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13 Attorneys for Plaintiff

14 **SUPERIOR COURT OF ARIZONA**

15 **MARICOPA COUNTY**

16 ANDREW P. THOMAS, in his official
17 capacity as Maricopa County Attorney;

18 Plaintiff,

19 v.

20 MARICOPA COUNTY BOARD OF
21 SUPERVISORS; and its members:
22 FULTON BROCK; DON STAPLEY;
23 ANDREW KUNASEK; MAX WILSON;
24 and MARY ROSE WILCOX, in their
25 official capacities as Maricopa County
26 Supervisors; MARICOPA COUNTY,

27 Defendants.

No. CV2008-033194

**PLAINTIFF'S MOTION FOR
COURT ORDERED MEDIATION
PURSUANT TO ARIZ. R. CIV. P.
16(g)**

(Honorable Donald Daughton)

28 Plaintiff Andrew P. Thomas, in his official capacity as Maricopa County Attorney, moves the Court for an order requiring the parties to mediate this dispute pursuant to Ariz. R. Civ. P. 16(g). Plaintiff believes that court-ordered mediation will provide the parties an opportunity to resolve the instant dispute.

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On April 6, 2009, the County Attorney invited the Board to engage in mediation by sending a letter to the Board's Chairman, Max Wilson. *See* Exhibit 1. On April 9, 2009, Supervisor Wilson responded, expressing a desire to meet. *See* Exhibit 2.

On April 13, 2009, the County Attorney attempted to facilitate mediation by proposing three possible mediators: Timothy Casey, Lee Miller and Christopher Skelly. *See* Exhibit 3. Although more than ten days have passed since the County Attorney's good faith efforts, the Board has not agreed to (or even responded) to the County Attorney's proposal. However, at the Rule 16 Scheduling Conference held on April 23, 2009, the Board's counsel indicated that the Board still had some interest in pursuing mediation, albeit under certain unidentified "ground rules."

The County Attorney submits to the Court that mediation could benefit the parties and, most importantly, the citizens of Maricopa County. Putting aside the legality of the Board's actions, the County Attorney seeks to mend the relationship between the parties. An improved relationship is crucial to ensuring that the County's civil litigation matters are handled appropriately and do not result in dire financial and legal consequences to the County, its employees, and its citizens. For this reason, as well as the Board's previous representations that it has an interest in mediation, Plaintiff submits that the Court should Order the parties to attend mediation, pursuant to Rule 16(g).

DATED this 24th day of April 2009.

Ogletree, Deakins, Nash, Smoak & Stewart, P.C.

By /s/ L. Eric Dowell
L. Eric Dowell
Leah S. Freed
Alec Hillbo
2415 East Camelback Road, Suite 800
Phoenix, Arizona 85016
Attorneys for Plaintiff

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CERTIFICATE OF SERVICE

I hereby certify that on the 24th day of April 2009, I electronically filed the attached document.

And a COPY of the foregoing document was served by e-mail this same day on:

Honorable Donald Daughton
Maricopa County Superior Court
c/o Judge Mark F. Aceto
125 W. Washington, #309
Phoenix, AZ 85003

Thomas K. Irvine
Shughart, Thomson & Kilroy, P.C.
3636 N. Central Ave., Suite 1200
Phoenix, Arizona 85012
tirvine@stklaw.com

By: /s/G. S. Ready, PLS

7255640.1 (OGLETREE)

EXHIBIT 1



Maricopa County Attorney

ANDREW P. THOMAS

301 W. JEFFERSON, SUITE 800
PHOENIX, AZ 85003
www.maricopacountyattorney.org

April 6, 2009

PH. (602) 506-3411
TDD (602) 506-4352
FAX (602) 506-8102

An Open Letter to the People of Maricopa County Also Delivered through Counsel

The Honorable Max Wilson, Chairman
Maricopa County Board of Supervisors
301 West Jefferson, 10th floor
Phoenix, AZ 85003

Dear Chairman Wilson:

As you know, the Board of Supervisors and County Attorney's Office have been involved in litigation and related legal disputes since December, 2008. I am writing you to offer gestures of goodwill and to seek to resolve these differences in the interests of county taxpayers.

First, our office has referred the criminal case against indicted Supervisor Donald Stapley, Jr. to the Yavapai County Attorney's Office. Yavapai County Attorney Sheila Polk has agreed to accept the case. I am also referring to the Yavapai County Attorney the investigation related to the Maricopa County Superior Court Tower, as well as any current or future investigations or prosecutions involving the Maricopa County Board of Supervisors or county management.

Second, I propose that the Board and our office enter into mediation to try to resolve the legal differences between us. Civil counsel for our office will affirm this offer today in court. A successful resolution of these differences through an independent mediator might save Maricopa County taxpayers hundreds of thousands of dollars in legal fees.

I hope that these actions will help bring about a global resolution of the differences between us. Thank you for your consideration of these efforts.

Sincerely

Andrew P. Thomas
County Attorney

APT/ds

EXHIBIT 2



Maricopa County

Max W. Wilson
Board of Supervisors, District 4

301 West Jefferson Street
10th Floor
Phoenix, AZ 85005-2145
Phone: 602-506-7642
Fax: 602-506-4989
www.maricopa.gov

April 9, 2009

Andrew P. Thomas
Maricopa County Attorney
301 West Jefferson, Suite 800
Phoenix, AZ 85003

Dear Mr. Thomas:

Thank you for your letter dated April 6, 2009 in which you indicate your wish to engage in mediation in order to try to resolve the lawsuits you have filed against Maricopa County. As Chairman of the Maricopa County Board of Supervisors, I welcome your offer to meet with the five of us to discuss these matters.

Based on your previous public statements, we understand that you wish to continue to litigate these matters while engaging in mediation and, because of the important issues involved, we agree that the parties should not delay the legal proceedings while exploring the possibility of settlement.

Please call me at your earliest convenience so that we can begin preparations for what I hope will be meaningful discussions between you and the Board.

Sincerely,

A handwritten signature in black ink that reads "Max W. Wilson".

Max W. Wilson
Chairman, Maricopa County Board of Supervisors

EXHIBIT 3



Maricopa County Attorney

ANDREW P. THOMAS

301 W. JEFFERSON, SUITE 800
PHOENIX, AZ 85003
www.maricopacountyattorney.org

April 13, 2009

PH (602) 506-3411
TDD (602) 506-4352
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An Open Letter to the People of Maricopa County Also Delivered through Counsel

The Honorable Max Wilson, Chairman
Maricopa County Board of Supervisors
301 West Jefferson, 10th floor
Phoenix, AZ 85003

Dear Chairman Wilson:

Thank you for your response to my letter of April 6, 2009, and your shared interest in mediating the differences and disputes between our respective agencies. I look forward to entering into this process with you and the Board.

Since our differences continue to impact the citizens of Maricopa County, I hope and trust that we can likewise agree on the importance of selecting promptly a mediator who is mutually acceptable to begin this settlement and reconciliation process. In order to expedite this, I am suggesting several possible mediators below. Our office has not contacted these attorneys to determine if they would serve as a mediator; however, if any or all are acceptable to the Board, I am hopeful they will agree to serve in this capacity and I will cooperate with you in trying to retain them for this purpose. These individuals are listed below in alphabetical order:

Timothy Casey, Schmitt Schneck Smyth & Herrod
Lee Miller, Miller LaSota & Peters
Christopher Skelly, Scott & Skelly (*not currently on outside counsel list*)

I am confident that we both have a sincere desire to reach a settlement of our differences. I am convinced that the participation of a skilled mediator will be of meaningful assistance, and I look forward to working with you to arrange for this.

Sincerely,

Andrew P. Thomas
County Attorney