who owns the home located
2 at 1321 South Allen in Mesa and suffered loss.

3 21. Plaintiff CODY W. PHELPS is an individual who owns the home located at
4 1465 South Doran in Mesa and suffered loss.

5 22. Plaintiff JONATHAN LEDLOW is an individual who resides and/or resided
6 in the home located at 1449 South Doran in Mesa at the time of the Storm and suffered
7 loss.

8 23. Plaintiff VAUGHN E. PELZER is an individual who owns the home located
9 at 1256 East Grove Circle in Mesa and suffered loss.

10 24. Plaintiff 1421 ALLEN INVESTMENT GROUP, LLC is an Arizona limited
11 liability company that owns the home located at 1421 South Allen in Mesa and suffered
12 loss.

13 25. Plaintiff 1349 ALLEN INVESTMENT GROUP, LLC is an Arizona limited
14 liability company that owns the home located at 1349 South Allen in Mesa and suffered
15 loss.

16 26. Plaintiff 1243 HARMONY INVESTMENT GROUP, LLC is an Arizona
17 limited liability company that owns the home located at 1243 East Harmony Circle in
18 Mesa and suffered loss.

19 27. Plaintiff 1242 HARMONY INVESTMENT GROUP, LLC is an Arizona
20 limited liability company that owns the home located at 1242 East Harmony Circle in
21 Mesa and suffered loss.

22 28. Plaintiff 1240 HARMONY INVESTMENT GROUP, LLC is an Arizona
23 limited liability company that owns the home located at 1240 East Harmony Circle in
24 Mesa and suffered loss.

25 29. Plaintiff 1237 HARMONY INVESTMENT GROUP, LLC is an Arizona
26 limited liability company that owns the home located at 1237 East Harmony Circle in

1 Mesa and suffered loss.

2 30. Plaintiff 1209 HARMONY INVESTMENT GROUP, LLC is an Arizona
3 limited liability company that owns the home located at 1209 East Harmony Circle in
4 Mesa and suffered loss.

5 31. Plaintiffs STEVEN REGEHR and DAWN REGEHR are a married couple
6 who own the home located at 1429 South Doran in Mesa and suffered loss.

7 32. Plaintiff ROBERT T. SPELTZ is an individual who owns the home located
8 at 1233 East Grove Circle in Mesa and suffered loss.

9 33. Plaintiffs DAVID B. SEIMON and HAN XIONG SEIMON are a married
10 couple who own the home located at 1452 South Lazona Drive in Mesa and suffered loss.

11 34. Plaintiff BENJAMIN VALLEJO is an individual who resides and/or resided
12 in the home located at 1205 East Grove Circle in Mesa at the time of the Storm and
13 suffered loss.

14 35. Plaintiffs ALLEN M. WENDLAND and VIRGINIA M. WENDLAND are a
15 married couple who own the home located at 1247 East Grove Circle in Mesa and
16 suffered loss.

17 36. Plaintiff ARTHUR LYMAN is an individual who resides and/or resided in
18 the home located at 1343 South Allen in Mesa at the time of the Storm and suffered loss.

19 37. Plaintiff SARAH MICHAL is an individual who owns the home located at
20 1343 East Hopi Avenue in Mesa and suffered loss.

21 38. Plaintiff GINGER M. TEDERMAN is an individual who owns the home
22 located at 1455 South Doran in Mesa and suffered loss.

23 39. Plaintiff SUSAN D. DRAKE is an individual who owns the home located at
24 1305 East Hopi Circle in Mesa and suffered loss.

25 40. Plaintiff ELIZABETH JOHNSON is an individual who owns the home
26 located at 1331 E Hopi Circle in Mesa and suffered loss.

1 41. PENNY TUCKER and JOSEPH A. JAIME are a married couple who owns
2 the home located at 1257 East Harmony Circle in Mesa and suffered loss.

3 42. Plaintiff RICHIE WENDLAND is an individual who resides and/or resided
4 in the home located at 1247 East Grove Circle in Mesa at the time of the Storm and
5 suffered loss.

6 43. Plaintiff GLENN WIGGINS is an individual who resides and/or resided in
7 the home located at 1345 East Hopi Avenue in Mesa at the time of the Storm and suffered
8 loss.

9 44. Plaintiffs GENE CIANFARANO and SANDRA S. CIANFARANO own
10 the home located at 1251 East Grove Circle in Mesa and suffered loss.

11 45. Plaintiff MARIA A. CABALLERO (a/k/a MARIA A. CARONADO) is an
12 individual who owns the home located at 1258 East Harmony Circle in Mesa and suffered
13 loss.

14 46. Plaintiff DONNA M. HEITKOTTER, individually and as Trustee of the
15 HEITKOTTER GIRLS FAMILY TRUST, owns the home located at 1519 East Harmony
16 Avenue in Mesa and suffered loss.

17 47. Plaintiffs THOMAS R. FISCHER and CHERYL J. FISCHER own the
18 home located at 1434 East Harmony Avenue in Mesa and suffered loss.

19 48. Plaintiff DAGOBERTO J. CORDOVA is an individual who owns the home
20 located at 1257 East Glade Avenue in Mesa and suffered loss.

21 49. Plaintiff KEMIA HALL is an individual who resides and/or resided in the
22 home located at 1411 South Allen in Mesa at the time of the Storm and suffered loss.

23 50. Plaintiff SAUL GARCIA (a/k/a SAUL GARCIA MERCADO) is an
24 individual owns the home located at 1436 South Lazona Drive in Mesa and suffered loss.

25 51. Plaintiffs GREGORY H. BECKETT and JUDITH E. BECKETT are a
26 married couple who own the home located at 1347 South Allen in Mesa and suffered loss.

1 52. Plaintiffs LEE A. MALTBY and THERESA M. MALTBY are a married
2 couple who own the home located at 1329 East Harmony Circle in Mesa and suffered
3 loss.

4 53. Plaintiff THOMAS M. COLTON is an individual who resides and/or
5 resided in the home located at 1529 East Harmony Avenue in Mesa at the time of the
6 Storm and suffered loss.

7 54. Plaintiff LORIN SCHNEBLY is an individual who resides and/or resided in
8 the home located at 1442 East Harmony Avenue in Mesa at the time of the Storm and
9 suffered loss.

10 55. Plaintiff CAROL CONNOR is an individual who owns the home located at
11 1222 East Harmony in Mesa and suffered loss.

12 56. Plaintiffs TIMOTHY C. LASKOWSKI and LYNN LASKOWSKI are a
13 married couple who own the home located at 1332 East Hopi Circle in Mesa and suffered
14 loss.

15 57. Plaintiffs ALICE L. GIERHAHN and JEFFREY G. GIERHAHN are a
16 married couple who own the home located at 1365 South Allen in Mesa and suffered loss.

17 58. Plaintiffs JEREMIE BLALACK and NINA BLALACK are a married
18 couple who reside and/or resided in the home located at 1427 East Grove Circle in Mesa
19 at the time of the Storm and suffered loss.

20 59. Plaintiff DAVID R. HOEBRECKX is an individual who owns the home
21 located at 1321 East Hopi Circle in Mesa and suffered loss.

22 60. Plaintiffs EDWARD F. STEELE and KATHY L. STEELE are a married
23 couple who own the homes located at 1363 East Hopi Avenue and 1449 South Doran in
24 Mesa and suffered loss.

25 61. Plaintiffs RANDY L. CULVER and JEANIE M. CULVER are a married
26 couple who own the home located at 1405 South Allen in Mesa and suffered loss.

1 62. Plaintiffs REX ETTLEMAN and SANDRA J. ETTLEMAN are a married
2 couple who own the home located at 1224 East Harmony Circle in Mesa and suffered
3 loss.

4 63. Plaintiff BARBARA CROSS is an individual who owns the home located at
5 1246 East Glade Avenue in Mesa and suffered loss.

6 64. Plaintiff ERNESTINE HUERTA is an individual who resides and/or resided
7 in the home located at 1343 South Allen in Mesa at the time of the Storm and suffered
8 loss.

9 65. Plaintiff NANCY VASQUEZ is an individual who resides and/or resided in
10 the home located at 1343 South Allen in Mesa at the time of the Storm and suffered loss.

11 66. Plaintiff KELLY HERSCHBERGER is an individual who owns the home
12 located at 1355 South Allen in Mesa and suffered loss.

13 67. Plaintiff BRETT A. EDISON is an individual who resides and/or resided in
14 the home located at 1413 South Allen in Mesa at the time of the Storm and suffered loss.

15 68. Plaintiffs PAUL MORENO and LYBIA MORENO are a married couple
16 who own the home located at 1562 East Hilton Avenue in Mesa and suffered loss.

17 69. Plaintiff IRMA VALDES (a/k/a IRMA MAJIA DE VALDEZ) is an
18 individual who owns the home located at 1435 South Doran in Mesa and suffered loss.

19 70. Plaintiff MICHAEL A. CREDIT is an individual who owns the home
20 located at 1211 East Harmony Circle in Mesa and suffered loss.

21 71. Plaintiffs CURTIS L. CORNILS and JERRI A. CORNILS are a married
22 couple who own the home located at 1345 East Hope Avenue in Mesa and suffered loss.

23 72. Plaintiff CONNOR CORNILS is an individual who resides and/or resides in
24 the home located at 1345 East Hope Avenue in Mesa at the time of the Storm and suffered
25 loss.

26 . . .

1 73. Plaintiff JAIMIE BUNNING is an individual who resides and/or resided in
2 the home located at 1328 East Hopi Circle in Mesa at the time of the Storm and suffered
3 loss.

4 74. Plaintiff LEAH BUNNING is an individual who resides and/or resided in
5 the home located at 1328 East Hopi Circle in Mesa at the time of the Storm and suffered
6 loss.

7 75. Plaintiff DILLON FRANSEN is an individual who resides and/or resided in
8 the home located at 1328 East Hopi Circle in Mesa at the time of the Storm and suffered
9 loss.

10 76. Plaintiff JUANA E. MORA is an individual who owns the home located at
11 1440 South Doran in Mesa and suffered loss.

12 77. Plaintiff EZEQUIEL ULLOA is an individual who owns the home located
13 at 1552 East Hilton Avenue in Mesa and suffered loss.

14 78. Plaintiff ALISHA HEITKOTTER is an individual who resides and/or
15 resided in in the home located at 1519 East Harmony Avenue in Mesa at the time of the
16 Storm and suffered loss.

17 79. Plaintiff THERESA A. CANTALICE is an individual who resides and/or
18 resided in the home located at 1337 East Hopi Circle in Mesa at the time of the Storm and
19 suffered loss.

20 80. Plaintiff EDWARD SPORTELLI is an individual who resides and/or
21 resided in the home located at 1337 East Hopi Circle in Mesa at the time of the Storm and
22 suffered loss.

23 81. Plaintiff WILBUR C. SCHULTZ is an individual who owns the home
24 located at 1329 South Allen in Mesa and suffered loss.

25 82. Plaintiff SHANE WENDLAND is an individual who resides and/or resided
26 in the home located at 1247 East Grove Circle in Mesa at the time of the Storm and

1 suffered loss.

2 83. Plaintiff JANET E. CAMPBELL, individually and as Trustee of the JANET
3 E. CAMPELL FAMILY LIVING TRUST, is an individual who owns the home located at
4 1254 East Glade Avenue in Mesa and suffered loss.

5 84. The named plaintiffs bring this action both individually and on behalf of
6 others similarly situated in, among other areas, a subdivision described in the records of
7 the Maricopa County Recorder, Map ID Nos. 853-36-02-04 identified as Stapley Gardens
8 (“Stapley Gardens”); a subdivision described in the records of the Maricopa County
9 Recorder, Map ID Nos. 853-36-02-02 and 853-36-02-03 identified as Mesa Place (“Mesa
10 Place”); and a subdivision described in the records of the Maricopa County Recorder,
11 Map ID Nos. 853-36-02-02 and 853-36-02-03 identified as Emerald Acres Unit 2
12 (“Emerald Acres”). All residents and property owners in Stapley Gardens, Mesa Place,
13 and Emerald Acres are collectively referred to as the “Class” or “Class Members.”

14 85. Plaintiffs intend to seek class certification and appointment as representative
15 of the Class or sub-Classes of others similarly situated that own or rent one or more
16 private residences located in Mesa and suffered damage from the Inundation as described
17 below.

18 86. The members of the Class are so numerous that joinder of all members is
19 impracticable. The disposition of their claims in a class action will provide substantial
20 benefits to the parties, class members, and the Court.

21 87. The prosecution of separate injunction actions by individual members of the
22 Class would create a risk of inconsistent or varying adjudications, and the adjudication of
23 an injunction action may, as a practical matter, be dispositive of the interests of other
24 members not parties to the adjudication.

25 88. Defendants have acted or refused to act on grounds generally applicable to
26 the Class, thereby making appropriate final injunctive relief with respect to the Class as a

1 whole.

2 89. There is a well-defined community of interest in the questions of law and
3 fact involved in this case. Questions of law and fact common to the members of the Class
4 that predominate over questions that may affect only individual members of the Classes
5 include:

- 6 • Whether Defendants caused or are strictly liable for the Inundation
7 because Defendants' actions or inaction;
- 8 • Whether injunctive relief is available under the facts of the case;
- 9 • Whether the design and/or operation of the Drainage System and/or
10 Channel caused or contributed to the Inundation.

11 90. Plaintiffs' claims are typical of those of the other members of the Class.
12 Plaintiffs will adequately protect the interests of the class members. Plaintiffs' counsel
13 are experienced and well qualified in real estate, property damages, water-law litigation
14 and complex commercial litigation. With respect to the Inundation described below,
15 Plaintiffs have no interests that conflict with those of the members of the Class.

16 91. A class action is superior to other available methods for the fair and efficient
17 adjudication of this controversy.

18 92. Defendant City of Mesa is an Arizona municipal corporation authorized to
19 and doing business in Maricopa County.

20 93. Defendant John Halikowski is sued in his official capacity as the Director of
21 the Arizona Department of Transportation, which is authorized to and doing business in
22 Maricopa County.

23 94. Defendant State of Arizona is a jural entity subject to suit.

24 95. Defendants John Does and Jane Does I-X, White Corporations I-X, Black
25 Limited Liability Companies I-X, and Red Partnerships I-X are individuals, corporations,
26 limited liability companies or partnerships, respectively, or other incorporated or

1 unincorporated associations, whose true names are presently unknown to Plaintiffs, but
2 who are or may be liable to Plaintiffs on their Complaint. John and Jane Does at all times
3 were acting on behalf of and/or for the benefit of their separate and marital community
4 estates. If and when the true names of such fictitious Defendants become known,
5 Plaintiffs may seek leave of the Court to amend their Complaint to set forth the fictitious
6 Defendants' true names, capacities, and relationships.

7 96. The real property at issue is located in Maricopa County. Jurisdiction and
8 venue are appropriate in this Court.

9 97. In the event judgment is entered by default for any of the Defendants'
10 failure to answer, Plaintiffs will not seek attorneys' fees in an amount in excess of
11 \$75,000 against such defaulted Defendants.

12 GENERAL ALLEGATIONS

13 **Emerald Park, the Drainage System, and the Channel**

14 98. The City owns Emerald Park located at 1455 South Harris Drive in Mesa,
15 near the major crossroads of U.S. 60 and South Harris Drive.

16 99. Defendants use Emerald Park as, among other things, a retention basin for
17 storm water retention.

18 100. The City designed and constructed the Drainage System. The Drainage
19 System relies on or incorporates the use of interconnected storm-water sewers, drainage
20 features, and retention facilities.

21 101. The Drainage System is designed and operated in a way that diverts,
22 concentrates, channelizes, and temporarily retains storm water after a storm event. The
23 Drainage System generally drains approximately 20 square miles of the City (the
24 "Tributary Area") in a southern and westerly direction with Emerald Park being on the
25 south limits of the Tributary Area.

26 . . .

1 102. Dozens, if not hundreds, of retention facilities in the Tributary Area (the
2 “Other Retention Facilities”) are interconnected in the Drainage System.

3 103. Other Retention Facilities have valves, gates, pumps, bleed pipes, overflow
4 weirs, or other mechanisms (collectively the “Overflow Relief”), to provide drainage and
5 the ability to send the water downstream in the Drainage System.

6 104. Emerald Park is the terminal retention basin for the Tributary Area in that it
7 does not have an appropriate emergency overflow system to prevent the storm water
8 pushed to it from other areas to be effectively carried away downstream. In other words,
9 Emerald Park is the end point for most of the storm water it receives from the U.S. 60 and
10 Tributary Area.

11 105. Emerald Park was not designed or constructed with and does not have
12 effective Overflow Relief. There are no valves, gates, pumps, bleed pipes, overflow
13 weirs, or other mechanisms to effectively provide drainage and the ability to send storm
14 water downstream from Emerald Park. Likewise, there is no outlet or other connection to
15 a storm sewer system or other part of the Drainage System to effectively take water out of
16 Emerald Park to provide effective overflow relief. On September 8, 2014, the overflow
17 relief for Emerald Park was through the homes and properties of the plaintiffs and class
18 members living next to Emerald Park.

19 106. The Drainage System includes several storm sewer pipes that empty directly
20 into Emerald Park (the “Storm Sewer Pipes”). A true and correct copy of a photograph of
21 one of these large pipes – 84 inches in diameter – is attached as **Exhibit A**.

22 107. Upon information and belief, ADOT or the State owns or controls the
23 Channel just north of and runs parallel to the U.S. 60.

24 108. ADOT uses the Channel to receive storm water pumped from U.S. 60 and
25 carry it to Emerald Park.

26 . . .

1 109. The City also uses the Channel receive storm water from Other Retention
2 Facilities and carry it to Emerald Park.

3 110. The Channel has concrete channel blocks, diversions, or weirs and flood
4 gates and side diversions designed to control the flow of water in the Channel.

5 111. At the time of the September 8 storm, the Channel had a channel block
6 concrete weir, and side diversion designed to divert water out of the Channel and into
7 Emerald Park (the "Channel Block").

8 112. The location of the Channel Block was adjacent to a concrete spillway that
9 empties water from the Channel into Emerald Park. *See Exhibit B.*

10 113. The City has one or more water pumps in or near Emerald Park (the
11 "Pumps") that are designed to pump water from Emerald Park.

12 114. The Pumps are designed to pump the water into the Channel but only at a
13 location upstream from the Channel Block. Upon information and belief, the location and
14 design of Pumps on September 8 caused the Pumps to be entirely ineffectual in that storm
15 water pumped out of Emerald Park simply would have been diverted back into the park.
16 The Pumps were not and are not an effective Overflow Relief for Emerald Park.

17 **The Storm**

18 115. According to the Maricopa County Flood Control District, rain fell in Mesa
19 during the morning of September 8, 2014 until approximately 10:00 a.m. (the "Storm").
20 After the rain stopped, there were mostly clear skies. There was no more rainfall the rest
21 of the day in Mesa.

22 116. By the time the rain stopped falling after the Storm, the retention basin at
23 Emerald Park was not at full capacity and had not overflowed.

24 117. During and after the Storm, storm water that fell in the Tributary Area had
25 been collected, concentrated, and diverted into the Drainage System and the Channel.
26 This included storm water collected, concentrated, and temporarily retained at Other

1 Retention Facilities.

2 118. The Drainage System and Channel was or should have been designed to be
3 able to retain storm water during the storm to attenuate the peak runoff to prevent
4 overwhelming Emerald Park.

5 119. Upon information and belief, release of water from Other Retention
6 Facilities was controlled by gates, valves, or pumps. Despite this, storm water was
7 allowed to drain from Other Retention Facilities into Emerald Park despite the lack of
8 outlet for the water and resulting impact to plaintiffs and class members.

9 **The City and ADOT Caused the Inundation of**
10 **Storm Water in the Neighborhood**

11 120. For several hours after the Storm, the retention basin at Emerald Park had
12 not overflowed and there was no inundation of storm water from Emerald Park into the
13 homes of plaintiffs and class members.

14 121. Upon information and belief, for a few hours after the Storm, rainwater that
15 had fallen in the neighborhood and collected in the streets from the Storm was receding.
16 The water level in the streets near the plaintiffs' and class members' homes from this rain
17 had been decreasing for a time after the Storm ended.

18 122. But after the Storm had passed, storm water that had been collected and
19 concentrated in Other Retention Facilities throughout the City was pumped or otherwise
20 released into the Drainage System or Channel so that it ultimately entered Emerald Park.
21 Significant amounts of storm water entered Emerald Park through the Channel and the
22 storm sewer pipes that feed into the park.

23 123. Emerald Park was filled beyond capacity because, among other things, there
24 was no effective Overflow Relief. Once Emerald Park overflowed, storm water flowed
25 across South Harris Drive and inundated the neighborhood, homes, and property of the
26 plaintiffs and class members (the "Inundation").

1 124. Upon information and belief, even after water was overflowing Emerald
2 Park and inundating the neighborhood, homes, and property of the plaintiffs and class
3 members, Defendants continued to cause or allow storm water to be concentrated and
4 diverted into Emerald Park through the Storm Sewer Pipes and Channel.

5 125. Defendants failed to take reasonable steps to provide Overflow Relief or
6 stop the storm water from being pumped or otherwise sent to Emerald Park.

7 126. Upon information and belief, affirmative actions were taken by Defendants
8 to collect, concentrate, and send storm water from U.S. 60 and the Tributary Area into
9 Emerald Park during and after the Storm.

10 127. Upon information and belief, affirmative actions could have been taken by
11 Defendants, which Defendants had a duty to take, to prevent storm water from being
12 concentrated and sent to Emerald Park under the circumstances.

13 128. Upon information and belief, during or after the Storm, the Pumps had one
14 or more broken parts that prevented or would have prevented the Pumps from operating
15 properly or at all.

16 129. According to statements from the City, the City had requested permission to
17 pump water from the Emerald Park retention basin into the Channel, but ADOT refused.

18 130. Upon information and belief, during the Inundation, the Channel
19 downstream from the spillway entrance into Emerald Park had additional capacity to
20 accept more water, but water continued to be directed from the Channel into Emerald
21 Park.

22 131. Upon information and belief, during the Inundation of the neighborhood,
23 Other Retention Facilities had the capacity to retain water instead of sending the water
24 from the facilities into Emerald Park via the Drainage System or Channel.

25 132. Upon information and belief, the Channel was not properly maintained so
26 that more water was forced into Emerald Park than would have been otherwise.

1 133. Upon information and belief, during or after the Storm, and during the
2 Inundation, ADOT failed to remove or otherwise open the Channel Block.

3 134. The design, maintenance, and operation of the Drainage System and the
4 Channel by Defendants contributed to the inundation of the neighborhood, homes, and
5 property of the plaintiffs and class members with storm water.

6 135. Upon information and belief, affirmative actions taken by Defendants to
7 collect, concentrate, and pump or otherwise release water through the Drainage System
8 and the Channel in the manner and at the times it was released contributed to the
9 inundation of the neighborhood, homes, and property of the plaintiffs and class members
10 with storm water.

11 136. Upon information and belief, affirmative actions that Defendants had a duty
12 to perform were not performed in connection with the retention, diversion, concentration
13 and release of water through the Drainage System and Channel, which omissions
14 contributed to the inundation of the neighborhood, homes, and property of the plaintiffs
15 and class members with storm water.

16 137. After the Inundation, Defendants failed to take reasonable steps to pump
17 water out of Emerald Park and surrounding neighborhoods. Defendants failed to timely
18 mobilize an appropriate response to provide relief from the inundation of the
19 neighborhood, homes, and property of the plaintiffs and class members with storm water.

20 138. Upon information and belief, the storm water that inundated the
21 neighborhood, homes, and property of the plaintiffs and class members was contaminated
22 and unsanitary. It contained, among other things, organic materials, high levels of
23 bacteria, oil and other petroleum products, heavy metals, pesticides, untreated sewage, and
24 other pathogenic, and toxic substances.

25 139. This toxic water that inundated the neighborhood and properties of the
26 plaintiffs and class members caused substantial damage and posed imminent and serious

1 health risks. The mold and other secondary effects from this water likewise posed serious
2 health risks.

3 140. Upon information and belief, the restoration industry standard for
4 remediation and repair of property contaminated by this type of water is to remove and
5 replace anything the water touches with the possible exceptions of structural studs and
6 concrete pads.

7 141. Upon information and belief, numerous people and animals became sick
8 and/or suffered medical issues as a result of the Inundation.

9 142. Plaintiffs and class members owned or rented homes located in the Class
10 Area during the Storm and suffered significant damages from the inundation of their
11 neighborhood, homes, and property with storm water.

12 143. Upon information and belief, the Inundation caused serious property
13 damage in the millions of dollars to over 300 homes located in Class Area including, but
14 not limited to, the homes' foundations, carpet, flooring, walls and drywall, ceilings,
15 basements, cabinets, storage, countertops, fixtures, electrical systems, and other items.

16 144. Upon information and belief, the Inundation caused serious property
17 damage to cars, furniture, appliances, televisions, computers, electronics, stereo
18 equipment, jewelry, clothing, tools, lawn equipment, firearms, artwork, bicycles, toys,
19 medicine, perishable and non-perishable food, heirlooms and personal mementos, and
20 other items belonging to the plaintiffs and class members.

21 145. As a result of the inundation of the neighborhood of the plaintiffs and class
22 members with storm water, the electrical service to the homes of the plaintiffs and class
23 members was turned off for days. Many of the plaintiffs and class members were
24 evacuated or otherwise displaced from their homes as a result of the Inundation.

25 146. Upon information and belief, the homes in the Class Area damaged during
26 the inundation of the neighborhood with storm water do not lie within an FEMA flood-

1 prone area, so flood insurance was not available to the plaintiffs and class members. The
2 City had not requested the neighborhood be designated as a flood-prone area and had not
3 shown it as a flood-prone area on its applicable area drainage master study.

4 147. On average, Maricopa County experiences the highest amount of rain in
5 July and August, and again in November through March.

6 148. The events of September 8 demonstrate that there is a fundamental failure in
7 the design and operation of the Drainage System and Channel that will likely cause
8 similar problems as those suffered by the plaintiffs and class members in the future.

9 149. Plaintiffs have serious concerns that rainfall during the upcoming winter
10 months will result in further inundation of their neighborhood, homes, and property.

11 150. An injunction should be entered against the Defendants to preclude them
12 from operating the Drainage System and Channel in a way that concentrates and diverts
13 storm water into Emerald Park until and unless appropriate Overflow Relief is installed
14 and measures taken to ensure the neighborhood will not be inundated with storm water
15 from the U.S. 60 and the Tributary Area.

16 151. Defendants have and appear to intend to continue to concentrate and divert
17 water into Emerald Park without providing for such measures and appropriate Overflow
18 Relief.

19 152. Upon information and belief, the use of the Drainage System and Channel
20 by the Defendants to concentrate and divert storm water to Emerald Park without an
21 effective Overflow Relief will cause further irreparable harm to plaintiffs and class
22 members.

23 **COUNT I**

24 **(Injunctive Relief)**

25 153. Plaintiffs incorporate by reference their allegations set forth above.

26 154. Plaintiffs have a strong likelihood of success on the merits.

1 155. Property ownership is a fundamental right protected under the United States
2 Constitution and Arizona Constitution.

3 156. Article 2, Section 17 of the Arizona Constitution provides that: "No private
4 property shall be taken or damaged for public or private use without just compensation
5 having first been made."

6 157. Defendants cannot act or fail to act in their use of the Drainage System and
7 Channel that results in the inundation of the neighborhood and property of plaintiffs and
8 class members with toxic storm water from the U.S. 60 and Tributary Area sent to
9 Emerald Park and into their neighborhood.

10 158. Defendants cannot act or fail to act in their use of the Drainage System and
11 Channel that interferes with the rights of the plaintiffs to control, enjoy, or use their
12 property.

13 159. The continued use by Defendants of the properties of the plaintiffs and class
14 members as an ad hoc overflow relief for Emerald Park will cause irreparable harm and
15 further affect their property rights and the property value.

16 160. The continued use by Defendants of the properties of the plaintiffs and class
17 members as an ad hoc overflow relief for Emerald Park presents an imminent threat that
18 they will again be displaced from their homes, which cannot be adequately compensated
19 for by monetary relief.

20 161. The continued use by Defendants of the properties of the plaintiffs and class
21 members as an ad hoc overflow relief for Emerald Park presents an imminent threat that
22 future floods will destroy priceless heirlooms and personal mementos such as
23 photographs, which cannot be adequately compensated for by monetary relief.

24 162. A balance of hardships favors granting injunctive relief to the plaintiffs and
25 class members as Defendants apparently intend to continue to use Emerald Park in
26 connection with the operation of the Drainage System and Channel without effective

1 Overflow Relief.

2 163. A balance of hardships favors granting injunctive relief to the plaintiffs and
3 class members as Defendants have far greater resources than the plaintiffs and class
4 members and could implement storm-water-management devices and procedures that
5 would correct the problems with Emerald Park essentially serving as the terminal
6 retention basin for the Tributary Area without an effective Overflow Relief.

7 164. Public policy, including the right of plaintiffs and class members to enjoy
8 and use their homes and property, favor granting injunctive relief.

9 165. Pursuant to A.R.S. 12-1801 through 12-1806 and Ariz. R. Civ. P. 65,
10 Plaintiffs are entitled to a preliminary and permanent injunction to enjoin Defendants
11 from: (a) using the real and personal property of the plaintiffs and class members as an ad
12 hoc overflow relief for Emerald Park without due process or just compensation; (b)
13 concentrating and diverting water into Emerald Park beyond its capacity unless and until
14 an effective Overflow Relief is provided; (c) operating the Drainage System and Channel
15 in such a manner as to make Emerald Park the retention basin of last resort in the
16 Tributary Area; and (d) collecting storm water from the U.S. 60 or Tributary Area and
17 pumping or otherwise sending it to Emerald Park -- whether through the Storm Sewer
18 Pipes or Channel -- so as to exceed its capacity and overflow into the neighborhoods and
19 properties of the plaintiffs and class members.

20 WHEREFORE, Plaintiffs respectfully pray for judgment in their favor and against
21 Defendants as follows:

22 A. Preliminary and permanent injunctive relief to enjoin Defendants from:
23 (a) using the real and personal property of the plaintiffs and class members as an ad hoc
24 overflow relief for Emerald Park without due process or just compensation;
25 (b) concentrating and diverting water into Emerald Park beyond its capacity unless and
26 until an effective Overflow Relief is provided; (c) operating the Drainage System and

1 Channel in such a manner as to make Emerald Park the retention basin of last resort in the
2 Tributary Area; and (d) collecting storm water from the U.S. 60 or Tributary Area and
3 pumping or otherwise sending it to Emerald Park -- whether through the Storm Sewer
4 Pipes or Channel -- so as to exceed its capacity and overflow into the neighborhoods and
5 properties of the plaintiffs and class members;

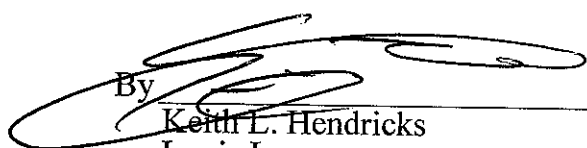
6 B. An award of attorneys' fees, costs, expert-witness fees and other litigation-
7 related expenses under all applicable law;

8 C. Interest to the fullest extent and at the highest rate permitted by law; and

9 D. Such other relief as the Court deems just and proper.

10 DATED this 18 day of November, 2014

11 MOYES SELLERS & HENDRICKS

12
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14 By 
15 Keith L. Hendricks
16 Louis Lopez
17 Stephen Brower
18 Attorneys for Plaintiffs

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VERIFICATION

Pursuant to Rule 80(i), Arizona Rules of Civil Procedure, I declare under penalty of perjury that I have read the foregoing Verified Complaint on behalf of Plaintiffs, and the factual information contained in the Verified Complaint is true and correct to the best of my knowledge, information, and belief.


Andrea Garcia

EXHIBIT A



EXHIBIT B

