

1 Anne C. Ronan (State Bar #006041)
2 ARIZONA CENTER FOR LAW IN THE PUBLIC INTEREST
3 202 East McDowell Road, Suite 153
4 Phoenix, Arizona 85004
(602) 258-8850

5 Edward L. Myers III (State Bar #0018856)
6 ARIZONA CENTER FOR DISABILITY LAW
7 5025 E. Washington Street, Suite 202
Phoenix, Arizona 85034

8 Steven J. Schwartz
9 Cathy E. Costanzo
10 CENTER FOR PUBLIC REPRESENTATION
11 22 Green Street
Northampton, Massachusetts 01060
(413) 584-6838

12 *Attorneys for Plaintiffs*

13
14 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**
15 **IN AND FOR THE COUNTY OF MARICOPA**

16
17 CHARLES ARNOLD, MARICOPA
18 COUNTY PUBLIC FIDUCIARY, as
guardian and next friend on behalf of
19 JOHN GOSS; NANCY E. ELLISTON,
as guardian, conservator and next friend
20 on behalf of CLIFTON DORSETT and
as next friend on behalf of RICHARD
21 SCHACHERLE and SUSAN SITKO;
TERRY BURCH; and on behalf of all
others similarly situated,

22 Plaintiffs,

23 vs.

24 ARIZONA DEPARTMENT OF
25 HEALTH SERVICES, ARIZONA
STATE HOSPITAL, MARICOPA
26 COUNTY BOARD OF
SUPERVISORS, and JANICE K.
27 BREWER, Governor of Arizona,

28 Defendants.

No. C-432355

**STIPULATION FOR PROVIDING
COMMUNITY SERVICES AND
TERMINATING THE LITIGATION**

(Assigned to the Honorable Edward W.
Bassett)

1 Plaintiffs¹ and State Defendants Arizona Department of Health Services
2 (“ADHS”) and Governor Janice K. Brewer (“Governor”) hereby submit this Stipulation
3 for Providing Community Services and Terminating the Litigation (“Stipulation”).²

4 1. This Stipulation is designed to facilitate essential community services
5 which the Parties agree and acknowledge are best practices for persons with serious
6 mental illness (“SMI”), including Assertive Community Treatment (“ACT”), supported
7 housing, supported employment, and consumer operated services. This Stipulation
8 further provides a schedule for vacating the Judgment in this case, dismissing the lawsuit,
9 and ensuring that the community mental health system in Maricopa County continues to
10 meet the needs of persons with serious mental illness.

11 2. The Parties agree that this Stipulation, unless expressly modified by a
12 subsequent Court order, shall be the exclusive means for establishing the specific
13 obligations and requirements of the Defendants and the services and benefits to be
14 provided to Class Members.

15 3. ADHS has no obligation to take any action or fulfill any requirement of this
16 Stipulation that is solely the responsibility of Maricopa County. Similarly, Maricopa
17 County has no obligation to take any action or fulfill any requirement of this Stipulation
18 that is solely the responsibility of ADHS.

19 **ARIZONA STATE HOSPITAL**

20 4. ADHS shall make its best efforts to identify Class Members residing at the
21 Arizona State Hospital (“ASH”) who could benefit from community living arrangements
22
23

24 ¹ For purposes of this Stipulation “Plaintiffs” and/or “Class Members” are defined as adults
25 eighteen (18) years or older that reside in Maricopa County and have a serious mental illness, as
set forth in A.R.S. §§ 36-550(4) and 36-550.06.

26 ² Maricopa County will elect its new chairman on January 6, 2014 and will review this
27 Stipulation at its January 8, 2014 meeting. Maricopa County will file a joinder if it agrees. For
28 purposes of this Stipulation, “Defendants” shall refer collectively to the Governor of the State of
Arizona, the Arizona Department of Health Services, and Maricopa County. “Parties” shall refer
collectively to Plaintiffs and Defendants.

1 and take steps to facilitate their discharge from ASH. ADHS will ensure that the census
2 at ASH does not exceed fifty-five Class Members.

3 5. ADHS will not use ASH for acute admissions, but may continue to use
4 ASH for Class Members who need long-term inpatient treatment, but only to the extent
5 the community living arrangements and services are not appropriate to meet the needs of
6 individual Class Members. Acute inpatient services for Class Members shall be provided
7 in units, programs, or facilities which are cost-effective, federally reimbursable,
8 integrated into the general medical provider system that serves nondisabled citizens as
9 close to the home communities of Class Members as practical, and not associated with
10 ASH.

11 6. ADHS will ensure that there are no admissions or readmissions of Class
12 Members directly into ASH from community mental health agencies or other entities,
13 programs, or persons. All admissions of Class Members to ASH shall follow attempts to
14 treat in one of the units, programs, or facilities described in paragraph 5.

15 7. ADHS shall make its best efforts to assure that Class Members are not
16 unnecessarily admitted to ASH and that all admissions to ASH are done in accordance
17 with Chapter 5, Title 36, Arizona Revised Statutes and Title 9 of the Arizona
18 Administrative Code.

19 **SUPERVISORY CARE AND BOARD AND CARE HOMES**

20 8. ADHS will use its best efforts to offer community living arrangements to
21 Class Members who reside in supervisory care homes.

22 9. ADHS will not encourage or recommend Class Members to reside in a
23 supervisory care home or place them in a supervisory care home.

24 **COUNTY SERVICES**

25 10. Some Class Members at the Maricopa County Jail (“Jail”) could benefit
26 from diversion prior to incarceration at the Jail. The County will make its best efforts to
27 develop programs designed to review the appropriateness and necessity for Jail admission
28 of Class Members and to divert Class Members from incarceration when appropriate.

1 **SERVICES**

2 **Crisis Services**

3 11. ADHS will make its best efforts to maintain a Crisis System, as described
4 in paragraph 12, which provides timely and accessible services and (i) is available 24
5 hours per day, 7 days per week, to Class Members experiencing a behavioral health
6 crisis, including a crisis due to substance abuse; (ii) stabilizes individuals as quickly as
7 possible and assists them in returning to their pre-crisis level of functioning; (iii) provides
8 solution-focused and recovery-oriented interventions designed to avoid unnecessary
9 hospitalizations, incarceration, or placement in a more segregated setting; (iv) when safe
10 and clinically appropriate, provides mobile services at the site of the crisis, including the
11 Class Member's residence; and (v) assesses the individual's needs, identifies the supports
12 and services that are necessary to meet those needs, and connects the individual to those
13 services.

14 12. The Crisis System shall include at least the following components:

- 15 i. A Crisis Hotline that provides crisis intervention services over the
16 phone, which includes triage and referral and telephone-based
17 support to persons in crisis and which often serves as the first place
18 of access to the behavioral health system. The service may also
19 include a follow-up call to ensure the person is stabilized.
- 20 ii. Mobile Crisis Teams that provide crisis intervention services by a
21 mobile team or individual who travels to the place where the person
22 is having the crisis (e.g., person's place of residence, emergency
23 room, jail, or community setting). Crisis intervention services
24 include services aimed at the assessment and immediate stabilization
25 of acute symptoms of mental illness, alcohol and other drug abuse,
26 and emotional distress. The purpose of this service is to stabilize
27 acute psychiatric or behavioral symptoms, evaluate treatment needs,
28 and develop plans to meet the needs of the persons served.

1 Depending on the situation, the person may be transported to a more
2 appropriate facility for further care (e.g., a crisis services center).
3 Mobile crisis teams shall have the ability to respond, on an average,
4 within one hour to a psychiatric crisis in the community (e.g. homes,
5 schools, or hospital emergency rooms).

6 iii. Crisis stabilization settings that provide short-term crisis
7 stabilization services (up to 72 hours) in an effort to successfully
8 resolve the crisis, returning the individual to the community instead
9 of transitioning to a higher level of care (i.e. an inpatient setting).
10 Crisis stabilization settings can include licensed Level I sub-acute
11 facilities, Level II facilities, and outpatient clinics offering 24/7
12 access. Crisis stabilization settings can also include home-like
13 settings such as apartments and single family homes, to the extent
14 covered by Medicaid, where individuals experiencing a psychiatric
15 crisis can stay to receive support and crisis services in the
16 community before returning home.

17 **Supported Employment**

18 13. ADHS will make its best efforts to develop supported employment services
19 as more fully described in ¶¶ 32-38. These are services through which Class Members
20 receive assistance in preparing for, identifying, attaining, and maintaining competitive
21 employment. The services provided include job coaching, transportation, assistive
22 technology, specialized job training, and individually tailored supervision.

23 **Assertive Community Treatment Teams**

24 14. ADHS will make its best efforts to develop ACT capacity, as more fully
25 described in ¶¶ 32-38. ACT teams will be available 24 hours per day, 7 days per week,
26 and deliver comprehensive, individualized, and flexible support, services, and
27 rehabilitation to individuals in their homes and communities. An ACT team is a
28 multidisciplinary group of professionals including a psychiatrist, a nurse, a social worker,

1 a substance abuse specialist, a vocational rehabilitation specialist, and a peer specialist.
2 Services are customized to an individual's needs and vary over time as needs change.

3 **Family and Peer Support**

4 15. ADHS will make its best efforts to develop a system of peer and family
5 support services, including peer and family-run provider organizations, as set forth in
6 ¶¶ 32-38.

7 16. Peer support services are delivered in individual and group settings by
8 individuals who have personal experience with mental illness, substance abuse or
9 dependence, and recovery to help people develop skills to aid in their recovery.

10 17. Family support services are delivered in individual and group settings and
11 are designed to teach families skills and strategies for better supporting their family
12 member's treatment and recovery in the community. Supports include training on
13 identifying a crisis and connecting Class Members in crisis to services, as well as
14 education about mental illness and about available ongoing community-based services.

15 **Supported Housing**

16 18. ADHS shall make its best efforts to provide supported housing services,
17 consistent with the SAMHSA definition, as set forth in ¶¶ 32-38. Supported Housing is
18 permanent housing with tenancy rights and support services that enable people to attain
19 and maintain integrated affordable housing. It enables Class Members to have the choice
20 to live in their own homes and with whom they wish to live. Supported Housing will
21 continue to be integrated, scattered site housing throughout Maricopa County.

22 19. Support services are flexible and available as needed but not mandated as a
23 condition of maintaining tenancy. Support services are provided by ACT teams for Class
24 Members who receive ACT. For all other Class Members in Supported Housing, support
25 services are provided by the RBHA through its Supported Housing provider.

26 20. Supported Housing also includes rental subsidies or vouchers and bridge
27 funding to cover deposits and other household necessities, although these items alone do
28 not constitute Supported Housing.

1 **Living Skills Training**

2 21. ADHS will make its best efforts to develop living skills training services
3 through which Class Members receive assistance and include learning independent
4 living, social, and communication skills in order to maximize their ability to live and
5 participate in the community and to function independently.

6 **Respite Care**

7 22. ADHS will make its best efforts to develop respite care services for Class
8 Members to provide rest or relief for family members or other individuals caring for
9 Class Members and may include a range of activities and may be provided in a range of
10 settings, including apartments and single family homes, to the extent covered by
11 Medicaid, to meet social, emotional, and physical needs of the Class Members during the
12 respite period.

13 **SERVICE STANDARDS**

14 23. ADHS will ensure that providers of services listed in ¶¶ 11-22 have
15 linguistic and cultural competencies to serve all individuals.

16 24. ADHS will adopt the Substance Abuse and Mental Health Administration
17 (“SAMHSA”) models, definitions, and standards for ACT, Supported Housing,
18 Supported Employment, and Consumer Operated Services,³ by incorporating these
19 SAMHSA standards into the Maricopa County Regional Behavioral Health Authority
20 (“RBHA”) contract. ADHS will require, through its contract with the RBHA, that all
21 providers of ACT, Supported Housing, Supported Employment, and Consumer Operated
22 Services comply with these standards. ADHS will use, and will require the RBHA to
23 use, SAMHSA assessment tools and/or instruments for evaluating providers’ compliance
24 with SAMSHA standards for each service.

25 25. In 2014, ADHS will evaluate providers based upon the SAMHSA
26 standards, using SAMHSA and National Association of State Mental Health Program

27 _____
28 ³ Consumer Operated Services relates to the Family and Peer Support Services set forth in
¶¶ 15-17.

1 Directors (“NASMHPD”) consultants and the SAMHSA instruments. In 2015, ADHS
2 will evaluate providers based upon the SAMHSA standards using the SAMHSA
3 instruments, through RBHA and ADHS staff who have been trained by the SAMHSA
4 and NASMHPD consultants and who have been determined to be qualified by ADHS.
5 Consistent with a schedule recommended by the consultants, trained ADHS and RBHA
6 staff will evaluate providers based upon the SAMHSA standards using the SAMHSA
7 instruments.

8 26. The findings and conclusions of the SAMHSA fidelity evaluations will be
9 made available to the public by ADHS. ADHS, through the RBHA, will take all
10 necessary steps, system improvements, and corrective actions to ensure that each
11 provider offers services consistent with the SAMHSA standards for ACT, Supported
12 Housing, Supported Employment, and Consumer Operated Services.

13 **QUALITY SERVICE REVIEWS**

14 27. ADHS will use Quality Service Reviews (“QSR”) to identify strengths,
15 service capacity gaps, and areas for improvement at the system-wide level in Maricopa
16 County. A QSR collects information through the use of a statistically significant sample
17 of total SMI members and includes a medical record review as well as interviews of
18 Class Members.

19 28. A QSR will objectively evaluate whether the needs of Class Members are
20 being identified, whether Class Members need and are receiving each of the services
21 identified in paragraphs 11-22, whether these services are available, whether supports and
22 services that they receive are meeting those needs, and whether supports and services are
23 designed around Class Members’ strengths and goals.

24 29. ADHS will conduct the QSR process annually to collect and analyze data.

25 30. ADHS will continue to contract with an independent entity to conduct the
26 QSR. During 2014, the Parties will finalize the QSR content and process, which will
27 include the data elements, collection methodology, the instrument, and the report.

28

1 **SERVICE CAPACITY**

2 31. During the term of this Stipulation, ADHS shall focus on assessing and
3 adjusting the network capacity of a service or services described in ¶¶ 11-22, subject to
4 available funding through legislative appropriation.

5 32. During Fiscal Years 2015 and 2016, ADHS will develop the following
6 additional service capacity:

- 7 a. Supported Housing services capable of serving 1200 Class
8 Members,
- 9 b. Supported Employment services capable of serving 750 Class
10 Members,
- 11 c. 8 ACT teams, some of which may be specialized teams, and
- 12 d. Peer Support services capable of serving 1500 Class Members.

13 ADHS will make reasonable progress to develop the service capacity described in
14 paragraph 32 over the two year period, and will achieve the full increases in capacity by
15 the completion of Fiscal Year 2016. ADHS will meet with Plaintiffs' counsel within
16 thirty days of the enactment of the Fiscal Year 2015 budget to discuss ADHS' funding
17 allocation strategy that will be spent for each of the services set forth in ¶¶ 11-22.

18 33. For Fiscal Year 2017, unless the service capacity assessment and
19 determination described in paragraphs 34-36 indicate that additional capacity is not
20 needed in supported housing, supported employment, and/or ACT, ADHS will develop
21 the following additional service capacity:

- 22 a. Supported Housing services capable of serving 300 Class Members;
- 23 b. Supported Employment services capable of serving 500 Class
24 Members; and
- 25 c. 5 ACT teams, some of which may be specialized teams.

26 34. For every year after FY 2016, ADHS will implement a reliable process to
27 assess the adequacy of community mental health services in Maricopa County for Class
28

1 Members, as set forth in ¶¶ 35-36, with a focus on the adequacy of supported
2 employment, supported housing, ACT, and consumer operated services.

3 35. ADHS will use an independent entity like Mercer Government Human
4 Services Consulting or another similarly qualified entity to conduct the service capacity
5 assessment. This service capacity assessment set forth in paragraph 34 will include a
6 need and allocation evaluation of supported housing, supported employment, consumer
7 operated services and ACT. The assessment shall utilize individual clinical reviews; an
8 analysis of service utilization data; an analysis of outcome data; and interviews with key
9 informants including class members, family members, providers and case managers. The
10 assessment may also utilize customer satisfaction surveys; complaint data; geo-access
11 mapping; hospital emergency room utilization; criminal justice records; homeless
12 prevalence; employment data; suicide rates; public forums; and other data as appropriate
13 that may indicate unmet need, utilization or availability of covered services. The
14 independent qualified entity shall provide ADHS with the completed assessment
15 annually.

16 36. The service capacity assessment, the QSR, and SAMHSA fidelity results
17 will be posted on ADHS' website. ADHS will collect and analyze data from the QSR,
18 the service capacity assessment, and the findings of the SAMHSA fidelity evaluations to
19 determine the appropriate capacity for each of the services described in ¶¶ 11-22 to meet
20 the needs of Class Members.

21 37. ADHS shall use the process described in ¶ 36 to develop its budget
22 recommendations to the Governor's Office of Strategic Planning and Budget ("OSP").
23 The Governor shall consider the information in ¶¶ 36-37 to develop the budget request to
24 the Legislature.

25 38. ADHS agrees to submit to OSPB its anticipated budgetary needs to operate
26 the behavioral health system in Maricopa County in accordance with this Stipulation and
27 to continue to meet the needs of persons with serious mental illness. The Governor
28 agrees to make best efforts to obtain this level of funding each year from the Legislature,

1 based upon the Governor's assessment of the competing funding needs and priorities of
2 all other state services. ADHS will make its best efforts to provide services, support, and
3 benefits to Class Members as set forth in this Stipulation subject to available funding
4 through legislative appropriation.

5 **ENFORCEMENT AND DISMISSAL**

6 39. Notwithstanding the provisions of this Stipulation that specifically
7 reference best efforts, Defendants agree to make reasonable progress to implement all
8 other terms of the Stipulation.

9 40. Prior to dismissal, Plaintiffs may bring any action to enforce this
10 Stipulation for failure to substantially comply with its terms, provided, however, the
11 Plaintiffs shall not allege contempt or initiate contempt proceedings prior to February 1,
12 2015. Prior to initiating any action for noncompliance, the Plaintiffs shall provide written
13 notice to the Defendants detailing their allegations of noncompliance. The Parties agree
14 to meet in person to seek a good faith resolution of these issues without court intervention
15 prior to initiating any action.

16 41. The common law doctrine of impossibility of performance may be raised as
17 a defense in any action or proceeding to enforce compliance with the terms of this
18 Stipulation. This includes an inability of one or more Defendants to obtain the funds
19 necessary to implement the requirements imposed by this Stipulation.

20 42. If any of the provisions of this Stipulation are held impossible to perform,
21 the remaining provisions of this Stipulation shall remain binding and in full force and
22 effect.

23 43. If no enforcement motion has been filed, the Parties shall file, between July
24 15 and September 1, 2014, a joint motion pursuant to Ariz. R. Civ. P. 41(a) to dismiss the
25 entire case. The motion shall attach and incorporate by reference this Stipulation, and
26 authorize the Court to retain ongoing jurisdiction to enforce the Stipulation. The motion
27 will further make clear that the Court is not vacating its order certifying the class.

1 44. After dismissal, Plaintiffs may bring any action to enforce this Stipulation
2 for failure to substantially comply with its terms. Prior to initiating any action, the
3 Plaintiffs shall provide written notice to the Defendants detailing their allegations of
4 noncompliance. The Parties agree to meet in person to seek a good faith resolution of
5 these issues without court intervention prior to initiating any action. If the Parties are
6 unable to resolve these issues, Plaintiffs may file a motion to restore the matter to the
7 Court's active docket and enforce the provisions of the Stipulation. In any action or
8 proceeding related to this Stipulation, the Court shall apply a standard of substantial
9 compliance, as defined by the Arizona Courts, to evaluate Defendants' compliance.

10 45. During the pendency of the Stipulation, no party shall engage in activities
11 which delay, prolong or frustrate performance of the obligations set forth herein.

12 46. This Stipulation and any resulting Order entered by the Court may be
13 amended, modified, or supplemented by a written agreement entered into between all
14 Parties and subsequently approved by the Court. Any party may petition the Court to
15 amend, modify or supplement this Stipulation if the Parties are unable to reach an
16 agreement.

17 47. Other than contempt as set forth in ¶ 40, nothing herein is intended to alter the
18 inherent authority of the court.

ATTORNEYS' FEES

19
20 48. The Parties agree that Class Members can recover reasonable and non-
21 duplicative attorneys' fees and taxable costs incurred in this matter through calendar year
22 2015. Such attorneys' fees and costs are strictly limited to those incurred through the
23 course of monitoring the implementation by Defendants regarding the obligations set
24 forth in this Stipulation.

25 49. The Parties agree that reasonable attorneys' fees and taxable costs incurred
26 by Class Members for monitoring any and all obligations set forth in this Stipulation shall
27 be paid by the Defendants subject to a maximum cap in the amount of \$225,000 for all
28 time and expenses incurred during the period July 1, 2013 to December 31, 2015. Time

1 spent on legislative lobbying is not a compensable monitoring activity. After December
2 31, 2015, there is no further right to fees for monitoring. In any judicial action brought
3 by Plaintiffs to enforce this Stipulation, Plaintiffs may seek to recover reasonable
4 attorneys' fees and taxable costs related to the enforcement action if they are the
5 prevailing party and such an award is authorized by Arizona law.

6 50. The Parties agree that Class Members are to submit to Defendants a
7 statement of attorneys' fees and taxable costs, a form of stipulation, and proposed order
8 to the Court, in order to recover for attorneys' fees and costs incurred each quarter.
9 Defendants shall be permitted a reasonable time to review each request and attempt to
10 resolve any questions or concerns they may have with Class Members regarding same.
11 Any request for attorneys' fees and costs submitted by Class Members to Defendants for
12 their attorneys' fees and taxable costs shall be submitted no more than three (3) months
13 following the last calendar day for the three (3) month period. If a request is not
14 submitted within this time to Defendants through their respective counsel(s), counsel for
15 the Class Members shall be deemed to have waived any entitlement to recover any fees
16 or costs incurred during the applicable period.

17 51. Class Members shall have the sole discretion to determine the individual
18 lawyers who should perform work on their behalf and should therefore submit billing
19 statements that provide sufficient detail of the work performed, the lawyer who did the
20 work, and the time spent. The billing rate for Steven Schwartz shall be \$400 per hour,
21 Anne Ronan shall be \$300 per hour, and Edward Myers (ACDL) shall be \$240 per hour.
22 If additional or different lawyers or paralegals than those stated above are to be included
23 in the quarterly billings, Class Members shall notify Defendants in writing of their intent
24 to submit billing statements and their hourly rates for such lawyers/paralegals. The
25 billing rates in this paragraph shall remain fixed during the term of this Stipulation/Order
26 for all work billed. Class Members do not concede the rates represent fair market rates,
27 because the Parties arrived at the rates through a process of negotiation and compromise.

1 52. The provisions of the Stipulation regarding attorneys’ fees and taxable costs
2 are applicable to proceedings brought in the Maricopa County Superior Court, the
3 Arizona Court of Appeals, and the Arizona Supreme Court.

4 53. The Parties agree that Defendants’ obligation to pay Class Members’
5 attorneys’ fees and taxable costs which are ordered by the Court may be satisfied by
6 making payment to counsel for Plaintiffs who are affiliated with the Arizona Center for
7 Law in the Public Interest, for deposit into that firm’s trust account to be later disbursed
8 to the other attorneys or firms of record who incurred fees and taxable costs through the
9 course of their representation of Plaintiffs.

10 **ADDITIONAL PROVISIONS**

11 54. The Parties agree that Defendants’ obligations under this Stipulation apply
12 only to Class Members.

13 55. The Court shall hold a fairness hearing and provide reasonable notice to
14 Class Members pursuant to Rule 23(d)(2), Arizona Rules of Civil Procedure, before
15 entering its Order following submission of the Stipulation. The Parties will represent to
16 the Court that this Stipulation is fair and reasonable under Rule 23. The Parties retain the
17 right to appeal from any order which modifies or alters this document.

18 56. Although Defendants have agreed as part of the negotiation process, which
19 was conducted under Ariz. R. Evid. 408, to undertake certain actions, such agreement and
20 this Stipulation do not constitute an enlargement of the Judgment or an admission of any
21 matter.

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1 57. Once this Stipulation is approved, and a corresponding Order is entered by
2 the Court, it shall be binding on all Parties.

3 RESPECTFULLY SUBMITTED this 8th day of January, 2014.

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Anne Ronan
Attorney for Plaintiffs

Joseph Kanefield
Attorney for Governor Janice K. Brewer

Joseph Sciarrotta
Attorney for Governor Janice K. Brewer

Gregory Honig
*Attorney for Arizona Department of
Health Services*

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CERTIFICATE OF SERVICE

I certify that on this 8th day of January, 2014, I electronically transmitted a PDF version of this document to the Office of the Clerk of the Superior Court, Maricopa County, for filing using the AZTurboCourt System.

COPY of the foregoing mailed this 8th day of January, 2014 to:

Gregory Honig
Office of the Arizona Attorney General
1200 W. Washington
Phoenix, AZ 85007

Joseph Sciarrotta
Office of the Governor
1700 W. Washington, 9th Floor
Phoenix, Arizona 85007
Counsel for Governor Janice K. Brewer

Joseph Kanefield
Ballard Spahr, LLP
1 East Washington St.
Suite 2300
Phoenix, Arizona 85004
Counsel for Governor Janice K. Brewer

Edward L. Myers III
Arizona Center for Disability Law
5025 E. Washington Street
Suite 202
Phoenix, AZ 85034

Steven J. Schwartz
Cathy E. Costanzo
Center for Public Representation
22 Green Street
Northampton, MA 01060
Attorneys for Plaintiffs

1 Bruce P. White
2 Maricopa County Attorney's Office
3 222 N. Central, Suite 1100
4 Phoenix, AZ 85004
5 *Attorney for Maricopa County*
6 *Board of Supervisors*

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/s/Sonya Batten