

1 Timothy A La Sota SBN 020539 (tal@tblaw.com)

2 **TB** **TIFFANY & BOSCO**
P.A.

3 **THIRD FLOOR CAMELBACK ESPLANADE II**
4 **2525 EAST CAMELBACK ROAD**
5 **PHOENIX, ARIZONA 85016-4237**
6 **TELEPHONE: (602) 255-6000**
7 **FACSIMILE: (602) 255-0103**
8 **EMAIL: TAL@TBLAW.COM**

9 *Attorneys for Kathleen Winn and Business Leaders for Arizona*

10 **Larry L. Debus SBN 002037**
11 **DEBUS, KAZAN & WESTERHAUSEN, LTD.**
12 **335 East Palm Lane**
13 **PHOENIX, ARIZONA 85004**
14 **TELEPHONE: 602-257-8900**
15 **FACSIMILE: 602-257-0723**
16 **EMAIL: lld@dkwlawyers.com**

17 *Attorneys for Kathleen Winn and Business Leaders for Arizona*

18 **Michael D. Kimerer SBN 002492**
19 **KIMERER & DERRICK, P.C.**
20 **1313 East Osborn Road, Suite 100**
21 **PHOENIX, ARIZONA 85014**
22 **TELEPHONE: 602/279-5900**
23 **FACSIMILE: 602/264-5566**
24 **EMAIL: MDK@Kimerer.com**

25 *Attorney for Tom Horne and Tom Horne for Attorney General Committee*

26 **IN THE OFFICE OF ADMINSTRATIVE HEARINGS**

27 In the Matter Of,

Case No. 14F-001-AAG

28 TOM HORNE, Tom Horne for Attorney
General Committee (SOS Filer ID 2010
00003); KATHLEEN WINN, Business
Leaders for Arizona, (SOS Filer ID 2010
00375)

**DEFENDANTS' MOTION TO
STRIKE TESTIMONY**

COMES NOW Defendants Kathleen Winn, Business Leaders for Arizona, Tom
Horne, and Tom Horne for Attorney General and move that this Court strike the
testimony of FBI Agent Brian Grehoski because the facts show that Agent Grehoski
committed perjury while testifying in this matter.

1 This motion is supported by the following Memorandum of Points and
2 Authorities.

3
4 **MEMORANDUM OF POINTS AND AUTHORITIES**

5
6 **I. THE FBI'S SHIFTING STORY REGARDING THEIR INTERVIEW WITH**
7 **GREG TATHAM**

8 It is fortunate that Greg Tatham recorded his conversations with the Federal
9 Bureau of Investigation. These audio recordings and FBI phone records that have just
10 been obtained, demonstrate conclusively that Agent Brian Grehoski testified falsely at the
11 hearing on material points. And even worse, the evidence shows that the phantom third
12 phone call between Agent Grehoski and Greg Tatham that Agent Grehoski testified to his
13 second time on the stand is a complete fabrication.
14

15
16 **A. Questions arise early about the FBI's characterization of its interview**
17 **with Greg Tatham**

18 The FBI's report on their interview with Greg Tatham (Yavapai County
19 Attorney's Office ("YCAO") Exhibit 34) was never an accurate summary of the actual
20 conversation. (Defendants presented an audio recording of this May 31, 2012
21 conversation as Horne-Winn Exhibit 14. For ease of reference the interview is referred to
22 as "the 15 minute call.")
23

24 In their summary, the FBI claimed that "Tatham was never aware of Horne ever
25 consulting with Kathleen Winn for real estate advice on the transaction." But the audio
26 of the conversation did not support this, as the FBI never mentioned Kathleen Winn to
27 Tatham. And the FBI's summary also leaves out the critical fact that Tatham indicated
28

1 that his knowledge of Horne is that he seeks real estate advice from numerous people,
2 people Tatham may not even be aware of. The fact Horne consulted with other people
3 would make it likely he consulted with Winn. Not knowing the conversation was taped,
4 the FBI agents wrote a summary that conveys exactly the opposite message than the one
5 Tatham had given them.
6

7 **B. The FBI's initial attempt to rebut allegations that their summary of the**
8 **Tatham interview was false**

9 Kathleen Winn raised the inaccuracy of the FBI summary (YCAO Exhibit 34) in a
10 May 13, 2013 letter to the Arizona Secretary of State's Office when this matter was sent
11 back to the Secretary of State upon the disqualification of the Maricopa County Attorney,
12 and Winn in turn forwarded this May 13, 2013 letter to YCAO once they were given the
13 case. [Exhibit 1, p. 11].
14

15 But at the hearing, Agent Grehoski had a purported explanation for this:
16

17 "Q. [by Ben Kreutzberg]. I'd like to turn to Exhibit Number 34 next. This
18 is the interview summary of Greg Tatham. Did you interview Mr. Tatham
19 during this investigation?

20 A. [by Brian Grehoski]. Yes. We actually interviewed Mr. Tatham a
21 couple times. This FT 302 actually summarizes two different conversations
22 we had with Mr. Tatham. I specifically recall driving down I-17 in Phoenix
23 when we got ahold of Mr. Tatham via telephone. My partner, Special
24 Agent Mason, put it in on speaker I had our conversation with Mr. Tatham
25 while we were driving. That conversation was not audio-recorded, so this
26 is a summary of both that interview, and at the conclusion of that first
27 interview Mr. Tatham indicated he had to go and either find some
28 documents or – I forgot what the reason was he had to get off the phone,
but he subsequently called us back and he had obtained a recording device
and surreptitiously recorded the conversation he had with me, myself, and
Special Agent Mason, so this reflects a summary of both of those
conversations.

1 Q. Would you please read the second to last paragraph being in this
2 document?

3 "Tatham was not aware of Horne ever consulting with Kathleen Winn for
4 real estate advice on the sale of the property. Winn was not involved in the
5 transaction of the sale at 1515 North 7th Ave, Arizona."

6 Q. Next I'm going to play for you Horne Exhibit Number 14, which is the
7 audio file that Greg Tatham recorded of the second interview.

8 (The recording was played.)

9 Q. BY MR. KREUTZBERG: Let's pause for a moment Special Agent
10 Grehoski. The Brian referred to in this email, this is recording you?

11 A. Yes.

12 Q. So you were a party to this recording?

13 A. That's correct.

14 (The recording was played.)

15 Q. BY MR. KREUTZBERG: Agent Grehoski, is that the end of the
16 recording?

17 A. Yes.

18 Q. I apologize for playing that long file, but I understand there's been
19 some question as to the statements made within this FBI document.
20 In that recording, was there a reason you didn't specifically ask whether
21 Kathleen Winn was not involved in the real estate transaction?

22 A. Yeah. In our first conversation we specifically asked was he aware that
23 -- if at all -- Kathleen Winn was involved in the -- either the purchase or sale
24 of those properties, and he said he wasn't aware of it. To his knowledge,
25 she wasn't involved.

26 And then in the follow up call we decided, let's ask him more open question
27 so we're not focusing on just a single person, and we asked him a more
28 general question, was anybody else involved to your knowledge, and you
heard what he said. Basically no." [Transcript, p. 135-38. Relevant parts
of the transcript included as **Exhibit 2.**]

1 On cross-examination, when Larry Debus questioned whether a conversation
2 occurred other than the 15 minute conversation on that day, Grehoski reiterated his claim
3 of another substantive conversation:

4 All we knew is we had two conversations with Mr. Tatham, and the very
5 first one I vividly recall asking specifically about Kathleen, and Mr. Mason
6 was in the car. I've had subsequent discussions with him [Mason]. He
7 recalled it. And then in the second conversation it was both of our
8 recollection that we asked a much broader over umbrella, was anybody else
9 involved in the transaction, to which he also replied no. So to – this report
10 reflects both of those conversations that not only did we ask if anyone else
11 was involved, if Kathleen specifically was involved, and in both in
12 instances Mr. Tatham told us not to his recollection or not to his
13 knowledge. I stand by the 302.” [Transcript, p. 312].

14
15 **C. Greg Tatham’s additional audio tape, this of his first conversation with**
16 **the FBI, rebuts FBI’s claims regarding a second conversation**

17 Greg Tatham would later rebut the FBI’s claim of another substantive
18 conversation with Agent Grehoski and Agent Mason, and he had another recording to
19 corroborate his testimony. At the lunch break on February 11, 2014, attorneys for Winn
20 and Horne learned that Tatham had also recorded the brief, non-substantive conversation
21 on May 30, 2012.

22 Later that day, the Defense called Tatham to the stand. Tatham testified that he had
23 four encounters with the FBI. The first was when Grehoski and Mason came to his home to
24 interview his wife, Amy Rezzonico. At the time they had no interest in Greg¹. The second
25 encounter was when Tatham responded to a message they left on his voice mail to call them. He
26 reached Mason’s cell phone on May 30, 2012, and they essentially made arrangements that he
27 would call them back the next day at 1:00 p.m. This May 30 call is the call that Grehoski did

28 ¹ Grehoski’s testimony on this point was that “There was nothing substantive about that conversation, but ultimately his wife consented to an interview.” [Transcript, p. 746].

1 NOT know was recorded when he first testified, and the audio recording is Horne-Winn 25. The
2 third encounter was when Tatham did call Grehoski and Mason on May 31, 2012 at 1:00 p.m.
3 This call was recorded and Grehoski was aware of that fact prior to when he first testified. The
4 fourth encounter is not relevant, because it occurred when the two agents contacted him shortly
5 before the hearing and Tatham refused to speak to them. [Transcript, p. 166].

6 Greg Tatham testified that the agents never asked him about Kathleen Winn nor did he
7 say anything about her. He noted that the statement in their 302 report that he had told them
8 about Kathleen Winn not being involved was not true. They never asked him about Kathleen
9 Winn. Tatham's testimony is substantiated by the two recorded conversations, and is as follows:

10 Q. [by Larry Debus]. Now, did you ever talk with the FBI?
11

12 A. [by Greg Tatham]. I did.

13 Q. And did they ever actually come to your house, other than sitting down the
14 street?

15 A. I've spoken to the FBI three different occasions, one when they were standing
16 at my gate, and I told them I didn't want them coming into my house and
17 interview my wife unless there was attorney present. They came in and
18 interviewed her, because she allowed it, and I don't control my wife. The second
19 time was a telephone call when they set up a time to interview me, so there were
20 three different times I spoke with the FBI.

21 Q. Was the second time they called you, was that a telephone call where they
22 were in the car?

23 A. It was a telephone call when they were apparently in transit from one location
24 to another.

25 Q. And then the third one, you recorded it, did you not?
26

27 A. That is correct.

28 Q. Now, the second telephone call when they were in the car, did you record that
as well?

A. I did as well.

Q. And in either one of these conversations, was the name Kathleen Winn
mentioned?

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A. At no time was her name mentioned.

[Recording Played]

Q. BY MR. DEBUS: Mr. Tatham, on the screen in front of you is exhibit -- what's that number?

MR. LASOTA: 34, States 34.

BY MR. DEBUS: Next to the bottom paragraph, begins Tatham was not aware. Do you see that?

A. Yep.

Q. Did you ever make that statement to these FBI agents?

A. I did not.

Q. And the only call you got from them when they were in the car is the one you recorded?

A. That's correct.

Q. And in that recording there's absolutely no mention of Kathleen Winn?

A. No mention whatsoever.

Q. And you knew they were in the car because they told you, the speaker told you we're driving, we're in route, and we don't want to get killed, basically?

A. That's correct.

Q. And if the agent said that in that conversation that you recorded you told him you were not aware of Horne ever consulting with Kathleen Winn, that's not true, is it?

A. That is not true.

Q. Did you ever in any conversation mention the name Kathleen Winn?

A. No.

[Transcript, pp. 458-60].

1 **D. The FBI then claims that there was a third conversation between them**
2 **and Tatham**

3 After Tatham's testimony, Agent Grehoski was recalled to the stand by the
4 Yavapai County Attorney's Office. He had been told about Tatham's testimony and
5 Agent Grehoski elaborated on his previous claim that there were actually two
6 conversations of substance with Tatham. After the short, two minute call on May 30
7 [Horne-Winn Exhibit 25] is played, Grehoski testified as follows:
8

9 (The recording was played.)
10

11 A. [by Grehoski]. Yeah, so it sounds to me as if at the end Mr. Tatham
12 says, "I can give you a call," and Merv says, "Okay. Give me a call. Give
13 me a call then." The following day, my recollection is we called him. We
14 ended up calling him. There may have been a little phone tag going on.
15 I'm not sure. My recollection and Merv's recollection was we ended up
16 calling him. And that first conversation, Mr. Tatham said -- basically, we
17 had a brief conversation where we talked about --

18 Q. [by Fields]. When you're talking about that first conversation, are you
19 talking about the conversation the next day?

20 A. The conversation on May 31st at approximately 1:00 o'clock --

21 Q. And I'm going to stop you again.

22 A. Yeah.

23 Q. On May 31st, would that have been this conversation that I just played
24 for you, or would it have been the next day?

25 A. This would have -- May 31st would have been the next day. This
26 conversation we just heard would have been on the 30th, and that was Merv
27 setting up the 1:00 o'clock conference call for the following day.

28 Q. Did the 1:00 o'clock conversation take place?

 A. It did. It was approximately --

 Q. Was it on time?

1 A. Yes, approximately on time, around 1:00 o'clock, approximately. I
2 don't know the exact time.

3 Q. Okay. Tell us about what you recall about that conversation?

4 A. My recollection is we called Mr. Tatham, and we basically described to
5 him the information we were looking to ascertain, which was his
6 participation in the purchase and/or sale of the property owned by Mr.
7 Home at 7th Ave and McDowell and the property at Sun City West. And
8 we also wanted to know his knowledge of-- if Kathleen Winn was involved
9 with this purchase and/or sale of those properties. And then what he
10 advised was -- he wasn't at his office, or he wasn't near the information that
11 he needed to properly answer some of those questions, and he asked if he
12 could call us back, which we said that would be fine. And after we hung up
13 the phone, Special Agent Mason and I had a conversation about what we
14 had just talked to Mr. Tatham about. And in discussing it, we thought
15 maybe next time we speak with him we should ask a much broader
16 question. Instead of targeting specifically was Ms. Winn involved in that
17 sale, we asked a broader question, was anybody else involved in the sale.

18 [Transcript, pp. 741-43].

19 Subsequently, Agent Grehoski made it clear that the first conversation was the
20 unrecorded call and the second conversation was the 15 minute call (Horne-Winn Exhibit
21 14):

22 Q. [by Jack Fields]. So it's your testimony today that there were two
23 conversations on May 31st that you participated in --

24 A. [by Brian Grehoski]. That's correct.

25 Q. -- with Mr. Tatham?

26 A. Yes.

27 Q. How long do you think the first one was?

28 A. It was brief. I believe the second call was longer because there was
more detail in it. The first call was a shorter one. As I stated, he was not at
his office. He wasn't near the information he needed to answer our
questions in any great detail. So it would have to have been-- if that one

