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

16 COLETTE MCNALLY, an individual,)
17)
18 Plaintiff,)
19)
20 vs.)
21)
22 SUN LAKES HOMEOWNERS ASSOCIATION #1,)
23 INC, an Arizona non-profit corporation,)
24)
25 Defendant.)

Case No. CV2014-009496
**DEFENDANT’S RESPONSE TO
PLAINTIFF’S STATEMENT OF
MATERIAL FACTS IN SUPPORT OF
PLAINTIFF’S MOTION FOR
SUMMARY JUDGMENT TO RESTORE
HER RIGHT TO PARTICIPATE IN
EXECUTIVE SESSIONS**

-AND-

**DEFENDANT’S CONTROVERTING
STATEMENT OF FACTS IN SUPPORT
OF DEFENDANT’S OPPOSITION TO
PLAINTIFF’S MOTION FOR
SUMMARY JUDGMENT**

(Assigned to the Honorable
James Blomo)

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27 Defendant Sun Lakes Homeowners Association #1, Inc. (“the Association”) submits
28 the following Response to Plaintiff’s Statement of Material Facts in Support of Plaintiff’s
Motion for Summary Judgment to Restore Her Right to Participate in Executive Sessions and
Controverting Statement of Facts in Support of Defendant’s Opposition to Plaintiff’s Motion
for Summary Judgment (“DSOF”) pursuant to Rule 56(c), Ariz. R. Civ. P.

DEFENDANT’S RESPONSE TO PLAINTIFF’S STATEMENT OF FACTS

1. Admit.

1 2. Deny. On August 4, 2013, Plaintiff received an e-mail from Jeannie Martens,
2 a former employee of the Association, in which Ms. Martens accused two of her former
3 colleagues of misconduct (“the Martens e-mail”). The Martens e-mail contains allegations
4 which, if proven false, are defamatory. The persons named in the Martens e-mail expressly
5 deny the truth of the allegations, and no member of the Association’s Board of Directors,
6 including Plaintiff, has any first-hand knowledge of the matters alleged in the e-mail. *See*
7 *infra* DSOF 34, 37, and 55.

8 3. Deny. On August 5, 2013, Plaintiff forwarded the Martens e-mail to Rick
9 Schwartz, President of the Association’s Board of Directors, along with an e-mail authored
10 by Plaintiff that contained further accusations against the Association’s employees and
11 demanded that those employees resign or be dismissed. Plaintiff threatened to publish the
12 e-mail by circulating it to the community if the President refused to discuss the e-mail at an
13 open meeting of the Board of Directors. Plaintiff also threatened legal action if the President
14 refused to discuss the e-mail at an open meeting of the Board of Directors. The President
15 sought the advice of the Association’s general counsel. *See infra* DSOF 35, 59, 40, and 41.

16 4. Deny. The President of the Association’s Board of Directors refused to allow
17 the Martens e-mail to be discussed at any open meeting of the Association’s Board of
18 Directors because its contents were defamatory if false. In order to mitigate any potential
19 liability to the Association arising out of the Martens e-mail and Plaintiff’s circulation of its
20 contents, the Board of Directors adopted a resolution disavowing any approval of or
21 responsibility for the Martens e-mail and any of Plaintiff’s e-mails further maligning the
22 Association’s employees. *See infra* DSOF 42.

23 5. Deny. A member of the Association attempted to address the matters discussed
24 in the Martens e-mail during an open meeting of the Board of Directors held September 4,
25 2013. Consistent with the Board’s earlier resolution, the President refused to allow
26 discussion of those matters during the meeting. After the President refused to allow
27 discussion of the Martens e-mail, Plaintiff began reading the Martens e-mail out loud to the
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1 people in attendance at the meeting. The President exercised his authority to adjourn the
2 meeting when Plaintiff refused to cease and desist from this conduct. *See infra* DSOF 43,
3 44, 45, and 46.

4 6. Deny. The Board of Directors has screened Plaintiff from participating in
5 executive sessions of the Board of Directors because she refuses to uphold her duty as a
6 Director to maintain as confidential information that is discussed during executive sessions,
7 unless she personally agrees that the information should not be disclosed. Plaintiff has a
8 history of violating her duties to the Association in this manner and of subjecting the
9 Association to liability in the process. In addition to reading the Martens e-mail during the
10 open session of the September 4, 2013 Board of Directors meeting, since she first began
11 serving on the Board of Directors in 2009, Plaintiff has been removed from the Board for
12 disclosing confidential financial information of the Association (after which she promptly
13 ran again and was re-elected); Plaintiff has revealed confidential information concerning a
14 former Association employee that subjected the Association to a claim for damages from that
15 employee; and Plaintiff has been removed from her position as Secretary of the Board of
16 Directors for conduct violating A.R.S. § 10-3830. *See infra* DSOF 39, 30, 31, and 58.

17 7. Deny. The Board of Directors has screened Plaintiff from participating in
18 executive sessions of the Board of Directors because she refuses to uphold her duty as a
19 Director to maintain as confidential information that is discussed during executive sessions
20 of the Board of Directors, unless she personally agrees that the information should not be
21 disclosed. *See infra* DSOF 58.

22 8. Deny. The Board of Directors has offered Plaintiff the opportunity to
23 participate in executive sessions of the Board of Directors if she agrees to uphold her duty
24 as a Director to maintain as confidential information that is discussed during executive
25 sessions. Plaintiff has refused and continues to refuse. Plaintiff believes that she has a right
26 to publicly air information that she determines, in her sole and unfettered discretion, is not
27 properly the subject of an executive session. *See infra* DSOF 56 and 57.
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1 9. Deny. In reading the Martens e-mail during the open session of the September
2 4, 2013 Board of Directors meeting, Plaintiff was simply carrying out her threat to publicly
3 circulate the Martens e-mail if the President refused to authorize the Association to disclose
4 it during an open meeting of the Board of Directors. Plaintiff knew when she disclosed the
5 Martens e-mail during the open session that the Association’s general counsel had advised
6 the Association against further publication of the Martens e-mail, and that in an attempt to
7 protect the Association against potential liability the Board of Directors had adopted a
8 resolution disavowing any approval of or responsibility for the Martens e-mail and any of
9 Plaintiff’s e-mails maligning the Association’s employees. Plaintiff had been informed that
10 further publication of the Martens e-mail could subject the Association to claims for
11 defamation. *See infra* DSOF 38, 39, and 42.

12 10. Deny. *See* paragraph 9 above. Plaintiff was well aware of the basis for
13 discussing the Martens e-mail in executive session under A.R.S. § 33-1804. She was aware
14 that the Association’s general counsel had advised the Association against further publication
15 of the Martens e-mail, and she was aware of the Board’s resolution disavowing approval of
16 or responsibility for the e-mail. She disagreed with the advice of the Association’s general
17 counsel and disagreed with the consensus reached by a majority of her fellow Board
18 members concerning the matter. She claims to have independently sought the advice of no
19 fewer than four lawyers before taking it upon herself to disclose the e-mail during an open
20 meeting of the Board of Directors, thereby subjecting the Association to liability for its
21 publication. *See infra* DSOF 38, 39, 42, and 48.

22 11. Deny. *See* paragraphs 6-10 above.

23 12. Deny. By screening Plaintiff from executive sessions, the Association has
24 enabled Plaintiff to continue her service as a Board member without exposing the
25 Association to liability arising out of Plaintiff’s inappropriate handling of confidential and
26 sensitive Association business. Plaintiff herself has described access to executive sessions
27 as “a minor issue” and has expressed her opinion that being excluded from executive sessions
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1 actually makes her a more effective Board Member because it forces her to raise issues of
2 importance in open meetings and gives her a public forum for showing the rest of the
3 Directors the “error of their ways.” *See infra* DSOF 65-67.

4 13. Admit.

5 14. Admit.

6 15. Deny. Former Article III, Section 15 of the Association’s Bylaws authorized
7 the Board of Directors to remove a Director for cause upon an affirmative vote of two-thirds
8 of the members of the Board of Directors. Plaintiff was in fact removed from the Board of
9 Directors pursuant to this provision in 2010. *See infra* DSOF 29. Article III, Section 15(a)
10 authorizes the removal of a Director for cause by a recall vote initiated by 10% of the voting
11 members of the Association. However, neither of these provisions has any relevance to
12 screening Plaintiff’s access to confidential and sensitive information of the Association.

13 16. Deny. Neither the Association, nor the Association’s Board of Directors, has
14 removed Plaintiff as a Director. Plaintiff continues to serve as a member of the Board of
15 Directors. The Board of Directors has screened Plaintiff from participating in executive
16 sessions of the Board of Directors because she refuses to uphold her duty as a Director to
17 maintain as confidential information that is discussed during executive sessions of the Board
18 of Directors, unless she personally agrees that the information should not be disclosed. *See*
19 paragraph 6 above. Former Article III, Section 15 of the Association’s Bylaws authorized
20 the Board of Directors to remove a Director for cause upon an affirmative vote of two-thirds
21 of the members of the Board of Directors. Plaintiff was in fact removed as a Director
22 pursuant to former Article III, Section 15 of the Association’s Bylaws in 2010, before that
23 provision was deleted. The Association has not relied on that provision to screen Plaintiff
24 from executive sessions. *See infra* DSOF 29, 58, and 66.

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1 17. Deny. Plaintiff's Non-Uniform Interrogatory No. 2 does not ask the
2 Association to "admit" that the Board of Directors relied on former Article III, Section 15
3 of the Association's Bylaws to screen Plaintiff from executive sessions, and indeed the Board
4 of Directors did not rely on that provision. *See* paragraphs 15 and 16 above.

5 18. Admit.

6 19. Deny. The Board of Directors discussed the matter in an executive meeting
7 prior to its regular meeting on September 4, 2013. Plaintiff was informed at this meeting that
8 further publication of the Martens e-mail could subject the Association to claims for
9 defamation. She was aware that the Association's general counsel had advised the
10 Association against further publication of the Martens e-mail, and she was aware of the
11 Board's resolution disavowing approval of or responsibility for the e-mail. She disagreed
12 with the advice of the Association's general counsel and she disagreed with the consensus
13 reached by a majority of her fellow Board members concerning the matter. Moreover,
14 Plaintiff had been warned and repeatedly disciplined for divulging confidential and
15 privileged information of the Association. Plaintiff was aware that she could be screened
16 from access to such information if she persisted. Plaintiff claims to have independently
17 sought the advice of no fewer than four lawyers before taking it upon herself to read the
18 Martens e-mail from the dais during an open meeting of the Board of Directors, thereby
19 subjecting the Association to liability for its publication. Far from considering the screening
20 tantamount to removal, Plaintiff has described her screening from executive sessions as "a
21 minor issue" and has expressed her opinion that being excluded from executive sessions
22 actually makes her a more effective Board Member because it forces her to raise issues of
23 importance in open meetings and gives her a public forum for showing the rest of the
24 Directors the "error of their ways." *See infra* DSOF 38, 39, 42, 48, and 66.

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1 23. The Association is managed and controlled by a seven-member Board of
2 Directors elected by the residents of Sun Lakes at an annual meeting. (*See* Restated Bylaws
3 of Sun Lakes Homeowners Association #1, Inc., Bates Nos. HOA 179-198, attached hereto
4 as Exhibit C, at Article III, Sec. 1 & 9.)

5 24. The Association’s Bylaws authorize the Board of Directors “[t]o exercise all
6 financial, legal, and other powers of the Board as are stated in these Bylaws, the Articles of
7 Incorporation, and any other powers granted under the laws of the State of Arizona.” (*Id.* at
8 Article III, Sec. 16.)

9 25. The President of the Board of Directors serves as the Chief Executive Officer
10 of the Association. (*Id.* at Article IV, Sec. 5(a)(1).)

11 26. The President’s duties include directing the Association according to the
12 policies established by the Board of Directors, the Bylaws, and state law; presiding at
13 meetings; and exercising any and all other powers necessary or incidental to the office. (*Id.*
14 at Sec. 5(a)(1)-(6).)

15 27. The Association employs various administrative personnel to carry out its day-
16 to-day operations, including a General Manager and staff. The General Manager reports to
17 the President of the Board of Directors. The Association also employs many dozens of other
18 people in positions that include golf course operations, restaurant operations, and
19 maintenance. (*See* Declaration of Richard Schwartz, 1/26/15, attached hereto as Exhibit D,
20 at ¶ 2.)

21 28. Plaintiff Colette McNally first began serving on the Association’s Board of
22 Directors in 2009, when she was appointed to fill a vacancy on the Board. At the conclusion
23 of her appointed term, Plaintiff ran for election to the Board of Directors but was not elected.
24 (*See* Exhibit A at p. 14, ll. 7-12.)

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1 29. In 2010, Plaintiff was again appointed to fill a vacancy on the Association's
2 Board of Directors. However, Plaintiff was removed for cause before the end of her
3 appointed term, after she disclosed confidential financial information of the Association to
4 non-Board members. The Association incurred substantial attorneys' fees and costs
5 associated with removing Plaintiff from the Board of Directors. (*Id.* at p. 22, l. 13 - p. 24, l.
6 11; Exhibit D at ¶ 5.)

7 30. After Plaintiff's removal, a former employee of the Association asserted a
8 claim against the Association arising out of Plaintiff's breach of a confidentiality agreement
9 between the Association and the former employee. The Association resolved the claim by
10 paying the former employee a sum of money to settle the claim. The Association also
11 incurred substantial attorneys' fees and costs in defending the former employee's claim. (*See*
12 Exhibit D at ¶ 6.)

13 31. Plaintiff ran for election in 2011 and was elected to the Board of Directors.
14 The Board selected Plaintiff to serve as Secretary of the Board upon her election. After
15 serving less than one year, Plaintiff was removed from her position as Secretary for cause.
16 Plaintiff continued serving on the Board of Directors after being removed from her position
17 as Secretary of the Board. (*See* Exhibit A at p. 22, l. 13 - p. 24, l. 11; Exhibit D at ¶ 7.)

18 32. Plaintiff's first elected term ended in 2013, after which she was elected to a
19 second term. (*See* Exhibit A at p. 79, l. 2 - p. 80, l. 14.)

20 33. Plaintiff's second term will end in 2016. The Association's Bylaws prohibit
21 Plaintiff from serving another term. (*See* Exhibit C at Article III, Sec. 2.)

22 34. On August 4, 2013, Plaintiff received an e-mail from Jeannie Martens, a former
23 employee of the Association, in which Ms. Martens accused two of her former colleagues
24 of misconduct ("the Martens e-mail"). (*See* Exhibit A at p. 28, ll. 10-23 & Exh. 5.)

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1 35. On August 5, 2013, Plaintiff forwarded the Martens e-mail to Rick Schwartz,
2 President of the Association’s Board of Directors, along with an e-mail authored by Plaintiff
3 that contained further accusations against the Association’s employees and demanded that
4 those employees resign or be dismissed. Plaintiff demanded a meeting of the Board of
5 Directors. (*Id.*; Exhibit D at ¶¶ 8-9.)

6 36. The President forwarded Plaintiff’s August 5, 2013 e-mail to the rest of the
7 Board of Directors and asked for their input on how to handle the situation. The President
8 also called the Association’s general counsel, Mr. Charles Maxwell, and sought legal advice
9 concerning the handling of the Martens e-mail. (*See* Exhibit D at ¶¶ 10-11.)

10 37. The employees named in the Martens e-mail denied the truth of Ms. Martens’
11 allegations. (*Id.* at ¶ 12.)

12 38. The Board of Directors – including Plaintiff – met in a special executive
13 session on August 14, 2013. The President reported to the Board that he had discussed the
14 Martens e-mail with the Association’s general counsel. The President reported that the
15 employees named in the Martens e-mail denied the allegations of the e-mail. The President
16 advised the Board that the Association should not act on the e-mail because doing so could
17 expose the Association to liability for defamation. (*Id.* at ¶ 13.)

18 39. Plaintiff was the only Director who disagreed with the President’s handling of
19 the Martens e-mail. Plaintiff argued that the contents of the Martens e-mail should be
20 disclosed to the Association’s members and discussed by the Board of Directors in an open
21 meeting. Plaintiff warned the President that she would disclose the contents of the e-mail to
22 the community and gave the President and the rest of the Board until the next regularly-
23 scheduled meeting of the Board of Directors to deal with the e-mail in a manner that Plaintiff
24 felt was appropriate. (*Id.* at ¶ 14; Exhibit A at p. 40, l. 12 - p. 41, l. 17, p. 54, l. 3 - p. 55, l.
25 18 & Exh. 7 at Bates Nos. HOA 56-59.)

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1 40. The President advised Plaintiff that she could be screened from future
2 executive sessions if she chose to divulge information discussed during an executive session.
3 In response, Plaintiff threatened legal action. (*See* Exhibit D at ¶ 14.)

4 41. Following the August 14, 2013 executive session, the President sought further
5 advice from the Association’s general counsel. (*Id.* at ¶ 14.)

6 42. On September 4, 2013, the Board of Directors – including Plaintiff – met in
7 executive session prior to the Board’s regularly-scheduled meeting to again discuss the
8 Martens e-mail. The President informed the Board that he would not allow the Martens e-
9 mail to be discussed in any open meeting of the Association’s Board of Directors because
10 its contents were defamatory if false. In order to mitigate any potential liability to the
11 Association arising out of the circulation of the Martens e-mail to the Board of Directors,
12 the Board adopted a resolution disavowing any approval of or responsibility for the Martens
13 e-mail and any of Plaintiff’s e-mails further maligning the Association’s employees. Plaintiff
14 was the only member of the Board who did not approve the resolution. Plaintiff made it clear
15 that she did not approve of the President’s handling of the Martens e-mail and demanded his
16 resignation. (*Id.* at ¶ 15.)

17 43. Following the executive session on September 4, 2013, the Board of Directors
18 convened in open session. During the open session, a member of the Association attempted
19 to address the matters discussed in the Martens e-mail. Consistent with the Board’s earlier
20 resolution, the President refused to allow discussion of those matters during the Board of
21 Directors meeting. (*Id.* at ¶ 16.)

22 44. After the President refused to allow discussion of the Martens e-mail, Plaintiff
23 began reading the e-mail out loud to the members in attendance at the Board of Directors
24 meeting. (*See* PSOF 5; Exhibit D at ¶ 16.)

25 45. Because Plaintiff was out of order and refused to stop reading the Martens e-
26 mail, the President adjourned the meeting, and all Directors except Plaintiff left. (*See* Exhibit
27 D at ¶ 16.)
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1 46. Plaintiff continued to read the Martens e-mail after the meeting adjourned.
2 (*Id.*)

3 47. Plaintiff agrees that if the Martens e-mail was false, her conduct was a problem
4 for her and for the Association. (*See* Exhibit A at p. 52, l. 23 - p. 53, l. 21.)

5 48. Plaintiff claims to have sought the advice of four “HOA lawyers” before
6 deciding to take it upon herself to publicize the Martens e-mail during the Board of Directors
7 meeting. (*See* Exhibit A at p. 43, ll. 10-13.)

8 49. The Association employees identified in the Martens e-mail complained to the
9 President that Plaintiff’s conduct was creating a hostile work environment for them. (*See*
10 Exhibit D at ¶ 17.)

11 50. The Association employees identified in the Martens e-mail sought the advice
12 of separate counsel, who sent a letter to Plaintiff demanding that she stop defaming the
13 Association’s employees. (*See* Exhibit A at p. 45, ll. 14-24; Exhibit D at ¶ 17.)

14 51. Plaintiff has no first-hand knowledge that any of the allegations of the Martens
15 e-mail involving the Association’s employees are true. However, based on her own
16 assessment of the “evidence,” she believes the allegations to be true. (*See* Exhibit A at p. 49,
17 l. 1 - p. 52, l. 3.)

18 52. On September 11, 2013, the Association’s general counsel sent Plaintiff a letter
19 informing Plaintiff that her conduct during the open portion of the September 4, 2103 Board
20 of Directors meeting violated her duties of confidentiality and loyalty to the Association, and
21 informing Plaintiff of his recommendation that the Association screen Plaintiff from future
22 executive sessions. (*Id.* at p. 64, ll. 5-18 & Exh. 8.)

23 53. Plaintiff responded to the letter in writing, insisting that her conduct was
24 completely appropriate and consistent with her obligations as a Board member:

25 My action was to defend our legitimate right to a fair and open
26 discussion as the First Amendment provides for, and which
27 guides the AZ Statute 33-1804 and our governing documents, as
28 to what can be kept secret. This issue is not one that can be
discussed in Executive Session It was not dealt with
appropriately. I was fulfilling my duty as an elected board

1 member who is bound by law to deal with issues of community
2 concern in an open and forthright manner, and not to shroud in
3 secrecy that which violates the open meetings laws.

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5 Loyalty is not without principals [sic], and sometimes needs a
6 stick. If I perceive that the Board is acting in bad faith, or is
7 being advised badly in how to handle the situation, and I can do
8 anything to help them make redress, I am bound to do so,
9 otherwise I have the appearance of lacking in the courage of my
10 convictions My loyalty to the Board lies in assisting,
11 pushing or dragging, whatever you like to call it, towards a
12 proper treatment of the issues as I interpret them to the best of
13 my ability.

14 (See Exhibit A at p. 64, l. 20 - p. 65, l. 4 & Exh. 9 at Bates Nos. HOA 7-8.)

15 54. After receiving Plaintiff's response, the Board of Directors accepted the
16 recommendation of the Association's counsel that Plaintiff should be screened from future
17 executive sessions for the remainder of her term, which ended in February 2014. (See
18 Exhibit D at ¶ 20.)

19 55. The Association incurred substantial attorneys' fees and costs in addressing
20 Plaintiff's conduct during the September 4, 2013 Board of Directors meeting. (*Id.* at ¶ 22.)

21 56. After Plaintiff was elected to a second term in 2014, the Board of Directors,
22 through counsel, offered to allow Plaintiff to participate in executive sessions if she would
23 agree to maintain as confidential all information discussed in executive session. Plaintiff
24 refused. (*Id.* at ¶ 21.)

25 57. Plaintiff continues to refuse to maintain as confidential all information
26 discussed in executive session, unless she personally agrees that the information should be
27 kept confidential:

28 **Q.** So if I understand what you're telling me, your answer is
that, no, you will not agree to keep the contents of an
executive session confidential?

A. I will not agree to do what is wrong. Okay. So if they
are discussing something that should be discussed in an
open meeting, it should be discussed in an open meeting.
I have learned now what to do, which is to say time out.
Let's consider this. But, I mean, I have gotten my
education bit by bit. I wasn't born knowing everything

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that has to be done on a board. I've been studying year after year, taking two courses a year, to make sure that I make the right decision.

Q. And if, in your opinion, the right decision is that what's being discussed in executive session should not be discussed in executive session but should be discussed in an open session of the board --

A. I will bring it to their attention.

Q. In the open session?

A. Not necessarily. I would bring it right there and then, if I were allowed to be in the executive session.

Q. And if they persisted with their wrong – in your opinion, their wrong headed view of it –

A. If it's doing harm to anybody in the community, I would have to bring it out in the open.

(See Exhibit A at p. 85, l. 1 - 86, l. 2.)

58. The Board of Directors has screened Plaintiff from participating in executive sessions because she refuses to maintain as confidential the information that the Board discusses in executive sessions, unless she personally agrees that the information should be kept confidential. (*Id.*; Exhibit D at ¶ 23.)

59. The Association has a legal right under its governing documents and Arizona law to protect against the unauthorized disclosure of certain Association information. (*See* Expert Affidavit of Scott B. Carpenter (“Carpenter Affidavit”), 1/28/15, attached hereto as Exhibit E, at p. 4.)

60. The Martens e-mail, which consisted of unsubstantiated allegations of misconduct by a former employee of the Association against two current employees of the Association, was within the scope of matters that may be withheld from disclosure under A.R.S. § 33-1805(B)(5). (*Id.*)

61. As a Director of the Association, Plaintiff owes certain fiduciary duties to the Association. (*Id.* at pp. 2-3.)

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1 62. Plaintiff's public disclosure of the Martens e-mail during an open session of
2 the Association's Board of Directors was improper under Arizona law and breached her
3 fiduciary duty to the Association. (*Id.* at p. 3.)

4 63. Plaintiff's public disclosure of the Martens e-mail during an open session of
5 the Association's Board of Directors violated the provisions of A.R.S. 33-1805(B). (*Id.* at
6 pp. 4-5.)

7 64. The author of the e-mail, former employee Jeannie Martens, did not intend for
8 Plaintiff to disclose the e-mail outside of executive session and believed that the
9 communication was protected under A.R.S. § 33-1805. (*See* E-mail exchange between
10 Plaintiff's counsel, Mr. Steve Cheifetz, and Jeannie Martens, produced with Plaintiff's Initial
11 Disclosure Statement at Bates No. PL39, attached hereto as Exhibit F.)

12 65. The Association's President and Board of Directors are empowered and
13 obligated to take such steps as are necessary to protect the confidential and sensitive business
14 of the Association against unauthorized disclosure. (*See* Exhibit E at pp. 4-5.)

15 66. Plaintiff has a history of disclosing confidential and sensitive business of the
16 Association in disregard of her duties as a Director of the Association. Plaintiff refuses to
17 recognize her duty not to disclose such matters, unless she personally agrees that the matters
18 should be kept confidential. Under these circumstances, the decision to screen Plaintiff's
19 access to confidential and sensitive business matters of the Association is reasonable. (*Id.*)

20 67. Plaintiff continues to serve as a Director of the Association but is restricted
21 from access to the confidential and sensitive business matters of the Association that is
22 discussed during executive sessions of the Board of Directors. Plaintiff has characterized this
23 restriction as "minor," and as enabling her to be a more effective Board member. (*See*
24 Exhibit A at p. 24, ll. 5-11, p. 70, l. 16 - p. 71, l. 2 & Exh. 11.)

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