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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. CV2014-009496

**STATEMENT OF MATERIAL FACTS
IN SUPPORT OF PLAINTIFF'S
MOTION FOR SUMMARY
JUDGMENT TO RESTORE HER
RIGHT TO PARTICIPATE IN
EXECUTIVE SESSIONS**

(Assigned to The Hon. James T. Blomo)

ORAL ARGUMENT REQUESTED

18 Pursuant to Rule 56 of the Arizona Rules of Civil Procedure, Plaintiff Colette McNally
19 submits this Statement of Material Facts in Support of her Motion for Summary Judgment to
20 restore her right to participate in executive sessions.

21 1. Plaintiff is a duly elected director on the Board of Directors for defendant Sun
22 Lakes Homeowners Association (the "Association"). See Declaration of Colette McNally
23 ("McNally Decl.") attached hereto as Exhibit A, ¶2.

24 2. In or about July 2013, Plaintiff received a publicly circulated e-mail from a former
25 employee of the Association's property management team where this person confessed to
26 participating in a conspiracy with other members of the Association and the Association's

1 management team of stealing another Board Member's board notes, circulating those notes
2 throughout the community and lying to this Board Member that his computer was hacked
3 resulting in this mass public disclosure. McNally Decl., ¶3.

4 3. Upon receiving this confession, Plaintiff gave it to the Association's president and
5 implored him to discuss the confession with the community at the next scheduled Board meeting
6 in August 2013. McNally Decl., ¶4.

7 4. After the Association failed to discuss the confession at the August 2013 Board
8 meeting, the Board met in an un-noticed executive session before the next September 2013
9 meeting and passed a resolution where they decided to take no action on the confession
10 (presumably because the confession implicated a majority of them). McNally Decl., ¶5.

11 5. When the Board president stopped public discussion of the confession during the
12 open portion of the meeting, Plaintiff began reading the confession to those community members
13 in attendance and the Board president abruptly ended the meeting altogether. McNally Decl.,
14 ¶6.

15 6. Since that September 2013 meeting when Plaintiff read the already publicized
16 confession to the community, the Association has prevented Plaintiff from participating in
17 executive sessions on the grounds that she violated executive meeting privilege when she read
18 the confession to the community. McNally Decl., ¶7.

19 7. Even though Plaintiff was re-elected to her directorship in March 2014 by the
20 community, the Association still precludes her from participating in executive sessions on the
21 grounds she allegedly violated executive meeting privilege in her last term. McNally Decl., ¶8.

22 8. The only way the Board will allow Plaintiff to participate in executive sessions is
23 if she signs a false confession and admits that the prior confession by the former employee was
24 false. McNally Decl., ¶9.

25 9. Plaintiff read the confession to the community because she believed that she had
26 an obligation pursuant to Arizona's Open Meeting Law (i.e. A.R.S. § 33-1804) to inform the

1 community of what this former employee of the Association's management team confessed to.
2 McNally Decl., ¶10.

3 10. She also believed that the Association was violating A.R.S. § 33-1804 by keeping
4 the confession secret because the confession did not fall within any of the exceptions of
5 documents that may be kept from disclosure pursuant to that statute. McNally Decl., ¶11.

6 11. On the other hand, the Association alleges that Plaintiff breached executive
7 session privilege by reading the confession after it had already decided to take no action on it.
8 McNally Decl., ¶12.

9 12. By precluding Plaintiff from executive sessions, the Association has ostensibly
10 removed Plaintiff as a Board Member because she is no longer able to adequately represent the
11 interests of her constituents, including those that re-elected her to the Board in March 2014.
12 McNally Decl., ¶13.

13 13. Section 6.15 of the CC&Rs titled "Boards Power to Adopt/Enforce Rules" does
14 not give the Board of Directors power to suspend Plaintiff's directorship privileges. McNally
15 Decl., ¶14, Exhibit 1, CC&Rs.

16 14. Section C of the Association's Policies and Rules Information Manual, which is
17 titled "Boards Authority" further does not give the Board of Directors the power to arbitrarily
18 suspend Plaintiff's directorship privileges for an indeterminate period of time. McNally Decl.,
19 ¶15, Exhibit 2, Policies and Rules Information Manual.

20 15. The only provision contained in any of the Association's governing documents
21 that gave the Association power to remove members of the Association's Board of Directors was
22 former Article III, Section 15 of the Bylaws. McNally Decl., ¶16, Exhibit 3, Bylaws, Article III,
23 Section 15 (in effect prior to February 21, 2011) and community statement supporting deletion
24 of same.

25 16. Former Article III, Section 15, which the Association has relied on to remove
26 Plaintiff, was deleted by a community vote in February 2011 - - over two years before the

1 Association removed Plaintiff. McNally Decl., ¶17, Exhibit 4, Bylaws, Article III, Section 15
2 (Including Amendments Through 2/21/11).

3 17. In its Response to Non-Uniform Interrogatory No. 2, the Association admits that it
4 relied on former Article III, Section 15 of the Bylaws as authority provided by the Association's
5 governing documents to remove Plaintiff as a member of the Board of Directors. A true copy of
6 the Association's Response to Non-Uniform Interrogatories is attached hereto as Exhibit B.

7 18. The Association did not call a special meeting and did not allow the members who
8 voted Plaintiff into office in the first place an opportunity to vote her off the Board of Directors.
9 McNally Decl., ¶18.

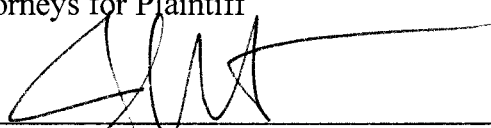
10 19. Instead, the Association held an un-noticed meeting and determined for itself to
11 preclude Plaintiff from participating in executive sessions, which is tantamount to removing her
12 as a director. McNally Decl., ¶19.

13 20. Since September 2013, the Association has portrayed Plaintiff as an untrustworthy
14 Board Member and has essentially removed her as a Director by forcing her to miss important
15 issues discussed during executive sessions. McNally Decl., ¶20.

16 21. The Association's removal of Plaintiff as a member of the Board of Directors for
17 an arbitrary length of time has severely compromised her ability to adequately represent the
18 interests of those members who voted her onto the Board. McNally Decl., ¶21.

19 **DATED** this 12th day of December, 2014.

20 **CHEIFETZ IANNITELLI MARCOLINI, P.C.**
21 Attorneys for Plaintiff

22 By: 
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24 Jacob A. Kubert
25
26

1 **ORIGINAL** of the foregoing
e-filed this 12th day of December,
2 2014, with:

3 Clerk
4 **MARICOPA COUNTY SUPERIOR COURT**
201 West Jefferson
5 Phoenix, Arizona 85003

6 **COPY** of the foregoing e-delivered
7 this 12th day of December 2014, to:

8 The Honorable James T. Blomo
9 **MARICOPA COUNTY SUPERIOR COURT**
201 West Jefferson Street
10 Phoenix, Arizona 85003

11 **COPY** of the foregoing mailed
12 this 12th day of December, 2014, to:

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