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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

**DEFENDANT’S MOTION TO
DISMISS PLAINTIFF’S FIRST
AMENDED COMPLAINT**

(Assigned to the
Hon. Jennifer Ryan-Touhill)

(Oral Argument Requested)

21 Pursuant to Arizona Rules of Civil Procedure 12(b)(1) and 12(b)(6), Defendant Sun
22 City Grand Community Association, Inc. (the “Association”) moves to dismiss Plaintiff
23 Thomas J. Gusich’s (“Plaintiff”) First Amended Complaint (the “FAC”). This Motion is
24 supported by the following Memorandum of Points and Authorities, the attached exhibits,
25 and the entire court record. In accordance with Rule 7.1(h) and Rule 12(j), Ariz. R. Civ. P.,
26 a Certificate of Good Faith Consultation is also lodged herewith.

27 **MEMORANDUM OF POINTS AND AUTHORITIES**

28 **I. INTRODUCTION.**

 Sun City Grand (the “Grand”) is a planned community located in Surprise, Arizona.
 The Association is the governing body of the Grand. Plaintiff is a resident of the Grand and
 a former member of the Board of Directors (the “Board”) of the Association.

1 On February 7, 2025, the Association received a petition submitted with the
2 signatures of over 1,000 members of the Association in support of the recall and removal
3 of Plaintiff from the Board (the “Petition”). Pursuant to A.R.S. § 33-1813(A), the
4 Association is required to notice and hold a special meeting of its members to vote on the
5 recall or removal of a director if it receives a petition to recall a director that includes the
6 signatures of at least ten (10) percent of the eligible voters in the Association. The special
7 meeting and vote must occur within thirty (30) days of receipt of the petition. *Id.* If the
8 Association fails to call timely call such a meeting, then “the members of the board of
9 directors are deemed removed from office” – a result that is catastrophic for the Grand and
10 the Association. A.R.S. § 33-1813(A)(4)(d).

11 After review and evaluation, the Association determined that the Petition included
12 sufficient signatures, including traditional handwritten signatures on paper petition forms
13 and electronic signatures of members of the Association, in compliance with A.R.S. § 44-
14 7007 (which permits electronic signatures). Like the handwritten signatures submitted on
15 the hardcopy versions of the Petition, the electronic signatures submitted in response to the
16 online version of the Petition reflected unambiguous intent by those members of the
17 Association to support the recall.

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

23 More than 5,399 Association members cast votes at the February 24, 2025 special
24 meeting, well in excess of the quorum requirements under A.R.S. § 33-1813(A)(4)(e). An
25 overwhelming majority – 4,666 members – voted in favor of recalling Plaintiff from the
26 Board. As of the conclusion of the vote, Plaintiff has been removed from and is no longer
27 a member of the Board pursuant to Arizona law.

1 On February 20, 2025—*ten days* after receiving notice of the special meeting and
2 *two* business days before the meeting—Plaintiff filed the FAC.¹ Each of Plaintiff’s claims
3 fails and is subject to dismissal for the following reasons:

4 (1) Count one of the FAC seeks a declaration that a code of conduct that was
5 *unanimously* adopted by the Board – *including Plaintiff* – and applicable only to Board
6 members called “The Grand Standards of Behavior of Directors” (the “Grand Standards”)
7 is invalid and unenforceable, and that Plaintiff has been wrongfully excluded from certain
8 executive sessions of the Board. Count one fails because Plaintiff has been duly recalled
9 and removed from the Board, and as such, Plaintiff does not have standing as a non-member
10 of the Board to challenge the Grand Standards (which apply only to Board members), nor
11 participate in executive session meetings of the Board (which extend only to Board
12 members).

13 (2) Count two of the FAC seeks a declaration that the Petition is invalid because
14 it was posted on a website and solicited electronic signatures. Count two fails for multiple
15 independent, but equally dispositive, reasons: (a) irrespective of the form of the Petition
16 and its electronic signatures, the Board was authorized under the governing documents and
17 Arizona law to call a special meeting to remove a director, and such an act did not require
18 a petition or any member signatures; (b) even if a petition was a necessary procedural step
19 (it was not), A.R.S. § 33-1813(A) does not require that such a petition take any specific
20 form or adhere to any certain format, nor does it preclude an electronic petition; and (c) to
21 the extent Plaintiff contests electronic signatures gathered via email, such signatures are
22 valid under A.R.S. § 44-7007.

23 (3) Count three of the FAC is a claim for breach of contract premised on
24 Plaintiff’s allegations that the Association has breached an obligation under the governing
25 documents to indemnify Plaintiff in connection with “its enforcement actions.” That claim

26 ¹ Plaintiff also filed an Application for Preliminary Injunction (“PI Application”) and
27 Application for Order to Show Cause (“OSC Application”), which sought to enjoin the
28 special meeting and vote on the recall. The PI Application is set for an evidentiary hearing
on May 22, 2025. The scope of that hearing extends to Plaintiff’s challenge to the signatures
on the Petition.

1 fails because the indemnification provision cited by Plaintiff applies only to Board
2 Members, and in all events, only Board Members face liability from third parties in
3 connection with Board services.

4 For these reasons, and as set forth more fully below, the Association respectfully
5 requests that the FAC be dismissed in its entirety, with prejudice.

6 **II. RELEVANT FACTUAL ALLEGATIONS AND BACKGROUND.**²

7 The Grand is a planned development located in Surprise, Arizona. *See* FAC, ¶ 1. The
8 Association is governed by Arizona’s Planned Communities Act and the Association’s
9 governing documents, including the *Declaration of Covenants, Conditions, and*
10 *Restrictions for Sun City Grand* (the “CC&Rs”) and *Amended and Restated Bylaws of Sun*
11 *City Grand Community Association, Inc.* (the “Bylaws”). *See id.* ¶ 5. The affairs of the
12 Association are managed by the Board. *Id.* ¶ 2.

13 Plaintiff, a resident of the Grand, was elected as a member of the Board on April 1,
14 2024. *Id.* ¶¶ 1, 9. On April 11, 2024, the Board unanimously adopted a code of conduct
15 applicable to the Board members, the Grand Standards. *See id.* ¶ 13. In other words,
16 Plaintiff voted in favor of the very same Standards that he seeks to invalidate. The Board
17 subsequently determined that Plaintiff had violated certain of the Grand Standards and
18 raised Plaintiff’s conduct during executive session meetings of the Board. *Id.* ¶ 24. Because
19 Plaintiff continued to engage in conduct that the Board found to violate the Grand Standards
20 even after their discussions of the issue in executive sessions, the Board raised Plaintiff’s
21 violations in a public Board meeting, a procedural step also expressly contemplated by the
22 Grand Standards. *Id.* ¶ 24 & Ex. 3 (copy of the Grand Standards).

23 Plaintiff alleges that on or around January 13, 2025, unidentified members of the
24 Association published an online post that solicited members of the Association to sign the
25 Petition for Plaintiff’s recall and removal. FAC, ¶ 34. Although Plaintiff alleges that no
26

27 ² This Court may consider documents attached to or cited in the FAC without converting
28 this motion into one for summary judgment. *See, e.g., ELM Ret. Ctr., LP v. Callaway*, 226
Ariz. 287, 289, ¶ 7 (App. 2010).

1 separate petition document or form was “attached” to that post, the post stated the following
2 near the top and included “**recalltomgusich**” in the email address:

3 **Support the recall of Director Tom Gusich by emailing your name,
4 address and CAM [i.e., community association membership] number to
recalltomgusich@gmail.com or sign a paper petition.**

5 *Id.*, Ex. 4 (emphasis in original); *see also id.* ¶ 34.

6 Underneath that language, the post delineated several criticisms of Plaintiff’s
7 conduct since taking office, after which it concluded with the following:

8 **Having read this, ask yourself this question: is this the right person to fill
the important role of Director for The Grand?
9 recalltomgusich@gmail.com
10 email your name, address and CAM number to the email address above!**

11 *Id.*, Ex. 4 (emphasis in original).

12 Plaintiff affirmatively alleges that anyone who sent an email to
13 recalltomgusich@gmail.com, received an automated response stating:

14 **Thanks for adding your name to the virtual petition. We have counted
your email as your signature (one per lot).** Please DO NOT sign a paper
15 copy, to avoid double counting. Please tell your neighbors and friends to join
the campaign to SAVE GRAND! Just have them send an email to
16 recalltomgusich@gmail.com with their address and CAM# and they will be
counted also. Every day we are closer to returning Grand to a cohesive,
17 community-oriented HOA, thanks to neighbors like you.

18 *Id.* ¶ 34 & Exs. 5 & 7 (emphasis added). The online version of the Petition makes express
19 reference to paper copies of the Petition that were also circulated. *See id.*

20 On February 7, 2025, the Board received the Petition. *See id.* ¶ 45 & Exs. 9, 10.
21 Pursuant to A.R.S. § 33-1813(A)(4)(b), upon receipt of a petition to recall such director that
22 includes the signatures of at least ten percent of eligible voters in the Association, the Board
23 is required to call and provide notice of a special meeting to vote on the recall or removal
24 of a director. After review and evaluation of the Petition, the Association verified that, of
25 the total 1,190 signatures presented, at least 982 were valid, thereby meeting the ten percent
26 threshold of the statute. *See FAC*, Exs. 9, 10.

27 On February 10, 2025, the Association sent notice to all members of the Association
28—including Plaintiff—that the Petition had been received and that a special meeting would

1 be held on February 24, 2025. *See* FAC, Ex. 9. On February 12, 2025, the Association gave
2 additional written notice of the special meeting to its members via email and via regular
3 mail. *See id.*, Ex. 10. On February 20, 2025—a full *ten days* after Association first sent
4 notice of the special meeting to its members—Plaintiff filed the FAC.

5 On February 24, 2025, the Association held the special meeting. *See* Declaration of
6 René Mitchell, attached as **Exhibit A** hereto, ¶ 4.³ More than 5,399 Association members
7 cast votes, and an overwhelming majority—4,666 members—voted in favor of recalling
8 Plaintiff from the Board. *Id.*, ¶ 7. As of the conclusion of the vote, Plaintiff has been
9 removed from and is no longer a member of the Board pursuant to Arizona law. *See id.*, ¶
10 8; *see also* A.R.S. § 33-1813(A)(4). Indeed, Plaintiff attended the special meeting and
11 witnessed the announcement of the result of the vote. Ex. A, ¶¶ 5-6. On March 6, 2025—
12 nearly a month after the Association gave notice to Plaintiff and members of the Association
13 that the Petition had been received and reviewed, and two weeks after Plaintiff filed an
14 Application for Temporary Restraining Order and Preliminary Injunction—Plaintiff finally
15 requested copies of documents related to the Petition, including records of the signatures
16 submitted, pursuant to A.R.S. § 33-1805(A). Ex. A, ¶ 9.

17 **III. ARGUMENT.**

18 **A. Count Two of the Petition Fails.**

19 While not a model of clarity, count two apparently seeks a declaration that the
20 Petition is invalid because “no petition was attached to the [online] post” and Defendants
21 incorrectly counted emails as electronic signatures to the Petition. *See* FAC, ¶¶ 56-64. Count
22 two should be dismissed for multiple independent, but equally dispositive reasons.

23 **1. The Board Was Empowered to Call a Special Election to** 24 **Remove Plaintiff Even Without a Petition.**

25 Section 12-1832 of Arizona’s Uniform Declaratory Judgment Act states that a
26 “person . . . whose rights, status or other legal relations are affected by a statute” may ask a

27 ³ The Court may properly consider evidence outside the pleadings in resolving jurisdictional
28 issues, such as standing, that are distinct from the merits without converting this Motion to
a motion for summary judgment. *See Buckelew v. Town of Parker*, 188 Ariz. 446, 449, fn.
1 (App. 1996) (citing *Swichtenberg v. Brimer*, 171 Ariz. 77, 82 (App. 1991)).

1 court to determine “any question of construction or validity arising under the . . . statute”
2 and to “obtain a declaration of rights, status or other legal relations thereunder.” A.R.S. §
3 12-1832. “Standing under the Declaratory Judgment Act requires ‘that there be an actual
4 controversy ripe for adjudication and that there be parties with a real interest in the questions
5 to be solved.’” *Republican Nat’l*, __Ariz. at __, ¶ 13, 2025 WL 719097 (quoting *Bd. of*
6 *Supervisors of Maricopa Cnty. v. Woodall*, 120 Ariz. 379, 380 (1978)). Here, to the extent
7 count two seeks a declaration that the Petition is invalid based on its format and electronic
8 signatures, there is no justifiable controversy, and the claim fails because the Board was
9 empowered by the Association’s governing documents and Arizona law to call a special
10 meeting for the purpose of holding a vote on Plaintiff’s removal from the Board. Plaintiff
11 was duly removed from the Board—regardless of whether the Petition did or did not satisfy
12 the requirements of A.R.S. § 33-1813.

13 Section 3.5 of the Bylaws provides: “[A]ny director may be removed, with or without
14 cause, by a majority vote of those Members voting on the matter at a meeting of the
15 Members in accordance with Arizona law.” *See* FAC, Ex. 2 (Bylaws), § 3.5. Separate and
16 independent from A.R.S. § 33-1813 (which discusses the process the Board must follow in
17 the event it receives a petition from community members), A.R.S. § 10-3808⁴ sets forth a
18 procedure for removal of a non-profit association board member in circumstances where a
19 petition was not submitted:

20 A. A director may be removed from office pursuant to any procedure
provided in the articles of incorporation or bylaws.

21 B. If the articles of incorporation or bylaws do not provide a procedure
22 for removal of a director from office:

23 1. The members may remove one or more directors elected by them with
or without cause unless the articles of incorporation provide that directors
24 may be removed only for cause.

25

26 5. A director elected by members may be removed by the members at a
meeting by written consent or by written ballot of the members authorized to
27 vote on such removal. If the removal is to occur at a meeting, the meeting
notice shall state that the purpose or one of the purposes of the meeting is
removal of the director.

28 ⁴, A.R.S. § 10-3808 applies to nonprofit corporations (such as the Association).

1 A.R.S. § 10-3808(A)-(B)(5).

2 Plaintiff does not (because he cannot) challenge the special meeting and vote held
3 by the Board to recall and remove Plaintiff. The Board provided adequate notice to Plaintiff
4 and members. *See* FAC, Exs. 9, 10. In accordance with A.R.S. § 10-3808(B)(5), each of
5 those notices clearly stated the purpose of the special meeting and vote to be held on
6 February 24, 2025 – *i.e.*, for the proposed recall and removal of Plaintiff from the Board.
7 *See id.* The special meeting had a quorum, and the vast majority vote of members (4,666
8 members, or 86.4%) voted to remove Plaintiff from the Board. The Board followed the
9 procedural steps required by the governing documents and A.R.S. § 10-3808 to remove
10 Plaintiff from the Board.

11 Because the process above complied with the requirements of A.R.S. § 10-3808, any
12 alleged defect in the Petition is of no consequence. Count two fails to seek a declaration
13 from the Court regarding any rights actually in controversy and must therefore be dismissed
14 for lack of standing and failure to state a claim.

15 **2. There is No Magic Form for a Petition Under A.R.S. § 33-1813.**

16 Although a petition was not necessary for the Board to hold a special meeting and
17 vote on the proposed recall of Plaintiff from the Board, the Petition submitted to the Board
18 complied with the requirements of A.R.S. § 33-1813, such that the Board was affirmatively
19 required by the statute to hold the special meeting and vote.

20 Section 33-1813 does not prescribe any particular form that a petition must take. It
21 does not require that a petition be on paper. It does not require that a petition include any
22 specific language. It does not preclude a petition in electronic form. Indeed, it does not
23 even require that a petition include the word “petition”. *Cf.* A.R.S. § 33-1802 (defining
24 terms for Title 33, Chapter 16, but lacking any definition for “petition”).

25 Moreover, if the Arizona Legislature wanted to impose stringent formatting
26 requirements on community association petitions, it certainly could have—yet did not. For
27 example, A.R.S. § 16-315 concerns the form for petitions for nominations for public office.
28 That statute requires that those petitions are on paper, with a caption, stated purpose, and

1 spaces to collect specific information. A.R.S. § 16-315(A). Similarly, the Legislature has
2 imposed strict form requirements for public referendum and initiative petitions. *See* A.R.S.
3 § 19-101 (referendum petitions); A.R.S. § 19-102 (initiative petitions).

4 In contrast, A.R.S. § 33-1813 imposes no similar requirements as to community
5 association petitions for recall. Nor is there a requirement established in the Association’s
6 Bylaws or CC&Rs. *See* FAC, Exs. 1 (CC&Rs) & 2 (Bylaws). Rather, A.R.S. § 33-1813
7 merely provides that a petition must “call[] for removal of a member of the board of
8 directors,” and for community associations with as many members as the Grand, a petition
9 must be signed by at least ten percent of the members eligible to vote to be effective in
10 requiring a board to hold a special meeting and vote for removal. A.R.S. § 33-
11 1813(A)(4)(b).

12 Here, the documents that Plaintiff attached to and cited in his FAC undoubtedly show
13 that the Petition meets the minimal requirements of A.R.S. § 33-1813(A). The version of
14 the Petition posted online expressly instructed readers:

15 **Support the recall of Director Tom Gusich by emailing your name,
16 address and CAM number to recalltomgusich@gmail.com or sign a
paper petition.”**

17 FAC, Ex. 4 (emphasis in original); *see also* FAC, ¶ 34. The Petition clearly and
18 unequivocally sought to recall Plaintiff as a member of the Board and asked that members
19 send submit electronic signatures, including identifying information, to
20 **recalltomgusich@gmail.com**.

21 Further, Plaintiff affirmatively alleges that anyone who sent an email to that address
22 received an automated response informing them that their name had been added to the
23 Petition and provided exemplars of those emails. FAC, ¶ 34 & Ex. 7. Those automated
24 responses clearly and unequivocally confirmed what was contained in the online Petition –
25 *i.e.*, that it sought to recall Plaintiff as a member of the Board and that the email the member
26 sent constituted a vote. This created an additional safeguard against improper inclusion of
27 electronic signatures on the Petition of members who had no intent to sign.

1 **3. Electronic Signatures are Permissible Under Arizona Law.**

2 To the extent that the FAC can be construed as contesting the use of electronic
3 signatures for a petition under A.R.S. § 33-1813, or that the emails may be solicited and
4 used for such electronic signatures, those arguments also fail as a matter of law. Arizona
5 has adopted the Uniform Electronic Transactions Act (“UETA”), which expressly provides
6 that “[a]n electronic signature satisfies any law that requires a signature.” A.R.S. § 44-
7 7007(B); *see also* § 44-7007(A) (“A record or signature in electronic form cannot be denied
8 legal effect and enforceability solely because the record or signature is in electronic form.”).

9 Moreover, here, the emails solicited from members as a way of signing the Petition
10 electronically easily satisfy the requirements for an electronic signature under Arizona law.
11 The UETA defines an “electronic signature” as “an electronic sound, symbol or that is
12 attached to or logically associated with a record and that is executed or adopted by an
13 individual with the intent to sign the record.” A.R.S. § 44-7002(8). The official comment to
14 that provision in the UETA further states:

15 No specific technology need be used in order to create a valid signature . .
16 . **including one’s name as part of an electronic mail communication also**
17 **may suffice** [T]he essential attribute of a signature involves applying a
 sound, symbol or process with an intent to do a legally significant act. It is
 that intention that is understood in the law as a part of the word “sign”, without
 the need for a definition.

18 UETA, § 2, cmt 7 (emphasis added).⁵ Because Plaintiff fails to effectively allege that the
19 form of the Petition or the use of electronic signatures is inconsistent with Arizona law,
20 count two must also be dismissed for failure to state a claim on these independent bases.

21
22
23 ⁵ *See also Williamson v. Bank of New York Mellon*, 947 F. Supp. 2d 704, 711 (N.D. Tex.
24 2013) (recognizing “a signature block at the bottom of an email has come to represent what
25 a handwritten signature once represented: a means of identifying the sender, signaling that
26 he or she adopts or stands behind the contents of the communication, and a method of
27 ensuring that the communication is authentic.”); *Waddle v. Elrod*, 367 S.W.3d 217, 228-29
28 (Tenn. 2012); (holding typed name in an email constitutes an electronic signature under the
UETA); *Williamson v. Delsener*, 59 A.D.3d 291, 874 N.Y.S. 2d 41, 41 (2009) (same); *Int’l
Casings Grp., Inc. v. Premium Standard Farms, Inc.*, 358 F.Supp.2d 863, 873 (W.D. Mo.
2005) (despite no typed name, each e-mail message included “a header with the name of
the sender,” which was sufficient to satisfy the signature requirement under Missouri’s
version of the UCC and UETA).

1 **B. Plaintiff's Claim for Declaratory Relief Challenging the Grand**
2 **Standards and Alleged Exclusion from Executive Sessions Must Be**
3 **Dismissed as Moot and for Lack of Standing.**

4 Because Plaintiff has been removed as member of the Board by membership vote,
5 he no longer has standing with respect to his first claim for declaratory relief (count one),
6 by which he challenges the validity and enforceability of the Grand Standards and his
7 exclusion from certain executive sessions of the Board.

8 Arizona has “established a rigorous standing requirement.” *Fernandez v. Takata Seat*
9 *Belts, Inc.*, 210 Ariz. 138, 140, ¶ 6 (2005). “The standing inquiry in Arizona is whether
10 ‘under all circumstances, the party possesses an interest in the outcome of the litigation.’”
11 *Republican Nat'l v. Fontes*, __ Ariz. at ¶ 11, 2025 WL 719097 (quoting *Strawberry Water*
12 *Co. v. Paulsen*, 220 Ariz. 401, 406, ¶ 8 (App. 2008). “Generally, to establish standing, a
13 party must demonstrate an injury in fact, economic or otherwise, caused by the complained-
14 of conduct, and resulting in a distinct and palpable injury **giving the plaintiff a personal**
15 **stake in the controversy's outcome.**” *Id.* (citations and quotation marks omitted)
16 (emphasis added). Moreover, as noted above, Arizona’s Uniform Declaratory Judgments
17 Act requires “that there be an actual controversy ripe for adjudication and that there be
18 parties with a real interest in the questions to be solved.” *Id.* at ¶ 13 (internal citations and
19 quotation marks omitted).

20 As a matter of judicial restraint, Arizona courts do not “issue advisory opinions,
21 address moot cases . . .” *Home Builders Ass'n of Cent. Ariz. v. Kard*, 219 Ariz. 374, 377, ¶
22 9 (App. 2008). A case is moot if an event “ends the underlying controversy and transforms
23 the litigation into ‘an abstract question which does not arise upon existing facts or
24 rights.’” *Workman v. Verde Wellness Ctr.*, 240 Ariz. 597, 603, ¶ 17 (App. 2016) (citing
25 *Contempo-Tempe Mobile Home Owners Ass'n v. Steinert*, 144 Ariz. 227, 229 (App.
26 1985)). A court will not decide a question which by a change in a condition of affairs has
27 become moot. *Steinert*, 144 Ariz. at 229.

28 Here, Plaintiff’s challenge to the enforceability of the Grand Standards and to his
29 exclusion from certain executive sessions of the Board fail for mootness and lack of

1 standing because Plaintiff is no longer a member of the Board as of February 24, 2025. The
2 Grand Standards, by their terms, apply only to the members of the Board. *See* FAC, ¶ 13 &
3 Ex. 3. Additionally, only Board members (who are not otherwise excluded because of a
4 conflict of interest) have a right to attend executive sessions of the Board. *See* FAC, Ex. 2
5 (Bylaws), § 3.13. Because Plaintiff is no longer a member of the Board, he now lacks
6 standing, under both Arizona’s Uniform Declaratory Judgments Act and the applicable
7 principles of juridical restraint, to challenge either the Grand Standards or his exclusion
8 from any Board meetings, including executive sessions. Those issues are moot, and
9 Plaintiff’s first claim for declaratory relief must be dismissed with prejudice.

10 **C. Plaintiff’s Claim for Breach of Contract Premised on an Alleged**
11 **Failure to Indemnify Plaintiff Must Be Dismissed.**

12 Plaintiff’s claim for breach of contract (count three) is premised on his assertion that
13 the Bylaws purportedly require the Association to indemnify Plaintiff for attorneys’ fees
14 incurred in connection with the Board’s efforts to enforce the Grand Standards. *See* FAC,
15 ¶¶ 68-69. Specifically, Plaintiff premises his breach of contract claim on Section 6.5 of the
16 Bylaws, which states in pertinent part:

17 [T]he Association shall indemnify every director and committee member
18 against all expenses, including attorney fees, incurred by them in connection
19 with any action, suit, or other proceeding . . . to which he or she may be a party
20 by reason of being or having been a director or committee member of the
21 Association.

22 The directors and committee members shall not be liable for any mistake of
23 judgment, negligent or otherwise, except for their own individual willful
24 misfeasance, malfeasance, misconduct, or bad faith. The directors shall have
25 no personal liability with respect to any contract or other commitment made
26 or action taken in good faith on behalf of the Association. The Association
27 shall indemnify and forever hold each such director and committee member
28 harmless from any and all liability to others on account of any such contract
commitment or action.

FAC, ¶ 67; FAC, Ex. 2 (Bylaws), § 6.5.

Contrary to Plaintiff’s conclusory allegations in the FAC, Section 6.5 does *not*
provide a basis upon which Plaintiff may recovery of attorneys’ fees he has purportedly
incurred in filing a lawsuit against the Board. On its face, Section 6.5 is intended only to
protect members of the Board in connection with actions, suits, or other proceedings

1 asserted by third parties against Board members in which they face personal liability solely
2 because of their positions as directors or members of a committee. *Id.* (Directors “shall not
3 be liable for any mistake of judgment, negligent or otherwise” and “shall have no personal
4 liability with respect to any contract or other commitment made or action taken in good
5 faith on behalf of the Association”). Indeed, the term “indemnify” means “[t]o restore the
6 victim of a loss, in whole or in part, by payment, repair, or replacement. To save harmless;
7 to secure against loss or damage; to give security for the reimbursement of a person in case
8 of an anticipated loss falling upon him.” *Jim Click Ford, Inc. v. City of Tucson*, 154 Ariz.
9 48, 50 (App. 1987) (quoting Black's Law Dictionary 692 (5th ed. 1979)). Because Plaintiff
10 has not alleged in the FAC that he has been subject to any actions, suits, or proceedings
11 initiated by any third party in which he faces potential personal liability arising from his
12 work as a member on the Board, Section 6.5 of the Bylaws is inapplicable here.

13 Moreover, even to the extent Section 6.5 could be construed to have a broader
14 implication beyond third-party claims, Plaintiff certainly was not made a party to “any
15 action, suit, or other proceeding . . . by reason of being or having been a director or
16 committee member of the Association.” FAC, Ex. 2 (Bylaws), § 6.5. The Association did
17 not institute any legal action or proceeding against Plaintiff. Plaintiff has not been forced
18 to be a party to any proceeding; Plaintiff affirmatively chose to instigate the present lawsuit
19 and cannot not recover under an indemnification provision for that affirmative choice.

20 For these reasons, Plaintiff’s breach of contract claim must also be dismissed with
21 prejudice.

22 **IV. LEAVE TO AMEND SHOULD BE DENIED.**

23 Denial of leave to amend is appropriate when amendment would not cure the
24 pleading defect or would otherwise be futile. *Tumacacori Mission Land Dev., Ltd. v. Union*
25 *Pac. R.R. Co.*, 231 Ariz. 517, 519, ¶ 4 (App. 2013). Because no possible amendment of the
26 FAC would cure the issues raised herein, the Court should deny Plaintiff leave to amend.

27 **V. REQUEST FOR ATTORNEYS’ FEES AND COSTS.**

28 The Association requests that the court award the Association its reasonable

1 attorneys' fees and costs incurred in connection with this action pursuant to A.R.S. § 33-
2 1813(A)(4)(f), Section 18.10 of the CC&Rs, and A.R.S. §§ 12-341 and 12-341.01.

3 **VI. CONCLUSION.**

4 For the reasons set forth herein, the Association respectfully requests that the Court
5 grant this Motion, dismiss the FAC in its entirety and with prejudice, and grant the
6 Association its attorneys' fees and costs.

7 RESPECTFULLY SUBMITTED this 9th day of April, 2025.

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Daniel G. Roberts

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

14 Original of the foregoing
15 Filed via AzTurboCourt the
9th day of April, 2025.

16 Copy of the foregoing emailed the 9th day of April, 2025
17 and hand delivered April 10, 2025, to:

18 Jonathan A. Dessauls
19 David E. Wood
20 Dessauls Law Group
7243 North 16th Street
Phoenix, AZ 85020
21 jdessauls@dessaulslaw.com
dwood@dessaulslaw.com
Attorneys for Plaintiff

22 Copies of the foregoing emailed/mailed
23 the 9th day of April, 2025, to:

24 Curtis Ekmark
25 Ekmark Pecor Law, PLLC
P.O. Box 56
Scottsdale, AZ 85252
26 curtis@ekmarkpecorlaw.com

27 By: /s/ Pam Worth

28

1 Quarles & Brady LLP
2 One Renaissance Square
3 Two North Central Avenue
4 Suite 600
5 Phoenix, AZ 85004-2322
6 TELEPHONE 602-229-5200

7 Lauren Elliott Stine (#025083)
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11 *Attorneys for Defendant Sun City Grand*
12 *Community Association, Inc.*

13
14 IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
15
16 IN AND FOR THE COUNTY OF MARICOPA

17 THOMAS J. GUSICH, an individual,
18 Plaintiff,

19 v.

20 SUN CITY GRAND COMMUNITY
21 ASSOCIATION, INC., an Arizona
22 nonprofit corporation,
23 Defendant.

NO. CV2025-002634

**CERTIFICATE OF GOOD FAITH
CONSULTATION**

(Assigned to the Hon. Jennifer Ryan-
Touhill)

24 Pursuant to Arizona Rules of Civil Procedure 7.1(h) and 12(j), undersigned counsel for
25 Defendant Sun City Grand Community Association, Inc. (the "Association") certifies that
26 she consulted in good faith with counsel for Plaintiff Thomas J. Gusich ("Plaintiff")
27 regarding *Defendant's Motion to Dismiss Plaintiff's First Amended Complaint* (the "Motion
28 to Dismiss"). On April 2, 2025, undersigned counsel for the Association conferred via
telephone with Plaintiff's counsel regarding the Association's perceived deficiencies in
Plaintiff's First Amended Complaint ("FAC") and the basis for the Motion to Dismiss.
Despite their good faith discussions, counsel for the parties were unable to agree that the
perceived deficiencies with FAC raised by the Association in the Motion to Dismiss could
be cured by amendment.

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RESPECTFULLY SUBMITTED this 9th day of April, 2025.

QUARLES & BRADY LLP
One Renaissance Square
Two North Central Avenue, Suite 600
Phoenix, AZ 85004-2322

By: /s/ Lauren Elliott Stine
Lauren Elliott Stine
Daniel G. Roberts

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

EXHIBIT A

1 Quarles & Brady LLP
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3 Two North Central Avenue, Suite 600
 Phoenix, AZ 85004-2391
 TELEPHONE 602-229-5200

4 Lauren Elliott Stine (#025083)
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6 Daniel G. Roberts (#033273)
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8 *Attorneys for Defendant Sun City Grand*
9 *Community Association, Inc.*

10 IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
11 IN AND FOR THE COUNTY OF MARICOPA

12 THOMAS J. GUSICH, an individual,
13 Plaintiff,
14 v.
15 SUN CITY GRAND COMMUNITY
16 ASSOCIATION, INC., an Arizona nonprofit
 corporation,
 Defendant.

NO. CV2025-002634

**DECLARATION OF RENÉ
MITCHELL IN SUPPORT OF
DEFENDANT’S MOTION TO
DISMISS PLAINTIFF’S FIRST
AMENDED COMPLAINT**

17 René Mitchell hereby declares as follows:

18 1. I am over 18 years of age, a resident of the State of Arizona, and I am
19 competent and otherwise qualified to make this Declaration.

20 2. I am the Treasurer and a member of the Board of Directors (the “Board”) for
21 defendant Sun City Grand Community Association, Inc. (the “Association”). I have served
22 in that position since April 1, 2025. Prior to that, from April 1, 2023 through March 31,
23 2025, I served as President of and a member of the Board for the Association. In that role,
24 my responsibilities included general oversight, governance, and management of the affairs
25 of the Association. In my capacity as Treasurer, and as a former President of the
26 Association, I have personal knowledge of the matters stated herein.

27 3. I am authorized to sign this Declaration on behalf of the Association in
28

1 support of its Motion to Dismiss Plaintiff's First Amended Complaint filed in the above-
2 captioned case.

3 4. On February 24, 2025, the Board held a special meeting and vote by the
4 Association membership on the proposed recall and removal of Thomas J. Gusich ("Mr.
5 Gusich"), the plaintiff in the above captioned action, from the Board (the "Special
6 Meeting").

7 5. I attended the Special Meeting. Mr. Gusich was also in attendance at the
8 Special Meeting.

9 6. I was present as the votes at the Special Meeting were tallied. Mr. Gusich was
10 also present for the vote count.

11 7. More than 5,399 Association members cast votes in connection with the
12 Special Meeting. Of those, 4,666 members voted in favor of recalling Mr. Gusich from the
13 Board. A complete and authentic copy of the unapproved minutes of the Special Meeting,
14 which accurately reflect the results of the vote on Mr. Gusich's proposed recall, is attached
15 as **Exhibit 1** hereto.

16 8. Mr. Gusich was thus removed from the Board effective February 24, 2025,
17 pursuant to A.R.S. § 33-1813(A)(4).

18 9. On March 6, 2025, Mr. Gusich submitted to the Association, through counsel,
19 a request for the Association's records of the signatures submitted in connection with the
20 member petition for his recall. A complete and authentic copy of Mr. Gusich's request for
21 records is attached as **Exhibit 2** hereto.

22 I declare under penalty of perjury that the foregoing is true and correct.

23 Executed this 7th day of April, 2025.

24 
25 _____
26 René Mitchell

EXHIBIT 1

SUN CITY GRAND COMMUNITY ASSOCIATION, INC.
SPECIAL MEMBERSHIP MEETING
HYBRID (IN-PERSON AND VIA ZOOM)
SAGEBRUSH BALLROOM – SONORAN PLAZA
MONDAY, FEBRUARY 24, 2025 – 1:00 p.m.

Directors Present: René Mitchell, Doug Brady, Tom Gusich, Ben Serns, Carol White, Jeff Gibbs, Stephanie Sloggett-O'Dell

Absent:

Officers Present: René Mitchell, Carol White, Doug Brady, Jeff Gibbs

Staff Present: Chris Helton and Communications Staff, Theresa Fleck, Vicki Taylor, Debbie Goodman, Andrew Fernandez, Carol Murr, Allison Adams, Demian Newsome, Gary Wilkes

Attorney: Curtis Ekmark, Esq.

I. ESTABLISH QUORUM AND CALL TO ORDER

Ms. Mitchell, President, established a quorum existed and called the Special Membership Meeting to order at 1:00 p.m.

II. ANNOUNCEMENTS

A. Board President Opening remarks: Ms. Mitchell announced this is a Special Membership Meeting. She introduced and turned the meeting over to Curtis Ekmark, the Association's Attorney.

III. NEW BUSINESS – Curtis Ekmark, Esq.

A. ARS 33-1813 – In Person Voting:

Mr. Ekmark did verify that a quorum was represented. After hearing no questions or comments from the Members, residents attending in person who had not previously voted were instructed to cast their ballots and to bring them to the front of the room so they can be tallied. The in-person ballots will be added to the Vote Now Electronic Voting results.

B. Announcement of voting results

Mr. Ekmark reported that Mr. Gusich was removed by the Members.

IV. ADJOURN

With no further business to come before the Membership, the Special Membership Meeting was adjourned at 1:07 p.m.

EXHIBIT 2



David E. Wood
dwood@dessauleslaw.com

7243 North 16th Street
Phoenix, Arizona 85020
☎ 602.753.3841
dessaules.com

March 6, 2025

VIA EMAIL

Lauren Elliot Stine
Quarles & Brady, LLP
(602) 229-5474
Lauren.Stine@quarles.com

Re: *Gusich/Sun City Grand Community Association, Inc.*

Dear Ms. Stine:

As you know, we represent Tom Gusich in the legal dispute between himself and the Board Majority of the Association. This correspondence serves as a demand for records pursuant to A.R.S. § 33-1805.

Please provide us with the following:

1. All petitions for the recall;
2. All alleged signatures to petitions for the recall;
3. All emails to and from recalltomgusich@gmail.com;
4. All communications submitted to <https://recalltomgusichnow.com/> and any responses thereby generated;
5. All communications submitted to <https://tomgusichrecall.com/> and any responses thereby generated; and
6. All ballots and instructions for the recall election.

Section 33-1805 mandates the production of these records within ten business days. Please provide the electronic records in their native, electronic format. If the Association determines that there are costs for that production, please let us know immediately so we can discuss the costs and payment. We look forward to your prompt response.

Sincerely,

David E. Wood