

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2024-002225

04/30/2024

HONORABLE JENNIFER RYAN-TOUHILL

CLERK OF THE COURT
A. Meza
Deputy

IQTUNHEIMR L L C

NATHAN BROWN

v.

VAL VISTA LAKES COMMUNITY
ASSOCIATION, THE, et al.

KYLE BANFIELD

JUDGE RYAN-TOUHILL

MINUTE ENTRY

On February 5, 2024, Plaintiff Iqtunheimr, LLC, filed suit against multiple defendants, including Val Vista Lakes Community Association (Val Vista) and Timothy Hedrick (Hedrick). Plaintiff Iqtunheimr is a limited liability company that owns property within the community at issue. *Complaint*, p. 4, ¶ 7. One defendant is the HOA and the other, Mr. Hedrick, lives in the community and is an HOA board member. *Id.* at ¶¶ 8, 9. Plaintiff argued that Defendants have breached the covenants and restrictions in place to maintain the safety, value, and well-being of the community. Plaintiff filed for a preliminary injunction on the same date, asking for relief from the Court to enjoin Defendants from causing further harm to the community. Defendants have not filed answers but instead filed for dismissal.

On March 8, 2024, the Court conducted an Order to Show Cause Return Hearing to discuss Plaintiff's application for injunctive relief. The Court set a full day evidentiary hearing for May 14, 2024. Since that time, the Court has received a number of pleadings.

Currently pending before the Court are:

1. Plaintiff's February 28, 2024, March 1, 2024, and March 28, 2024, *Notice(s)*, Defendants' March 29, 2024, *Motion to Strike Plaintiff's Notices*, and Plaintiff's April 2, 2024, *Motion to Strike Defendant's [sic] Improper Motion to Strike*.

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2. Defendants' March 13, 2024, *Motion to Dismiss Timothy Hedrick Pursuant to Rule 12(B)(6)* (MTD), Plaintiff's March 29, 2024, *First Motion for an Extension of Time to File a Response to the Timothy Hedrick MTD*, and Defendants' April 15, 2024, *Response to Plaintiff's Motion for Extension of Time* []. Plaintiff did not file a reply.
3. Defendants' March 13, 2024, *Motion to Dismiss Val Vista Lakes Community Association Pursuant to Rule 12(B)(6)* (MTD), Plaintiff's March 15, 2024, *Notice of Material Misrepresentation in Val Vista Lakes' Motion to Dismiss*, Plaintiff's March 17, 2024, *Response in Opposition to Only Defendant Val Vista Lakes Community Association's MTD*, and Defendant Val Vista Lakes Community Association's March 27, 2024, *Reply in Support of MTD*.
4. Plaintiff's March 17, 2024, *Motion to Disqualify Carpenter Hazlewood Attorneys*, Defendants' April 3, 2024, *Response to Plaintiff's Motion to [Disqualify]*, and Plaintiff's April 13, 2024, *Reply in Favor of Disqualification* [].
5. Defendants' April 15, 2024, *Request for Rule 16 Status Conference*.

The Court now rules.

Notices

On three separate occasions Plaintiff has filed "notices" with the Court. The February 28, 2024, notice informs the Court that Val Vista shut down a community pool. The March 1, 2024, notice informs the Court of the HOA's board's refusal to repair the pool. The March 28, 2024, notice informs the Court of a case arising out of a Los Angeles superior court.

The Court finds no good cause for Plaintiff's repeated filings of "notices" with the Court. Pleadings, formal written statements filed by parties, are limited by Rule 7, Ariz. R. Civ. P. Rule 7 does not allow "notices." Rule 7.1 covers motions; a motion is not a pleading pursuant to Rule 7, but is instead "[a]n application to the court for an order. . . ." Rule 7.1(a), Ariz. R. Civ. P. A motion must be in writing, accompanied by a memorandum of points and authorities, and a specific request to the court. *Id.* Rule 7.1(b) allows the Court to summarily deny a motion if it fails to comply with our rules.

Here, Plaintiff has not filed a motion and Plaintiff has not filed a complaint (e.g., amended). Rather, Plaintiff has provided evidence to the Court, which may or may not be admissible, in advance of an evidentiary hearing. The Court concurs with Defendants that Plaintiff's notices "are nothing more than an attempt to supplement the record in advance of" a hearing. *Defendant[s'] Motion to Strike*, p. 2, ¶ 2. Plaintiff, in response, contends it can file the notices and Defendants are without recourse to respond because Rule 7.1(f) only allows a motion to strike another motion, not these notices. The argument is without merit. Plaintiff's further contention that Rule 7.1(f)(3)

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controls is, likewise, meritless. If Plaintiff is filing a notice, not a motion, then arguably 7.1(f)(3) wouldn't control, either. If Plaintiff has filed evidence, then Rule 7.1(f)(3) would allow an objection but as stated, a "notice" with allegations and inserts, not tied to any request to the Court, is an impermissible method by which to get evidence before the Court.

The Court concurs these filings are improper and disregards same. Therefore,

IT IS ORDERED granting Defendants' motion to strike and striking Plaintiff's three "notices" filed with the Court.

IT IS FURTHER ORDERED denying Plaintiff's motion to strike Defendant[s'] "improper motion" to strike.

IT IS FURTHER ORDERED attorney's fees will be held in abeyance. Defendants may re-raise this request at a later date.

Motion to Disqualify

Plaintiff seeks to have Carpenter, Hazlewood, Delgado Bolen, LLP disqualified from representing Defendants Val Vista and Hedrick. Plaintiff relies upon an "obvious conflict of interest and for the violation of A.R.S. [§] 33-1811, the HOA Anti-kickback Statute." *Motion*, p. 2, ¶ 1. Plaintiff has requested oral argument; the Court does not need oral argument to decide the issue before it, and Plaintiff's request is denied.

A.R.S. § 33-1811 is inapplicable. That statute states, "If any contract, decision or other action for compensation taken by or on behalf of the board of directors would benefit any member of the board of directors [or relatives of board member], that member of the board of directors shall declare a conflict of interest for that issue." (Emphasis added.) The statute applies to the board member, not the law firm. Pursuant to the statute, a board member is required to declare a conflict exists in an open meeting before the board votes. Hypothetically, if Val Vista HOA voted on whether to hire a law firm, Brodie Hurtado would have to disclose a relationship with Carpenter, Hazlewood, Delgado Bolen, LLP if the board was accepting bids or exploring contracts to enter into with this firm. Brodie Hurtado would make this disclosure at a meeting. If Brodie Hurtado failed to make the requisite disclosure, then the board could act consistent with its CC&Rs (e.g., seek to remove the board member). The remedy proposed here—removing a law firm—is not grounded in law and reliance upon A.R.S. § 33-1811 is in error. Therefore,

IT IS ORDERED denying Plaintiff's request to disqualify Carpenter, Hazlewood, Delgado Bolen, LLP for a violation of A.R.S. § 33-1811.

The Court now turns to Plaintiff's assertion of an "obvious" conflict of interest. Plaintiff speculatively alleges that Carpenter, Hazlewood, Delgado Bolen, LLP partner Jonathan

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Ebertshauser financially benefits from the contractual agreement between Accredited Surety and Casualty Company and the law firm. Mr. Ebertshauser is not involved in this case and, beyond a photo of counsel from the firm's website and speculative argument, Plaintiff has provided no facts demonstrating how or whether Mr. Ebertshauser financially benefits from the professional relationship in this case. The Court declines to find that Mr. Ebertshauser either does or does not financially benefit—the possibility of indirect profit-sharing from payments made by an insurance company to the law firm is not enough to rise to a level of conflict necessitating removal and sheer speculation does not rise to the level warranting a hearing on this issue.

Noteworthy is the method by which Carpenter, Hazlewood, Delgado Bolen, LLP became involved in the case. The parties agree the HOA obtained an insurance policy that covers legal fees; the insurer, in response to the lawsuit, hired the law firm. Consequently, the professional relationship is between the insurance carrier and the law firm, and Val Vista did not hire Carpenter, Hazlewood, Delgado Bolen, LLP. Here, the insurer has the freedom to contract with others to fulfill its obligations pursuant to the agreement it entered into with the HOA.

Plaintiff improperly inserts rhetoric into pleadings in order to support its request. For example, Plaintiff states, "It was almost as if Diana Ebertshauser and Brodie Hurtado wanted the lawsuit so they could enrich/benefit the law firm of their direct family member." *Motion*, p. 5, ¶ 1. The Court cautions Plaintiff against unnecessary and unhelpful statements that only disparage a non-party and do nothing to further the case against Defendants. Additionally, the Court is required to reflect upon these statements when considering the elements of disqualification, including harassment.

Disqualification interferes with the professional relationship between counsel and client. Motions to disqualify counsel "should be granted '[o]nly in extreme circumstances,' and the party seeking disqualification has the burden of proof." *Simms v. Rayes*, 234 Ariz. 47, 50, ¶ 8 (App. 2014)(quoting *Alexander v. D'Angelo*, 141 Ariz. 157, 161 (1984)). The Court must consider the *Gomez* factors when deciding Plaintiff's motion. *Gomez v. Superior Court*, 149 Ariz. 223 (1986).

We believe that the court, when considering a motion for disqualification based upon the appearance of impropriety, should consider the following: (1) whether the motion is being made for the purposes of harassing the defendant, (2) whether the party bringing the motion will be damaged in some way if the motion is not granted, (3) whether there are any alternative solutions, or is the proposed solution the least damaging possible under the circumstances, and (4) whether the possibility of public suspicion will outweigh any benefits that might accrue due to continued representation.

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Id. at 226 (quoting *Alexander*)(internal citations omitted). This Court, when considering the first factor, concludes that Plaintiffs are harassing Defendants. Plaintiff does not have a legal basis to seek removal of Carpenter, Hazlewood, Delgado Bolen, LLP; Plaintiff, in argument, chastises Defendant Val Vista of improperly spending money on “a **\$320,000 insurance policy** to protect them from getting personally sued[.]” *Motion*, p. 2, ¶ 3 (emphasis in original). How or why the HOA decides to spend funds to protect itself from liability is not indicative of wrongdoing or underhandedness. All association members are harmed by lawsuits because the HOA is comprised of association members who, in turn, may have increased dues (expenses) related to litigation. Simply because the HOA took action to protect itself (i.e., the members) in a litigation context does not show a conflict of interest.

Plaintiff has also harassed Defendants by irrelevant rhetoric contained in the motion. In addition to the example provided above, Plaintiff unnecessarily references Diana Ebertshauser’s marital status in a footnote. *See Motion*, p. 3, FN1. Plaintiff repeatedly accuses Defendants of “kickbacks” and “self-dealing,” utilizing A.R.S. § 33-1811 as justification for these terms. Plaintiff complains that the HOA did not vote on hiring Carpenter, Hazlewood, Delgado Bolen, LLP, accusing the board members of entering into this contractual relationship to benefit family members (a kickback), without acknowledging that the HOA obtained insurance and it is the insurance provider who selected the law firm, not Ms. Eberthauser or Brodie Hurtado. Instead, Plaintiff conclusively asserts that the association members have “not been notified that [their] monies are being used to benefit the family of HOA board members.” *Motion*, p. 7, ¶ 2. This is inflammatory, as is the bald assertion that multiple lawsuits “have been fought to prevent Board Members from using Val Vista Lakes Community funds to enrich their friends and families.” *Id.* at p. 10, ¶ 2. In the reply, Plaintiff states, “Defendants should be advised to spend less time on social media, and more time trying to fix the community.” *Reply*, p. 7, ¶ 5. The rebuttal statement is irrelevant to conflict of interests, is improper, and the unsupported allegations constitute harassment.

Turning to the second factor, Plaintiff fails to illustrate how Plaintiff may be harmed if the firm is not disqualified. Plaintiff simply states, “If motion is not granted, it will be business as usual for” Defendant Val Vista. *Motion*, p. 11, ¶ 3. This is insufficient to allow Plaintiff to prevail; Plaintiff has not met its burden under the second *Gomez* factor.

The third factor, alternative solutions, is briefly addressed by Plaintiff insofar as Plaintiff suggests Carpenter, Hazlewood, Delgado Bolen, LLP simply step down. Plaintiff’s cursory argument deficiently addresses the *Gomez* factor; more is needed. *See, e.g., State ex. Rel. Mitchell v. Palmer in and for County of Maricopa*, ---P.3d---, 2024 WL 1561618 (2024). Here, the Court can hypothesize multiple, less restrictive alternatives beside disqualifying an entire law firm, similar to what is considered in a criminal context. Nevertheless, it is not the Court’s burden to

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justify disqualification under factor three—it is Plaintiff’s burden; Plaintiff has not met its burden and the Court does not find any need for an alternative solution.

The fourth factor, public suspicion, is not apparent or sustainable on behalf of Plaintiff. However, if the Court were to grant Plaintiff’s request to disqualify Carpenter, Hazlewood, Delgado Bolen, LLP, Defendants could reasonably believe that Plaintiff used disqualification as a tactical tool and, consequently, promote distrust in the legal process. By granting Plaintiff’s request, the Court would show that it is not persuaded by law, facts, or sound legal reasoning but instead decides disputed issues on speculation, conclusory arguments, and inserted social media posts. The fourth *Gomez* factors weighs in Defendants’ favor, not Plaintiff’s.

The Court would be remiss in failing to mention that Plaintiff presents no argument whatsoever to disqualify Carpenter, Hazlewood, Delgado Bolen, LLP from representing Defendant Hedrick. Therefore, the motion is denied as to that co-defendant.

No good cause appearing,

IT IS ORDERED denying Plaintiff’s motion to disqualify Carpenter, Hazlewood, Delgado Bolen, LLP for conflict of interest.

IT IS FURTHER ORDERED attorney’s fees will be held in abeyance. Defendants may re-raise this request at a later date.

Motion for Extension of Time

Plaintiff requests a delay in responding to Defendant Hedrick’s MTD; Defendant opposes.

Plaintiff, in the request for additional time to respond, provides the Court with no authority for the request. Instead, at the outset of the motion, Plaintiff provides an “introduction” to the case which, essentially, bad-mouths Defendant Hedrick and the HOA board. *See First Motion*, pp. 2-4. The information presented is irrelevant to Plaintiff’s request for additional time in which to file a response to Defendant Hedrick’s MTD.

Plaintiff argues it has a motion pending that seeks to block HOA fees paying for Hedrick’s attorney’s fees; Plaintiff then contends the outcome of that motion (not currently before the Court) will allow the HOA to fix up the community instead of paying Carpenter, Hazlewood, Delgado Bolen, LLP. Similarly to the “introduction,” this is irrelevant to the pending motion.

Plaintiff provides the Court with argument extraneous to the pending motion. Plaintiff states, “Right now, Carpenter Hazlewood attorneys such as Kyle Banfield are telling the HOA Board that they do not have to fix up the community. . . . Until, [sic] the Court declares Mr. Banfield’s legal advice unsound, people like Defendant Hedrick will believe their actions can go

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unchecked.” *Motion*, p. 5, ¶ 2. One, unclear to the Court is why Plaintiff believes addressing Mr. Banfield’s role in this case helps Plaintiff’s request for additional time to respond to the MTD. Two, the Court does not grant an extension of time for pleadings so that a party may wait for the Court to admonish another party. This is not sound legal reasoning and is not the Court’s role.

Plaintiff asked Defendants for an extension and Defendants refused; regardless of professional courtesy, Defendants’ refusal is not, by itself, a legal basis by which this Court will extend time. Finally, the Court does not understand the purpose of the pleadings attached to Plaintiff’s motion and will disregard same.

The Court finds that Plaintiff seeks additional time in which to respond to the MTD because Plaintiff believes a response, if any, should be filed after the Court’s evidentiary hearing. The Court appreciates Plaintiff’s request for judicial economy and concurs this should be a priority. Defendants point out, however, that the evidentiary hearing is for Val Vista only and, consequently, waiting to file a response to Defendant Hedrick’s MTD is unwarranted.

The Court further finds Plaintiff failed to make any relevant argument for good cause for an extension of time. Additionally, Plaintiff has had between March 13, 2024, and the date of this Ruling to file a response and has not done so. Because there is no good cause for an extension of time in which to file a response,

IT IS ORDERED denying Plaintiff’s request.

Motion to Dismiss

Defendants filed two motions to dismiss, both for Val Vista and Hedrick. The Court will consider both MTD here. No party requested oral argument and the Court does not need oral argument to decide the issues before it.

The Court has considered the filings and arguments presented by the parties, the relevant authority and law, and the record of the case. Regarding the MSJ, the Court specifically considered all facts and reasonable inferences in the light most favorable to the non-moving party. The Court’s rulings are below.

Arizona law disfavors 12(b)(6) motions to dismiss. *Ariz. R. Civ. P.*; *Acker v. CSO Chevira*, 188 Ariz. 252 (Ct. App. Div. 1 1997); *State ex rel. Corbin v. Pickrell*, 136 Ariz. 589, 594 (1983). The narrow question before this Court is whether Plaintiffs’ alleged facts are sufficient to allowing Plaintiffs to prevail. *Coleman v. City of Mesa*, 230 Ariz. 352, 363. ¶ 46 (2012). After consideration of Plaintiffs’ allegations and assuming the truth therein, this Court finds that Defendants are and are not entitled to dismissal “as a matter of law, on any interpretation of the facts.” *Id.*

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Val Vista Lakes Community Association (Val Vista) is an HOA. Plaintiff is one member of the HOA. Val Vista “is a master planned community that has 14 neighborhoods, with 2243 total members who are part of the Association.” MTD, p. 2, ¶ 2. In the lawsuit against Defendant Val Vista, Plaintiff alleges breaches of contract and the duty of good faith and fair dealing. Plaintiff has no independent, direct cause of action against Val Vista for a general breach of contract under the facts alleged and, instead, alleges facts that impact all members of the HOA. Count Two, the breach of contract for the duty of good faith and fair dealing applies to Defendant Hedrick, not Val Vista, and will not be addressed here.

The HOA members (all 2243 of them) have use and enjoyment of their common areas but have no undivided interests in those common areas. Ownership of common area rests with a homeowner’s association in total, not member by individual member. Here, Plaintiff has no legal authority demonstrating that an individual member of an HOA has legal standing to sue for defects in a common area, even if that individual member has an unfettered right of access to the area. Plaintiff also provides no notice in the complaint that reflects any assignment of rights to sue (from the HOA to Plaintiff). The Court will set out the explanation differently:

1. Plaintiff, on its own, brought an action individually against Val Vista.
2. The nature of the action is the alleged wrongs done to the entire community (e.g., failure to maintain or repair common areas).
3. Plaintiff does not own the common areas.
4. Plaintiff’s argument of wrongdoing includes allegations that Val Vista’s inaction has devalued the community. This devaluation impacts not only Plaintiff but also all other HOA members.
5. The wrongdoing—the injury—is to the community areas and to the value of the community as a whole.
6. The remedy sought is not for Plaintiff’s own benefit but rather the benefit of the community as a whole (i.e., repair and maintain the common areas).

Albers v. Edelson Technology Partners L.P., 201 Ariz. 47, ¶ 17 (App. 2001). An individual may have a direct claim under certain circumstances, including times when the dispute between the claimant and wrongdoer is separate from the claimant’s status as a member of the HOA, the wrongdoer owes a duty to the claimant for a reason other than membership in an HOA, or the claimant’s injuries are individual. *Id.*, p. 52, ¶¶ 17, 18. None of those potential scenarios exist here and Plaintiff has no direct claim against Val Vista for breach of contract. Pursuant to Plaintiff’s facts alleged for breach of contract claim filed against Val Vista, the Court finds it is,

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instead, a derivative claim. Because Plaintiff has not complied with the mandatory statutory requirements for a derivative claim, Count One is dismissed.

Plaintiff may have a valid claim for Count Three, “Breach of Contract by Selective Enforcement and Failure to Maintain.” *Complaint*, p. 51. Plaintiff provides minimal notice of its claim when it alleges that Val Vista “is selectively enforcing their governing documents to the detriment of Plaintiff. . . .” *Id.* at ¶ 115. The remainder of the allegations, if legally cognizable, are derivative. However, because Plaintiff has made a claim that Val Vista has directly harmed Plaintiff (and not others), this count survives a motion to dismiss. The Court, understanding Defendants’ position on dismissal of this claim, nevertheless finds that on its face Plaintiff has made a survivable claim against Val Vista. If, at a later date, Defendant Val Vista proves that Plaintiff itself has not received any selective treatment, Defendant may wish to file for summary judgment.

Timothy Hedrick

Upon reviewing Plaintiff’s complaint, the Court found that allegations for Count One, breach of contract, against Defendant Hedrick did not appear until page 47. Plaintiff alleged Defendant Hedrick (1) refuses to maintain facilities, (2) refused to replace air conditioners, (3) tells others he (Hedrick) will not repair the community, and (4) releases private HOA business to community members to cause outrage. *Complaint*, p. 47, ¶¶ 89-92. None of these allegations rise to the level of breach of contract between Plaintiff and Defendant Hedrick; the *Complaint* is legally deficient and dismissal of Count One against Defendant Hedrick is warranted.

Count Two alleges that Defendant Hedrick failed to act in good faith by depriving Plaintiff of Plaintiff’s reasonable expectations from the HOA. *Id.* p. 48, ¶ 96. This is a direct claim. Likewise, Plaintiff’s claim that Defendant Hedrick has failed to meet a contractual bargain with Plaintiff survives only because Arizona is a notice pleading state and Plaintiff has put Defendant Hedrick on notice that he, Hedrick, is not complying with a contract with Plaintiff (the CC&Rs). *Id.* p. 51, ¶ 112. However, Plaintiff’s remaining claims are derivative and for the reasons provided above in the Val Vista discussion, are dismissed.

Count Three only makes passing reference to Defendant Hedrick, accusing that party of making side deals. *Id.* p. 52, ¶ 119. This is not a valid claim, even in context of reviewing the entire pleading, because it fails to state a basis for relief. Here, Plaintiff’s accusations against Defendant Hedrick are insufficient to survive the MTD.

Therefore,

IT IS ORDERED dismissing Count One as to both parties.

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IT IS FURTHER ORDERED denying Defendants' motions to dismiss for Count Two for the reasons stated herein.

IT IS FURTHER ORDERED denying Defendant's motion to dismiss Count Three against Defendant Val Vista but granting the MTD Count Three against Defendant Hedrick.

IT IS FURTHER ORDERED attorney's fees will be held in abeyance. Defendants may re-raise this request at a later date.

Request for Status Conference

Defendants ask for a status conference to address many of the issues dealt with in this Ruling. However, Defendants seek court intervention for other, related issues, including allegations that Plaintiff is or intends to contact represented parties, and the timing of the upcoming evidentiary hearing.

The Court reviewed Plaintiff's *Application for Preliminary and Permanent Injunction*. Plaintiff properly sets out the criteria by which the Court must assess a request for injunction, including whether there exists a strong likelihood of success on the merits. Plaintiff restates the law and refers back to the complaint filed; in consideration of this *Application*, the Court, likewise, considers the *Complaint*.

Here, the Court does not find a strong likelihood of success on the merits at this juncture. Simply because Plaintiff has survived a motion to dismiss for some of the claims does not translate to "a strong likelihood of success." The Court has addressed the deficiencies of the pleadings but finds those deficiencies, in some respects, do not warrant dismissal. However, the pleadings likewise do not demonstrate a preliminary injunction is warranted.

Plaintiff does not have standing to seek retribution for the entire HOA. If Plaintiff speaks for others beyond itself, Plaintiff must comply with statutory requirements for derivative claims. However, for those Counts that may impact Plaintiff directly, the Court sees no urgency in immediately addressing Plaintiff's assertions that Val Vista and Hedrick fail to act in good faith and fair dealing or by Val Vista selectively enforcing the CC&Rs. Therefore, on the Court's own motion,

IT IS ORDERED vacating the evidentiary hearing set for May 14, 2024, at 9:00 a.m.

IT IS FURTHER ORDERED setting the matter for a Status Conference on **May 14, 2024, at 9:00 a.m. (time allotted: 15 minutes)**.

This matter will be heard by video/audio conference using **Court Connect**. Court Connect is the Superior Court in Maricopa County's video court hearing platform. For more information

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about Court Connect, please visit: <https://superiorcourt.maricopa.gov/court-connect>. Counsel shall have their calendars available for this proceeding.

A Court Connect video link will be emailed to counsel of record (or self-represented parties) the day before the hearing. All parties must appear by video and ensure their environment is free from distractions.

Join on your computer or mobile app by copying the link below and pasting it into an internet browser

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IT IS FURTHER ORDERED confirming the only parties to this case are Plaintiff, Val Vista HOA, and Timothy Hedrick. The hearings are open to the public but this does not mean the Court must allow unfettered access to multiple HOA members, especially when the members do not appear on time or refuse to remain muted during the hearing. These actions are disruptive and will not be tolerated by the Court. If necessary, the Court will require all future hearings in person in an effort to minimize distractions.