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7 **IN THE SUPREME COURT**  
8 **STATE OF ARIZONA**

9 In the Matter of:

Supreme Court No. R-18-

10 **PETITION TO AMEND RULES 38,**  
11 **39, 49, 77, AND 84 OF THE**  
12 **ARIZONA RULES OF CIVIL**  
13 **PROCEDURE**

**PETITION**

14 Pursuant to Rule 28(A), Ariz. R. Sup. Ct., the State Bar of Arizona (“State  
15 Bar”) petitions the Court to amend Arizona Rules of Civil Procedure 38, 39, 49, 77,  
16 and 84 regarding the procedure for obtaining a jury trial. The text of the proposed  
17 amendments appears in the appendixes to this Petition (a clean version at Appendix  
18 A and a blacklined version at Appendix B).

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21 **INTRODUCTION**

22 Arizona Rule of Civil Procedure 38 requires parties to file a separate written  
23 demand in order to preserve their right to a jury trial. Arizona’s rule differs  
24 substantially from Federal Rule of Civil Procedure 38, both with respect to the  
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1 timing of the demand (within 10 days after the filing of a joint report and proposed  
2 scheduling order in state court, versus 14 days after the final pleading in federal  
3 court) and the form of the demand (a separate written demand required in state court,  
4 versus the ability to include the demand within a pleading in federal court). These  
5 differences can create a trap for the unwary in cases removed from state to federal  
6 court, whereby parties can inadvertently fail to timely demand a jury trial. *See, e.g.,*  
7 *Lutz v. Glendale Union High School*, 493 F.3d 1061 (9th Cir. 2005) (finding jury  
8 trial waiver in case removed to federal court); *Singh v. Southwest Airlines Co.*, 82  
9 Fed. Appx. 549, 551 (9th Cir. 2003) (same in case involving *pro per* litigant). Even  
10 in cases that stay in state court, parties can inadvertently lose their right to a jury  
11 trial. *See, e.g., In re Guardianship of Sommer*, 2017 WL 1422479 (App. Apr. 13,  
12 2017) (waiver due to failure to file jury demand); *Del Castillo v. Wells*, 22 Ariz.  
13 App. 41, 45 (1974) (waiver due to untimely demand by *pro per* litigant).

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18 Under an amendment that went into effect on January 1, 2017, parties in  
19 medical malpractice cases need not file a demand for a jury trial. Instead, it is  
20 presumed that a jury trial is desired, with the parties able to “affirmatively waive the  
21 right to a jury trial by filing a written stipulation, signed by all parties, at any time  
22 after the action is commenced, but no later than 30 days before the trial is scheduled  
23 to begin.” Ariz. R. Civ. P. 38(b)(2). That amendment was partially intended to fix  
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25

1 a gap created for jury demands in medical malpractice cases due to a 2014  
2 amendment to the rule, but the amendment was also crafted to account for the fact  
3 that defendants nearly always desire a jury trial in medical malpractice cases, so why  
4 make them jump through any hoops to get one.  
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6 The State Bar now recommends further amending Rule 38 such that in all  
7 cases—not just medical malpractice cases—parties must affirmatively waive their  
8 right to a jury trial rather than affirmatively assert that right through a written  
9 demand. The proposed amendments eliminate the potential trap in cases removed  
10 to federal court and give greater recognition to the constitutional right to jury trials.  
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### 13 THE TRAP FOR THE UNWARY IN REMOVED CASES

14 Stuck within Federal Rule of Civil Procedure 81(c)(3) are provisions  
15 governing jury demands in cases removed from state to federal court. That rule  
16 provides:  
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#### 19 **(3) Demand for a Jury Trial**

20 **(A) *As Affected by State Law.*** A party who, before removal, expressly  
21 demanded a jury trial in accordance with state law need not renew the  
22 demand after removal. If the state law did not require an express demand  
23 for a jury trial, a party need not make one after removal unless the court  
24 orders the parties to do so within a specified time. The court must so order  
25 at a party's request and may so order on its own. A party who fails to make  
a demand when so ordered waives a jury trial.

1           **(B) Under Rule 38.** If all necessary pleadings have been served at the time  
2 of removal, a party entitled to a jury trial under Rule 38 must be given one  
3 if the party serves a demand within 14 days after:

4           (i) it files a notice of removal; or

5           (ii) it is served with a notice of removal filed by another party.

6 Fed. R. Civ. P. 81(c)(3). Given Arizona’s current requirement for a jury demand:

7 (i) in a removed case where all pleadings have already been filed at the time of  
8 removal, a jury demand is required no later than 14 days after the filing or service of  
9 the notice of removal; and (ii) in a removed case where the final pleading is filed in  
10 federal court after removal, a jury demand is required pursuant to Fed. R. Civ. P.  
11 38(b) no later than 14 days after service of that pleading. These are both earlier  
12 deadlines than required by Arizona’s Rule 38.

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14           A number of courts and commentators have noted the potential trap for the  
15 unwary created by Rule 81(c)(3), partially due to its placement within the federal  
16 rules. Needless to say, Rule 81(c)(3) is not necessarily the first place a practitioner  
17 or *pro per* litigant would look when determining what requirements they may need  
18 to meet in requesting a jury trial (Rule 81 is entitled, “Applicability of the Rules in  
19 General; Removed Actions”). As noted by one commentator:  
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22           Often enough the lawyer is not, and perhaps excusably so[, aware of Rule  
23 81(c)(3)]. Instead of being made part of the statutes that govern removal  
24 procedure, 1446 and 1447 of Title 28, or being included as an additional  
25 subdivision in the rule that addresses the jury demand in original federal  
actions (Rule 38), this important procedural guidance on demanding trial by

1 jury in a removed case was instead made just a subdivision within a single  
2 rule set forth as part of a handful of “General Provisions” at the end of the  
Rules of Civil Procedure (Part XI, consisting of Rules 81-84).

3 108 SIEGEL’S PRACTICE REVIEW 1, *Different Ways of Demanding Jury in State*  
4 *Courts Can Generate Inadvertent Waivers of Trial by Jury in Removed Actions*  
5 (April 2001) (describing the positioning of this rule as “eccentric” or “unlikely”);  
6 *see also, e.g., Cross v. Monumental Life Ins. Co.*, 2008 WL 2705134, at \*1 (D. Ariz.  
7 July 8, 2008) (observing that “the needless complexity of the removal rule, Rule  
8 81(c), sometimes creates a trap for the unwary”); *Marvel Entertainment Group, Inc.*  
9 *v. Arp Films, Inc.*, 116 F.R.D. 86, 88 (S.D.N.Y. 1987) (noting same trap); 8 MOORE’S  
10 FEDERAL PRACTICE § 39.31[5][h][i] (3d ed. 2017) (“Rule 81(c)(3) presents what may  
11 be a trap for the unwary practitioner seeking a jury trial...”). This unexpected  
12 positioning thus could lead even a relatively diligent practitioner (and certainly a *pro*  
13 *per* litigant) to miss the jury demand deadline in a removed case.<sup>1</sup>

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20 <sup>1</sup> While Federal Rule of Civil Procedure 39(b) says that where a proper jury demand  
21 is not made, “the court may, on motion, order a jury trial on any issue for which a  
22 jury might have been demanded,” the trial court has wide discretion on whether to  
23 excuse an untimely demand and grant a jury trial. *See Rutledge v. Elec. Hose &*  
24 *Rubber Co.*, 511 F.2d 668, 675 (9th Cir. 1975) (“The denial of a motion under this  
25 rule [39(b)] is to be sustained unless an abuse of judicial discretion is shown. For  
this reason appellate courts normally refuse to interfere.”) (citations omitted). Thus,  
parties who fall into the trap of Rule 81(c)(3) will then be at the mercy of the district  
court judge, and the results may vary widely from judge to judge.

1 Adding to its odd placement within the rules, ambiguous wording in Rule  
2 81(c)(3) adds to the risk that a party will inadvertently waive its right to a jury trial.  
3 Namely, with respect to the provision of that rule accounting for states that do not  
4 require an express jury trial demand, the rule was amended in 2007 as part of the  
5 federal restyling effort to change the wording from “state law applicable in the court  
6 from which the case is removed **does not require** the parties to make express  
7 demands in order to claim trial by jury” to “state law **did not require** an express  
8 demand for a jury trial.” (Emphasis added). That changed wording from present to  
9 past tense could potentially be read by a party to mean that if a jury demand was not  
10 required by state law before the time of removal, then the party need not make such  
11 a demand after removal. A federal court, however, would be unlikely to read the  
12 amendment in that way given that it was part of the federal restyling effort and given  
13 that the Advisory Committee Note to the 2007 amendment of Rule 81 states that the  
14 “changes are intended to be stylistic only.” Instead, courts will likely continue to  
15 interpret the provision to mean that a jury demand in a removed case is only excused  
16 if state law does not require an express jury demand at any time (i.e., if a demand  
17 would have been required after the time at which the case was removed, a demand  
18 must still be made in federal court pursuant to Rule 81(c)(3)). *See, e.g., Williams v.*  
19 *Shell Oil Co.*, 487 F. Supp. 81, 84 (E.D. Mich. 1980). At meetings held in April of  
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1 2016 and April of 2017, the Federal Advisory Committee on Civil Rules recognized  
2 the potential ambiguity created by the restyled language.

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4 Finally, the likelihood that the jury demand deadline in a removed case will  
5 be missed is heightened in Arizona by the fact that our state rules do not require a  
6 jury demand as early in the case as is required by the federal rules. See J. Baker,  
7 *Traps for Us Attorneys Not Blessed with a Steel-Trap Mind*, 50 ARK. LAW. 42  
8 (Winter 2015) (noting potential trap for state-court practitioners wanting jury trial in  
9 federal court case, where jury demands are required much earlier than under  
10 Arkansas state court rules).

### 13 **AMENDING RULE 38 TO REMOVE THE DEMAND REQUIREMENT**

14 This Petition recommends amending Rule 38 to move from the current system  
15 of requiring written demand of a jury trial to a system requiring express waiver of a  
16 jury trial right. The proposed amendments to Rule 38 are set forth in the attached  
17 appendixes. As explained below, these proposed amendments will remove the trap  
18 for parties seeking jury trials in removed cases and will give greater recognition to  
19 the constitutional right to jury trials.  
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22 The proposal does not break new ground, as there are in fact several states  
23 already utilizing systems where jury demands are unnecessary and express waivers  
24 are instead required. See, e.g., Minn. R. Civ. P. 38.02; Mo. R. Civ. P. 69.01; Or. R.  
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1 Civ. P. 51(C). And, in fact, there is currently discussion within the federal system  
2 about potentially changing to a system of presumed jury demands absent express  
3 waiver. *See* June 13, 2016 Memorandum Re Jury Trials in Civil Cases from Judges  
4 Neil Gorsuch and Susan Graber to Judges Jeffrey Sutton, David Campbell, and John  
5 D. Bates of Advisory Committee on Civil Rules (proposing concept whereby “a jury  
6 trial would be the default in civil cases, and that where a party is entitled to a jury  
7 trial on a claim, “that claim will be tried by a jury unless the party waives a jury, in  
8 writing, as to that claim”), found at  
9 [http://www.uscourts.gov/sites/default/files/2017-04-civil-agenda\\_book.pdf](http://www.uscourts.gov/sites/default/files/2017-04-civil-agenda_book.pdf).

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13 Arizona Rule of Civil Procedure 38 currently requires—in all non-medical  
14 malpractice cases—the filing and service of “a written demand” in order to gain a  
15 jury trial. This Petition recommends revising the rule such that “a party need not  
16 file a written demand or take any other action in order to preserve its right to trial by  
17 jury.” Instead, in cases where there is a jury trial right, the parties must all expressly  
18 waive their jury trial right “by filing a written stipulation, signed by all parties who  
19 appear at trial, at any time after the action is commenced, but no later than 30 days  
20 before the trial is scheduled to begin.” This proposal is very much in line with the  
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1 amendment that went into effect on January 1, 2017, to Rule 38(b)(2) for medical  
2 malpractice actions.<sup>2</sup>

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4 The Petition recommends two additional changes to Rule 38 to provide greater  
5 clarity to such a system based on express jury waivers rather than demands. First,  
6 the proposal adds language clarifying that the parties can effect waivers of the jury  
7 trial right either in whole or only as to specific issues (just as under the current  
8 system parties can make jury demands on all issues triable as of right by jury or only  
9 as to specific issues). Second, the proposal adds language authorizing jury trial  
10 waivers later than 30 days before the scheduled trial date, so long as the court  
11 approves the waiver. While the parties will generally know earlier than 30 days  
12 before trial whether they want a jury or bench trial, the State Bar believes that the  
13 court and the parties together should have the flexibility to waive jury trials even  
14 past that date.

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18 To account for these changes, Rule 39 would require minor amendments.  
19 Namely, Rule 39 is currently drafted to set forth the procedures followed if a jury  
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23 <sup>2</sup> A clause has also been added to the proposed language such that it reads, “The  
24 parties may be deemed to have waived, under these rules, a right to trial by jury only  
25 if they affirmatively waive that right by filing a written stipulation....” This clause  
has been added to clarify that the rule does not govern the enforceability of any pre-  
litigation contractual waiver that the parties may have executed.

1 demand is or is not made under Rule 38. The language would need to be amended  
2 to instead speak in terms of the procedures followed if a jury waiver is or is not  
3 effected under Rule 38. Again, the proposed amendments to Rule 39 are set forth in  
4 the attached appendixes.  
5

6 Finally, to account for the change from a system of express jury demands to  
7 one of express jury waivers, minor amendments are required to Rule 49(c), Rule  
8 77(a), and the forms for Joint Reports found in Rule 84 (namely Forms 11(a), 12(a),  
9 13(a), and 14(a)).<sup>3</sup> The proposed amendments to these rules are set forth in the  
10 attached appendixes.  
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### 12 REASONS FOR PROPOSED AMENDMENTS

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14 The State Bar recommends these amendments to the procedures for gaining  
15 jury trials for two primary reasons. First, the amendments will remove the trap  
16 whereby litigants in cases removed to federal court can inadvertently lose their right  
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21 <sup>3</sup> The forms currently ask the parties to identify in the Joint Report whether a “trial  
22 by jury is demanded.” *See, e.g.*, Ariz. R. Civ. P. 84, Form 12(a). Such a provision  
23 in the standard forms for Joint Reports could itself lead to an inadvertent waiver of  
24 a jury trial if a party believed that indicating yes to the question sufficed as the jury  
25 trial demand. Rule 38 prohibits combining a jury demand “with any other motion  
or pleading filed with the court.” Ariz. R. Civ. P. 38(b)(1). Thus, parties who believe  
the Joint Report suffices as their jury demand could potentially lose their jury trial  
right.

1 to a jury trial. Second, the amendments give greater recognition to what is  
2 oftentimes a constitutional right to a jury trial.

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4 With respect to cases removed to federal court, the proposed changes to Rule  
5 38 will place litigants in Arizona within the “safe harbor” of Rule 81(c)(3)(A),  
6 whereby if “the state law did not require an express demand for a jury trial, a party  
7 need not make one after removal unless the court orders the parties to do so within  
8 a specified time.” Federal courts in states that do not require jury demands (but  
9 instead require express waivers) have held that parties need not make a jury demand  
10 after the case is removed to federal court, unless the district court orders them to do  
11 so (at which point, there is of course no trap). *See, e.g., Cashman Holdings, Inc. v.*  
12 *Campbell*, 177 F.R.D. 664, 666 (D. Minn. 1998); *Fin. Bldg. Consultants, Inc. v. Am.*  
13 *Druggists Ins. Co.*, 91 F.R.D. 62, 63-64 (N.D. Ga. 1981).

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17 The proposed amendments will also give greater recognition to parties’ jury  
18 trial rights. *See Broemmer v. Abortion Servs. of Phoenix, Ltd.*, 173 Ariz. 148, 152  
19 (1992) (describing the right to a jury trial as a “fundamental right”). As explained  
20 in Wright & Miller:

21  
22 It long has been settled by an impressive array of precedents that the Seventh  
23 Amendment to the Constitution gives a right to jury trial in cases covered by  
24 its language but that this right, like other constitutional rights, can be waived  
25 by the parties by nonassertion. It is true, however, that the cases state that the  
right to a trial by jury is fundamental, and that they will indulge every  
reasonable presumption against a waiver of that right. Nevertheless, it is clear

1 that the test of waiver that is applied to other constitutional rights, that there  
2 must have been “an intentional relinquishment or abandonment of a known  
right or privilege,” is not applicable to the right to trial by jury.

3 9 Fed. Practice & Procedure Civil § 2321 (3d ed. April 2016 Update). Moving to a  
4 system requiring express waivers rather than express demands will better protect  
5 parties’ constitutional right to jury trials by ensuring that the right is waived only  
6 intentionally and not by mere inadvertence. Such a change will thus serve this  
7 Court’s recently stated goal of increasing access to justice—especially for *pro per*  
8 litigants—by reducing barriers through amendments to the rules. *See, e.g.,*  
9 Administrative Order No. 2014-83 (establishing the Arizona Commission on Access  
10 to Justice) (stating as one of the purposes of the Commission “promoting access to  
11 justice for individuals who cannot afford legal counsel or who choose to represent  
12 themselves in civil cases”); Administrative Order No. 2014-116 (establishing the  
13 Task Force on the Arizona Rules of Civil Procedure) (stating as a goal of the Task  
14 Force “ensur[ing] that our courts are accessible to litigants, whether represented by  
15 counsel or self-represented”).

16 In proposing a similar change to the federal system for obtaining jury trials,  
17 Judge (now Justice) Gorsuch and Judge Graber similarly justified the proposed  
18 change as follows:  
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20 Several reasons animate our proposal. First, we should be encouraging jury  
21 trials, and we think that this change would result in more jury trials. Second,  
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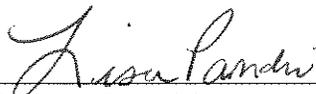
1 simplicity is a virtue. The present system, especially with regard to removed  
2 cases, can be a trap for the unwary. Third, such a rule would produce greater  
3 certainty. Fourth, a jury-trial default honors the Seventh Amendment more  
4 fully. Finally, many states do not require a specific demand. Although we  
have not looked for empirical studies, we do not know of negative experiences  
in those jurisdictions.

5 *See* June 13, 2016 Memorandum Re Jury Trials in Civil Cases from Judges Neil  
6 Gorsuch and Susan Graber to Judges Jeffrey Sutton, David Campbell, and John D.  
7 Bates of Advisory Committee on Civil Rules. For these and all the other reasons  
8 discussed in this Petition, the Court should adopt the proposed amendments.  
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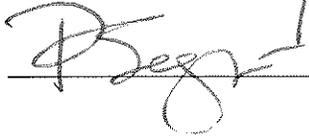
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11 **CONCLUSION**

12 The changes proposed by this Petition simplify the procedure for gaining jury  
13 trials, better ensure that jury trials are not waived by mere inadvertence, eliminate  
14 the jury demand trap in cases removed to federal court, and serve this Court's stated  
15 purpose of increasing access to justice for both represented and self-represented  
16 litigants. The State Bar of Arizona therefore respectfully asks the Court to adopt the  
17 proposed amendments set forth in the attached appendixes.  
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20 RESPECTFULLY SUBMITTED this 10<sup>th</sup> day of January, 2018.  
21

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24 \_\_\_\_\_  
Lisa M. Panahi  
25 General Counsel

1 Electronic copy filed with the  
2 Clerk of the Supreme Court of Arizona  
3 this 10<sup>th</sup> day of January, 2018.

4 by: 

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## Appendix A—Clean Version

### Rule 38. Right to a Jury Trial; Waiver

- (a) **Right Preserved.** The right of trial by jury is preserved to the parties inviolate. On any issue triable of right by a jury, a party need not file a written demand or take any other action in order to preserve its right to trial by jury.
- (b) **Waiver.** The parties may be deemed to have waived, under these rules, a right to trial by jury only if they affirmatively waive that right by filing a written stipulation, signed by all parties who appear at trial, at any time after the action is commenced, but no later than 30 days before the trial is scheduled to begin. The stipulation may not be combined with any other motion or pleading. In the stipulation, the parties may specify any issues that they wish to have tried by a jury; otherwise, the parties will be deemed to have waived trial by a jury on all issues. Alternatively—with court approval and subject to such conditions that the court considers proper, including but not limited to the assessment of jury fees—all parties who appear at trial may waive the right to a jury trial later than 30 days before the trial is scheduled to begin either by written stipulation or oral stipulation in open court and entered in the minutes.

### Rule 39. Trial by Jury or by the Court

- (a) **If No Waiver Is Effected.** If there is no waiver of the right to trial by jury under Rule 38(b), the trial must be by jury unless the court, on motion or on its own, finds that there is no right to a jury trial on some or all issues.
- (b) **If a Waiver Is Effected.** If the parties waive the right to trial by jury under Rule 38(b), the court must try all issues.
- (c) **If a Limited Waiver Is Effected.** If the parties' waiver to trial by jury under Rule 38(b) specifies certain issues to be tried by a jury, the trial must be by jury on those issues unless the court, on motion or on its own, finds that there is no right to a jury trial on some or all of those issues.
- (d) **Advisory Jury; Jury Trial by Consent.** In an action—or on any issue—not triable of right by a jury, the court, on motion or on its own:
- (1) may try any issue with an advisory jury; or
  - (2) may, with the parties' consent, order a jury trial on any issue, and the verdict will have the same effect as if a jury trial had been held as a matter of right.

## Appendix A—Clean Version

### **Rule 49. Special Verdict; General Verdict and Questions; Proceedings on Return of Verdict; Form of Verdict**

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- (c) **Written Questions in Actions Seeking Equitable Relief.** If a jury is impaneled in an action seeking equitable relief and more than one material issue of fact is presented, the court may submit written questions to the jury covering all or part of the issues of fact. The questions may be submitted only if the court approves them, and each question must be confined to a single question of fact and framed so that it can be answered yes or no. The jury's answers are advisory only and are not binding on the court.

...

### **Rule 77. Appeal**

- (a) **Filing a Notice of Appeal.** Any party who appears and participates in the arbitration proceedings may appeal an arbitrator's award by filing a notice of appeal with the clerk. The notice of appeal must be entitled "Appeal from Arbitration and Motion for Trial Setting." It must request that the action be set for trial in the superior court, must state the estimated length of trial, and must state whether there is a right to a jury trial and, if so, whether that right has been waived.

...

Appendix A—Clean Version

Form 11(a). Joint Report: Tier 1 Case

In the Superior Court of Arizona  
\_\_\_\_\_ County

Plaintiffs	)	Case number _____
	)	
v	)	<b>Joint Report</b>
	)	<i>(Tier 1 case)</i>
Defendants	)	Assigned to:

The parties signing below certify that they have conferred about the matters contained in Rule 16(b)(2) and (c)(3), and they further certify that:

- (a) Every defendant has been served or dismissed, and every defendant who has not been defaulted has filed a responsive pleading;
- (b) There are no third party claims; and
- (c) This case is not subject to the mandatory arbitration provisions of Rule 72.

**Optional Summary of Rule 16(b) Early Meeting** (not to exceed 4 pages of text), split evenly between separate statements of the parties if they do not agree on the summary’s contents:

\_\_\_\_\_  
\_\_\_\_\_

With regard to matters upon which the parties could not agree, they have set forth their positions separately in item 12 below. The parties are submitting a Proposed Scheduling Order with this Joint Report. Each date in the Joint Report and in the Proposed Scheduling Order includes a calendar month, day, and year.

***1. Brief description of the case:***

\_\_\_\_\_  
\_\_\_\_\_.

- If a claimant is seeking other than monetary damages, specify the relief sought:

\_\_\_\_\_.

**Appendix A—Clean Version**

**2. Settlement:** The parties agree to engage in settlement discussions with a settlement judge assigned by the court, or a private mediator.

- The parties will be ready for a settlement conference or a private mediation by \_\_\_\_\_.
- If the parties will not engage in a settlement conference or a private mediation, state the reason(s): \_\_\_\_\_.

**3. Readiness:** This case will be ready for trial by \_\_\_\_\_.

**4. Jury:**

- There is a right to a trial by jury. yes no
- If there is such a right, it has been waived by the parties. yes no

**5. Length of trial:** The estimated length of trial is \_\_\_ days.

**6. Summary jury:** The parties agree to a summary jury trial. yes no

**7. Short cause:** A non-jury trial will not exceed one hour. yes no

**8. Preference:** This case is entitled to preference for trial under this statute or rule:

\_\_\_\_\_.

**9. Special requirements:** At a pretrial conference or at trial, a party will require disability accommodations (specify)

\_\_\_\_\_

an interpreter (specify language)

\_\_\_\_\_

**10. Scheduling conference:** The parties request a Rule 16(d) scheduling conference. yes no

If requested, the reasons for having a conference are: \_\_\_\_\_

\_\_\_\_\_.

**11. Other matters:** Other matters that the parties wish to bring to the court's attention that may affect management of this case:

\_\_\_\_\_.

**12. Items upon which the parties do not agree:** The parties were unable in good faith to agree upon the following items, and the position of each party as to each item is as follows:

\_\_\_\_\_.

**Appendix A—Clean Version**

The parties must attach a good faith consultation certificate under Rule 7.1(h) to this Joint Report.

Dated this \_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_.

\_\_\_\_\_  
For Plaintiff

\_\_\_\_\_  
For Defendant

**Appendix A—Clean Version**

**Form 12(a). Joint Report: Tier 2 Case**

In the Superior Court of Arizona  
\_\_\_\_\_ County

Plaintiffs	)	
	)	Case number _____
v	)	<b>Joint Report</b>
	)	<i>(Tier 2 case)</i>
Defendants	)	Assigned to:

The parties signing below certify that they have conferred about the matters set forth in Rule 16(b)(2) and (c)(3), and that this case is not subject to the mandatory arbitration provisions of Rule 72. With regard to matters upon which the parties could not agree, they have set forth their positions separately in item 13 below. The parties are submitting a Proposed Scheduling Order with this Joint Report. Each date in the Joint Report and in the Proposed Scheduling Order includes a calendar month, day, and year.

**Optional Summary of Rule 16(b) Early Meeting** (not to exceed 4 pages of text), split evenly between separate statements of the parties if they do not agree on the summary’s contents:

\_\_\_\_\_  
\_\_\_\_\_

***1. Brief description of the case:***

\_\_\_\_\_

- If a claimant is seeking other than monetary damages, specify the relief sought

\_\_\_\_\_.

***2. Current case status:*** Every defendant has been served or dismissed. yes no

- Every party who has not been defaulted has filed a responsive pleading. yes no

- Explanation of a “no” response to either of the above statements: \_\_\_\_\_

\_\_\_\_\_.

## Appendix A—Clean Version

**3. Amendments:** A party anticipates filing an amendment to a pleading that will add a new party to the case: yes no

**4. Settlement:** The parties agree to engage in settlement discussions with a settlement judge assigned by the court, or a private mediator.

The parties will be ready for a settlement conference or a private mediation by \_\_\_\_\_.

If the parties will not engage in a settlement conference or a private mediation, state the reason(s): \_\_\_\_\_.

**5. Readiness:** This case will be ready for trial by \_\_\_\_\_.

**6. Jury:**

- There is a right to a trial by jury. yes no
- If there is such a right, it has been waived by the parties. yes no

**7. Length of trial:** The estimated length of trial is \_\_\_ days.

**8. Summary jury:** The parties agree to a summary jury trial. yes no

**9. Preference:** This case is entitled to a preference for trial pursuant to the following statute or rule:

\_\_\_\_\_.

**10. Special requirements:** At a pretrial conference or at trial, a party will require disability accommodations (specify)

\_\_\_\_\_

an interpreter (specify language)

\_\_\_\_\_

**11. Scheduling conference:** The parties request a Rule 16(d) scheduling conference. yes no If requested, the reasons for having a conference are

\_\_\_\_\_.

**12. Other matters:** Other matters that the parties wish to bring to the court's attention that may affect management of this case:

\_\_\_\_\_.

**13. Items upon which the parties do not agree:** The parties were unable in good faith to agree upon the following items, and the position of each party as to each item is as follows:

\_\_\_\_\_.

The parties must attach a good faith consultation certificate under Rule 7.1(h) to

**Appendix A—Clean Version**

this Joint Report.

Dated this \_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_.

---

For Plaintiff

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For Defendant

Appendix A—Clean Version

Form 13(a). Joint Report: Tier 3 Case

In the Superior Court of Arizona
\_\_\_\_\_ County

Plaintiffs ) Case number \_\_\_\_\_
v ) Joint Report
Defendants ) (Tier 3 case)
Assigned to:

The parties signing below certify that they have conferred about the matters set forth in Rule 16(b)(2) and (c)(3). With regard to matters upon which the parties could not agree, they have set forth their positions separately in item 13 below. The parties are submitting a Proposed Scheduling Order with this Joint Report. Each date in the Joint Report and in the Proposed Scheduling Order includes a calendar month, day, and year.

Optional Summary of Rule 16(b) Early Meeting (not to exceed 4 pages of text), split evenly between separate statements of the parties if they do not agree on the summary’s contents:

\_\_\_\_\_
\_\_\_\_\_

1. Brief description of the case:

• If a claimant is seeking other than monetary damages, specify the relief sought
\_\_\_\_\_.

2. Current case status: Every defendant has been served or dismissed. yes no

- Every party who has not been defaulted has filed a responsive pleading. yes no
• Explanation of a “no” response to either of the above statements: \_\_\_\_\_

3. Amendments: A party anticipates filing an amendment to a pleading that will

## Appendix A—Clean Version

add a new party to the case: yes no

**4. Settlement:** The parties agree to engage in settlement discussions with a settlement judge assigned by the court, or a private mediator.

The parties will be ready for a settlement conference or a private mediation by \_\_\_\_\_.

If the parties will not engage in a settlement conference or a private mediation, state the reason(s): \_\_\_\_\_.

**5. Readiness:** This case will be ready for trial by \_\_\_\_\_.

**6. Jury:**

- There is a right to a trial by jury. yes no
- If there is such a right, it has been waived by the parties. yes no

**7. Length of trial:** The estimated length of trial is \_\_\_ days.

**8. Summary jury:** The parties agree to a summary jury trial. yes no

**9. Preference:** This case is entitled to a preference for trial pursuant to the following statute or rule:

\_\_\_\_\_.

**10. Special requirements:** At a pretrial conference or at trial, a party will require disability accommodations (specify)

\_\_\_\_\_

an interpreter (specify language)

\_\_\_\_\_

**11. Scheduling conference:** The parties request a Rule 16(d) scheduling conference. yes no If requested, the reasons for having a conference are

\_\_\_\_\_.

**12. Other matters:** Other matters that the parties wish to bring to the court's attention that may affect management of this case:

\_\_\_\_\_.

**13. Items upon which the parties do not agree:** The parties were unable in good faith to agree upon the following items, and the position of each party as to each item is as follows:

\_\_\_\_\_.

The parties must attach a good faith consultation certificate under Rule 7.1(h) to

**Appendix A—Clean Version**

this Joint Report.

Dated this \_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_.

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For Plaintiff

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For Defendant

Appendix A—Clean Version

**Form 14(a). Joint Report: Commercial Case**

In the Superior Court of Arizona  
\_\_\_\_\_ County

Plaintiffs	)	-
	)	Case number _____
	)	
<u>y</u>	)	<b>Joint Report</b>
	)	( <i>Commercial case</i> )
Defendants	)	
	)	Assigned to:

The parties signing below certify that they have conferred about the matters set forth in Rules 8.1(f) and 16(b)(2) and (c)(3), and that this case is not subject to the mandatory arbitration provisions of Rule 72. With regard to matters upon which the parties could not agree, they have set forth their positions separately in item 14 below. The parties are submitting a Proposed Scheduling Order with this Joint Report. Each date in the Joint Report and in the Proposed Scheduling Order includes a calendar month, day, and year.

***1. Brief description of the case:***

\_\_\_\_\_

- If a claimant is seeking other than monetary damages, specify the relief sought

\_\_\_\_\_.

- This is a commercial case under Rule 8.1 because (refer to the specific provisions of Rule 8.1 that apply):

\_\_\_\_\_.

***2. Current case status:*** Every defendant has been served or dismissed. yes no

- Every party who has not been defaulted has filed a responsive pleading. yes no
- Explanation of a “no” response to either of the above statements: \_\_\_\_\_

\_\_\_\_\_.

***3. Amendments:*** A party anticipates filing an amendment to a pleading that will add a new party to the case: yes no

**Appendix A—Clean Version**

**4. Special case management:** Special case management procedures are appropriate: yes no If “yes,” the following case management procedures are appropriate because:\_\_\_\_\_.

**5. Commercial case management [Rule 8.1(f)]:**

**a. Approximate Amount in Controversy \$\_\_\_\_\_**

**b. The commercial court should assign this case to a tier other than Tier 3 for the following reasons:**

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**c. Anticipated Areas of Expert Testimony (not binding):**

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**d. Electronically Stored Information**

The parties do not expect electronically stored information to be at issue in this case.

The parties do expect electronically stored information to be at issue in this case.

Have the parties reached an agreement regarding the discovery of electronically stored information?  yes  no

If yes, have the parties filed a stipulated order?  yes  no

Do the parties currently have disputes or anticipate particular disputes over electronically stored information?  yes  no

If yes, please describe the dispute(s):

**e. Privilege Issues and Protective Order**

Have the parties reached an agreement regarding the inadvertent production of privileged material pursuant to Rule 502 of the Rules of Evidence?  yes  no

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If so, have the parties filed a stipulated order?  yes  no

Have any issues arisen or do you expect any issues to arise regarding claims of privilege or protection of trial preparation materials pursuant to Rule 26(b)(6) or Rule 26.1(h)?  yes  no

If so, have the parties filed a stipulated protective order?  yes  no

**6. Settlement:** The parties agree to engage in settlement discussions with a settlement judge assigned by the court, or a private mediator.

The parties will be ready for a settlement conference or a private mediation by \_\_\_\_\_.

If the parties will not engage in a settlement conference or a private mediation, state the reason(s): \_\_\_\_\_.

**7. Readiness:** This case will be ready for trial by \_\_\_\_\_.

**8. Jury:**

- There is a right to a trial by jury. yes no
- If there is such a right, it has been waived by the parties. yes no

**9. Length of trial:** The estimated length of trial is \_\_\_ days.

**10. Summary jury:** The parties agree to a summary jury trial. yes no

**11. Preference:** This case is entitled to a preference for trial under the following statute or rule:

\_\_\_\_\_.

**12. Special requirements:** At a pretrial conference or at trial, a party will require disability accommodations (specify)

\_\_\_\_\_

an interpreter (specify language)

\_\_\_\_\_

**13. Other matters:** Other matters that the parties wish to bring to the court's attention that may affect management of this case:

\_\_\_\_\_.

**14. Items upon which the parties do not agree:** The parties were unable in good faith to agree upon the following items, and the position of each party as to each item is as follows:

\_\_\_\_\_.

**Appendix A—Clean Version**

Dated this \_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_.

\_\_\_\_\_  
For Plaintiff

\_\_\_\_\_  
For Defendant

## Appendix B—Blacklined Version

### Rule 38. Right to a Jury Trial; Waiver

- (a) **Right Preserved.** The right of trial by jury is preserved to the parties inviolate. On any issue triable of right by a jury, a party need not file a written demand or take any other action in order to preserve its right to trial by jury.
- (b) **Demand.** ~~On any issue triable of right by a jury, a party may obtain a jury trial as follows:~~
- (1) ~~*Non-Medical Malpractice Actions.* In all actions other than a medical malpractice action, a party may obtain a jury trial by filing and serving a written demand at any time after the action is commenced, but no later than the date on which the court sets a trial date or 10 days after the date a Joint Report and Proposed Scheduling Order under Rule 16(b) or a joint report under Rule 16.3(b) are filed, whichever occurs first. The demand may not be combined with any other motion or pleading filed with the court.~~
  - (2) ~~*Medical Malpractice Actions.* In a medical malpractice action, no written demand needs to be filed or served. The parties may affirmatively waive the right to a jury trial by filing a written stipulation, signed by all parties, at any time after the action is commenced, but no later than 30 days before the trial is scheduled to begin. The stipulation may not be combined with any other motion or pleading.~~
- (c) **Specifying Issues.** ~~In its demand, a party may specify the issues that it wishes to have tried by a jury; otherwise, the party is deemed to have demanded a jury trial on all issues triable by jury. If a party has demanded a jury trial on only some issues, any other party may within 10 days after the demand is served or within a shorter time ordered by the court serve a demand for jury trial on any other or all factual issues triable by jury.~~
- (d) **Waiver; Withdrawal.** ~~Except as provided in Rule 38(b)(2), a party waives a jury trial unless its demand is properly filed and served. A proper demand may be withdrawn only if all parties consent.~~
- (b) Waiver. The parties may be deemed to have waived, under these rules, a right to trial by jury only if they affirmatively waive that right by filing a written stipulation, signed by all parties who appear at trial, at any time after the action is commenced, but no later than 30 days before the trial is scheduled to begin. The stipulation may not be combined with any other motion or pleading. In the stipulation, the parties may specify any issues that they wish to have tried by a jury; otherwise, the parties will be deemed to have waived trial by a jury on all issues. Alternatively—with court approval and subject to such conditions that the court considers proper, including but not limited to the assessment of jury

## Appendix B—Blacklined Version

fees—all parties who appear at trial may waive the right to a jury trial later than 30 days before the trial is scheduled to begin either by written stipulation or oral stipulation in open court and entered in the minutes.

### Rule 39. Trial by Jury or by the Court

~~(a) If a Demand Is Made.~~ If a jury trial is demanded under Rule 38, the action must be designated on the docket as a jury action. The trial on all issues so demanded must be by jury unless:

- ~~(1) all parties file a stipulation to a nonjury trial or so stipulate on the record; or~~
- ~~(2) the court, on motion or on its own, finds that there is no right to a jury trial on some or all of those issues.~~

(a) If No Waiver Is Effected. If there is no waiver of the right to trial by jury under Rule 38(b), the trial must be by jury unless the court, on motion or on its own, finds that there is no right to a jury trial on some or all issues.

~~(b) If No Demand Is Made.~~ The court must try all issues on which a jury trial is not properly demanded. The court may, on motion, order a jury trial on any issue for which a jury might have been demanded.

(b) If a Waiver Is Effected. If the parties waive the right to trial by jury under Rule 38(b), the court must try all issues.

(c) If a Limited Waiver Is Effected. If the parties' waiver to trial by jury under Rule 38(b) specifies certain issues to be tried by a jury, the trial must be by jury on those issues unless the court, on motion or on its own, finds that there is no right to a jury trial on some or all of those issues.

~~(e)~~(d) Advisory Jury; Jury Trial by Consent. In an action—or on any issue—not triable of right by a jury, the court, on motion or on its own:

- (1) may try any issue with an advisory jury; or
- (2) may, with the parties' consent, order a jury trial on any issue, and the verdict will have the same effect as if a jury trial had been held as a matter of right.

### Rule 49. Special Verdict; General Verdict and Questions; Proceedings on Return of Verdict; Form of Verdict

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(c) Written Questions in Actions Seeking Equitable Relief. If a jury is demandeimpaneled in an action seeking equitable relief and more than one material issue of fact is presented, the court may submit written questions to the

## Appendix B—Blacklined Version

jury covering all or part of the issues of fact. The questions may be submitted only if the court approves them, and each question must be confined to a single question of fact and framed so that it can be answered yes or no. The jury's answers are advisory only and are not binding on the court.

### **Rule 77. Appeal**

**(a) Filing a Notice of Appeal.** Any party who appears and participates in the arbitration proceedings may appeal an arbitrator's award by filing a notice of appeal with the clerk. The notice of appeal must be entitled "Appeal from Arbitration and Motion for Trial Setting." It must request that the action be set for trial in the superior court, ~~and must state whether a jury trial is demanded,~~ and must state the estimated length of trial, and must state whether there is a right to a jury trial and, if so, whether that right has been waived.

...

Appendix B—Blacklined Version

Form 11(a). Joint Report: Tier 1 Case

In the Superior Court of Arizona  
\_\_\_\_\_ County

Plaintiffs	)	Case number _____
	)	
v	)	<b>Joint Report</b>
	)	<i>(Tier 1 case)</i>
Defendants	)	Assigned to:

The parties signing below certify that they have conferred about the matters contained in Rule 16(b)(2) and (c)(3), and they further certify that:

- (a) Every defendant has been served or dismissed, and every defendant who has not been defaulted has filed a responsive pleading;
- (b) There are no third party claims; and
- (c) This case is not subject to the mandatory arbitration provisions of Rule 72.

**Optional Summary of Rule 16(b) Early Meeting** (not to exceed 4 pages of text), split evenly between separate statements of the parties if they do not agree on the summary’s contents:

\_\_\_\_\_  
\_\_\_\_\_

With regard to matters upon which the parties could not agree, they have set forth their positions separately in item 12 below. The parties are submitting a Proposed Scheduling Order with this Joint Report. Each date in the Joint Report and in the Proposed Scheduling Order includes a calendar month, day, and year.

***1. Brief description of the case:***

\_\_\_\_\_  
\_\_\_\_\_.

- If a claimant is seeking other than monetary damages, specify the relief sought:

\_\_\_\_\_.

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**2. Settlement:** The parties agree to engage in settlement discussions with a settlement judge assigned by the court, or a private mediator.

- The parties will be ready for a settlement conference or a private mediation by \_\_\_\_\_.
- If the parties will not engage in a settlement conference or a private mediation, state the reason(s): \_\_\_\_\_.

**3. Readiness:** This case will be ready for trial by \_\_\_\_\_.

**4. Jury:** ~~A trial by jury is demanded.~~ yes no

- There is a right to a trial by jury. yes no
- If there is such a right, it has been waived by the parties. yes no

**5. Length of trial:** The estimated length of trial is \_\_\_ days.

**6. Summary jury:** The parties agree to a summary jury trial. yes no

**7. Short cause:** A non-jury trial will not exceed one hour. yes no

**8. Preference:** This case is entitled to preference for trial under this statute or rule:

\_\_\_\_\_.

**9. Special requirements:** At a pretrial conference or at trial, a party will require disability accommodations (specify)

\_\_\_\_\_

an interpreter (specify language)

\_\_\_\_\_

**10. Scheduling conference:** The parties request a Rule 16(d) scheduling conference. yes no

If requested, the reasons for having a conference are: \_\_\_\_\_

\_\_\_\_\_.

**11. Other matters:** Other matters that the parties wish to bring to the court's attention that may affect management of this case:

\_\_\_\_\_.

**12. Items upon which the parties do not agree:** The parties were unable in good faith to agree upon the following items, and the position of each party as to each item is as follows:

\_\_\_\_\_.

The parties must attach a good faith consultation certificate under Rule 7.1(h) to

**Appendix B—Blacklined Version**

this Joint Report.

Dated this \_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_.

---

For Plaintiff

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For Defendant

**Appendix B—Blacklined Version**

**Form 12(a). Joint Report: Tier 2 Case**

In the Superior Court of Arizona  
\_\_\_\_\_ County

Plaintiffs	)	Case number _____
	)	
v	)	<b>Joint Report</b>
	)	
Defendants	)	<i>(Tier 2 case)</i>
	)	
	)	Assigned to:

The parties signing below certify that they have conferred about the matters set forth in Rule 16(b)(2) and (c)(3), and that this case is not subject to the mandatory arbitration provisions of Rule 72. With regard to matters upon which the parties could not agree, they have set forth their positions separately in item 13 below. The parties are submitting a Proposed Scheduling Order with this Joint Report. Each date in the Joint Report and in the Proposed Scheduling Order includes a calendar month, day, and year.

**Optional Summary of Rule 16(b) Early Meeting** (not to exceed 4 pages of text), split evenly between separate statements of the parties if they do not agree on the summary’s contents:

\_\_\_\_\_  
\_\_\_\_\_

***1. Brief description of the case:***

\_\_\_\_\_

- If a claimant is seeking other than monetary damages, specify the relief sought

\_\_\_\_\_.

***2. Current case status:*** Every defendant has been served or dismissed. yes no

- Every party who has not been defaulted has filed a responsive pleading. yes no

- Explanation of a “no” response to either of the above statements: \_\_\_\_\_

\_\_\_\_\_.

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**3. Amendments:** A party anticipates filing an amendment to a pleading that will add a new party to the case: yes no

**4. Settlement:** The parties agree to engage in settlement discussions with a settlement judge assigned by the court, or a private mediator.

The parties will be ready for a settlement conference or a private mediation by \_\_\_\_\_.

If the parties will not engage in a settlement conference or a private mediation, state the reason(s): \_\_\_\_\_.

**5. Readiness:** This case will be ready for trial by \_\_\_\_\_.

**6. Jury:** ~~A trial by jury is demanded.~~ yes no

- There is a right to a trial by jury. yes no
- If there is such a right, it has been waived by the parties. yes no

**7. Length of trial:** The estimated length of trial is \_\_\_ days.

**8. Summary jury:** The parties agree to a summary jury trial. yes no

**9. Preference:** This case is entitled to a preference for trial pursuant to the following statute or rule:

\_\_\_\_\_.

**10. Special requirements:** At a pretrial conference or at trial, a party will require disability accommodations (specify)

\_\_\_\_\_

an interpreter (specify language)

\_\_\_\_\_

**11. Scheduling conference:** The parties request a Rule 16(d) scheduling conference. yes no If requested, the reasons for having a conference are

\_\_\_\_\_.

**12. Other matters:** Other matters that the parties wish to bring to the court's attention that may affect management of this case:

\_\_\_\_\_.

**13. Items upon which the parties do not agree:** The parties were unable in good faith to agree upon the following items, and the position of each party as to each item is as follows:

\_\_\_\_\_.

The parties must attach a good faith consultation certificate under Rule 7.1(h) to

**Appendix B—Blacklined Version**

this Joint Report.

Dated this \_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_.

---

For Plaintiff

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For Defendant

Appendix B—Blacklined Version

Form 13(a). Joint Report: Tier 3 Case

In the Superior Court of Arizona  
\_\_\_\_\_ County

Plaintiffs	)	Case number _____
	)	
v	)	<b>Joint Report</b>
	)	<i>(Tier 3 case)</i>
Defendants	)	Assigned to:

The parties signing below certify that they have conferred about the matters set forth in Rule 16(b)(2) and (c)(3). With regard to matters upon which the parties could not agree, they have set forth their positions separately in item 13 below. The parties are submitting a Proposed Scheduling Order with this Joint Report. Each date in the Joint Report and in the Proposed Scheduling Order includes a calendar month, day, and year.

**Optional Summary of Rule 16(b) Early Meeting** (not to exceed 4 pages of text), split evenly between separate statements of the parties if they do not agree on the summary’s contents:

\_\_\_\_\_  
\_\_\_\_\_

**1. Brief description of the case:**

- If a claimant is seeking other than monetary damages, specify the relief sought

\_\_\_\_\_.

**2. Current case status:** Every defendant has been served or dismissed. yes no

- Every party who has not been defaulted has filed a responsive pleading. yes no
- Explanation of a “no” response to either of the above statements: \_\_\_\_\_

\_\_\_\_\_.

**3. Amendments:** A party anticipates filing an amendment to a pleading that will

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add a new party to the case: yes no

**4. Settlement:** The parties agree to engage in settlement discussions with a settlement judge assigned by the court, or a private mediator.

The parties will be ready for a settlement conference or a private mediation by \_\_\_\_\_.

If the parties will not engage in a settlement conference or a private mediation, state the reason(s): \_\_\_\_\_.

**5. Readiness:** This case will be ready for trial by \_\_\_\_\_.

**6. Jury:** ~~A trial by jury is demanded.~~ yes no

- There is a right to a trial by jury. yes no
- If there is such a right, it has been waived by the parties. yes no

**7. Length of trial:** The estimated length of trial is \_\_\_ days.

**8. Summary jury:** The parties agree to a summary jury trial. yes no

**9. Preference:** This case is entitled to a preference for trial pursuant to the following statute or rule:

\_\_\_\_\_  
**10. Special requirements:** At a pretrial conference or at trial, a party will require disability accommodations (specify)

\_\_\_\_\_  
an interpreter (specify language)

\_\_\_\_\_  
**11. Scheduling conference:** The parties request a Rule 16(d) scheduling conference. yes no If requested, the reasons for having a conference are

\_\_\_\_\_  
**12. Other matters:** Other matters that the parties wish to bring to the court's attention that may affect management of this case:

\_\_\_\_\_  
**13. Items upon which the parties do not agree:** The parties were unable in good faith to agree upon the following items, and the position of each party as to each item is as follows:

\_\_\_\_\_  
The parties must attach a good faith consultation certificate under Rule 7.1(h) to

**Appendix B—Blacklined Version**

this Joint Report.

Dated this \_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_.

\_\_\_\_\_  
For Plaintiff

\_\_\_\_\_  
For Defendant

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**Form 14(a). Joint Report: Commercial Case**

In the Superior Court of Arizona  
\_\_\_\_\_ County

Plaintiffs	)	-
	)	Case number _____
	)	
<u>y</u>	)	<b>Joint Report</b>
	)	( <i>Commercial case</i> )
Defendants	)	
	)	Assigned to:

The parties signing below certify that they have conferred about the matters set forth in Rules 8.1(f) and 16(b)(2) and (c)(3), and that this case is not subject to the mandatory arbitration provisions of Rule 72. With regard to matters upon which the parties could not agree, they have set forth their positions separately in item 14 below. The parties are submitting a Proposed Scheduling Order with this Joint Report. Each date in the Joint Report and in the Proposed Scheduling Order includes a calendar month, day, and year.

***1. Brief description of the case:***

\_\_\_\_\_

- If a claimant is seeking other than monetary damages, specify the relief sought

\_\_\_\_\_.

- This is a commercial case under Rule 8.1 because (refer to the specific provisions of Rule 8.1 that apply):

\_\_\_\_\_.

***2. Current case status:*** Every defendant has been served or dismissed. yes no

- Every party who has not been defaulted has filed a responsive pleading. yes no
- Explanation of a “no” response to either of the above statements: \_\_\_\_\_

\_\_\_\_\_.

***3. Amendments:*** A party anticipates filing an amendment to a pleading that will add a new party to the case: yes no

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**4. Special case management:** Special case management procedures are appropriate: yes no If “yes,” the following case management procedures are appropriate because:\_\_\_\_\_.

**5. Commercial case management [Rule 8.1(f)]:**

**a. Approximate Amount in Controversy \$\_\_\_\_\_**

**b. The commercial court should assign this case to a tier other than Tier 3 for the following reasons:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**c. Anticipated Areas of Expert Testimony (not binding):**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**d. Electronically Stored Information**

The parties do not expect electronically stored information to be at issue in this case.

The parties do expect electronically stored information to be at issue in this case.

Have the parties reached an agreement regarding the discovery of electronically stored information?  yes  no

If yes, have the parties filed a stipulated order?  yes  no

Do the parties currently have disputes or anticipate particular disputes over electronically stored information?  yes  no

If yes, please describe the dispute(s):

**e. Privilege Issues and Protective Order**

Have the parties reached an agreement regarding the inadvertent production of privileged material pursuant to Rule 502 of the Rules of Evidence?  yes  no

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If so, have the parties filed a stipulated order?  yes  no

Have any issues arisen or do you expect any issues to arise regarding claims of privilege or protection of trial preparation materials pursuant to Rule 26(b)(6) or Rule 26.1(h)?  yes  no

If so, have the parties filed a stipulated protective order?  yes  no

**6. Settlement:** The parties agree to engage in settlement discussions with a settlement judge assigned by the court, or a private mediator.

The parties will be ready for a settlement conference or a private mediation by \_\_\_\_\_.

If the parties will not engage in a settlement conference or a private mediation, state the reason(s): \_\_\_\_\_.

**7. Readiness:** This case will be ready for trial by \_\_\_\_\_.

**8. Jury:** ~~A trial by jury is demanded.~~ yes no

• There is a right to a trial by jury. yes no

• If there is such a right, it has been waived by the parties. yes no

**9. Length of trial:** The estimated length of trial is \_\_\_ days.

**10. Summary jury:** The parties agree to a summary jury trial. yes no

**11. Preference:** This case is entitled to a preference for trial under the following statute or rule:

\_\_\_\_\_.

**12. Special requirements:** At a pretrial conference or at trial, a party will require disability accommodations (specify)

\_\_\_\_\_

an interpreter (specify language)

\_\_\_\_\_

**13. Other matters:** Other matters that the parties wish to bring to the court's attention that may affect management of this case:

\_\_\_\_\_.

**14. Items upon which the parties do not agree:** The parties were unable in good faith to agree upon the following items, and the position of each party as to each item is as follows:

\_\_\_\_\_.

**Appendix B—Blacklined Version**

Dated this \_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_.

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For Plaintiff

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For Defendant