

**ORIGINAL**



0000093779

BEFORE THE ARIZONA CORPORATION COMMISSION

**RECEIVED**

COMMISSIONERS

KRISTIN K. MAYES, Chairman  
GARY PIERCE  
PAUL NEWMAN  
SANDRA D. KENNEDY  
BOB STUMP

2009 FEB 17 A 11: 55

Arizona Corporation Commission

**DOCKETED**

AZ CORP COMMISSION  
DOCKET CONTROL

FEB 17 2009

DOCKETED BY

IN THE MATTER OF THE APPLICATION OF JOHNSON UTILITIES, L.L.C., DBA JOHNSON UTILITIES COMPANY FOR AN INCREASE IN ITS WATER AND WASTEWATER RATES FOR CUSTOMERS WITHIN PINAL COUNTY, ARIZONA.

DOCKET NO. WS-02987A-08-0180

**EMERGENCY MOTION TO PROHIBIT INAPPROPRIATE CONTACT**

1 Swing First Golf LLC ("Swing First") moves for an order prohibiting Johnson Utilities  
2 LLC, its managing member George Johnson, or any other member or employee (collectively  
3 "Utility") from further contacting (i) Swing First's members or investors; or (ii) customers  
4 concerning the issues in this case.

5 In support of its motion, Swing First states as follows:

6 **I Factual Basis**

- 7 1. On February 3, 2009, Swing First submitted testimony in this docket.
- 8 2. Attached as Exhibit A, is a copy of a February 9, 2009, letter from Utility, signed  
9 by George Johnson and sent to Swing First members. Among other things, the letter:
  - 10 a. Threatens to sue the member for defamation if the member fails to  
11 proactively oppose Swing First's activities at the Corporation Commission;
  - 12 b. Attacks Mr. Ashton's character by attaching information concerning an  
13 irrelevant legal matter involving Mr. Ashton;
  - 14 c. Disparages without basis Mr. Ashton's management of Swing First;
  - 15 d. Libels Mr. Ashton by insinuating financial impropriety; and
  - 16 e. Seeks to damage Mr. Ashton's business relationship with Swing First's  
17 members and investors.

1           3.       Swing First is also informed and believes that Mr. Johnson has been contacting  
2 Swing First's members and/or Utility's customers, and demanding that they agree to be deposed  
3 or he will get an order forcing them to testify.

4 **II       Discussion**

5           There can be no dispute that Utility's actions are completely inappropriate. Utility should  
6 not be attempting to intimidate another party or its customers through threats. Utility and Swing  
7 First are each represented by counsel. Regardless of their nature, all communications between  
8 the parties should be made by counsel. All communications with customers concerning  
9 testimony or other matters related to this case should also come from Utility's counsel.

10           Swing First asks that the Commission act immediately, without further hearings or  
11 pleadings, to provide relief in the nature of a temporary restraining order. There can be no  
12 lawful justification for Utility's reprehensible behavior. To be clear, Swing First is not asking  
13 that the Commission evaluate this behavior at this time.<sup>1</sup> Rather, Swing First is asking the  
14 Commission to order Utility to not engage in such actions in the future and to remind Utility of  
15 the standards of conduct in Commission cases. No further hearings or pleadings are required for  
16 the Commission to issue such an order.

17 **III       Requested Relief**

18           Swing First asks the Commission

19           1.       To order Utility to cease all contacts with Swing First, its members, or its  
20 investors;

21           2.       To order Utility to cease all contacts with its customers concerning this or other  
22 Commission matters (including Docket Nos. WS-02987A-08-0180 and WS-02987A-08-0049),  
23 other than as specifically authorized by the Commission;

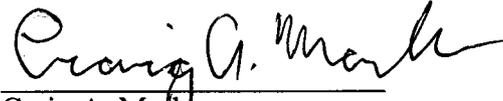
24           3.       To order Utility to make all contacts with Swing First and other parties in this  
25 case only through counsel;

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<sup>1</sup> Swing First is today filing supplemental direct testimony concerning Utility's latest activities. This will provide the Commission a full opportunity to evaluate Utility's conduct and to determine what penalties are warranted.

1 Jeffrey W. Crockett, Esq.  
2 Bradley S. Carroll, Esq.  
3 Kristoffer P. Kiefer, Esq.  
4 Snell & Wilmer LLP  
5 One Arizona Center  
6 400 East Van Buren Street  
7 Phoenix, AZ 85004-2202  
8 Attorneys for Johnson Utilities, LLC  
9

10 James E. Mannato  
11 Florence Town Attorney  
12 775 N. Main Street  
13 P.O. Box 2670  
14 Florence, AZ 85232  
15

16  
17 By:   
18 Craig A. Marks  
19



***JOHNSON UTILITIES, L.L.C***

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5230 East Shea Boulevard \* Scottsdale, Arizona 85254  
PH: (480) 998-3300; FAX: (480) 483-7908

February 9, 2009

Mr. Nick Enthoven  
227 Monroe Dr.  
Mountain View, CA. 94040

Re: Johnson Utilities, L.L.C.  
David Ashton as Managing Member of Swing First Golf, L.L.C.

Dear Swing First Golf Member:

As you may or may not know, David Ashton, as the managing member of Swing First Golf, L.L.C., ("SFG") has filed a libelous complaint against Johnson Utilities, L.L.C. with the Arizona Corporation Commission, ("ACC"). Before Mr. Ashton filed his libelous complaint with the ACC, Johnson Utilities filed a lawsuit against SFG and David Ashton in the Superior Court of Arizona. The case number for that complaint is CV2008-000141. The complaint includes claims of Tortious Interference and Defamation among other things.

I am writing to you now for two reasons. First, Mr. Ashton, purportedly acting on behalf of SFG, continues to make libelous remarks and unsubstantiated filings with the ACC in effort to slander me personally and damage Johnson Utilities. I do not know whether you are aware of Mr. Ashton's actions on your behalf or whether you support those actions. However, because Mr. Ashton claims to be acting for SFG, and therefore on your behalf, we are considering adding all members of SFG personally as defendants in the pending Superior Court case. If you do not support Mr. Ashton's actions, please let me know as soon as possible. If I do not hear from you, we will assume that you support Mr. Ashton's actions, and will proceed accordingly.

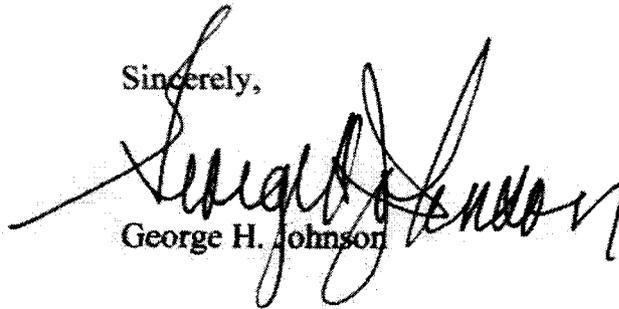
The second reason for this letter is to make you aware of the nature of the character of Mr. Ashton who is your appointed representative of SFG. Attached you will find copies of complaints filed against Mr. Ashton in the Superior Court of Arizona. These complaints are unrelated to Johnson Utilities but, in my humble opinion, show "the nature of the beast" we are all dealing with in Mr. Ashton.

A cursory review of the financials that we understand have been provided to you would strongly suggest that an outside independent management and financial audit be performed on SFG since Mr. Ashton has been managing member. We would also suggest the independent financial audit should not be limited to SFG, but in light of the other superior court complaints, be extended to Mr. Ashton's personal tax returns.

Swing First Golf, L.L.C.  
February 9, 2009  
Page 2 of 2

If we can provide additional information or answer any questions, please do not hesitate to call.

Sincerely,



George H. Johnson

Enclosure: Superior Court Complaint NO. CV2005-013279  
Superior Court Judgment NO. CV2005-013279  
Superior Court Complaint NO CR2005-110896-001

1 Curry, Pearson & Wooten, PLC  
2 814 W. Roosevelt Street  
3 Phoenix, Arizona 85007  
4 Tel. (602)258-1000  
5 Fax (602)523-9000  
6 e-mail: [kcurry@azlaw.com](mailto:kcurry@azlaw.com)

7 Kristen Curry #015017  
8 Attorney for Plaintiffs

MICHAEL K. JEANES  
Clerk of the Superior Court

By ALAYNA HUFF, Deputy  
Date 08/19/2005 Time 03:36 PM  
Description Qty Amount  
CASE# CV2005-013279  
CIVIL NEW COMPLAINT 001 245.00  
TOTAL AMOUNT 245.00  
Receipt# 00007263336

9 IN THE SUPERIOR COURT OF THE STATE OF ARIZONA  
10 IN AND FOR THE COUNTY OF MARICOPA

11 CURTIS LAYTON, by and through  
12 his parents and guardians,  
13 BRIAN LAYTON and CYNTHIA  
14 LAYTON,

15 Plaintiff,

16 vs.

17 DAVID ASHTON and STASHA  
18 ASHTON, husband and wife; JOHN  
19 DOES I-V and JANE DOES I-V,

20 Defendants.

NO. CV2005-013279  
COMPLAINT  
(TORT-NON MOTOR VEHICLE)

21 Plaintiff, by and through undersigned counsel, hereby alleges as follows:

22 GENERAL ALLEGATIONS

- 23 1. Plaintiff, Curtis Layton, by and through his parents, Brian Layton and Cynthia Layton,  
24 were residents of Maricopa County, Arizona, at the time the events alleged herein  
25 occurred.
- 26 2. On information and belief, Defendants David Ashton and Stasha Ashton are husband  
27 and wife and reside in Maricopa County Arizona. All actions against Defendants  
28 complained of herein were undertaken jointly or on behalf of and for the benefit of  
the marital community of David Ashton and Stasha Ashton.
3. The remaining Defendants are fictitiously-named individuals who, along with the

1 Defendants are liable for the Plaintiff's damages, as alleged herein. The Plaintiff will  
2 seek leave to amend this Complaint to add proper names when the identities of the  
3 fictitiously-named Defendants are ascertained.

4 4. The incident and all matters alleged herein occurred in Maricopa County in the State  
5 of Arizona.

6 5. Jurisdiction and venue are appropriate for this Court. The amount in controversy  
7 exceeds the minimal jurisdictional limits of this court.

8 6. On or about April 11, 2005, Defendants David Ashton and Stasha Ashton sought out  
9 some unknown juvenile males who had allegedly yelled profanities at Stasha Ashton  
10 earlier in the day.

11 7. Defendants David Ashton and Stasha Ashton were together in their vehicle searching  
12 for the juveniles when they saw Plaintiff Curtis Layton riding his bicycle near 67<sup>th</sup>  
13 Avenue and Happy Valley Road in Phoenix, Arizona.

14 8. Defendant Stasha Ashton identified Plaintiff and then Defendant David Ashton exited  
15 his vehicle and attacked Curtis Layton both physically and verbally by pushing Curtis  
16 off of his bicycle, throwing him against a pillar and shopping cart and yelling at him.

17 9. After already attacking Plaintiff, Defendant David Ashton then forcibly took Curtis  
18 towards the car where Defendant Stasha Ashton was sitting and asked her if Plaintiff  
19 was one of the juveniles involved. Defendant Stasha Ashton told her husband that  
20 Plaintiff was not.

21 **COUNT ONE**  
22 **(Assault)**

23 10. Plaintiff hereby realleges the allegations in paragraphs 1-9.

24 11. Defendant David Ashton intended to cause a harmful or offensive contact with Curtis  
25 Layton or place Curtis Layton in imminent apprehension of such contact without  
26 cause or justification.

27 12. Defendant Stasha Ashton intended to cause a harmful or offensive contact with Curtis  
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Layton or place Curtis Layton in imminent apprehension of such contact without cause or justification when she went with her husband to find Plaintiff and assist him.

13. Defendants actions caused Curtis Layton to fear imminent offensive and harmful contact.

14. Curtis Layton suffered physical injuries, mental anguish, pain and suffering as a direct and proximate result of Defendants' intentional acts.

**COUNT TWO**  
**(Battery)**

15. Plaintiffs hereby re-allege the allegations in paragraphs 1-14.

16. Defendant David Ashton intended to cause a harmful or offensive contact when he attacked Curtis Layton without cause or justification.

17. Defendant Stasha Ashton intended to cause a harmful or offensive contact with Curtis Layton when she went with her husband to find Plaintiff and assist him.

18. Defendants' actions caused Curtis Layton to suffer harmful and offensive contact.

19. Curtis Layton suffered physical injuries, mental anguish, pain and suffering as a direct and proximate result of Defendant's intentional acts.

**COUNT THREE**

**(Intentional Infliction of Emotional Distress)**

20. Plaintiffs hereby re-allege the allegations in paragraphs 1-19.

21. Defendants actions in attacking Curtis Layton without cause or justification was extreme and outrageous conduct.

22. Defendants actions either intended to cause severe emotional distress or recklessly disregarded the near certainty that such distress would result from their actions and conduct.

23. Curtis Layton suffered severe emotional distress as a result of Defendant's conduct.

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WHEREFORE, Plaintiff prays for judgment against the Defendants as follows:

A. Compensatory damages;

B. Punitive Damages;

C. Costs and expenses incurred herein; and

D. For such other and further relief as the Court deems just and appropriate under the circumstances.

DATED this 19<sup>th</sup> day of August, 2005.

CURRY, PEARSON & WOOTEN, PLC

  
\_\_\_\_\_  
Kristen M. Curry  
Attorney for Plaintiff

FILED  
6-20-07 8:25am  
MICHAEL K. JEANES, Clerk  
By *W. Bobrowski*  
W. Bobrowski, Deputy

1 William D. Holm, Bar #007412  
2 JONES, SKELTON & HOCHULI, P.L.C.  
3 2901 North Central Avenue, Suite 800  
4 Phoenix, Arizona 85012  
5 Telephone: (602) 263-1749  
6 Fax: (602) 200-7804  
7 minuteentries@jshfirm.com

8 *Attorneys for Defendants Ashton*

9 SUPERIOR COURT OF THE STATE OF ARIZONA  
10 COUNTY OF MARICOPA

11 CURTIS LAYTON, by and through his  
12 parents and guardians, BRIAN LAYTON and  
13 CYNTHIA LAYTON,

14 Plaintiff,

15 v.

16 DAVID ASHTON and STASHA ASHTON,  
17 husband and wife, et al.,

18 Defendants.

NO. CV2005-013279

JUDGMENT

(Assigned to the Hon. Paul A. Katz)

19 The above-entitled and numbered cause having come on regularly for a jury  
20 trial before the Honorable Paul A. Katz on May 29, 2007; the Plaintiff, Curtis Layton,  
21 being present in person and with his parents Brian Layton and Cynthia Layton and his  
22 attorney, Kristin Curry, Defendants David Ashton and Stasha Ashton, being present in  
23 person and with their attorney, William D. Holm, and the parties having announced ready;  
24 Plaintiff having introduced evidence in support of his complaint and Defendants having  
25 introduced evidence in opposition thereto; and the matter having been submitted to the  
26 jury for its determination; and the jury having returned a verdict for Plaintiff:

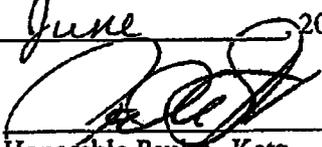
NOW, THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED  
that Judgment be entered, in Plaintiff's favor, and against Defendants David Ashton and  
Stasha Ashton in the amount of \$9,625.00.

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IT IS FURTHER ORDERED, ADJUDGED AND DECREED that, as the prevailing party in this action, Plaintiff is entitled to recover his taxable costs from Defendants in the amount of \$ 901.70.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that, pursuant to Arizona Rules of Civil Procedure Rule 68(d), since Plaintiff failed to obtain a Judgment greater than Defendants' June 26, 2006 Offer of Judgment in the amount of \$10,000, Defendants Ashton are entitled to recover double their taxable costs incurred after the date of the Offer of Judgment in the amount of \$901.70.

DATED this 20th day of June, 2007.

  
\_\_\_\_\_  
Honorable Paul A. Katz

**THE STATE OF ARIZONA V. DAVID BRUCE ASHTON**

**CR2005-110896-001**

**AGGRAVATED ASSAULT, A CLASS 6 FELONY**



**COURT INFORMATION SHEET (CIS)**

County Attorney Case Number: CA2005012841

Filing ID Number: CA2005012841-1-1

**STATE v. DAVID BRUCE ASHTON**  
**Defendant Sequence: 1**

Defendant's **IN CUSTODY**  
Address: 7131 WEST AVENIDA DEL SOL  
PEORIA, AZ 85383

Defendant's **UNKNOWN**  
Employer:

Defendant's **PUBLIC DEFENDER**  
Attorney:

**DEFENDANT'S DESCRIPTION:**

Race: W Sex: M Hair: BRO Eyes: GRN Hgt: 510  
Wgt: 165 DOB: 11/22/1970 Soc Sec #: 281606489

SID #: Unknown FBI #: Unknown Old LEJIS #: Unknown  
JMS Booking #: P063574 JMS LEJIS #: Unknown

**FILING STATUS:**

Direct Complaint CR #: CR2005110896001 Date Filed: \_\_\_\_\_  
Court Designation: RCC - GLENDALE  
Justice Court Precinct: NORTH VALLEY JUSTICE

**ATTORNEY: SCOTT WOLFRAM** Bar ID: 014100 Location: Downtown

**PRELIMINARY HEARING/GRAND JURY CHARGES:**

**COUNT 1: AGGRAVATED ASSAULT, A CLASS 6 FELONY**

<u>Count</u>	<u>ARS</u>	<u>Date of Crime</u>
<u>1</u>	<u>13-1204A4</u>	<u>4/11/2005</u>

**DEPARTMENTAL REPORTS:**

DR 200550679472 - Phoenix Police Department

**EXTRADITE: AO**

**DWL**

IN THE NORTH VALLEY COURT  
STATE OF ARIZONA, COUNTY OF MARICOPA

RELEASE QUESTIONNAIRE

Information to be supplied by a prosecutor or law enforcement officer.

STATE OF ARIZONA vs. DAVID ASHTON DOB 11-22-76 CASE / BK. NO. \_\_\_\_\_

**A. GENERAL INFORMATION**

1. Charge and Class: 13-1204 A4
2. Offense Location: 6640 W. HAPPY VALLEY RD  
Date: 4-11-05 Time: 1641
3. Arrest Location: 6640 W. HAPPY VALLEY RD  
Date: 4-11-05 Time: 1700

**B. CIRCUMSTANCES OF THE OFFENSE**

1. Was a firearm or other weapon used?  
 YES  NO  
Type of weapon: \_\_\_\_\_  
Was anyone injured by the defendant?  
 YES  NO  
Was medical attention necessary?  
 YES  NO  
Nature of injuries: HIT HEAD ON STUCCO WALL, SCRATCHED ARM, SCRATCHES ON BACK
2. Was anyone threatened by the defendant?  
 YES  NO  
Nature and extent of threats: ATTACKED BY A KID
3. If property offense, value of property taken or damaged:  
\_\_\_\_\_
- Was the property recovered?  
 YES  NO

**C. CIRCUMSTANCES OF THE ARREST**

1. Did the defendant attempt to:  
Avoid arrest?  YES  NO  
Resist arrest?  YES  NO  
Explain: \_\_\_\_\_
2. Was the defendant armed when arrested?  
 YES  NO  
Type of weapon: \_\_\_\_\_
3. Was evidence of the offense found in the defendant's possession?  
 YES  NO  
Explain: \_\_\_\_\_
4. Was the defendant under the influence of alcohol or drugs at the time of the offense?  
 YES  NO  UNK

**D. CRIMES OF VIOLENCE**

1. Relationship of defendant to victim:  
NONE  
Do the victim and defendant reside together?  
 YES  NO
2. How was the situation brought to the attention of police?  
 Victim  
 Third party  
 Officer observed
3. Have there been any previous incidents involving these same parties?  
 YES  NO  
Explain: \_\_\_\_\_
4. Is defendant currently the subject of:  
 An order of protection  
 Injunction against harassment  
 Any other court order  
Explain: \_\_\_\_\_

**E. OTHER INFORMATION**

1. Is the defendant presently on probation, parole or any other form of release involving other charges or convictions?  
 YES  NO  
Explain: \_\_\_\_\_
2. List any prior arrests, convictions, and/or F.T.A.'s:  
SUBPENDING WRTS (10 yrs ago)
3. Is there any indication the defendant is:  
 An alcoholic?  An addict?  
 Mentally disturbed?  Physically ill?
4. Is the defendant currently employed?  
 YES  NO  
With whom REACTIVITY INC  
How long 4 MONTHS  
Nature of employment BUSINESS DEVELOPMENT
5. Where does the defendant currently reside?  
7131 W. Avenida Del Sol  
With whom WIFE, KIDS  
How long 2 1/2 yrs
6. What facts indicate the defendant will flee if released?  
Explain: NONE
7. What facts does the State have to oppose an unsecured release?  
Explain: \_\_\_\_\_

**E. DRUG OFFENSES**

**SECTION-III: Probable Cause Statement**

1. If the defendant is considered a major drug dealer, please state the supporting facts:

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

2. What quantities and types of illegal drugs are directly involved in this offense?

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

Approximate monetary value:

\_\_\_\_\_

3. Was any money seized?

YES  NO

Amount: \_\_\_\_\_

4. Were any automatic weapons in the possession of the defendant at the time of the arrest?

YES  NO

Quantity and type: \_\_\_\_\_

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

1. Please summarize and include the information which establishes probable cause for the arrest:

ON 4-11-05 AT APPROX 1641 HRS API COMMITTED  
ABUSE AT WIND W. HAPPY VALLEY Rd by  
MISTAKENLY THROWING A VI CURTIS LAYTON (13yrs)  
off his bike, throwing him up against a street  
pillar in front of Walgreens, API then picked  
Curtil up off the ground, dragged him  
over to his wife, who was waiting in her  
car & was going to make Curtis apologize  
to his wife for cursing at her. API  
asked his wife if Curtis was the correct  
kid & she said "No, that's not him." API  
let Curtis go & apologized & then  
waited for P.D. to arrive.

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

**\*\* If a fugitive arrest, a form IVA must also be completed \*\***

**MARICOPA COUNTY JUSTICE COURT PRECINCTS**

- |                         |                        |
|-------------------------|------------------------|
| 1. Buckeye              | 13. Northwest Phoenix  |
| 2. Central Phoenix      | 14. Peoria             |
| 3. Chandler             | 15. Scottsdale         |
| 4. East Mesa            | 16. South Mesa/Gilbert |
| 5. East Phoenix #1      | 17. South Phoenix      |
| 6. East Phoenix #2      | 18. Tempe East         |
| 7. Gila Bend            | 19. Tempe West         |
| 8. Glendale             | 20. Tolleson           |
| 9. Maryvale             | 21. West Mesa          |
| 10. North Mesa          | 22. West Phoenix       |
| 11. <u>North Valley</u> | 23. Wickenburg         |
| 12. Northeast Phoenix   |                        |

*Subsequent to AD 2003-046, the oath has been administered pursuant to the law and required procedure.*

(PLEASE REFER TO PRECINCT MAP)

**JUDICIAL OFFICER REVIEW OF PROBABLE CAUSE STATEMENT AND COMPLAINT ON OATH OR AFFIRMATION**

I certify that the information presented is true to the best of my knowledge.

ARNETT 7762  
 ARRESTING OFFICER / SERIAL NUMBER

PHX P.D. 602 445 5009  
 AGENCY / DUTY PHONE NUMBER

4-11-05  
 DATE

Complaint review

Witness sworn

Reviewed Form IV

Other sources: \_\_\_\_\_

PC determined

Judicial Officer \_\_\_\_\_