

**SUPREME COURT OF ARIZONA**

JOSEPH TERBORG,	)	Arizona Supreme Court
INDIVIDUALLY,	)	No. CV-25-0317
	)	
Respondent/Appellant,	)	Court of Appeals
	)	Division Two
vs.	)	No. 2 CA-CV 2025-0080
	)	
TOWN OF PAYSON, A POLITICAL	)	Gila County Superior Court
SUBDIVISION OF THE STATE OF	)	No. S0400CV202400109
ARIZONA,	)	
	)	
Petitioner/Appellee,	)	
_____	)	

**BRIEF OF *AMICUS CURIAE*  
LEAGUE OF ARIZONA CITIES AND TOWNS  
IN SUPPORT OF PETITIONER TOWN OF PAYSON**

**[WITH CONSENT]**

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## **INTEREST OF AMICUS CURIAE**

Pursuant to Rules 14 and 16, Ariz. R. Civ. App. P, this amicus curiae brief (“Brief”) is submitted by the League of Arizona Cities and Towns (“League”) with the written consent of Petitioner/Appellee Town of Payson (“Town”) and Respondent/Appellant Joseph Terborg (“Terborg”). No other person or entity authored this Brief or made a monetary contribution for its preparation or submission.

Founded in 1937, the League is a voluntary membership organization of all 91 incorporated Arizona municipalities. The League advocates for its members’ interests before the legislature and courts. The League is advised by its amicus committee, which identified this case for its statewide significance.

The League respectfully submits this Brief in support of the Town because this Court’s interpretation of A.R.S. § 12–821.01(A) has important legal and practical consequences for Arizona’s cities and towns. The League can provide a unique municipal perspective and additional information to complement what has already been presented by the parties.

Arizona cities and towns are presently secure in the knowledge that, if they are sued for damages, a claimant will have a statutory obligation to file a proper notice of claim in advance of litigation — and that notice of claim will include a precise amount for which the matter can be settled. The dollar amount is an essential

term to any potential settlement agreement. When the dollar amount is definite and certain, it allows the parties to settle meritorious claims without the burdens and expense of litigation. When the dollar amount is indefinite or uncertain, it is neither a “specific amount” under § 12–821.01(A) nor a valid settlement offer under basic contract principles.

### **INTRODUCTION**

Arizona law requires a notice of claim to include a specific amount for which the claim can be settled. A.R.S. § 12–821.01(A). Terborg’s notice of claim includes *two* amounts. By expressing two different settlement amounts, the notice of claim does not present a sum certain; it presents uncertainty.

This defect should have been fatal to Terborg claims. A.R.S. § 12–821.01(A); *see also, e.g., Deer Valley Unified Sch. Dist. No. 97 v. Houser*, 214 Ariz. 293 (2007) (requiring strict compliance and rejecting reasonableness standard); *Falcon ex rel. Sandoval v. Maricopa Cnty.*, 213 Ariz. 525, 527 (2006) (requiring strict compliance and rejecting actual notice and substantial compliance). Despite acknowledging that there are “two alternate settlement amounts” in Terborg’s notice of claim, the Court of Appeals picked one of these amounts based on its own assessment of what Terborg likely intended. *Terborg v. Town of Payson*, 581 P.3d 735, 739 (Ariz. Ct. App. 2025). This approach ignores the plain language of § 12–821.01(A), departs

from settled case law, and replaces a strict compliance requirement with an unworkable standard that cannot be administered by public entities in real time.

The League urges this Court to grant review and reverse. Municipalities should not be required to divine a claimant's intent when a notice of claim states two different settlement amounts; municipalities should continue to rely on a sum-certain demand as the Legislature intended.

### **ARGUMENT**

#### **A. A.R.S. § 12-821.01(A) REQUIRES A SUM CERTAIN.**

The Legislature has the constitutional authority to restrict the right to sue public entities and employees, and to prescribe how such a suit may be maintained. *See* Ariz. Const. art. IV, Pt. 2 § 18 (“The legislature shall direct by law in what manner and in what courts suits may be brought against the state.”); *Landry v. Sup. Ct.*, 125 Ariz. 337, 338 (Ct. App. Div. 2 1980) (interpreting Ariz. Const. art. IV, Pt. 2 § 18). Consistent with its constitutional authority, the Legislature adopted § 12–821.01(A) to unequivocally require a notice of claim to contain a specific amount for which a claim can be settled. A.R.S. § 12–821.01(A) (stating a claim “shall” contain a specific amount for which the claim can be settled).

Terborg’s notice of claim provides in relevant part: “A demand on behalf of Joseph Terborg is hereby made for the sum-certain amount of One Hundred Thousand Dollars (\$250,000.00) upon the City of Payson, the Payson Police

Department, and/or Gila County.” This does not present a *single* sum that could settle the matter: it presents *two* alternatives. Despite acknowledging this defect, the Court of Appeals inexplicably concluded that it satisfies the sum certain requirement. *See Terborg*, 581 P.3d at 739 (citation omitted). This determination alone should have been fatal to Terborg’s claim.

In *Deer Valley*, this Court analyzed a notice of claim against a school district that demanded the following in relevant part: (1) economic damages “in an amount anticipated to be approximately \$35,000.00 per year or more going forward over the next 18 years”; (2) compensatory damages “in an amount no less than \$300,000.00; and (3) general damages “in an amount of no less than \$200,000.00.” 214 Ariz. at 295, ¶ 3 (citations omitted). *Deer Valley* concluded that the plain language of § 12-821.01(A) “unmistakably instructs claimants to include a particular and certain amount of money that, if agreed to by the government entity, will settle the claim.” *Id.* at 296, ¶ 9 (citation omitted). The claims against the school district were barred because the notice of claim lacked a clear aggregate amount that would settle the matter. *Id.* at 296, ¶¶ 10, 11. By using imprecise and uncertain language (like “approximately,” “or more going forward,” “similar appropriate pay increases,” and “no less than”), the school district could not readily identify a specific dollar amount that would settle the matter. *Id.*

In *City of Mesa v. Ryan*, a claimant offered to settle his personal injury claim against a city for “\$1,000,000 or the applicable [insurance] policy limits, whichever are greater.” 258 Ariz. 297, 298 (2024). The claims were barred because the language did not state a *single* amount or provide an objective method to calculate a single amount. *See id.* at 299. *Ryan* noted that a notice of claim can state “a pie-in-the-sky number” so long as that number “leaves no room for debate about what the public entity must pay to settle the claim.” *Id.* at 300 (citations omitted) (citing *Donovan v. Yavapai Cnty. Cmty. Coll. Dist.*, 244 Ariz. 608, 611 ¶ 10 (App. 2018) and *Deer Valley*, 214 Ariz. at 296, ¶ 9)).

While not binding on this Court, federal courts have also considered the sum certain requirement of § 12–821.01(A). For example, in *Bamonte v. City of Mesa*, No. CV 06-01860-PHX-NVW, 2007 WL 2022011, at \*6 (D. Ariz. July 10, 2007), a federal district court considered a notice of claim that stated the claimant “would settle for twenty million dollars (\$20,000,000) plus attorneys fees and costs.” *Id.* (citation omitted). The *Bamonte* court found that while “\$20,000,000 is on its own an unqualified and specific amount . . . the additional demands for unspecified fees and costs introduced uncertainty into the proposed settlement value.” *Id.* (citation omitted).

In *Glynn v. City of El Mirage*, a notice of claim against a city offered to settle for “a reasonable lump sum payment of \$510,000 (inclusive of all economic and

emotional distress damages)” and a reimbursement of “attorneys’ fees incurred in this dispute.” No. CV-23-00612-PHX-MTL, 2023 WL 6795080, at \*7 (D. Ariz. Oct. 13, 2023) (citation omitted). The federal district court concluded the notice of claim was defective because it lacked a specific monetary amount for the attorneys’ fees. *See id.* The demand for an unspecified amount of attorneys’ fees “introduce[d] uncertainty to the settlement offer, particularly when those fees could total a substantial amount.” *Id.* at \*8 (citation omitted).

These decisions make sense. Without a precise dollar amount, the public entity cannot realistically treat the notice of claim as an offer of settlement under § 12–821.01(A) or basic contract principles. *See James v. City of Peoria*, 253 Ariz. 301, 302 (2022) (using “settlement offer” and “notice of claim” interchangeably); *Hill-Shafer Partnership v. Chilson Family Trust*, 165 Ariz. 469, 473 (1990) (stating a distinct intent that is common to both parties must exist without doubt or difference before any agreement can be formed); RESTATEMENT (SECOND) OF CONTRACTS §§ 17, 18 (2024) (discussing the manifestation of mutual assent and offers that are so uncertain as to preclude binding acceptance); RESTATEMENT (SECOND) OF CONTRACTS § 20 (2024) (stating there is no mutual assent if parties attach materially different meanings to their manifestations and “neither party knows or has reason to know the meaning attached by the other”) (citation omitted).

In sum, this Court should grant review because Terborg’s notice of claim did not provide a single dollar amount that would *unquestionably* settle the matter. Allowing his claims to move forward without a valid settlement offer would conflict with the plain language of § 12–821.01(A) and its obvious purpose.

**B. CITIES AND TOWNS SHOULD NOT BE FORCED TO GUESS A CLAIMANT’S INTENT.**

Public entities are required to evaluate a notice of claim prospectively. They must determine potential exposure, set financial reserves, consult insurers, obtain settlement authority from governing bodies, and ensure compliance with budgetary and procurement constraints. These decisions are made administratively, not after judicial review. A notice of claim that states two different settlement amounts does not provide any workable guidance for those administrative decisions. The Legislature enacted the § 12–821.01(A) to avoid this uncertainty. By requiring a specific settlement amount, § 12–821.01(A) allows public entities to evaluate claims based on what the notice of claim says — not based on what a court might later infer was meant by the claimant.

The Court of Appeals acknowledged what Terborg’s notice of claim reveals on its face: it unambiguously states two distinct sums. *See Terborg*, 581 P.3d at 739 (determining that Terborg’s notice of claim *unambiguously* states “two alternate settlement amounts”). This acknowledgement should have ended the lower court’s

analysis; two numbers cannot constitute a sum certain. *See Hayes v. Cont'l Ins. Co.*, 178 Ariz. 264, 268 (1994) (interpretation is unnecessary when language is unambiguous). Instead, the Court of Appeals rewrote Terborg's notice of claim. Although it expressly found no ambiguity, the court invoked contract-interpretation principles and a style guide to select one dollar amount over the other. *Terborg*, 581 P.3d at 739 (discussing Bryan A. Garner, *The Redbook: A Manual on Legal Style* §§ 1.35-36 (4th ed. 2018) and the use of parentheticals). In doing so, the court converted a bright-line statutory prerequisite into a subjective exercise in divining intent.

The lower court's approach is both doctrinally wrong and practically unworkable. Drafting conventions cannot rescue a notice a claim that never states a single, definite settlement amount. While interpretive tools are helpful with *ambiguous* text, the Court of Appeals determined that Terborg's notice of claim was *unambiguous*.

Moreover, the contract interpretation principles that were used by the lower court presuppose a valid offer was made. Regardless, a statement that expresses a matter can be settled for either \$100,00 or \$250,000 is not a valid offer. While Terborg *could* accept \$100,00, the notice does not say with any certainty that he *would* accept that amount. Only two things are reasonably certain: \$100,00 is the minimum sum that could have settled the matter; and \$250,000 is the maximum sum

that could have settled the matter. To the extent Terborg argues the Town could have deciphered Terborg's true intent, the law places no such burden on the Town. *See Yahweh v. City of Phoenix*, 243 Ariz. 21, 23 (Ct. App. 2017) ("Public entities in Arizona are not duty-bound to assist claimants with statutory compliance."); *Backus v. State*, 220 Ariz. 101, 107, ¶ 28 (2009) (a public entity is not required to request additional facts when a claimant's notice of claim is deficient.).

At best, Terborg's notice of claim is an invitation to negotiate, which is not sufficient to comply with § 12-821.01(A). *See, e.g., Yahweh*, 243 Ariz. at 23; *Yollin v. City of Glendale*, 219 Ariz. 24, 31, ¶ 19 (App. 2008) (quoting RESTATEMENT (SECOND) OF CONTRACTS § 24 (1981)). In *Yahweh*, a former city employee's notice of claim stated he would sue the city for various claims in the amount of \$1.5 million and instructed the city to contact his lawyer to obtain an agreeable resolution. *Yahweh*, 243 Ariz. at 22, ¶ 3. Despite the specific settlement amount, the former employee's claims were barred because his ambiguous words of equivocation did not manifest an intent to be bound to that specific amount. *Id.* at 23, ¶ 10. The reference to \$1.5 million was simply how much he would seek during litigation. As a result, the court interpreted the reference to \$1.5 million as an invitation to bargain. *Id.*

Like *Yahweh*, Terborg's notice of claim does not indicate an intent to be bound to any specific amount of money; rather, his notice of claim is an invitation to

bargain for either \$100,00 or \$250,000. Any attempt to tease out Terborg’s true willingness to settle and the precise settlement amount was a guessing game. To the extent Town employees could have guessed the correct amount, the law places no such burden on them. *See id.* at 23, ¶ 12 (“Public entities in Arizona are not duty-bound to assist claimants with statutory compliance.”).

The notice of claim statute places the burden on the *claimant*, not the public entity, to be precise. *See* A.R.S. § 12–821.01(A). Any uncertainty in the settlement demand is fatal, precisely because public entities should not be required to guess, infer, or investigate what a claimant “really meant.” By excusing noncompliance through inferred intent, the Court of Appeals’ decision shifted the burden from claimants to public entities and their administrators.

Compliance with the sum certain requirement is not difficult. *Deer Valley*, 214 Ariz. at 296, ¶ 9. “[T]he statute does not require that claimants reveal the amount that they will demand at trial if litigation ensues but simply requires that claimants identify the specific amount for which they will settle and provide facts supporting that amount.” *Id.* Most cities and towns in Arizona make it *even easier* to comply by supplying a standard notice of claim form.<sup>1</sup> Claimants are obviously not required to

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<sup>1</sup> *See e.g.*, CITY OF CHANDLER, ARIZ., Claims Against the City of Chandler For Damages to Persons or Personal Property (2019), <https://www.chandleraz.gov/sites/default/files/City-of-Chandler-Law-Risk-Management-Claim-Form-Dec-2019.pdf> (“Please state a specific amount for which

use these forms, but many of them do. A standard form typically asks claimants to write a single dollar amount for which their claims can be settled. Claimants are not asked to provide a line-item accounting for each possible damage claim should litigation ensue. They are only asked to provide a specific amount *for which they are willing to settle*. See *Jones v. Cochise Cnty.*, 218 Ariz. 372, 378, ¶ 19 (Ct. App. 2008) (concluding the notice of claim included a specific amount because it included dollar amounts that were “certain and not approximate” and said the claimants would settle for those specific amounts); *Deer Valley*, 214 Ariz. at 296, ¶ 10 (describing the sum certain requirement as an instruction “to include a particular and certain amount of money that, if agreed to by the government entity, will settle the claim”).

In sum, review is warranted. Allowing a notice of claim to move forward without a valid settlement offer would lead to absurd and untenable results—cities and towns could never be certain of a single sum for which they could settle and avoid litigation altogether. Public employees would effectively need to decipher a claimant’s intent — without any guidance on which interpretative tools to use, and without any assurance that their guess would later be upheld. Such an approach erodes the strict compliance rule, undermines the Legislature’s intent, conflicts with

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you will settle your claim. \$ \_\_\_\_\_”); MARICOPA COUNTY, ARIZ., Notice of Claim form, <https://www.maricopa.gov/DocumentCenter/View/16045/Claims-Form-PDF> (2014) (“Specific amount for which your claim can be settled: \$ \_\_\_\_\_.”)

long-standing precedent, and injects uncertainty into a statutory framework that depends on clarity and predictability.

**CONCLUSION**

For the reasons stated above, the League respectfully urges this Court to grant review and reverse.

**RESPECTFULLY SUBMITTED** this 10th day of February 2026

by:

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League of Arizona Cities and Towns