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5 Attorney for Plaintiff

6 **IN THE UNITED STATES DISTRICT COURT**
 7 **FOR THE DISTRICT OF ARIZONA**

8 Edward Douglas Pisciotta, Jr.,
 9 Plaintiff,
 10 vs.
 11 Steve Waugh, in his individual and and official
 capacity; et. al.,
 12
 13 Defendants.

Case No.: CV05-3205-PCT-NVW

**PLAINTIFF’S MOTION FOR RELIEF
 FROM ORDER GRANTING SUMMARY
 JUDGMENT AND JUDGMENT
 THEREON**

(Oral Argument Requested)

15 Plaintiff, by and through Counsel undersigned, moves this court for an order setting
 16 aside the summary judgment granted herein in favor of Defendants in accordance with Rule
 17 60(b) of the Federal Rules of Civil Procedure, for the reason that no hearing had been set in
 18 this matter and no deadline had yet passed for Plaintiff to serve any opposing documents.

19 Defendants filed a motion for summary disposition on June 27, 2007, stating that the
 20 deadling for Plaintiff’s response was June 20, 2007. However, Rule 56(c) provides that a
 21 motion for summary judgment shall be served at least 10 days before the time fixed for the
 22 hearing and the adverse party may serve opposing affidavits prior to the day of the hearing.
 23 Perhaps Defendants have used the Arizona Rules of Civil Procedure in calculating this
 24 deadline, but they are incorrect.

25

1 I hereby certify that on June 28,
2 2007, I electronically transmitted
3 the attached document to the
4 Clerk's office using the CM/ECF
5 System for filing and transmittal
6 of a Notice of Electronic Filing to
7 the following CM/ECF registrants:

8 James M. Jellison
9 Jellison Law Offices, PLLC
10 3101 North Central Avenue
11 Suite 1090
12 Phoenix, AZ 85012

13 Attorney for Defendants

14 I hereby certify that on June 28,
15 2007, I served the attached
16 Document by US Mail on the
17 Following, who are not registered
18 Participants of the CM/ECF System:

19 Honorable Neil V. Wake
20 United States District Court
21 Sandra Day O'Connor US Court House
22 Suite 524
23 401 West Washington Street, SPC 52
24 Phoenix, AZ 85003

25 By s/Ashley Alford