Nancy Markham v. City of Surprise, et al.
2:15-cv-01696-SRB

LODGED: PROPOSED

PLAINTIFF'S MOTION FOR A PRELIMINARY INJUNCTION AND MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT ATTACHED

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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ARIZONA

NANCY MARKHAM,

Plaintiff,

v.

CITY OF SURPRISE; MICHAEL FRAZIER in his individual and official capacities, and CHRISTOPHER TOVAR, in his individual capacity,

Defendants.

No. 2:15-cv-01696-SRB

PLAINTIFF'S MOTION FOR A PRELIMINARY INJUNCTION AND MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT ATTACHED

(ORAL ARGUMENT REQUESTED)

MOTION

Pursuant to Federal Rule of Civil Procedure 65, Plaintiff moves for a preliminary injunction:

1) Prohibiting Defendants from enforcing the Nuisance Policy against crime victims in rental properties for any alleged nuisance that is based on calls reporting or seeking police assistance regarding crime or on any criminal activity that is perpetrated against the tenant; and

2) Prohibiting Defendants from requiring the adoption of crime free lease provisions that permit and threaten eviction on the basis of criminal activity that is perpetrated against the tenant.

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiff Nancy Markham ("Ms. Markham") seeks a preliminary injunction to preclude Defendants from enforcing an unconstitutional policy that violates Ms. Markham's First Amendment rights to seek police assistance by compelling her landlord to pursue her eviction when she exercises her rights.[1] The enactment and enforcement of this policy causes an undue chilling effect on Ms. Markham and other tenants in Surprise who wish to exercise the fundamental rights to petition the government for redress of grievances and to free expression. Absent an injunction, the First Amendment rights of tenants in

[1] The instant Motion for Preliminary Injunction focuses on Defendants' violations of Ms. Markham's rights under the First Amendment to the United States Constitution, including the right to petition. As discussed in the accompanying Verified Complaint, Ms. Markham also seeks injunctive relief to prevent Defendants' threatened enforcement of the Nuisance and Crime Free Lease Sections of the Ordinance under the Fourteenth Amendment to the United States Constitution, their Arizona constitutional equivalents, federal and state statutory housing law, and on state preemption grounds. For the sake of judicial economy, Ms. Markham does not rely upon those additional bases for a preliminary injunction here.

Surprise to call the police to report incidents of crime or other emergency situations will continue to be chilled.

Defendants – the City of Surprise ("Surprise" or "the City"), Surprise chief of police Michael Frazier, and Surprise police officer Christopher Tovar – have enacted or enforced Article III of the Surprise Municipal Code, which includes §105-104 ("the Nuisance Property Section") and §105-106 ("the Crime Free Lease Section"). These two sections, hereinafter referred together as the Surprise "Nuisance Policy," authorize Defendants to penalize landlords and cause those landlords to remove their tenants from their homes if the tenants have called or required the assistance of law enforcement more than four times in thirty days, or if two crimes occurred at the rental unit at any time. This policy applies regardless of whether the tenant was the victim of the crime, had no part in or responsibility for crime committed by others at her home, or called the police in need of emergency assistance. The City anticipated and intended that the provisions of the Nuisance Policy would work in tandem to significantly deter calls to the police, which are constitutionally protected petitions and speech.

Defendants vigorously enforced the Nuisance Policy against Ms. Markham and her landlord on the grounds that police were called to her rental property ("the Property") to protect her from incidents of domestic violence. In the course of enforcing the Nuisance Policy, Defendants warned Ms. Markham's landlord that there had been numerous calls to police at the Property and threatened the landlord with penalties under the Nuisance Property Section unless the criminal problems there were "abated" to their satisfaction.

The Nuisance Policy provides a ready means for Defendants to compel such action. The Crime Free Lease Section requires landlords to adopt lease provisions that entitle them

to evict tenants whenever police respond to crime at a rental property. The Nuisance Property Section allows the imposition of penalties, including criminal prosecution, fines, and rental license revocation, against landlords who fail to pursue evictions in response to notice that their property has been the site of either four calls for police service or two crimes that "negatively impact[] the quality of life or threaten[] the safety and/or health of those in the area." The City's Nuisance Policy thus incentivizes and empowers landlords to proactively evict tenants upon a single call to police made by a tenant to report crime committed against her at a property.

The Surprise Police Department, in actions undertaken by Officer Christopher Tovar and under the direction and supervision of Police Chief Frazier, repeatedly pressured Ms. Markham's landlord and her property manager to abate the alleged nuisance at the Property by evicting Ms. Markham and her two sons from their home. At all times, Defendants knew and acknowledged that Ms. Markham was the victim of the domestic violence for which police had been summoned. Defendants proceeded, undeterred, to seek the removal of Ms. Markham from the Property until Plaintiff's counsel interceded.

Defendants' enforcement of the Nuisance Policy directly burdens and causes an undue chilling effect on tenants in Surprise, including Ms. Markham, who wish to exercise their First Amendment right to seek police assistance. Ms. Markham was threatened with eviction pursuant to the Nuisance Property Section on the basis of her calls to the police to report and request protection from crime committed against her. Although Ms. Markham has moved to another rental property, she still lives in Surprise and remains subject to the Nuisance Policy. As a result, Ms. Markham is unable to call the police, for fear that she will again face eviction, either in response to a threatened nuisance citation at her new home or

as a proactive means by a landlord who anticipates such a city response in the future. Surprise can articulate no compelling or even legitimate interest furthered by this policy of punishing tenants for crime committed against them and restricting their rights to request police aid in an emergency.

A preliminary injunction is necessary to vindicate the First Amendment rights of tenants in Surprise, including Ms. Markham, and is warranted under the circumstances presented in this case. First, Ms. Markham is likely to succeed on the merits of her First Amendment claim given the well-established constitutional right to petition the government for redress of grievances and to freedom of expression. Defendants' Nuisance Policy has directly penalized and chilled the exercise of these rights by Ms. Markham and other residents in Surprise by threatening penalties on the basis of calls to police or any activity that would lead to a police response. Second, Ms. Markham and other Surprise residents are irreparably harmed by Defendants' actions. The loss of First Amendment rights constitutes irreparable harm as a matter of law; this loss is continuing and causes Ms. Markham and other victims of crime in Surprise to choose between foregoing exercise of their fundamental rights or facing eviction. Third, the lawful exercise of constitutional rights presumptively serves the public interest, and the equities favor the party exercising those rights. Here, in addition, granting injunctive relief serves the public interest by ensuring that tenants in Surprise will be able to report incidents of crime and request police assistance, increasing accountability of perpetrators of crime such as domestic violence, and enhancing the safety of crime victims and the community as a whole.

Failure to grant a preliminary injunction would stifle the First Amendment rights of tenants in Surprise and reinforce the message that Surprise sends loud and clear to victims

of domestic violence through its Nuisance Policy – keep incidents of abuse secret or risk eviction. The court should issue an injunction before the next crime victim faces the false choice of staying silent about crime committed against her or losing her home.

II. STATEMENT OF FACTS

A. The Nuisance Policy

In 2010, Defendants adopted and have since maintained and enforced the current version of the Nuisance Policy, Article III §§105-104, 105-106 of the Surprise Municipal Code, against landlords and tenants in Arizona.

The Nuisance Policy includes the Nuisance Property Section, §105-104, which declares a property to be a nuisance upon the occurrence of the following "offenses," among others: 1) four or more calls for police to the same service address or unit within a 30-day period relating to commission of crime under Arizona or federal law or otherwise reporting criminal activity; or 2) commission of any two or more crimes under Arizona or federal law on the property that "negatively impacts the quality of life or threatens the safety and/or health in the area." Compl. ¶40. The Nuisance Property Section authorizes Surprise to revoke or suspend a landlord's business license and/or charge the landlord with a civil or criminal violation if, after receiving notice that a tenant allows any nuisance offense to occur at the property, the landlord fails to take steps against the tenant to effectively abate the alleged nuisance violation. A companion Crime Free Lease Section of the Nuisance Policy, §105-106, requires all owners, managers, or leasing agents in Surprise to incorporate a lease provision that, on information and belief, permits them to evict tenants upon a single occurrence of any criminal activity at the property. The Nuisance Policy thereby requires landlords to adopt a lease provision that provides both a ready

abatement measure and a proactive means to avoid any penalty under the Nuisance Property Section – namely, the eviction of any tenant residing in an alleged nuisance property or who has called police to report crime and request assistance.

Neither the Nuisance Property Section nor the crime free lease provisions required by the Crime Free Lease Section distinguish between perpetrators and victims of crime or between those who called the police frivolously and those who were in need of emergency assistance. By mandating that landlords be prepared to take action against tenants whenever police respond to crime at the rental property and then imposing penalties on landlords if they fail to take action, Surprise established a statutory system that pressures landlords to penalize any instance of crime occurring at the property, even when the tenant was the victim of the criminal acts. While the Nuisance Property Section purports to require that tenants "allow" the alleged nuisance offenses to occur on their property, and the lease provisions mandated by the Crime Free Lease Section require that any penalized crime be committed "within the tenant's sphere of influence," the emptiness of these supposed limitations are borne out by Defendants' aggressive enforcement of the Nuisance Policy against Ms. Markham. She called the police to report violent crime that, while perpetrated by someone known to her, was beyond her control. Markham Decl. ¶8.

The Nuisance Policy has several direct, adverse effects on Ms. Markham and other victims of crime in Surprise. Before the Nuisance and Crime Free Lease Sections, as currently amended, were jointly passed in 2010, Surprise, including the City Council and Mayor, were repeatedly warned by interested stakeholders that these provisions could be used to penalize residents who were victims of crime, including domestic violence victims, and would encourage discrimination by landlords. Compl. ¶¶52-57, 62-67. Nevertheless,

the City Council passed the current Nuisance Policy and took no steps to ensure that the rights and safety of victims of domestic violence and persons in need of emergency assistance were protected. Compl. ¶61.

Moreover, Surprise recognized and demonstrated its intent that the Nuisance Property and Crime Free Lease Sections would work in tandem to deter tenants from calling police. Compl. ¶¶70-73. For example, on its website, Surprise promotes its crime-free housing program, of which the Crime Free Lease Section requirement is "one of the key components," and clearly articulates its intent to deter police calls, touting "[m]easurable results in the reduction of police calls for service for properties participating . . . have been seen nation wide. . . up to a 90% reduction. . .." Compl. ¶72. Surprise also encouraged landlords to evict tenants as a means of abating criminal activity or police responses to the property, even suggesting that this could be a proactive response to a single instance of crime. Compl. ¶73.

The statutory limits on tenants' calls to police in turn strips domestic violence victims – some of the most vulnerable citizens in the community – of police protection, silences them from reporting acts of violence against them, and can empower their abusers to continue to perpetrate acts of violence at their victims' homes. Arnold Decl. ¶22; Markham Decl. ¶¶49-55. Pursuant to the Nuisance Policy, victims of violence are essentially forced to choose between eviction and calling for help. It is well-documented that domestic violence is a primary cause of homelessness and housing instability for women and children. Arnold Decl. ¶¶22, 40. Moreover, in most jurisdictions, domestic violence makes up the primary category of calls police departments receive. Andrew R. Klein, Nat'l Inst. Of Justice, Practical Implications of Current Domestic Violence Research:

For Law Enforcement, Prosecutors, and Judges (June 2009), http://www.nij.gov/topics/crime/intimate-partner-violence/practical-implications-research/Pages/welcome.aspx. The Nuisance Policy exacerbates the preexisting challenges that victims of domestic violence already face in accessing police protection and maintaining secure housing by encouraging their eviction on the basis of violence committed against them. Arnold Decl. ¶42.

B. Episodes of Domestic Violence

Between March of 2013 and March of 2015, Ms. Markham rented the Property, where she lived with her two sons. As required by the Crime Free Lease Section, Ms. Markham's lease included a "Crime-Free Provision" that stated that "[t]enant, occupants, family, guests, invitees, or other persons under the Tenant's control shall not engage in . . . any criminal activity, including . . . any act of violence or threats of violence . . . threatening or intimidating, unlawful discharge of firearms, or assault" and that any violation of this provision would be a material and irreparable violation of the lease. Compl. ¶77. While living at the property, Ms. Markham was the victim of domestic violence that was perpetrated by her former boyfriend, R.V. Markham Decl. ¶8. These included violent attacks and threats to kill. Ms. Markham could not control R.V. when he was violent towards her. Markham Decl. ¶8.

As a result, Ms. Markham called the police to report the abuse and seek police protection on several occasions from March through August 2014. Ms. Markham never called the police to the Property for any reason other than domestic violence, except for one occasion where she accidentally dialed 911 and hung up. She was not arrested for or charged with any crime at the Property. In July and August 2014, Ms. Markham's home

was the subject of four calls to the police, all of which related to domestic violence committed against her. Compl. ¶¶ 90-108. Police also charged R.V. for crimes of domestic violence at the Property on more than two occasions. These included: 1) a charge of aggravated assault on March 13, 2014, after R.V. put his hands around Ms. Markham's neck, choked her repeatedly, and punched her in the mouth; 2) charges of disorderly conduct with a deadly weapon and possession of drug paraphernalia on July 31, 2014, after R.V. brandished a gun in Ms. Markham's home and police found syringes on his person after his arrest; and 3) charges of assault, assaulting a police officer, and obstructing justice on August 20, 2014, when R.V. brandished a knife in Ms. Markham's home, and police responded to arrest him. Compl. ¶¶85-88, 98-105, 128-130.

Despite her property being the site of both the triggering number of calls to police and instances of criminal activity, at no point in any of the responses to the Property did any police officer mention the Nuisance Policy or its Nuisance Property and Crime Free Lease Sections to Ms. Markham or inform her that repeated calls to the police or instances of criminal activity at the Property could result in her eviction or other penalty.

C. Defendants' Enforcement of the Nuisance Policy Against Ms. Markham

Under the direction of Defendant Frazier, the Surprise Police Department initiated its enforcement of the Nuisance Policy against Ms. Markham through contact by Defendant Tovar to Ms. Markham's landlord on August 4, 2014. Although the Nuisance Property Section defines a nuisance as a situation where a tenant "allowed" a nuisance offense, Defendants did not exempt Ms. Markham from enforcement, despite their knowledge that police had only responded to her home regarding incidents of domestic violence in which she was the victim.

Officer Tovar informed Ms. Markham's landlord and the property manager that "serious criminal problems" were occurring at Ms. Markham's rental home, which was the subject of "numerous calls for various incidents." Compl. ¶¶111, 115. He shared a list of calls for police service from the Property and warned that the Property may be deemed a criminal nuisance under the Nuisance Property Section if the problems were not corrected. Compl. ¶¶111-12, 114.

While Officer Tovar acknowledged and informed the property manager that Ms. Markham "was the listed victim in each of these cases," at no point did Defendant Tovar, Defendant Frazier, or anyone else at the Surprise Police Department directed by Chief Frazier, instruct or advise the property manager or landlord that Ms. Markham should not be the subject of negative action or penalty on the basis of domestic violence or related police calls. Compl. ¶¶118, 121. Instead, Officer Tovar pushed for Ms. Markham's removal by discussing the possible legal grounds for evicting her from the residence with the property manager. Compl. ¶121.

On August 14, 2014, Chief Frazier received a letter from some of Ms. Markham's neighbors that blamed Ms. Markham for the police responses to domestic violence at the Property and demanded action against her. Defendant Frazier ordered that someone at his department "take ownership of this issue . . . [and] keep [him] apprised." Compl. ¶¶122-124. He then assured the neighbors that police "have a strategy in place that should result in a permanent solution, but it is still a work in progress." Compl. ¶125.

As part of the "strategy" put in place by Defendant Frazier, and in response to the direct contacts and threats by Defendant Tovar, the property manager told Ms. Markham on August 18, 2014 that "[t]he Surprise P.D. has put the owner in a position where they can no

longer allow you to stay as a tenant." Markham Decl. ¶30. The property manager told Ms. Markham that if she did not voluntarily leave, the landlord would pursue her eviction. Markham Decl. ¶31.

1. Defendants Push for Eviction and Discourage Any Alternative

From late August through September 2014, Defendant Tovar continued to pressure the landlord and property manager to take action against Ms. Markham. On August 21, 2014, he inquired whether attempts to remove Ms. Markham from the property were successful, informed the landlord and property manager that Ms. Markham had again called 911 regarding domestic violence on August 20, 2014, and described the neighbors' letter. Compl. ¶¶131, 133-135.

On August 26, 2014, Ms. Markham responded to the property manager's threat of eviction, assuring him that the problems at the Property had been resolved because she had obtained a protection order against R.V., and he was now incarcerated. Markham Decl. ¶36. The property manager was receptive and requested that Ms. Markham send him a police report to verify this, indicating his willingness to work matters out and not require Ms. Markham and her children to leave their home. Markham Decl. ¶37.

When, on September 2, 2014, Defendant Tovar again contacted the property manager to confirm that he was proceeding to evict Ms. Markham, the property manager asked Tovar to verify that R.V., the cause of the disturbances, had been arrested and served with a protection order. Compl. ¶¶138-140. While Officer Tovar confirmed these facts, he indicated that this was not an adequate solution and continued to urge that the property manager evict Ms. Markham by suggesting that her eviction could be pursued on an alternative basis. Compl. ¶¶141-145.

Despite Officer Tovar's coercive tactics, the property manager recommended to the landlord that Ms. Markham be allowed to stay. Compl. ¶146. The landlord emailed Officer Tovar on September 8, 2014, for feedback on the property manager's recommendation and Officer Tovar reported having a phone conversation with the landlord that same day. Compl. ¶¶147-148. His report indicates that he did not disclaim his previous statements to the landlord and property manager, urging Ms. Markham's eviction. Nor did he clearly state that action should not be taken against Ms. Markham on the basis of domestic violence committed against her.

2. Eviction Notice

On September 9, 2014, the landlord directed the property manager to move forward with evicting Ms. Markham. Compl. ¶149. On September 12, 2014, the property manager told Ms. Markham that she would be evicted in the next month if she failed to move before then. Markham Decl. ¶39. This threat was immediate and actionable, for, under Arizona Landlord and Tenant Law, where there is a breach of lease through criminal acts such as threatening, intimidating, and assault, the landlord may deliver a notice for immediate termination of the rental agreement. A.R.S. §33-1368. In response to Ms. Markham's repeated explanation that "[t]here was no criminal activity going on at [her] home, it was a domestic violence issue and [the abuser] was not living at the home," the property manager replied that, in the face of the threats from the City and under the Nuisance Policy, he had no choice. Compl. ¶152; Markham Decl. ¶¶40-41.

D. Notice to Surprise

Ms. Markham, through her undersigned counsel, sent Defendants a letter on October 2, 2014, notifying Defendants of the unconstitutionality of their actions under the Nuisance

Policy and demanding that Defendants cease enforcement of the Nuisance Property Section against Ms. Markham and other tenants in Surprise. Compl. ¶172. Defendants responded by denying they had taken any action against Ms. Markham or the landlord to abate a "nuisance" at the Property. Compl. ¶173. Defendants did not respond to the request to suspend enforcement and made no assurance that the Nuisance Property Section would not be enforced against Ms. Markham or her landlord at a later date, or that they would not again take action against Ms. Markham based on reported crimes or calls for police assistance. Compl. ¶174.

E. The Nuisance Policy Continues to Violate Ms. Markham's Constitutional Rights

The continued existence of the Nuisance Policy creates a chilling effect on Ms. Markham's ability to call the police or seek law enforcement assistance in the future, even when she fears that her safety is threatened. Markham Decl. ¶¶49-52.

On March 1, 2015, Ms. Markham moved into a new rental property in Surprise. Markham Decl. ¶¶5, 48. She remains subject to penalty, pursuant to the Nuisance Policy, upon any further calls to the police to report crime or seek police services. Pursuant to the Crime Free Lease Section, Ms. Markham's new lease includes a nearly identical crime-free provision, which empowers her new landlord to act against her in response to warnings or threats from the Surprise Police department or the mere threat of the existence of the Nuisance Policy. Markham Decl. ¶52.

Due to the continued existence of the Nuisance Policy and her experience with Surprise officials' aggressive enforcement of it against her, Ms. Markham's freedoms of petition and speech have been directly burdened, chilled, and she suffers an ongoing loss

of her First Amendment rights to petition the government and freedom of expression.

III. ARGUMENT

A preliminary injunction is warranted if a plaintiff shows the likelihood of success on the merits and her suffering of irreparable harm, and the balance of equities and public interest favor an injunction. *Winter v. Natural Resources Defense Council, Inc.*, 555 U.S. 7, 24 (2008). The Ninth Circuit has adopted a "sliding scale" approach. If a plaintiff can show that there are at least serious questions going to the merits, then a preliminary injunction may issue if the balance of the hardships tips sharply in plaintiff's favor and the other two *Winter* factors are satisfied. *Alliance for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1134-35 (9th Cir. 2011).

Ms. Markham is entitled to a preliminary injunction because Defendants' enactment and enforcement of the Nuisance Policy unconstitutionally burdened, and now chills, her First Amendment rights to petition the government and to freedom of expression, causing irreparable harm. The balance of equities and the public interest always favor protecting freedoms of petition and speech, and the public interest also favors blocking policies that discourage reporting crime to the police, undermine accountability of perpetrators of domestic violence, increase homelessness, and threaten the safety of domestic violence victims, crime victims, and the community as a whole. Failure to grant an injunction would send a frightening message to tenants in Surprise: reporting crime committed against you in your home, including domestic violence, can result in eviction.

The Nuisance Policy should be enjoined to ensure that: a) Ms. Markham may seek police assistance without fear of penalty to herself or her landlord; b) Ms. Markham and her sons are not evicted for exercising their First Amendment rights; and c) no other crime

victim renting property in Surprise is penalized for seeking or requiring police assistance in an emergency.

A. Ms. Markham Is Likely to Prevail on the Merits of Her First Amendment Claim

Ms. Markham will likely succeed on the merits of her First Amendment claim that the Nuisance Policy unconstitutionally restricts her rights to petition the government and to freedom of speech.

The right to petition the government for redress of grievances is fiercely protected under the First Amendment (applicable to the states and their municipalities through the Fourteenth Amendment) and its Arizona equivalent. *See, e.g., BE & K Const. Co. v. NLRB*, 536 U.S. 516, 524 (2002) (holding the right to petition is "one of the most precious of the liberties safeguarded by the Bill of Rights); *United Mine Workers of Am., Dist. 12 v. Illinois State Bar Ass'n*, 389 U.S. 217, 222 (1967) (describing the right to petition as "among the most precious of the liberties safeguarded by the Bill of Rights. . . intimately connected both in origin and in purpose, with the other First Amendment rights of free speech and free press"); *McDonald v. Smith*, 472 U.S. 479, 482 (U.S. 1985) (holding that "the right to petition is cut from the same cloth as the other guarantees of that Amendment, and is an assurance of a particular freedom of expression.").

Calls to the police to report information or request a police response constitute legitimate exercises of the First Amendment right to petition. *See, e.g., Borough of Duryea v. Guarnieri*, 131 S. Ct. 2488, 2498 (2011) (holding that the right to petition is "not limited to petitions lodged under formal procedures"); *Eastern R.R. Presidents Conference v. Noerr Motor Freight, Inc.*, 365 U.S. 127, 133, 139 (1961) (holding that, absent illegal purposes, a

state actor may not penalize a person for exercising his/her right to petition the government and influence law enforcement authorities); *see also United Mine Workers v. Pennington*, 381 U.S. 657, 670 (1965) (holding that a person may not be held liable for "a concerted effort to influence public officials regardless of intent or purpose"); *Cal. Motor Transp. Co. v. Trucking Unlimited*, 404 U.S. 508, 510 (1972) (holding that the First Amendment right to petition is not limited to just influencing the legislative process but extends to every governmental body); *White v. Lee*, 227 F.3d 1214, 1231 (9th Cir. 2000) (holding the right to petition "applies equally in all contexts").

Accordingly, each call that tenants in Surprise make to the police truthfully reporting incidents of domestic violence or any other criminal activity is protected by the First Amendment's right to petition clause. *See, e.g., Meyer v. Bd. of County Comm'rs*, 482 F.3d 1232, 1243 (10th Cir. 2007) (holding that reporting physical assault, reporting a danger of a commission of crime, and filing a complaint with law enforcement are protected under the First Amendment); *Forro Precision, Inc. v. Int'l Bus. Machs.*, 673 F.2d 1045, 1060 (9th Cir. 1982) (holding that the right to petition is integral to law enforcement's ability to enforce the laws of the United States); *Doe v. San Mateo County*, Nos. C 07–05596 SI, 2009 WL 735149, at *6 (N.D. Cal. Mar.19, 2009) (holding that filing a police report to complain about criminal activity – in this case police misconduct – is constitutionally protected speech); *Mazzeo v. Gibbons*, 649 F. Supp. 2d 1182, 1194 (D. Nev. 2009) (holding that plaintiff stated a retaliation claim under the First Amendment right to petition by alleging that filing a police report about an attempted rape was the but-for cause of Defendant police officers' retaliatory action against her); *United States v. Hylton*, 558 F. Supp. 872, 874 (S.D. Tex. 1982), *aff'd* 710 F.2d 1106 (5th Cir. 1983) ("There can be no

doubt that the filing of a legitimate criminal complaint with local law enforcement officials constitutes an exercise of the first amendment right.").

Calls to police to report incidents of criminal activity or seek police assistance are also protected on free expression grounds when the government disadvantages or penalizes that form of speech. *Turner Broad. Sys., Inc. v. F.C.C.*, 512 U.S. 622, 642 (1994) (stating that this requirement "appl[ies] the most exacting scrutiny to regulations that suppress, disadvantage, or impose differential burdens upon speech because of its content"). This is true whether the government restriction targets specific content on its face or whether, in its operation or effect, it singles out or sweeps up constitutionally protected speech for control or penalty. *Lind v. Grimmer*, 30 F.3d 1115, 1117 (9th Cir. 1994) (citing *Ward v. Rock Against Racism*, 491 U.S. 781, 791 (1989)) (government regulation of expressive activity is content-based if the state cannot "justify it without reference either to the content of the speech it restricts or to the direct effect of that speech on listeners"); *Thornhill v. State of Alabama*, 310 U.S. 88, 97-98 (1940) (holding that a penal statute "which does not aim specifically at evils within the allowable area of State control but, on the contrary, sweeps within its ambit other activities that in ordinary circumstances constitute an exercise of freedom of speech . . . [and] which readily lends itself to harsh and discriminatory enforcement by local prosecuting officials, against particular groups deemed to merit their displeasure, results in a continuous and pervasive restraint on all freedom of discussion that might reasonably be regarded as within its purview").

Ms. Markham and other residents of Surprise thus have a First Amendment right to engage in communications with law enforcement free from express or effective limitations on the subject matter or communicative impact of that speech, including communications to

report crime at a property, request police services, or relay other information the effect of which would foreseeably lead to a police response. *See, e.g.*, *Lind*, 30 F.3d at1118-19 (9th Cir. 1994) (holding that a state's justification for a statute – deterring unmeritorious complaints and public inquiries to the government – was invalid because it "stemm[ed] from the direct communicative impact of speech"); *Coates v. City of Cincinnati*, 402 U.S. 611, 614 (1971) (holding that a city ordinance was unconstitutionally broad where the city could have achieved the same end through penalties "directed with reasonable specificity toward the conduct to be prohibited," but instead adopted an ordinance that "authorize[d] the punishment of constitutionally protected conduct.").

1. The Surprise Nuisance Policy Burdens and Creates an Undue Chilling Effect on the Constitutionally Protected Right to Request Police Aid

The enactment and enforcement of the Surprise Nuisance Policy directly penalizes and unduly chills the First Amendment right of tenants in Surprise, including Ms. Markham, to report crime to police and seek law enforcement protection. *Broadrick v. Oklahoma*, 413 U.S. 601, 612 (1973) (holding that Plaintiffs may challenge the impact of a policy on others because "the statute's very existence may cause others not before the court to refrain from constitutionally protected speech or expression."); *see also United States v. Stevens*, 559 U.S. 460, 473 (2010) (holding that "a law may be invalidated as overbroad if a substantial number of its applications are unconstitutional, judged in relation to the statute's plainly legitimate sweep.") (internal quotation marks omitted).

The Nuisance Policy pressures and coerces landlords to pursue eviction on the basis of any calls to the police that report criminal activity or lead police officers to respond to crime at a property, regardless of whether the tenant was the victim of that crime. Arnold

Decl. ¶58. Its Nuisance Property Section provides that it is a violation, subject to penalty, "to rent or continue to rent . . . to a tenant when the [landlord] knew or becomes aware that the tenant allows any [nuisance] offense to occur." For these "offenses," defined as four calls to police in 30 days or two instances of criminal activity at the property, the Nuisance Policy authorizes Defendants to penalize the landlord if he or she does not abate the alleged nuisance. Its companion Crime Free Lease Section provides both a ready abatement method and a proactive means to avoid such penalty, even before receiving any notice of nuisance conduct by requiring all leases to include a provision that permits landlords to evict tenants upon a single occurrence of crime at a property.

Surprise anticipated and intended that these Nuisance Property and Crime Free Lease Sections work in tandem to deter tenants from seeking police assistance at their rental properties. *See Sloman v. Tadlock*, 21 F.3d 1462, 1469 (9th Cir. 1994) (finding a violation of plaintiff's First Amendment rights where a defendant police officer's actions, though linked to legitimate official powers to warn, cite, and arrest, deterred or chilled plaintiff's exercise of his First Amendment rights "and such deterrence was a substantial or motivating factor in [the defendant's] conduct in issuing citations and warnings to him."); *Mendocino Envtl. Ctr. v. Mendocino Cnty.*, 192 F.3d 1283, 1300-01 (9th Cir. 1999) (intent to inhibit speech. . . can be demonstrated either through direct or circumstantial evidence); *Gibson v. United States*, 781 F.2d 1334, 1338 (9th Cir. 1986) ("State action designed to retaliate against and chill political expression strikes at the heart of the First Amendment."). Materials that the Surprise Police Department uses to promote the Nuisance Policy illustrate an overall goal of reducing calls to the police.

The Nuisance Policy thus predictably chills crime victims' First Amendment right to

seek police assistance for fear that any calls to police or speech that could result in a police response will be deemed a nuisance offense or violation of a crime free lease provision and lead to eviction. Arnold Decl. ¶¶22, 29, 31-34; *Mendocino Environmental Ctr*. 192 F.3d at 1300 (holding that government officials violate First Amendment rights when their acts "would chill or silence a person of ordinary firmness from future First Amendment activities"); *Clairmont v. Sound Mental Health*, 632 F.3d 1091, 1100 (9th Cir. 2011) (internal citations and quotation marks omitted) ("First Amendment protection does not depend on whether the governmental action is direct or indirect. Where the government may not prohibit certain speech, it also may not threaten to exert economic pressure . . . in order to produce a result which [it] could not command directly."); *White*, 227 F.3d at 1228 (9th Cir. 2000) (quoting *Bantam Books, Inc. v. Sullivan*, 372 U.S. 58, 67, 83 S.Ct. 631, 9 L.Ed.2d 584 (1963)) (finding a violation of plaintiff's right to petition and to free speech through "[i]nformal measures, such as 'the threat of invoking legal sanctions and other means of coercion, persuasion, and intimidation'. . .").

This fear is real and palpable. Defendants doggedly pursued enforcement of the Nuisance Policy against Ms. Markham and her landlord on the basis of her repeated calls to the police to report incidents of domestic violence at the Property. Though the Surprise Police Department was aware that Ms. Markham was the victim of this crime, Officer Tovar repeatedly pressured her landlord to abate the alleged nuisance by removing Ms. Markham from the property and discouraged any alternative abatement method. As a result of Defendants' threatened penalties and coercive tactics, Ms. Markham's landlord directed the property manager to move forward with an eviction against her. Ms. Markham protested the eviction, explaining that she was the victim of the alleged nuisance activity,

which was actually domestic violence perpetrated against her, and that the abuser who caused the problem had been incarcerated and barred from her home. However, the property manager told her that he had no choice; the action was coming from the City. Defendants thus directly penalized Ms. Markham on the basis of calls to police to engage in protected conduct, resulting in loss of rights, safety, and great emotional distress.

While Ms. Markham's landlord relented in seeking Ms. Markham's eviction when Plaintiff's counsel interceded, Defendants have made no assurance that the Nuisance Policy would not be enforced against Ms. Markham or her landlord at a later date or that they would not again take action against Ms. Markham based on 911 calls or police responses relating to domestic violence. The continued existence of the Nuisance Policy has had a chilling effect on Ms. Markham's ability to call the police to report crime or seek law enforcement assistance in the future. Ms. Markham now fears that communications to the police, even to report immediate threats to her safety, will once again place her at risk of eviction. Markham Decl. ¶53. Accordingly, the threat of Defendants' enforcement of the Nuisance Policy causes an ongoing loss and undue chilling effect on Ms. Markham's First Amendment rights to petition and to freedom of expression.

When the government restricts petition or speech, as done by Defendants' Nuisance Policy and its enforcement, it has the burden of proving the constitutionality of its actions. *United States v. Playboy Entm't Grp., Inc.*, 529 U.S. 803, 816 (2000). That cannot be done, for Defendants are unable to articulate any legitimate interest in punishing tenants for crime committed against them and restricting their rights to request police aid in an emergency. The Nuisance Policy's burden on the expressive activity is thus prohibited by every applicable judicial test. Here, Defendants are pursuing illegitimate ends by enforcing

policies that penalize crime victims like Ms. Markham for seeking police assistance to ensure their safety; there is no rational basis for such actions.

2. The Nuisance Policy Is Subject to the Greatest Scrutiny

The Nuisance Policy is subject to strict scrutiny review, as it both infringes on the First Amendment right to petition the government by reporting crime or requesting police assistance and establishes content-based limits on communications involving law enforcement, in violation of the First Amendment right to freedom of expression. *See, e.g.*, *Gibson v. Fla. Legislative Investigation Comm.*, 372 U.S. 539, 546 (1963) ("[I]t is an essential prerequisite to the validity of an investigation which intrudes into the area of constitutionally protected rights of speech, press, association and petition that the State convincingly show a substantial relation between the information sought and a subject of overriding and compelling state interest"); *Reed v. Town of Gilbert, Ariz.*, 135 S. Ct. 2218, 2222 (2015) ("Whether laws define regulated speech by particular subject matter or by its function or purpose, they are subject to strict scrutiny.").

To justify infringement of either the right to petition or to free speech, Defendants must demonstrate that the Nuisance Policy serves a compelling governmental interest and that it is the least restrictive means to further such an interest. *See, e.g., Wayte v. U.S.* 470 U.S. 598, 611(1985) ("Although the right to petition and the right to free speech are separate guarantees, they are related and generally subject to the same constitutional analysis."); *Meyer v. Grant*, 486 U.S. 414, 424-25 (1988) (holding that the burden a State must overcome when infringing First Amendment rights is "well-nigh insurmountable"); *cf. Borough of Duryea*, 131 S. Ct. at 2495 (noting that the Right to Petition may extend further than the right to speak "in cases where the special concerns of the Petition Clause would

provide a sound basis for a distinct analysis; and if that is so, the rules and principles that define the two rights might differ in emphasis and formulation."). Defendants are unable to satisfy either requirement.

There is no compelling interest that could justify punishing crime victims for reporting crime committed against them or restricting their ability to request police aid in an emergency. Indeed, the Nuisance Policy's restrictions run counter to basic government functions and undermine fundamental municipal goals of public welfare and safety. The Nuisance Policy directly contradicts governmental interests established in Arizona state law, which prohibits landlords from limiting or imposing penalties on a tenant's recognized "right to summon a peace officer or other emergency assistance in response to an emergency." A.R.S. §33-1315(A)(4), (5). Discouraging crime victims from seeking emergency assistance from the police is not a legitimate public goal.

The Nuisance Policy's imposition of penalty upon calls to the police or police responses, regardless of whether a tenant reported being the victim of a crime or urgently required police assistance, authorizes Defendants to penalize crime victims for the crime perpetrated against them. This predictably stops citizens of Surprise from reporting criminal activity, even when they are facing imminent threat of violence or require police assistance in an emergency. Arnold Decl. ¶¶56-58. It consequently places all tenants in Surprise at enhanced risk and undermines accountability for individuals who perpetrate crime. Arnold Decl. ¶55.

The Nuisance Policy has a further predictable, negative impact on an already vulnerable population: domestic violence survivors. There is ample evidence that the kind of penalties imposed by Surprise harm domestic violence victims in myriad ways, including

by penalizing them for the abuse they experience, establishing significant barriers to reporting violence perpetrated against them, emboldening perpetrators of violence, and forcing victims to face escalating violence in silence. Arnold Decl. ¶¶70-71. The Nuisance Policy's limit on survivors' ability to call police conflicts with law enforcement's best practices, undercuts efforts to hold abusers accountable, and runs counter to other government policies that are intended to address domestic violence. Arnold Decl. ¶29. This, in turn, undermines core societal interests in protecting the physical safety of domestic violence victims in Surprise and in preserving their fundamental First Amendment freedoms. *See, e.g.*, *United States v. Lippman*, 369 F.3d 1039, 1044 (8th Cir. 2004) (holding that protecting the physical safety of domestic violence victims is a compelling government interest recognized by Congress and multiple Courts of Appeals), *cert. denied*, 543 U.S. 1080 (2005); *United States v. Sanchez*, No. CR09-1125-FRZ-GEES, 2009 WL 4898122, at *3 (D. Ariz. Dec. 11, 2009) (holding that reducing domestic violence is a compelling government interest); *Meyer v. Bd. of County Comm'rs*, 482 F.3d at 1243 (holding that reporting incidents of domestic violence was "one of the most basic" exercises of the First Amendment right to petition).

Accordingly, Defendants cannot show that the Nuisance Policy is consistent with any government interest, let alone serves a compelling one. *Arizona Dream Act Coalition v. Brewer*, 757 F.3d 1056 (9th Cir. 2014) (citing *City of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432, 446 (1985)) (holding that when a policy's "relationship to an asserted goal. . . is so attenuated as to render the distinction arbitrary or irrational,' [it] is not likely to withstand rational basis review."). It is arbitrary and irrational that Defendants would seek to reduce criminal activity by deterring crime victims from seeking police assistance.

The Nuisance Policy and its failure to differentiate between victims and perpetrators of crime is strikingly broad, and its imposition of penalty upon reports of crime, requests for police assistance, and any other petition or speech that would lead to a police response necessarily burdens a significant amount of protected petition and speech. *See, e.g.*, *White*, 227 F.3d at 1237 (9th Cir. 2000) (holding that defendants violated the first amendment rights to petition and to freedom of expression where their actions "far exceeded what was reasonable for the purpose" they gave, and that "[i]t is axiomatic that when the actions of government officials so directly affect citizens' First Amendment rights, the officials have a duty to take the least intrusive measures necessary to perform their assigned functions."); *Coates*, 402 U.S. at 614 (holding that a city ordinance was unconstitutionally broad where, although it encompassed conduct within the city's constitutional power to prohibit, the city was able to achieve the same end "through the enactment and enforcement of ordinance directed with reasonable specificity toward the conduct to be prohibited" and the challenged ordinance "authorize[d] the punishment of constitutionally protected conduct."); *Davenport v. City of Alexandria, Va.*, 748 F.2d 208, 210 (4th Cir. 1984) (rejecting asserted safety interests based on factual findings that the City's total ban on street performances "is much more broad than is necessary to satisfy any interest in public safety the city has [and thus] there has been shown no safety interest substantial enough to outweigh plaintiff's First Amendment interests.").

Nothing in the Nuisance Policy protects Ms. Markham and other tenants when they exercise their First Amendment right to call the police to report crime or seek police assistance. Although the Nuisance Policy purports to base any penalty on a determination that a tenant "allow" any offense to occur or that the crime was somehow within a tenant's

"sphere of influence," it is clear from Defendants' enforcement against Ms. Markham that this supposed exception is devoid of meaning. In this case, the triggering events for enforcing the Nuisance Policy against Ms. Markham were instances of domestic violence perpetrated against her and calls to police to report them. Defendants, acting pursuant to the Nuisance Policy, had no concern for the circumstances of the call or police response. It was of no consequence to Defendants that Ms. Markham was the victim of crimes reported, or that there was no finding – nor could there have been – that she 'allowed' or was otherwise responsible for the threats to her safety. As the target, Ms. Markham was not in control of the actions of her abuser. Markham Decl. ¶8; Arnold Decl. ¶¶49-50. The failure of Defendants to give weight to this key fact in assessing alleged nuisance offenses at the property demonstrates the complete absence of any effective protections for victims of crime in these provisions. *See, e.g., Thornhill*, 310 U.S. at 100 (finding that limiting language that does not "in any effective manner restrict the breadth of the regulation" will not adequately exempt protected First Amendment speech). Indeed, the one means that Ms. Markham did have to try to influence R.V.'s conduct – calling the police – is the very petition and speech that Defendants target and chill. In addition to the direct penalties it imposes, the Nuisance Policy, as enforced by Defendants, incentivizes landlords to take steps against any tenant who even arguably engages in the prohibited communications to police, such as by calling 911 a single time to report a crime against him or her or because of a crime occurring in the unit even if the tenant had no involvement. Compl. ¶73; Arnold Decl. ¶¶49, 58.

The Nuisance Policy thereby unconstitutionally chills Ms. Markham's rights to petition the government and to free expression under the First Amendment and withers

under strict scrutiny review. Indeed, its imposition of penalties on crime victims for reporting crime against them or engaging in speech leading to a police response undermines basic municipal goals of safety and security, is irrational, and cannot be supported at any level of judicial review. Ms. Markham thus is likely to prevail on the merits of her First Amendment claim.

B. Ms. Markham Has Suffered and Continues to Suffer Irreparable Harm as a Result of Defendants' Violations of her First Amendment Rights

Unless Defendants are enjoined from enforcing the Nuisance Policy, Ms. Markham will be irreparably harmed because the threat of its enforcement against her landlord, with the inevitable impact on her, continues to chill her First Amendment right to seek police protection and report crime. *See, e.g.*, *Elrod v. Burns*, 427 U.S. 347, 373-74 (1976) (holding that, as a matter of law, "[t]he loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury"); *see also Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012) ("[T]he deprivation of constitutional rights unquestionably constitutes irreparable injury.") (internal quotations omitted); *Thalheimer v. City of San Diego*, 645 F.3d 1109, 1128 (9th Cir. 2011); *Klein v. City of San Clemente*, 584 F.3d at 1196, 1207-08 (9th Cir. 2009).

Although Plaintiff's counsel notified Defendants of the First Amendment violations stemming from the Nuisance Policy, Defendants made no assurance that they will not enforce the Nuisance Policy against Ms. Markham or her landlord in the future. Defendants did not even indicate that actions would not again be taken against Ms. Markham based on reported crimes or calls for police assistance relating to domestic violence. The ongoing threat of enforcement of the Nuisance Policy against Ms. Markham

and her current landlord thus continues to chill her First Amendment rights. *White*, 227 F.3d at 1233 (condemning state actors for chilling plaintiffs' right to petition and to free speech by informally threatening legal sanctions).

Ms. Markham now fears she and her two sons may lose their home if they contact the police, even if she calls the police to protect their physical safety. Markham Decl. ¶¶49-52. Subject to a "crime-free" lease mandated by the Nuisance Policy, she faces eviction if she makes even a single call to the police. Markham Decl. ¶53. Effectively stripped of her ability to contact the police for protection, Ms. Markham is made highly vulnerable to further physical abuse at the hands of R.V., who has been released from prison, another companion, or even a stranger. Moreover, Ms. Markham would be irreparably harmed if the Nuisance Policy was again enforced against her landlord, and she was evicted from her new home. *Park Vill. Apartment Tenants Ass'n v. Mortimer Howard Trust*, 636 F.3d 1150, 1159 (9th Cir. 2011) ("Defendants' threat to evict Plaintiffs created a likelihood of irreparable harm in the absence of an injunction barring future evictions").

Thus, this Court should enjoin enforcement of the Nuisance Policy to prevent further irreparable injury to Ms. Markham's First Amendment rights and future threats to her physical safety. Absent injunctive relief, other residents of Surprise will also have their First Amendment rights burdened when they face eviction pursuant to threatened penalty under the Nuisance Policy, or when they are chilled in calling the police to report crime or request assistance, thereby leaving them vulnerable to further harm absent police protection. Arnold Decl. ¶55.

C. The Balance of Equities and Public Interest Favor an Injunction to Prevent Further Constitutional Violations

The final two elements of the preliminary injunction test – whether the public interest and the balance of the equities favor an injunction – merge when the government is a party. *See League of Wilderness Defenders/Blue Mountains Biodiversity Project v. Connaughton*, 752 F.3d 755, 766 (9th Cir. 2014). Ms. Markham satisfies both elements.

The balance of equities tips "sharply in favor" of an injunction when First Amendment rights are at stake, *Klein*, 584 F.3d at 1208; *Arpaio*, 695 F.3d at 1002; *Am. Civil Liberties Union of Ill. v. Alvarez*, 679 F.3d 583, 589-90 (7th Cir. 2012); *Sammartano v. First Judicial District Court*, 303 F.3d 959, 973 (9th Cir. 2002); *see also Galassini v. Town of Fountain Hills, Ariz.*, No. CV-11-02097-PHX-JAT, 2011 WL 5244960, at *6 (D. Ariz. Nov. 3, 2011) (quoting *Shondel v. McDermott*, 755 F.2d 859, 869 (7th Cir. 1985)) (the "balancing of equities that is undertaken in a conventional equity case is out of place in dealing with rights so important as the modern Supreme Court considers the rights of expression to be").

Enjoining the enforcement of the Nuisance Policy will also serve the public interest by ensuring that Ms. Markham and other tenants in Surprise will be able to speak up and report incidents of crime without fear of eviction or other penalty, potentially reducing the occurrence of domestic violence, enhancing the safety of domestic violence victims, and decreasing homelessness. Arnold Decl. ¶¶70-71. *See Forro Precision, Inc.*, 673 F.2d at 1060 (holding that reporting to law enforcement was in the public interest because "it would be difficult indeed for law enforcement authorities to discharge their duties if citizens were in any way discouraged from providing information"); *Consol. Delta Smelt*

Cases, 717 F. Supp. 2d 1021, 1069 (E.D. Cal. 2010) (noting a public interest in reducing conditions that lead to homelessness).

The existence of First Amendment violations outweighs whatever burden the injunction would impose on Defendants. The government is "in no way harmed by the issuance of an injunction that prevents the state from enforcing unconstitutional restrictions." *Legend Night Club v. Miller*, 637 F.3d 291, 302-03 (4th Cir. 2011). Moreover, the requested injunction would not interfere with Defendants' ability to punish perpetrators of crime and ensure order through existing laws that do not extend censure to any tenant who calls for or requires police services. *Puente Arizona v. Arpaio*, 76 F.Supp.3d 833, 861 (D. Ariz. 2015) (holding that there is little burden on enforcement officials when they have other laws with which to pursue the same ends). The balance of equities additionally tips "sharply in favor" of an injunction where, as here, a party's actions infringe "on the free speech rights not only of [the plaintiffs], but also of anyone seeking to express their views in this manner." *Klein*, 584 F.3d at 1208; *Friendly House v. Whiting*, 846 F. Supp. 2d 1053, 1062 (D. Ariz. 2012), *aff'd sub nom. Valle Del Sol Inc. v. Whiting*, 709 F.3d 808 (9th Cir. 2013) (noting that "[t]he public interest inquiry primarily focuses on the impact on non-parties, as opposed to parties" and holding that defendants failed to show a competing public interest that was compelling enough to outweigh the First Amendment concerns raised by "continuing enforcement of a regulation that likely violates the First Amendment [and that] would infringe not only the rights of Plaintiffs" but also of other similarly situated persons.). An injunction would not only protect Ms. Markham from the penalties and attendant chilling on calls to police under the Nuisance Policy, but it would enable all residents of Surprise to call police when in danger and report crimes

committed against them. Failure to enjoin the Nuisance Policy would send a dangerous message to tenants in Surprise: if you are assaulted in your home you have no right to seek police assistance, so keep incidents of crime secret or risk eviction. The Nuisance Policy should be enjoined before another crime victim is evicted based on attacks against her or is made to suffer in silence, chilled from calling the police.

IV. CONCLUSION

For the foregoing reasons, Ms. Markham respectfully requests that the Court issue a preliminary injunction, pursuant to Rule 65 of the Federal Rules of Civil Procedure, prohibiting Defendants from: 1) enforcing the Nuisance Policy against crime victims in rental properties for any alleged nuisance that is based on calls reporting or seeking police assistance regarding crime or on any criminal activity that is perpetrated against the tenant; and 2) requiring the adoption of crime free lease provisions that permit and threaten eviction on the basis of criminal activity that is perpetrated against the tenant.

DATED this 2nd day of September, 2015.

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I hereby certify that on this 2nd day of September, 2015 I electronically transmitted the attached document to the Clerk's Office using the CM/ECF System for filing and a copy was electronically transmitted to the following:

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