

Plaintiff Statement [Rule 26(d)]:

Per A.R.S. § 33-1804, F: “It is the policy of this state as reflected in this section that all meetings . . . of the board of directors . . . be conducted openly and that notices and agendas be provided for those meetings that contain the information that is reasonably necessary to inform the members of the matters to be discussed or decided and to ensure that members have the ability to speak after discussion of agenda items, but before a vote of the board of directors . . . is taken.” The statute also allows the Board to meet in closed session, but it specifically limits a closed session to “consideration” of five (5) specific matters. *Id.* sec. A. “Consideration” does not include formal actions or voting.

The Defendant HOA is repetitively violating A.R.S. § 33-1804 (“the open meeting statute”) by, among other things, failing to provide meeting agendas, and by taking formal action (voting) in a closed session. The parties disagree on the interpretation and application of the open meeting statute.

The Plaintiff seeks declaratory judgment of its open meeting rights under the open meeting statute including, but not limited to: the right to receive meeting agendas; the right to speak before the HOA Board takes formal action (or votes); and, the right to attend, observe and participate in Board meetings which are required to be open.

The Declaratory Judgments Act is remedial and must be liberally construed, but a Declaratory Judgment action must be based upon an actual controversy. *Café Valley, Inc. v. Navidi*, 330 P.3d 1009, 1012 (Ariz. Ct. App. 2014). To support an actual controversy, Plaintiffs have requested agendas and minutes of closed meetings to show violations of the open meeting requirements.

The requested documents fall within Ariz. R. Civ. P. 26(b)(1): “Parties may obtain discovery regarding any nonprivileged matter that is relevant to any party’s claim or defense and proportional to the needs of the case” The requested documents – without redactions – are relevant because they have a tendency to make the existence of improper Board actions more or less probable than it would be without the evidence, and such facts are of consequence in this declaratory judgment action.

The Defendant HOA responded to the documents request with extensively redacted closed meeting agendas and minutes which obscure open meeting violations.

The Defendant does not assert that the requested documents are privileged, and has not provided a description of, and the legal basis for, each redaction. The Defendant erroneously asserts that A.R.S. § 33-1805 prohibits disclosure of the closed meeting agendas and minutes. A.R.S. § 33-1805 requires that “all financial and other records of

the association shall be made reasonably available for examination by any member” and provides the Board with discretion to either disclose or withhold minutes (or other records) of a “a session of a board meeting that is not required to be open to all members.” The statute does not prohibit disclosure.

Plaintiffs seek an Order for Defendant to produce **authenticated** closed meeting agendas and minutes with the redactions limited to: (1) attorney-client communications; (2) the identities of persons who had matters under consideration by the Defendant’s Board of Directors; and, (3) the substance of Board discussions on pending litigation. But, the substantive nature of matters considered, and the formal actions taken in relation to those matters, by the HOA Board must be disclosed, and are expected to show non-compliance with open meeting requirements of A.R.S. § 33-1804, A & F.

The Plaintiff also does not object to an appropriate protective order to prevent public dissemination of HOA records and which requires the Defendant to identify the character or nature of each redaction, and which allows the HOA documents to be filed under seal when, or if, submitted.

The requested documents are mere business records. Redaction and a protective order fully and adequately address any confidentiality or privacy concerns.

DEFENDANT’S POSITION¹

In its initial production request, Plaintiff requested the following: “For all Board of Directors meetings on and after January 1, 2023, produce all notices of such meetings; all agendas for such meetings; and, all the minutes of such meeting. This request includes all meetings whether open or closed, and any quorum of the Board of Directors that meets informally to discuss association business, including workshops, without regard to whether the board voted or took any action on any matter at that meeting. All notices of Board meetings, as requested herein includes, but is not limited to, any and all notices sent in any form to any one or more Directors.” Included with Defendant’s production response, Defendant produced numerous executive session meeting agendas and minutes, but

¹ Defendant notes that Rule 26(d) provides each party a page and half of text. Plaintiff has exceeded the permissible limit of text for this joint statement. Rule 5.2(b)(1)(F) states that text may not exceed 28 lines per page. Despite Defendant’s request, Plaintiff has refused to format the Joint Statement to comply with Rule 5.2.

redacted the documents to prevent the disclosure of information excepted from the disclosure requirement of A.R.S. § 33-1804. A privilege log was also provided.

As acknowledged by Plaintiff above, it “seeks declaratory judgment of its open meeting rights under the open meeting statute including, but not limited to: the right to receive meeting agendas; the right to speak before the HOA Board takes formal action (or votes); and, the right to attend, observe and participate in Board meetings which are required to be open.” What Plaintiff has not sought in its complaint for declaratory relief is a finding that Defendant is not in compliance with A.R.S. §§ 33-1804, A & F. Plaintiff cannot file suit and then seek discovery to create an actual controversy where none exists.

At the heart of this litigation and that for which Plaintiff seeks a declaration is whether Defendant’s executive meetings and minutes/records of same are required to be open to all members. However, any portion of a meeting may be closed if that closed portion of the meeting is limited to consideration of one or more of the topics listed in A.R.S. § 33-1804 (A) (1) through (5). A.R.S. § 33-1804 (C) provides that a board shall provide notice of the closed executive session, identifying the section of A.R.S. § 33-1804 (A) (1) through (5) by which the meeting was closed. As part of its initial disclosures and production response, Defendant provided the corresponding notices of a closed executive session, which clearly identify the section(s) of A.R.S. § 33-1804 (A) (1) through (5) by which the meeting was closed.

Plaintiff’s request for the unredacted executive minutes is nothing more than an attempt to circumvent A.R.S. § 33-1804. Defendant maintains that Plaintiff is not entitled to the information redacted in the executive session agendas and minutes. At a minimum, Defendant would request an *in camera* inspection of the redacted documents (bate-stamped SSHA 000111-146) to determine whether any of the redacted information is discoverable.