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10 Attorneys for Defendant Sun City Grand
11 Community Association, Inc.

12 IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
13 IN AND FOR THE COUNTY OF MARICOPA

14 THOMAS J. GUSICH, an individual,
15 Plaintiff,

16 v.

17 SUN CITY GRAND COMMUNITY
18 ASSOCIATION, INC., an Arizona nonprofit
19 corporation,
20 Defendant.

NO. CV2025-002634

**RESPONSE TO PLAINTIFF'S
APPLICATION FOR AN ORDER
TO SHOW CAUSE**

(Assigned to the Hon. Jennifer Ryan-
Touhill)

21 Defendant Sun City Grand Community Association, Inc. (the "Association" or
22 "Defendant"), by and through its undersigned counsel, hereby responds to Plaintiff Thomas
23 J. Gusich's ("Plaintiff's") "Application for an Order to Show Cause for Temporary
24 Restraining Order to Halt February 24, 2025 Actions" (the "Application").

25 The Court has set the Application for virtual hearing on Friday, March 7, 2025.
26 Pursuant to the Court's order setting the hearing, the Association understands that the March
27 7 hearing is a return hearing only, and the Court does not intend to receive evidence from
28 the parties on that date.¹ Counsel for the Association will attend and participate in the
March 7 hearing, and per the Court's directive, does not intend to submit evidence on that
date. However, in advance of the hearing, the Association provides the following statement

¹ Defendant reserves the right to present evidence and file a formal response to Plaintiff's various filings depending on the outcome of the hearing.

1 regarding the underlying events and the Association’s position with respect to the
2 Application.

3 Sun City Grand (the “Grand”) is a planned development located in Surprise, Arizona.
4 Plaintiff is a resident of the Grand. The Association is governed by Arizona’s Planned
5 Communities Act and the Association’s governing documents, including the Association’s
6 CC&Rs and Amended and Restated Bylaws (the “Bylaws”). The affairs of the Association
7 are governed by its Board of Directors (the “Board”).

8 Plaintiff was elected as a member of the Board of the Association on April 1, 2024.
9 On April 11, 2024, the Board adopted a code of conduct applicable to the Board members,
10 called “The Grand Standards of Behavior of Directors” (the “Grand Standards”). Plaintiff
11 had an opportunity to provide and did provide input regarding the content of the Grand
12 Standards. The Board *unanimously* adopted the Grand Standards – i.e., *Plaintiff voted in*
13 *favor of the adoption of the Grand Standards.*

14 The Board subsequently determined that Plaintiff had violated certain of the Grand
15 Standards and, as contemplated by the Grand Standards, first raised Plaintiff’s conduct
16 during executive session meetings of the Board. Because Plaintiff continued to engage in
17 conduct that the Board found to violate the Grand Standards even after their discussions of
18 the issue in executive sessions, the Board raised Plaintiff’s violations in a public Board
19 meeting, a procedural step also expressly contemplated by the Grand Standards. Though it
20 is permitted to do so under the Grand Standards, the Board did not take and has not taken
21 any action to remove Plaintiff from the Board of Directors.

22 Nevertheless, on January 22, 2025, Plaintiff filed an unverified Complaint against
23 the Association, which asserted two claims for relief: (1) a claim for declaratory judgment,
24 seeking a declaration that the Grand Standards that were unanimously adopted by the Board
25 – including Plaintiff – are invalid and unenforceable; and (2) a claim for breach of contract,
26 alleging that the Association is obligated to indemnify Plaintiff for attorneys’ fees and costs
27 he has incurred in connection with this lawsuit.

28 On February 7, 2025, the Association received a petition from members of the

1 Association, which sought to recall and remove Plaintiff as a member of the Board (the
2 “Petition”). The Petition appears to have begun circulating among members of the
3 Association as early as December 2024 (and perhaps earlier).

4 The Board President is permitted to call a special meeting for any purpose which
5 necessarily includes a meeting at which the Association may vote to remove a member of
6 the Board. Separately, under A.R.S. § 33-1813, the Board is required to call and provide
7 notice of a special meeting to vote on the recall or removal of a director if it receives a
8 petition to recall such director that contains the signatures of at least ten percent of the
9 members of eligible voters in the Association. The special meeting and vote must occur
10 within thirty (30) days of receipt of the petition. *Id.* § 33-1813(4)(d).

11 After review and evaluation, the Association determined that the Petition included
12 1,190 valid signatures, which was well above the 982 signatures required to achieve ten
13 percent of the members of eligible voters in the Association. The Petition included both
14 traditional hand signatures on paper petition forms and electronic signatures of members of
15 the Association, in compliance with A.R.S. § 44-7007 (which permits electronic
16 signatures). The Petition also indicated on its face that it was a petition that sought to
17 remove Plaintiff as a member of the Board.

18 On February 10, 2025, the Association first sent notice to all members of the
19 Association that the Petition had been received and that a special meeting on the recall
20 Petition would be held on February 24, 2025. On February 12, 2025, the Association
21 provided an additional written notice to its members both via email and via regular mail.
22 That notice was crystal clear as to its purpose: “The purpose of the Special Meeting is to
23 vote on the recall of Board Member Thomas Gusich.”

24 On February 20, 2025 – a full *ten (10) days* after the Association sent its initial notice
25 to all members of the Association (*including Plaintiff*) – Plaintiff filed a First Amended
26 Complaint (the “FAC”), an Application of Preliminary Injunction (the “PI Application”), a
27 proposed Temporary Restraining Order (“Proposed TRO”), and the Application (for Order
28 to Show Cause). The FAC included two additional claims for declaratory judgment, one

1 which sought a declaration that Plaintiff cannot be excluded from certain executive sessions
2 of the Board and another which sought a declaration that the Petition was ineffective and
3 invalid due to the way electronic signatures were gathered. Notably, the FAC was not
4 verified. Plaintiff's Application for Preliminary Injunction sought to enjoin the Association
5 from proceeding with the recall special meeting and an injunction precluding the Board
6 from excluding Plaintiff from attending executive sessions of the Board related to this
7 litigation. Again, the Application for Preliminary Injunction was not supported by a verified
8 FAC or any affidavits or declarations. Finally, the Proposed TRO and Application sought
9 *only* to enjoin the Association from holding the Special Meeting scheduled for February 24,
10 2025 and/or counting the votes received in connection with such meeting.

11 On February 24, 2025, the Association held the special meeting. More than 5,399
12 Association members cast votes, well in excess of the quorum requirements under A.R.S.
13 § 33-1813(4)(e). Of those members that cast votes, an overwhelming majority — 4,659
14 members — voted in favor of recalling Plaintiff from the Board. As of the conclusion of
15 the vote, Plaintiff has been removed from and is no longer a member of the Board pursuant
16 to Arizona law.

17 There is no need for an order to show cause determination, nor is there any
18 emergency issue that needs to be addressed by this Court. As noted above, the Application
19 and TRO sought only to restrain the February 24, 2025 vote. However, due process was
20 provided, the votes were cast and tallied, and the members of the Association voted
21 overwhelmingly to remove Plaintiff as a member of the Board. As such, there is no
22 emergency or impending proceeding to restrain at this point.

23 Moreover, with respect to the FAC, the Association intends to move to dismiss the
24 complaint in its entirety. Plaintiff's challenge to the Petition insofar as it used electronic
25 signatures of Association members is without merit. First, Arizona law expressly allows
26 for signatures by electronic means (*see* A.R.S. § 44-7007), and the emails submitted by
27 members clearly meet the criteria of an electronic signature (*see* A.R.S. § 44-7002(8)).
28 Further, it was explicitly clear from the face of the online version of the Petition what its

1 purpose was. Plaintiff is no longer a member of the Board. Plaintiff does not have standing
2 to challenge the Grand Standards – standards that apply only to members of the Board and
3 in which Plaintiff voted in favor. Plaintiff does not have any right, as a non-Board member,
4 to attend executive sessions of the Board. And, Plaintiff has not challenged (because he
5 cannot challenge) the overwhelming votes cast in favor of his removal.

6 The Members have made their voice heard. There is no need for expedited
7 proceedings. This matter should proceed in the normal course, with the Association
8 reserving the right to file its motion to dismiss.

9 RESPECTFULLY SUBMITTED this 6th day of March, 2025.

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14 By: /s/ Lauren Elliott Stine

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17 *Attorneys for Defendant Sun City Grand Community
18 Association, Inc.*

19 **FILED** with the Clerk of the Court and emailed this 6th day of March, 2025, to:

20 Hon. Jennifer Ryan-Touhill
21 Eileen.hoyle@jbazmc.maricopa.gov

22 **COPY** of the foregoing mailed and emailed this 6th day of March, 2025, to:

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