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Attorneys for Plaintiffs

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

**PLAINTIFF'S SEPARATE
STATEMENT OF FACTS IN
SUPPORT OF HER REPLY IN
SUPPORT OF HER MOTION FOR
PARTIAL SUMMARY JUDGMENT
RE: DEFENDANT'S NEGLIGENT
INFLECTION OF EMOTIONAL
DISTRESS**

(Assigned to the Honorable Linda Miles)

(Oral Argument Requested)

Plaintiff Rebecca Beasley, by and through undersigned counsel, hereby file this separate
Statement of Facts in support of her Reply in support of her Motion for Partial Summary Judgment
Regarding Plaintiffs' Claim for Negligent Inflection of Emotional Distress pursuant to Arizona
Rules of Civil Procedure Rule 56(c)(2):

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SEPARATE STATEMENT OF FACTS

I. Plaintiff’s replies to Defendant’s Response’s Statement of Facts.

Defendant did not respond to Plaintiff’s Statement of Facts. Defendant’s Statement of Facts started with paragraph number 1; the second numbers in parenthesis is numbering continuing from Plaintiff’s Statement of Facts.

1. (15) Admit.
2. (16) Admit Mr. Stuart stopped the FJ Cruiser at the red traffic light at Tatum Road, a white SUV was in the left-hand-turn lane, that driver of the white SUV was Orville Thomas Beasley, III; Mr. Beasley responded to Stuart’s yelling. (See undisputed Plaintiff’s SOF 5).
3. (17) Admit Mr. Stuart and Mr. Beasley exchanged words from their respective vehicles, that Mr. Beasley exited his vehicle, deny Mr. Beasley charged the FJ Cruiser in a rage, statements is inadmissible hearsay and speculation. Additionally, statement ignores the fact that after Mr. Beasley initially approached Stuart’s vehicle he started to return to his own vehicle. (See Joshua Spade’s testimony, page 46, lines 6-14, *see* attached Exhibit 1). Thus, Cantrell’s allegation of rage is in direct conflict of Mr. Beasley’s physical act of leaving Mr. Stuart after initially contacting him.
4. (18) Admit Mrs. Beasley was a passenger in the white SUV, that Mr. Beasley exited the vehicle, that Mr. Beasley spoke with Mr. Stuart, admit exhibit 2 is the Police Report, deny Police Report evidences Mrs. Beasley’s testimony, the police report is a recording of the police officer’s statements not Mrs. Beasley’s, as a result such evidence is inadmissible hearsay.

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5. (19) Admit Mrs. Beasley spoke to police, that exhibit 2 is the Police Report, deny Police Report evidences Mrs. Beasley’s testimony, the police report is a recording of the police officer’s statements not Mrs. Beasley’s, as a result such evidence is inadmissible hearsay.

6. (20) Admit that Mr. Beasley walked in front of the SUV toward Mr. Stuart’s car, Deny Defendant’s statement of fact is supported by paragraph 5 of Cantrell’s affidavit. Cantrell’s statement that Mr. Beasley was angry or on drugs is inadmissible.

7. (21) Admit Joshua Spade was the driver of a vehicle stopped directly behind Mr. Stuart’s FJ Cruiser at the intersection of Pinnacle Peak and Tatum Road, deny “also observed the fight between Mr. Beasley and Mr. Stuart”, this a gross misstatement of Spade’s testimony and is Defense counsel’s own language, Spade testified he never saw Mr. Beasley’s hands touch Mr. Stuart (Spade Deposition, page 52, lines 3-6, *see* attached Exhibit 1), if Spade never saw Mr. Beasley’s hands touch Mr. Stuart then Spade never observed a fight. Further, Police Officer Dalton testified that Mr. Stuart did not have any physical markings to support his allegation that he was physically touched by Mr. Beasley. (*See* Police Officer Dalton’s testimony, SOF 42 located below).

8. (22) Admit Mr. Beasley exited the SUV and approached Stuart’s vehicle, deny Mr. Spade has knowledge of Mr. Beasley’s mannerisms or was aware of Mr. Beasley’s state of mind, statement is inadmissible hearsay.

9. (23) Admit.

10. (24) Admit Strachan saw an argument but couldn’t understand what was being said, deny Strachan observed Mr. Beasley reach for the handle of driver’s side door, this

1 is a misstatement of Strachan's testimony. Strachan testified that she could see that
2 side of the vehicle and wasn't sure what Mr. Beasley was reaching for. (Strachan
3 Deposition page 20, lines 16-23, page 23, lines 2-8, see attached Exhibit 2).

4 **11.** (25) Deny, there was no evidence that Stuart had any physical injury. When Stuart
5 was taken into custody there was no evidence that he was physically touched by Mr.
6 Beasley. (*See* Police Officer Dalton's testimony, SOF 42 located below). Thus,
7 Cantrell's allegations of a fist fight has no evidentiary support, any alleged fist fight
8 would have left physical marks on either Stuart or Beasley.
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10 **12.** (26) Deny, there was no evidence that Stuart suffered any physical injury. When
11 Stuart was taken into custody there was no evidence to indicate he was physically
12 touched by Mr. Beasley. (*See* Police Officer Dalton's testimony, SOF 42 located
13 below). Thus, Cantrell's allegations that Mr. Beasley almost broke Stuart's arm or
14 strangled Mr. Stuart lacks any credibility, such alleged violent actions would have
15 left physical evidence of an alleged violent act.
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17 **13.** (27) Deny, Mr. Beasley walked away from Stuart upon seeing the firearm, a fact
18 Defendant has not disputed. (*See* undisputed Plaintiff's SOF 10, Rebecca Beasley's
19 Affidavit). As a result Beasley outwardly demonstrating he was retreating from
20 Stuart upon seeing the firearm. Further, Cantrell's statement that Mr. Beasley
21 would've killed Stuart is irrelevant to determining Stuart's belief and conduct. Thus,
22 Cantrell's belief is not at issue in Plaintiff's Motion, she did not fire the gun that
23 cause Plaintiff's emotional harm. Moreover, there is no physical evidence of Stuart
24 being physically touched by Mr. Beasley, thus, Stuart was not justified in using
25 deadly force. Additionally, Cantrell's statement speculates to Mr. Stuart's and Mr.
26 Beasley's frame of mind and is inadmissible hearsay. Further, Cantrell's beliefs

1 would be different than Mr. Stuart's as he was armed with a concealed weapon. As a
2 result, the situation facing Cantrell was not the same situation facing Mr. Stuart,
3 thus Defendant's attempt to assimilate Cantrell's statements as Stuart's beliefs or
4 views is improper.

5 **14. (28)** Admit Spade's testimony claims that Mr. Beasley reached into Stuart's driver
6 side window, that Mr. Stuart's car door looked open to Mr. Spade, deny the
7 statement "Mr. Stuart tried to open his driver's side door to get out of the vehicle,
8 presumably away from Mr. Beasley, but was unable to do so." This statement is not
9 from Spade's testimony and appears to be Defense counsel's own wording. It is
10 unclear why Stuart opened his car door, Stuart has asserted his fifth amendment
11 right and has not provided testimony why he opened the car door.
12

13 **15. (29)** Admit Cantrell observed Stuart discharge the firearm, can not admit or deny
14 Cantrell's statement of "an inch from FJ Cruiser" as Cantrell does not provide the
15 location to where she is referencing. Officer Dalton will testify, based on physical
16 measurements, that Beasley was shot by Stuart's car hood and at least a foot and
17 four inches away from Stuart's door. (*See* Police Officer Dalton's testimony, SOF
18 41 located below).
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20 **16. (30)** Admit Strachan made statements in deposition regarding seeing the firearm
21 fire, deny that Strachan defined the word "close", Defendant's Response attempts to
22 equate Strachan's use of the word "close" to the distance of inches, this is improper.
23 Additionally, Officer Dalton will testify, based on physical measurements, that
24 Beasley was shot by the car hood and at least a foot and four inches away from
25 Stuart's door. (*See* Police Officer Dalton's testimony, SOF 41 located below).
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17. (31) Admit exhibit 5 is an Autopsy Report, deny document indicates Mr. Beasley's blood alcohol concentration.

18. (32) Admit.

19. (33) Deny, Cantrell's statements are inadmissible hearsay, based on conjecture, and have no foundation. Cantrell did not know Mr. Beasley's frame of mind or emotional state, Cantrell has no foundation to support her testimony that Mr. Beasley was intoxicated or on drugs.

20. (34) Unable to admit or deny, and object to affidavit and move to strike portions of affidavit. Mr. Collier fails to provide the foundation of his testimony, there is no indication of how Mr. Collier calculated his blood alcohol estimations. Plaintiff has no way of verifying Mr. Collier's estimations, blood alcohol estimates are plainly stated without indicating how the values were determined. Moreover, part of Mr. Collier's affidavit is based on hearsay testimony, thus calling into credibility of his calculations. Also, Mr. Collier did not provide the basis for assuming Mr. Beasley's stomach only contained 100 proof alcohol, an apparent base for determining Mr. Beasley's BAC. From the limited information provided it is unknown the validity or accuracy of Mr. Collier's statements.

21. (35) Unable to admit or deny, and object to affidavit, as stated in paragraph # 20(34).

22. (36) Deny and object to affidavit, and move to strike portions of Mr. Collier's affidavit. Mr. Collier's affidavit in describing Mr. Beasley's actions relies on hearsay testimony, as a result Mr. Collier's affidavit would represent double hearsay. Mr. Collier has no personal knowledge of Mr. Beasley's conduct. Additionally, Mr. Collier's affidavit includes statements outside the scope of his

1 expertise and improperly attempt to assert facts that are not within his personal
2 knowledge or training. Mr. Collier's admitted expertise is in "scientific evidence,
3 toxicology, drugs, narcotics, criminalistics and firearm identification". Mr. Collier
4 has not claim an expertise in human behavior, psychology, or that he has experience
5 in treating, researching or working with individuals' with a known blood alcohol
6 content. Moreover, there is no evidence Mr. Collier has any clinical experience with
7 human behavior. Thus, Mr. Collier has no foundation to testify that he would have
8 known Mr. Beasley's state of mind, emotional level, psychology, or behavior based
9 only on his toxicology work. As a result, Mr. Collier's conclusions regarding Mr.
10 Beasley's state of mind, behavior, or emotional state lack proper foundation and
11 should be struck. Mr. Collier is a toxicologist his affidavit should be limited to his
12 field of expertise.
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15 **23.** (37) Deny and object to affidavit as stated in paragraph # 22(36).

16 **24.** (38) Deny and object to affidavit as stated in paragraph # 22(36).

17 **25.** (39) Deny, statement taken out of context, testimony was objected to in Mr.

18 Dalton's testimony, Defendant is improperly seeking a conclusion of law from a lay
19 witness. Moreover, a reading of Dalton testimony supports Plaintiff's assertion that
20 Stuart's use of a concealed weapon was a superseding event; Dalton testified "...and
21 does both of them [Beasley and Stuart] arguing with each other and causing – did
22 Mr. Beasley think that this confrontation was going to end in his death? **Absolutely**
23 **not**, because he would have most likely have – a reasonable person would have
24 stayed in his vehicle if he knew Mr. Stuart had a gun." Dalton Deposition, page 134,
25 lines 18-22. (emphasis added).
26

1 26. (40) Deny, statement taken out of context, testimony was objected to in Mr.

2 Dalton's testimony, Defendant is improperly seeking a conclusion of law from a lay
3 witness. Moreover, Dalton deposition testimony supports Plaintiff's assertion that
4 Stuart's use of a concealed weapon represents a superseding event, Dalton testified
5 "...and does both of them [Beasley and Stuart] arguing with each other and causing
6 – did Mr. Beasley think that this confrontation was going to end in his death?

7 **Absolutely not**, because he would have most likely have – a reasonable person
8 would have stayed in his vehicle if he knew Mr. Stuart had a gun." Dalton
9

10 Deposition, page 134, lines 18-22, *see* attached Exhibit 3. (emphasis added).

11 **II. Plaintiff's Statement of Facts In Support of Her Reply.**

12 **41.** Police Officer Dalton testified that based upon his tests Beasley was a minimum
13 distance of one foot four inches, this calculation is based on the blood spot where
14 Beasley's head hit the car hood after being shot. (Dalton's Deposition Testimony, page
15 155, line 4- page 156, line 24, *see* attached Exhibit 3).

16 **42.** Officer Dalton testified there was no physical evidence to support any physical
17 contact between Beasley and Stuart; no bruises, scratches, scrapes, cuts, redness
18 irritation, or anything like that. (Dalton's Deposition Testimony, page 158, line 4- page
19 162, line 3, *see* attached Exhibit 3).

20 **43.** Spade testified he never saw Mr. Beasley's hands touch Mr. Stuart (Spade
21 Deposition, page 52, lines 3-6, *see* attached Exhibit 4).

22 **44.** Allan Shearer testified that he witnessed Ms. Cantrell inform Phoenix Police
23 Department that her previous testimony to police had been coached by Defendant John
24 Stuart. (Alan Shearer Affidavit *see* Exhibit 5 page 1, paragraph 4).

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1 RESPECTFULLY SUBMITTED this 27th day of January, 2011

2 **DOYLE LAW GROUP**

3 /s/ John C. Doyle, Esq.

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5 Jonathan L. Sullivan, Esq.

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8 *Attorneys for Plaintiffs*

9 **ORIGINAL** of the foregoing electronically
filed this 27th day of January, 2011 with:

10 Clerk of Court
11 Maricopa Superior Court
12 Northeast Regional Center
13 18380 N. 40th Street
14 Phoenix, AZ 85032

15 **COPY** of the foregoing distributed by electronic
16 filing this 27th day of January, 2011 to:

17 The Honorable Linda Miles
18 Maricopa Superior Court
19 Northeast Regional Center
20 18380 N. 40th Street
21 Phoenix, AZ 85032

22 **COPY** of the foregoing emailed
23 this 27th day of January, 2011 to:

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By: /s/ Whitney Stricker