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17 **IN THE UNITED STATES DISTRICT COURT**  
18 **FOR THE DISTRICT OF ARIZONA**

19 John Doe,

20 Plaintiff,

21 vs.

22 Paul Penzone, Sheriff of Maricopa  
23 County, Arizona, in his official capacity,  
24 Defendant.

No.

**COMPLAINT FOR DECLARATORY  
AND INJUNCTIVE RELIEF  
PURSUANT TO 42 U.S.C. § 1983**

25 **NOTICE OF CHALLENGE TO CONSTITUTIONALITY OF STATE STATUTE**

26 COMES NOW John Doe, Plaintiff in the above-captioned case, and does hereby  
27 bring challenge to the reporting requirements contained in Arizona Revised Statutes  
28 (A.R.S.) §§ 13-3821 and 13-3822. These statutes place upon Plaintiff, and other persons  
convicted or adjudicated guilty of certain offenses, affirmative disabilities and restraints

1 in violation of the First, Eighth, and Fourteenth Amendments to the Constitution of the  
2 United States. Plaintiff’s claims are both facial and as applied as specified herein.

3  
4 **Jurisdiction and Venue**

- 5 1. Plaintiff’s claims are brought pursuant to 42 U.S.C. § 1983.  
6 2. Jurisdiction is proper under 28 U.S.C. §§ 1331 and 1343. Plaintiff seeks redress for  
7 the deprivation of rights secured by the United States Constitution.  
8 3. The declaratory and injunctive relief sought by Plaintiff is authorized by 28 U.S.C.  
9 §§ 2201 and 2202, Fed. R. Civ. P. 57 and 65, and by the legal and equitable powers of this  
10 Court.  
11 4. Venue is proper in the District of Arizona pursuant to 28 U.S.C. § 1391(b)(2).  
12 Defendant resides within the District of Arizona.  
13

14  
15 **Parties**

16 **A. Plaintiff**

- 17 5. Plaintiff is a resident of Maricopa County, Arizona.  
18 6. Plaintiff is a person required to register as a sex offender pursuant to a 2016  
19 conviction for Attempted Sexual Contact with Minor; Sexual Abuse, and Public Sexual  
20 Indecency.  
21 7. The latest date alleged for commission of these offenses is July 27, 2015.  
22 8. Plaintiff’s registration is mandated by A.R.S. § 13-3821(A).  
23 9. Plaintiff is not subject to community notification because the State of Arizona has  
24 determined he is a “Level One” offender –that he is at low risk to reoffend. See A.R.S.  
25 § 13-3825(C)(2).  
26  
27  
28

1 10. Plaintiff's information is not made publicly available on the State of Arizona's  
2 Internet Sex Offender Website. See A.R.S. § 13-3827(A).

3 11. Plaintiff's crime did not involve the Internet.

4 12. Plaintiff must register for life without possibility of relief.

5 13. Plaintiff owns two residences located in separate counties in Arizona.  
6

7 **B. Defendant**

8 14. Defendant Paul Penzone is the Sheriff of Maricopa County, Arizona. He is sued in  
9 his official capacity.

10 15. Pursuant to A.R.S. § 11-441, a county sheriff is charged with "arresting and taking  
11 before a magistrate for examination all persons who attempt to commit or who have  
12 committed a public offense."  
13

14 16. Pursuant to A.R.S. § 13-3821(A), (I), and (J), a county sheriff is responsible for  
15 collecting registration information and is the public official to whom a person required to  
16 register must report in order to fulfill the registration requirements challenged herein.  
17

18 17. All actions of Defendant in connection with the allegations of this Complaint are  
19 taken under color of Arizona state law.  
20

21 **Statement of Facts**

22 18. Arizona law automatically requires registration as a sex offender pursuant to  
23 conviction for any one of twenty-two offenses. See C.R.S. § 3821(A).

24 19. Not all these offenses are "sexual" offenses. See id. at (A)(1) and (2).

25 20. Not all these offenses involve conduct against a minor. See id. at (A)(5), (6), (17),  
26 (18).  
27  
28

1 21. None of these offenses require the use of a computer or the Internet and only a  
2 handful can be committed through use of a computer or the Internet. See generally id. at  
3 (A)(1)–(22).

4 22. Registration may also be required for any violation of Chapter 14 (Sexual Offenses)  
5 of Title 13 (Criminal Code) of the Arizona Revised Statutes. A.R.S. § 13-3821(C).  
6

7 23. Most Chapter 14 offenses do not involve minors; many are not contact offenses,  
8 and at least one criminalizes behavior between consenting adults. See, e.g., A.R.S. §§13-  
9 1408 (adultery); 13-1411 (bestiality), 13-1424 (voyeurism); 13-1404 (sexual abuse).  
10

11 24. In addition, registration may be required for any criminal offense committed with  
12 a “sexual motivation.” A.R.S. § 13-3821(C), see also A.R.S. § 13-118.

13 25. There are no statutory or other standards or guidelines for making the determination  
14 whether someone convicted of a Chapter 14 or “sexually motivated” offense should be  
15 required to register.  
16

17 26. A person required to register is subject to multiple, overlapping requirements.

18 27. Pursuant to A.R.S. § 13-3821(J), “on the person’s initial registration and every year  
19 after the person’s initial registration during the month of the person’s birthday, the person  
20 shall report in person to the sheriff of the county in which the person is registered.”  
21

22 28. The Arizona Revised Statutes do not say whether the person is required to register  
23 annually in each county he or she may be registered or only in the county where they  
24 reside at the time of registration.  
25  
26  
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28

1 29. Pursuant to A.R.S. § 13-3821(A), the person must register, in-person, with the  
2 county sheriff “within seventy-two hours, excluding weekends and legal holidays, after  
3 entering and remaining for at least seventy-two hours in any county” in Arizona.

4 30. The Arizona Revised Statutes do not say whether a person must register each time  
5 he or she enters a county and remains for more than seventy-two hours or whether they  
6 must register only upon the initial occurrence of entering and remaining in a given county.  
7

8 31. Pursuant to A.R.S. § 13-3821(I), “[i]f the person has more than one residence, the  
9 person shall register in person and in writing every residence and address not less than  
10 every ninety days with the sheriff in whose jurisdiction the person is physically present.”  
11

12 32. Pursuant to A.R.S. § 13-3822(A), “[w]ithin seventy-two hours, excluding  
13 weekends and holidays, after moving to or from the person’s residence or to a different  
14 county or after changing the person’s name or address, a person who is required to register  
15 under this article shall inform the sheriff in person and in writing of the person’s new  
16 residence[.]”  
17

18 33. The Arizona Revised Statutes do not say whether an individual who has already  
19 registered two residences must re-register each time he or she moves between residences.  
20

21 34. Plaintiff is not able to determine from the text of the statute whether he is required  
22 to register each time he spends more than seventy-two hours in a different county, whether  
23 he is required to register each time he moves between residences, and in which  
24 jurisdictions he must register annually.

25 35. Additionally, pursuant to A.R.S. § 13-3821(J), at the person’s initial registration  
26 and annually thereafter, the person must obtain a new “non-operating identification license  
27  
28

1 or a driver license from the motor vehicle division in the department of transportation and  
2 shall carry a valid nonoperating identification license or driver license.”

3 36. At each registration, under A.R.S. § 13-3821(I), all persons required to register  
4 must provide and/or verify:

5 i. Any names by which they are known;

6 ii. The location of any residence (defined as a “dwelling place, whether temporary or  
7 permanent” (A.R.S. § 13-3821(S)(3)(A));

8 iii. Any address of the person (defined as “all locations at which the person receives  
9 mail” (A.R.S. § 13-3821(S)(1));

10 iv. Any “required online identifier” (defined as “any electronic mail address  
11 information or instant message, chat, social networking, or other similar internet  
12 communication name” (A.R.S. § 13-3821(S)(2)); and

13 v. “[T]he name of any website or communication service where the identifier is being  
14 used.”

15  
16  
17  
18 37. Additionally, any person, like Plaintiff, who is required to register pursuant to  
19 A.R.S. § 13-3821(A) must also register the name of any website or internet  
20 communication service where the person intends to use a required online identifier. A.R.S.  
21 § 13-3821(P).

22  
23 38. Plaintiff is unable to tell from the text of the statute when and how he is required  
24 to register the name of any website or communication service he intends to use.

25 39. Neither A.R.S. § 13-3821(P) nor any other statute specifies when or how Plaintiff  
26 must notify the sheriff of any website or communication service intended to be used.  
27

1 40. Pursuant to A.R.S. § 13-3822(B), “a person who is required to register . . . shall  
2 notify the sheriff either in person or electronically within seventy-two hours, excluding  
3 weekends and legal holidays, after a person makes any change to any required online  
4 identifier, and before any use of a changed or new required online identifier to  
5 communicate on the internet” (emphasis added).  
6

7 41. These “online identifier” requirements apply to any website, regardless of the  
8 purpose of the website, the presence of minors on the website, or the ability to  
9 communicate privately with minors on the website.  
10

11 42. These “online identifier” requirements apply regardless of whether the crime of  
12 conviction was against a minor or whether internet communication was used to facilitate  
13 the crime of conviction.

14 43. The provisions regarding registration of sex offenders (which include persons not  
15 convicted of a sex offense) are located in the Arizona state criminal code.  
16

17 44. Violation of any of these registration requirements is a Class 4 felony. A.R.S. § 13-  
18 3824(A).

19 45. For almost all persons required to register as sexual offenders, the presumptive  
20 sentence for commission of a Class 4 felony is 4.5 years’ incarceration. See A.R.S. § 13-  
21 703; see also A.R.S. § 13-702.  
22

23 46. Failure to comply with the Sex Offender Registration statutes is a strict liability  
24 offense. See A.R.S. § 13-202(B).  
25

26 47. Except for very limited exceptions, registration is for life. See A.R.S. § 13-3826;  
27 see also A.R.S. § 13-3821(D), (F)–(H), (M).  
28

1 48. Apart from these limited exceptions, there is no mechanism to seek relief from the  
2 requirement to register in Arizona. See A.R.S. § 13-3826.

3 49. Under Arizona law, sex offender registration is a sanction so severe that a person  
4 charged with a sexually motivated misdemeanor has a right to trial by jury. Fushek v.  
5 State, 183 P.3d 536 (Ariz. 2008).  
6

7 50. Since 1983, the Arizona State Legislature has continually amended Arizona’s Sex  
8 Offender Registration Statutes to make them more comprehensive and onerous.

9 51. Since 1983 the Arizona Legislature has continually increased the punishment for  
10 failing to comply with any requirement of the Sex Offender Registration Statutes.  
11

12 52. In passing the original legislation and the subsequent amendments, the Legislature  
13 did not consider consider any empirical evidence that the Sex Offender Registration  
14 Statutes in fact increase public safety.

15 53. Prior to 2021, and at the time Plaintiff was convicted, a person was required to  
16 register under A.R.S. § 13-3821(A) “within ten days after entering and remaining in any  
17 county in [Arizona].” Compare A.R.S. § 13-3821(A) (2010) with A.R.S. § 13-3821(A)  
18 (2021).  
19

20 54. There are no legislative findings that changing the “grace period” from ten days to  
21 seventy-two hours was necessary or that such change would increase public safety.  
22

23 55. Prior to 2021, and at the time Plaintiff was convicted, a person with two permanent  
24 residences was not required to register every ninety days. Compare A.R.S. § 13-3821(A)  
25 (2010) with A.R.S. § 13-3821(A) (2021).  
26  
27  
28



1 56. There are no legislative findings that requiring an individual with two residences  
2 to register every ninety days increases public safety.

3 57. There is no empirical evidence that the Arizona Sex Offender Registration Statutes  
4 increase public safety.

5 58. There is no empirical evidence that the provisions of the Arizona Sex Offender  
6 Registration Statutes challenged herein increase public safety.

7 59. The State of Arizona conducts an individualized risk assessment of all persons  
8 required to register.  
9

10 60. The Sex Offender Registration Statutes challenged herein apply to all offenders  
11 regardless of individualized risk of recidivism.  
12

13 61. Plaintiff's harm is ongoing and cannot be alleviated except through declaratory and  
14 injunctive relief.

15 62. No other remedy is available at law.  
16

17 **Causes of Action**

18 **I. Arizona Revised Statutes §§ 13-3821 and 13-3822, Individually and**  
19 **Collectively, Violate the First Amendment**

20 63. Plaintiff realleges and reincorporates, as though fully set forth herein, each  
21 allegation contained above.

22 64. Plaintiff wishes to engage in lawful online discourse without prior notification to  
23 the government.  
24

25 65. Plaintiff wishes to engage in lawful online discourse anonymously and without  
26 being subject to government surveillance.  
27  
28

1 66. Arizona Revised Statutes §§ 13-3821 and 13-3822, individually and collectively,  
2 burden Plaintiff's, and other registrants', ability and willingness to speak on the Internet.

3 67. Arizona Revised Statutes §§ 13-3821 and 13-3822, individually and collectively,  
4 target conduct with a significant expressive element.

5 68. Arizona Revised Statutes §§ 13-3821 and 13-3822, individually and collectively,  
6 single out those engaged in expressive activity.

7 69. Arizona Revised Statutes §§ 13-3821 and 13-3822, individually and collectively,  
8 prevent Plaintiff, and other registrants, from speaking anonymously.

9 70. Arizona Revised Statutes §§ 13-3821 and 13-3822, individually and collectively,  
10 are a prior restraint on speech.

11 71. Arizona Revised Statutes §§ 13-3821 and 13-3822, individually and collectively,  
12 burden Plaintiff's, and other registrants', rights of Free Speech guaranteed by the First and  
13 Fourteenth Amendments to the United States Constitution.

14 72. Arizona Revised Statutes §§ 13-3821 and 13-3822, individually and collectively,  
15 are subject to heightened scrutiny.

16 73. Arizona Revised Statutes §§ 13-3821 and 13-3822, individually and collectively,  
17 do not advance an important governmental interest unrelated to the suppression of speech.

18 74. Arizona Revised Statutes §§ 13-3821 and 13-3822, individually and collectively,  
19 burden substantially more speech than necessary to further any legitimate government  
20 interest.

21 75. Arizona Revised Statutes §§ 13-3821 and 13-3822, individually and collectively,  
22 are not the least restrictive means of advancing any legitimate government interest.  
23  
24  
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1 76. On their face, Arizona Revised Statutes §§ 13-3821 and 13-3822, individually and  
2 collectively, violate registrants' rights of Free Speech under the First and Fourteenth  
3 Amendments of the United States Constitution.

4 77. As applied to Plaintiff, Arizona Revised Statutes §§ 13-3821 and 13-3822,  
5 individually and collectively, violate his rights of Free Speech under the First and  
6 Fourteenth Amendments of the United States Constitution.  
7

8 **II. Lifetime Registration as a Sex Offender, without Opportunity for**  
9 **Administrative or Judicial Review, Violates the Fourteenth Amendment**  
10 **Right to Due Process.**

11 78. Plaintiff realleges and reincorporates, as though fully set forth herein, each  
12 allegation contained above.

13 79. By state action, Plaintiff has been placed on the Arizona sex offender registry and  
14 is currently under threat of arrest and prosecution for violating any provision of Arizona  
15 Revised Statutes §§ 13-3821 and 13-3822.  
16

17 80. Placement on the Arizona sex offender registry, specifically the requirement that  
18 they comply with Arizona Revised Statutes §§ 13-3821 and 13-3822, significantly alters  
19 Plaintiff's legal status and implicates a protected liberty interest of Plaintiff and other  
20 registrants.  
21

22 81. Arizona Revised Statutes §§ 13-3821 and 13-3822, individually and collectively,  
23 subject Plaintiff to permanent, unwarranted governmental interference.

24 82. Plaintiff, was given no notice of any registry requirement enacted after the  
25 commission of or conviction for the crime requiring registration, including amendments  
26 significantly increasing the burdens posed by Arizona Revised Statutes §§ 13-3821 and  
27 13-3822.  
28

1 83. Plaintiff has no opportunity under Arizona law for hearing on whether he is  
2 properly subject to Arizona Revised Statutes §§ 13-3821 and 13-3822.

3 84. Lifetime subjection to Arizona Revised Statutes §§ 13-3821 and 13-3822 is not  
4 reasonably related to any legitimate purpose of those statutes.

5 85. As applied to Plaintiff, lifetime subjection to Arizona Revised Statutes §§ 13-3821  
6 and 13-3822, predicated solely on the fact of conviction and without opportunity for  
7 judicial review, violates the Due Process Clause of the Fourteenth Amendment of the  
8 United States Constitution.  
9

10 **III. The Reporting Requirements of Arizona Revised Statutes §§ 13-3821 and**  
11 **13-3822 are Unconstitutionally Vague, Both on Their Face and As Applied,**  
12 **in Violation of the Fourteenth Amendment Right to Due Process.**

13 86. Plaintiff realleges and reincorporates, as though fully set forth herein, each  
14 allegation contained above.

15 87. A law is unconstitutionally vague when it does not provide a person of ordinary  
16 intelligence notice of what conduct is prohibited, when it fails to provide adequate  
17 standards to prevent arbitrary enforcement, or when, by lack of clarity, it impermissibly  
18 interferes with or inhibits the exercise of fundamental liberties.  
19

20 88. Arizona Revised Statutes §§ 13-3821 and 13-3822 are unconstitutionally vague as  
21 applied to Plaintiff as they do not give adequate notice regarding his requirement to  
22 register when he travels between residences.  
23

24 89. Arizona Revised Statutes §§ 13-3821 and 13-3822 are unconstitutionally vague as  
25 applied to Plaintiff as they fail to provide adequate instruction to law enforcement  
26 regarding the duty to register when he travels between residences.  
27  
28

1 90. Arizona Revised Statutes §§ 13-3821 and 13-3822 are unconstitutionally vague on  
2 their face and as applied to Plaintiff as they fail to provide notice of which jurisdictions  
3 an individual must register in annually.

4 91. Arizona Revised Statutes §§ 13-3821 and 13-3822 are unconstitutionally vague on  
5 their face and as applied to Plaintiff as they fail to provide adequate instruction to law  
6 enforcement regarding the duty to register annually.

8 92. Arizona Revised Statutes §§ 13-3821 and 13-3822 are unconstitutionally vague on  
9 their face and as applied to Plaintiff as they fail to provide notice of when and how a  
10 person must register the name of any website or communication service they intend to use.

11 93. Arizona Revised Statutes §§ 13-3821 and 13-3822 are unconstitutionally vague on  
12 their face and as applied to Plaintiff as they fail to provide adequate instruction to law  
13 enforcement as to when and how a person must register the name of any website or  
14 communication service they intend to use.  
15  
16

17 **IV. Application of the Reporting Requirements in Arizona Revised Statutes**  
18 **§§ 13-3821 and 13-3822, As Applied to Plaintiff, Constitute Cruel and**  
19 **Unusual Punishment in Violation of the Eighth Amendment.**

20 94. Plaintiff realleges and reincorporates, as though fully set forth herein, each  
21 allegation contained above.

22 95. Application to Plaintiff of the reporting requirements of Arizona Statutes §§ 13-  
23 3821 and 3822, individually and collectively, constitutes punishment within the meaning  
24 of the Eighth Amendment of the United States Constitution.

25 96. The history and development of the reporting requirement in Arizona Statutes  
26 §§ 13-3821 and 13-3822 evince an intent to punish.  
27  
28

1 97. The reporting requirements impose an affirmative disability and restraint on  
2 Plaintiff as he must register, in person, upon the occurrence of myriad events.

3 98. The reporting requirements impose an affirmative disability and restraint on  
4 Plaintiff as he must report intended use of the Internet.

5 99. Under Arizona Statute § 13-3821(J), Plaintiff must, at all times, carry with him  
6 identification specifically identifying him as a sex offender.

8 100. Registration as a sex offender has traditionally been viewed as punitive.

9 101. Application of the reporting requirements of Arizona Statutes §§ 13-3821 and 3822  
10 subject Plaintiff to a sentence of permanent government surveillance.

11 102. The reporting requirements of Arizona Statutes §§ 13-3821 and 3822 do not serve  
12 a legitimate, non-punitive government purpose.

13 103. To the extent the reporting requirements of Arizona Statutes §§ 13-3821 and 3822  
14 do serve any purpose, it is solely the traditional deterrent function of punishment.

15 104. The reporting requirements of Arizona Statutes §§ 13-3821 and 3822 are excessive  
16 in relation to any non-punitive purpose.

17 105. The reporting requirements of Arizona Statutes §§ 13-3821 and 3822 apply to all  
18 registrants, regardless of whether their crime requiring registration involved a minor or  
19 involved use of the Internet.

20 106. The reporting requirements of Arizona Statutes §§ 13-3821 and 3822 apply for life  
21 outside very limited exceptions.

22 107. The reporting requirements of Arizona Statutes §§ 13-3821 and 3822 apply to  
23 individuals determined by the State of Arizona to be at low risk of reoffending.  
24  
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1 108. Application to Plaintiff of the reporting requirements of Arizona Statutes §§ 13-  
2 3821 and 3822, individually and collectively, is in violation of the Eighth Amendment.

3 **V. Retroactive Application of Amendments to Arizona Revised Statutes**  
4 **§§ 13-3821 and 13-3822 to Plaintiff Violates the Ex Post Facto Clause of**  
5 **the United States Constitution**

6 109. Plaintiff realleges and reincorporates, as though fully set forth herein, each  
7 allegation contained above.

8 110. At the time Plaintiff committed his crime of conviction, the time periods for  
9 registration and for reporting changes in registration information pursuant to Arizona  
10 Statutes §§ 13-3821 and 13-3822 were ten days.

11 111. Subsequent to Plaintiff's commission of his crime of conviction, these reporting  
12 periods were shortened to seventy-two hours.

13 112. At the time Plaintiff committed his crime of conviction, he was not required to  
14 register every ninety days on the basis that he had two permanent residences located in  
15 separate counties.  
16

17 113. Subsequent to Plaintiff's commission of his crime of conviction, statutory  
18 amendments required him to register every ninety days even though his two residences  
19 are both permanent.  
20

21 114. These amendments changed the punishment for Plaintiff's crime of conviction and  
22 inflict a greater punishment than the law annexed to the crime when committed.  
23

24 115. As applied to Plaintiff, these shortened time-periods violate the Ex Post Facto  
25 Clause of the United States Constitution.  
26

27 **WHEREFORE,** Plaintiff prays the Court:  
28

1) For a declaratory judgment that subsection (J) (in so far as that subsection requires disclosure of online identifiers) and subsection (P) of Arizona Statute § 13-3821 and subsection (C) of Arizona Statute § 13-3822 are unconstitutional on their face and as applied to Plaintiff;

2) For a permanent injunction barring Defendant for seeking to enforce subsection (J) (in so far as that subsection requires disclosure of online identifiers) and subsection (P) of Arizona Statute § 13-3821 and subsection (C) of Arizona Statute § 13-3822 against Plaintiff or another registrant;

3) For a declaratory judgment that Arizona Statutes §§ 13-3821 and 13-3822 violate Plaintiff's rights under the First Amendment to the United States Constitution;

4) For a declaratory judgment that Arizona Statutes §§ 13-3821 and 13-3822, individually and collectively, both on their face and as applied, violate the Due Process Clause of the Fourteenth Amendment to the United States Constitution;

5) For a declaratory judgment that Arizona Statutes §§ 13-3821 and 13-3822, individually and collectively, violate Plaintiff's rights under the Eighth and Fourteenth Amendment to the United States Constitution;

6) For a declaratory judgment that Arizona Statutes §§ 13-3821 and 13-3822, individually and collectively, violate the prohibition against ex post facto laws under Article I, Section 10, Clause 1 of the United States Constitution;

7) For a permanent injunction barring Defendant from seeking to enforce against Plaintiff amendments to Arizona Statutes §§ 13-3821 and 13-3822 enacted after July 27, 2015;



1 8) For a permanent injunction barring Defendant from seeking to enforce Arizona  
2 Statutes §§ 13-3821 and §§ 13-3822;

3 9) For a permanent injunction barring Defendant from seeking to enforce Arizona  
4 Statutes §§ 13-3821 and §§ 13-3822 against Plaintiff;

5 10) An award of attorney's fees, expenses, and costs pursuant to 42 U.S.C. § 1988 and  
6 any other applicable provision of law; and  
7

8 11) Any and all such other relief the Court deems appropriate.  
9

10 DATED this 15<sup>th</sup> day of September, 2023.

11 **DUMOND LAW FIRM, PLLC**

12  
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14 Samantha K. DuMond, Esq.  
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