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6  
7 IN THE UNITED STATES DISTRICT COURT  
8 FOR THE DISTRICT OF ARIZONA  
9

10 State of Arizona, *ex rel.*, Andrew P.  
Thomas,

11 Plaintiff,

12 vs.

13 Scottsdale Art Factory, L.L.C., an Arizona  
limited liability company,

14 Defendant.  
15

16 Scottsdale Art Factory, L.L.C., an Arizona  
limited liability company.

17 Counterclaimants,  
18

19 vs.

20 State of Arizona, *ex rel.*, Andrew P.  
Thomas,

21 Counter-defendants.  
22

NO.: CV 09-2576-PHX-MHM

SECOND AMENDED ANSWER TO  
COMPLAINT AND COUNTERCLAIM

23 Defendant Scottsdale Art Factory, LLC, by and through its counsel undersigned,  
24 hereby submits its Answer to the Complaint filed by the Plaintiff State of Arizona, *ex rel.*  
25 Andrew P. Thomas, hereinafter (“County Attorney Thomas”). For the convenience of  
26 the Court and the parties, Defendant reprints below the text of the Complaint in regular  
27 type and adds the responsive pleading of this Answer in bold type so that the parties and  
28 the Court may refer to the Complaint and the Answer in one document.

**ANSWER TO FIRST CLAIM**

**COUNT ONE**

**(Intentionally Employ an Unauthorized Alien)**

**NATURE OF ACTION AND JURISDICTION**

1. This action is brought pursuant to A.R.S. §§ 23-212 and 212.01 which empowers the State of Arizona to file an action against an employer for a violation of A.R.S. §§ 23-212(A) or 23-212.01(A) that has occurred after December 31, 2007.

**ANSWER TO PARAGRAPH 1:**

Defendant admits that this action is purportedly filed pursuant to A.R.S. §§ 23-212 and 212.01, but denies that the statutes constitutionally empower County Attorney Thomas to file this action because the statute violates the Constitution of the United States of America and the Constitution of Arizona, and County Attorney Thomas has violated Defendant's constitutional rights in bringing this action.

2. The Superior Court has jurisdiction pursuant to A.R.S. §§23-212(D) and 23-212.01(D).

**ANSWER TO PARAGRAPH 2:**

Defendant admits that this action is purportedly filed pursuant to A.R.S. §§ 23-212 and 212.01, but denies that the statutes constitutionally empower County Attorney Thomas to file this action because the statute violates the Constitution of the United States of America and the Constitution of Arizona, and County Attorney Thomas has violated Defendant's constitutional rights in bringing this action.

3. Venue is appropriately (sic) in this court pursuant to A.R.S. §§ 23-212(D) and 23-212.01(D) as an unauthorized alien employee was employed by the employer that is the subject of this Complaint at a business establishment which is located within Maricopa County, Arizona.

**ANSWER TO PARAGRAPH 3:**

Defendant admits that venue is proper and that it operates a business establishment within Maricopa County, Arizona, but denies the remaining allegations in Paragraph 3.

**IDENTIFICATION OF THE PLAINTIFF**

4. Plaintiff is the State of Arizona by and through Andrew P. Thomas, Maricopa County Attorney (hereafter the "STATE").

**ANSWER TO PARAGRAPH 4:**

Defendant admits the allegations of Paragraph 4.

**IDENTIFICATION OF THE DEFENDANT EMPLOYER**

5. At all times material to the events alleged in this Complaint, Scottsdale Art Factory, L.L.C. (hereafter "SCOTTSDALE ART FACTORY") was an "employer" as that term is defined in A.R.S. § 23-211(4).

**ANSWER TO PARAGRAPH 5:**

Defendant admits to the allegations of Paragraph 5.

6. At all times material to the events alleged in this Complaint, SCOTTSDALE ART FACTORY has transacted business as a domestic limited liability company within the State of Arizona through an office located at 8554 East Cholla Street and a location identified by SCOTTSDALE ART FACTORY as a "gallery factory showroom" located at 7407 East Greenway Road (hereafter "FACTORY SHOWROOM"), both located in Scottsdale, Arizona.

**ANSWER TO PARAGRAPH 6:**

Defendant admits that it transacts business as a limited liability company within the State of Arizona and that it operates in part at a premises located at 7407 East Greenway Road that is referred to as a "gallery showroom." Defendant denies the remaining allegations of Paragraph 6.

7. At all times material to the events alleged in this Complaint, Michelle A. Hardas (hereafter "HARDAS"), was a member of SCOTTSDALE ART FACTORY and

1 reserved the right to the management of SCOTTSDALE ART FACTORY, all pursuant to  
2 the Articles of Organization dated April 23, 1997, and filed with Arizona Corporation  
3 Commission on June 13, 1997.

4 **ANSWER TO PARAGRAPH 7:**

5 **Defendants admit the allegations of Paragraph 7, except that Michelle**  
6 **Hardas' middle initial is S and not A.**

7 **8.** At all times material to the events alleged in this Complaint, HARDAS did  
8 in fact manage SCOTTSDALE ART FACTORY and those management actions are  
9 binding upon SCOTTSDALE ART FACTORY, all pursuant to the provisions of A.R.S.  
10 § 29-654.

11 **ANSWER TO PARAGRAPH 8:**

12 **Defendant admits that Hardas participated in the management of Defendant**  
13 **with her husband, and Defendant admits the remaining allegations of Paragraph 8.**

14 **9.** At all times material to the events alleged in this Complaint,  
15 SCOTTSDALE ART FACTORY represented, as the primary business conducted at the  
16 FACTORY SHOWROOM, the manufacture, for retail sale, of furniture, doors, gates,  
17 lighting and hardware.

18 **ANSWER TO PARAGRAPH 9:**

19 **Defendant admits the allegations of Paragraph 9.**

20 **10.** At all times material to the events alleged in this Complaint,  
21 SCOTTSDALE ART FACTORY has employed one or more employees at the  
22 FACTORY SHOWROOM, including, but not limited to, an employee named Hilario  
23 Santiago-Hernandez.

24 **ANSWER TO PARAGRAPH 10:**

25 **Defendant admits that it has employed one or more persons at its gallery**  
26 **showroom, but denies the remaining allegations of Paragraph 10.**

27 **11.** At all times material to the events alleged in this Complaint, in order to  
28 conduct its business activity within the State of Arizona and the City of Scottsdale,

1 SCOTTSDALE ART FACTORY has been required by law to maintain certain licenses  
2 and authorizations, as those terms are defined in A.R.S. §23-211(9).

3 **ANSWER TO PARAGRAPH 11:**

4 **Defendant admits the allegations of Paragraph 11.**

5 **ANSWER TO ALLEGATIONS REGARDING:**  
6 **SPECIFICATION OF BUSINESS LICENSE SUBJECT TO SUSPENSION/**  
7 **REVOCATION**

8 **Articles of Organization**

9 **12.** At all times material to the events alleged in this Complaint, and pursuant  
10 to the applicable provisions of A.R.S. § 29-635, SCOTTSDALE ART FACTORY was  
11 required to have filed, and did file, Articles of Organization with the Arizona Corporation  
12 Commission.

13 **ANSWER TO PARAGRAPH 12:**

14 **Defendant admits the allegations of Paragraph 12.**

15 **13.** Articles of Organization were filed by SCOTTSDALE ART FACTORY  
16 with the Arizona Corporation Commission on June 13, 1997.

17 **ANSWER TO PARAGRAPH 13:**

18 **Defendant admits the allegations of Paragraph 13.**

19 **14.** The licensing agency for the Articles of Organization is the Arizona  
20 Corporation Commission, which is located at 1300 West Washington Street, Phoenix,  
21 Arizona, 85007-2929.

22 **ANSWER TO PARAGRAPH 14:**

23 **Defendant admits the allegations of Paragraph 14.**

24 **15.** The identity and mailing address of the agency official authorized to accept  
25 service for the Arizona Corporation Commission is Lynda Griffin, Supervisor o the  
26 Records Section, located at 1300 West Washington Street, Phoenix, Arizona, 85007-  
27 2929.

**ANSWER TO PARAGRAPH 15:**

**Defendant lacks sufficient information to plead in response to Paragraph 15 and, therefore, denies the same.**

**16.** Pursuant to the provisions of Rule 65.2(b)(2), Arizona Rules of Civil Procedure, the STATE specifies the Articles of Organization filed at the Arizona Corporation Commission by SCOTTSDALE ART FACTORY as the license subject to suspension or revocation under A.R.S. §§ 23-212 and 23-212.01.

**ANSWER TO PARAGRAPH 16:**

**Defendant admits that County Attorney Thomas has purported to designate the Articles of Organization filed at the Arizona Corporation Commission as the license subject to suspension revocation under A.R.S. §§ 23-212 AND 23-212.01, but Defendant denies that any of its licenses are subject to suspension or revocation pursuant to the statute.**

**ANSWER TO ALLEGATION REGARDING:**

**Transaction Privilege Sales Tax License**

**17.** At all times material to the events alleged in this Complaint, and pursuant to the applicable provisions of the Scottsdale Revised City Code, Transaction Privilege and Use Tax Code (January 2007), SCOTTSDALE ART FACTORY was required to hold, and did hold, a Transaction Privilege Sales Tax License issued by the City of Scottsdale.

**ANSWER TO PARAGRAPH 17:**

**Defendant admits the allegations of Paragraph 17.**

**18.** The licensing agency for the Transaction Privilege Sales Tax License is the City of Scottsdale Tax and License Registration office which is located at 7447 East Indian School Road, Suite 110, Scottsdale, Arizona, 85251.

**ANSWER TO PARAGRAPH 18:**

**Defendant lacks sufficient information to plead in response to Paragraph 18 and, therefore, denies the same.**

1       **19.** The identity and mailing address of the agency official authorized to accept  
 2 service for the City of Scottsdale Tax and License Registration office is Teresa Hoglund,  
 3 Tax and License Manager, 7447 East Indian School Road, Suite 110, Scottsdale, Arizona  
 4 85251.

5       **ANSWER TO PARAGRAPH 19:**

6       **Defendant lacks sufficient information to plead in response to Paragraph 19**  
 7 **and, therefore, denies the same.**

8       **20.** Pursuant to the provisions of Rule 65.2(b)(2), Arizona Rules of Civil  
 9 Procedure, the STATE specifies the Transaction Privilege Sales Tax License issued by  
 10 the City of Scottsdale to SCOTTSDALE ART FACTORY as the license subject to  
 11 suspension or revocation under A.R.S. §§ 23-212 AND 23-212.01.

12       **ANSWER TO PARAGRAPH 20:**

13       **Defendant admits that County Attorney Thomas has purported to designate**  
 14 **the transaction privilege sales tax license issued by the City of Scottsdale as the**  
 15 **license subject to suspension revocation under A.R.S. §§ 23-212 AND 23-212.01, but**  
 16 **Defendant denies that any of its licenses are subject to suspension or revocation**  
 17 **pursuant to the statute.**

18       **ANSWER TO ALLEGATION REGARDING:**

19       **STATEMENT OF SPECIFIC FACTS REGARDING IMMIGRATION**

20       **STATUS AND EMPLOYMENT AUTHORIZATION**

21       **21.** Pursuant to A.R.S. §§ 23-212(B) and 23-212.01(B), a federal  
 22 determination, pursuant to 8 U.S.C. § 1373(c) has been made as to the immigration status  
 23 or work authorization status of Hilario Santiago-Hernandez.

24       **ANSWER TO PARAGRAPH 21:**

25       **Defendant denies that 8 U.S.C. § 1373(c) provides procedures for a federal**  
 26 **determination of the immigration status of work authorization of an individual, as**  
 27 **under federal law there are different procedures for determinations of immigration**  
 28 **status or work authorization.**

1           **Defendant lacks sufficient information to plead in response to Paragraph 21**  
 2 **and, therefore, denies the same.**

3           **22.**     The federal determination of the immigration status or work authorization  
 4 status of Hilario Santiago-Hernandez is that Hilario Santiago-Hernandez was not  
 5 authorized to be employed in the United States during the period of January 28, 2009, to  
 6 November 5, 2009.

7           **ANSWER TO PARAGRAPH 22:**

8           **Defendant lacks sufficient information to plead in response to Paragraph 22**  
 9 **and, therefore, denies the same.**

10           **Defendant denies that 8 U.S.C. § 1373(c) provides procedures for a federal**  
 11 **determination of the immigration status or work authorization of an individual, as**  
 12 **under federal law there are different procedures for determinations of immigration**  
 13 **status or work authorization.**

14           **ANSWER TO ALLEGATIONS REGARDING:**

15           **SPECIFIC FACTS REGARDING INTENTIONAL EMPLOYMENT**

16           **Regarding Knowledge of Hilario's Employment Eligibility**

17           **23.**     On January 28, 2009, Deputies from the Maricopa County Sheriff's Office  
 18 responded to the FACTORY SHOWROOM as part of an investigation concerning  
 19 forgery and identity theft.

20           **ANSWER TO PARAGRAPH 23:**

21           **Defendant admits that on January 28, 2009, approximately fifty (50) armed**  
 22 **officers from the Maricopa County Sheriff's Office, dressed in SWAT-team riot**  
 23 **gear helmets and vests, entered the Defendant's property, including, but in addition**  
 24 **to, what County Attorney Thomas has deemed to be the Factory Showroom through**  
 25 **multiple doors, with their guns drawn and pointing at employees, including the**  
 26 **elderly mother of Ms. Hardas. Defendant admits that a member of the Sheriff's**  
 27 **SWAT team said the Sheriff's Office had a warrant, and later gave to Defendant a**  
 28 **copy of a warrant, but the Sheriff's Office exceeded the scope of the warrant in its**

1 inspection and seizure of property and its confinement of persons. Defendant  
2 admits that the warrant did not name Defendant as a target, but listed names of  
3 persons who the Sheriff's Office alleged might be found in the Defendant's Factory  
4 Showroom. Defendant denies the remaining allegations of Paragraph 23.

5       **24.** Although not a specific target of the forgery and identity theft investigation,  
6 as a part of that investigation and while at the FACTORY SHOWROOM, a law  
7 enforcement personnel encountered Hilario Santiago-Hernandez (hereafter "HILARIO").

8       **ANSWER TO PARAGRAPH 24:**

9       Defendant admits that the Sheriff's army of helmeted, vest-wearing, gun-  
10 drawn, SWAT team officers encountered the person identified in Paragraph 24 as  
11 Hilario Santiago-Hernandez ("Mr. Santiago-Hernandez") when the Sheriff's  
12 Office's conducted its raid in a manner that segregated persons by race, national  
13 origin and/or skin color and subjected the persons to different screening procedures  
14 based on race, national origin and/or skin color, as alleged more specifically in  
15 Defendant's Counterclaim.

16       **25.** On January 28, 2009, HILARIO was providing services and labor in  
17 exchange for wages and other remuneration to SCOTTSDALE ART FACTORY at the  
18 FACTORY SHOWROOM and was an "employee" of SCOTTSDALE ART FACTORY  
19 as that term is defined in A.R.S. § 23-211(3).

20       **ANSWER TO PARAGRAPH 25:**

21       Defendant admits that the person referred to in the Complaint as Hilario, Mr.  
22 Santiago-Hernandez, was an employee of Defendant on January 28, 2009.

23       **26.** On January 28, 2009, a routine field interview was conducted of HILARIO  
24 by certified law enforcement personnel certified to conduct such interviews.

25       **ANSWER TO PARAGRAPH 26:**

26       Defendant lacks sufficient information about what County Attorney Thomas  
27 alleges is a "routine field interview" and lacks sufficient information regarding  
28 whether the law enforcement personnel that were certified to conduct such

1 interviews and therefore denies the allegations of Paragraph 26. Defendant alleges  
2 that if the field interviews conducted on Defendant's property were done in a  
3 "routine" manner for the Maricopa County Sheriff's Office, such "routine"  
4 interviews are a violation of Fourth Amendment rights against unlawful searches  
5 and seizures, a denial of due process and a denial of equal protection under the law  
6 because the Sheriff's Office exceeded the terms of the search warrant and conducted  
7 interviews in a manner that is discriminatory based on race, national original  
8 and/or color. The Sheriff's Office divided the persons on Defendant's property and  
9 segregated them based on race, national origin and/or color and subjected persons  
10 with brown skin and those who appeared to be Latino in origin to different and  
11 discriminatory practices than the Sheriff's Office conducted with respect to Anglo  
12 or White employees, including an Anglo worker who did not speak English and who  
13 is a production employee working alongside the Latino production employees who  
14 were segregated by the Sheriff's Office. The Sheriff's Office subjected the Latino  
15 persons to additional screening and separate treatment than the procedures used  
16 with respect to Anglo persons.

17       **27.** On January 28, 2009, the certified law enforcement personnel determined  
18 that HILARIO was residing in the United States illegally, based upon an investigation  
19 that included admissions by HILARIO that HILARIO had entered the United States on  
20 February 28, 2005, without inspection or parole by an Immigration Officer.

21       **ANSWER TO PARAGRAPH 27:**

22       Defendant lacks sufficient information to respond to the allegations of  
23 Paragraph 27 and, therefore, denies the same.

24       **28.** On January 28, 2009, HILARIO was placed into custody and removed from  
25 the FACTORY SHOWROOM premises.

26       **ANSWER TO PARAGRAPH 28:**

27       Defendant admits the allegations of Paragraph 28.

1           **29.** On January 28, 2009, HILARIO requested, and was granted, voluntary  
2 return to Mexico.

3           **ANSWER TO PARAGRAPH 29:**

4           **Defendant lacks sufficient information to respond to the allegations of**  
5 **Paragraph 29 and, therefore, denies the same.**

6                           **ANSWER TO ALLEGATIONS**

7                           Regarding Creation of Shell Limited Liability Company

8           **30.** On April 23, 2009, HILARIO filed Articles of Organization with the  
9 Arizona Corporation Commission forming a domestic limited liability company known  
10 as SANTIAGO HOMEMADE FURNITURE, LLC (HEREAFTER “Santiago furniture”)  
11 that: identified the business address of SANTIAGO FURNITURE as 1145 East Weber  
12 Drive, Tempe, Arizona 85281; that designate HILARIO as the statutory agent for that  
13 business; and, identified HILARIO as the sole managing member of SANTIAGO  
14 FURNITURE.

15           **ANSWER TO PARAGRAPH 30:**

16           **Defendant admits on information and belief that Mr. Santiago-Hernandez**  
17 **filed Articles of Organization with the Arizona Corporation Commission and**  
18 **formed a domestic limited liability company known as Santiago Homemade**  
19 **Furniture, LLC with the address and statutory agent alleged in Paragraph 30, and**  
20 **Defendant, upon and information and belief, denies that Santiago Homemade**  
21 **Furniture, LLC. was a “shell” limited liability company. Defendant further alleges**  
22 **that, pursuant to the Legal Arizona Workers Act, the State of Arizona is required**  
23 **by law to verify the citizenship or lawful residency in the United States of each**  
24 **person before issuing a business license such as the establishment of a limited**  
25 **liability company and that the State of Arizona, therefore, must have determined on**  
26 **or about April 23, 2009 that Mr. Santiago-Hernandez was legally entitled to obtain a**  
27 **business license, form a corporation and, therefore, to be employed in the United**  
28 **States.**

1       **31.** From at least April 23, 2009, to the present, HILARIO has been employed  
2 by SCOTTSDALE ART FACTORY and has continued to provide services and labor for  
3 SCOTTSDALE ART FACTORY at the FACTORY SHOWROOM an in exchange for  
4 wages and other remuneration.

5       **ANSWER TO PARAGRAPH 31:**

6       **Defendant denies the allegations of Paragraph 31.**

7       **32.** From at least April 23, 2009, to the present, the services and labor provided  
8 by HILARIO to SCOTTSDALE ART FACTORY at the FACTORY SHOWROOM have  
9 been provided in the capacity of an employee of SCOTTSDALE ART FACTORY and  
10 not as an independent contractor through the domestic limited liability company  
11 SANTIAGO FURNITURE, as those terms are defined by A.R.S. § 23-211(2), (3) and  
12 (6).

13       **ANSWER TO PARAGRAPH 32:**

14       **Defendant denies the allegations of Paragraph 32.**

15       **33.** From at least April 23, 2009 to the present, HARDAS intentionally and  
16 knowingly engaged in wrongful activity with HILARIO to use the limited liability  
17 company SANTIAGO FURNITURE in order to continue to employ HILARIO at the  
18 FACTORY SHOWROOM; knowing that HILARIO was not authorized to be employed  
19 in the United States during the period beginning at least on January 28, 2009, to the  
20 present; and for the specific purpose of avoiding compliance by SCOTTSDALE ART  
21 FACTORY at the FACTORY SHOWROOM with the provisions and consequences of  
22 Arizona law, including, but not limited to, A.R.S. §§ 23-212 and 23-212.01.

23       **ANSWER TO PARAGRAPH 33:**

24       **Defendant denies the allegations of Paragraph 33.**

25       **34.** From April 23, 2009, to the present, neither HILARIO nor SANTIAGO  
26 FURNITURE supplied any tools or materials necessary to the services and labor  
27 provided to SCOTTSDALE ART FACTORY at the FACTORY SHOWROOM by  
28 HILARIO.

**ANSWER TO PARAGRAPH 34:**

**Defendant denies the allegations of Paragraph 34.**

**35.** From April 23, 2009, to the present, neither HILARIO nor SANTIAGO FURNITURE made the services and labor provided to SCOTTSDALE ART FACTORY at the FACTORY SHOWROOM by HILARIO available to the general public.

**ANSWER TO PARAGRAPH 35:**

**Defendant denies the allegations of Paragraph 35 on information and belief. Defendant further alleges that even when Mr. Santiago-Hernandez was an employee of Defendant, prior to January 28, 2009, Mr. Santiago-Hernandez had a business as an independent contractor and performed services for others. Defendant further alleges that Mr. Santiago-Hernandez and Santiago Homemade Furniture, LLC, did not perform any services for Defendant between January 28, 2009 and August 11, 2009. On August 11, 2009, Santiago Homemade Furniture, LLC entered into an independent contractor relationship with Defendant, and Defendant thereafter purchased products made by Santiago Homemade Furniture, LLC. Santiago Homemade Furniture, LLC, presented Defendant with a business card describing the business of Santiago Homemade Furniture, LLC, and it includes various services that Defendant did not purchase from Santiago Homemade Furniture, LLC, and that, upon information and belief, were undertaken by Santiago Homemade Furniture, LLC, as an independent contractor on behalf of other customers, not for Defendant.**

**36.** From April 23, 2009, to the present HILARIO and SANTIAGO FURNITURE provided all services and labor exclusively to SCOTTSDALE ART FACTORY at the FACTORY SHOWROOM.

**ANSWER TO PARAGRAPH 36:**

**Defendant denies the allegations of Paragraph 36 on information and belief and incorporates by this reference the answer to Paragraph 35 as though fully set forth herein.**

1       **37.** From April 23, 2009, to the present, neither HILARIO nor SANTIAGO  
2 FURNITURE made any investments that were in any way related to the services and  
3 labor provided to SCOTTSDALE ART FACTORY at the FACTORY SHOWROOM by  
4 HILARIO.

5       **ANSWER TO PARAGRAPH 37:**

6       **Defendant denies the allegations of Paragraph 37.**

7       **38.** From April 23, 2009, to the present, the order or sequence of the services  
8 and labor provided to SCOTTSDALE ART FACTORY at the FACTORY SHOWROOM  
9 by HILARIO or SANTIAGO FURNITURE were directed and controlled by HARDAS  
10 and SCOTTSDALE ART FACTORY.

11       **ANSWER TO PARAGRAPH 38:**

12       **Defendant denies the allegations of Paragraph 38.**

13       **39.** From April 23, 2009, to the present, the hours worked by HILARIO or  
14 SANTIAGO FURNITURE at the FACTORY SHOWROOM in providing services and  
15 labor to SCOTTSDALE ART FACTORY were directed and controlled by HARDAS and  
16 SCOTTSDALE ART FACTORY.

17       **ANSWER TO PARAGRAPH 39:**

18       **Defendant denies the allegations of Paragraph 39.**

19       **40.** On September 28, 2009, HARDAS discussed with HILARIO the  
20 possibility of hiring an additional employee at the FACTORY SHOWROOM that  
21 HARDAS and HILARIO knew was not authorized to be employed in the United States.

22       **ANSWER TO PARAGRAPH 40:**

23       **Defendant denies the allegations of Paragraph 40.**

24       **41.** On September 28, 2009, and as part of those business-related discussions  
25 with HILARIO, HARDAS discussed the possibility of setting up a limited liability  
26 company for the employee for the specific purpose of avoiding compliance by  
27 SCOTTSDALE ART FACTORY at the FACTORY SHOWROOM with the provisions  
28

1 and consequences of Arizona law, and HARDAS noted that "it's like having a real  
2 business even though ... we're just using it to put the money through . . . ."

3 **ANSWER TO PARAGRAPH 41:**

4 **In response to the allegations of Paragraph 41, Defendant alleges that the**  
5 **quotations are incomplete, out of context, and Defendant denies the allegations of**  
6 **Paragraph 41. Defendant also alleges that the conversation referred to included a**  
7 **discussion by Ms. Hardas urging compliance with the law. During the time period**  
8 **relevant to this litigation, Defendant did not hire or employ either of the two persons**  
9 **involved in the conversation referred to in Paragraph 41. Defendant, therefore,**  
10 **denies the allegations of Paragraph 41. Defendant further alleges that the taped**  
11 **conversation was a violation of Defendant's constitutional rights, as set forth in**  
12 **Defendant's Counterclaim herein. Defendant, therefore, denies the allegations of**  
13 **Paragraph 41. Defendant further alleges that the tape-recording is not admissible**  
14 **evidence and is not relevant because, *inter alia*, the Legal Arizona Workers Act does**  
15 **not prohibit conversations, and the tape-recorded conversation was only a**  
16 **conversation, with no actions taken by Defendant, as the only two parties to the**  
17 **conversation were persons who the Defendant did not employ and did not have the**  
18 **intention of employing. County Attorney Thomas cannot legitimately prosecute**  
19 **Defendant based upon a conversation with a non-employee and an independent**  
20 **contractor, as the statute regulates only the actual employment of a person, and**  
21 **does not prohibit or regulate conversations.**

22 **42.** On September 28, 2009, and as part of those business-related discussions  
23 with HILARIO, HARDAS discussed the possibility of setting up a limited liability  
24 company for the employee for the specific purpose of avoiding compliance by  
25 SCOTTSDALE ART FACTORY at the FACTORY SHOWROOM with the provisions  
26 and consequences of Arizona law, and HARDAS noted that she was "trying to get around  
27 the system . . . and change the rules so that I can make you be hired."  
28

**ANSWER TO PARAGRAPH 42:**

In response to the allegations of Paragraph 42, Defendant alleges that the quotations are incomplete, out of context, and Defendant denies the allegations of Paragraph 42. Defendant also alleges that the conversation referred to included a discussion by Ms. Hardas urging compliance with the law. During the time period relevant to this litigation, Defendant did not hire or employ either of the two persons involved in the conversation referred to in Paragraph 41. Defendant, therefore, denies the allegations of Paragraph 42. Defendant further alleges that the taped conversation was a violation of Defendant's constitutional rights, as set forth in Defendant's Counterclaim herein. Defendant, therefore, denies the allegations of Paragraph 42. Defendant further alleges that the tape-recording is not admissible evidence and is not relevant because, *inter alia*, the Legal Arizona Workers Act does not prohibit conversations, and the tape-recorded conversation was only a conversation, with no actions taken by Defendant, as the only two parties to the conversation were persons who the Defendant did not employ and did not have the intention of employing. County Attorney Thomas cannot legitimately prosecute Defendant based upon a conversation with a non-employee and an independent contractor, as the statute regulates only the actual employment of a person, and does not prohibit or regulate conversations.

43. On September 25, 2009, and as part of those business-related discussions with HILARIO, HARDAS discussed the possibility of setting up a limited liability company for the employee for the specific purpose of avoiding compliance by SCOTTSDALE ART FACTORY at the FACTORY SHOWROOM with the provisions and consequences of Arizona law, and noted that the establishment of a limited liability company protected SCOTTSDALE ART FACTORY because HARDAS was "not responsible to ask" such questions as "are you a legal company; do you have your license; do all of your guys have papers; are you legal;" and "it's not my responsibility to check paperwork."

**ANSWER TO PARAGRAPH 43:**

In response to the allegations of Paragraph 43, Defendant alleges that the quotations are incomplete, out of context, and Defendant denies the allegations of Paragraph 43. Defendant also alleges that the conversation referred to included a discussion by Ms. Hardas urging compliance with the law. During the time period relevant to this litigation, Defendant did not hire or employ either of the two persons involved in the conversation referred to in Paragraph 41. Defendant, therefore, denies the allegations of Paragraph 43. Defendant further alleges that the taped conversation was a violation of Defendant's constitutional rights, as set forth in Defendant's Counterclaim herein. Defendant, therefore, denies the allegations of Paragraph 43. Defendant further alleges that the tape-recording is not admissible evidence and is not relevant because, *inter alia*, the Legal Arizona Workers Act does not prohibit conversations, and the tape-recorded conversation was only a conversation, with no actions taken by Defendant, as the only two parties to the conversation were persons who the Defendant did not employ and did not have the intention of employing. County Attorney Thomas cannot legitimately prosecute Defendant based upon a conversation with a non-employee and an independent contractor, as the statute regulates only the actual employment of a person, and does not prohibit or regulate conversations.

**ANSWER TO ALLEGATIONS**

**Regarding egregious nature of conduct**

44. The conduct of SCOTTSDALE ART FACTORY and HARDAS is particularly egregious in that HARDAS counseled HILARIO how to use the fiction of the limited liability company to exploit unauthorized employees hired by SANTIAGO FURNITURE but in reality working for SCOTTSDALE ART FACTORY by stating that, if HILARIO was willing to hire an employee of SCOTTSDALE ART FACTORY as an employee of SANTIAGO FURNITURE, HILARIO could charge the hired employee, as a kickback, as much as "five percent for the trouble"

**ANSWER TO PARAGRAPH 44:**

In response to the allegations of Paragraph 44, Defendant alleges that the quotations are incomplete, out of context, and Defendant denies the allegations of Paragraph 44. Defendant also alleges that the conversation referred to included a discussion by Ms. Hardas urging compliance with the law. During the time period relevant to this litigation, Defendant did not hire or employ either of the two persons involved in the conversation referred to in Paragraph 41. Defendant, therefore, denies the allegations of Paragraph 44. Defendant further alleges that the taped conversation was a violation of Defendant's constitutional rights, as set forth in Defendant's Counterclaim herein. Defendant, therefore, denies the allegations of Paragraph 44. Defendant further alleges that the tape-recording is not admissible evidence and is not relevant because, *inter alia*, the Legal Arizona Workers Act does not prohibit conversations, and the tape-recorded conversation was only a conversation, with no actions taken by Defendant, as the only two parties to the conversation were persons who the Defendant did not employ and did not have the intention of employing. County Attorney Thomas cannot legitimately prosecute Defendant based upon a conversation with a non-employee and an independent contractor, as the statute regulates only the actual employment of a person, and does not prohibit or regulate conversations.

45. The conduct of SCOTTSDALE ART FACTORY and HARDAS is particularly egregious in that HARDAS counseled HILARIO how to use the fiction of the limited liability company to lie to law enforcement personnel that might come onto the FACTORY SHOWROOM when HILARIO or others, working at the FACTORY SHOWROOM under the fiction of SANTIAGO FURNITURE might be present, by counseling that, in ANSWER to any inquiry from law enforcement personnel, HILARIO should say "I don't work here. ... Sometimes I come in the shop and I help a little bit, but mostly I just bring in furniture — drop off furniture — drop off doors that I made. I was just here making a door. Got to go. You don't need to see my papers. I got to go."

**ANSWER TO PARAGRAPH 45:**

In response to the allegations of Paragraph 45, Defendant alleges that the quotations are incomplete, out of context, and Defendant denies the allegations of Paragraph 45. Defendant also alleges that the conversation referred to included a discussion by Ms. Hardas urging compliance with the law. During the time period relevant to this litigation, Defendant did not hire or employ either of the two persons involved in the conversation referred to in Paragraph 41. Defendant, therefore, denies the allegations of Paragraph 45. Defendant further alleges that the taped conversation was a violation of Defendant's constitutional rights, as set forth in Defendant's Counterclaim herein. Defendant, therefore, denies the allegations of Paragraph 45. Defendant further alleges that the tape-recording is not admissible evidence and is not relevant because, *inter alia*, the Legal Arizona Workers Act does not prohibit conversations, and the tape-recorded conversation was only a conversation, with no actions taken by Defendant, as the only two parties to the conversation were persons who the Defendant did not employ and did not have the intention of employing. County Attorney Thomas cannot legitimately prosecute Defendant based upon a conversation with a non-employee and an independent contractor, as the statute regulates only the actual employment of a person, and does not prohibit or regulate conversations. Defendant further alleges that the language quoted in Paragraph 45 of the Complaint would be true if Mr. Santiago-Hernandez were to communicate such information because he was indeed a legitimate independent contractor.

46. The conduct of SCOTTSDALE ART FACTORY and HARDAS is particularly egregious in that HARDAS counseled HILARIO how to use the fiction of the limited liability company to lie to other employees of SCOTTSDALE ART FACTORY working at the FACTORY SHOWROOM by telling "the guys in the shop ... that you work as subcontractors . . ."

**ANSWER TO PARAGRAPH 46:**

In response to the allegations of Paragraph 46, Defendant alleges that the quotations are incomplete, out of context, and Defendant denies the allegations of Paragraph 46. Defendant also alleges that the conversation referred to included a discussion by Ms. Hardas urging compliance with the law. During the time period relevant to this litigation, Defendant did not hire or employ either of the two persons involved in the conversation referred to in Paragraph 41. Defendant, therefore, denies the allegations of Paragraph 46. Defendant further alleges that the taped conversation was a violation of Defendant's constitutional rights, as set forth in Defendant's Counterclaim herein. Defendant, therefore, denies the allegations of Paragraph 46. Defendant further alleges that the tape-recording is not admissible evidence and is not relevant because, *inter alia*, the Legal Arizona Workers Act does not prohibit conversations, and the tape-recorded conversation was only a conversation, with no actions taken by Defendant, as the only two parties to the conversation were persons who the Defendant did not employ and did not have the intention of employing. County Attorney Thomas cannot legitimately prosecute Defendant based upon a conversation with a non-employee and an independent contractor, as the statute regulates only the actual employment of a person, and does not prohibit or regulate conversations.

47. The conduct of SCOTTSDALE ART FACTORY and HARDAS is particularly egregious in that HARDAS has used the provision of limited liability companies, designed to protect legitimate businesses, as a way of gaining an unfair economic advantage over legitimate businesses by continuing to hire employees who are not authorized to be employed in the United States.

**ANSWER TO PARAGRAPH 47:**

**Defendant denies the allegations of Paragraph 47.**

1       **48.** All conduct by HARDAS and SCOTTSDALE ART FACTORY as alleged  
 2 in this Complaint was done with the intended objective of employing HILARIO as an  
 3 unauthorized alien in violation of A.R.S. § 23-212.01(A).

4       **ANSWER TO PARAGRAPH 48:**

5       **Defendant denies the allegations of Paragraph 48.**

6       **AFFIRMATIVE DEFENSES AND OTHER GROUNDS**

7       **FOR THE ABSENCE OF LIABILITY**

8       **49.** Defendant states the affirmative defenses and other grounds for the absence  
 9 of liability following its answers to the second claim below, at Paragraphs 55 through 80  
 10 of this Answer, and Defendant hereby incorporates by reference all of those paragraphs  
 11 the same as though fully set forth herein.

12       **PRAYER FOR RELIEF**

13       WHEREFORE, the STATE respectfully requests that the Court:

14       1. Set this matter for an expedited evidentiary hearing to the court pursuant to  
 15 the provisions of A.R.S. § 23-212.01(E) and Rule 65.2 (c), (e) and (f), Arizona Rules of  
 16 Civil Procedure.

17       2. Enter an order finding a first violation of A.R.S. § 23-212.01 (A) pursuant  
 18 to the provisions of A.R.S. § 23-212.01(F)(1).

19       3. Enter an order, pursuant to A.R.S. § 23-212.01(F)(1)(a), that  
 20 SCOTTSDALE ART FACTORY terminate the employment of all unauthorized aliens  
 21 including, but not limited to, HILARIO.

22       4. Enter an order, pursuant to A.R.S. § 23-212.01(F)(I)(b). that places  
 23 SCOTTSDALE ART FACTORY on a five year probationary period for the business  
 24 located at 7447 East Indian School Road, Suite 110, Scottsdale, Arizona, 85251 and  
 25 require the filing of quarterly reports in keeping with the terms of A.R.S. § 23-  
 26 212.01(F)(1)(b).

5. Enter an order, pursuant to A.R.S. § 23-212.01(F)(1)(c), that suspends, for no less than ten business days, all licenses and authorizations held by SCOTTSDALE ART FACTORY and as more fully described in A.R.S. § 23-212.01(9(d).

6. Enter an order requiring SCOTTSDALE ART FACTORY to comply with the provisions of A.R.S. § 23-212.01(F)(1)(d).

7. For such other relief as the Court deems just and proper under the circumstances.

**ANSWER TO PRAYER FOR RELIEF TO FIRST CLAIM**

**Defendant denies that County Attorney Thomas is entitled to the relief requested in his prayer for relief for his first claim for the reasons set forth in the denials above and in the affirmative defenses and other bases for avoidance of liability alleged below and incorporated herein by this reference.**

**ANSWER TO COUNT TWO**

**COUNT TWO**

**(Knowingly Employ an Unauthorized Alien)**

The STATE alleges all allegations made in Count One of this Complaint and incorporates those allegations into Count Two of this Complaint as though they had been specifically plead herein.

**ANSWER TO PARAGRAPH 49:**

**Defendant incorporates by reference all of its denials and allegations made in answer to the first claim of the Complaint and incorporates by reference the same as though fully set forth herein.**

**50.** This action is brought pursuant to A.R.S. § 23-212 which empowers the State of Arizona to file an action against an employer for a violation of A.R.S. § 23-212(A) that has occurred after December 31, 2007.

**ANSWER TO PARAGRAPH 50:**

**Defendant admits that this action is purportedly filed pursuant to A.R.S. §§ 23-212 and 212.01, but denies that the statute empowers County Attorney**

1 **Thomas to file this action because the statute violates the Constitution of the United**  
2 **States of America and the Constitution of Arizona.**

3 **51.** All conduct by HARDAS and SCOTTSDALE ART FACTORY as alleged  
4 in this Complaint was knowingly done, as that term is defined in A.R.S. § 23-211(8) and  
5 8 United States Code § 1324(a) and as the circumstances should have caused HARDAS  
6 and SCOTTSDALE ART FACTORY to have reasonably known that HILARIO was not  
7 authorized to be employed in the United States at least as of January 28, 2009

8 **ANSWER TO PARAGRAPH 51:**

9 **Defendant denies the allegations of Paragraph 51.**

10 **52.** All conduct by HARDAS and SCOTTSDALE ART FACTORY as alleged  
11 in this Complaint was knowingly done, as that term is defined in A.R.S. § 23-211(8) and  
12 8 U.S.C. § 1324(a) such that they acted with reckless and wanton disregard for the legal  
13 consequences of permitting HILARIO or SANTIAGO FURNITURE to provide  
14 SCOTTSDALE ART FACTORY with services and labor at the FACTORY  
15 SHOWROOM at all times after January 28, 2009.

16 **ANSWER TO PARAGRAPH 52:**

17 **Defendant denies the allegations of Paragraph 52.**

18 **53.** All conduct by HARDAS and SCOTTSDALE ART FACTORY as alleged  
19 in this Complaint was knowingly done, as that term is defined in A.R.S. § 23-211(8) and  
20 8 United States Code § 1324(a) as HARDAS and SCOTTSDALE ART FACTORY  
21 failed to take reasonable steps after receiving information indicating that HILARIO may  
22 be an alien who was not employment authorized at all times after January 28, 2009.

23 **ANSWER TO PARAGRAPH 53:**

24 **Defendant denies the allegations of Paragraph 53.**

25 **AFFIRMATIVE DEFENSES AND OTHER GROUNDS FOR**  
26 **THE ABSENCE OF LIABILITY**

27 **54. The Complaint fails to state a claim upon which relief may be granted.**  
28

1           **55. Defendant complied with federal immigration laws, including properly**  
2 **competing Federal I-9 forms.**

3           **56. The Legal Arizona Workers Act (“LAWA”), the statute under which**  
4 **County Attorney Thomas brings his claims, is unconstitutional on its face and as**  
5 **applied in this case because it denies due process of law to Defendant.**

6           **57. LAWA is unconstitutional on its face and as applied in this case**  
7 **because it is preempted by the Supremacy Clause of the United States Constitution**  
8 **because Federal Immigration Law preempts LAWA.**

9           **58. The investigation of Defendant and the prosecution of Defendant**  
10 **pursuant to the LAWA has violated the constitutional rights of Defendant for**  
11 **reasons set forth Defendant’s Counterclaim, which is incorporated herein by**  
12 **reference. All of the matters alleged in the Counterclaim are also defenses to**  
13 **County Attorney Thomas’s Complaint.**

14           **59. The investigation and prosecution of Defendant has violated**  
15 **Defendant’s constitutional rights to be free from unreasonable searches and seizures**  
16 **by the government, as guaranteed by the Fourth and Fourteenth Amendments to**  
17 **the U.S. Constitution.**

18           **60. The investigation and prosecution of Defendant under LAWA has**  
19 **violated Defendant’s right to due process and equal protection under the law.**

20           **61. It was a violation of Defendant’s constitutional rights for County**  
21 **Attorney Thomas and/or the Sheriff’s Office to round up and detain all persons at**  
22 **Defendant’s properties based upon a search warrant purportedly for identity theft-**  
23 **related matters by several individuals, not Defendant, and that named only a few**  
24 **persons and named only one property of Defendant’s. The Sheriff’s Office exceeded**  
25 **the scope of the warrant in conducting its raid upon Defendant’s properties.**

26           **62. It was a violation of Defendant’s constitutional rights for County**  
27 **Attorney Thomas and/or the Sheriff to search and seize Defendant’s property not**  
28 **identified in the search warrant.**

1           **63. The taping of Defendant's employee on Defendant's property without**  
2 **Defendant's consent violated the constitutional rights of Defendant and was an**  
3 **unreasonable search.**

4           **64. The investigation of Defendant in this case was based on race and was**  
5 **conducted in a racially discriminatory manner, as described below.**

6           **65. On January 28, 2009, utilizing approximately fifty (50) armed Sheriff's**  
7 **officers, dressed in the manner of a SWAT team, with helmets and vests, with guns**  
8 **drawn and pointed at persons on Defendant's premises, including pointing a gun at**  
9 **the elderly mother of Ms. Hardas, entered multiple entrances of Defendant's**  
10 **properties, in locations and premises not included in the search warrant that named**  
11 **ten persons as the subject of the warrant.**

12           **66. The Sheriff's Office rounded up all persons on Defendant's multiple**  
13 **properties and confined them to a central room, not merely the ten persons named**  
14 **in the search warrant and not merely the one property named in the search**  
15 **warrant.**

16           **67. The Sheriff's Office segregated the persons that it rounded up based on**  
17 **race, national origin and/or color.**

18           **68. The Sheriff's Office photographed all Latinos on Defendant's**  
19 **properties and subjected them to identity screening in one location, separate from**  
20 **the Anglo persons.**

21           **69. The Sheriff's Office did not photograph the Anglo persons, and**  
22 **handled them in a different manner and screened them in a different location than**  
23 **the Latino persons.**

24           **70. The Sheriff's Office even extended courtesies for an Anglo employee**  
25 **who did not speak English in order to enable that person to satisfy the Sheriff's**  
26 **Office that he was authorized to work in this country.**

1           **71. The Sheriff's Office's segregation of persons was not based on job**  
2 **classification, as Latino shop employees were segregated from Anglo shop**  
3 **employees.**

4           **72. The Sheriff's Office did not even check the identification of all Anglo**  
5 **employees.**

6           **73. County Attorney Thomas's prosecution of Defendant is barred**  
7 **because, on information and belief, the investigation and prosecution was based on**  
8 **race, national origin or color, in violation of the LAWA and the U.S. Constitution.**

9           **74. Evidence that the investigation and prosecution is based on race**  
10 **includes, but it not limited to, the allegations set forth above regarding the manner**  
11 **in which the raid was conducted and the allegations set forth in the following**  
12 **paragraphs.**

13           **75. County Attorney Thomas announced that his decision regarding who**  
14 **would conduct LAWA investigations and LAWA enforcement was a decision that**  
15 **he made based on race.**

16           **76. In a News Release issued by County Attorney Thomas's office on**  
17 **September 20, 2007, entitled "Thomas and Arpaio to Enforce Employer Sanctions**  
18 **Law; Partnership Forged for Investigation of Possible Employer Violations,"**  
19 **County Attorney Thomas stated the following:**

20                   **"In seeking a partner for enforcing Arizona's new employer**  
21 **sanctions law, I found the choice was clear," said County**  
22 **Attorney Andrew Thomas. "Sheriff Arpaio and the Maricopa**  
23 **County Sheriff's Office have a proven track record of enforcing**  
**our immigration laws and not caving in to political correctness."**

24           **77. County Attorney Thomas considered his selection of the Maricopa**  
25 **County Sheriff's Office for LAWA enforcement based on the above race-based**  
26 **reason to be one of the primary achievements of his tenure as Maricopa County**  
27 **Attorney during 2007, as he highlighted in the Maricopa County Attorney's Annual**  
28

1 Report for 2007 his statement above of the race-based reason for choosing the  
2 Sheriff's Office for LAWA enforcement.

3 78. County Attorney Thomas's declaration that he chose the Sheriff as a  
4 "partner" for investigating and enforcing LAWA because of the Sheriff's rejection  
5 of "political correctness" is a "code word" that County Attorney Thomas condones  
6 and authorizes racial profiling by Maricopa County Sheriff's Office and condones  
7 and authorizes racial profiling in LAWA enforcement. There is no other reason for  
8 County Attorney Thomas even to mention the subject of "political correctness" as a  
9 reason for granting the Maricopa County Sheriff's Office the role of conducting  
10 LAWA investigations.

11 79. By delegating LAWA investigation duties to the Maricopa County  
12 Sheriff's Office, County Attorney Thomas chose as his LAWA "partner" the agency  
13 known for, indeed, notorious for, racial profiling to conduct LAWA investigations  
14 on behalf of the County Attorney.

15 80. County Attorney Thomas announced that his decision to utilize the  
16 Maricopa County Sheriff to conduct LAWA investigations and enforcement  
17 activities was based in part on "Sheriff Arpaio and the Maricopa County Sheriff's  
18 Office ... proven track record of enforcing our immigration laws ...," as stated in  
19 County Attorney Thomas's September 20, 2007 News Release quoted above.

20 81. The "track record" of Sheriff Arpaio and the Maricopa County  
21 Sheriff's Office in enforcing immigration laws, which County Attorney Thomas  
22 cited as the reason he chose the Sheriff's Office for LAWA investigation and  
23 enforcement activities, is a record by the Sheriff's Office of widespread illegal,  
24 unconstitutional racial profiling and discrimination.

25 82. The County Attorney is or should be well aware that racial profiling is  
26 part of the immigration enforcement practices of MCSO. During the time period  
27 that the County Attorney has funded and utilized the Sheriff's Office for the  
28 investigation and enforcement of LAWA, including its investigations and

1 enforcement against Defendant, a class action lawsuit filed against the Sheriff for  
2 racial profiling in immigration enforcement under § 287(g), *Manuel De Jesus*  
3 *Ortega, Melendres, et al. v. Joseph M. Arpaio, et al.*, CV 07-02513-PHX-GMS, has  
4 been pending in the United States District Court for the District of Arizona.

5 83. The “proven track record of enforcing our immigration laws” by the  
6 Maricopa County Sheriff’s Office that County Attorney Thomas stated was a  
7 reason he delegated to the Sheriff’s Office to conduct LAWA investigations and  
8 enforcement, including the raid on Defendant’s property, included racial profiling  
9 actions that, upon information and belief, caused the United States Department of  
10 Homeland Security to cancel the authority of the Maricopa County Sheriff to  
11 conduct the very immigration enforcement activities that the County Attorney cited  
12 as a qualification and reason that he chose to delegate LAWA investigation and  
13 enforcement activities and responsibilities to the Maricopa County Sheriff.

14 84. The County Attorney was undoubtedly aware of the racial profiling  
15 when he selected the Sheriff’s Office as his “partner” for LAWA enforcement and  
16 when he authorized the Sheriff’s Office to conduct the investigation and  
17 enforcement activities against Defendant.

18 85. LAWA confers upon County Attorney Thomas the responsibility for  
19 investigation and enforcement of LAWA in Maricopa County, and the County  
20 Attorney has shared and delegated that responsibility to the Maricopa County  
21 Sheriff’s Office and has made the Sheriff’s Office the agent of the County Attorney  
22 for purposes of LAWA investigation and enforcement.

23 86. County Attorney Thomas caused to be paid to the Maricopa County  
24 Sheriff’s Office funds appropriated by the Arizona Legislature for purposes of  
25 LAWA enforcement and allocated by the Legislature to the Maricopa County  
26 Attorney’s Office.

27 87. County Attorney Thomas, by declaring the Maricopa County Sheriff to  
28 be his “partner” in LAWA enforcement and by providing funds allocated to his

1 office to the Sheriff's Office for purposes of LAWA investigation and enforcement,  
2 has created an agency relationship in which the activities of the Maricopa County  
3 Sheriff's Office regarding LAWA investigation and enforcement are being  
4 conducted on behalf of County Attorney Thomas.

5 88. The acts and omissions of the Maricopa County Sheriff's Office with  
6 respect to Defendant were conducted on behalf of County Attorney Thomas as an  
7 agent of County Attorney Thomas.

8 89. County Attorney Thomas is legally responsible and liable for the acts  
9 and omissions of the Maricopa County Sheriff taken against Defendant at issue in  
10 this litigation, and the actions by the Sheriff's Office gave rise to defenses to the  
11 claims of County Attorney Thomas.

12 90. The fact that the investigation and prosecution of Defendant is based  
13 on race is further evidenced by the fact that the Complaint filed by County Attorney  
14 Thomas against Defendant uses racially discriminatory terminology in the language  
15 of the Complaint.

16 91. The County Attorney Thomas's Complaint refers to Anglo persons by  
17 their last name, but when referring to Latino persons, the Complaint either does not  
18 identify them by name at all or identifies them by first name rather than last name.  
19 The Complaint refers to Mr. Hilario Santiago-Hernandez as "Hilario," without any  
20 last name, in Paragraphs 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39,  
21 40, 41, 42, 43, 44, 45, 46, 48, 51, 52, and 53. The Complaint refers to all Anglo  
22 persons by their last name and never uses only the first name of an Anglo person.

23 92. Referring to Latino persons by their first name only, while referring to  
24 Anglo persons by their last name, is disrespectful and demeaning to Latino persons  
25 and is evidence that County Attorney Thomas's prosecution of this litigation is  
26 based on race.

27 93. When the prosecution of this case was announced, County Attorney  
28 Thomas personally stated at a news conference that he considered the investigation

1 and prosecution of this case to have been done correctly. He was quoted by the  
2 Arizona Republic as stating at his news conference on November 18, 2009, that “It’s  
3 an important day, not only in Arizona but nationally, and we thought it was  
4 important that we tried to do it right, and I believe we have.”

5 94. County Attorney Thomas on November 18, 2009, issued a News  
6 Release about this case which stated, in part, as follows:

7 County Attorney Thomas stated, ‘This first employer-sanctions  
8 case is the capstone of our office’s efforts to stop illegal  
9 immigration.’

10 95. County Attorney Thomas’s November 18, 2009 News Release also  
11 stated:

12 Thomas especially thanked ... Sheriff Joe Arpaio for continuing  
13 with employer raids despite protests.

14 96. Evidence that the claims against Defendant are based on race, national  
15 origin or color includes, but is not limited to, the fact that County Attorney Thomas  
16 (i) pointed to the Sheriff’s raid on the property of Defendant, (ii) pointed to the  
17 investigation and prosecution of this case as an investigation having been done  
18 correctly, (iii) declared his prosecution of this case as being the “capstone” of his  
19 office’s immigration enforcement achievements, and (iv) his expression of the  
20 appreciation for the Sheriff’s employer raids. The County Attorney, by citing his  
21 approval and ratification of the way this case has been handled, has, *a fortiori*,  
22 expressed his approval and ratification of rounding up persons at gun point by a  
23 SWAT Team, segregating people based on race, and subjecting persons to  
24 discriminatory and different screening practices and interrogation techniques and  
25 treatment based on race, national origin or skin color, and conducting searches and  
26 seizures in excess of any authority granted by a warrant.

27 97. The Complaint is barred by the provision of LAWA, A.R.S. § 23-213,  
28 that provides that it shall not be construed to require Defendant to take any action

1 that Defendant believes in good faith would violate federal or state law, and  
2 Defendant in good faith believes it was complying with federal and state law, and it  
3 was barred by federal and state discrimination and immigration laws from  
4 subjecting persons to greater scrutiny and screening based upon any protected  
5 classification, including, but not limited to, race, national origin, color or the  
6 appearance of same.

7       **98.** The only alleged employee that County Attorney Thomas alleges  
8 Defendant employed without authorization in violation of LAWA is Mr. Santiago-  
9 Hernandez and Defendant purchased products from Santiago's Homemade  
10 Furniture, LLC and did not employ Mr. Santiago-Hernandez during the relevant  
11 time period. Furthermore, the State of Arizona issued a business license to  
12 Mr. Santiago-Hernandez for the incorporation of Santiago's Homemade Furniture,  
13 LLC. Under A.R.S. § 41-1080, the State of Arizona could have issued such a license  
14 only after a finding that Mr. Santiago-Hernandez is a U.S. citizen, a lawful resident  
15 of the U.S., or is otherwise lawfully entitled to hold a business license and, thus, to be  
16 employed in the United States. County Attorney Thomas in this prosecution, is  
17 attempting to hold Defendant to a higher and different standard than the standards  
18 utilized and practices followed by the State of Arizona itself when it issues a business  
19 license to Santiago's Homemade Furniture, LLC.

20       **99.** Defendant hereby alleges any other Rule 8 affirmative defenses that  
21 may be shown by discovery to exist.

22       **100.** Defendant is entitled to recover its costs and attorney's fees incurred  
23 herein pursuant to A.R.S. § 12-348, and other federal and state statutes and rules.

24                                   PRAYER FOR RELIEF

25       WHEREFORE, the STATE respectfully requests that the Court:

26       1. Set this matter for an expedited evidentiary hearing to the court pursuant to  
27 the provisions of A.R.S. § 23-212(E) and Rule 65.2 (c), (e) and (f) Arizona Rules of Civil  
28 Procedure.

2. Enter an order finding a first violation of A.R.S. § 23-212(A) pursuant to the provisions of A.R.S. § 23-212(F)(1).

3. Enter an order, pursuant to A.R.S. § 23-212(F)(1)(a), that SCOTTSDALE ART FACTORY terminate the employment of all unauthorized aliens including, but not limited to, HILARIO.

4. Enter an order, pursuant to A.R.S. § 23-212(F)(1)(b), that places SCOTTSDALE ART FACTORY on a three year probationary period for the business located at 7447 East Indian School Road, Suite 110, Scottsdale, Arizona, 85251 and require the filing of quarterly reports in keeping with the terms of A.R.S. § 23-212(9)(1)(b).

5. Enter an order requiring SCOTTSDALE ART FACTORY to comply with the provisions of A.R.S. § 23-212(F)(1)(c).

6. Enter an order, pursuant to A.R.S. § 23-212(F)(1)(d), that suspends, for no more than ten business, all licenses and authorizations held by SCOTTSDALE ART FACTORY and as more fully described In A.R.S. § 23-21 2(F)(d).

7. For such other relief as the Court deems just and proper under the circumstances.

**ANSWER TO PRAYER FOR RELIEF TO SECOND CLAIM**

Defendant denies that County Attorney Thomas is entitled to the relief requested in his prayer for relief for his second claim for the reasons set forth in the denials above and in the affirmative defenses and other bases for avoidance of liability alleged below and incorporated herein by this reference.

**DEMAND FOR RELIEF**

WHEREFORE, having fully answered the County Attorney's Complaint, Defendant respectfully demands judgment as follows:

A. That the Complaint be dismissed, with County Attorney Thomas to take nothing thereby.



1 §§ 1331 and 1441 because they arise under the Constitution and laws of the United  
2 States.

3 5. The District Court has jurisdiction over the  
4 Defendant/Counterclaimant's state law claims pursuant to 28 U.S.C. § 1367.

5 6. The District Court has jurisdiction over this Counterclaim as a result  
6 of its jurisdiction over County Attorney Thomas's Complaint.

7 7. The District Court has jurisdiction over the Complaint because it  
8 raises several federal questions, including issues arising out of federal immigration  
9 law, including, but not limited to, 8 U.S.C. §§ 1324(a) and 1373(c), and 26 U.S.C.  
10 § 3508 of the Internal Revenue Code.

11 8. Venue is proper in the District Court pursuant to 28 U.S.C. § 1391(b).

12 9. Pursuant to 28 U.S.C. §§ 2201 to 2202, the Court may issue a  
13 declaratory judgment and further necessary or proper relief.

14 **ALLEGATIONS COMMON TO ALL CLAIMS**

15 10. The Arizona Legislature enacted a law known as the Legal Arizona  
16 Workers Act ("LAWA"), codified in relevant part at A.R.S. §§ 23-211 to 23-216.

17 11. A.R.S. § 23-212(A) prohibits employers from "knowingly" or  
18 "intentionally" employing an unauthorized alien.

19 12. When investigating complaints pursuant to A.R.S. § 23-212(B),  
20 County Attorney Thomas must verify an individual's work authorization  
21 exclusively by communicating with the federal government pursuant to 8 U.S.C. §  
22 1373(c).

23 13. Under the Legal Arizona Workers Act, employers that are deemed to  
24 have "knowingly" or "intentionally" hired unauthorized aliens may have their  
25 business licenses suspended for a first violation of A.R.S. § 23-212(A) and  
26 permanently revoked for a second violation of A.R.S. § 23-212(A).

27 14. County Attorney Thomas, acting through his own office and acting  
28 through the Maricopa County Sheriff's Office, has investigated

1 Defendant/Counterclaimant for an alleged violation of LAWA, as set forth in  
2 County Attorney Thomas's Complaint and Defendant's/Counterclaimant's Answer  
3 in this action, which is incorporated herein by this reference.

4 15. County Attorney Thomas, through his Complaint in this action, is  
5 prosecuting Defendant/Counterclaimant for alleged violations of LAWA.

6 **The Unconstitutional Investigation of Defendant/Counterclaimant**

7 16. The investigation and prosecution of Defendant/Counterclaimant has  
8 violated Defendant's/Counterclaimant's constitutional rights to be free from  
9 unreasonable searches and seizures by the government, as guaranteed by the Fourth  
10 and Fourteenth Amendments to the U.S. Constitution.

11 17. The investigation and prosecution of Defendant/Counterclaimant  
12 under LAWA has violated Defendant's/Counterclaimant's right to due process and  
13 equal protection under the law.

14 18. It was a violation of Defendant's/Counterclaimant's constitutional  
15 rights for County Attorney Thomas and/or the Sheriff's Office to round up and  
16 detain all persons at Defendant's/Counterclaimant's properties based upon a search  
17 warrant purportedly for identity theft-related matters by several individuals, not  
18 Defendant/Counterclaimant, and that named only a few persons and named only  
19 one property of Defendant's/Counterclaimant's.

20 19. The Sheriff's Office exceeded the scope of the warrant in conducting its  
21 raid upon Defendant's/Counterclaimant's properties.

22 20. It was a violation of Defendant's/Counterclaimant's constitutional  
23 rights for County Attorney Thomas and/or the Sheriff to search and seize  
24 Defendant's/Counterclaimant's property not identified in the search warrant.

25 21. The taping of Defendant's/Counterclaimant's employee on  
26 Defendant's/Counterclaimant's property without Defendant's/Counterclaimant's  
27 consent violated the constitutional rights of Defendant/Counterclaimant and was an  
28 unreasonable search.

1           **22. The investigation of Defendant/Counterclaimant in this case was based**  
2 **on race and was conducted in a racially discriminatory manner, as described below.**

3           **23. On January 28, 2009, utilizing approximately fifty (50) armed Sheriff's**  
4 **officers, dressed in the manner of a SWAT team, with helmets and vests, with guns**  
5 **drawn and pointed at persons on Defendant's/Counterclaimant's premises,**  
6 **including pointing a gun at the elderly mother of Ms. Hardas, entered multiple**  
7 **entrances of Defendant's/Counterclaimant's properties, in locations and premises**  
8 **not included in the search warrant that named ten persons as the subject of the**  
9 **warrant.**

10           **24. The Sheriff's Office rounded up all persons on**  
11 **Defendant's/Counterclaimant's multiple properties and confined them to a central**  
12 **room, not merely the ten persons named in the search warrant and not merely the**  
13 **one property named in the search warrant.**

14           **25. The Sheriff's Office segregated the persons that it rounded up based on**  
15 **race, national origin and/or color.**

16           **26. The Sheriff's Office photographed all Latinos on**  
17 **Defendant's/Counterclaimant's properties and subjected them to identity screening**  
18 **in one location, separate from the Anglo persons.**

19           **27. The Sheriff's Office did not photograph the Anglo persons, and**  
20 **handled them in a different manner and screened them in a different location than**  
21 **the Latino persons.**

22           **28. The Sheriff's Office even extended courtesies for an Anglo employee**  
23 **who did not speak English in order to enable that person to satisfy the Sheriff's**  
24 **Office that he was authorized to work in this country.**

25           **29. The Sheriff's Office's segregation of persons was not based on job**  
26 **classification, as Latino shop employees were segregated from Anglo shop**  
27 **employees.**  
28

1           **30. The Sheriff's Office did not even check the identification of all Anglo**  
2 **employees.**

3           **31. On information and belief, County Attorney Thomas's investigation**  
4 **and prosecution of Defendant/Counterclaimant was based on race, national origin**  
5 **or color, in violation of the Legal Arizona Workers Act and the U.S. Constitution.**

6           **32. Evidence that the investigation and prosecution is based on race**  
7 **includes, but it not limited to, the allegations set forth above regarding the manner**  
8 **in which the raid was conducted and the allegations set forth in the following**  
9 **paragraphs.**

10           **The County Attorney's Race-Based LAW A Enforcement Decisions and Practices**

11           **33. County Attorney Thomas announced that his decision regarding who**  
12 **would conduct LAW A investigations and LAW A enforcement was a decision that**  
13 **he made based on race.**

14           **34. In a News Release issued by County Attorney Thomas's office on**  
15 **September 20, 2007, entitled "Thomas and Arpaio to Enforce Employer Sanctions**  
16 **Law; Partnership Forged for Investigation of Possible Employer Violations,"**  
17 **County Attorney Thomas stated the following:**

18                   **'In seeking a partner for enforcing Arizona's new**  
19 **employer sanctions law, I found the choice was clear,' said**  
20 **County Attorney Andrew Thomas. 'Sheriff Arpaio and**  
21 **the Maricopa County Sheriff's Office have a proven track**  
22 **record of enforcing our immigration laws and not caving**  
23 **in to political correctness.'**

24           **35. County Attorney Thomas considered his selection of the Maricopa**  
25 **County Sheriff's Office for LAW A enforcement based on the above race-based**  
26 **reason to be one of the primary achievements of his tenure as Maricopa County**  
27 **Attorney during 2007, as he highlighted in the Maricopa County Attorney's Annual**  
28 **Report for 2007 his statement above of the race-based reason for choosing the**  
**Sheriff's Office for LAW A enforcement.**

1           **36. County Attorney Thomas’s declaration that he chose the Sheriff as a**  
2 **“partner” for investigating and enforcing LAWA because of the Sheriff’s rejection**  
3 **of “political correctness” is a “code word” that County Attorney Thomas condones**  
4 **and authorizes racial profiling by Maricopa County Sheriff’s Office and condones**  
5 **and authorizes racial profiling in LAWA enforcement. There is no other reason for**  
6 **County Attorney Thomas even to mention the subject of “political correctness” as a**  
7 **reason for granting the Maricopa County Sheriff’s Office the role of conducting**  
8 **LAWA investigations.**

9           **37. By delegating LAWA investigation duties to the Maricopa County**  
10 **Sheriff’s Office, County Attorney Thomas chose as his LAWA “partner” the agency**  
11 **known for, indeed, notorious for, racial profiling to conduct LAWA investigations**  
12 **on behalf of the County Attorney.**

13           **38. County Attorney Thomas announced that his decision to utilize the**  
14 **Maricopa County Sheriff to conduct LAWA investigations and enforcement**  
15 **activities was based in part on “Sheriff Arpaio and the Maricopa County Sheriff’s**  
16 **Office ... proven track record of enforcing our immigration laws ...,” as stated in**  
17 **County Attorney Thomas’s September 20, 2007 News Release quoted above.**

18           **39. The “track record” of Sheriff Arpaio and the Maricopa County**  
19 **Sheriff’s Office in enforcing immigration laws, which County Attorney Thomas**  
20 **cited as the reason he chose the Sheriff’s Office for LAWA investigation and**  
21 **enforcement activities, is a record by the Sheriff’s Office of widespread illegal,**  
22 **unconstitutional racial profiling and discrimination.**

23           **40. The County Attorney is or should be well aware that racial profiling is**  
24 **part of the immigration enforcement practices of MCSO. During the time period**  
25 **that the County Attorney has funded and utilized the Sheriff’s Office for the**  
26 **investigation and enforcement of LAWA, including its investigations and**  
27 **enforcement against Defendant/Counterclaimant, a class action lawsuit filed against**  
28 **the Sheriff for racial profiling in immigration enforcement under § 287(g), *Manuel***

1 *De Jesus Ortega, et al., v. Joseph M. Arpaio, et al.*, CV 07-02513-PHX-GMS, has been  
2 pending in the United States District Court for the District of Arizona.

3 41. The “proven track record of enforcing our immigration laws” by the  
4 Maricopa County Sheriff’s Office that County Attorney Thomas stated was a  
5 reason he delegated to the Sheriff’s Office to conduct LAW A investigations and  
6 enforcement, including the raid on Defendant’s/Counterclaimant’s property,  
7 included racial profiling actions that, upon information and belief, caused the  
8 United States Department of Homeland Security to cancel the authority of the  
9 Maricopa County Sheriff to conduct the very immigration enforcement activities  
10 that the County Attorney cited as a qualification and reason that he chose to  
11 delegate LAW A investigation and enforcement activities and responsibilities to the  
12 Maricopa County Sheriff.

13 42. The County Attorney was undoubtedly aware of the racial profiling  
14 when he selected the Sheriff’s Office as his “partner” for LAW A enforcement and  
15 when he authorized the Sheriff’s Office to conduct the investigation and  
16 enforcement activities against Defendant/Counterclaimant.

17 43. LAW A confers upon County Attorney Thomas the responsibility for  
18 investigation and enforcement of LAW A in Maricopa County, and the County  
19 Attorney has shared and delegated that responsibility to the Maricopa County  
20 Sheriff’s Office and has made the Sheriff’s Office the agent of the County Attorney  
21 for purposes of LAW A investigation and enforcement.

22 44. County Attorney Thomas caused to be paid to the Maricopa County  
23 Sheriff’s Office funds appropriated by the Arizona Legislature for purposes of  
24 LAW A enforcement and allocated by the Legislature to the Maricopa County  
25 Attorney’s Office.

26 45. County Attorney Thomas, by declaring the Maricopa County Sheriff to  
27 be his “partner” in LAW A enforcement and by providing funds allocated to his  
28 office to the Sheriff’s Office for purposes of LAW A investigation and enforcement,

1 has created an agency relationship in which the activities of the Maricopa County  
2 Sheriff's Office regarding LAWA investigation and enforcement are being  
3 conducted on behalf of County Attorney Thomas.

4 46. The acts and omissions of the Maricopa County Sheriff's Office with  
5 respect to Defendant/Counterclaimant were conducted on behalf of County  
6 Attorney Thomas as an agent of County Attorney Thomas.

7 47. County Attorney Thomas is legally responsible and liable for the acts  
8 and omissions of the Maricopa County Sheriff taken against  
9 Defendant/Counterclaimant at issue in this litigation.

10 48. On information and belief, prior to the investigation of Defendant, the  
11 County Attorney was aware that Sheriff Joseph Arpaio has been quoted in the news  
12 media as having made statements that he and/or his office can determine that a  
13 person lacks authorization to be in this country based in part on the physical  
14 appearance of the person.

15 49. Sheriff Joseph Arpaio has made statements to the news media that he  
16 and/or his office can determine that a person lacks authorization to be in this  
17 country based in part on the physical appearance of the person.

18 50. On information and belief, Sheriff Joseph Arpaio has made statements  
19 to County Attorney Thomas that he and/or his office can determine that a person  
20 lacks authorization to be in this country based in part on the physical appearance of  
21 the person.

22 51. On information and belief, County Attorney Thomas, by selecting and  
23 authorizing the Sheriff to continue to conduct investigations under the County  
24 Attorney's authority to enforce LAWA, authorized, condoned and ratified the  
25 Sheriff's actions in considering persons to lack authorization to work in this country  
26 based upon their physical appearance.

1           **52. On information and belief, Sheriff Joseph Arpaio has made comments**  
2 **to County Attorney Thomas, personally, that include race-based or national origin-**  
3 **based stereotypes.**

4           **53. On information and belief, Sheriff Joseph Arpaio has made comments**  
5 **to County Attorney Thomas, personally, reflecting that the Sheriff suspected**  
6 **persons to lack authorization to work in this country based upon their physical**  
7 **appearance or accent.**

8           **54. The fact that the investigation and prosecution of**  
9 **Defendant/Counterclaimant is based on race is further evidenced by the fact that**  
10 **the Complaint filed by County Attorney Thomas against**  
11 **Defendant/Counterclaimant uses racially discriminatory terminology in the**  
12 **language of the Complaint.**

13           **55. The County Attorney Thomas's Complaint refers to Anglo persons by**  
14 **their last name, but when referring to Latino persons, the Complaint either does not**  
15 **identify them by name at all or identifies them by first name rather than last name.**  
16 **The Complaint refers to Mr. Hilario Santiago-Hernandez as "Hilario," without any**  
17 **last name, in Paragraphs 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39,**  
18 **40, 41, 42, 43, 44, 45, 46, 48, 51, 52 and 53. The Complaint refers to all Anglo**  
19 **persons by their last name and never uses only the first name of an Anglo person.**

20           **56. Referring to Latino persons by their first name only, while referring to**  
21 **Anglo persons by their last name, is disrespectful and demeaning to Latino persons**  
22 **and is evidence that County Attorney Thomas's prosecution of this litigation is**  
23 **based on race.**

24           **57. When the prosecution of this case was announced, County Attorney**  
25 **Thomas personally stated at a news conference that he considered the investigation**  
26 **and prosecution of this case to have been done correctly. He was quoted by the**  
27 **Arizona Republic as stating at his news conference on November 18, 2009, that "It's**  
28

1 an important day, not only in Arizona but nationally, and we thought it was  
2 important that we tried to do it right, and I believe we have.”

3 58. County Attorney Thomas on November 18, 2009, issued a News  
4 Release about this case which stated, in part, as follows:

5 County Attorney Thomas stated, ‘This first employer-  
6 sanctions case is the capstone of our office’s efforts to stop  
7 illegal immigration.’

8 59. County Attorney Thomas’s November 18, 2009 News Release also  
9 stated:

10 Thomas especially thanked ... Sheriff Joe Arpaio for  
11 continuing with employer raids despite protests.

12 60. The fact that County Attorney Thomas (i) pointed to the Sheriff’s raid  
13 on the property of Defendant/Counterclaimant, (ii) pointed to the investigation and  
14 prosecution of this case as an investigation having been done correctly, (iii) declared  
15 his prosecution of this case as being the “capstone” of his office’s immigration  
16 enforcement achievements, and (iv) his expression of the appreciation for the  
17 Sheriff’s employer raids are evidence that the claims against  
18 Defendant/Counterclaimant are based on race, national origin or color. The County  
19 Attorney, by citing his approval and ratification of the way this case has been  
20 handled, has, a fortiori, expressed his approval and ratification of rounding up  
21 persons at gun point by a SWAT Team, segregating people based on race, and  
22 subjecting persons to discriminatory and different screening practices and  
23 interrogation techniques and treatment based on race, national origin or skin color,  
24 and conducting searches and seizures in excess of any authority granted by a  
25 warrant.

26 61. Defendant/Counterclaimant is entitled to an award of its costs and  
27 attorney’s fees incurred herein pursuant to federal and state statutes and rules,  
28 including 42 U.S.C. § 1988.

**FIRST CLAIM FOR RELIEF**

**VIOLATION OF FOURTH AMENDMENT PROTECTION AGAINST  
UNREASONABLE SEARCHES AND SEIZURES**

62. Defendant/Counterclaimant hereby incorporates by this reference all allegations of the preceding paragraphs of this Counterclaim, the same as if fully set forth herein.

63. The Fourth Amendment to the United States Constitution, part of the Bill of Rights, guarantees Defendant/Counterclaimant the right to be secure in their persons, property, papers and effects against unreasonable searches and seizures and that no warrants shall issue except upon probable cause.

64. The Fourteenth Amendment to the United States Constitution provides that the guarantees the protections of the Fourth Amendment apply to and restrict the actions of County Attorney Thomas and the Maricopa County Sheriff's Office.

65. The actions of County Attorney Thomas and his agent, the Maricopa County Sheriff's Office, in conducting the investigation and enforcement of LAWA violate the Fourth Amendment to the United States Constitution and the Fourteenth Amendment of the United States Constitution.

66. The unconstitutional actions of County Attorney Thomas and his agent, the Maricopa County Sheriff's Office, in their investigation and enforcement activity under LAWA against Defendant/Counterclaimant include the raid conducted upon Defendant/Counterclaimant in January 2009 by the Sheriff's Office and the investigation and prosecution of Defendant/Counterclaimant under LAWA.

67. The violations, as previously alleged, include the search of Defendant's/Counterclaimant's properties not allowed by the scope of the search warrant, the seizure of Defendant's/Counterclaimant's papers and records from a property not covered by the search warrant, the search of persons and properties not covered by the search warrant, the rounding up, at gunpoint, of all persons on Defendant's/Counterclaimant's property even though the warrant identified only

1 certain persons, not all persons, the interrogation of persons located on  
 2 Defendant's/Counterclaimant's property, and the taping of an employee of  
 3 Defendant/Counterclaimant, among other unconstitutional and unlawful acts by  
 4 County Attorney Thomas and/or the Sheriff's Office.

5 68. Defendant/Counterclaimant has been damaged by the unlawful and  
 6 unconstitutional actions of County Attorney Thomas.

7 69. Defendant/Counterclaimant is entitled to recover its damages for the  
 8 unlawful and unconstitutional actions of County Attorney Thomas, in an amount to  
 9 be proven at trial.

## 10 SECOND CLAIM FOR RELIEF

### 11 VIOLATION OF PROCEDURAL DUE PROCESS GUARANTEES UNDER THE 12 U.S. CONSTITUTION

13 70. Defendant/Counterclaimant hereby incorporates by this reference all  
 14 allegations of the preceding paragraphs of this Counterclaim, the same as if fully set  
 15 forth herein.

16 71. Under the Fourteenth Amendment to the U.S. Constitution, state and  
 17 local governments are prohibited from depriving any person of property without  
 18 due process of law.

19 72. Defendant/Counterclaimant is a limited liability company, is a  
 20 corporation, person under the law that is entitled to due process.

21 73. Licenses or permits from the State of Arizona and/or its political  
 22 subdivisions are property interests that are subject to the due process protections of  
 23 the Fourteenth Amendment to the U.S. Constitution.

24 74. Defendant/Counterclaimant has a property interest in its business  
 25 property located in the vicinity of Scottsdale Airport and has a property interest in  
 26 its papers, documents and business records.

27 75. Maricopa County Attorney, County Attorney Thomas, is prohibited by  
 28 the Fourth and Fourteenth Amendment from seizing

1 Defendant's/Counterclaimant's property suspending or revoking business licenses  
2 or permits unless Defendant/Counterclaimant is provided with due process of law.

3 76. Due process of law requires, at a minimum, that before any person,  
4 whether an individual, corporation or other business entity, may be deprived of a  
5 license or permit, the State must provide:

- 6 A. Notice and a reasonable definite statement of the charges or  
7 matters at issue.
- 8 B. Notice of the time and place of a hearing.
- 9 C. The right to produce witnesses at a hearing.
- 10 D. The right to examine witnesses at a hearing.
- 11 E. The right to a full consideration and determination of the issues  
12 based on the evidence.

13 77. LAW A does not provide Defendant/Counterclaimant, with due process  
14 before Defendant/Counterclaimant may be deprived of property interests.

15 78. In contrast to the Legal Arizona Workers Act, federal immigration law  
16 contains provisions to provide due process rights to employers. Under federal  
17 immigration law, before an employer is found to have violated the law, the employer  
18 is provided the following due process rights:

- 19 A. A signed, written complaint must be filed with sufficient  
20 information to identify the complainant and the potential  
21 violator, including names and addresses.
  - 22 B. The federal government investigates only those complaints  
23 "which, on their face, have a substantial probability of validity."  
24 8 U.S.C. § 1324a(c)(1)(B).
  - 25 C. After investigation the federal government may issue a Warning  
26 Notice or Notice of Intent to Fine.
- 27  
28

- D. The Notice of Intent to Fine must include the basis for the charges, the statutory provisions alleged to have been violated, and the penalty to be imposed.**
- E. The Notice of Intent to Fine must also notify the employer of its rights, including the right to counsel, that any statement may be used against the employer, and the employer's right to a hearing.**
- F. The respondent employer has a right to request a hearing before a federal administrative law judge. 8 C.F.R. § 274a.9(e) and 8 U.S.C. § 1324a(e)(3).**
- G. The employer has the right to an evidentiary hearing, with appellate review, as is customary in other federal administrative/adjudicative proceedings.**
- H. At the hearing, the employer has the right to present evidence and to cross-examine witnesses regarding the evidence presented against it.**

**79. Under the Legal Arizona Workers Act, Defendant/Counterclaimant is not provided any of the due process rights of federal law set forth in the preceding paragraph.**

**80. Under the Legal Arizona Workers Act, Defendant/Counterclaimant has been subjected to an enforcement scheme that includes the following:**

- A. Complaints may be initiated by any person without a signed written complaint, without any standards, without any requirements for the identification of the person(s) who is accused of not being authorized to work in this country, without any disclosure or identification of the basis for the allegation that an employee is not authorized to work, and without any**

1 requirement that any basis for the allegation must exist before  
2 an investigation must be initiated.

3 **B. Complaints may be initiated based on race, national origin,**  
4 **language ability or characteristics, accent, physical appearance,**  
5 **clothing characteristic of an ethnic group, religious attire, racial**  
6 **or ethnic prejudice or other unlawful factors.**

7 **C. Complaints may be initiated for reasons unrelated to the**  
8 **enforcement of immigration laws.**

9 **D. The County Attorney is compelled to investigate all complaints**  
10 **regardless of the lack of any basis for the complaint.**

11 **E. The County Attorney must investigate all complaints, even if**  
12 **the basis for the complaint is racial or ethnic prejudice or**  
13 **discrimination or any other improper unlawful motive.**

14 **F. There is no notice of the initiation of an investigation to**  
15 **Defendant/Counterclaimant or to the individual who is the**  
16 **subject of the investigation (the “Affected Employee”).**

17 **G. Under LAWA, the investigation relating to whether an employee**  
18 **is authorized to work in the United States consists solely of a**  
19 **request to the federal government to check federal computer**  
20 **records pursuant to 8 U.S.C. § 1373(c).**

21 **H. Legal Arizona Workers Act excludes the ability of the County**  
22 **Attorney to consider any other evidence besides the response**  
23 **from the federal government pursuant to 8 U.S.C. § 1373(c) in**  
24 **determining whether an employee is authorized to work.**

25 **I. In any proceedings in Arizona courts to impose penalties under**  
26 **A.R.S. § 23-212(F), including the suspension or revocation of**  
27 **business licenses or permits of Defendant/Counterclaimant,**  
28

1           A.R.S. § 23-212(H) restricts the evidence that may be  
2           considered.

3           **J.    The Legal Arizona Workers Act provides in part, “On**  
4           **determining whether an employee is an unauthorized alien, the**  
5           **Court shall consider only the federal government’s**  
6           **determination pursuant to 8 U.S.C. § 1373(c).” A.R.S. § 23-**  
7           **212(H). The Legal Arizona Workers Act also states that Arizona**  
8           **courts may take judicial notice of the federal government’s so-**  
9           **called “determination” under 8 U.S.C. § 1373(c). *Id.***

10          **K.    The Legal Arizona Workers Act does not give**  
11          **Defendant/Counterclaimant the right to call witnesses on its**  
12          **behalf regarding the work authorization of Mr. Santiago-**  
13          **Hernandez.**

14          **L.    The Legal Arizona Workers Act does not give**  
15          **Defendant/Counterclaimant the right to submit as evidence the**  
16          **business licenses obtained by Mr. Santiago-Hernandez and/or**  
17          **Santiago’s Homemade Furniture, LLC, which could be lawfully**  
18          **issued by the State of Arizona under A.R.S. § 41-1080 only upon**  
19          **a finding by the State that Mr. Santiago-Hernandez is a U.S.**  
20          **citizen, is a lawful resident in the U.S., or is otherwise lawfully**  
21          **entitled to hold a business license and to be employed in the U.S.**

22          **M.    The Legal Arizona Workers Act does not give**  
23          **Defendant/Counterclaimant the right to cross-examine witnesses**  
24          **for County Attorney on the issue of Mr. Santiago-Hernandez’s**  
25          **work authorization.**

26          **N.    The Legal Arizona Workers Act does not provide a procedure**  
27          **whereby Defendant/Counterclaimant or Mr. Santiago-**  
28

Hernandez may challenge erroneous “determinations” of immigration status.

- O. Due process rights are not provided to Defendant/Counterclaimant or to Mr. Santiago-Hernandez under the Legal Arizona Workers Act.**
- P. There is no “determination” made under 8 U.S.C. § 1373(c). The federal government’s informational response under 8 U.S.C. § 1373(c) is not a determination, but is merely a reflection of whatever information is in the federal government’s database.**
- Q. Due process rights are not provided before the federal government furnishes a response under 8 U.S.C. § 1373(c).**
- R. The absence of any “determination” pursuant to 8 U.S.C. § 1373(c) is reflected by the fact that federal immigration law does not provide for any action to be taken by the federal government against a person or employer based upon response under 8 U.S.C. § 1373(c). Determinations by the federal government of whether an employer knowingly employed an unauthorized alien are made pursuant to 8 CFR § 274a.9, and require a hearing and due process, as set forth in paragraph 131, above. Determinations of an alien’s status are made pursuant to administrative procedures that provide due process protections. Determinations are not made pursuant to 8 U.S.C. § 1373(c), and the federal immigration system does not provide a final determination of immigration status at the request of a state or local government.**
- S. To find that Defendant/Counterclaimant knowingly or intentionally employed an unauthorized alien, an Arizona Court will be required to make a determination that Mr. Santiago-**

1                   Hernandez is an unauthorized alien, but the Arizona Courts  
2                   have no authority to determine an alien's immigration status.  
3                   Such status determinations may be made only by a federal  
4                   immigration judge. 8 U.S.C. § 1229a(a)(1) and (a)(3). The Legal  
5                   Arizona Workers Act does not provide due process to  
6                   Defendant/Counterclaimant and Mr. Santiago-Hernandez  
7                   subject Defendant/Counterclaimant a hearing in an Arizona  
8                   Court that does not have jurisdiction to determine immigration  
9                   status.

10           81.    The procedures established pursuant to the Legal Arizona Workers  
11    Act and applied to Defendant/Counterclaimant in this case do not satisfy the due  
12    process requirements of the United States Constitution.

13           82.    Defendant/Counterclaimant is entitled to a declaratory judgment that  
14    the Legal Arizona Workers Act is unconstitutional because it violates the  
15    Fourteenth Amendment to the U.S. Constitution.

16           83.    Defendant/Counterclaimant has incurred damages as a result of the  
17    violation of its constitutional rights.

18           84.    Defendant/Counterclaimant is entitled to recover damages in an  
19    amount to be determined at trial.

20           85.    Defendant/Counterclaimant has been damaged by the unlawful and  
21    unconstitutional actions of County Attorney Thomas.

22           86.    Defendant/Counterclaimant is entitled to recover its damages for the  
23    unlawful and unconstitutional actions of County Attorney Thomas, in an amount to  
24    be proven at trial.

**THIRD CLAIM FOR RELIEF**

**VIOLATION OF PROCEDURAL DUE PROCESS GUARANTEES OF ARIZONA CONSTITUTION**

87. Defendant/Counterclaimant hereby incorporates by this reference all allegations of the preceding paragraphs of this Complaint, as if fully set forth herein.

88. Article II, § 4 of the Arizona Constitution prohibits state and local governments from depriving any person of property without due process of law.

89. Corporations, including Defendant/Counterclaimant is a person entitled to due process.

90. Licenses or permits from the State of Arizona and/or its political subdivisions are property interests that are subject to the due process protections of Article II, § 4 of the Arizona Constitution.

91. County Attorney Thomas is prohibited by Article II, § 4 of the Arizona Constitution from suspending or revoking Defendant's/Counterclaimant's business licenses or permits unless the Defendant/Counterclaimant is provided with due process of law.

92. County Attorney Thomas' actions that violate the Fourteenth Amendment to the U.S. Constitution, as alleged in paragraphs above, also violate the Arizona Constitution.

93. The procedures established by the Legal Arizona Workers Act do not satisfy and are in conflict with provisions of existing Arizona law for the procedures that must be used and due process rights that must be provided in order for Defendant/Counterclaimant to suspend or revoke licenses or permits.

94. The procedures established under the Legal Arizona Worker Act do not satisfy the due process requirements of the Arizona Constitution.



1           **102. The licensing exception was designed and intended to allow state**  
2 **governments to take action against the business license for employers “found to**  
3 **have violated the sanctions provision” of 8 U.S.C. § 1324a – essentially only after the**  
4 **employer had been found by the federal government to have violated the federal**  
5 **law.**

6           **103. The licensing exception to the preemption clause in 8 U.S.C. §**  
7 **1324a(h)(2) does not allow states to pass laws prohibiting the employment of**  
8 **unauthorized aliens.**

9           **104. The federal government has enacted broad, comprehensive**  
10 **immigration laws that govern who is eligible to work in the United States and that**  
11 **govern the process by which employers must verify the eligibility of job applicants.**

12           **105. The federal government has occupied the field of immigration**  
13 **regulation through the Immigration and Nationality Act (“INA”), the Immigration**  
14 **Reform and Control Act of 1986 (“IRCA”), the Illegal Immigration Reform and**  
15 **Immigrant Responsibility Act (“IIRIRA”), and other laws, including occupying the**  
16 **field relating to prohibiting the employment of unauthorized workers and verifying**  
17 **the eligibility of job applicants.**

18           **106. The immigration laws, procedures, and policies created by the federal**  
19 **government regulate immigration and confer rights in a careful balance reflecting**  
20 **the national interest.**

21           **107. Congress carefully balanced the requirements and penalties in the**  
22 **federal immigration law with consideration of the tension that immigration**  
23 **compliance and sanctions might cause relating to race, national origin, and**  
24 **citizenship discrimination.**

25           **108. The Constitution bars Defendant/Counterclaimant from altering or**  
26 **obstructing the federal government’s carefully crafted comprehensive immigration**  
27 **regime.**  
28

1           **109. The Constitution bars Defendant/Counterclaimant from enacting or**  
2 **enforcing laws that conflict with federal law, including federal immigration laws.**

3           **110. The Legal Arizona Workers Act conflicts with federal law and is**  
4 **therefore preempted by federal law and is unconstitutional pursuant to the**  
5 **Supremacy Clause of the U.S. Constitution.**

6           **111. Federal law governs the documents that employers must accept to**  
7 **make employment decisions regarding whether persons are authorized to work in**  
8 **this country.**

9           **112. Federal law prohibits employers from conducting any further**  
10 **investigation or taking any steps other than reviewing any of the 24 forms of**  
11 **documents that employees have the right, under federal law, to present to an**  
12 **employer to establish eligibility for employment in this country. Once an employee**  
13 **has satisfied the verification requirements of 8 U.S.C. § 1324a, employers are barred**  
14 **by federal law from seeking additional information regarding their authorization to**  
15 **work.**

16           **113. Federal law prohibits employers from making additional inquiries,**  
17 **conducting additional investigations, or taking additional steps to determine an**  
18 **applicant's or employee's eligibility to work in this country, other than (i) having**  
19 **examined the original documents that the employee chose to present, (ii) if the**  
20 **employer voluntarily enters into an agreement, to utilize E-Verify, and (iii) taking**  
21 **certain steps in response to receiving a communication from the Social Security**  
22 **Administration that an employee's name does not match an employee's Social**  
23 **Security number.**

24           **114. Federal law prohibits the use of the Form I-9 for any law enforcement**  
25 **purpose other than for enforcement of IRCA or other specified federal laws. 8**  
26 **U.S.C. § 1324a(d)(2)(F).**

27           **115. Federal law prohibits the use of the Form I-9 or any information on the**  
28 **I-9 except by the Department of Homeland Security, Department of Labor, or**

1 Department of Justice for purposes of enforcing IRCA or other specified federal  
2 laws. 8 U.S.C. § 1324a(b)(5).

3 116. The Legal Arizona Workers Act provides that employers who comply  
4 with the federal I-9 requirement have an affirmative defense that they did not  
5 knowingly or intentionally employ an unauthorized alien. A.R.S. § 23-212(J).

6 117. The affirmative defense provided in A.R.S. § 23-212(J) conflicts with  
7 federal limitations on the use of the Form I-9 and, thus, is preempted by federal law.

8 118. The factors to be considered by Arizona courts in determining whether  
9 to suspend business licenses include “whether the employer made good faith efforts  
10 to comply with any applicable requirements,” which necessarily will require the  
11 consideration of the employer’s compliance with the Form I-9. The foregoing  
12 enforcement provisions of A.R.S. § 23-212(F)(1)(d) conflicts with the federal  
13 limitations on the use of the Form I-9 and is thus preempted by federal law.

14 119. The federal government has failed to issue tamper-proof and forgery-  
15 proof forms of identification to persons that employers may rely upon to confirm  
16 with accuracy and reliability the identity of a person or the person’s eligibility to  
17 work in the United States.

18 120. The State of Arizona has failed to issue tamper-proof and forgery-  
19 proof documents establishing the identity of residents of the State of Arizona.

20 121. Federal immigration law and federal employment discrimination laws  
21 prohibit employers from taking action to refuse to hire or discharge employees  
22 based upon their citizenship, national origin, race, ethnicity, color or other  
23 classifications protected by law.

24 122. The Legal Arizona Workers Act threatens the uniformity and primacy  
25 of the federal immigration system and conflicts with federal immigration law.

26 123. The Legal Arizona Workers Act stands as an obstacle to the uniform  
27 enforcement and application of federal immigration laws and the comprehensive  
28 regime created by Congress.

1           **124. The Legal Arizona Workers Act imposes penalties on employers for**  
2 **Arizona’s state-regulated immigration enforcement measures beyond and different**  
3 **than what the federal government requires or allows.**

4           **125. The Legal Arizona Workers Act makes unlawful an additional**  
5 **immigration-related employment practice that is not prohibited under federal law,**  
6 **that of “intentionally” employing an unauthorized alien.**

7           **126. The prohibition in A.R.S. § 23-212(A) against “intentionally”**  
8 **employing an unauthorized alien is preempted by IRCA. It is inconsistent with the**  
9 **uniform enforcement of federal immigration law and Congress has already acted,**  
10 **through IRCA, to occupy the field regarding controlling the employment of aliens.**

11           **127. The definition of “license” in A.R.S. § 23-211(7) subject to being**  
12 **suspended or revoked includes items that are not licenses within any traditional**  
13 **sense of the word or as the term is used in 8 U.S.C. § 1324a(h)(2).**

14           **128. A grant of authority to Defendant/Counterclaimant for a Limited**  
15 **Certificate of Liability Corporation is not a “license.”**

16           **129. The Arizona Legislature exceeded the savings clause in 8 U.S.C.**  
17 **§ 1324a(h)(2) when it defined “license” to include Articles of Incorporation, a grant**  
18 **of authority for a Limited Liability Corporation.**

19           **130. Under The Legal Arizona Workers Act, Arizona courts could order the**  
20 **Arizona Corporation Commission to “suspend” Defendant’s/Counterclaimant’s**  
21 **limited liability status.**

22           **131. There is no legal meaning to “suspending” a corporation’s limited**  
23 **liability status. Either the corporation’s charter exists or it does not. There is no in-**  
24 **between concept of a “suspended” limited liability corporation.**

25           **132. The Legal Arizona Workers Act, as it is being enforced against**  
26 **Defendant/Counterclaimant, is preempted by federal law and is unconstitutional**  
27 **under the Supremacy Clause, and is a denial of due process because of the**  
28 **conflicting and inconsistent provisions of the state and federal law and the**

1 conflicting and inconsistent information that employers receive from the State of  
2 Arizona and the federal government.

3 133. The federal preemption of enforcement of LAW A against  
4 Defendant/Counterclaimant is evidenced by the fact that the County Attorney,  
5 acting through the Maricopa County Sheriff's Office, when conducting its raid on  
6 Defendant's/Counterclaimant's premises seized I-9 documents that federal law  
7 requires Defendant/Counterclaimant to maintain and the County Attorney and  
8 Sheriff continue to withhold from Defendant's/Counterclaimant's property that  
9 federal law requires Defendant/Counterclaimant to maintain on its premises.

10 134. The federal preemption of the enforcement of LAW A against  
11 Defendant/Counterclaimant as applied in this case is evidenced by the utilization of  
12 I-9 documents under LAW A enforcement in a way inconsistent with and prohibited  
13 by federal law, which restricts the use of I-9 documents to matters of federal  
14 immigration law compliance.

15 135. Defendant/Counterclaimant has been damaged by the unlawful and  
16 unconstitutional actions of County Attorney Thomas.

17 136. Defendant/Counterclaimant is entitled to recover its damages for the  
18 unlawful and unconstitutional actions of County Attorney Thomas, in an amount to  
19 be proven at trial.

20 **FIFTH CLAIM FOR RELIEF**

21 **VIOLATION OF THE SEPARATION OF POWERS DOCTRINE OF THE**  
22 **ARIZONA CONSTITUTION**

23 137. Defendant/Counterclaimant hereby incorporates by this reference all  
24 allegations of the preceding paragraphs of this Counterclaim, as if fully set forth  
25 herein.

26 138. The Constitution of Arizona divides the State Government of Arizona  
27 into three branches, the executive, legislative and judicial. Article III of the  
28 Constitution states as follows:

1           The powers of the government of the State of Arizona  
2           shall be divided into three separate departments, the  
3           Legislative, the Executive, and the Judicial, and, except as  
4           provided in this Constitution, such departments shall be  
5           separate and distinct, and no one of such departments  
6           shall exercise the powers properly belonging to either of  
7           the others.

8           **139.** The Arizona Constitution prohibits each branch of government from  
9           exercising the powers that are given by the Constitution to a separate branch of  
10          government.

11          **140.** The Constitution of Arizona prohibits the Legislative Branch of  
12          government from exercising executive powers that properly belong to the Executive  
13          Branch of government.

14          **141.** The Legislative Branch has the power to write and pass laws. The  
15          Executive Branch has the sole power to carry out the provisions of the law.

16          **142.** The Legal Arizona Workers Act contains a legislative mandate that the  
17          Executive Branch of government investigate every complaint that it receives alleging  
18          that an employer is knowingly or intentionally employing an unauthorized alien.  
19          A.R.S. § 23-212(A).

20          **143.** A.R.S. § 23-212(B) dictates the method by which the Executive Branch  
21          of government shall investigate each complaint. A.R.S. § 23-212(B) mandates that  
22          the investigation regarding an employee's status shall consist solely of an inquiry to  
23          the federal government pursuant to 8 U.S.C. § 1373(c).

24          **144.** A.R.S. § 23-212(B) prohibits the Executive Branch of government  
25          from considering information other than a response from the federal government  
26          pursuant to 8 U.S.C. § 1373(c) in acting upon each complaint received by the  
27          Executive Branch and determining whether an alien is authorized to work in the  
28          United States.

**145.** The Legal Arizona Workers Act mandates that the Executive Branch  
of government prosecute each complaint that is "not frivolous."

1           **146. The Legal Arizona Workers Act does not allow the exercise of**  
2 **discretion by the Executive Branch in enforcing the Act. Prosecutors are required**  
3 **to bring lawsuits that on balance lack merit but do not fall to the level of being**  
4 **“frivolous.”**

5           **147. The Legal Arizona Workers Act mandates that the Executive Branch**  
6 **take each of the above actions regardless of the resources, other duties, professional**  
7 **judgment and other priorities or factors that the Executive Branch would otherwise**  
8 **consider in discharging its duties under the Legal Arizona Workers Act and under**  
9 **all other laws for which it has the responsibility to take action.**

10           **148. Because of the mandate of the Legal Arizona Workers Act that all**  
11 **complaints under A.R.S. § 23-212(B) must be investigated and all non-frivolous**  
12 **complaints under the Legal Arizona Workers Act must be prosecuted, it is possible**  
13 **that the Executive Branch of the Arizona Government may be unable to discharge**  
14 **other important duties that are the responsibility of the Executive Branch,**  
15 **including, but not limited to, prosecuting suspects for murder, rape, child**  
16 **molestation, hate crimes, financial fraud, driving while intoxicated, and other**  
17 **crimes.**

18           **149. The above provisions of the Legal Arizona Workers Act violate the**  
19 **separation of powers clause of the Arizona Constitution. Each of the provisions set**  
20 **forth above constitutes the exercise by the Legislative Branch of powers that are**  
21 **reserved to the Executive Branch.**

22           **150. Defendant/Counterclaimant is entitled to a declaratory judgment that**  
23 **the Legal Arizona Workers Act is unconstitutional because it violates the separation**  
24 **of powers of the Arizona Constitution.**

25           **151. Defendant/Counterclaimant has been damaged by the unlawful and**  
26 **unconstitutional actions of County Attorney Thomas.**

1           **152. Defendant/Counterclaimant is entitled to recover its damages for the**  
2 **unlawful and unconstitutional actions of County Attorney Thomas, in an amount to**  
3 **be proven at trial.**

4                                   **DEMAND FOR RELIEF**

5           **WHEREFORE, Defendant/Counterclaimant respectfully demands judgment**  
6 **awarding the following:**

- 7           **A. A declaratory judgment pursuant to 28 U.S.C. §§ 2201 and 2202**  
8                   **declaring that the Legal Arizona Workers Act is unconstitutional on its**  
9                   **face and as applied because it violates the procedural due process**  
10                  **guarantees of the Fourteenth Amendment to the U.S. Constitution.**
- 11           **B. A declaratory judgment pursuant to 28 U.S.C. §§ 2201 and 2202**  
12                   **declaring that the Legal Arizona Workers Act is unconstitutional on its**  
13                   **face and as applied because it violates the procedural due process**  
14                  **guarantee of Article II § 4 of the Arizona Constitution.**
- 15           **C. A declaratory judgment pursuant to 28 U.S.C. §§ 2201 and 2202**  
16                   **declaring that the Legal Arizona Workers Act is unconstitutional on its**  
17                   **face and as applied because it is preempted by federal law.**
- 18           **D. A declaratory judgment pursuant to 28 U.S.C. §§ 2201 and 2202**  
19                   **declaring that the Legal Arizona Workers Act is unconstitutional on its**  
20                   **face and as applied because it violates the Commerce Clause of the U.S.**  
21                  **Constitution.**
- 22           **E. A declaratory judgment pursuant to 28 U.S.C. §§ 2201 and 2202**  
23                   **declaring that the Legal Arizona Workers Act is unconstitutional on its**  
24                   **face and as applied because it violates the Fourth Amendment to the**  
25                  **U.S. Constitution.**
- 26  
27  
28

1           **F.     An award of attorneys' fees and costs, plus interest, pursuant to 42**  
2                   **U.S.C. § 1988.**

3           **G.     For such other relief as the Court deems just and proper.**

4           DATED this 19<sup>th</sup> day of January 2010.

5                                   BALLARD SPAHR LLP

6                                   By: /s/ David A. Selden  
7   Julie A. Pace  
8   David A. Selden  
9   Isaac P. Hernandez  
                                       3300 N. Central Avenue, Suite 1800  
                                       Phoenix, Arizona 85012-2518  
                                       Attorneys for Defendant/Counterclaimant

10           I hereby certify that on the 19<sup>th</sup> day of  
11           January 2010, I caused the foregoing document:

12           **SECOND AMENDED ANSWER TO COMPLAINT**  
13           **AND COUNTERCLAIM**

14           To be filed electronically with the Clerk of  
15           Court through ECF; and that ECF will send  
                 an e-notice of the electronic filing to the  
                 following ECF participants:

16           Courtesy copy of the foregoing pleading mailed  
17           This 19<sup>th</sup> day of January 2010, to:

18           The Honorable Mary H. Murguia  
19           Judge of the U. S. District Court of Arizona  
20           Suite 425  
21           401 West Washington Street  
22           Phoenix, Arizona 85003

23           /s/ L. Cook