

# THE INDUSTRIAL COMMISSION OF ARIZONA



## LEGAL DIVISION

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P.O. Box 19070  
Phoenix, Arizona 85005-9070

ANDREW F. WADE, CHIEF COUNSEL  
PHONE: (602) 542-5781  
FAX: (602) 542-6783

LAURA L. MCGRORY, DIRECTOR

May 1, 2015

The Honorable Michael A. Mosesso  
ALJ Division  
Industrial Commission of Arizona  
800 W. Washington Street, 4<sup>th</sup> Floor  
Phoenix, AZ 85007

Re: ADOSH vs. ARIZONA STATE FORESTRY DIVISION  
Inspection No: L3419-317242683

Dear Judge Mosesso:

On behalf of ADOSH, we submit the following as an exhibit for use at hearing:

1. April 16, 2012 **Cooperative Fire Rate Agreement** between Arizona State Forestry Division and City of Prescott.

Very truly yours,

Valli Goss  
Attorney for ADOSH

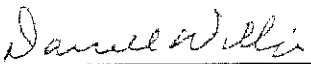
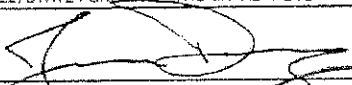
Enclosure

c: David Selden, Esq. (by mail)  
Joy Hernbrode, Esq. (by mail)

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15 MAY 01 AM 11 05 16 AZ ALJ/FHX

## ARIZONA STATE FORESTER'S COOPERATIVE FIRE RATE AGREEMENT

COOPERATIVE FIRE RATE AGREEMENT NUMBER		IGA REFERENCE AGREEMENT NUMBER	
1-1475-12		KR95-1311-LNR	
(1) FIRE DEPT/AGENCY NAME (COOPERATOR)		(6) STATE DISTRICT OFFICE	
CITY OF PRESCOTT FIRE DEPARTMENT		PHOENIX DISTRICT	
(2) ADDRESS		(7) ADDRESS	
1700 IRON SPRINGS ROAD		2901 W PINNACLE PEAK RD	
(3) CITY, STATE, ZIP CODE		(8) CITY, STATE, ZIP CODE	
PRESCOTT, AZ 86305		PHOENIX, AZ 85027	
(4a) BUS. PHONE	(4b) EMERGENCY PHONE	(9) PHONE	
(928) 777-1700	(928) 445-6815	(602)-255-4059 (B)      1-800-309-7081 (FIRE)	
(4c) FAX NUMBER	(4d) EMAIL ADDRESS	(10) ARIZONA STATE FORESTRY DIVISION WEBSITE	
(928) 776-1890		<a href="http://www.azsf.gov">www.azsf.gov</a>	
(5) FEDERAL EMPLOYER ID NUMBER		(11) EFFECTIVE DATES OF AGREEMENT	
86-6000257		BEGINNING      4/15/2012      ENDING      4/15/2014	
(12) EQUIPMENT WORK RATES LISTED BELOW ARE BASED ON ALL OPERATING SUPPLIES BEING FURNISHED BY COOPERATOR (WET)		(13) OPERATORS AND PERSONNEL ARE NOT INCLUDED IN EQUIPMENT WORK RATES AND ARE PAID ACCORDING TO GENERAL PROVISION ITEM 8a4 and ITEM 8a5.	
(14) EQUIPMENT DESCRIPTION <small>List: ICS Type, Gallons, GPM, make, model, year, FD Unit #, License #, 4x4, foam capability.</small>	(15)      RATES		
	STANDARD STAFFING	(16) WORK OR HRLY RATE      UNIT	
		(17) SPECIAL RATE      UNIT	
a. Type 1, 794 gal, 1500 GPM, HME, Pumper, 2005, #1156, G1100X, 2x2, 500 GPM foam capability @ 1%	4	\$125.00	HR
b. Type 1, 750 gal, 1500 GPM, HME, Pumper, 2003, #1057, G250DW, 2x2, 500 GPM foam capability @ 1%	4	\$125.00	HR
c. Type 1, 750 gal, 1500 GPM, HME, Pumper, 2003, #1056, G301DV, 2x2, 500 GPM foam capability @ 1%	4	\$125.00	HR
d. Type 1, 500 gal, 1500 GPM, HME, Pumper, 1999, #910, G524BZ, 2x2, 300 GPM foam capability @ 1%	4	\$125.00	HR
e. Type 1, 500 gal, 1500 GPM, Central States, Pumper, 2008, #1307, G685FC 2x2, 300 GPM foam capability @ 1	4	\$125.00	HR
f. Type 1, 75' Aerial Ladder, HME, 2003, # 1068, G347DV	4	\$125.00	HR
(18) Special Provisions			
Cooperator will adhere to terms set forth on the General Provisions to Cooperative Rate Agreement FM104A (02/12) attached hereto.			
Cost of Personnel assigned to Engines, and Overhead positions will be on actual City of Prescott costs per individual plus benefits (pension, insurance, medicare) Will follow State meal rate schedule for In and out of State assignments. Will follow State lodging rates in State and Federal Lodging rates out of State			
(19) FIRE DEPT/AGENCY REPRESENTATIVE	(20) NAME AND TITLE (PLEASE PRINT)		(21) DATE
	Daniel Willis District Forester		4/16/12
(22) STATE FORESTRY DIVISION REPRESENTATIVE	(23) NAME AND TITLE (PLEASE PRINT)		(24) DATE
	James Downey, District Forester		4/16/12

FORM FM 104 (REPLACES FM 100) Rev 2/12

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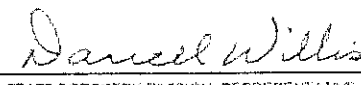

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ARIZONA STATE FORESTER'S  
CFR CONTINUATION SHEET

COOPERATIVE FIRE RATE AGREEMENT NUMBER		IGA REFERENCE AGREEMENT NUMBER				
1-1475-12		KR95-1311-LNR				
(1) FIRE DEPT/AGENCY NAME (COOPERATOR)		(6) STATE DISTRICT OFFICE				
CITY OF PRESCOTT FIRE DEPARTMENT		PHOENIX DISTRICT				
(14) EQUIPMENT DESCRIPTION		(15) STANDARD STAFFING	RATES			
List, ICS Type, Gallons, GPM, make, model, year, FD Unit #, License #, 4x4, foam capability.			(16) WORK OR HRLY		(17) SPECIAL	
			RATE	UNIT	RATE	UNIT
g Type 1, 75' Sparten Ladder Truck, 2006, # 1201, G609EK		4	\$125.00	HR		
h. Hazardous Materials Truck, Chevy, 1988, # 781, G765AX		3	\$125.00	HR		
i Foam 73, CFR "Aircraft Truck", Emergency One, 2001, #981 G675CV		3	\$125.00	HR		
j. Utility Air/Special Rescue, Freightliner Utili Master, 2010, #1337, G454FG			\$125.00	HR		
k. Type 3, 500 gal, 750 GPM, Central States, Pumper, 2001, #974 G663CT, 4x4, foam capabilit		4	\$113.00	HR		
l Type 3, 400 gal, 500 GPM, International, Pumper 1998 #911 G-412BY, 2x2, foam capability		4	\$113.00	HR		
m. Type 6, 250 gal, 300 GPM, Ford F550 Patrol, 2005, # 1132 G088DX, 4x4, foam capability, includes minimum wildland Equipment Caffe unit		3	\$87.00	HR		
n Type 6, 250 gal, 300 GPM, Ford F550, Patrol, 2001, # 966, G316CS, 4x4, foam capability, includes minimum wildland Equipment		3	\$76.00	HR		
o. Type 6, 230 gal, 350 GPM, Dodge 5500, Patrol, 2009, #1312 G629EK, 4x4, 350 GPM foam capability, includes minimum wildland equipment		3	\$76.00	HR		
p. Type I Hand Crew w / transportation		18-22	\$39.50 per hr per crew member.	HR		
q. Polaris ATV, 2007, # 1254, 4634S AOV			\$75.00	DAY		

(18) Special Provisions  
Cooperator will adhere to terms set forth on the General Provisions to Cooperative Rate Agreement FM104A (02/12) attached hereto.

\*\*\*FD Hand Crew with less than 15 members will be billed at the actual personnel cost to the City of Prescott per individual plus benefits (pension, insurance, medicare)\*\*\*  
\*\*\*FD Hand Crew with less than 15 members "Crew Carriers will not be included in cost of crew and will be billed exclusive of the crew according to current contract rates"\*\*\*

(19) FIRE DEPT/AGENCY REPRESENTATIVE	(20) NAME AND TITLE (PLEASE PRINT)	(21) DATE
	Darrell Willis District	4/16/12
(22) STATE FORESTRY DIVISION REPRESENTATIVE	(23) NAME AND TITLE (PLEASE PRINT)	(24) DATE
	James Downey, District Forester	4/16/12

FORM FM 104 (REPLACES FIN 100) REV 2/12

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## ARIZONA STATE FORESTER'S CFR CONTINUATION SHEET

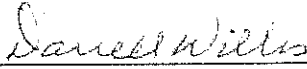
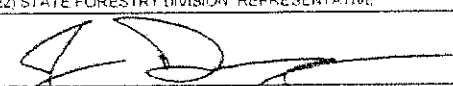
COOPERATIVE FIRE RATE AGREEMENT NUMBER		IGA REFERENCE AGREEMENT NUMBER			
1-1475-12		KR95-1311-LNR			
(1) FIRE DEPT/AGENCY NAME (COOPERATOR)		(6) STATE DISTRICT OFFICE			
CITY OF PRESCOTT FIRE DEPARTMENT		PHOENIX DISTRICT			
(13) EQUIPMENT DESCRIPTION		(14) STANDARD STAFFING	RATES		
List: ICS Type, Gallons, GPM, make, model, year, FD Unit #, License #, 4x4, foam capability.			(15) WORK OR HRLY		(16) SPECIAL
		RATE	UNIT	RATE	UNIT
r. 4x4, Dodge 4500, 1 1/2 ton, 2009, # 1311, G630EK		\$74.00	DAY	\$0 74	MILE
s. Ford F750, Crew Carrier, 2006, # 1167, G117DX		\$125.00	DAY	\$1.25	MILE
t. Ford F750, Crew Carrier, 2006, #1168, G118DX		\$125.00	DAY	\$1.25	MILE
u. Dump Truck, 1986, #1019, G603DM		\$75.00	DAY	\$0.75	MILE
v. 2x2, Ford, F550 Chipper Truck, 2005, #1098, G477DV		\$78.00	DAY	\$0 78	MILE
w. Structure Protection Trailer, 2003 # 1046, G507CW ( IF NOT IN USE NEEDS TO BE SENT HOME)		\$850.00	DAY		
x. Generator Trailer, 1999, #930, G987CG		\$25.00	DAY		
y. 4x4, Ford F250, 3/4 ton Truck, 2004 #1076, # G332DV		\$65.00	DAY	\$0.65	MILE
z. 4x4 Ford F250, 3/4 ton, truck, 2001, #997, G688CV		\$65.00	DAY	\$0 65	MILE
aa. 4x4 Chevy Silverado, 1/2 ton, truck, 2003, #1026, G619DM <i>1/2 LB</i>		\$45.00	DAY	\$0.45	MILE
bb. 4x4 Ford, 3/4 ton, F250, truck, 2004, #1074, G327DV		\$65.00	DAY	\$0.65	MILE
(18) Special Provisions					
Cooperator will adhere to terms set forth on the General Provisions to Cooperative Rate Agreement FM104A (02/12) attached hereto					
**Note Crew Carrier rate only applicable if utilized without Prescott FD Handcrew. Crew Carriers are included in the Crews \$39.50 hourly labor rate					
(18) FIRE DEPT/AGENCY REPRESENTATIVE		(20) NAME AND TITLE (PLEASE PRINT)		(21) DATE	
<i>Darrell Willis</i>		<i>Darrell Willis DIV Dist</i>		<i>4/16/12</i>	
(22) STATE FORESTRY DIVISION REPRESENTATIVE		(23) NAME AND TITLE (PLEASE PRINT)		(24) DATE	
<i>[Signature]</i>		James Downey, District Forester		<i>4/16/12</i>	

FORM FM 104 (REPLACES FIN 100) Rev 2/12

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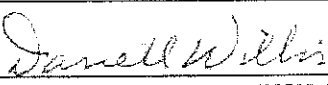

COOPERATIVE FIRE RATE AGREEMENT NUMBER		IGA REFERENCE AGREEMENT NUMBER			
1-1475-12		KR95-1311-LNR			
(1) FIRE DEPT/AGENCY NAME (COOPERATOR)		(6) STATE DISTRICT OFFICE			
CITY OF PRESCOTT FIRE DEPARTMENT		PHOENIX DISTRICT			
(13) EQUIPMENT DESCRIPTION		(14) STANDARD STAFFING	RATES		
List: ICS Type, Gallons, GPM, make, model, year, FD Unit #, License #, 4x4, foam capability.			(15) WORK OR HRLY		(16) SPECIAL
		RATE	UNIT	RATE	UNIT
cc. Ford Taurus, 2000, # 955, G818CR <i>SEDAN CB</i>		\$40.00	DAY	\$0.40	MILE
dd. 4x4 Ford, F250 3/4 ton, 2006, # 1169, G119DX		\$65.00	DAY	\$0.65	MILE
ee. 4x4 Ford, F250 3/4 ton, 2008, # 1221, G037EJ Crew Cab		\$65.00	DAY	\$0.65	MILE
ff. 4x4 Ford, F250 3/4 ton 2008 # 1222, G041 EJ		\$65.00	DAY	\$0.65	MILE
gg. 4x4 Ford, 3/4 Ton, F250, 2008 # 1223, G040EJ		\$65.00	DAY	\$0.65	MILE
hh. 4x4 Ford, 3/4 Ton, F250, 2008, # 1224, G039EJ		\$65.00	DAY	\$0.65	MILE
ii. 4x4 Ford, 3/4 Ton, F250, 2008, # 1272, G664FC		\$65.00	DAY	\$0.65	MILE
jj. 4x4 Ford Escape, 2008, # 1267, G656FC <i>SUV, COMPACT CB</i>		\$46.00	DAY	\$0.46	MILE
kk. Ford Crown Vic, 2008, # 1270, G660FC <i>SEDAN CB</i>		\$40.00	DAY	\$0.40	MILE
ll. Ford Crown Vic, 2008, 1271, G659FC <i>SEDAN CB</i>		\$40.00	DAY	\$0.40	MILE
mm. 4x4 GMC Sierra 2500 HD, 3/4 ton, 460FNS POV (Collier)				\$0.65	MILE
(18) Special Provisions					
Cooperator will adhere to terms set forth on the General Provisions to Cooperative Rate Agreement FM104A (02/12) attached hereto					
***Hand Crew hourly rates inclusive of operational supplies -exceptions at District Forester discretion					
(18) FIRE DEPT/AGENCY REPRESENTATIVE		(20) NAME AND TITLE (PLEASE PRINT)		(21) DATE	
		Daniel Willis District Forester		4/16/12	
(22) STATE FORESTRY DIVISION REPRESENTATIVE		(23) NAME AND TITLE (PLEASE PRINT)		(24) DATE	
		James Downey, District Forester		4/16/12	

FORM FM 104 (REPLACES FM 100) Rev 2/12

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# ARIZONA STATE FORESTER'S CFR CONTINUATION SHEET

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1-1475-12		KR95-1311-LNR				
(1) FIRE DEPT/AGENCY NAME (COOPERATOR)		(5) STATE DISTRICT OFFICE				
CITY OF PRESCOTT FIRE DEPARTMENT		PHOENIX DISTRICT				
(13) EQUIPMENT DESCRIPTION		(14) STANDARD STAFFING		RATES		
List ICS Type, Gallons, GPM, make, model, year, FD Unit #, License #, 4x4, foam capability.			(15) WORK OR HRLY		(16) SPECIAL	
			RATE	UNIT	RATE	UNIT
Inn 4x4, Ford, F350, 1 Ton, #1053, G494DV			\$74.00	DAY	\$0.74	MILE
Co. 4x4, Dodge, 1500, <sup>1/2</sup> Ton, 2000, #1365, G483FG			\$45.00	DAY	\$0.45	MILE
(18) Special Provisions Cooperator will adhere to terms set forth on the General Provisions to Cooperative Rate Agreement FM104A (02/12) attached hereto.						
(19) FIRE DEPT/AGENCY REPRESENTATIVE		(20) NAME AND TITLE (PLEASE PRINT)		(21) DATE		
		Daniel Willis, District Forester		4/16/12		
(22) STATE FORESTRY DIVISION REPRESENTATIVE		(23) NAME AND TITLE (PLEASE PRINT)		(24) DATE		
		James Downey, District Forester		4/16/12		

FORM FM 104 (REPLACES FIN 100) Rev 2/12

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15 MAY 01 AM 11:09:44 AM PAX

**GENERAL PROVISIONS TO ARIZONA STATE FORESTER'S COOPERATIVE RATE AGREEMENT FORM FM 104A (02/12)**

This Cooperative Fire Rate Agreement is entered pursuant to the Cooperative Intergovernmental Agreement currently in effect between the State Forester and the Cooperator. The following terms and provisions apply, but in the event of a conflict between this Rate Agreement and the Cooperative Intergovernmental Agreement, the Cooperative Intergovernmental Agreement shall prevail.

Dispatch. At the time of dispatch, an Incident Order Number and Resource Number will be assigned. Cooperator shall furnish this number as well as a copy of the Cooperative Rate Agreement upon arrival and check in at the incident. When such resources are furnished to the Incident, the following provisions shall apply;

1. Condition of Equipment. The State reserves the right to reject equipment which is not in safe and operative condition. No payment will be made for rejected equipment.

2. Time Under Hire. The equipment and personnel time under hire shall start at the time agreed upon which is when equipment is en route and end by notification to the Cooperator by the State that equipment is released back to its point of hire, except as provided in item 9 and 6F.

3. Transportation of Equipment. Equipment will be transported at State expense from point of hire to the site of work and return, whether under its own power or by transport, except as provided in Item 9 and 8.a.1.

4. Operating Supplies. Operating supplies are to be provided by the Cooperator. Operating supplies may include but are not limited to fuel, oil, filters, lube/oil changes. Though all operating supplies are to be furnished by the Cooperator, the State may, at its option, elect to furnish such supplies when necessary to keep the equipment operating. The cost of such supplies will be deducted from payment to the Cooperator.

5. Repairs. Repairs to equipment shall be made and paid for by the Cooperator. The State may, at its option, elect to make such repairs when necessary to keep the equipment operating. The cost of such repairs will be deducted from payment to the Cooperator.

6. Timekeeping and Invoicing. Time will be reviewed and approved by the appropriate incident supervisor and/or a State Forestry representative responsible for ordering and/or directing use of each piece of equipment. Time will be recorded in military time as follows:

a. Hourly rate - To nearest quarter hour.

b. Daily rate - By calendar day except for first and last day, this will be recorded to nearest hour. Not to exceed total daily rate. Reference item 8.a.2

c. Mileage Rate - To nearest mile.

d. Excessive Work Hours - Work shifts exceeding 16 hours after the first shift of the incident will require the written justification on CTR or other incident documentation by the incident commander or immediate supervisor.

e. Meal breaks - A minimum thirty minute meal break shall be shown on crew time reports for each operational period; if not shown a written justification will be required. Exceptions to this must meet conditions as referenced in the current National Wildfire Coordinating Group (NWCG) Incident Business Handbook (IBHB). In addition, thirty minute meal breaks shall be shown while in travel status unless method of travel conveyance precludes stopping as referenced in the current NWCG IBHB.

f. Refurbishment - Refurbishment/Rehabilitation will be allowed for personnel only and will be restricted to the time it takes to bring the engine back to fire readiness. Refurbishment exceeding 1 hour must be approved by the State Foresters Office.

g. Rest and Recuperation (R & R) - R&R may be reimbursed if it is the policy of the cooperator to allow R&R. The policy may not exceed the Days Off conditions listed in the current NWCG IBMH. A copy of the cooperator's policy allowing R&R must be filed with the corresponding State Forestry District before the beginning of the incident to be considered.

7. Invoices: Invoices to the State shall include the information in the State Invoice Format (State Form FM 122) and shall be signed by an authorized Cooperator's representative. Invoices shall be submitted within 90 days to the State after release from the incident. Invoices received after 90 days may be subject to refusal. Invoices shall contain the following attachments:

a. Completed Crew Time Reports (Federal Form SF261) and/or Emergency Equipment Shift Tickets (Federal Form OF-297) need to be signed by the Incident Commander, Immediate Supervisor or State Forester's representative. On extended Federal Incidents and Team Managed Incidents, Fire Time Reports (Federal Form OF288) and Emergency Equipment Use Invoices (Federal Form OF-286) are also required (**All forms to be original**).

b. Itemized receipts and resource order form with order #'s for authorized supply purchases are required.

c. Incident based documentation: All inspections, reports, resource order #'s and justifications for damage or loss claims shall accompany invoice.

8. Payments.

a. Rates of payments: Payment for equipment and staffing furnished shall be in accordance with the following, except as provided in Item 9:

(1) Hourly Work Rates (column 16): Shall apply to cooperator tactical and support apparatus, including federal excess cooperative property. Current State equipment rate sheets will be utilized to set these rates. Rates shall apply when the cooperator's resources are under hire as ordered by the State and on shift, including mobilization and demobilization of equipment under its own power. When apparatus is being transported (lowboy), a maximum of 4 hours per calendar day will be paid. Meal breaks do not apply to equipment.

(2) Daily Work Rates/Mileage Rates (use column 16-17 FM 104): Shall apply to light duty non-tactical vehicles, command vehicles and miscellaneous equipment. Payment will be made on the basis of calendar days. For fractional days at the beginning and ending of time under hire payment will be based on 50% of the daily rate for periods less

than 8 hours. Current State equipment rate sheets will be utilized to set these rates. Daily work rates will apply to ATV's/UTV's but only when in actual use (wheels turning) and documented on the Emergency Equipment Shift Ticket signed by the Incident Commander, Line Supervisor, or State Forestry Representative.

a. Personally Operated Vehicles (POV's): will be reimbursed at the current state vehicle rates and will not normally include a daily rate. To include a daily rate, the vehicle must be necessary for fireline duty and a justification written on the Emergency Equipment Shift Ticket as to the POV's necessity and signed by the Incident Commander, Line Supervisor, or State Forestry Representative. POV's must be included on the CFRA for compensation and will require proof of insurance.

(3) Special Work Rates (column 17): If a specific work rate or work rate amendment is not in place for planned events within Arizona such as preparedness patrols, prescribed burns, and various non-emergency activities, the default equipment rate will be 50% of standard hourly rate or 50% of daily rate. In-State planned event default personnel rates will be as in item 8(4) and 8(5) without allowance for excess costs due to backfill or coverage.

(4) Career Personnel Rates: Cooperator shall charge actual labor expenses including eligible overtime and employee related expenses in accordance with each department's pre-existing labor contracts and pay schedules. A copy of the shift schedule and pay schedule shall accompany the agreement. Pay schedule revisions occurring during the agreement period will be provided to the State. Non budgeted costs to the fire department incurred for required backfill or coverage will be eligible.

(5) Volunteer Personnel Rates: Cooperator will charge the State for volunteer fire personnel at the current rates outlined in the State Forester Volunteer Classifications for the position for which they were ordered.

(6) Employee Related Expenses (ERE): Employee Related Expenses covered for time while on the assignment will be as follows:

- Workers Compensation
- Unemployment Insurance
- FICA taxes
- Employee Insurance
- Retirement
- Long term disability

Any other Employee Related Expenses beyond the above list must be approved by the State Foresters Office.

(7) Administrative or Special Wildland Fire Incentive Fees: Administrative or Special Wildland Fire Incentive Fees/Pay will not be reimbursed.

(8) Standard Staffing (Column 15): Cooperator lists normal staffing for listed equipment for general information purposes only. This does not restrict the State from ordering or requesting staffing that differ from this value. Equipment rates are for equipment only and do not include staffing.

a. Method of Payment: Lump-sum payment will normally be processed at the end of the emergency incident upon receipt of invoice and agreement with charges. See Arizona Revised Statute 37-623.02E.

## 9. Exceptions

a. No further payment under item 8 will accrue during any period that equipment under hire is not in a safe or operable condition or when Cooperator furnished staffing is (are) not available.

(1) Equipment will be requested with the understanding that it may be on assignment for 14 days. Should a staffing swap be required before the completion of 14 days prior approval by a State Forestry representative will be required before accepting the assignment.

b. If the Cooperator withdraws equipment and/or staffing prior to being released by the State, no further payment under item 8 shall accrue and the cooperator shall bear all costs of returning equipment and/or personnel to the point of hire.

c. After inspection and acceptance for use, equipment and/or furnished staffing that cannot be replaced or equipment that cannot be repaired at the site of work by the Cooperator or by the incident in accordance with Clause 5, within 24 hours, may be considered as being withdrawn by the Cooperator in accordance with paragraph b above, except that the incident will bear the costs of returning equipment and/or personnel to the point of hire as promptly as emergency conditions will allow.

10. Loss, Damage or Destruction. Equipment furnished under this agreement may be operated and subjected to extreme environmental and/or strenuous operating conditions which could include but is not limited to unimproved roads, steep, rocky, hilly terrain, dust, heat, and smoky conditions. As a result, by entering into this agreement, the Cooperator agrees that what is considered wear and tear under this agreement is in excess of what the equipment is subjected to under normal operations and is reflected in the rates paid for the equipment. No reimbursement will be made for loss, damage or destruction when (a) it is due to normal wear and tear, or (b) negligence of the Cooperator or the Cooperator's agents which caused or contributed to the loss, damage or destruction, or (c) damages caused by equipment defects unless such defects are caused by negligence of the State or it's employees.

## 11. Meal and Lodging Expense Reimbursement:

a. In-State: The cooperator will provide and/or pay for their own food and drinks for the first 12 hours of an in-state assignment. The State may, at its discretion, provide meals for in-state assignments within this 12 hour period at no cost to the cooperator. Meals not provided after the first twelve hours of the incident and purchased by the cooperator may be reimbursed according to current State travel meal rates for breakfast lunch or dinner at the location being requested for reimbursement. Lodging costs will not be reimbursed for in-state assignments unless approved by the incident or dispatch office. Approved in-state lodging may be reimbursed according to current State travel policy.

b. Out-of-State: Cooperators may be reimbursed individual meals and lodging while traveling to and from out-of-state assignments. Meals will be reimbursed according to current State travel meal rates for breakfast, lunch, or dinner at the location being requested for reimbursement unless provided for by the incident. Travel time will begin from the time the resources left for the assignment. Out-of-



State lodging may be reimbursed not exceeding the current Federal Rate. Meals and lodging purchased by the cooperator while at the incident will not be reimbursed unless approved and documented by the incident.

c. Miscellaneous: Reimbursement for miscellaneous costs will be at the discretion of the State.

## 12. Safety Requirements

a. The cooperator is required to comply with all rules and regulations covered by the Arizona Industrial Commission Occupational Safety Codes, Title 23, Chapter 2, Article 10.

b. Current NWCG Qualifications Standards including the 3-22-04 NWCG Initial Action Clarification Memo shall apply. During initial response actions, minimum firefighter qualifications shall be completion of NWCG FFT2 training. Individuals at or above single resource boss and unit leader trainee level shall be approved by the State Qualifications Committee.

c. Fire department personnel must be a minimum of 18 years of age and in adequate physical condition to meet the physical requirements for the position for which they were ordered.

d. Personal Protective Equipment- Cooperators must supply the following minimum required personal protective equipment for wildfire response: hardhat, goggles, long sleeve fire resistant shirt, fire resistant trousers, leather lace up boots with a minimum 8" top and non-skid soles, leather work gloves, and a fire shelter. Personal protective equipment shall meet current NFPA standards where applicable.

13. Disputes. In the event of a dispute, the parties agree to arbitrate the dispute to the extent required by A.R.S. Section 12-1518.

14. Termination. The State may cancel this agreement without penalty or further obligation pursuant to A.R.S. 38-511.

15. Failure to adhere to these provisions may result in the cooperator forfeiting all rights to payment.

16. Audit. Within a 5 year period of invoice submittal, the state at its discretion may request a review of fire invoicing documentation.

17. The Parties agree to comply with all applicable Federal or State laws relating to equal opportunity and non-discrimination.

Pursuant to A.R.S. § 35-214, the Cooperator shall retain all data, books and other records ("records") relating to this Contract for a period of five years after completion of the Contract. All records shall be subject to inspection and audit by the State at reasonable times. Upon request, the Cooperator shall produce the original of any or all such records.

This agreement shall be subject to available funding, and nothing in this agreement shall bind the State to expenditures in excess of funds appropriated and allotted for the purposes outlined in this agreement.

The Cooperator assigns to the State any claim for overcharges resulting from antitrust violations to the extent that such violations concern materials or services supplied by third parties to the Cooperator

toward fulfillment of this Contract.

The Cooperator warrants its compliance with Federal Immigration Laws.

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THE CAVANAGH LAW FIRM  
A Professional Association

1850 NORTH CENTRAL AVENUE  
SUITE 2400  
PHOENIX, ARIZONA 85004-4527  
(602) 322-4046

David A. Selden (007499)  
dselden@cavanaghlaw.com  
Julie A. Pace (014585)  
jpace@cavanaghlaw.com  
Justin V. Niedzialek (025654)  
jniedzialek@cavanaghlaw.com  
Fax: (602) 322-4101

Joy L. Hernbrode, Esq. (020494)  
Assistant Attorney General  
ARIZONA ATTORNEY GENERAL'S OFFICE  
1275 W. Washington Street  
Phoenix, AZ 85007

Co-Counsel for Respondent

**BEFORE THE INDUSTRIAL COMMISSION OF ARIZONA**

DIVISION OF OCCUPATIONAL SAFETY &  
HEALTH OF THE INDUSTRIAL  
COMMISSION OF ARIZONA,

Complainant,

v.

ARIZONA STATE FORESTRY DIVISION  
OF ARIZONA,

Respondent.

NO. L3419-317242683

**RESPONDENT'S AMENDED  
REQUEST FOR THE TRIBUNAL  
TO ISSUE A SUBPOENA FOR  
THE DEPOSITION OF  
BRENDAN MCDONOUGH**

(Assigned to the Honorable Michael  
A. Mosesso)

Respondent, Arizona State Forestry Division ("ASFD"), hereby requests that the Tribunal issue a Subpoena for the Deposition of Brendan McDonough. As the Tribunal is aware, there have been several previous efforts to take the deposition of Mr. McDonough. In November 2014, his deposition was postponed due to the schedule of his attorney, Mr.

15 MAY 01 AM 10:12 ICA/ALJ/PHX

1 David Shapiro. His deposition was then set for February 26, 2015. Just a few days before  
2 the February 26, 2015 deposition, Mr. McDonough's attorney sent to ASFD's counsel a  
3 letter from a therapist for Mr. McDonough stating that a deposition would be detrimental  
4 to the treatment of Mr. McDonough for post-traumatic stress disorder.

5 It has recently been revealed by the *Arizona Republic*, in an article on April 21,  
6 2015, that during the same time period that Mr. McDonough has avoided being deposed in  
7 this matter, he has been collaborating with an author on a book about the Yarnell Hill Fire.  
8 Attached hereto as Exhibit A is a copy of the article. The article quotes a book agent  
9 confirming the collaboration with Mr. McDonough regarding the book, and the attorney  
10 for Mr. McDonough was quoted in the newspaper article saying that he was not aware of  
11 the book deal, but he did not deny it.

12 Although the Tribunal normally does not issue subpoenas for the attendance of  
13 witnesses at depositions, in this situation ASFD believes that it is necessary and  
14 appropriate to do so. ASFD has been actively attempting to take Mr. McDonough's  
15 deposition for six months. His testimony is important, and obtaining his testimony at this  
16 time is particularly beneficial because of the upcoming renewed session of the "global"  
17 mediation of this proceeding and related civil litigation. The Arizona Administrative  
18 Code, A.A.C. R20-5-818, gives this Tribunal the authority to call witnesses, rule upon  
19 applications for depositions, and take any other action appropriate for conducting the  
20 hearings in this matter, which certainly include the authority for the issuance of subpoenas  
21 for depositions. Moreover, A.A.C. R20-5-819 provides that depositions in these  
22 proceedings shall comply with the Arizona Rules of Civil Procedure, and Rule 30(a) of  
23 the Arizona Rules of Civil Procedure expressly authorizes the issuance of subpoenas to  
24 compel the attendance of witnesses at depositions.

25 The parties have scheduled another mediation session to occur on June 1, 2015 in  
26 both this matter as well as in related civil litigation. It is therefore critical that the

1 deposition of Mr. McDonough occur on May 26, 2015, as planned.

2 The May 26, 2015 date has been cleared with counsel for ADOSH. The  
3 undersigned counsel has previously also requested that counsel for Mr. McDonough  
4 notify him of any dates in late May that are not convenient for either Mr. McDonough or  
5 his counsel, and he did not receive any response.

6 In view of the long efforts to obtain Mr. McDonough's testimony, the importance  
7 of his testimony, the need for his testimony to occur in May prior to the June 1, 2015  
8 mediation date, and in view of Mr. McDonough's previous avoidance and postponement  
9 of his deposition by asserting that it would be contrary to his PTSD therapy to testify  
10 about the Yarnell Hill Fire notwithstanding the fact that he was and presumably still is  
11 collaborating with a book author regarding the same subject matter during the same time  
12 period, the issuance of a subpoena is appropriate.

13 ASFD appreciates the Tribunal's prompt attention to this request for the issuance  
14 of a subpoena so that this discovery may be obtained forthwith.

15 DATED this 29<sup>th</sup> day of April, 2015.

16 THE CAVANAGH LAW FIRM, P.A.

17  
18 By: 

19 David A. Selden  
20 Julie A. Pace  
21 Justin V. Niedzialek

22 Joy L. Hernbrode, Esq.  
23 Assistant Attorney General  
24 ARIZONA ATTORNEY GENERAL'S OFFICE  
25 1275 W. Washington Street  
26 Phoenix, AZ 85007  
Co-Counsel for Respondent

1 ORIGINAL of the foregoing faxed and  
2 mailed this 29<sup>th</sup> day of April, 2015 to:

3 The Honorable Michael A. Mosesso  
4 Industrial Commission of Arizona  
800 West Washington Street  
Phoenix, AZ 85007

5 COPY of the foregoing emailed and mailed  
6 this 29<sup>th</sup> day of April, 2015 to:

7 Valli Goss  
8 Industrial Commission of Arizona  
800 West Washington Street  
Phoenix, AZ 85007  
9 Attorney for Complainant

10 David M. Shapiro, Esq.  
11 303 E Gurley St Ste 212  
12 Prescott, AZ 86301-3802  
13 Attorney for Brendan McDonough  
(Notice of Appearance has not been filed)

14 COPY of the foregoing emailed  
15 this 29<sup>th</sup> day of April, 2015 to:

16 Joy L. Hernbrode, Esq.  
17 Arizona Attorney General's Office  
18 1275 W. Washington Street  
19 Phoenix, AZ 85007  
20 Co-Counsel for Respondent

21  
22  
23  
24  
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Sharon Damon

# EXHIBIT A

2400



# ARIZONA REPUBLIC

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TUESDAY, APRIL 21, 2015

15 MAY 01 AM 10:13 ICA-ALJ/PNK

## Surviving Yarnell Hill hotshot signs book deal

DENNIS WAGNER, YVONNE WINGETT  
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A Prescott wildfire lookout who lived through the deadly Yarnell Hill blaze of 2013 signed a book deal at about the same time his sworn testimony was canceled based on concerns from his therapist that a deposition would jeopardize his treatment for post-traumatic stress.

Former Granite Mountain Hotshots member Brendan McDonough has been working with best-selling author Stephen Talty to produce a book that, ac-

cording to online promotional materials, will reveal "the untold story from the lone survivor of the Yarnell Hill Fire."

McDonough, who has retained a private attorney and an agent, barely escaped flames that killed 19 fellow hotshots June 30, 2013. Reached by phone Monday, he declined to explain why his treatment precluded sworn testimony but did not prevent participation in a book. He referred calls to his legal representative and his agent.

See **BOOK DEAL, Page 7A**

### AZCENTRAL SPORTS



After 12 years with the team, Arizona Cardinals safety and five-time Pro Bowler Adrian Wilson announces his retirement at the Cardinals' training facility in Tempe. See story on Page 7C.  
PATRICK BREEN/  
THE REPUBLIC

### INSIDE

Astrology	4D	Lottery	4A
Business	10A	Movies	2D
Comics	4D	Obituaries	8A
Dear Abby	4D	Opinions	12A

The USS Theodore Roosevelt and other U.S. forces are tracking an Iranian fleet of ships in the Gulf of Aden and are standing ready to intercept any arms shipments that could help rebels in Yemen. **1B**

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### FORECAST

Mostly sunny  
High 91° // Low 63°

## From the Front Page

# Book deal

Continued from Page 1A

In an interview last week, Los Angeles-based agent Steve Fisher confirmed that a book is in the offing.

"I suggested to Brendan that he should tell his story in book form, and he agreed and I arranged that for him," Fisher said Friday. The narrative, he added, will focus on events leading "up to and after the fire and his efforts to help firefighter families."

Fisher said the contract is with Hachette Book Group, and McDonough's account will be written by Talty. The agreement was arranged several months ago, Fisher said, and the project is in early stages. Fisher would not discuss payment or any other details about the contract.

Talty said in an e-mail that he would not talk about the book until it's published.

McDonough, though previously interviewed by fire investigators and the media, has never answered questions about the accident under oath. His potential deposition looms in litigation stemming from the catastrophe, especially after recent claims that McDonough overheard a crucial radio transmission between the hotshot crew's bosses.

According to that account, which is a subject of dispute, McDonough heard

Granite Mountain Hotshots supervisor Eric Marsh argue with his deputy, Jesse Steed, shortly before the fatal accident. Marsh purportedly ordered Steed to abandon a safe zone and join him with the crew. According to the account, Steed resisted, saying it was unsafe, but relented when given a direct order. All 19 firefighters were overcome by flames a short time later.

McDonough disclosed the previously unreported radio transmissions last fall to Darrell Willis, Prescott's former wildland fires chief, who shared an account of the conversation with City Attorney Jon Paladini. McDonough and Willis subsequently said the narrative related by Paladini was not accurate.

If a dispute between Marsh and Steed occurred, it could change the dynamics for multimillion-dollar legal cases stemming from the fire. Families of the fallen hotshots filed wrongful-death complaints against the Arizona Division of Forestry, which directed suppression efforts. Yarnell property owners also sued. And the Division of Forestry is appealing citations and fines stemming from an investigation by the Arizona Division of Occupational Safety and Health.

As litigation proceeded late last year and early this year, McDonough did not attend two depositions where he was expected to be asked about the radio call.

According to recent court filings, the most recent of those had been set for Feb. 26. Two days before that, according to a legal brief filed by the Division of

Forestry, testimony was postponed "due to Mr. McDonough's therapist informing the parties that subjecting Mr. McDonough to a deposition would impact the progress made in relation to the therapist's treatment of Mr. McDonough for post-traumatic stress disorder."

McDonough appears to have been involved in the book contract at approximately the same time.

Publishers Marketplace, an online service that lists coming books, posted this promotional blurb: "Firefighter Brendan McDonough with NYT best-selling author Stephan Lalty's MY LOST BROTHERS, the untold story from the lone survivor of the Yarnell Hill Fire."

Paladini said Monday that it would be inconsistent for McDonough to offer revelations in a book that he didn't provide during previous inquiries or under oath.

"If the things he is going to put in the book are the things state Forestry want him to testify about, then it is disingenuous," Paladini said. "Why didn't we know this a year and a half ago? This is stuff we should already know."

Paladini said if McDonough, in return for money, is writing about what led up to the deaths of 19 comrades, he can't easily claim that it is too traumatic to discuss.

"Certainly, if he has enough mental acuity and enough mental capacity to write a book ... he can testify," Paladini said.

McDonough's lawyer in the ADOSH case, David M. Shapiro, said he was not

aware of the book deal and could not comment on it.

ADOSH, which is charged with finding the truth about on-the-job accidents, has sought to delay or prevent McDonough's deposition. The agency is pursuing \$559,000 in fines levied against the Forestry Division for willful and serious safety violations during the fire. ADOSH officials declined comment through a spokeswoman.

Division of Forestry attorneys unsuccessfully sought to subpoena McDonough's testimony about the key radio transmission, arguing that his information could lessen or eliminate the agency's liability. In an April 10 filing, agency attorney David Selden suggested that McDonough's trauma could be lessened by dismissal of a citation related to his endangerment.

ADOSH's investigation found the Division of Forestry culpable for unsafe supervision that exposed McDonough to smoke, flames and possible death. By dropping that charge, Selden wrote, ADOSH could "ensure that Mr. McDonough is not forced to recount the events surrounding the fire more than necessary."

The Yarnell Hill Fire legal actions — the ADOSH case, wrongful-death suits and civil complaints filed by property owners — are under mediation in pursuit of a global settlement. Patrick McGroder III, who represents some family members of the fallen hotshots, declined to comment on McDonough's book deal.

# Tuition

Continued from Page 1A

from Arizona high schools and are approved for President Barack Obama's

qualify for in-state tuition. Then-Arizona Attorney General Tom Horne sued the colleges over this position in 2013.

He maintained that the policy violates state law because it gives public benefits to undocumented immigrants.

A decision on the lawsuit is expected in June.

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THE CAVANAGH LAW FIRM  
A Professional Association

1850 NORTH CENTRAL AVENUE  
SUITE 2400  
PHOENIX, ARIZONA 85004-4527  
(602) 322-4009

David A. Selden (007499)  
dselden@cavanaghlaw.com  
Julie A. Pace (014585)  
jpace@cavanaghlaw.com  
Justin V. Niedzialek (025654)  
jniedzialek@cavanaghlaw.com  
Fax: (602) 322-4101

Joy L. Hernbrode, Esq. (020494)  
Assistant Attorney General  
ARIZONA ATTORNEY GENERAL'S OFFICE  
1275 W. Washington Street  
Phoenix, AZ 85007

Co-Counsel for Respondent

BEFORE THE INDUSTRIAL COMMISSION OF ARIZONA

DIVISION OF OCCUPATIONAL SAFETY &  
HEALTH OF THE INDUSTRIAL  
COMMISSION OF ARIZONA,

Complainant,

v.

ARIZONA STATE FORESTRY DIVISION  
OF ARIZONA,

Respondent.

NO. L3419-317242683

RESPONDENT'S NOTICE OF  
ERRATA

(Assigned to the Honorable Michael  
A. Mosesso)

On April 28<sup>th</sup>, 2015 at approximately 5:00 p.m., Arizona State Forestry Division  
("ASFD") filed Respondent's Request for the Tribunal to Issue a Subpoena for the  
Deposition of Brendan McDonough and Notice of Deposition of Brendan McDonough.

15 MAY 01 AM 10:12 ICA/ALJ/PAK

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The deposition was noticed for May 25, 2015, and the subpoena was requested for May 25, 2015. Respondent did not realize at the time of the filing that May 25<sup>th</sup> is Memorial Day.

Filed simultaneously with this Notice, is an Amended Notice of Deposition of Brendan McDonough and Respondent's Amended Request for the Tribunal to Issue a Subpoena for the Deposition of Brendan McDonough, both for May 26, 2015.

Plaintiff's counsel apologizes to the Tribunal and the Parties for any inconvenience caused by this inadvertent error.

RESPECTFULLY SUBMITTED this 29<sup>th</sup> day of April, 2015.

THE CAVANAGH LAW FIRM, P.A.

By:   
\_\_\_\_\_  
David A. Selden  
Julie A. Pace  
Justin V. Niedzialek

Attorneys for Respondent

1 Original of the foregoing faxed and  
mailed this 29<sup>th</sup> day of April, 2015 to:

2  
3 Honorable Judge Michael A. Mosesso  
Industrial Commission of Arizona  
800 West Washington Street  
4 Phoenix, AZ 85007

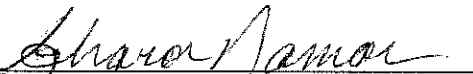
5 Copy of the foregoing emailed and  
mailed this 29<sup>th</sup> day of April, 2015 to:

6  
7 Valli Goss  
Industrial Commission of Arizona  
800 West Washington Street  
8 Phoenix, AZ 85007  
Attorney for Complainant

9  
10 David M. Shapiro, Esq.  
303 E Gurley St Ste 212  
Prescott, AZ 86301-3802  
11 Attorney for Brendan McDonough  
(Notice of Appearance has not been filed)

12  
13 Copy of the foregoing emailed  
this 29<sup>th</sup> day of April, 2015 to:

14 Joy L. Hernbrode, Esq.  
Assistant Attorney General  
15 Arizona Attorney General's Office  
1275 W. Washington Street  
16 Phoenix, AZ 85007  
Co-Counsel for Respondent

17  
18   
19 Sharon Damon

20

21

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26

1 THE CAVANAGH LAW FIRM  
2 A Professional Association

3 1850 NORTH CENTRAL AVENUE  
4 SUITE 2400  
5 PHOENIX, ARIZONA 85004-4527  
6 (602) 322-4009

7 David A. Selden (007499)  
8 dselden@cavanaghlaw.com  
9 Julie A. Pace (014585)  
10 jpace@cavanaghlaw.com  
11 Justin V. Niedzialek (025654)  
12 jniedzialek@cavanaghlaw.com  
13 Fax: (602) 322-4101

14 Joy L. Hernbrode, Esq. (020494)  
15 Assistant Attorney General  
16 ARIZONA ATTORNEY GENERAL'S OFFICE  
17 1275 W. Washington Street  
18 Phoenix, AZ 85007

19 Co-Counsel for Respondent

20 **BEFORE THE INDUSTRIAL COMMISSION OF ARIZONA**

21 DIVISION OF OCCUPATIONAL SAFETY &  
22 HEALTH OF THE INDUSTRIAL  
23 COMMISSION OF ARIZONA,

24 Complainant,

25 v.

26 ARIZONA STATE FORESTRY DIVISION  
OF ARIZONA,

Respondent.

NO. L3419-317242683

**AMENDED NOTICE OF  
DEPOSITION OF BRENDAN  
MCDONOUGH**

(Assigned to the Honorable Michael  
A. Mosesso)

PLEASE TAKE NOTICE that pursuant to the Occupational Safety & Health  
Rules of Procedure Before the Industrial Commission of Arizona, A.A.C. R20-5-819 (A),  
any and all other applicable rules, and by the ruling of Judge Michael A. Mosesso on

\*15 MAY 01 AM 10:12 ICA/ALJ/PHX

1 February 5, 2015, the undersigned will take the deposition upon oral examination of  
2 Brendan McDonough ("Mr. McDonough"), at the time and place stated below, before an  
3 officer authorized by law to administer oaths. The deposition will be transcribed by  
4 stenographic means.

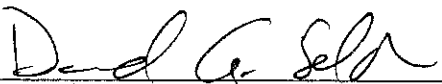
5 **PERSON TO BE EXAMINED:** Brendan McDonough  
6 3290 Sunflower Drive  
7 Prescott, AZ 86305  
8 and  
9 c/o David M. Shapiro, Esq.  
303 E Gurley St Ste 212  
Prescott, AZ 86301-3802

10 **DATE/TIME OF EXAMINATION:** May 26, 2015, 9:00 a.m.

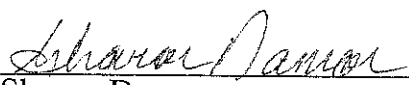
11 **LOCATION OF EXAMINATION:** The Cavanagh Law Firm  
12 1850 North Central Avenue  
13 Suite 2400  
14 Phoenix, Arizona 85004

15 RESPECTFULLY SUBMITTED this 29<sup>th</sup> day of April, 2015.

16 THE CAVANAGH LAW FIRM, P.A.

17  
18 By:   
19 David A. Selden  
20 Julie A. Pace  
21 Justin V. Niedzialek  
22  
23 Attorneys for Respondent  
24  
25  
26

LAW OFFICES  
THE CAVANAGH LAW FIRM, P.A.  
1850 NORTH CENTRAL AVE., STE. 2400  
PHOENIX, ARIZONA 85004  
(602) 322-4041

- 1 Original of the foregoing faxed and
- 2 mailed this 29<sup>th</sup> day of April, 2015 to:
- 3 Honorable Judge Michael A. Mosesso
- 4 Industrial Commission of Arizona  
800 West Washington Street  
Phoenix, AZ 85007
- 5 Copy of the foregoing emailed and
- 6 mailed this 29<sup>th</sup> day of April, 2015 to:
- 7 Valli Goss
- 8 Industrial Commission of Arizona  
800 West Washington Street  
Phoenix, AZ 85007  
Attorney for Complainant
- 9 Copy of the foregoing emailed
- 10 this 29<sup>th</sup> day of April, 2015 to:
- 11 Wendell Help Chapman
- 12 Chapman and Associates – Court Reporting  
wchap5586@aol.com
- 13 Joy L. Hernbrode, Esq.
- 14 Assistant Attorney General  
Arizona Attorney General’s Office  
1275 W. Washington Street  
Phoenix, AZ 85007  
Co-Counsel for Respondent
- 15 David M. Shapiro, Esq.
- 16 303 E Gurley St Ste 212  
17 Prescott, AZ 86301-3802  
18 Attorney for Brendan McDonough  
(Notice of Appearance has not been filed)
- 19 Copy of the foregoing emailed to
- 20 Process Server this 29<sup>th</sup> day of April, 2015
- 21 for service upon:
- 22 Brendan McDonough  
3290 Sunflower Drive  
Prescott, AZ 86305
- 23
- 24   
Sharon Damon
- 25
- 26