

MICHAEL K. JEANES
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CASE# CV2014-009496	
CIVIL NEW COMPLAINT	319.00
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8 Attorneys for Plaintiff

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

11 COLETTE MCNALLY, an individual,

12 Plaintiff,

13 -vs-

14 SUN LAKES HOMEOWNERS
 15 ASSOCIATION #1, INC., an Arizona non-
 16 profit corporation,

17 Defendant.

No. CV 2014-009496

VERIFIED COMPLAINT

(Declaratory/Injunctive Relief;
 Breach of Contract; Defamation; False
 Light; Punitive Damages)

18 Plaintiff, Colette McNally, through her undersigned attorneys, by way of Verified
 19 Complaint against Defendant, hereby alleges as follows:

20 **PARTIES, JURISDICTION AND VENUE**

- 21 1. Plaintiff owns real property in Maricopa County, Arizona.
 - 22 2. Defendant, Sun Lakes Homeowners Association #1, Inc. (the "Association") is an
 23 Arizona non-profit corporation doing business in Maricopa County, Arizona.
 - 24 3. The acts, obligations and transactions that are the subject of this Complaint
 25 occurred in Maricopa County, Arizona.
- 26

1 Association; (A2) pending or contemplated litigation; (A3) the personal, health or financial
2 information about an individual member; (A4) matters relating to the job performance of an
3 individual employee of the Association; or, (A5) discussion of a member's appeal of any
4 violation or penalty unless the effected member requests the meeting be held in an open session.

5 10. In or about 2011, board members including Plaintiff, Tom West and Ray Smith
6 properly exercised their duty owed to the homeowners within the Association by meeting with
7 the undersigned law firm to discuss their justified concerns regarding certain other board
8 members abuses of power, improper voting, other extraneous Association governance issues and
9 to obtain legal advice on how to properly address their justified concerns and issues facing the
10 Association. Due to the inherent conflict of interest that Plaintiff, Mr. West and Mr. Smith had
11 with those other board members who they believed were acting improperly, Plaintiff, Mr. West
12 and Mr. Smith were unable to consult with the Association's corporate counsel who essentially
13 represented those other board members.

14 11. Prior to meeting with undersigned counsel, a concerned homeowner by the name
15 of Steve Wolfer gave notes to Mr. Smith which contained an outline of issues that he believed
16 should be discussed with undersigned counsel during the meeting. Mr. Smith kept Mr. Wolfer's
17 outline in his personal "board notebook" which contained his other private notes and documents.

18 12. In or about the time that Plaintiff, Mr. West and Mr. Smith met with undersigned
19 counsel, Mr. Smith's private board notes containing Mr. Wolfer's outline were anonymously
20 circulated throughout the community along with an anonymously written cover letter addressed
21 to the Association's residents that actually accused Plaintiff, Mr. West and Mr. Smith of
22 participating in illegal and unethical action against those board members who they properly
23 sought legal advice regarding. Although Plaintiff, Mr. West and Mr. Smith's motive for meeting
24 with undersigned counsel was pure and only to ensure that the board was complying with
25 Arizona law, this anonymous letter spun their pure motives into something sinister, which
26 clearly they were not. When Mr. Smith asked the Association's management team how his

1 personal notes became circulated throughout the community, as discussed below, the
2 management team lied to him by telling him that his “computer must have been hacked.” A
3 copy of the anonymous letter and Mr. Wolfer’s outline that was circulated is attached hereto as
4 Exhibit A.

5 13. Mr. Smith’s computer was not hacked. Approximately two years after Mr.
6 Smith’s notes were circulated throughout the community, on July 29, 2013, a certain Jeannie
7 Martens resigned from her position with the Association’s property management team. After
8 she resigned, on or about August 5, 2013, she wrote a confession addressed to “Ray”, “Tom”,
9 “Colette” (i.e. Plaintiff) and/or e-mail recipients “Rglazieraz”, “West_Thomas”, “Me”, and
10 “Morrcin” (hereafter, the “Martens Confession”) where she cleared her conscience by admitting
11 to stealing Mr. Smith’s board notes from his files, participating in a conspiracy with other
12 members and the Association’s management team to anonymously circulate his notes (including
13 the Wolfer outline and anonymously written cover letter that accused Plaintiff, Mr. West and
14 Mr. Smith of engaging in illegal and unethical behavior) and lying to Mr. Smith that his
15 computer was hacked. A copy of the Martens Confession is attached hereto as Exhibit B.

16 14. In the Martens Confession, Ms. Martens confesses that the conspiracy “weighed
17 heavy on [her] conscience for the past 2 years.” She “apologized profusely that [she] allowed
18 [her]self to be involved in any part of this plan” and admitted that the management team and
19 implicated members participated in the conspiracy by confessing:

20 “I was really nervous about this whole thing and I voiced to Clint and
21 Roberta that ‘I was uncomfortable doing this’.”

22 See Exhibit B.

23 15. In closing, Ms. Martens’ writes that her confession is the “100% truth” and that
24 she wrote it strictly to clear her conscience and reclaim her integrity and dignity since the
25 conspiracy, betrayal and lies had been weighing on her since 2011. See Exhibit B.

26 16. Although Ms. Martens addressed her confession to Plaintiff, Mr. West and Mr.

1 Smith, she also addressed the confession to Cindi Morrison (who was not a board member at the
2 time) and circulated the letter to other homeowners.

3 17. Plaintiff received the Martens Confession on or about August 5, 2013. Upon
4 reading the detailed confession, Plaintiff rightly became appalled over the management team's
5 scheme stealing Mr. Smith's private notes, disseminating them throughout the community with a
6 cover letter that completely twisted the reasons why Plaintiff, Mr. West and Mr. Smith sought
7 independent legal advice and lying to Mr. Smith that his computer was hacked when, in fact, his
8 notes were stolen right out of his personal file and published by the management team. In an
9 effort to comply with Arizona's open meeting laws and disclose the Martens Confession to the
10 community, who clearly had a right to know of management's highly unethical and illegal
11 actions, Plaintiff sent the Martens Confession to Board President Rick Schwartz so that he may
12 prepare and address the issues raised in the confession at the next meeting scheduled two days
13 later on August 7, 2013. Unfortunately, Plaintiff's disclosure of the Martens Confession to Mr.
14 Schwartz only set in motion a turn of events resulting in the Association taking all actions
15 necessary to hide the conspiracy and sweep the issues raised by the Martens Confession under
16 the rug.

17 18. During the August 7, 2013 board meeting, former board member Smith sought to
18 address the Martens Confession during the open board meeting. When he asked the Board to
19 discuss those issues, President Schwartz violated A.R.S. § 33-1804 by immediately stopping the
20 meeting and refusing to allow any comments or questioning from the Board or other community
21 members regarding the issues raised in the Martens Confession. Given Plaintiff's justified
22 concerns that the Association was blatantly violating open meeting laws by intentionally
23 concealing an issue of direct community concern, Plaintiff told President Schwartz that she
24 would give him until the next scheduled Board meeting in September to openly address the
25 issues raised in the Martens Confession with the community. Unfortunately, unbeknownst to
26 Plaintiff, she unintentionally gave President Schwartz all the time he needed to permanently

1 sweep the Martens Confession under the rug.

2 19. During the month leading up to the September Board Meeting, Plaintiff tried to
3 persuade President Schwartz to listen to those community members, including Plaintiff, that
4 were targeted by the Association's management team in order to discuss a strategy for resolving
5 the issue. Plaintiff even went so far as to provide President Schwartz an outline of how to
6 address the Martens Confession at the next Board Meeting. However, President Schwartz did
7 nothing. Instead of tackling the Martens Confession head-on and addressing it with the
8 community, President Schwartz began the process of concealing it from the community.

9 20. On or about September 4, 2013, the Board met in executive session before the
10 portion of the Board meeting open to the community. During the executive session, in a clear
11 effort to conceal the Martens Confession from the community and improperly prevent any
12 discussion regarding the confession whatsoever, the Board passed a resolution over Plaintiff's
13 lone dissenting vote where they decided not to take any action with regard to the Martens
14 Confession. Not only did the Association violate A.R.S. § 33-1804 by failing to give notice to
15 the community that the Martens Confession would be discussed in a closed executive session,
16 the Association clearly violated A.R.S. § 33-1804 because the Open Meeting Laws prohibit such
17 issues from being discussed in a closed session to begin with. To the contrary, the Open
18 Meeting Laws require issues like the Martens Confession, though scandalous, to be discussed
19 openly with the community because the community is entitled to know about such issues
20 especially those affecting their significant real estate investment.

21 21. After the Board secretly passed their improper resolution to conceal the Martens
22 Confession during their improperly noticed executive session; once again, former board member
23 Smith tried to address the issues raised by the Martens Confession during the portion of the
24 meeting open to the community. However, in a complete show of totalitarianism, President
25 Schwartz stopped all discussion regarding the Martens Confession and disingenuously told Mr.
26 Smith that he should have requested an executive session to discuss the issue (disingenuous

1 because President Schwartz already resolved the Martens issue the hour before in his own
2 improperly called executive session.)

3 22. Although President Schwartz tried to stop all discussion and conceal the Martens
4 Confession, Plaintiff began reading the already publicized Martens Confession to those
5 community members who were in attendance. Just like the last Board meeting in August 2013,
6 President Schwartz again ended the meeting. Undeterred, Plaintiff continued to read the
7 Martens Confession as the other Board Members sheepishly walked out of the meeting. It was
8 at this point that the Association began an all out attack against Plaintiff to silence her, prohibit
9 her from participating in Board functions and cover up their conspiracy of stealing Mr. Smith's
10 private notes, anonymously circulating them throughout the community with a cover letter
11 falsely persuading the community that Plaintiff, Mr. West and Mr. Smith were engaged in illegal
12 wrongdoing and then lying to Mr. Smith that his computer was hacked as specified in the
13 Martens Confession. As discussed below, the Association has prevented Plaintiff from attending
14 executive sessions as was her right as an elected official of the Association, threatened her with
15 litigation, harassed her and simply tormented her all in an effort to make her quit the Board. In
16 essence, rather than openly address the Martens Confession, the Association has chosen to
17 completely undermine the democratic process by preventing Plaintiff from participating in
18 Association governance all in an effort to sweep what could have been a minor issue under the
19 rug.

20 23. The Association went into damage control mode and painted Plaintiff as the
21 wrongdoer. After the September Board Meeting debacle, the Association's corporate counsel
22 sent Plaintiff a letter dated September 11, 2013 telling her, unbelievably, that by reading the
23 Martens Confession to the community SHE "violated [her] duties of confidentiality and loyalty"
24 because the Board already passed a resolution to essentially conceal that issue from the
25 community! Based on the foregoing, the Association's corporate counsel told Plaintiff that the
26 Board met in another "executive session" (this time, in Plaintiff's absence without her

1 knowledge) and passed another resolution (again, unnoticed and improper) banning her from all
2 future executive sessions. In closing, the Association's counsel told Plaintiff that she can no
3 longer participate in executive sessions "until and unless [she] obtained a court order to the
4 contrary." Based on the Association's wrongful conduct and as stated through its counsel,
5 Plaintiff had no choice but to file this action. See copy of Maxwell & Morgan letter dated
6 September 11, 2013 attached hereto as Exhibit C.

7 24. As discussed above, the closed meeting where the Board passed its resolution to
8 conceal the Martens Confession violated Open Meeting laws because the issues raised therein
9 are required to be shared with the community, not hidden. Nevertheless, the closed meeting was
10 illegally called because the issue of the Martens Confession was not properly noticed to the
11 community. Moreover, from a practical standpoint, Plaintiff did not violate any duty by simply
12 reading the Martens Confession to the community. The confession itself was not a privileged
13 document (because Mr. Martens disseminated it to more than just Plaintiff, Mr. West and Mr.
14 Smith) and cannot be "cloaked" with some sort of *ex post facto* privilege by simply passing
15 through a closed session (which session was illegal to begin with).

16 25. To be clear, Plaintiff did not violate any executive privilege by disseminating the
17 Martens Confession to the community at the open meeting. Indeed, she complied with the Open
18 Meeting law by disseminating a document that does not fall within any exceptions to the Open
19 Meeting Law and is otherwise required to be produced to community members under A.R.S. §
20 33-1805. The Martens Confession does not contain legal advice from an attorney for the Board
21 or the Association within the meaning of A.R.S. § 33-1804(A)(1); it does not discuss pending or
22 contemplated litigation within the meaning of A.R.S. § 33-1804(A)(2); it does not discuss the
23 personal, health or financial information about an individual member within the meaning of
24 A.R.S. § 33-1804(A)(3); it does not discuss matters relating to the job performance of an
25 individual employee of the Association within the meaning of A.R.S. § 33-1804(A)(4); and it
26 does not discuss a member's appeal of any violation or penalty within the meaning of A.R.S. §

1 33-1804(A)(5). Just because the Martens Confession discloses wrongdoing and may subject the
2 Board and management team to embarrassment and consequences, the confession does not
3 suddenly become privileged simply because the Association took the confession into a closed
4 session. Closed sessions are not where previously un-privileged documents magically become
5 privileged and capable of being hidden from the community.

6 26. By precluding Plaintiff from executive sessions, the Association has essentially
7 removed Plaintiff as a director, who was elected by the community before the Martens
8 Confession and re-elected after she tried to publicize the confession (as discussed below) in
9 violation of A.R.S. § 10-3808 which states that elected directors may only be removed from
10 office by members of the Association, Bylaws or Articles of Incorporation.

11 27. Although the Association hoped that by pressuring Plaintiff she would not run for
12 re-election, Plaintiff won her bid for re-election proving that the community preferred
13 transparency over deception. By re-electing Plaintiff, the community told the Association loud
14 and clear that it wanted to know the truth and wanted Plaintiff to fully participate as a duly-
15 elected Board Member. Even though Plaintiff won the election, the Association still continues
16 to defy the community by precluding her from executive sessions on the ridiculous basis that she
17 violated the executive session privilege over nine months ago. Notwithstanding the fact that she
18 breached no such privilege by disseminating the Martens Confession and further
19 notwithstanding the fact that Plaintiff honored the Open Meeting laws by disseminating the
20 Martens Confession to the community as she was legally required to do, the Association still
21 continues to ban Plaintiff from executive sessions and painting Plaintiff as an untrustworthy
22 Board Member with no integrity all as part of their continued effort to sweep the Martens
23 Confession under the rug.

24 28. Recently, the Association told Plaintiff that there was only one way it would let
25 her participate and its method was taken directly from the playbook of a totalitarian government.
26 The Association told Plaintiff at a board training session, in the presence of various staff

1 members, that the only way she could participate in executive sessions, including the board
2 training session of all things, is if she signed a false confession, letter of apology,
3 acknowledgement that she was wrong to disseminate the Martens Confession, admission that the
4 Martens Confession is false, and a disavowal of the Martens Confession in writing. Essentially,
5 the Association will allow Plaintiff to participate in executive sessions if she lies to the
6 community and admits to defaming those individuals implicated in the Martens Confession.
7 When Plaintiff justifiably refused the Association's demands, the Association told Plaintiff in
8 front of the Board and staff to "leave".

9 29. As proven by the fact that the minutes of this meeting falsely stated that Plaintiff
10 was "absent" and deceptively made no reference to the Association's attempt to obtain (i.e.
11 bribe) Plaintiff for a (false) confession, the Association has now proven that it will humiliate
12 Plaintiff in front of Board members and staff by suggesting that she engaged in wrongdoing and
13 has proven that it will manipulate meeting minutes all to conceal the Martens Confession from
14 the community. Simply put, the Association will go to all lengths necessary to hide their own
15 wrongdoing even if it means humiliating Plaintiff and engaging in further wrongdoing to do so.
16 Their behavior knows no bounds.

17 30. Since Plaintiff justifiably refused to admit to any wrongdoing, the Association has
18 now just resorted to simply tormenting Plaintiff in an effort to force her resignation. It marks her
19 as "absent" during meetings, locks her out of meetings and refuses to allow her to participate in
20 executive sessions. The Association does not provide Plaintiff notices of executive sessions and
21 has repeatedly painted her as an untrustworthy outcast who "violates executive meeting
22 privilege" during the portions of meetings open to the community.

23 31. In sum, the Association has improperly precluded Plaintiff from participating in
24 executive sessions and has refused to give Plaintiff notice of executive sessions. It has violated
25 Arizona's Open Meeting laws by hiding information and by not circulating proper meeting
26 notices containing proper meeting agenda. The Association has defamed Plaintiff and placed her

1 in a false light by falsely telling the community that she violates executive meeting privilege and
2 is untrustworthy (simply because Plaintiff refuses to participate in the Association's cover up of
3 management's past wrongdoing). Furthermore, the Association continues to torment Plaintiff in
4 an apparent effort to force her to resign. Clearly, the Association has taken whatever action
5 necessary to avoid transparency of the Martens Confession. Based upon the Association's
6 improper conduct, Plaintiff is entitled to injunctive relief, damages and her attorneys' fees.

7 **COUNT ONE**

8 **(Declaratory/Injunctive Relief)**

9 32. Plaintiff repeats the allegations contained in paragraphs 1 through 31 of her
10 Verified Complaint as though fully set forth at length herein.

11 33. Plaintiff seeks declaratory relief pursuant to the Uniform Declaratory Judgment
12 Act, A.R.S. § 12-1831. The rights, status and legal relations of the parties that are affected by
13 this dispute are described herein.

14 34. As discussed above, the Association has wrongfully precluded Plaintiff from
15 executive sessions as is her right as a Board Member duly elected by members of the
16 community.

17 35. As discussed above, the Association lacks power to preclude Plaintiff from
18 executive sessions and, by doing so has removed Plaintiff as a Board Member in direct violation
19 of A.R.S. § 10-3808 and Bylaws Article 3 §15 because Plaintiff can only be removed by
20 members of the community. Although Plaintiff was re-elected by the community, the
21 Association prevents Plaintiff from participating in executive sessions and repeatedly defames
22 Plaintiff by telling the community that she violates executive session privilege and cannot be
23 trusted.

24 36. Moreover, the Association has violated A.R.S. § 33-1804 (i.e. the Open Meeting
25 law) by refusing to produce the Martens Confession to the community, by improperly discussing
26 the issue during a closed meeting instead of an open meeting as required under A.R.S. § 33-

1 1804, by failing to give proper notice of its meetings and by improperly discussing issues during
2 closed meetings that are required to be discussed openly. The Martens Confession is a public
3 document that would otherwise be subject to production pursuant to A.R.S. § 33-1805.

4 37. Based upon the foregoing, it is essential for the Court to compel the Association to
5 enter an order compelling the Association to: allow Plaintiff to participate in executive sessions;
6 admit that the Martens Confession should be discussed openly; discuss the Martens Confession
7 at an open meeting; give proper notice of meetings (such as providing proper notice to the
8 community; publicize the issues in the notice that will be discussed during the open and closed
9 portions of meetings; publicly retract its statements that Plaintiff is an untrustworthy Board
10 member who violates the executive session privilege; issue a written apology to the community
11 for undermining the democratic process by preventing Plaintiff from participating; and, comply
12 with the Association's governing documents and Arizona law.

13 38. The Association engaged in its behavior against Plaintiff with an evil mind in
14 order to harm Plaintiff and cover up the truth of the Martens Confession at all costs thereby
15 justifying an award of punitive damages to discourage like behavior in the future.

16 39. Pursuant to Rule 55(b)(1) of the *Arizona Rules of Civil Procedure*, in the event
17 that Judgment by default is rendered in Plaintiff's favor, Plaintiff seeks her reasonable attorneys'
18 fees in an amount not less than \$5,000.00 or as otherwise proven to the Court.

19 THEREFORE, Plaintiff requests an Order against the Association:

- 20 (a) Declaring that Plaintiff did not violate any executive meeting privilege or other
21 law by disseminating the Martens Confession at the September 5, 2013 meeting;
- 22 (b) Compelling the Association to allow Plaintiff to participate in all executive
23 meetings and to participate in all other Board functions;
- 24 (c) Compelling the Association to comply with the Open Meeting law by, among
25 other things, sharing the Martens Confession with the community and discussing
26 the contents therein as the Martens Confession and contents therein are not subject
to any privilege;
- (d) Compelling the Association to comply with the Open Meeting laws by giving

1 proper notice of meetings and specifying the agenda of the open portion of the
2 meeting and closed portion of the meeting;

- 3 (e) Compelling the Association to comply with the Open Meeting laws by discussing
4 all issues with the community that do not fall within any of the exceptions set
5 forth in A.R.S. § 33-1804(A)(1-5);
- 6 (f) Compelling the Association to publicly retract its statements that Plaintiff is an
7 untrustworthy Board member who violates the executive session privilege;
- 8 (g) Compelling the Association to issue a written apology to the community for
9 undermining the democratic process by preventing Plaintiff from participating;
- 10 (h) Compelling the Association to comply with the Association's governing
11 documents and Arizona law
- 12 (i) For Plaintiff's damages, including, but not limited to punitive damages;
- 13 (j) For Plaintiff's reasonable attorneys' fees and costs pursuant to the CC&Rs'
14 violation of A.R.S. § 10-3808 or other applicable law and/or A.R.S. §§ 12-341
15 and 12-341.01; and
- 16 (k) Such other and further relief as this Court may deem just and proper.

17 **COUNT TWO**

18 **(Breach of Contract)**

19 40. Plaintiff repeats the allegations contained in paragraphs 1 through 39 of her
20 Verified Complaint as though fully set forth at length herein.

21 41. The CC&Rs constitute a contract between Plaintiff and the Association.

22 42. Pursuant to the CC&Rs and other governing documents, Plaintiff was entitled to
23 run for a seat on the Board of Directors and become a Board Member if she garnered enough of
24 the community vote to do so.

25 43. Once Plaintiff was elected to the Board of Directors, the CC&Rs, governing
26 documents and Arizona law empowered Plaintiff to participate in all Board functions, meetings,
and executive sessions.

44. The Association substantially and materially breached the CC&Rs by wrongfully
precluding Plaintiff from participating in executive sessions.

1 45. The Association's breach of the CC&Rs is a significant and material breach of the
2 Association's duties to the members of the Association including to Plaintiff.

3 46. The Association's breach of its contractual obligations pursuant to the CC&Rs
4 (i.e. its contractual obligation to allow Plaintiff to participate in all aspects as a Board Member)
5 has caused Plaintiff to suffer damages in an amount to be proven at trial. Alternatively, the
6 Association's breach of that contractual obligation entitles Plaintiff to the remedy of specific
7 performance (i.e. compelling the Association to allow Plaintiff to participate in all aspects of
8 Board Membership) since damages may not redress the harm caused by the Association's breach
9 of the CC&Rs.

10 47. Pursuant to the CC&Rs and/or A.R.S. §§ 12-341 and 12-341.01, Plaintiff is
11 entitled to an award of her reasonable attorneys' fees and costs incurred herein.

12 48. The Association engaged in its behavior against Plaintiff with an evil mind in
13 order to harm Plaintiff, cover up the truth of the Martens Letter at all costs and pressure Plaintiff
14 to resign from the Board thereby justifying an award of punitive damages to discourage like
15 behavior in the future.

16 49. Pursuant to Rule 55(b)(1) of the *Arizona Rules of Civil Procedure*, in the event
17 that Judgment by default is rendered in Plaintiff's favor, Plaintiff seeks attorneys' fees in an
18 amount not less than \$5,000.00 or as otherwise proved to the Court.

19 THEREFORE, Plaintiff requests Judgment against the Association, as follows:

- 20 (a) For Plaintiff's compensatory, consequential, incidental and punitive damages in
21 an amount to be proven at trial or, alternatively, for specific performance;
- 22 (b) For an Order of this Court compelling the Association to allow Plaintiff to
23 participate as a Board Member in all aspects including, but not limited to,
24 allowing Plaintiff to participate in all executive sessions;
- 25 (c) For pre- and post-interest (if applicable) at the highest rate allowed by law;
- 26 (d) For attorneys' fees, costs and expenses, including attorneys' fees of not less than
 \$5,000.00 or as otherwise proven pursuant to Rule 55(b)(1) of *Arizona Rules of
Civil Procedure* in event of default in this action; and

1 (e) For such other and further relief as this Court deems just and proper under the
2 circumstances.

3 **COUNT THREE**

4 **(Defamation)**

5 50. Plaintiff repeats the allegations contained in paragraphs 1 through 49 of her
6 Verified Complaint as though fully set forth at length herein.

7 51. After Plaintiff disseminated the Martens Confession at the September 2013 open
8 meeting and was later precluded from participating in executive sessions, the Association made
9 false statements to the community that Plaintiff violated the executive session privilege and/or
10 that Plaintiff could not be trusted as a Board Member.

11 52. The statements made by the Association were intended to defame Plaintiff, lower
12 her esteem and reputation in the community as an honorable Board Member and pressure her
13 into resigning from the Board.

14 53. The defamatory statements made by the Association contain material falsehoods
15 that impugn Plaintiff's honesty, integrity, and reputation as a respected Board Member and were
16 made knowingly and/or with conscious disregard for the truth. Specifically, the Association
17 knew that Plaintiff did not violate any privilege by disseminating a confession that was already
18 made public by Ms. Martens. The Association's effort to silence Plaintiff was made strictly to
19 conceal the truth of the Martens Confession and sweep the issues contained therein under the rug
20 at the expense of Plaintiff's reputation and honesty as a forthcoming Board Member who honors
21 the Open Meeting laws instead of using them as a shield to hide wrongdoing.

22 54. As a direct and proximate result of the defamatory statements made by the
23 Association to certain members of the community, Plaintiff has sustained damages in an amount
24 to be proven at trial.

25 55. Should the defamatory statements made by the Association constitute defamation
26 per se based on the fact that the statements, on their face, falsely impeach Plaintiff's honesty,

1 integrity and reputation, Plaintiff necessarily need not prove actual damages to recover.

2 56. The Association made its statements to the community with an evil mind in order
3 to harm Plaintiff and cover up the truth of the Martens Confession at all costs thereby justifying
4 an award of punitive damages to discourage like behavior in the future.

5 57. Pursuant to Rule 55(b)(1) of the *Arizona Rules of Civil Procedure*, in the event
6 that Judgment by default is rendered in Plaintiff's favor, Plaintiff seeks attorneys' fees in an
7 amount not less than \$5,000.00 or as otherwise proved to the Court.

8 THEREFORE, Plaintiff requests Judgment against the Association as follows:

- 9 (a) For Plaintiff's compensatory, consequential, incidental and punitive damages in
10 an amount to be proven at trial;
- 11 (b) For pre- and post-Judgment interest at the highest rate allowed by law;
- 12 (c) For Plaintiff's reasonable attorneys' fees and costs incurred herein pursuant to the
13 CC&Rs, A.R.S. §§ 12-341 and 12-341.01 or other applicable Arizona law;
- 14 (d) Attorneys' fees, costs and expenses, including attorneys' fees of not less than
15 \$5,000.00 or as otherwise proven pursuant to Rule 55(b)(1) of the *Arizona Rules*
16 *of Civil Procedure* in the event of default in this action; and
- 17 (e) For such other and further relief as this Court deems just and proper under the
18 circumstances.

17 **COUNT FOUR**

18 **(False Light)**

19 58. Plaintiff repeats the allegations contained in paragraphs 1 through 57 of her
20 Verified Complaint as though fully set forth at length herein.

21 59. The defamatory statements made by the Association were falsehoods that
22 impugned Plaintiff's character and reputation.

23 60. The statements made by the Association that Plaintiff violated the executive
24 meeting privilege and/or was otherwise untrustworthy as a Board Member placed Plaintiff in a
25 false light highly offensive to a reasonable person.

26 61. In publishing the inflammatory and defamatory statements to the community, the

1 Association knew and acted in reckless disregard as to the falsity as to the statements made.

2 62. As a direct and proximate result of the Association's outrageous conduct in
3 publishing knowing false statements that Plaintiff violated executive meeting privilege and/or
4 was otherwise untrustworthy as a Board Member, Plaintiff has sustained damages in an amount
5 to be proven at trial.

6 63. The Association made its statements to the community with an evil mind in order
7 to harm Plaintiff, cover up the truth of the Martens Confession at all costs and pressure Plaintiff
8 to resign from the Board thereby justifying an award of punitive damages to discourage like
9 behavior in the future.

10 64. Pursuant to Rule 55(b)(1) of the *Arizona Rules of Civil Procedure*, in the event
11 that Judgment by default is rendered in Plaintiff's favor, Plaintiff seeks attorneys' fees in an
12 amount not less than \$5,000.00 or as otherwise proved to the Court.

13 THEREFORE, Plaintiff requests Judgment against the Association as follows:

- 14 (a) For Plaintiff's compensatory, consequential, incidental and punitive damages in
15 an amount to be proven at trial;
- 16 (b) For pre- and post-Judgment interest at the highest rate allowed by law;
- 17 (c) For Plaintiff's reasonable attorneys' fees and costs incurred herein pursuant to the
18 CC&Rs, A.R.S. §§ 12-341 and 12-341.01 or other applicable Arizona law;
- 19 (d) Attorneys' fees, costs and expenses, including attorneys' fees of not less than
20 \$5,000.00 or as otherwise proven pursuant to Rule 55(b)(1) of the *Arizona Rules*
21 *of Civil Procedure* in the event of default in this action; and
- 22 (e) For such other and further relief as this Court deems just and proper under the
23 circumstances.

24 **COUNT FIVE**

25 **(Punitive Damages)**

26 65. Plaintiff repeats the allegations contained in paragraphs 1 through 64 of her
Verified Complaint as though fully set forth at length herein.

66. As discussed above, the Association used its position of power to act in the best

1 interests of the other Board Members to conceal the Martens Confession at all costs and at
2 Plaintiff's expense. The Association stopped Plaintiff from disseminating the already public
3 Martens Confession at an open meeting and then wrongfully prohibited Plaintiff from
4 participating in executive sessions. Thereafter, the Association told community members at an
5 open meeting that Plaintiff violated executive meeting privileges and/or that she was otherwise
6 untrustworthy as a Board Member. The Association's actions were taken against Plaintiff
7 strictly in an effort to cover up the conspiracy confessed in the Martens Confession and were
8 committed to prevent disclosure of that conspiracy to the community at all costs and at
9 Plaintiff's expense.

10 67. By misusing its power and voice to conceal the truth at Plaintiff's expense and
11 improperly hide its own wrongdoing, the Association evidenced an evil mind appropriately
12 warranting punitive and exemplary damages for the intentional misconduct described above.

13 THEREFORE, Plaintiff requests Judgment against the Association for punitive damages
14 in an amount sufficient to punish the Association and ensure such conduct does not occur in the
15 future.

16 DATED this 8th day of July, 2014 .

17
18 **CHEIFETZ IANNITELLI MARCOLINI, P.C.**
Attorneys for Plaintiff

19
20 By: _____

21 Steven W. Cheifetz
22 Jacob A. Kubert
23
24
25
26

VERIFICATION

I have read the Verified Complaint above and declare in accordance with Rule 80(i) of the Arizona Rules of Civil Procedure and under the penalty of perjury that the allegations made therein are true and accurate to the best of my knowledge.



Dated: July __, 2014

COLETTE MCNALLY

N:\CLIENTS\McNally\Sun Lakes HOA 3172-4\Pleadings\Verified Complaint 07 7 14 v4.doc

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Exhibit A

TO THE RESIDENTS OF SUN LAKES COUNTRY CLUB:

The attached documents were prepared by one home owner, Steve Wolfer. They contain instructions to three newly elected HOA Board members: Colette McNally, Tom West and Ray Smith. The intent is very clear - to create a one sided board majority that will continue to take direction from Mr. Wolfer. The e-mail gives directions to Ms. McNally's attorney, not the HOA'S attorney (Charles Maxwell). These three directors and one home owner planned to meet with counsel, without the other board members or the GM present. Please study these documents carefully. Is this illegal – probably not, but it is unethical and unprofessional behavior for an elected official, at any level.

Item 1 - Notice how he even plans to tell the attorney what to do.

Item 2 - He talks of a past president's "illegal" actions but fears her "digging her heels in".

Item 3 - Don't leak the letter. Spring it at the Community Meeting. Where is the openness?

Item 4 - Their attorney should not talk to the HOA's attorney.

Item 5 - More mass e-mails. "Get a definite edge." Who should read the letter at the meeting. Then vote Michael in.

Item 9 - Very interesting. "where one of the **OPPOSITION** is late or doesn't show up make the motion to appoint Michael and take the vote"

Item 10 - This is how to vote!

Item 11 - Is this one of the hated "secret meetings"?

And, last but not leastremember... "you guys are not puppets"!

Who is the "real" behind the scenes toxin spreader?

HOME OWNERS....LISTEN UP.....PAY ATTENTION. This is not how a board represents **US**. If these directors continue to take direction from one home owner, why do we have elections? These three directors owe Bernadette Halpin and every homeowner an apology for their behavior and should publicly denounce any future professional involvement with this man, immediately.

This is what I would want from the attorney and the strategy that occurs to me:

1. Get a letter from the attorney that matches these requirements:
 - a. Written on the letterhead, with the signature of a named partner.
 - b. That makes it clear that the bylaws were studied.
 - c. That makes it clear that the arguments given for and against the proposition that the president or chair of a board meeting could vote on filling a vacancy were also studied.
 - d. That the letter is written in a neutral, professional tone, not adversarial, but strong.
 - e. That it is clear in stating that the president does NOT have the right to vote except to break a tie and that in any other case it is not a legal vote.
 - f. The letter should be fairly short so that it can read in full at the appropriate public meeting
2. I'd not spend any of the time with the attorney – to start with – talking about anything but the president-can't-vote issue to hold down the cost for Cindy, and to keep the letter focused on just one thing. You have to tell him about the history of Bernadette's illegal actions to control who is on the board, but it shouldn't take more than 5 to 10 minutes, and none of that should be in the letter (if it is, it forces Bernadette to dig her heels in, reject it and turn to Charles Maxwell).
3. The letter should not be leaked, or made available, or mentioned to anyone until the moment it is made public during the Community Meeting. Even that a lawyer has been consulted should be kept quiet. If it is leaked, then Bernadette will attempt to get an offsetting letter from Charles Maxwell and in addition, she will be prepared to argue instead of being caught off-guard.
4. The attorney should be told that under no circumstances is he to let any information get to Charles Maxwell before this letter is read by a board member at a meeting. Remember, all attorneys love to go to court – that is exciting and a big payday, he would like to let Maxwell know and to set up a court battle – it's what lawyers do.
5. It might be possible to settle this now with the following steps:
 - a. I'll send out a mass email that tells everyone about Bernadette voting illegally and I'll also talk about Larry Smith saying that he is going to talk to a lawyer to try to overturn the new cap on the dues – that will bring some people to the meeting!
 - b. Using the letter, having it be a surprise, at a public meeting, and the mass emailing should give a small but definite edge and that edge might be enough.
 - c. Start right off with a motion to get a vote on whether or not the presidential vote is legal except when it is to break a tie.
 - d. Read the letter during the discussion of that motion to rule out the presidential-vote-except-for-tie-breaking.
 - e. I think Ray should read it since Colette has been attacked too often and will draw too much flack from board and audience, and Tom appears to be a new target for attacks. There are those on the board who still think they can sweet-talk Ray onto their side.
 - f. And with success on that motion, go directly to a motion to accept Michael – that's the way to go... in my not so humble opinion.

- g. If Bernadette and Jean and Larry vote against the legal opinion, they put themselves in a worse place. And it justifies all of you from ever voting on any other applicant – Your position is clear that Michael is on the board now – any attempt to put another person on would be illegal and open up massive HOA liabilities. If you guys ever accept any applicant they put up, you have ensured a majority for Bernadette.
6. Court has risks and it takes years and lots of money gets spent and only the lawyers are guaranteed a good outcome. So, the lawyers might love it, but I'm not excited about that.
 7. Bernadette will schedule interviews and they should include Michael. Keep in close touch with each other, and with Clint to make sure there is no "accidental" failure to notify one of you about a scheduled exec session.
 8. Bernadette might schedule an executive session to vote on the appointment – this must either be changed to be an appropriately noticed open meeting. If you can't kill the closed meeting, then don't reveal your strategy, just be sure you show up and vote no on everything.
 9. If you ever find yourself at a meeting where one of the opposition is late or doesn't show up, make the motion to appoint Michael and take the vote.
 10. Again, if there is a motion at anytime to appoint anyone else, just vote no, and say that the president voted illegally and Michael is currently a legal board member and that must be so recognized. If it does go the court, then you don't want anyone else to have been appointed making this a moot point.
 11. If this strategy fails after the letter, then everyone needs to meet again and decide about pursuing it in the courts – that's a more complex question and one that involves more upfront costs. There are a number of different strategies that can be discussed in that area, but it's too soon now. Keep your fingers crossed that a letter turns things around.

Please let me know what you think I might have missed, or that doesn't appeal to you, or any better ideas. You guys will be doing the heavy lifting. It is all totally your decision. I'll never do anything but make suggestions, tell you what I think and then respect your decisions.

You guys are not puppets – you know that and I know that. And you can tell me at anytime to back off if you think my participation is generating more conflict than my efforts are help.

When Bernadette is removed from the presidency, I believe it will turn many things around. Much of the motivation to attack you guys will disappear and the nasty, behind the scenes toxin spreaders can be dealt with (but I don't think things will be all sweetness and light for a long time – just better).

Exhibit B

JeannieMartens@aol.com

8:17 PM (18 hours ago)

to rglazieraz, west_thomas, me, morrcin

Ray, Tom, Colette:

If you are not already aware, I resigned (under duress) from my position at Sun Lakes on Monday 7/29/13. Now that I am no longer employed at Sun Lakes, I am relieved that I may finally confess something to you that has weighed heavy on my conscious for the past two years.

Two years ago, in 2011 when Bernadette resigned from the Board and Jean Tolar became President, I was cleaning out board books as I usually do to prepare them for the next board meeting. I came across some questionable information in Ray Smith's board book. It caught my eye because I knew it wasn't something I had originally inserted in the board book. It was information written by Steve Wolfer instructing Ray Smith, Tom West, and Colette McNally what to say to an outside attorney (Steve Chiefetz), Steve Wolfer's suggestions how the attorney should write a letter, and how a board member (Ray Smith) should present the letter to the public at a community meeting regarding Bernadette's "illegal actions" (Steve Wolfer's opinion) to catch Bernadette off guard and try to ensure that Michael Hern was appointed to the Board. Cindi Morrcin was also involved in this scheme and was the person who was paying the attorney.

Due to the nature of the information, I felt that I should show it to General Manager Clint Warrell to make him aware of the situation as I thought it may be unethical of board members to be planning something like this, in secret, to do to another board member. Clint read it and said yes, it may be unethical but there really wasn't anything we could do about it.

However, the next day, Clint said he had given much thought to the situation and decided it was unethical of board members to do this and yes, we should think of something to do about this. Roberta Laird, Human Resources Manager was called over to Clint's office, told the situation, and the brainstorming began as to what we could do. Even though the plan was not mine, I am still guilty for being involved in it. The plan was for me to place the documents in an unmarked envelope and place them in Roberta's mailbox at the front office. She would then give them to Bill Hoyt and tell him she found them in her mailbox and that they were from an anonymous person. We felt this may be a good plan as Bill Hoyt was a friend of Roberta's at the time and trusted her. We assumed that Bill Hoyt would probably distribute this information out to the community, which he did. Clint agreed we should do this. I was really nervous about this whole thing and I voiced to Clint and Roberta that "I was very uncomfortable doing this". However, I placed the documents in Roberta's mailbox even though I felt that it wasn't the right thing to do. Roberta passed on the documents to Bill Hoyt as planned and you know the rest of the story.

I apologize profusely that I allowed myself to be involved in any part of this plan. In my opinion, it was unethical and unprofessional for us to do this, especially the General Manager and Human Resources Manager, the trusted upper management of the corporation and the community, to deliberately plan something that could initiate further distrust in the community and turn homeowners against each other and against board members; definitely not a good "lead by example" action by management. We should have done nothing and remained neutral. So no, Ray, your computer was not hacked into and now you know who was responsible for the information getting out to the community. I knew it was wrong but in fear of the possibility of losing my job, I kept quiet. Now that I am no longer employed at Sun Lakes, I feel obligated to tell the truth so I can clear my conscious once and for all and move on. What I learned from this experience is that I will never again allow myself to be involved in doing something that I know is not ethical. I know I am a better person than this and I really want to reclaim my integrity and dignity in being a trustworthy professional executive. If any of this is denied or anything said to the contrary, it will not be the truth. What I have just told you is 100 per cent the truth. I will miss my job at Sun Lakes and I am truly very sad that it had to end this way.

Jeannie Martens

Exhibit C

Jeffrey B. Corben
Chad M. Gallacher
Charles E. Maxwell
Brian W. Morgan*
Paul R. Neil**
W. William Nikolaus
Allen H. Quist
Mark W. Waldron

* Also admitted in Utah
** Also admitted in California

LAW OFFICES OF

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Representing Hundreds of Homeowner Associations Throughout Arizona

September 11, 2013

Colette McNally
9412 E. Lakeside Drive
Sun Lakes, AZ 85248

RE: Unauthorized Disclosure

Dear Ms. McNally:

As you may know, we are counsel for Sun Lakes Home Owners Association #1, Inc. ("Association"). The purpose of this letter is to address matters of serious concern that have come to our attention. On September 5, 2013, the Board of Directors passed, in Executive Session, a resolution disavowing approval of, or responsibility for, any email from you maligning Clint Warrell. You were present for the meeting and were the lone dissenting vote against the resolution. The Board then held the Open Meeting.

We are informed that during the Open Meeting, and ~~without prior notice or~~ Board approval to do so, you began reading aloud to the homeowners present, the contents of Jeannie Martens' email of August 4, 2013, in which she accused Mr. Warrell and Roberta Laird of misconduct. The Open Meeting was then closed, but you nevertheless continued to read Ms. Martens' email to the homeowners who remained to listen.

As you know, especially in light of the resolution that had been passed earlier that day in Executive Session, your conduct was inappropriate, to put it mildly. The Board previously considered Ms. Martens' accusations against Mr. Warrell and Ms. Laird, and decided against pursuing anything further as it relates to those individuals. Your emails regarding Mr. Warrell following and relating to Ms. Martens' email were the very matters the Board resolved would be disavowed. Hence, you knowingly violated the intent of the resolution.

Directors owe duties of confidentiality and loyalty to the Association. Sharing information that was provided by Ms. Martens to Directors, and that the Board evaluated and decided in Executive Session to pursue no further, violated your duties of confidentiality and loyalty. Moreover, such misconduct threatens to divide the Community and result in potential otherwise unnecessary litigation. You are free to disagree with Board decisions, but you are not free to openly disclose the nature or substance of information considered confidential to the Association. At no time are you permitted to share confidential information with others who are

September 11, 2013

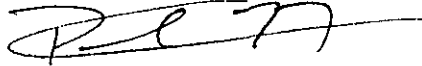
Page 2 of 2

not on the Board. Please cease and desist from any further misuse, or unauthorized disclosure, of information that is confidential to the Association. Moreover, if you have provided anyone outside of current directors of the Board with any information or correspondence of any kind that the Board has considered in Executive Session, please immediately identify for the Board the specific information or correspondence disclosed and all recipients of the same.

Finally, we are informed that as a result of your inappropriate disclosure on September 5, 2013, the Board met again in Executive Session to discuss excluding you from all future Executive Sessions. It will be our recommendation to the Board that for the foregoing reasons, until and unless you obtain a court order to the contrary, that you be screened from future executive meetings of the Board and from any meeting or communication to or from the Board concerning confidential or attorney-client protected information.

Feel free to contact me should you have questions.

Very truly yours,

A handwritten signature in black ink, appearing to read "P. Neil", with a long horizontal flourish extending to the right.

Paul R. Neil, Esq.

for

MAXWELL & MORGAN, P.C.

cc: Sun Lakes Home Owners Association #1, Inc.