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

8
9 Ryan Morrow,

10 Plaintiff,

11 v.

12 Steven Temple, *et al.*,

13 Defendants.

No. CV-19-0202-TUC-JAS (BGM)

REPORT AND RECOMMENDATION

14 Currently pending before the Court is Defendants Steven Temple, Kimberly
15 Temple, and 4 Ropin Ranch, Inc.'s Motion to Dismiss Second Amended Complaint (Doc.
16 39). Plaintiff has filed a response in opposition to Defendants' motion to dismiss, and they
17 have replied. Pl.'s Resp. in Opp. to Defs.' Mot. to Dismiss 2d Amended Compl. Pursuant
18 to Red. R. Civ. P. 12(b)(1) for Lack of Subj. Matter Juris. (Doc. 42); Defs.' Reply (Doc.
19 43).

20 In its discretion, the Court finds this case suitable for decision without oral
21 argument. *See* LRCiv. 7.2(f). The Parties have adequately presented the facts and legal
22 arguments in their briefs and supporting documents, and the decisional process would not
23 be significantly aided by oral argument. The Magistrate Judge recommends that the
24 District Court deny Defendants Steven Temple, Kimberly Temple, and 4 Ropin Ranch,
25 Inc.'s Motion to Dismiss Second Amended Complaint (Doc. 39).

26
27 **I. PROCEDURAL BACKGROUND**

28 Plaintiff Ryan Morrow, a Texas resident, filed this cause of action against Steven

1 Temple and Kimberly Temple, residents of Arizona, and 4 Ropin Ranch, Inc., an Arizona
2 corporation. *See* Compl. (Doc. 1). This original complaint was filed in the Northern
3 District of Texas. *See id.* The original complaint was filed pursuant to the court’s diversity
4 jurisdiction, 28 U.S.C. § 1332(a) and alleged that “Plaintiff ha[d] incurred more than
5 \$25,000 in economic damages and more than \$50,000 in mental anguish and other non-
6 economic damages arising from Defendants’ fraudulent and deceptive conduct and breach
7 of an agreement to provide substitute goods.” *Id.* at ¶ 5. Plaintiff further alleged that he
8 had “also already incurred in excess of \$15,000 in attorneys’ fees through the date of this
9 filing in connection with this dispute[.]” *Id.* Plaintiff’s complaint alleged causes of action
10 for fraudulent inducement and breach of the replacement agreement, as well as a notice of
11 intent to file a claim under the Texas Deceptive Trade Practices Act. *Id.* at ¶¶ 40–54.

12 On February 4, 2019, Defendants’ filed a Motion to Dismiss for Lack of Personal
13 Jurisdiction, Motion to Transfer Venue and, in the Alternative, Motion to Dismiss for
14 *Forum Non-Conveniens* and for Failure to Plead Fraud with Particularity (Doc. 7). Prior
15 to filing a response to Defendants’ motion (Doc. 7), Plaintiff filed his First Amended
16 Complaint (“FAC”) (Doc. 15). The FAC alleged identical economic and non-economic
17 damages as the original complaint, but the amount of attorneys’ fees was increased to
18 \$27,000. FAC (Doc. 15) at ¶ 5. Plaintiff’s FAC alleged causes of action for 1) fraudulent
19 inducement; 2) breach of the replacement agreement; 3) violations of the deceptive trade
20 practices act; 4) alter ego; and 5) fraud by omission. The parties went on to finish briefing
21 on Defendants’ then pending motion to dismiss (Doc. 7). Upon consideration of the
22 parties’ filings, the district judge for the Northern District of Texas enforced the forum
23 selection clause contained within the Purchase Agreement and transferred the case to this
24 Court. Order 3/28/2019 (Doc. 21). The Texas court made no findings or judgment
25 regarding the Defendants’ motion to dismiss (Doc. 7). *See* Order 3/28/2019 (Doc. 21),
26 docket text.

27 Upon transfer to this Court, Defendants filed a second Motion to Dismiss (Doc. 33)
28 for lack of subject matter jurisdiction, alleging Plaintiff has failed to meet the jurisdictional

1 amount in controversy. On June 4, 2019, Plaintiff filed his Second Amended Complaint
2 (“SAC”) (Doc. 35).¹ Plaintiff’s SAC alleges identical economic and non-economic
3 damages as the original complaint, but the amount of attorneys’ fees was increased to
4 \$58,849.00. SAC (Doc. 35) at ¶ 5. The SAC alleges causes of action for 1) fraudulent
5 inducement; 2) breach of the purchase agreement; 3) breach of the replacement agreement;
6 4) breach of the boarding agreement; 5) violation of the Arizona Consumer Fraud Act
7 (“ACFA”); 6) alter ego; 7) fraud by omission; 8) unjust enrichment; and 9) breach of the
8 implied covenant of good faith and fair dealing. Defendants filed their now pending
9 Motion to Dismiss Second Amended Complaint (Doc. 39).

11 **II. FACTUAL BACKGROUND²**

12 In August of 2018, Plaintiff Ryan Morrow was searching for a roping horse in order
13 to ride in two competitions for which he had qualified that Fall. SAC at ¶ 7. Plaintiff’s
14 search lead him to Defendant 4 Ropin Ranch Inc.’s website. *Id.* at ¶ 8–9. Defendants
15 Steven and Kimberly Temple are the owners and operators of Defendant 4 Ropin Ranch,
16 Inc. *Id.* at ¶¶ 2–4. Plaintiff decided to purchase a horse named Big Rig from Defendants.
17 *Id.* at ¶¶ 9–12. In reaching this decision, Plaintiff relied on statements and omissions made
18 by Defendants both on their website and in person via telephone. *Id.* at 11–13. On August
19 20, 2018, Defendant Steven Temple sent Plaintiff a Purchase Agreement and Bill of Sale
20 for Big Rig (“PA”). SAC at ¶ 14. Ultimately, the Parties executed the PA and Plaintiff
21 purchased Big Rig for \$19,550.00. *Id.* at ¶ 17.

22 Defendants shipped Big Rig to Texas for delivery to Plaintiff. *Id.* at ¶ 18. When

23
24 ¹ A party is allowed to “amend its pleading once as a matter of course[,]” within certain
25 limitations. Fed. R. Civ. P. 15(a)(1). “In all other cases, a party may amend its pleading only with
26 the opposing party’s written consent or the court’s leave.” Fed. R. Civ. P. 15(a)(2). The Court
27 notes that Plaintiff failed to seek or receive leave of court to file its Second Amended Complaint
28 (Doc. 35). The Court will construe Defendants’ second motion to dismiss (Doc. 39) as tacit
agreement to the filing of the SAC.

² For purposes of this Report and Recommendation only, the Court accepts as true the
factual allegations contained in Plaintiff’s SAC (Doc. 35) to the extent that they provide context
for this cause of action.

1 Big Rig arrived, Plaintiff noticed that he was exhibiting signs of lameness in his front legs.
2 *Id.* at ¶ 19. Plaintiff rested Big Rig for several days before riding him. *Id.* Plaintiff’s initial
3 ride around his property was uneventful, but when he attempted roping, Big Rig behaved
4 erratically and bucked Plaintiff off. SAC at ¶ 20. Plaintiff had Big Rig examined by a
5 veterinarian, and Plaintiff ultimately concluded that Big Rig was not suitable for
6 competition. *Id.* at ¶ 23. Plaintiff negotiated a Replacement Agreement (“RA”) with
7 Defendant Steven Temple, by which 4 Ropin Ranch would take Big Rig back and issue
8 Plaintiff inhouse credit for the purchase price of Big Rig and allow Plaintiff to select a
9 suitable replacement. *Id.* at ¶ 23. The parties also executed a Boarding Agreement and a
10 Consignment Agreement (“BA”). *Id.* at ¶ 24. Big Rig was eventually transported back
11 from Texas to Arizona and Defendant Steven Temple took possession of Big Rig but
12 refused to provide a replacement. *Id.* at ¶¶ 25–33. Defendants continued to refuse to
13 provide Plaintiff with a selection of potential replacement horses and refused to refund his
14 money, alleging that the horse returned from Texas lame and demanding that Plaintiff pay
15 for Big Rig’s medical bills. SAC at 34. Plaintiff ultimately purchased another roping horse
16 to ride in competition, from a different vendor, for \$30,000. *Id.* at ¶ 36.

17 18 **III. STANDARD OF REVIEW**

19 This matter is before the Court on Defendants’ motion to dismiss the complaint for
20 lack of subject matter jurisdiction. In “considering a motion to dismiss pursuant to Rule
21 12(b)(1) the district court is not restricted to the face of the pleadings, but may review any
22 evidence, such as affidavits and testimony, to resolve factual disputes concerning the
23 existence of jurisdiction.” *Id.* (citing *Land v. Dollar*, 330 U.S. 731, 735 n.4, 67 S. Ct. 1009,
24 1011 n.4, 91 L. Ed. 1209 (1947)). Further, in attacks on subject matter jurisdiction pursuant
25 to Rule 12(b)(1), Plaintiffs bear “the burden of proof that jurisdiction does in fact exist.”
26 *Thornhill Publ’g Co., Inc. v. General Tel. & Elec. Corp.*, 594 F.2d 730, 733 (9th Cir. 1979);
27 *In Re: Ford Motor Co./Citibank (South Dakota), N.A.*, 264 F.3d 952, 957 (9th Cir. 2001)
28 (citing *McNutt v. General Motors Acceptance Corp.*, 298 U.S. 178, 189, 56 S. Ct. 780, 80

1 L. Ed. 1135 (1936) (“The party asserting federal jurisdiction bears the burden of proving
2 the case is properly in federal court.”). Where a party attacks “a complaint’s jurisdictional
3 allegations despite their formal sufficiency . . . [i]t then becomes necessary for the party
4 opposing the motion to present affidavits or any other evidence necessary to satisfy its
5 burden of establishing that the court, in fact, possesses subject matter jurisdiction.” *St.*
6 *Clair v. City of Chico*, 880 F.2d 199, 201 (9th Cir. 1989). The Court need not consider
7 unreliable evidence, and “no presumptive truthfulness attaches to plaintiff’s allegations.”
8 *Id.* Moreover, Plaintiff has an “obligation to provide the ‘grounds’ of his ‘entitlement to
9 relief’ requir[ing] more than labels and conclusions[.]” *Bell Atlantic Corp. v. Twombly*,
10 550 U.S. 544, 555, 127 S. Ct. 1955, 1964–65, 167 L. Ed.2d 929 (2007).

11 12 **IV. ANALYSIS**

13 Defendants brought their Motion to Dismiss Second Amended Complaint (Doc. 39)
14 pursuant to Rule 12(b)(1), Federal Rules of Civil Procedure, seeking dismissal for lack of
15 subject matter jurisdiction alleging that Plaintiff cannot meet the amount in controversy
16 requirement.

17 Federal courts are courts of limited jurisdiction. U.S. Const. art. III. A district court
18 has “original jurisdiction of all civil actions arising under the Constitution, laws, or treaties
19 of the United States.” 28 U.S.C. § 1331. A district court also has original jurisdiction “of
20 all civil actions where the matter in controversy exceeds the sum or value of \$75,000,
21 exclusive of interest and costs, and is between (1) citizens of different States; (2) citizens
22 of a State and citizens or subjects of a foreign state; (3) citizens of different States and in
23 which citizens or subjects of a foreign state are additional parties; and (4) a foreign state,
24 defined in section 1603(a) of this title as plaintiff and citizens of a State or of different
25 States.” 28 U.S.C. § 1332. “It must appear to a legal certainty that the claim is really for
26 less than the jurisdictional amount to justify dismissal.” *St. Paul Mercury Indemnity Co.*
27 *v. Red Cab Co.*, 303 U.S. 283, 289, 58 S. Ct. 586, 590, 82 L. Ed. 845 (1938). “[I]f, from
28 the face of the pleadings, it is apparent, to a legal certainty, that the plaintiff cannot recover

1 the amount claimed or if, from the proofs, the court is satisfied to a like certainty that the
2 plaintiff never was entitled to recover that amount, and that his claim was therefore
3 colorable for the purpose of conferring jurisdiction, the suit will be dismissed.” *Id.* Further,
4 in a diversity case, federal courts “look to state law to determine the nature and extent of
5 the right to be enforced.” *Horton v. Liberty Mut. Ins. Co.*, 367 U.S. 348, 352–53, 81 S. Ct.
6 1570, 1573, 6 L. Ed.2d 890 (1961).

7 The Ninth Circuit Court of Appeals has “defined the amount in controversy as the
8 amount at stake in the underlying litigation, . . . includ[ing] any result of the litigation,
9 excluding interests and costs, that entail[s] a payment by the defendant.” *Gonzales v.*
10 *CarMax Auto Superstores, LLC*, 840 F.3d 644, 648 (9th Cir. 2016) (quotations and
11 citations omitted) (last alteration in original). “This amount includes, *inter alia*, damages
12 (compensatory, punitive, or otherwise) and the cost of complying with an injunction, as
13 well as attorneys’ fees awarded under fee shifting statutes.” *Id.* at 648–49 (citations
14 omitted). Moreover, “[t]he amount in controversy is not a prospective assessment of [a]
15 defendant’s liability[,] . . . [r]ather, it is the amount at stake in the underlying litigation.”
16 *Chavez v. JPMorgan Chase & Co.*, 888 F.3d 413, 417 (9th Cir. 2018) (quotations and
17 citations omitted) (second alteration in original). “In assessing the amount in controversy,
18 [the Court] may consider allegations in the complaint[,] . . . as well as summary-judgment-
19 type evidence relevant to the amount in controversy.” *Id.* at 416 (citations omitted).

20 **A. Contract Damages**

21 It is undisputed that Plaintiff can claim damages related to the purchase and return
22 of Big Rig. “Arizona has long held that damages for breach of contract are
23 those damages which arise naturally from the breach itself or which may reasonably be
24 supposed to have been within the contemplation of the parties at the time they entered the
25 contract.” *All Am. Sch. Supply Co. v. Slavens*, 125 Ariz. 231, 233, 609 P.2d 46, 48 (Ariz.
26 1980) (citations omitted). Plaintiff has incurred the following damages (excluding
27 attorneys’ fees) from the alleged breach:

28 \$19,550.00 Sale price of Big Rig

1 \$10,450.00 Additional cost for substitute horse

2 \$ 5,650.00 Transportation and medical care for Big Rig

3 Pl.’s Response (Doc. 42) at 8. Thus, Plaintiff’s claimed damages, exclusive of attorneys’
4 fees, for the alleged breach total \$35,650.00.

5 **B. *Emotional Distress Damages***

6 “[I]n Arizona, a party may recover damages for emotional distress arising out of the
7 tortious loss of property where the tortious act directly harmed the plaintiff and affected or
8 burdened a personal, as opposed to an economic or other interest belonging to the plaintiff.”
9 *Murray v. Farmers Ins. Co. of Ariz.*, 2016 WL 7367754, *7 (Ariz. Ct. App. January 19,
10 2016) (citing *Kaufman v. Langhofer*, 223 Ariz. 249, 253, 222 P.3d 272, 276 (Ariz. Ct. App.
11 2009). “Examples of personal damages are the loss of liberty or damage to a family
12 relationship.” *Id.* (citing *Reed v. Mitchell & Timbanard, P.C.*, 283 Ariz. 313, 318–19, 903
13 P.2d 621, 626–27 (Ariz. Ct. App. 1995)). “In contrast, [Arizona courts] have precluded
14 the recovery of emotional distress damages where the plaintiff’s interest was determined
15 to be ‘purely economic.’” *Id.* (citing *Reed*, 283 Ariz. at 319, 903 P.2d at 627); *see also*
16 *Kaufman*, 223 Ariz. 249, 222 P.3d 272 (holding pet owner could not recover emotional
17 distress damages based on loss of a pet due to veterinarian’s negligence because harm did
18 not burden a personal right or interest of plaintiff). To the extent that Plaintiff is seeking
19 remedies under a breach of contract theory, he is not entitled to emotional distress damages.
20 *See Cook v. Orkin Exterminating Co., Inc.*, 227 Ariz. 331, 335, 258 P.3d 149, 153 (Ariz.
21 Ct. App. 2011) (holding the economic loss rule barred plaintiffs’ tort claims).

22 **C. *Arizona Consumer Fraud Act***

23 The Arizona Consumer Fraud Act (“ACFA”) “makes it unlawful to use ‘any
24 deception, deceptive act or practice, fraud, false pretense, false promise, misrepresentation,
25 or concealment, suppression or omission of any material fact’ when selling or advertising
26 merchandise.” *Shaw v. CTVT Motors, Inc.*, 232 Ariz. 30, 31, 300 P.3d 907, 908–09 (Ariz.
27 Ct. App. 2013) (quoting A.R.S. § 44-1522(A)). “The [ACFA] provide[s] injured
28 consumers with a remedy to counteract the disproportionate bargaining power often present

1 in consumer transactions.” *Id.* at 32, 300 P.3d at 909 (quotations and citations omitted).
2 In furtherance of the remedial goals, the Arizona supreme court has recognized a private
3 right of action under the AFCA. *Id.* at 909 (citing *Sellinger v. Freeway Mobile Home Sales,*
4 *Inc.*, 110 Ariz. 573, 575–76, 521 P.2d 1119, 1121–22 (Ariz. 1974)). In order to prevail, “a
5 plaintiff must establish that (1) the defendant made a misrepresentation in violation of the
6 Act, and (2) defendant’s conduct proximately caused plaintiff to suffer damages.”
7 *Cheatham v. ADT Corp.*, 161 F. Supp. 3d 815, 825 (D. Ariz. 2016) (citing *Parks v. Macro-*
8 *Dynamics, Inc.*, 121 Ariz. 517, 591 P.2d 1005, 1008 (Ariz. Ct. App.1979)). Furthermore,
9 “Arizona’s economic loss rule does not apply to private causes of action under the
10 [A]CFA.” *Shaw*, 232 Ariz. at 33, 300 P.3d at 910. As such, although Plaintiff may not be
11 able to recover emotional distress damages under a breach of contract theory, those
12 damages may be recoverable under the ACFA. At this time, the amount is not quantified,
13 but the damages are “at stake” in the litigation. *Chavez v. JPMorgan Chase & Co.*, 888
14 F.3d 413, 417 (9th Cir. 2018).

15 ***D. Punitive Damages***

16 “Punitive damages are not usually awarded in contract actions, unless there is an
17 accompanying tort.” *Miscione v. Bishop*, 130 Ariz. 371, 374–375, 636 P.2d 149
18 (App.1981); see also Restatement (Second) Contract § 355 (1981). In Arizona, punitive
19 damages are available under a consumer fraud cause of action, as well as claims for
20 fraudulent inducement. *See Medasys Acquisition Corp. v. SDMS, P.C.*, 203 Ariz. 420, 55
21 P.3d 763 (Ariz. 2002) (noting the availability of punitive damages for consumer fraud
22 claims and holding equitable claims, such as rescission, also support punitive damages).
23 Plaintiff has brought the tort claim of fraud in the inducement and a consumer fraud claim.
24 “To recover punitive damages, a plaintiff must prove by clear and convincing evidence that
25 the defendant engaged in aggravated and outrageous conduct with an ‘evil mind.’” *Hyatt*
26 *Regency Phoenix Hotel Co. v. Winston & Strawn*, 184 Ariz. 120, 132, 907 P.2d 506, 518
27 (Ariz. Ct. App.1995) (quoting *Thompson v. Better-Bilt Aluminum Prod. Co.*, 171 Ariz.
28 550, 832 P.2d 203, 209 (Ariz.1992)). “A defendant acts with the requisite evil mind when

1 he intends to injure or defraud, or deliberately interferes with the rights of others,
2 ‘consciously disregarding the unjustifiable substantial risk of significant harm to them.’”
3 *Id.* (quoting *Linthicum v. Nationwide Life Ins. Co.*, 150 Ariz. 326, 723 P.2d 675, 680
4 (Ariz.1986)). Factors for consideration include “(1) the reprehensibility of defendant's
5 conduct and the severity of the harm likely to result, (2) any harm that has occurred, (3)
6 the duration of the misconduct, (4) the defendant's awareness of the harm or risk of harm,
7 and (5) any concealment of it.” *Hyatt Regency*, 184 Ariz. at 132, 907 P.2d at 518.
8 Plaintiff’s Second Amended Complaint (Doc. 35) alleges that Defendants had previously
9 sold Big Rig to another buyer prior to Plaintiff and that Defendants had lied to that buyer,
10 as well as Plaintiff. Plaintiff further alleges that Defendants purposefully mislead him
11 throughout the course of their business relationship. *See id.* These facts are sufficient to
12 support a claim for punitive damages.

13 ***E. Attorneys’ Fees***

14 The Ninth Circuit Court of Appeals has explained that the amount in controversy
15 “encompasses all relief a court may grant on that complaint if the plaintiff is victorious.”
16 *Fritsch v. Swift Transp. Co. of Ariz., LLC*, 899 F.3d 785, 791 (9th Cir. 2018) (quoting
17 *Chavez v. JPMorgan Chase & Co.*, 888 F.3d 413, 414–15 (9th Cir. 2018)). Attorneys’ fees
18 awarded under fee-shifting statutes or contracts are included in the amount in controversy
19 calculation. *Id.*, at 793. The *Fritsch* court considered “whether attorneys’ fees incurred
20 after removal were properly included in the amount in controversy . . . [and] conclude[d],
21 in light of *Chavez* and [its] precedents, that a court must include future attorneys’ fees
22 recoverable by statute or contract when assessing whether the amount-in-controversy
23 requirement is met.” *Fritsch*, 899 F.3d at 794 (citations omitted); *see also Degon v. USAA*
24 *Casualty Ins. Co.*, 2019 WL 5889301 (D. Ore. November 12, 2019) (applying *Fritsch* in a
25 breach of contract case). The court further noted that “if the law entitles the plaintiff to
26 future attorneys’ fees if the action succeeds, then there is not question that future [attorneys’
27 fees] are at stake in the litigation.” *Id.* (quotations and citations omitted) (alteration in
28 original).

1 Plaintiff's attorneys' fees were \$15,000.00 at the outset of this litigation. Pl.'s
2 Original Compl. (Doc. 1) at ¶ 5. At the time of filing his response, Plaintiff's attorneys'
3 fees were estimated to be \$63,424.00. Pl.'s Response (Doc. 42), Wcislo Aff. at ¶¶ 3, 11.
4 Defendants assert that "Plaintiff cannot spend his way to subject matter jurisdiction."
5 Defs.' Reply (Doc. 43) (citing *Dukes v. Twin City Fire Ins. Co.*, 2010 WL 94109 (D. Ariz.
6 2010)). Defendants do not, however, address the impact of the Ninth Circuit's opinion in
7 *Fritsch*, which notes that "[a]t the time of the district court's ruling, district courts in the
8 Ninth Circuit were split on whether a court could include future attorneys' fees in the
9 amount in controversy[,]” specifically noting the *Dukes* opinion. *Fritsch*, 899 F.3d at 790
10 n.2. It is undisputed that at this juncture, Plaintiff has incurred \$63,424.00 in attorneys'
11 fees. Even if the Court were only to consider the \$15,000.00 spent at the time of filing as
12 incurred to date, it is not unreasonable to expect that the remaining \$48,424.00 would be
13 incurred over the course of this litigation. As such, it is "at stake" in the litigation and shall
14 be considered in the amount in controversy. *Chavez*, 888 F.3d at 417; *Fritsch*, 899 F.3d at
15 794.

16 ***F. Conclusion***

17 Plaintiff's alleged breach of contract damages of \$35,650.00 plus attorneys' fees of
18 \$63,424.00 equals \$78,424.00. Additionally, Plaintiff's claims for consumer fraud and
19 fraudulent inducement increase that total. As such, the Court finds that Plaintiff's claims
20 allege more than the \$75,000.00 minimum amount in controversy necessary to sustain
21 diversity jurisdiction.

22

23 **V. RECOMMENDATION**

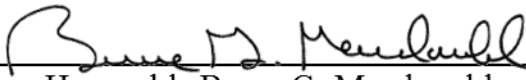
24 For the reasons delineated above, the Magistrate Judge recommends that the District
25 Judge enter an order DENYING Defendants' Motion to Dismiss Second Amended
26 Complaint (Doc. 39).

27 Pursuant to 28 U.S.C. § 636(b) and Rule 72(b)(2) of the Federal Rules of Civil
28 Procedure, any party may serve and file written objections within fourteen (14) days after

1 being served with a copy of this Report and Recommendation. A party may respond to
2 another party's objections within fourteen (14) days after being served with a copy. Fed.
3 R. Civ. P. 72(b)(2). No replies shall be filed unless leave is granted from the District Court.
4 If objections are filed, the parties should use the following case number: **CV-19-0202-**
5 **TUC-JAS.**

6 Failure to file timely objections to any factual or legal determination of the
7 Magistrate Judge may result in waiver of the right of review. The Clerk of the Court shall
8 send a copy of this Report and Recommendation to all parties.

9 Dated this 4th day of March, 2020.

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11 _____
12 Honorable Bruce G. Macdonald
13 United States Magistrate Judge
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