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7 IN THE SUPERIOR COURT OF ARIZONA

8 IN AND FOR THE COUNTY OF MARICOPA

9 THOMAS J. GUSICH, an individual,

10 Plaintiff,

11 vs.

12
13 SUN CITY GRAND COMMUNITY
ASSOCIATION, INC., an Arizona
14 corporation,

15 Defendant.
16

Case No. CV2025-002634

**REPLY TO DEFENDANT'S RESPONSE
TO PLAINTIFF'S APPLICATION FOR A
PRELIMINARY INJUNCTION**

17 Mr. Gusich has shown a sufficient likelihood of winning on the merits
18 regarding the recall election. Defendant Sun City Grand Community Association
19 only obtained, at most, 350 signatures on its § 33-1813 petition. 982 signatures were
20 needed to hold a vote for Mr. Gusich's recall.¹ [Exh. A18]² The Association asserts
21 that, by adding the 350 written entries on the paper petition and some of the 1200
22 pages of emails it claims were "verified" and qualify as electronic signatures, it had
23

24 ¹ On that paper petition, several entries are indecipherable or lack information to
determine the veracity of the written signature.

25 ² References to "Exh. A#" herein shall refer to the exhibits Plaintiff previously
26 uploaded through Case Center for the previously scheduled Evidentiary Hearing.
Exhibits 1 and 2 referenced herein are attached hereto.

1 the required signatures to a petition. Which emails are signatures, and why? The
2 Association has never answered those questions. By any analysis, those emails do
3 not qualify as signatures, and the Association did not obtain the requisite signatures
4 on the Petition to hold a recall election. Mr. Gusich must be reinstated to the Board
5 of Directors.

6 **I. THE EMAILS DO NOT CONSTITUTE “SIGNATURES” TO A “PETITION.”**

7 Section § 33-1813 requires a petition with signatures. Even if Title 44 applies,
8 there still must be a petition, with signatures. An email only qualifies as an
9 electronic signature if:

- 10 1. attached to or logically associated with a record and
- 11 2. that is executed or adopted by an individual
- 12 3. with the intent to sign the record.

13 A.R.S. § 44-7002(8). In this case, the “record” must be the petition, and the intent
14 with which any “electronic signature” was adopted must be determined by the
15 “surrounding circumstances.” *Id.*; § 44-7009(B). These statutes work together to state
16 the obvious: only those emails that unequivocally and objectively demonstrate an
17 intent to sign an attached or logically traceable petition can be counted as signatures.

18 **A. When the prompts for an email are a mystery and do not instruct that**
19 **a response equals a signature, the surrounding circumstances do not**
support a finding of the intent of the email.

20 No emails can qualify as an electronic signature, as it is unknown what
21 prompted people to send an email to the “recalltomgusich” address, or what was said
22 to potential emailers to prompt their messages. The “recalltomgusich” email address
23 was posted on social media with unknown messages and on paper statements with
24 unknown messages. [Exh. 1] Without those background “circumstances,” the
25 hundreds of confused and silent email messages cannot be interpreted as an intent
26 to sign an unattached, hidden petition. Where those posts were preserved, they

1 demonstrate that people were induced to send general inquiries to that email address
2 without warning that the Association would count the message as a signature. Here
3 is an example illustrating that fundamental flaw.

4 The message from email address joykreick@gmail.com does not include a
5 subject line. He or she writes “YES” followed by identifying information. He or she
6 makes no mention of the recall petition, does not state what prompted the email, and
7 indeed, attaches nothing to the email. [Exh. A4, at 1201] Furthermore, and most
8 importantly, he or she does not indicate the intent of that “yes.” It could easily be
9 responsive to the NextDoor post that poses the following question:

10 Having read this, ask yourself this question: is [Tom Gusich] the right
11 person to fill the important role of Director for The Grand?
recalltomgusich@gmail.com.

12 [E]mail your name address and CAM number to the email above.
13 [Exh. A17]

14 Hundreds of emails held up as signatures to a petition fail to state the intent
15 of the sender and cannot be logically connected to any particular publication or
16 record. No such record was attached when the emails were sent. And many posts
17 linked recalltomgusich@gmail.com. [Exh. 1] It is impossible to determine which of
18 these posts elicited the responses or what instructions were provided or not provided.
19 It is impossible with the NextDoor post quoted above to determine whether “yes”
20 means, “no I do not want to recall Tom Gusich, because he is the correct person to be
21 a board director” or if “no” means “yes, I would like to join in your recall effort as he
22 is not the correct person for the board.”

23 The Association struggled with distinguishing between “yes” and “no” in the
24 context of these emails, but unsurprisingly, it construed them in favor of Plaintiff’s
25 recall. [Exhibit A3, at 630, 644, and 645]. Those are not signatures.

26 **B. Replies to an email blast are not signatures or a petition.**

1 Some of the production includes responses to an apparent email blast that did
2 not clarify what a responding email meant, disqualifying responsive emails as a
3 signature. The email blast eliciting replies from members cannot be considered a
4 petition in its own right. It differentiates itself from the Association's petition. [Exh.
5 A3, at 624]. The blast states the following in pertinent part:

6 Your signature on the petition only calls for a VOTE as to whether to
7 remove him or not. The petition is kept in association documents.

8 **Please send an email to recalltomgusich@gmail.com, or reply to this
9 email with the following: Name, Address and CAM number.**

10 By stating "the petition is kept in association documents," the email negatively
11 states that it itself is not the petition. There is no attachment with the email, there
12 is no language that suggests it serves as a record or a petition, and importantly no
13 language that indicates that the Association would deem a response with a name,
14 address and CAM number as a signature.

15 Nonetheless, the Association sent the following automated email to any who
16 responded or otherwise sent an email to the address, regardless of the substance of
17 the email. [Exh. A3, at 705]:

18 **Thank you for signing the petition...**

19 **Please have your acquaintances send an email to
20 recalltomgusich@gmail.com, or reply to this email with the following:**

21 **Name, Address and CAM number**

22 **Remind them that this is not a website, it is an email address. We can
23 use one signature per household.**

24 Anyone, regardless of their reason for sending an email, received that response
25 treating their message as a signature. Lynn Myrick perceived the Association's
26 postings as invitations to engage in discourse related to the recall and opposed any
recall. [Exh. 2; Exh. A4, at 1117, 1119] Even so, he received the same response
treating his message as a signature. Additionally, he has confirmed that when he

1 clicked the email link, it automatically generated the subject line “Recall.” [Exh. 2]
2 He did not create that subject line content.

3 The owner of the email address georgiathomas6911@gmail.com, for example,
4 indicated that she did not know whether she had signed a petition before sending
5 her information again as instructed by the reply. [Exh. A3 , at 705] Whether she
6 intended to sign the petition, read the petition, or otherwise simply heed the
7 instructions remains unclear, but the Association took no efforts to confirm such
8 intent, nor did it explain that her original email itself was the act of “signing” to
9 which it referred.

10 The owner of the email account rayj.cleantech@gmail.com did not know that
11 the Association deemed the email to serve as a petition, judging from the fact that in
12 response to the confirmation email, he asked for a copy of the petition to read. [Exh.
13 A2, at 274] Similarly, kgab300@gmail.com sent an independent email to the
14 association to inquire about the location of the petition. [Exh. A2, at 218]

15 **C. Emails sent on behalf of others are not signatures.**

16 Many emails treated as signatures are not even from homeowners. Emails
17 purport to be from others sending the Association homeowners names, numbers, and
18 CAM #s. [Exh. A2, at 328, 482; Exh. A3, at 668, 719, and 720] The emails in relation
19 to these individuals reveal both that the individuals purportedly signing the petition
20 did not do anything of the sort, and that administrators (Diane Hamman or “Diane
21 H” chief among them) took liberties in curing perceived deficiencies stemming
22 therefrom. [*Id.* at 328, 719, 720] Email address odette46@gmail.com sent a message
23 stating “[b]eing my neighbor is in a nursing home, he has given me permission to
24 add his name to the Petition. Roger Bolan.” [*Id.* at 482] That is the least egregious
25 example.

26

1 Correspondence produced with a discussion between “Diane H” and the elusive
2 Jaycee Bee. [Exh. A3, at 719-720] In this exchange, the two expressly state that there
3 are efforts to gather the names of individuals who cannot themselves understand the
4 process the Association purportedly prescribed for signing the petition, but they also
5 indicate that efforts were taken to coerce signatures from certain individuals. “Diane
6 H” states, “I know Bea Schlender and I know the person who had her sign the paper,
7 but we are both leary of contacting her because we don’t know how her husband feels
8 about the petition.” [*Id.*] That message raises the question about whether others were
9 on the same boat, and, indeed, whether intent to sign a record in this case must be
10 attributed to a person, or to an entire household.

11 **D. Emails sent without attachment or response on their face**

12 Divining the intent of individuals who were not responding to an email blast,
13 but rather initiating a new email thread with recalltomgusich@gmail.com is no
14 easier. Plaintiff has compiled a series of emails that demonstrate the impossibility
15 of such analysis as they profess either nothing regarding a signature, or profess
16 misunderstanding about a petition.

17 The email account earlegreenberg@gmail.com sent the Association
18 information with a subject line reading “[o]ops forgot address.” He or she makes no
19 mention of the recall petition, does not state what prompted the email, and indeed,
20 attaches nothing to his email. [Exh. A2, at 74]

21 The email address tlarew1950@gmail.com includes the subject line “Problem!”
22 along with identifying information. She or he makes no mention of the recall petition,
23 does not state what prompted the email, and indeed, attaches nothing to the email.
24 [Exh. A2, at 152]

25 Email address petersg_99@yahoo.com sent an email with the Edmund Burke
26 quote, “[f]rugality is founded on the principle that all riches have limits.” Although

1 the subject line states “recall petition,” he or she does not state any intention to sign
2 any record. [Exh. A2, at 227]

3 Email address sbkpumpkin@aol.com sends an email with subject line “Recall
4 petition,” with substance demonstrating nothing. [Exh. A2, at 245] Specifically, he
5 or she states, “[b]y the way, my girlfriend received the counter-petition to recall 3
6 Board members.” Is the counter petition the “recall petition” to which it refers? That
7 cannot be answered.

8 The email address cjrinaldi@gmail.com includes the subject line “Additional
9 details”, stating that he or she is a qualified voter before providing the requested
10 identifying information. [Exh. A2, at 269] This person makes no mention of the recall
11 petition, does not state what prompted the email, and indeed, attaches nothing to
12 the email. Furthermore, it is equally probable that she sent the email with the intent
13 of gathering “additional details.” Similar ambiguity arises from an email sent by
14 debbiehill@aol.com, whose subject line simply states “Request.” [Exh. A2, at 426]

15 The email address nowellb3@gmail.com sent an email to state an “opinion,”
16 expressing wishes that Mr. Gusich resign, but does not mention the recall petition
17 or the recall vote. [Exh. A2, at 316] Email address jrmcginniss@gmail.com similarly
18 includes the subject line “Resignation” and airs grievances, none of which reference
19 a recall vote or petition. [Exh. A3, at 809] Grievances or a request for resignation do
20 not equal an intent to sign a petition to hold a recall election.

21 Email address john.mead.jm@gmail.com took a similar tact, sending a
22 message regarding his unhappiness with the way Mr. Gusich created division,
23 labeled with the subject line, “enough.” [Exh. A2, at 175] The message does not
24 mention a petition or a signature. The intent becomes murkier when viewing a later
25 email, which is also the first time in the chain that the sender mentioned the word
26 “petition.” This email, responding to the automated follow-up, states, “I’m guessing

1 the petition will be held to see if he improved. I watched the budget meetings and he
2 was polite.” A shrugging emoji followed this. [Exh. A2, at 248]

3 The email address Darrell phxrdking@aol.com sends the requested
4 information in the subject line. He or she makes no mention of the recall petition,
5 does not state what prompted the email, and indeed, attaches nothing to the email.
6 [Exh. A2, at 347]. Email address droscherrick@gmail.com does the same exact
7 thing. [Exh. A2, at 352]

8 Email address hockey6931@gmail.com puts a number of unknown significance
9 (0419) in the subject line. It makes no mention of the recall petition, does not state
10 what prompted the email, and indeed, attaches nothing to the email. [Exh. A4, at
11 931].

12 **II. CONCLUSION.**

13 A signed petition is required to create a document beyond dispute. Signatures,
14 by their nature, demonstrate unequivocal intent to sign a record to which they are
15 logically traceable. The pile of emails from the Association require divining intent as
16 complex as Florida’s search for hanging Chads. Even if emails could be examined for
17 a manifested intent given the surrounding circumstances, only two emails have
18 anything purporting to be a petition attached, and only 184 emails express an
19 intention to sign a petition or vote for Plaintiff’s recall. The Association only had, at
20 most, 350 signatures on the petition to recall Mr. Gusich. 25 of these paper
21 signatures are unconfirmed for various faults as noted in the spreadsheet Defendant
22 provided Mr. Gusich to corroborate its count. [Exh. A16]. Even assuming the 25
23 signatures can be confirmed, combining the 350 paper signatures and the 184 emails
24 that demonstrate an unequivocal intent to sign or authenticate a petition, the
25 Association has 534 signatures, a number far short of the required 982 signatures.

26 In this case, the other hundreds of emails fail in various ways to demonstrate

1 such unequivocal intent, or to draw a logical connection between themselves and a
2 petition. As such, none of them can be deemed electronic signatures. Because the
3 Association did not obtain the required 982 signatures, the recall vote was invalid,
4 and Mr. Gusich remains a director on the Board.

5 Mr. Gusich has shown a significant likelihood of winning on the merits for his
6 Count 2 claim. This Court should enjoin the Association's recall process and vote,
7 and reinstate the status quo with Mr. Gusich on the Board.

8 DATED this 2nd day of June 2025.

9 DESSAULES LAW GROUP

10
11 By: /s/ Jonathan A. Dessaulles
12 Jonathan A. Dessaulles
13 David E. Wood
Attorneys for Plaintiff

14 COPY of the foregoing document mailed and
15 emailed this 2nd day of June 2025 to:

16 Lauren Elliot Stine
17 Daniel G. Roberts
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20 Two North Central Avenue, Suite 600
21 Phoenix, Arizona 85004
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Daniel.Roberts@quarles.com
Attorneys for Defendant

22
23 /s/ Hilary Narveson

EXHIBIT 1

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DECLARATION OF THOMAS J. GUSICH

I, Thomas J. Gusich, hereby make the following declarations:

1. I am over the age of 18 years old, competent to testify to the truth of the matters contained herein, and attest that the foregoing statements made by me are based upon my personal knowledge unless otherwise stated.

2. I am the named Plaintiff in the action *Gusich v. Sun City Grand Community Association, Inc.*, Case No. CV2025-002634.

3. I viewed several internet posts containing the email address “recalltomgusich@gmail.com,” including multiple posts on the NextDoor app.

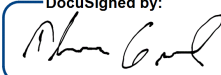
4. I am aware of paper distributions containing that email address.

5. None of these contained a written Petition for signature.

6. I am not aware of any instructions on the internet posts advising people that sending an email would be treated as a signature to a Petition.

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

EXECUTED on 6/2/2025.

DocuSigned by:

42DC911FC1824D6...

THOMAS J. GUSICH

EXHIBIT 2

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DECLARATION OF LYNN M. MYRICK

I, Lynn M. Myrick, hereby make the following declarations:

1. I am over the age of 18 years old, competent to testify to the truth of the matters contained herein, and attest that the foregoing statements made by me are based upon my personal knowledge unless otherwise stated.

2. I own real property in the Sun City Grand Community Association.

3. I received an email from the email address recalltomgusich@gmail.com.

4. I interpreted that message as a forum to discuss whether or not to hold a recall election for Mr. Gusich.

5. I clicked on the email address in that link to send my message that a recall election was not in the best interests of our community.

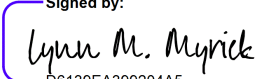
6. That link opened a new message with an auto-filled subject line "Recall."

7. I wrote a message stating opposition to a recall election and pointing out that their message did not include a petition for review.

8. I received an automated response that thanked me for signing the petition, which I did not intend to do with my email message.

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

EXECUTED on 6/2/2025.

Signed by:


LYNN M. MYRICK,
Oregon State Bar Assn.
Member 752745