

Evelyn L. Keiling, TTE – The Keiling Living Trust
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June 9, 2026

Arizona Department of Real Estate
Administrative Hearings / HOA Dispute Process
100 North 15th Avenue, Suite 201
Phoenix, Arizona 85007

Re: Supplemental Transmittal and Reservation of Rights

Petitioner: Evelyn L. Keiling, TTE – The Keiling Living Trust

Respondent: Lone Mountain Community Association

ADRE Matter/Case No.: 26F-H116 – **Keiling v. Lone Mountain Community Association**

Property Address: 6041 East Pebbles Court, Cave Creek, AZ 85331

Dear Sir or Madam:

Please accept this letter as a supplemental transmittal in the above-referenced matter. I previously submitted my petition and supporting materials to the Arizona Department of Real Estate. I now submit additional supplemental exhibits and information for inclusion in the administrative record while I await any response from the Association or its counsel. I also wish to note at the outset that I have obtained more than **40 homeowner signatures and comments** supporting this ADRE filing and/or opposing the Association's one-size-fits-all Pepper Spice mandate.

As of today, June 9, 2026, no response from the Association or its counsel has been received by Petitioner although the deadline for same was yesterday, June 8, 2026. If the Association submits a response after the stated deadline, I respectfully reserve all objections to timeliness and request that ADRE confirm the date, time, and method of receipt before accepting or considering the response.

If the Association's response was timely received electronically or otherwise, I respectfully request that ADRE provide a copy to me or confirm when it will be made available so that I may review it and respond as permitted by the Department's procedures.

Summary of Supplemental Position

The central issue remains whether the Association may impose a new affirmative obligation through Design Guideline 5.8.1 requiring owners to repaint existing builder-designed walls to a single Board-selected color, **Behr Pepper Spice or equivalent**, where the original governing documents did not contain that one-size-fits-all mandate and where the owner is not seeking an owner-initiated exterior change.

The Association has created and is now enforcing a new affirmative obligation requiring affected homeowners to repaint existing builder-designed stucco walls to a single Board-selected color, even though that obligation did not exist in the 2009 CC&Rs or the 2009 Design Guidelines.

My position is that this is not merely an architectural review issue. The Association is compelling an affirmative alteration to existing walls, backed by deadlines and threatened fines. This is materially different from applying design standards to a homeowner's voluntary request to repaint, alter, or improve property.

This issue is especially significant for Lennar homes in the community. Lennar homes comprise approximately **42%** of Lone Mountain and were designed using only **six color palettes**. Many Lennar homes were originally designed with stucco-painted walls matching the body color of the home. Those walls are not generic cement block community walls; they are visually and architecturally integrated into the original builder-designed appearance of the homes.

This is not a simple paint job or minor maintenance correction. For my property, compliance would require altering approximately **502 square feet** of stucco-painted wall surface that functions as part of the home's original Lennar exterior design, at an estimated cost of **\$3,250**. That makes the mandate both visually significant and financially burdensome.

The timing of enforcement is also significant. The Pepper Spice requirement was created in 2020, years after the original 2009 governing documents and years after many homeowners purchased their homes. The Association did not begin meaningful enforcement until 2025/2026. During that period, many homeowners in the Lennar portion of the community reasonably believed they were in compliance because their stucco-painted front-facing or return walls matched the body color of their homes, consistent with the original Lennar builder design. The delayed enforcement confirms that this was not an obvious, original, uniformly understood requirement, but a later-created mandate now being imposed as a new affirmative obligation.

Applicable Authority: Kalway and the Improper Use of Design Guidelines

The controlling Arizona authority is **Kalway v. Calabria Ranch HOA, LLC, 506 P.3d 18 (Ariz. 2022)**. In **Kalway**, the Arizona Supreme Court held that although CC&Rs may generally be amended according to the voting procedure in the declaration, the original declaration must still provide sufficient notice of the type of later restriction being imposed. **Kalway, 506 P.3d 18, ¶¶ 1, 10.**

The Court further explained that an HOA may not create new **affirmative obligations** where the original declaration did not give homeowners notice that they could later be subjected to those obligations. **Id.** ¶ 14. The Court also emphasized that allowing substantial, unforeseen, and unlimited later restrictions would alter the nature of the covenants to which homeowners originally agreed. **Id.** ¶ 15.

Most importantly here, **Kalway** states that a later restriction must be tied to the original declaration and cannot be “**entirely new and different in character**” from the original covenants. **Id.** ¶ 17. That is the precise issue presented here: whether the Association may use a later Design Guideline amendment to impose a new mandatory repainting obligation that did not exist in the 2009 CC&Rs or the 2009 Design Guidelines.

This case falls squarely within **Kalway**. The Association’s Pepper Spice mandate was not contained in the 2009 CC&Rs or the 2009 Design Guidelines that homeowners relied upon. It was later created through a Design Guideline amendment and is now being enforced as a mandatory obligation through deadlines and threatened fines. The Association’s position appears to be that because the mandate was placed in the Design Guidelines rather than in the Declaration itself, the notice and foreseeability principles in **Kalway** do not apply. I respectfully disagree.

The label placed on the rule should not control. If a Design Guideline functions as a new substantive restriction or new affirmative obligation, then homeowners should still be protected against later-imposed burdens that were not reasonably foreseeable from the original governing documents. A Design Guideline cannot be used as a substitute for a Declaration amendment when the practical effect is to impose a new affirmative obligation requiring owners to alter existing builder-designed improvements. **Kalway**, 506 P.3d 18, ¶¶ 14–17.

The Bainbridge Law Firm letter, submitted as **Exhibit N**, is important for this reason. It explains that affected owners are not seeking a new exterior change or requesting approval to alter their properties. Rather, they are attempting to maintain the existing builder-designed condition of their homes and walls. The Association is using the Design Guidelines not merely to review a proposed homeowner change, but to compel homeowners to make a change they did not request. That is the overreach at issue.

Supplemental Exhibits Submitted

I previously submitted Exhibits **A through J**. I now submit the following supplemental exhibits for ADRE’s consideration. These exhibits are offered to clarify the governing-document history, the later-created Pepper Spice mandate, the scope of homeowner opposition, the Association’s enforcement activity, the financial burden imposed, and the related process/fairness concerns.

- **Exhibit K — Original 2009 CC&Rs.** Included to show the governing Declaration that existed when homeowners purchased and to demonstrate that the original CC&Rs did not contain a one-size-fits-all Pepper Spice repainting mandate.

- **Exhibit L — Original 2009 Design Guidelines.** Included to show the design rules in effect before the later amendments and to demonstrate that the original Design Guidelines did not contain the challenged Pepper Spice mandate.
- **Exhibit M — 2025 Revised Design Guidelines.** Included to show when and how the Board later added the new “Community Standard” color requirement for front yard block walls and to distinguish that later-created rule from the original governing documents.
- **Exhibit N — Bainbridge Law Firm Letter.** Included because it explains the legal objection to the Association’s position, including that affected owners are not seeking a new exterior change but are attempting to maintain the existing builder-designed condition of their property. I have received approval from the Hendersons to provide this letter from their attorney, Mark J. Bainbridge.
- **Exhibit O — 40+ Homeowner Petition Signatures and Comments.** Included to show that more than 40 homeowners have signed in support of this ADRE filing and/or in opposition to the Association’s one-size-fits-all Pepper Spice mandate. These signatures and comments demonstrate that the issue is community-wide and not limited to a single homeowner’s personal preference.
- **Exhibit P — Appeal Denial and Enforcement Correspondence.** Included to show that the Association is actively enforcing the challenged mandate and has denied homeowner appeals or requests for relief. This includes evidence that homeowners who reasonably believed they were compliant have nevertheless been required to apply, appeal, or repaint under protest. For example, my neighbor was given until May 31 to comply with this mandate and who subsequently just painted to avoid fines after losing her appeal.
- **Exhibit Q — Fine Notices and Continuing Enforcement Actions.** Included to show that the Association’s position is not merely advisory or informational, but is being enforced through deadlines, notices, and threatened or continuing penalties. This includes my most recent **\$100 fine letter**, which demonstrates that enforcement is continuing while this ADRE matter is pending. I also understand that the Hendersons received the same type of letter, further confirming that the Association is continuing enforcement against affected homeowners.
- **Exhibit R — Selective Enforcement Evidence — Jim Tucker.** Included to support concerns that the Association has not applied the rule uniformly or has treated similarly situated homeowners differently. Mr. Tucker signed the homeowner petition in support of this ADRE filing. According to the information available to me, after the 2020 rule was adopted, Mr. Tucker obtained ARC approval in 2023 to repaint his home white and also painted his front-facing walls to match his home. In 2025, he received a letter stating that he had to repaint his wall Behr Pepper Spice or face a fine. He has since repainted his front-facing walls Pepper Spice next to his white home. I submit this as evidence relevant to

selective enforcement, inconsistent application, and the reasonableness of the Association's interpretation.

- **Exhibit S — Cactus Colors Estimate — \$3,250.** Included to show the substantial financial burden imposed by the mandate. This estimate matters because my property has approximately **502 square feet** of affected wall surface, meaning compliance would require repainting a substantial exterior feature rather than making a minor maintenance correction.
- **Exhibit T — Lustig Cease-and-Desist Letter.** Included as part of the process and fairness record concerning communications and conduct surrounding this dispute. Mr. Lustig is an 84-year-old Lone Mountain homeowner who, to my knowledge, has tried to communicate with other homeowners and Board members in a professional and informational manner regarding this community-wide issue as well as other matters. I understand that serious allegations have been made against him, and I dispute the accuracy and fairness of those allegations. I include this exhibit to show the broader process and fairness concerns surrounding homeowner communications about the mandate. I have obtained permission from Mr. Lustig to include this exhibit.
- **Exhibit U — Nextdoor Communication / Moderation Documentation.** Included as context showing the difficulty homeowners have faced in communicating and organizing around this community-wide issue. I do not ask ADRE to adjudicate Nextdoor's moderation decisions. I submit this only as context for the broader process concerns, including my concern that HOA-related actors may be interfering with homeowner communication, petitioning, and participation concerning this HOA governance dispute.
- **Exhibit V — Board Member Correspondence Concerning Exclusion from ADRE Notification and Appeal Process.** Included to show a governance and process concern: Board Member Keith Sutcliffe indicated that he had not received information regarding this pending ADRE matter and was not included in any decision to seek attorney advice concerning this issue. Mr. Sutcliffe has also signed the homeowner petition in support of this ADRE filing, and he also appealed the Association's enforcement position and was denied. I have obtained permission from Board Member Keith Sutcliffe to include this information. This is important because Mr. Sutcliffe is both a current Board member and an affected homeowner who has objected to the mandate.

Where applicable, I have obtained permission from the relevant third parties to include their communications or statements, including the **Hendersons** for the Bainbridge Law Firm letter, **Mr. Lustig**, and Board Member **Keith Sutcliffe**.

Board Authorization and Process Concern

I also respectfully request that ADRE require the Association to identify the date, meeting, vote, executive session, written consent, or other board action by which the Association authorized counsel, authorized any response in this ADRE matter, and approved continued enforcement of the challenged paint mandate.

This request is based on information I received from Board Member **Keith Sutcliffe**, who indicated that he had not received information regarding this pending ADRE matter and was not included in any decision to seek attorney advice concerning this issue. If the Association's position is being presented as the position of the Board or the Association, I respectfully request that the Association be required to identify the board action authorizing that position.

Request

For these reasons, I respectfully request that ADRE:

- Accept this supplemental transmittal and Exhibits **K through V** into the administrative record;
- Confirm whether the Association's response was timely received and, if so, the date, time, and method of receipt, particularly because I understand no response had been received by ADRE or by me as of the date of this letter;
- Provide me a copy of any Association response or confirm when it will be made available;
- Require the Association to identify the board authorization for counsel, any ADRE response, and continued enforcement; and
- Consider the supplemental exhibits together with my previously submitted Exhibits **A through J**.

Thank you for your attention to this matter.

Respectfully submitted,

Evelyn L. Keiling, TTE – The Keiling Living Trust
Petitioner