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IN THE SUPERIOR COURT OF THE STATE OF ARIZONA  
IN AND FOR THE COUNTY OF MARICOPA

REBECCA BEASLEY, individually as the  
surviving spouse of ORVILLE THOMAS  
BEASLEY III, and as personal representative  
of the ESTATE OF ORVILLE THOMAS  
BEASLEY III; and ORVILLE THOMAS  
II and ANNA ELIZABETH BEASLEY,  
husband and wife, and parents of ORVILLE  
THOMAS BEASLEY III. )

Plaintiffs, )

v. )

JOHN C. STUART and JANE DOE )  
STUART, a married couple; JOHN and )  
JANE DOES I-V; BLACK & WHITE )  
CORPORATIONS VI-X; and ABC )  
PARTNERSHIPS XI-XV; )

Defendants. )

**CASE NO. CV2010-050624**

**PLAINTIFFS' RESPONSE TO  
DEFENDANT'S JUDICIAL NOTICE  
AND OTHER PLEADINGS**

(Tort: Non-Motor Vehicle)

**(Assigned to the Honorable Linda Miles)**

Plaintiffs Rebecca Beasley, the Estate of Orville Thomas Beasley III, and Orville Thomas II  
and Anna Elizabeth Beasley, by and through undersigned counsel, file this Response To  
Defendant's Motion For Judicial Notice and other pleadings.

Plaintiffs submit this Response to Defendant's Motion for Judicial Notice, as it appears  
Defendant's Motion contains an order to dismiss, which in part, attempts to clarify Defendant's  
prior motions. While it is still uncertain if Defendant is asserting counterclaims against Plaintiffs, a  
third-party complaint, or if he has even answered Plaintiffs' Complaint, Plaintiffs, in the abundance  
of caution, respond to Defendant's allegations that the Court should dismiss their Complaint under

1 Ariz.R.Civ.P Rule 12. Defendant's claims are unjustified and not supported with explanations or  
2 evidence. This Motion is more fully supported by the following Memorandum of Points and  
3 Authorities.

## 4 MEMORANDUM OF POINTS AND AUTHORITIES

### 5 I. INTRODUCTION

6 Defendant's Motion for Judicial Notice and his preceding Motions submitted to this Court  
7 have been confusing and cover a broad array of legal issues, none of which are clearly conveyed.  
8 However, it is apparent through Defendant's last motion of Judicial Notice that Defendant is  
9 seeking to have Plaintiffs' Complaint dismissed. Plaintiff brings to the Court's attention that  
10 Defendant is simultaneously requesting a motion to dismiss while at the same time requesting the  
11 Court to recognize Defendant's counterclaims. Thus, it is unknown what Defendant is trying to  
12 accomplish, either he is submitting to the Court's jurisdiction or he is seeking a motion to dismiss.  
13 However, in Defendant's Motion For Judicial Notice, an Order was included that requested the  
14 Court dismiss Plaintiffs' Complaint. Plaintiffs, in erring on the side of caution, are treating  
15 Defendant's last Motion as a Motion To Dismiss, and have provided ample evidence that this  
16 Court has jurisdiction and that Plaintiffs have properly plead their Complaint. Additionally,  
17 Defendant's claims are not supported by evidence and sometimes are illogical, as a result the Court  
18 should deny Defendant's request to dismiss Plaintiffs' Complaint.  
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### 22 II. FACTUAL BACKGROUND

23 Defendant was arrested on January 29, 2008 by the Phoenix Police Department for the  
24 homicide of Thomas Orville Beasley. (Exhibit No. 1, Phoenix Police Department Report, only two  
25 pages of the reports are provided as report was 151 pages). In the report Defendant's address is  
26 listed as 3540 E. Expedition Way, Phoenix, Arizona.

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1 Defendant was served in this matter by a process server when Defendant appeared at a  
2 criminal court hearing for his defense of felony charges levied against him by the State of Arizona.  
3 (See Exhibit No. 2, Certificate of Service).

4 Defendant is a resident of Tolleson, Arizona. Defendant's residence in Arizona is  
5 established by the fact he has previously filed a Complaint in Arizona District Court, stating he is a  
6 resident of Arizona. (See Exhibit No. 3, Complaint filed by Defendant in District Court, 2:10-cv-  
7 00044-ROS Stuart v. McMurdie et al, Date filed: 01/08/2010, page 4, ¶9, not all pages are  
8 included in exhibit as Complaint was 63 pages).

9  
10 Additionally, proof that Defendant is an Arizona resident is provided in Defendant's  
11 Motions. Defendant's Motion lists his home address as 10407 W. Trumbull Road, Tolleson,  
12 Arizona. (See Exhibit No. 4, first page of Defendant's Motion For Judicial Notice).

### 13 **III. LEGAL ANALYSIS**

#### 14 **A. Plaintiffs Can Establish That Defendant Is Subject To Personal Jurisdiction By This** 15 **Court Due To The Fact He Has Been A Resident of Arizona For Over Two Years.**

16 Arizona courts "may exercise personal jurisdiction over parties, whether found within or  
17 outside the state, to the maximum extent permitted by the Constitution of this state and the  
18 Constitution of the United States." Ariz. R. Civ. P. 4.2(a); *see also A. Uberti & C. v. Leonardo*, 181  
19 Ariz. 565, 569, 892 P.2d 1354, 1358 (1995). General jurisdiction subjects the defendant to suit on  
20 virtually any claim, even when the cause of action does not arise out of or relate to the defendant's  
21 activities in the forum State. *Rollin v. William V. Frankel & Co., Inc.*, 196 Ariz. 350, 352-353, 996  
22 P.2d 1254, 1256 - 1257 (App. 2000)(citations omitted). General jurisdiction applies only if the  
23 defendant has substantial or continuous and systematic' contacts with the forum state. *Id.*  
24  
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26 When a defendant challenges the existence of personal jurisdiction, the plaintiff must come  
forward with facts establishing a prima facie showing of jurisdiction, at which time the burden

1 shifts to the defendant to rebut the showing. *Macpherson v. Taglione*, 158 Ariz. 309, 312, 762 P.2d  
2 596, 599 (App.1988). However, the court should resolve any conflicts “in the affidavits and  
3 pleadings” in the plaintiff’s favor. *Id.*

4 Here, Defendant has claimed that this Court lacks personal jurisdiction over him. This  
5 simply isn’t true as there is ample evidence demonstrating the Defendant has lived in Arizona for  
6 several years. Defendant was a resident of Arizona at the time he was arrested for the homicide of  
7 Thomas Beasley in January 2008. (*See* Exhibit No. 1). Defendant was served in this matter while  
8 he made a court appearance regarding Arizona’s prosecution against him for felony homicide. (*See*  
9 Exhibit No. 2). Thus, Defendant has been in Arizona since 2008 and must stay in Arizona due to  
10 his criminal trial. Additionally, Defendant has declared in a complaint filed in Arizona District  
11 Court that he was a resident of Arizona as of January 8, 2010. (*See* Exhibit No. 3). Further,  
12 Defendant’s Motions in this case state that he is a resident of Tolleson, Arizona. (*See* Exhibit No.  
13 4). Moreover, Defendant caused the death of Mr. Beasley by shooting him on a Maricopa county  
14 road, after which Defendant fled to his home, in Arizona, and was then apprehended on an Arizona  
15 roadway by the Phoenix police. (*See* Exhibit No. 1, page 2, police narrative). Because Defendant is  
16 an Arizona resident and because he has conducted significant activity in Arizona, exercise of  
17 general jurisdiction by an Arizona court is “reasonable and just.” *Perkins v. Benguet Cons. Min.*  
18 *Co.*, 342 U.S. 437, 438, 72 S.Ct. 413, 96 L.Ed. 485 (1952). Further, Defendant’s residence in  
19 Arizona for a continued period of time demonstrates he has had substantial and continuous contacts  
20 with Arizona to subject him to personal jurisdiction in this Court. As a result, Defendants’ claim  
21 for dismissal under Ariz.R.Civ.P. Rule 12(b)(2) for lack of personal jurisdiction is incorrect and  
22 should be denied.  
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1 **B. Defendant's Motion To Dismiss Under Rule 12(b)(6) Should Be Denied As He Has Not**  
2 **Provided Legal or Factual Support For Such A Motion, And If The Allegations In**  
3 **Plaintiffs' Complaint Are Taken As True It Would Defeat A Rule 12(b)(6) Motion.**

4 Motions to dismiss for failure to state claim are not favored and should not be granted  
5 unless it appears certain that plaintiff would not be entitled to relief under any state of facts  
6 susceptible of proof under the claim stated. *See State ex rel. Corbin v. Pickrell*, 136 Ariz. 589, 667  
7 P.2d 1304 (1983). In considering a motion to dismiss for failure to state a claim, all of material  
8 allegations of pleadings of nonmoving party are taken to be true. *See Sierra Madre Development,*  
9 *Inc. v. Via Entrada Townhouses Ass'n*, 20 Ariz.App. 550, 514 P.2d 503 (1973).

10 Here, Plaintiffs have alleged that Defendant is liable for wrongful death, reckless and gross  
11 negligence, negligence, intentional infliction of emotional distress, negligent infliction of emotion  
12 distress, assault, and battery. (*See Exhibit No. 5, Plaintiffs' Complaint*). Plaintiffs' Complaint  
13 outlines the events that caused Thomas Orville Beasley's death by Defendant. If the factual  
14 allegations in Plaintiffs' Complaint are taken as true then Plaintiff would have demonstrated that  
15 Defendant killed Mr. Beasley and is therefore liable for Plaintiffs' claims. As a result, Plaintiffs  
16 have sufficiently plead their Complaint to avoid dismissal under Rule 12(b)(6), and Defendant's  
17 request for dismissal should be denied. Defendant has also failed to state the basis for his Rule  
18 12(b)(6) motion, Defendant merely asserts the claim.

19  
20 **C. Defendant's Motion For Failure To Join An Indispensible Party Is Nonsensical And**  
21 **Should Be Denied.**

22 The test of indispensability of parties in Arizona is whether the absent person's interest in  
23 the controversy is such that no final judgment or decree could be entered, doing justice between the  
24 parties actually before the court and without injuriously affecting the rights of others not brought  
25 into the action. *See Copper Hills Enterprises, Ltd. v. Arizona Dept. of Revenue*, 214 Ariz. 386, 153  
26 P.3d 407 (App. 2007).

1 Here, Defendant doesn't even list what party is indispensable that would prevent this Court  
2 from adjudicating the current matter. Because Defendant can not list the actual party that justifies a  
3 dismissal under Ariz.R.Civ.Pro Rule 12(b)(7), the claim should be dismissed.

4 **D. Plaintiffs' Complaint is Properly Before This Court To Satisfy All Subject Matter**  
5 **Jurisdiction Claims.**

6 In current usage, the phrase "subject matter jurisdiction" refers to a court's statutory or  
7 constitutional power to hear and determine a particular type of case. *See United States v. Cotton*,  
8 535 U.S. 625, 630, 122 S.Ct. 1781, 152 L.Ed.2d 860 (2002); *First Nat'l Bank & Trust Co. v.*  
9 *Pomona Mach. Co.*, 107 Ariz. 286, 288, 486 P.2d 184, 186 (1971). "[T]he Superior Court of  
10 Arizona [i]s a single unified trial court of general jurisdiction." *Marvin Johnson, P.C. v. Myers*,  
11 184 Ariz. 98, 102, 907 P.2d 67, 671 (1995). As such, the superior court has not only original  
12 jurisdiction in felony cases such as these, but also "ha[s] all powers and may issue all writs  
13 necessary to the complete exercise of its jurisdiction." § 12-123(B). "[I]n addition to [exercising]  
14 the powers conferred by constitution, rule or statute," the superior court also "may proceed  
15 according to the common law." A.R.S. § 12-122.

17 Here, Plaintiffs are seeking remedy for state common-law claims against Defendant. This  
18 Court has subject matter jurisdiction over this case based on the fact it is a court of general  
19 jurisdiction and Plaintiffs are seeking a remedy for violations of state common-law claims.  
20 Therefore, this Court does have subject matter jurisdiction over Plaintiffs' Complaint. Further,  
21 Defendant has not provided a basis for his Rule 12(b)(1) argument, Defendant merely alleges this  
22 Court lacks subject matter jurisdiction without any explanation.

24 **IV. CONCLUSION**

25 As indicated above, Defendant's Motions before this Court have been difficult to apprehend  
26 and contain contradictory legal positions. However, there is an indication that Defendant is

1 pursuing a motion to dismiss. Plaintiffs have provided clear rebuttals to Defendant's requests for  
2 Rule 12 dismissal. Defendant is an Arizona resident which gives this Court personal jurisdiction  
3 over Defendant. Additionally, Plaintiffs' Complaint is well plead and based on Arizona common-  
4 law claims, therefore this Court has proper subject matter jurisdiction and Plaintiffs have stated  
5 actionable claims against Defendant. Further, Defendant's claim that there is an indispensable party  
6 is not supported with the identity of the party that is supposedly indispensable. The Court should  
7 deny all of Defendants' claims to dismiss, they are not supported by evidence and Defendant has  
8 failed to provide the actual basis for such claims. Additionally, Plaintiffs request instruction from  
9 the Court on how to address Defendant's Motions, as it is unclear which ones require a responsive  
10 pleading or if the Court has considered such documents sufficient to raise legal issues.  
11

12  
13 RESPECTFULLY SUBMITTED this 21st day of May, 2010.

14  
15 **DOYLE LAW GROUP**

16 */s/Jonathan L. Sullivan*

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21 Attorneys for Plaintiffs

22 **ORIGINAL** of the foregoing electronically  
23 filed this 21st day of May, 2010 with:

24 Clerk of Court  
25 Maricopa Superior Court  
26 Northeast Regional Center  
18380 N. 40th Street  
Phoenix, AZ 85032

**COPY** of the foregoing distributed by electronic  
filing this 21st day of May, 2010 to:

///

1 The Honorable Linda Miles  
2 Maricopa Superior Court  
3 Northeast Regional Center  
4 18380 N. 40th Street  
5 Phoenix, AZ 85032

6 COPY of the foregoing mailed  
7 this 21st day of May, 2010 to:

8 John Stuart, Pro per  
9 10407 W. Trumbull Road  
10 Tolleson, Arizona 85353

11 By: /s/ Jonathan Sullivan

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