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IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF GILA

THE ESTATE OF BABY VILLEGAS, DECEASED, by and through MARIO VILLEGAS; MARIO VILLEGAS on his own behalf and on behalf of all survivors of BABY VILLEGAS, Deceased Plaintiff, vs. JACKRABBIT FAMILY MEDICINE, INC., an Arizona corporation dba CAMELBACK FAMILY PLANNING, GABRIELLE J. GOODRICK, M.D. and "JANE DOE GOODRICK" a married couple, and KRISTIN J. LIVINGSTON, M.D. and "JOHN DOE LIVINGSTON," a married couple, et. al. Defendants.	**Case No. S0400CV202200007** **DEFENDANTS' RESPONSE TO PLAINTIFF'S WRITTEN CLOSING ARGUMENTS, POST-TRIAL BRIEF, PROPOSED FINDINGS OF FACT & CONCLUSIONS OF LAW** **(Assigned to Hon. Bryan B. Chambers)**

TABLE OF CONTENTS

TABLE OF AUTHORITIES iii

INTRODUCTION 1

ARGUMENT 2

I. Plaintiff has failed to meet his burden of proving that he qualifies for relief under the Act 2

A. Plaintiff bears the burden of proving he is entitled to recover under the Act because the Act's criminal act clause is not an affirmative defense. 2

B. Plaintiff is not entitled to the rule of lenity in his civil lawsuit for money damages because he is not a criminal defendant. 3

C. Plaintiff's deception of M.S.V. altered the nature of the act leading to her pregnancy. 4

D. Plaintiff's transportation of M.S.V. to her abortion appointments does not negate the evidence of coercive control or deception. 6

II. There is no evidentiary basis for the money damage Plaintiff seeks. 7

A. Plaintiff's alleged harms, even if genuine, were caused by M.S.V,'s decision to seek an abortion, rather than the abortion itself. 7

B. Plaintiff's claim that "the embryo would have been born alive, more probably than not" is unsupported by the record. 8

C. Plaintiff failed to show that he would have enjoyed a positive parent-child relationship 9

D. M.S.V. credibly testified that she was clear in her conviction to terminate her pregnancy. 9

III. Plaintiff's calculation of money damages has no evidentiary basis. 10

CONCLUSION 11

TABLE OF AUTHORITIES

Page(s)

Cases

Am. Pepper Supply Co. v. Fed. Ins. Co.,
208 Ariz. 307 (2004) 3
Aranda v. Cardenas,
215 Ariz. 210 (Ct. App. 2007) 2, 3
Boro v. Superior Court,
fares no better. 163 Cal. App. 3d 1224 (1985) 5, 6
Coury Bros. Ranches, Inc. v. Ellsworth,
103 Ariz. 515 (1968) 8, 11
Felder v. Physiotherapy Assocs.,
215 Ariz. 154 (Ct. App. 2007) 11
Fitzgerald v. Superior Ct.,
173 Ariz. 539 (Ct. App. 1992) 3
Gilmore v. Cohen,
94 Ariz. 34 (1963) 12
Harvest v. Craig,
195 Ariz. 521 (Ct. App. 1999) 2
In re Stephanie B.,
204 Ariz. 466 (Ct. App. 2003) 3
People v. Babaali,
171 Cal. App. 4th 982 (2009) 5
People v. Icke,
9 Cal. App. 5th 138 (2017) 5
People v. Ogunmola,
assist Plaintiff. 193 Cal. App. 3d 274 (1987) 6
Pfeil v. Smith,
183 Ariz. 63 (Ct. App. 1995) 3
Reinesto v. Superior Court,
182 Ariz. 190 (Ct. App. 1995) 4
Solomon v. Harman,
107 Ariz. 426 (1971) 3
State v. Schackart,
190 Ariz. 238 (1997) 5
State v. Van Adams,
194 Ariz. 408 (1999) 4
State v. Witwer,
175 Ariz. 305 (Ct. App. 1993) 6
Suliveres v. Commonwealth,
865 N.E.2d 1086, 449 Mass. 112, (2007) 6

Statutes

A.R.S. § 36-2153(K)(2) 1, 3
§ 36-2153 3

INTRODUCTION

Nothing in Plaintiff's brief cures his failure to establish 1) that he qualifies for relief under the Women's Right to Know Act (the "Act"), or 2) that his requested damages have an evidentiary basis.

First, he fails to carry his burden of proving he is entitled to recover under the Act, instead arguing that the burden is Defendants'. But the Act's criminal-act clause, A.R.S. § 36-2153(K)(2), merely lists who has a private right of action; it is not an affirmative defense. Plaintiff next asks this court for lenity in determining whether M.S.V.'s pregnancy was a result of his criminal conduct. But the rule of lenity is only applied to criminal defendants, and only in situations with ambiguous statutory provisions, neither of which are applicable here. Plaintiff then argues—citing only case law from other states interpreting those states' criminal statutes—that deceiving M.S.V. about his vasectomy reversal would not alter the nature of the sexual act that led to her pregnancy. But this is contrary to Arizona law. And the fact that Plaintiff drove M.S.V. to her abortion appointments, without more, is insufficient to overcome the mountain of credible, unrebutted, expert testimony that he exerted coercive control over M.S.V. and deceived her about his vasectomy reversal.

Second, Plaintiff provided no evidentiary basis for the money damages he seeks. The record establishes that any alleged harm Plaintiff suffered flows from M.S.V.'s decision to seek an abortion, rather than the abortion itself, or indeed any of Defendant's actions. It also undermines Plaintiff's claim that the embryo would have been born alive and healthy, were it not for M.S.V.'s abortion. Plaintiff also failed to show that he would have enjoyed a healthy, much less positive, parent-child relationship with the embryo, even if it had been born alive and healthy. And, contrary to Plaintiff's assertions, M.S.V. credibly testified that she was clear in her conviction to terminate her pregnancy. By contrast, Plaintiff can only speculate about whether particular information might have caused her to change her mind. Finally, the money damages Plaintiff seeks has no evidentiary basis—only conjecture about what constitutes great suffering and what is considered reasonable.

Because Plaintiff has no private right of action and his claimed harms lack record support, this Court should enter judgment for Defendants. Alternatively, the Court should limit any damages award to $5,000 in statutory damages because Plaintiff has not shown that he is entitled to compensatory or punitive damages.

ARGUMENT

I. Plaintiff has failed to meet his burden of proving that he qualifies for relief under the Act.

A. Plaintiff bears the burden of proving he is entitled to recover under the Act because the Act's criminal act clause is not an affirmative defense.

Plaintiff's argument that subdivision (K)(2) of the Act creates an affirmative defense for which Defendants carry the burden has no basis in law. Rather than identifying any authority allocating the burden to Defendants, Plaintiff relies principally on the Court's prior observation and simply claims, without providing any legal authority, that placing the burden on the Plaintiff "would require him to prove a negative." Pl.'s Br. at 2.

But the Court expressly asked the parties "to brief who has the burden," Tr. 222:18-20 (Feb. 11, 2026), precisely because resolving the issue by assumption or conjecture would be legal error. Further, Plaintiff's characterization of the issue "as proving a negative" misunderstands the nature of his burden. As explained in Defendants' trial brief, a plaintiff seeking to recover under a statute that confers a limited right of action must prove that he falls within the class of people the statute protects. *See Aranda v. Cardenas*, 215 Ariz. 210, 215–17, ¶¶ 16–23 (Ct. App. 2007). Courts look to the statute itself to determine whether the legislature has allocated the burden of proving entitlement to a statutory right or benefit. *Harvest v. Craig*, 195 Ariz. 521, 524, ¶ 14 (Ct. App. 1999). When the statute is silent, "it is generally held that a party seeking a right or benefit under a statute bears the burden of proving that he comes within the ambit of the statute." *Id.* ¶ 15. That requirement is not treated as an affirmative defense in this context; rather, it is part of the plaintiff's case to show when challenged. *Aranda*, 215 Ariz. at 216, ¶¶ 20–21; *see also Solomon v. Harman*, 107 Ariz. 426, 430–31 (1971) (discussing who may recover under a wrongful death suit and holding it is the plaintiff's burden to prove their right to bring suit

and that "[o]ne standing merely in loco parentis . . . is not the child's 'father' (if a man), or 'mother' (if a woman), within the meaning of the [] statute," and thus may not sue).

The Act is a purely statutory creation conferring a limited right of action on a defined class of individuals—husbands—while expressly withholding that right where the pregnancy resulted from the husband's criminal act. A.R.S. § 36-2153(K)(2). That limitation defines the scope of the statutory right itself. Accordingly, Plaintiff bears the burden of proving, by a preponderance of the evidence, not only that a statutory violation occurred, but that he qualifies for relief under § 36-2153, which includes demonstrating that the pregnancy did not result from his own disqualifying conduct under subsection (K)(2).

Indeed, as Defendants explained in their opening brief, the plaintiff in a civil action bears the burden of proving each element of his claim by a preponderance of the evidence. *See Am. Pepper Supply Co. v. Fed. Ins. Co.*, 208 Ariz. 307, 309, ¶ 11 (2004). This standard applies to the factual predicates of civil claims even when those facts overlap with conduct that may also give rise to criminal liability. *See Fitzgerald v. Superior Ct.*, 173 Ariz. 539, 547 (Ct. App. 1992) (applying preponderance standard in civil forfeiture proceedings involving criminal conduct); *Pfeil v. Smith*, 183 Ariz. 63, 65–66 (Ct. App. 1995) (applying preponderance standard to civil fraud claims); *In re Stephanie B.*, 204 Ariz. 466, 469–70, ¶ 15–16 (Ct. App. 2003) (applying preponderance of the evidence to restitution, a civil remedy, in relation to a criminal act).

Treating the criminal-act clause as an affirmative defense would improperly shift to Defendants the burden to negate Plaintiff's statutory eligibility, contrary to Arizona law, since there is a clear absence of legislative directive. Plaintiff has provided no legal authority to the contrary.

B. Plaintiff is not entitled to the rule of lenity in his civil lawsuit for money damages because he is not a criminal defendant.

In arguing for the rule of lenity, Plaintiff seems to forget that he is not a criminal defendant. As such, his reliance on *Reinesto v. Superior Court*, 182 Ariz. 190, 192 (Ct. App. 1995), is inapposite. As Plaintiff concedes, the rule of lenity requires the court to tip

the scales "against expanding *criminal liability*." Pl.'s Br. at 5 (emphasis added). No criminal liability is at issue here. This case concerns a civil action and the scope of a statutory limitation on recovery. The rule of lenity accordingly has no application.

Nor is there any genuine ambiguity to be resolved. The rule of lenity only applies "[w]hen the meaning of a statute is unclear or subject to more than one interpretation." *Reinesto*, 182 Ariz. at 192. But Arizona courts have been clear in holding that deception can negate consent in sexual assault cases. *See, e.g.*, *State v. Van Adams*, 194 Ariz. 408, 420, ¶ 42 n.10 (1999) (collecting cases). Plaintiff seems to think that, if this court were to straightforwardly apply precedent interpreting Arizona sexual assault statutes to the present facts, it would be "creat[ing] new crimes through judicial decision," Pl.'s Br. at 5, simply because no Arizona court seems to have squarely addressed such a fact pattern. Plaintiff is plainly incorrect. The absence of a prior case involving identical facts does not render the governing legal principles ambiguous, nor does it trigger the rule of lenity.

C. Plaintiff's deception of M.S.V. altered the nature of the act leading to her pregnancy.

Plaintiff's argument that his deception of M.S.V. about his vasectomy reversal did not alter the nature of the act and vitiate her consent is unsupported by Arizona law. Instead, Plaintiff relies on cases from other states' courts interpreting their own state's sexual assault statutes—statutory schemes materially different from Arizona's. Because these cited decisions arise from different statutory frameworks with distinct doctrinal histories, they have little relevance to the interpretation of Arizona's sexual assault statutes. In any event, none supports Plaintiff's position.

Plaintiff principally relies on *People v. Babaali* to argue that, at most, his deception of M.S.V. constitutes "fraud in the inducement," rather than "fraud in the factum," and that M.S.V. was therefore able to consent to the sex act that caused her pregnancy. Pl.'s Br. at 4 (citing *People v. Babaali*, 171 Cal. App. 4th 982, 987-88 (2009)). But, as the court in *Babaali* recognized, California began criminalizing sexual assault through "fraud in the inducement to obtain the victim's consent [when] the Legislature created the crime of sexual battery by fraudulent representation." 171 Cal. App. 4th at 988. That is, the

California legislature did by statute what Arizona courts did by holding that sexual assault "can be perpetrated by deception as well as by force." *State v. Schackart*, 190 Ariz. 238, 246 (1997).

Plaintiff's "leading case" on the issue, Pls. Br. at 3, *Boro v. Superior Court*, fares no better. 163 Cal. App. 3d 1224, 1229–30 (1985). *Boro* is more than forty years old and is no longer good law. Its holding rested expressly on California's unique legislative history and then-existing common law distinctions that have since been overtaken by statutory developments in California law. *See People v. Icke*, 9 Cal. App. 5th 138, 144–45 (2017). As such, it no longer reflects the governing understanding of consent obtained through deception, even within California.

Yet, as the court in *Boro* recognized, even by 1985 California had already determined that deception can constitute "fraud in the factum"—even when the survivor is aware that the act is sexual in nature. Regarding "the fraudulent obtaining of intercourse by impersonating a spouse," the court noted that "[s]ome courts have taken the position that such a misdeed is fraud in the inducement on the theory that the woman consents to exactly what is done (sexual intercourse) and hence there is no rape." 163 Cal. App. 3d at 1228. But the court determined that the "better reason[ing] . . . would seem [to] hold such a misdeed to be rape on the theory that it involves fraud in the *factum* since the woman's consent is to an innocent act of marital intercourse while what is actually perpetrated upon her is an act of adultery." *Id.* (emphasis in original) (citation omitted). Indeed, even forty-one years ago, California had already adopted this view by statute. *Id.* at 1229.

Nor does *People v. Ogunmola* assist Plaintiff. 193 Cal. App. 3d 274 (1987). There, a California court of appeals affirmed the conviction of a physician who sexually assaulted his patients by inserting his penis into their vaginas during pelvic examinations. *Id.* at 277-78. The case addressed deception in the context of medical impersonation and abuse of professional authority. *Id.* at 277-79. Its reasoning has no meaningful bearing on the present facts and does nothing to support Plaintiff's contention that deception concerning fertility or reproductive capacity cannot negate consent under Arizona law. *Id.* It is a mere non sequitur.

Finally, Plaintiff cites *Suliveres v. Commonwealth*, 865 N.E.2d 1086, 449 Mass. 112, (2007), for the proposition that "[c]ourts do not expand the definition of sexual assault by judicial construction." Pl.'s Br. at 4 (explaining the holding as "declining to overrule 50-year precedent that fraud cannot substitute for force in rape statute; the legislature has had ample opportunity to change the law and has not"). But *Suliveres* is another non sequitur: there, the statute at issue defined rape as "sexual intercourse *compelled 'by force* and against [the] will' of the victim." 865 N.E.2d at 1087 (citing the statute) (emphasis added). The court had thus previously held that "fraud cannot . . . supply the place of the force which the statute makes mandatory." *Id.* No such statutory language or precedent exists here. To the contrary, Arizona courts have interpreted the sexual assault statute expansively, holding that the statutory definition of "without consent" is expressly illustrative, not exhaustive. *State v. Witwer*, 175 Ariz. 305, 307–08 (Ct. App. 1993). Plaintiff's authorities therefore do not expose ambiguity in Arizona law; they at best merely illustrate that other states, interpreting different statutes, reached conclusions tied to their own legislative choices and doctrinal histories.

D. Plaintiff's transportation of M.S.V. to her abortion appointments does not negate the evidence of coercive control or deception.

Plaintiff argues that, because he drove M.S.V. to her abortion appointments, he could not have exercised coercive control over her or deceived her regarding his vasectomy reversal. But this conclusion is unsupported by the record.

First, Plaintiff's argument overlooks Dr. Taylor's unrebutted testimony that coercive control frequently operates through dependency and control over access to essential needs, including transportation and healthcare. Tr. 17:9–15 (Taylor Test.) (Feb. 11, 2026). The fact that M.S.V. relied on Plaintiff for transportation to obtain time-sensitive medical care is therefore not inconsistent with coercive control; if anything, it may reflect the very dependency dynamics Dr. Taylor described.

Second, Dr. Taylor testified that coercive control is often subtle rather than overt. As she explained, "[i]n fact, the nature of coercive control and the manipulation involved is such that it makes that sort of browbeating . . . unnecessary, because the control, the

power is there." Tr. 95:4–8 (Taylor Test.) (Feb. 11, 2026). This manipulation is apparent in Plaintiff's testimony that, on the way to the first appointment, he "had insisted . . . [that she] at least listen to the heartbeat or look at the sonogram or the image." Tr. 129:18–21 (Villegas Test.) (Feb. 10, 2026).

Third, Plaintiff now characterizes his conduct as evidence that he "respected her right to make her own decisions, even when he disagreed with it." Pl.'s Br. at 8. But Plaintiff cites no testimony in the record supporting that characterization. By contrast, Dr. Taylor's unrebutted testimony establishes that tactics of coercive control can evolve and may include the weaponization of court systems or other forms of post-separation control. Tr. 15:13–16:6 (Taylor Test.) (Feb. 11, 2026). Thus, Plaintiff's decision to accompany M.S.V. to the appointments does not negate the evidence of deception or coercive control and is fully compatible with the dynamics described by Defendants' unrebutted expert testimony.

II. There is no evidentiary basis for the money damage Plaintiff seeks.

A. Plaintiff's alleged harms, even if genuine, were caused by M.S.V,'s decision to seek an abortion, rather than the abortion itself.

Plaintiff seeks damages for a parade of alleged harms —including emotional distress, professional shortcomings, and the collapse of his purported "political career", yet failed to establish that any of those harms were caused by Defendants' conduct rather than by M.S.V.'s independent decision to terminate the pregnancy.

Plaintiff claims he experienced "two kinds of distress": one related to M.S.V.'s decision, and another related to the abortion itself. But he points to no evidence in the record to support the existence of any such distinction. Nor could he. Plaintiff's own testimony makes clear that the source of his distress was M.S.V.'s *decision* to have an abortion, rather than any action by the Defendants, that caused the alleged harm for which he seeks money damages.

The undisputed facts underscore this causation failure. Plaintiff acknowledged that he knew M.S.V. did not want children. Tr. 215:14–17 (Villegas Test.) (Feb. 11, 2026). He also testified that he personally drove her to the abortion clinic on multiple occasions. Tr. 125:18–22, 134:18–135:2 (Villegas Test.) (Feb. 10, 2026). Those facts are fundamentally

inconsistent with Plaintiff's effort to attribute his alleged injuries to Defendants' conduct rather than to M.S.V.'s autonomous decision to terminate the pregnancy. At minimum, they sever any causal chain between the alleged statutory violation and the damages Plaintiff now claims. And these facts also bar recovery because "[d]amages are not recoverable for harm that the plaintiff should have foreseen and could have avoided by reasonable effort without undue risk, expense, or humiliation." *Coury Bros. Ranches, Inc. v. Ellsworth*, 103 Ariz. 515, 520 (1968) (citation omitted).

B. Plaintiff's claim that "the embryo would have been born alive, more probably than not" is unsupported by the record.

Plaintiff argues that no expert identified any specific risk factor for a poor pregnancy outcome, and that therefore the embryo would have been born a healthy child. But that argument ignores the undisputed testimony establishing that the pregnancy was simply too early for many critical risk factors to be identified or excluded. And it is Plaintiff's burden to show that no specific risk factor for a poor pregnancy outcome existed if he wishes to adequately support his claim that the embryo would have been born a healthy child but for the abortion. He has failed to carry this burden.

Plaintiff's own expert conceded that fetal chromosomal abnormalities, "the most common reason for miscarriage in the first trimester", Tr. 68:19–21 (Hazelrigg Test.) (Feb. 10, 2026), cannot be reliably diagnosed until at least 10 to 12 weeks of pregnancy; that placental abnormalities, which can lead to severe hemorrhage and death, typically present in the second trimester or later; that many maternal and fetal complications that affect the viability of a pregnancy do not develop until the second or third trimester; that many fetal impairments are not diagnosed until an amniocentesis at 16 to 19 weeks or a 20-week ultrasound exam; and that there is an entire specialty of obstetrics and gynecology called maternal fetal medicine that is dedicated to treating patients with high-risk pregnancies, with many of the relevant conditions arising after 8 weeks of pregnancy. Tr. 67:16–68:3; 70:6–10; 75:1–76:21; 77:11–21 (Hazelrigg Test.) (Feb. 10, 2026). It is simply not possible to know the outcome of a pregnancy before 8 weeks.

Plaintiff's expert also conceded that it would be impossible to know, had M.S.V.'s pregnancy continued, whether she would have given birth prematurely or whether her baby would have experienced an injury during childbirth, particularly in a country with "one of the highest" rates of maternal mortality in the developed world. Tr. 74:9–18; Tr. 77:22–25 (Hazelrigg Test.) (Feb. 10, 2026). Nor could he reliably determine the lifespan of M.S.V.'s child, had the pregnancy continued. Tr. 74:19–22 (Hazelrigg Test.) (Feb. 10, 2026).

Against this evidentiary backdrop, Plaintiff's claim that "the embryo would have been born alive, more probably than not," Pl.'s Br. at 11, is mere speculation. The record simply does not permit the certainty Plaintiff asks this Court to assume about the outcome of a pregnancy terminated at fewer than eight weeks gestation.

C. Plaintiff failed to show that he would have enjoyed a positive parent-child relationship.

Plaintiff attempts to pass off his hopes and assumptions about the embryo's future—its name, its gender, its future relationship with him—as evidence. But any future between Plaintiff and the embryo is speculative at best. These fantasies have no basis in reality, much less the record. They cannot, therefore, support an award of damages.

Nor is it possible to know anything about what the child would have been like had it been born, including what, if any, relationship it would have had with its father, who, according to Dr. Taylor's unrebutted testimony, exhibited characteristics associated with coercive control and intimate partner violence against its mother. Plaintiff failed to put forth any evidence, much less prove, that he would have had any ongoing positive relationship with the child after birth. As such, he is not entitled to money damages for this alleged loss.

D. M.S.V. credibly testified that she was clear in her conviction to terminate her pregnancy.

Plaintiff instead attempts to undermine the credibility of M.S.V.'s testimony regarding her abortion. But M.S.V. credibly testified that she was determined to terminate her pregnancy, and that "there was nothing that was going to change [her] mind." Tr. 203:21–22 (M.S.V. Test.) (Feb. 10, 2026). Her main concern in seeking out abortion care was "to just get an abortion," and she would not have asked to see any other information if

it had been offered to her prior to her abortion, including information from the State of Arizona. Tr. 203:12–18 (M.S.V. Test.) (Feb. 10, 2026). Nor does she regret having sought and received an abortion. Tr. 204:4–7 (M.S.V. Test.) (Feb. 10, 2026).

Despite this, Plaintiff frames her testimony as "speculation, not evidence," Pl.'s Br. at 11, because "[s]he cannot know what she would have done with information she never had." *Id.* But M.S.V. testified emphatically that she was and is firm in her decision to have an abortion. It is Plaintiff who, having failed to build any record about what, if any, significance the information contained in the Arizona Department of Health Services website would have had on her decision, now hides his speculation behind "argument." But that will not carry his evidentiary burden.

III. Plaintiff's calculation of money damages has no evidentiary basis.

Finally, even assuming Plaintiff is entitled to any damages at all, he failed to provide any evidentiary basis for the damages he has "calculated." And "[d]amages that are speculative, remote or uncertain may not form the basis of judgment." *Coury Bros. Ranches, Inc.*, 103 Ariz. at 521. Most notably, Plaintiff offers a purported "daily value of $430" for his alleged suffering. Pl.'s Br. at 14. But that figure appears to have been invented without any discernible methodology, factual foundation, or evidentiary support. Plaintiff simply asserts that the amount is "modest," *id.*, and vaguely references an alleged "consensus assessment" by psychologists concerning human suffering. Yet no such assessment was introduced into evidence. Plaintiff identified no study, publication, professional standard, or accepted methodology supporting his calculation. Nor did he present testimony from a psychologist, economist, psychiatrist, damages expert, or any other qualified witness capable of grounding such an opinion in reliable principles or methods. *See Coury Bros. Ranches, Inc.*, 103 Ariz. at 521 ("The speculations, guesses or estimates of witnesses form no better basis of recovery than the speculations of the jury themselves.") (internal citation omitted).

Indeed, the record contains no evidence explaining how Plaintiff derived the figure, why $430 per day—as opposed to any other number—purportedly reflects compensable emotional harm, or how the amount relates to Plaintiff's actual experiences. The

calculation is therefore nothing more than an arbitrary number attached to an inherently subjective claim. Arizona law does not permit a damages award to rest on conjecture, speculation, or figures untethered to the evidentiary record. *See Felder v. Physiotherapy Assocs.*, 215 Ariz. 154, 162, ¶ 38 (Ct. App. 2007) ("This court [has] stated . . . that 'conjecture or speculation' cannot provide the basis for an award of damages, and . . . that the evidence must make 'an approximately accurate estimate' possible.") (internal citations omitted) (citing *Gilmore v. Cohen*, 94 Ariz. 34, 36 (1963)).

The absence of evidentiary support is especially glaring given the sweeping and highly individualized harms Plaintiff claims to have suffered, including emotional distress, professional decline, and the derailment of his purported political aspirations. If Plaintiff wished to translate those allegations into a quantifiable monetary award, it was his burden to provide competent evidence establishing both the existence and reasonable measure of such damages. He did not do so. Instead, Plaintiff asks the Court to accept a self-generated formula unsupported by expert testimony, documentary evidence, or any recognized damages methodology. The Court should decline that invitation.

CONCLUSION

Plaintiff has not met his burden of proving that he is entitled to money damages under the Act. Nor is there any evidentiary basis for the money damages Plaintiff seeks.

For these reasons, the Court should enter judgment in favor of Defendants. In the alternative, the Court should limit any recovery to $5,000 in statutory damages and deny all other requested relief.

DATED this 5th day of June, 2026

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