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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

**PLAINTIFF'S REPLY IN SUPPORT OF
MOTION TO PARTIALLY STRIKE
JOE COLLIER'S AFFIDAVIT**

(Tort: Non-Motor Vehicle)

(Assigned to the Honorable Linda Miles)

Plaintiffs by and through undersigned counsel, files this Reply In Support of Motion To
Partially Strike Joe Collier's Affidavit. Defendant's Response and Motion for Sanctions are
inappropriate as Defendant has failed to qualify Joe Collier as an expert on the effects of alcohol
intoxication. Additionally, Defendant's argument ignores controlling Arizona Supreme Court case
law that categorically excludes expert's opinions that comment on the effects of alcohol
intoxication to the jury. Therefore, Plaintiff's Motion to Partially Strike is proper, and Defendant's
Motion for Sanctions should be denied.

1 **I. INTRODUCTION.**

2 Defendant offers two distinct areas of expert testimony by Joe Collier. The first area of
3 Collier’s expert testimony concerns his opinion on Mr. Beasley’s blood alcohol concentration. The
4 second area of Collier’s expert testimony is his opinion on the alleged effects alcohol intoxication
5 had on Mr. Beasley. Plaintiffs have limitedly moved to strike the second portion of Collier’s
6 testimony. Plaintiffs’ Motion is based on Arizona Rules of Evidence and on Arizona Supreme
7 Court case law. Arizona law excludes expert testimony regarding the effects of alcohol
8 intoxication. Additionally, as indicated below, Defendant’s Opposition to Plaintiff’s Motion and
9 Motion for Sanctions should be denied as they critically fail to review Arizona law and the basis of
10 Collier’s testimony.

11 **II. LEGAL ARGUMENT.**

12 **A. Arizona Law Directs the Exclusion of Expert Testimony Opining On the Effects of**
13 **Alcohol Intoxication.**

14 The legal justification for Plaintiff’s Motion to Partially Strike Collier’s Affidavit is based
15 on the same legal reasoning used in the Arizona Supreme Court *State v. Salazar* case. *See*, 173
16 Ariz. 399, 405, 844 P.2d 566, 572 (1992). The *Salazar* Court upheld a trial court’s decision to
17 exclude an expert’s testimony that reported on the effects of intoxication. *Id.* The *Salazar* court
18 held that “the effect of alcohol intoxication is an area within the common knowledge and
19 experience of the jury, and therefore, no expert testimony is needed to assist the trier of fact.” *Id.*
20 173 Ariz. at 407-408, 844 P.2d 566; *citing State v. Hicks*, 133 Ariz. 64, 71, 649 P.2d 267, 274
21 (1982); *see also State v. Laffoon*, 125 Ariz. 484, 486, 610 P.2d 1045, 1047 (1980). The *Salazar*
22 court also excluded the expert’s testimony based on the fact that the expert had no first-hand
23 knowledge of defendant's condition on the night in question, nor did the expert have any familiarity
24 with the individual’s personal alcohol abuse problem. *Id.* 173 Ariz. at 408, 844 P.2d 566.
25
26

1 Here, Defendant's Motion in Opposition states that "Joe Collier is Qualified to Testify
2 about the Effects of Alcohol on the Human Body". (Exhibit 1, Defendant's Motion, page 1, lines
3 23-24). This clearly demonstrates Defendant is offering parts of Collier's expert affidavit to opine
4 on the effect of alcohol intoxication. This offered area of expert testimony has been categorically
5 excluded by the Arizona Supreme Court. As a result, Plaintiff's Motion is justified. Further, as
6 pointed out in Plaintiff's original Motion, and just like in the *Salazar* case, Collier does not possess
7 first-hand knowledge of Mr. Beasley's condition on the night of his death, nor is Collier familiar
8 with Mr. Beasley's personal alcohol use. Thus, the same rationale for excluding expert testimony
9 in the *Salazar* case is also present here. The portion of Collier's affidavit opining on the effects of
10 alcohol should be struck.

12 **B. Defendant Has Still Failed to Demonstrate Collier Is An Expert On The Effects Of**
13 **Alcohol On The Human Body.**

14 Defendant's Opposition to Plaintiff's Motion still fails to establish that Collier has any
15 "knowledge, skill, experience, training or education" that would allow him to make a
16 psychological evaluation of an individual based only on alcohol content. Defendant maintains
17 Collier's 47 years of experience qualifies him as an expert, but experience in an unrelated field
18 does not qualify Collier to make psychological evaluations when lacks previous experience making
19 psychological assessments of intoxicated individuals. Just because Collier is qualified in
20 toxicology does not mean he is an expert on all areas of alcohol intoxication, or a qualified in
21 assessing how alcohol impacts an individual's psychology.

23 Defendant attempts to argue that a single table in a medical text makes Collier an expert.
24 This is incorrect. First, reading a table in a medical text does not qualify someone as a medical
25 expert. Second, the Table is in part titled "Intoxication In Nontolerant Individuals". Thus, the data
26 upon which Collier based his opinion makes a critical unsubstantiated presumption; that Mr.

1 Beasley was a “Nontolerant Individual”. Defendant has not produced or offered any evidence why
2 Mr. Beasley is an assumed “Nontolerant Individual”. Collier’s failure to correlate the table with the
3 facts of this case further demonstrates his testimony lacks credibility. Third, Collier’s “expert”
4 statements advance a conclusion not present in the Table. In part, Collier’s opinion states:

5 **C. That Mr. Beasley would experience exaggerated emotional states.**
6 **For example, Mr. Beasley’s experience of anger would quickly turn into rage under the**
7 **influence of this much alcohol³**

8 (Exhibit 2, Collier’s Affidavit page 2, lines 21-23).
9

10 While the Table, in part, states:

11			
12	0.18–0.30	Confusion	Disorientation, mental confu-
13			sion; dizziness
14			Exaggerated emotional states
15			(fear, anger, grief, etc.)

16 (Exhibit 3).

17 Collier offers no explanation why he is cherry-picking “anger” out of the emotional states listed in
18 the Table; why his opinion discounts the other emotional states; and why “anger would quickly
19 turn into rage”. Thus, if this Table is the source of Collier’s opinion the Table is being misstated
20 and his testimony is, again, unreliable.

21
22 **III. CONCLUSION**

23 Based on the Arizona Rules of Evidence and controlling Arizona Supreme Court case law
24 the sections of Collier’s expert affidavit that discuss the effect alcohol intoxication had on Mr.
25 Beasley should be struck. Defendant’s Motion fails to provide a basis for Collier’s expertise and
26 ignores relevant case law. Additionally, Defendant’s Motion for Sanctions should be denied as
Plaintiff’s Motion to Strike is proper.

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RESPECTFULLY SUBMITTED this 22th day of February, 2011.

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ORIGINAL of the foregoing electronically filed this 22th day of February, 2011 with:

Clerk of Court
Maricopa Superior Court
Northeast Regional Center
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Phoenix, AZ 85032

COPY of the foregoing distributed by electronic filing this 22th day of February, 2011 to:

The Honorable Linda Miles
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