

EXHIBIT A

<p style="text-align: right;">Page 5</p> <p>1 DEPOSITION OF COLETTE MCNALLY 2 January 15, 2015 3 4 COLETTE MCNALLY, 5 having been first duly sworn, testified as follows: 6 7 EXAMINATION 8 BY MS. WINKLER: 9 Q. Good afternoon. 10 A. Good afternoon. 11 Q. Will you please state your name for the record. 12 A. My name is Colette McNally. 13 Q. Ms. McNally, have you ever had your deposition 14 taken before? 15 A. No. 16 Q. Okay. I want to go through with you just some 17 basic ground rules. As you can see, we have a court 18 reporter here. Her job is to take down every word that is 19 said in this room; and so we need to do some things to 20 make that job a little bit easier to make sure we get a 21 good, clear transcript; and one thing we need to do is to 22 make sure that only one of us speaks at a time. 23 Do you understand that? 24 A. Uh-huh. 25 Q. Okay. And we need to make sure that your</p>	<p style="text-align: right;">Page 7</p> <p>1 publicly or outside the confines of this litigation, and 2 that's pending a formal protective order that we'll ask 3 the court to put in place. 4 Do you agree to that? 5 MR. KUBERT: Agreed. 6 MS. WINKLER: Okay. So we're going to take just 7 a short break, and I'll give you the confidential material 8 and then we'll come back on the record. Try to keep this 9 in the order that I'm intending to go. 10 MR. KUBERT: I will. 11 MS. WINKLER: Good luck to us on that, but we'll 12 see how we do. If I hand you anything that's highlighted 13 and has my initials on it, you have to give it back to me. 14 MR. KUBERT: Okay. 15 (Recess taken from 1:06 to 2:07 p.m.) 16 BY MS. WINKLER: 17 Q. All right. We are back on the record. 18 Ms. McNally, before we go any further, I want 19 to ask you. You heard the stipulation that your counsel 20 and I put on the record, correct? 21 A. I don't remember right now what -- 22 Q. The stipulation -- 23 A. Yes. 24 Q. -- concerning the documents that are marked 25 confidential --</p>
<p style="text-align: right;">Page 6</p> <p>1 answers to my questions are verbal and audible so that she 2 can record them correctly. 3 Do you understand that? 4 A. Yes. 5 Q. If you have any -- if you do not understand the 6 question that I ask you, because sometimes my, you know, 7 brain gets out in front of my mouth or vice versa, my 8 mouth gets in front of my brain, if you don't understand 9 something I'm asking you, rather than trying to answer the 10 question you think I'm asking you, you should just tell me 11 that you don't understand my question and I'll try to 12 rephrase it until you do understand. Is that okay? 13 A. Very good. 14 Q. If you need to take a break at any time, just 15 let me know and we'll go ahead and take a break. The only 16 condition on that is that if I have a question pending, I 17 will ordinarily ask you to answer my question before we 18 take the break. 19 MS. WINKLER: Counsel, we discussed, prior to 20 getting started today, that we're going to put a 21 stipulation on the record that documents that are from, 22 basically, executive session minutes that are -- they will 23 be stamped -- clearly stamped confidential, those records 24 will be -- we've stipulated that they will be maintained 25 as confidential; meaning, they cannot be disclosed</p>	<p style="text-align: right;">Page 8</p> <p>1 A. Uh-huh. 2 Q. -- that you just finished reviewing with your 3 attorney. 4 A. Yes. 5 Q. Okay. And you understand that what we are 6 agreeing to is that those documents will remain 7 confidential and cannot be circulated to anyone -- 8 A. Oh, yes, yes. 9 Q. -- outside of this case. 10 A. Uh-huh. I think I have a couple of them 11 already. 12 MR. KUBERT: Colette, I'll tell you before we 13 start. The court reporter can only take down one person 14 at a time. 15 THE WITNESS: Sorry. 16 MR. KUBERT: So even though you know -- you 17 probably anticipate what counsel will ask you, you have to 18 let her get her whole question out so that you can get the 19 response out and the court reporter can get everything 20 down. Do you understand? 21 THE WITNESS: Uh-huh. 22 MR. KUBERT: Okay. 23 BY MS. WINKLER: 24 Q. Okay. Ms. McNally, how old are you? 25 A. I'm 76.</p>

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1 Q. Okay. And do you have any mental functioning
2 problems or anything that would prevent you from answering
3 my questions today?
4 A. Not that I know of.
5 Q. Okay. No medical disabilities that affect your
6 ability to remember things or to understand?
7 A. No, just age.
8 Q. Okay. Even I have that.
9 All right. Can you tell me a little bit about
10 your educational background.
11 A. Sure. I have -- I was a teacher all my life. I
12 have a Master's in school administration. I have a
13 certification in nonprofit management. I was a school
14 principal. I was educated in Ireland and then spent
15 20 years in Spain, so I'm fully bilingual. I, then,
16 finished my education here in Northern Arizona University
17 and University of San Francisco.
18 Q. Okay. So are you retired currently?
19 A. I am retired.
20 Q. And you said that you were a teacher?
21 A. Uh-huh.
22 Q. What --
23 A. Yes.
24 Q. -- did you teach?
25 A. I taught, first, English as a foreign language

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1 for 20 years, and then I joined the Catholic school system
2 here in the Diocese of Phoenix and taught in Phoenix,
3 Prescott, and Flagstaff, and then became a school
4 principal in Flagstaff.
5 Q. Okay. And so was that at the high school level
6 or --
7 A. I taught from kindergarten through college. I
8 ended my career, actually, working for Mesa Community
9 College, bilingual classes online for Chinese students.
10 Q. All right. And when did you retire?
11 A. I think I retired -- I retired in '05
12 officially. I think I was working part-time a few years
13 before that.
14 Q. And you said that you earned a degree from
15 Northern Arizona University?
16 A. Yes.
17 Q. And what degree was that?
18 A. Bachelor's of science.
19 Q. And was that a bachelor's of science in
20 education?
21 A. Education, yes.
22 Q. And, then, University of San Francisco?
23 A. San Francisco, I got my Master's there in
24 education administration.
25 Q. Do you remember what year you got your Master's?

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1 A. That's a good question. Gosh. I was in
2 Flagstaff from '79 to '89, so it was in those years.
3 Probably '82, '83. I'm not -- I don't remember exactly
4 what the -- when the date was.
5 Q. Okay.
6 A. I did three summers, I remember, going over to
7 San Francisco.
8 Q. All right. And you mentioned you have a
9 certification in nonprofit management. Where did you get
10 that --
11 A. ASU.
12 Q. -- certification?
13 A. ASU.
14 Q. Okay. And what was involved in obtaining that
15 certification?
16 A. Attending classes, doing whatever work was given
17 to me to do.
18 Q. And was it -- but was it -- is that, like, a
19 one-year program, or is it just a seminar?
20 A. It was a series of classes. I was -- at that
21 time, I was working in a nonprofit management agency. I
22 had left education in '89 and moved into the sphere of
23 nonprofit management, and I worked in Guadalupe for
24 six years developing programs for drug and alcohol
25 prevention. So I went to ASU -- can't remember whether it

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1 was a once-a-week class or whatever. I have my big frames
2 and certificate they gave me.
3 Q. All right. And, then, you mentioned that you
4 have training in homeowners association board management.
5 A. Yes.
6 Q. And where did you get that training?
7 A. I got the first two accredited courses from The
8 Leadership Institute, which they hold them at different
9 areas. My first one was in Mesa, and the second one was
10 in Queen Creek, I think; and then I went to four more
11 accredited courses in Chandler with Beth Mulcahy, law firm
12 of Mulcahy & Associates.
13 Q. All right. Let's talk a little bit about your
14 service on the Sun Lakes Homeowners Association Board.
15 You're currently a member of the board of directors --
16 A. Correct.
17 Q. -- correct?
18 I have to ask you, please, to let me finish my
19 question, 'cause --
20 A. Yes.
21 Q. -- we're going to make the court reporter crazy.
22 So you are currently a member of the board -- of
23 the board of directors of the Sun Lakes Homeowners
24 Association, correct?
25 A. That is correct.

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1 Q. And I want to talk a little bit about the
2 history of your service on the board. I understood that
3 you first started serving in 2008; is that correct?
4 A. No, that's not correct.
5 Q. Okay. When did you first --
6 A. 2009. I was appointed after the complete board
7 was removed.
8 Q. So who appointed you?
9 A. The lawyer at the time, who was the trustee for
10 the organization. There's -- the whole board was removed.
11 The lawyer was in charge. What's his name?
12 Q. The board was -- when you say the board was
13 removed, do you mean recalled by the homeowners?
14 A. Yes.
15 Q. Do you recall the lawyer's name?
16 A. I'm trying to think. It will come to me
17 eventually.
18 Q. You can tell me later if it does pop into your
19 head. It's not particularly important.
20 All right. And so you were appointed, I think
21 you said, as the secretary; is that --
22 A. Yes.
23 Q. -- right?
24 A. That is correct.
25 Q. And, then, at some point, you were actually

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1 elected to the board, correct?
2 A. Yes.
3 Q. Was it -- am I correct that that was 2010?
4 A. I think it was 2011, 'cause I had three years
5 and now I'm on my second -- three years.
6 Q. How long did you serve as secretary?
7 A. I was on the 2009 board until -- from the fall,
8 November, I think, or October that we started until the
9 elections in February or March. In March, I was not
10 elected, so I was off the board for a very short period.
11 Then I was appointed back on the board after another board
12 member left, and I was secretary again.
13 Q. Okay. So you had -- you actually served two
14 appointed terms as secretary?
15 A. Correct.
16 Q. Okay. And then you were elected in --
17 A. I was secretary again.
18 Q. But you were elected by --
19 A. By the community, yes.
20 Q. Now, you were removed from the board yourself
21 for, as I understand it, some sort of breach involving a
22 draft budget; is that correct?
23 MR. KUBERT: Object to the form.
24 THE WITNESS: I was removed -- I was the third
25 person removed in two years by the board. I was removed,

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1 although the minutes of the executive session at that time
2 said it was not a removable offense. But the -- some of
3 the board members got together in an illegal meeting --
4 there are no minutes to say why they did it -- and decided
5 that they were going to remove me.
6 At that time, the board had that power. But as
7 the community was absolutely disgusted at this stage, they
8 changed the bylaws and we removed that privilege from the
9 power of the board. And then I was immediately elected
10 back on to the board after being removed.
11 BY MS. WINKLER:
12 Q. And, then, were you removed a second time after
13 that?
14 A. No. Then we had taken that power away from the
15 board at that stage. The board does not have the power to
16 remove a member.
17 (Exhibit 1 marked.)
18 BY MS. WINKLER:
19 Q. If you -- let me just caution you that the court
20 reporter has to take down everything you say. So even
21 reading to yourself out loud like that, you don't want to
22 do that because it's going to be on the record.
23 I've handed you what we've marked as Exhibit 1
24 to your deposition. And let me just first ask you, is
25 this an e-mail that you wrote?

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1 A. I imagine it is but, I mean, I have no way of
2 proving it.
3 MR. KUBERT: Don't guess. You can take your
4 time to read through it to make sure.
5 THE WITNESS: Oh, yes, okay. Let's see.
6 MR. KUBERT: Counsel, has this document been
7 produced? I'm not seeing a Bates stamp number on it.
8 MS. WINKLER: Not yet.
9 THE WITNESS: Okay.
10 BY MS. WINKLER:
11 Q. Okay. So I think that the question that was
12 pending was, do you recognize this as an e-mail that you
13 wrote?
14 A. Yes, it looks like it.
15 Q. And I want to direct you to page 2 of Exhibit 1.
16 It appears that --
17 A. I have page 3 and 4.
18 Q. Oh, I'm sorry. Yeah, it has page numbers 3 and
19 4 at the bottom, but it's a two-page exhibit.
20 A. Uh-huh.
21 Q. So the second of the pages that has the number 4
22 at the bottom, it looks as though you are responding to an
23 e-mail from somebody whose e-mail account is
24 banddehoyt- --
25 A. Uh-huh.

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1 Q. -- @juno.com?
2 A. Yes, that's Bill Hoyt.
3 Q. Bill Hoyt.
4 A. He's a board member.
5 Q. Okay. And so Mr. Hoyt is writing that he would
6 like to commence a recall action against you; is that
7 correct?
8 A. That is correct.
9 Q. And so was a recall action commenced against you
10 in October of 2010?
11 A. Yes, I was the third person that was recalled.
12 We call it removal.
13 (Exhibit 2 marked.)
14 THE WITNESS: And Bill explained it to me later.
15 He said it wasn't --
16 BY MS. WINKLER:
17 Q. There's no question pending, and I really just
18 need you to answer my questions.
19 I've handed you what we've marked as Exhibit 2
20 to your deposition. These are the minutes of an open
21 meeting of the board of directors of the Sun Lakes
22 Homeowners Association, dated October 29, 2010. And all I
23 want to establish here is -- is the timing. So
24 October 29th of 2010, is this when you were removed from
25 the board, as you call it?

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1 A. That is correct.
2 Q. Okay.
3 A. Are we proceeding to read this?
4 MR. KUBERT: There's no question.
5 MS. WINKLER: No, you don't need to read it.
6 MR. KUBERT: Counsel, I'm becoming a bit
7 concerned. I'm not seeing Bates stamps on any of these
8 documents. None of these documents were disclosed, and I
9 haven't had a chance to review these with my client
10 beforehand. Is there a reason why I'm just getting all
11 these now?
12 (Exhibit 3 marked.)
13 MS. WINKLER: The document that I just handed
14 you is one that is confidential, and you just had nearly
15 an hour to review all of the confidential documents with
16 your client.
17 MR. KUBERT: This one, Exhibit 2?
18 MS. WINKLER: Exhibit 3.
19 Exhibit 2 is a publicly available document. And
20 Exhibit 2 was introduced, as I said, just to establish the
21 timeline of your client's removal from the board, which
22 she's very aware of. So that's all. I'm just helping her
23 establish the date.
24 MR. KUBERT: I understand. It's just I
25 haven't --

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1 MS. WINKLER: The content of that --
2 MR. KUBERT: I haven't seen the document yet
3 with a Bates stamp on it, and I'm just becoming a bit
4 concerned is all.
5 MS. WINKLER: Okay. Your concern is duly noted.
6 BY MS. WINKLER:
7 Q. I've handed you what we've marked as Exhibit 3
8 to your deposition, and this is a document that has been
9 marked confidential, and it is correspondence from a
10 Mr. Mark Wade.
11 Do you know Mr. Wade or did you know him in the
12 past?
13 A. Yes, I knew Mr. Wade. Mark was the manager of
14 the HOA.
15 Q. Okay. And Mr. Wade is making -- he's addressing
16 someone named Bernadette. Do you know who that is?
17 A. Yes, she was president at the time.
18 Q. And that's Bernadette Halpin?
19 A. The same person who was here, who -- who had me
20 removed illegally.
21 Q. Okay. And he is -- Mr. Wade is making
22 statements to Ms. Halpin about a presentation that you
23 made where his name was mentioned in a slide that
24 portrayed him in a negative light. Do you remember
25 anything about this?

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1 MR. KUBERT: Object to the form.
2 You can answer, if you understand the question.
3 THE WITNESS: I understand, yes.
4 I was doing a slide show presentation of the
5 analysis that I had made of a survey that the community
6 had completed. Mr. Wade was not there, and some -- he, at
7 that time, had been removed, let go from his position.
8 And he sent -- this is the first time I've seen this, but
9 he did send a letter saying that I had done three things
10 wrong. I had two slides all in red against him and this
11 other thing, none of which was true, and I still have the
12 presentation.
13 Somebody talked to him, and he talked to
14 somebody else, which he was forbidden to do, according to
15 his contract. So he -- he violated the contract by
16 speaking about why our -- he had been let go because we
17 were letting him go instead of firing him, I guess. And
18 then the -- the board did not check with me on what he
19 said to them. So he -- I had no recourse because that was
20 at the same time that they were trying to remove me.
21 BY MS. WINKLER:
22 Q. I see.
23 So are you aware that the homeowners association
24 ended up settling with Mr. Wade?
25 A. Yes. When I got back on the board, which I did

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1 immediately -- the community elected me right back on the
2 board -- I went straight to the minutes to make sure I
3 knew what had been going on and how all of that stuff had
4 gone down, and I was aware that they had paid him without
5 consulting me or without checking whether what he was
6 saying was true or not.
7 Q. I'm actually not going to mark this. I'm just
8 going to show it to you.
9 MS. WINKLER: Counsel, this is one of the
10 documents that I showed you earlier.
11 BY MS. WINKLER:
12 Q. These are executive session minutes from January
13 4th, 2012. And I want to direct you down -- excuse me --
14 to the bottom of the page there under number 4. It says
15 legal/litigation, and then it says [as read]: Motion
16 number 4. Jean Tolar made a motion to remove Colette
17 McNally as secretary of the board of directors. The
18 motion was approved unanimously, including Ms. McNally's
19 yes vote.
20 Do you see where I'm reading?
21 A. Yes, I remember well.
22 Q. All right. So this is -- again, I'm trying to
23 establish the timing here. So I think that I had
24 understood that you were appointed in 2009 as secretary.
25 A. Uh-huh.

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1 Q. And, then, did your term end and then --
2 A. No, I wasn't elected. When the elections came
3 up, I wasn't elected.
4 Q. Okay. But then you were appointed --
5 A. Then I was appointed again a few months later.
6 Q. Okay. And, then, in October of 2010, you were
7 removed and we just talked about that --
8 A. Uh-huh.
9 Q. -- is that correct?
10 A. Yes.
11 Q. Okay.
12 A. I think that's correct.
13 Q. And, then, I'm confused by this document because
14 this shows January 2012, so two years later. It shows a
15 motion to remove you as secretary of the board that was
16 approved unanimously, including your yes vote. So can you
17 explain that to me?
18 A. Sure. I can explain, yes.
19 I was voted back on -- I was voted onto the
20 board in 2011, and I was made secretary. I sat as
21 secretary for over a year. We had a change of presidents.
22 Bernadette resigned after a lot of problems, and Jean took
23 over. And Jean -- I got permission from the board to make
24 a presentation to the community to try to explain to them
25 how the budget related -- their dues related to the

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1 budget, how it was divided out, and I did a -- not a
2 PowerPoint, a -- what do you call those? Charts -- and a
3 presentation with -- to the community. The community was
4 very excited. And the chair of the budget and finance
5 committee adopted the same as he had adopted what I had
6 done previously when the board decided to remove me the
7 first time. He adopted the process so that the budget
8 would format in a way that the people could understand.
9 The board was not what -- oh, what would I
10 say? -- in agreement that the community should be made
11 aware of where their money was going and how much actually
12 was needed to run the community, and they decided -- they
13 decided to let me know it. That's exactly what happened.
14 We go into executive session. I'm attacked from all
15 sides. And I say, What? You're going to be removed as
16 secretary. That's fine with me. I have no problem. Do
17 what you like, you know.
18 So that's the sort of stuff we -- we have gone
19 through very, very bad and difficult years, and we
20 continue to go through them in our community.
21 Q. So if I understand your testimony, Ms. -- this
22 Jean Tolar was the board president?
23 A. She was the board president at that time.
24 Q. Okay. And she made a motion to remove you as
25 secretary and you did not oppose it?

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1 A. No.
2 Q. No, you did not oppose it?
3 A. I did not oppose it, no. I said fine. If
4 that's what you want, that's -- that's fine with me.
5 Q. Now, did you continue to serve as a board
6 member --
7 A. Yes.
8 Q. -- after that?
9 A. Yes.
10 Q. Okay.
11 A. Ever since. I'm still serving.
12 (Exhibit 4 marked.)
13 MS. WINKLER: You should have this one, Counsel.
14 MR. KUBERT: Okay.
15 BY MS. WINKLER:
16 Q. Okay. I have handed you what has been marked as
17 Exhibit 4 to your deposition. And this is, again, another
18 document that's to be kept confidential. It's marked
19 confidential. These are executive session meeting minutes
20 of the Sun Lakes Homeowners Association Board of
21 Directors, dated September 5, 2012.
22 And item 2 of these minutes have the heading
23 Legal, and then it says Attorney Charles Maxwell, and then
24 there's a long narrative that, apparently, is
25 Mr. Maxwell's discussion. Do you remember being at this

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1 meeting?
2 A. I remember vaguely. I remember him coming in,
3 yes.
4 Q. And do you remember him making a presentation
5 about attorney/client privilege and executive session?
6 A. Not clearly. I remember why he came in and
7 how -- I've never seen these before, by the way. They
8 were never given to me, so I don't understand.
9 MR. KUBERT: Referring to Exhibit 4?
10 THE WITNESS: Yes, Exhibit 4. I have never seen
11 this before. And I have read through it, and I really do
12 not recall the detail. I remember he came in, because
13 Jean Tolar was being asked questions about our manager
14 Clint Warrell. Now, he's passed. And she -- I remember
15 going into an executive session, and Mr. Maxwell was
16 there. And my impression, what I retained from that
17 meeting is that we were told that we -- that this was all
18 confidential, and that it was -- we could not discuss it
19 even among ourselves, which was -- sounded very strange to
20 me.
21 And I remember saying to him, But this is all on
22 the web. It's all out there. People know. And that's as
23 much as I remember. I certainly don't remember this thing
24 here about -- this really struck me when I read it on
25 page -- where would it be now? Something about the court.

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1 Here it is, talking about executive session. Not be
2 allowed any -- oh, this -- this -- there was something
3 there that was put in. Yeah, yeah. I'm going to go
4 through with every board member, as well as staff, and I
5 will tell you what the consequences will be for -- from
6 your attorney. You will be -- I don't recognize this at
7 all. Maybe I'm -- this is something else. Roberta and
8 HR.
9 BY MS. WINKLER:
10 Q. If you could avoid reading the document out
11 loud. All right. Let me -- let me see if I can direct
12 you. Are you talking about the paragraph that's at the
13 top of page 2 of these minutes where it discusses -- the
14 last sentence of that paragraph [as read]: You may want
15 to get a court order first which allows you to discuss
16 executive session issues?
17 A. Yeah, I don't remember any of that.
18 Q. Okay. Do you remember -- if you go a little
19 further down on that page, there is -- the minutes reflect
20 that Mr. Maxwell went around the room and, basically,
21 polled the people present and asked for their verbal
22 agreement about the confidentiality that exists in
23 executive session. Do you remember that?
24 A. No, I don't remember that.
25 Q. Okay. Do you have any reason to doubt that you

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1 stated your agreement during that meeting?
2 A. I do. I have a doubt. I remember him saying
3 vaguely, you know, this is executive session and things
4 that are executive -- I remember that, because I agree
5 absolutely that that is the case. But I do not remember
6 that statement at all about court. That struck me.
7 Certainly, I never heard that before.
8 Q. So do you think --
9 A. And I don't remember him going around the room.
10 I remember him sitting out front and looking at us, and
11 I -- but, you know, it's been a while. So...
12 Q. Right. So do you think it's possible that he
13 went around the room and asked you whether or not you
14 agreed that you understood the confidentiality that exists
15 in executive session and that you stated that you did not
16 agree that you understood that?
17 A. No.
18 MR. KUBERT: Objection to form.
19 BY MS. WINKLER:
20 Q. That was a no?
21 A. I could not agree that I didn't understand,
22 because I do understand.
23 Q. Okay.
24 A. Absolutely.
25 (Exhibit 5 marked.)

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1 BY MS. WINKLER:
2 Q. I've handed you what we've marked as Exhibit 5
3 to your deposition; and if you'll just take a moment to
4 look at this, this is similar to the question I asked
5 earlier. I would like you to confirm that the bottom
6 portion where it says, from Colette McNally, that that's
7 an e-mail that you drafted.
8 MR. KUBERT: Read it first.
9 BY MS. WINKLER:
10 Q. Okay. So the question that was pending,
11 Ms. McNally, was: Is the e-mail that says, from Colette
12 McNally to Rick Schwartz, that appears -- the text that
13 appears on the first page of Exhibit 5, is that an e-mail
14 that you drafted?
15 A. That appears to me that it is, uh-huh.
16 Q. And you are forwarding to Mr. Schwartz an e-mail
17 from a Jeannie Martens, dated August 4th, 2013, correct?
18 A. That is correct.
19 Q. And is the e-mail from Jeannie Martens, is that
20 the same e-mail that you read out loud following a board
21 meeting or, I guess, during a board meeting in September
22 of 2013?
23 A. That is correct.
24 (Exhibit 6 marked.)
25 MS. WINKLER: Counsel, you should have this one

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1 already. This is executive session minutes from
2 August 14, 2013.
3 MR. KUBERT: Yep.
4 BY MS. WINKLER:
5 Q. So, Ms. McNally, we've marked this as Exhibit 6
6 to your deposition. And, again, this is a document that
7 is marked confidential. These are minutes of an executive
8 session that occurred on August 14, 2013. And have you
9 had an opportunity to review these minutes with your
10 counsel today?
11 A. Yes, I have.
12 Q. Is there anything about these minutes that
13 strikes you as completely inaccurate?
14 A. What strikes me is that we never ever give out
15 executive minutes that are not on monogrammed paper. I
16 don't understand. I've never seen these before, and
17 they're on plain paper. That, we never do.
18 Q. Okay. But in terms of the substance of what is
19 recorded here, is there something that you read in here
20 that you think is just completely inaccurate?
21 A. I would say so, yes.
22 Q. Okay. And what is that?
23 A. I'd have to go line by line to recall, because I
24 don't recall a lot of this verbatim. I remember having a
25 meeting -- [reading to self]: ...participated by phone

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1 and Bill by Skype. I have no compete recollection of that
2 happening, but let me -- we had a meeting. Okay.
3 Q. Right. So let me -- let's try to back into it
4 that way, then.
5 So you sent this e-mail from Jeannie Martens to
6 Rick Schwartz, who was the president of the homeowners
7 association board at the time, correct?
8 A. That is correct.
9 Q. And, then, it looks like very soon after you
10 sent that e-mail to Mr. Schwartz, you had an executive
11 session where you discussed the e-mail; is that right?
12 A. This was sent on August the 5th, and this is
13 August the 14th.
14 Q. Okay.
15 A. I don't remember if it was the first meeting we
16 had after -- after this or, you know, I don't remember how
17 many meetings now exactly we had. I do remember meeting
18 with them in the boardroom. I remember going in. There
19 wasn't a copy of the e-mail on the board. There was no
20 agenda. I remember Mr. Schwartz coming in, standing in
21 front of us and saying, We're going to do nothing. I've
22 talked to the attorney. We're going to do nothing.
23 That's what I remember, the gist of the meeting.
24 Q. But -- and which meeting was that? Because you
25 just said there was more than one.

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1 A. That's what I'm trying to remember.
2 Q. So let me ask you this. How often did the board
3 of directors meet or how often do they meet?
4 A. We usually meet -- usually meet by announcing,
5 sending out an agenda, etcetera, at least probably once a
6 month at the most. But once Rick became president, as he
7 doesn't understand procedures, etcetera, of -- he called
8 meetings whenever he wanted. This wasn't the first time.
9 Q. So is it typical that the board has an executive
10 session just prior to its regular meeting?
11 A. That's, generally, when it's held.
12 Q. Okay. And it's your experience that board
13 meetings occurred, generally, once a month but sometimes
14 more often; is that -- am I understanding you?
15 A. Generally, once a month. But since Rick became
16 president, he has -- he seems to think that he can call
17 them without an agenda, without notifying. Just when he
18 has something, he just calls us to a meeting. So if I
19 sent it on the 5th -- 6th, 7th, 8th, 9th -- this is
20 two weeks later.
21 Q. Okay. So is it -- your meetings that are held
22 once a month, are they generally held on the same date or,
23 like, the same day of the month? Like, the first Tuesday
24 or something like that?
25 A. That is correct.

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1 Q. Okay.
2 A. We now have our board -- open board meeting on
3 the first Wednesday of the month.
4 Q. Do you remember if it was like that in 2013 as
5 well, or is that a new schedule?
6 A. It was -- there was a change.
7 Q. Do you remember what the meeting schedule was in
8 2013? If you don't, it's okay.
9 A. Prior to 2013, I remember. 2013, I think is
10 when it changed.
11 Q. So the date that is on Exhibit No. 6, which is
12 August 14, 2013, you don't recall, as you're sitting here
13 today, whether this was an executive session that took
14 place before a regular -- a regularly scheduled board
15 meeting or if it was a specially called meeting?
16 A. It was a specially called meeting. It was not
17 before the regular meeting.
18 Q. And so was this specially called meeting called
19 for the purpose of discussing the Jeannie Martens' e-mail?
20 A. We were just called. That's the way it happens
21 now. We don't get an agenda. At least that was my
22 experience for the two meetings I had -- executive
23 meetings I had with Rick. He called us in. We went in;
24 and he just told us, I have spoken with the attorney.
25 We're not going to do anything about this.

<p style="text-align: right;">Page 33</p> <p>1 Q. And are you recalling that independently about 2 this August 14th meeting, or is -- or are you just -- 3 A. That's my recollection. 4 Q. Based on reading these minutes? 5 A. Uh-huh. 6 Q. Okay. So I think my -- I think the question 7 that I asked you before we got a little off track there 8 was, when you read through these minutes, aside from the 9 fact they're -- I think you told me they're not on 10 letterhead, is there any statement in these minutes that 11 strikes you as totally inaccurate? 12 A. Well -- 13 MR. KUBERT: Go through it. 14 THE WITNESS: Go through each one? 15 MR. KUBERT: Uh-huh. 16 THE WITNESS: Okay. Very good. Let's see. 17 I do not recommend [sic] Rick asking if all 18 directors understood attorney/client privilege. I don't 19 think he has that vocabulary. 20 BY MS. WINKLER: 21 Q. Okay. Well, wait a minute. The question that 22 is pending is, do any of the statements in here, to the 23 extent that you recall the events of this meeting, are 24 these statements inaccurate? I'm not asking you if you 25 agree with whether or not Rick Schwartz understands</p>	<p style="text-align: right;">Page 35</p> <p>1 you do remember, that it's inaccurately written in these 2 minutes. 3 A. Well, that's one of the ones. 4 The purpose of the meeting was not to discuss 5 the Jeannie Martens' e-mail. There was not even a copy of 6 the e-mail in the room. The purpose was for Rick to tell 7 us that he had made up his mind that the board was not 8 going to do anything about it. 9 Q. About what? 10 A. About the e-mail. 11 Q. So if the purpose of the meeting was not to 12 discuss the e-mail, then what sense would it have made for 13 Mr. Schwartz to make the statement that you just said he 14 made? 15 A. As much sense as he makes. That's what he said. 16 The e-mail was not there. 17 Q. Okay. So you're saying there was not a copy of 18 the e-mail at the meeting? 19 A. There couldn't be a discussion if there wasn't a 20 copy of the e-mail for us to follow along and see what we 21 were discussing. 22 Q. Referring you back to Exhibit 5 -- 23 A. Uh-huh. 24 Q. -- are the people that are copied on this 25 Exhibit 5 e-mail, are those members of the board of</p>
<p style="text-align: right;">Page 34</p> <p>1 attorney/client privilege. 2 A. Well, I'm just saying that I don't remember him 3 saying such a thing. Who -- I don't remember anybody 4 saying what the purpose of the meeting was; that it was to 5 discuss -- certainly, was not to discuss the e-mail. 6 Q. Oh, let me see if I can save us a little bit of 7 time. 8 So, again, I didn't ask you to read through and 9 tell me which of these statements you remember. Are you 10 telling me that you just don't remember the substance of 11 the meeting? 12 A. I am remembering my -- the way I remember it. 13 Q. Okay. 14 A. So I want to see if it coincides with what is 15 written here. 16 Q. Perfect. 17 A. Okay. 18 Q. So if, when you read through this, if there is a 19 statement in there, based on your recollection, that is 20 inaccurate, then that's what I would like you to tell me. 21 If it's just that you don't remember that, then it could 22 be true or it could not. You don't know. 23 A. Correct. 24 Q. Okay. And that -- I'm not so interested in 25 hearing that. I want to know if there's something that</p>	<p style="text-align: right;">Page 36</p> <p>1 directors? 2 A. Yes. 3 Q. So is it fair to say that prior to the 4 August 14, 2013, meeting, all of the members of the board 5 of directors had seen the Jeannie Martens' e-mail? 6 MR. KUBERT: Object to form. 7 THE WITNESS: I hope -- I don't know. I don't 8 know whether they saw it or not. It wasn't discussed. 9 BY MS. WINKLER: 10 Q. Do you have any reason to doubt that the people 11 on this -- on the e-mail list here on Exhibit 5 received 12 the e-mail? 13 A. I can only tell you that when I received the 14 e-mail from Jeannie, I didn't see it until somebody drew 15 my attention to it. 16 Q. Okay. But -- 17 A. So I -- I don't know. I cannot say whether they 18 had read it or not. 19 Q. Okay. Did you receive this e-mail from 20 Mr. Schwartz? Your name is on the list. 21 A. My name is on it. Sometimes he puts the wrong 22 e-mail. No, my name is on it, so I must have. 23 Q. All right. So you -- you believe that the -- 24 Exhibit 6 -- going back to Exhibit 6, it's your testimony 25 that the purpose of that meeting was not to discuss the</p>

<p style="text-align: right;">Page 37</p> <p>1 Jeannie Martens' e-mail? 2 A. Correct. 3 Q. Okay. Anything else you think is inaccurate 4 about the minutes? 5 A. I really cannot say because some of it, I don't 6 even understand. 7 Q. Well, on the first page of Exhibit 6 where it 8 says [as read]: Colette felt Jeannie confessed to a 9 conspiracy of divulging private information, and our 10 employees were no longer trustworthy and were without 11 blame. 12 Do you remember saying that or something like 13 that at the meeting? 14 A. No, I don't. I don't even understand it. 15 Q. Okay. 16 A. Are no longer trustworthy and were without 17 blame? It doesn't make sense. 18 Q. Okay. At the -- at the top of the next page of 19 Exhibit 6 [as read]: Colette responded that Jeannie 20 confessed to a conspiracy with Clint, Roberta, and Bill 21 Hoyt to harm Tom West and Ray Smith. 22 Do you remember making any statement like that 23 at the meeting? 24 A. Not in that form. 25 Q. What do you remember saying?</p>	<p style="text-align: right;">Page 39</p> <p>1 Q. So was the focus of the disagreement during this 2 meeting that you wanted to discuss the Jeannie Martens' 3 e-mail at the open meeting of the board; is that -- 4 A. No, that is not correct. I wanted the board to 5 deal with it, to institute an investigation to satisfy the 6 members, to go before the members and say, We're taking 7 care of it. But, instead of that, they refused to deal 8 with it. 9 Q. Okay. It says [as read]: She then read the 10 bylaws where it defines the authority of the board 11 president. 12 A. I didn't even have the bylaws with me. 13 Q. So you don't recall doing that? 14 A. No, not at all. That's another meeting 15 altogether. 16 Q. [As read]: Colette said she will get an 17 attorney. 18 Do you remember saying that? 19 A. No, I don't remember that. 20 Q. Do you remember -- 21 A. On the contrary, Rick had told me he would only 22 talk to my attorney. So, eventually, I did have to get 23 one. 24 Q. Okay. But was that at this meeting? 25 A. I have no idea. This looks to me like a</p>
<p style="text-align: right;">Page 38</p> <p>1 A. I tried over and over to bring in the discussion 2 for them to discuss the e-mail, to see the serious 3 consequences, but I was rebuffed every time. No, we're 4 not going to discuss this e-mail. We are not doing 5 anything. That was the -- I mean, all the time we got 6 back. 7 Q. So in the next sentence from where I was just 8 reading where it says [as read]: Bill Townsend stated 9 that Clint felt what was described in the e-mail may have 10 been unethical, what e-mail do you think they're referring 11 to there? 12 A. Obviously, they're referring to the e-mail that 13 Rick sent them, that I sent to Rick. 14 Q. From Jeannie Martens? 15 A. Yes, but nothing could be done about it. 16 Q. There's a statement that says [as read]: 17 Colette said she was not interested in what the attorney 18 said and that Rick was making it difficult for a board 19 member to express themselves. 20 Do you remember saying anything like that? 21 A. I remember expressing my frustration that they 22 would not discuss the e-mail, that they would not allow me 23 to speak to how important it was for me that the community 24 feel that they were being looked after, that they weren't 25 just being abandoned.</p>	<p style="text-align: right;">Page 40</p> <p>1 combination of two meetings at least or I'm remembering 2 one meeting that we haven't discussed yet, and this is 3 another meeting. Very confusing. 4 Q. Okay. [As read]: Rick pointed out that if 5 Colette were to divulge this or any executive session 6 information, she could be expelled from future executive 7 session meetings. 8 Do you remember Mr. Schwartz -- 9 A. No -- 10 Q. -- telling you that? 11 A. -- I don't remember that at all. 12 Maybe, again, as I say, there's -- for me, it's 13 a confusion of different times that I spoke to him, but 14 what I tried to explain to him was -- and this may be 15 coming from that, that this e-mail was sent to me, not to 16 the board. This was a personal e-mail to myself and 17 another group of people in the community. This did not 18 belong to the board. They had no right over this e-mail. 19 I had brought it to them looking for a solution, for them 20 to take care of the community. They refused to do it. 21 Then they were leaving it up to me. This was my e-mail; 22 not theirs. 23 Q. Okay. So, then, what made you think that you 24 should read it at a board meeting -- at an open board 25 meeting?</p>

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1 A. When we came to the first open board meeting,
2 after receiving the e-mail -- and probably after one of
3 these meetings -- Mr. Smith -- Ray Smith, who also
4 received the e-mail and brought it to my attention, stood
5 up at the members comments portion of the meeting and
6 tried to engage the board in dealing with this -- with
7 this letter. He had the letter and he was going to say, I
8 need the board to take care of this.
9 Mr. Schwartz immediately took the gavel, banged
10 the table, and closed the meeting. That, to me, was not a
11 good policy. Anyway, I tried to speak to him. And Jean
12 Tolar, of course, said, You can't speak. And so I turned
13 to Rick and I said, Rick, I give you one month to resolve
14 this issue and that's what I said. And so it wasn't until
15 a month later when Ray Smith brought it up again and he
16 said, No, we're not dealing with it; then I said, Well,
17 I'm concerned, and I read the e-mail.
18 Q. And so if you think something is not a good
19 policy that the president is doing, you think it's
20 appropriate for you to just take the matter into your own
21 hands?
22 MR. KUBERT: Objection, form.
23 THE WITNESS: It depends on what you're trying
24 to say there. I believe that we should follow the rules
25 and regulations of the HOA. I am a firm believer in

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1 being -- doing what is right. I had looked and talked and
2 tried to talk to Rick for a full month so that we could --
3 I gave -- actually gave him a format. I e-mailed it to
4 him, so -- showing him how he could deal with this. Sit
5 down with Tom and Ray and Steve and Cindi and myself and
6 whoever else had received this e-mail and talk about it.
7 I gave him the format for a resolution of such a sort, and
8 he wouldn't do anything. He was not going to do anything,
9 period.
10 BY MS. WINKLER:
11 Q. And so you believe that the rules and
12 regulations of the HOA should be followed?
13 A. Absolutely.
14 Q. And you believe that it is your role as a board
15 member, if the rules are not being followed, to take
16 matters into your own hands?
17 A. I don't think --
18 MR. KUBERT: Objection to form.
19 THE WITNESS: I don't think -- that was not
20 taking things into my own hand. That was following my own
21 conscience as a board member. The community was being
22 neglected. The community was being thrown aside and not
23 given any attention; and, somehow, someone -- and I
24 certainly thought a lot about it and consulted with four
25 different HOA lawyers and they told -- I asked them to

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1 analyze the situation and went from there to say, I've got
2 to take a step here.
3 Q. So you consulted with four different HOA lawyers
4 before you took it upon yourself to publicize the Martens'
5 e-mail --
6 MR. KUBERT: Objection to form.
7 MS. WINKLER: I'm not done with my question.
8 MR. KUBERT: Okay.
9 BY MS. WINKLER:
10 Q. You consulted with four different HOA lawyers
11 before you took it upon yourself to read the Martens'
12 e-mail at an open board meeting?
13 A. Yes.
14 Q. Are you familiar with an Arizona statute -- it's
15 ARS 10-3304(B)(1)(2).
16 A. I couldn't tell you what it is right off without
17 looking at it.
18 Q. Are you familiar with -- that's fair, because
19 I'm a lawyer and I can't remember statutes by their
20 numbering either.
21 ARS 10-3304(B)(2) says [as read]: That a
22 corporation's power to act may be challenged by any of the
23 following: In a proceeding by any member of a condominium
24 or a planned community association against the corporation
25 to enjoin the act pursuant to Title 12, Chapter 10,

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1 Article 1.
2 Are you familiar with that?
3 A. No, I have no idea what it means.
4 Q. So did you -- did you consider going to court to
5 get an injunction to have the court tell the board what it
6 needed to do under the HOA rules and regulations?
7 A. I needed to go to court?
8 Q. Did you consider doing that?
9 A. No.
10 Q. That's what that statute authorizes. Did you
11 ever consider that?
12 A. No, I followed my own HOA laws in our own books.
13 Q. Have you seen this before?
14 A. No -- yes, many times.
15 Q. Okay. So the statute that I just read to you is
16 in this Condo and Planned Community Statutes in Arizona,
17 2013 to 2014, prepared by Carpenter Hazelwood.
18 A. I still don't understand what it means.
19 Q. Well, the statute that I just read you --
20 A. Uh-huh. Do we have to go to court?
21 Q. The statute authorizes a member of an HOA to go
22 to court to enjoin an act of the association that the
23 member considers to be illegal or in violation of the
24 rules.
25 And my question is, did you ever consider doing

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1 that?
2 A. Never. I didn't -- I didn't know that was the
3 only way we could act.
4 Q. Even though you had consulted with four lawyers?
5 A. Right. Nobody advised me to go to court.
6 Q. So, instead, you read the e-mail at an open
7 meeting of the board and then have instituted this lawsuit
8 to get the blessing for that action after the fact?
9 MR. KUBERT: Objection to form.
10 THE WITNESS: That's a way of interpreting it,
11 but that's not what happened. I tried, as you see from
12 all the letters that I sent and all the appeals that I
13 made to the board, that they listen to reason and that
14 they be -- understand what we needed to do. And, then, as
15 I say, I consulted with a number and -- and what happened,
16 then, was, the manager filed a lawsuit against me. You
17 say "file." I mean, he sent me the papers himself, and
18 Roberta, threatening to sue me, and then that was the
19 point when I had to get a lawyer. They didn't actually
20 file it. They just -- it was the process all along to
21 scare me and make me back down.
22 Q. That was after you had read the e-mail at the
23 board meeting, correct?
24 A. Yes, yes.
25 Q. Would you agree with me that the contents of the

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1 Jean Martens' e-mail are inflammatory?
2 A. No, I would not.
3 Q. How would you describe the contents of the
4 e-mail?
5 A. A fair description of what actually happened.
6 Q. Okay. Let's talk about that.
7 Let's go back to Exhibit 5. And the -- the
8 second and third pages of Exhibit 5 are the e-mail from
9 Jeannie Martens that you read at the board meeting,
10 correct?
11 A. Correct.
12 Q. Now, you just -- you just told me that this is
13 a -- in your opinion, a fair description of what happened?
14 A. Uh-huh.
15 Q. And by that, are you telling me that you believe
16 that the contents of this e-mail are true and correct?
17 A. Yes, I do.
18 Q. And do you have any firsthand knowledge of any
19 of the events described in this e-mail?
20 A. Yes, I was involved.
21 Q. How were you involved?
22 A. I was one of the people that was targeted, same
23 as Tom and Ray and Cindi and Steve. We were board
24 members -- not all of us board members. Cindi wasn't a
25 board member. She was the one who brought up a --

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1 something. Anyway, we were mostly board members who met
2 together to try to resolve an issue and were e-mailing
3 back and forth because Cindi wants to bring in a lawyer to
4 just consult on how we can resolve these issues that
5 Bernadette was causing in the community.
6 Q. I wanted to ask you about that. I've seen
7 statements from you that you believe it's wrong for a
8 board member to consult with an attorney without first
9 having a vote of a majority of the board.
10 MR. KUBERT: Objection, form.
11 BY MS. WINKLER:
12 Q. Is that correct?
13 A. What I believe is that the authority resides in
14 the board.
15 Q. So why did you go talk to a lawyer without the
16 authority of the board?
17 A. Because I wasn't going as a board member
18 representing the board.
19 Q. I see.
20 So you went to an attorney as a private
21 individual?
22 A. Yes.
23 Q. So what about this -- other than being a target,
24 as you describe it, what about the events that are
25 described in this e-mail did you have firsthand

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1 involvement in?
2 A. Well, what happened was, we had this -- we had
3 these meetings with Cindi. She was a community member.
4 She asked for our advice. She brought the bylaws to us,
5 that this is what should be happening; it's not happening,
6 etcetera, etcetera. So we said -- she said, I'm going to
7 get a lawyer. I'd like you to come and help me resolve
8 this issue.
9 So we went as individuals, as Tom said in his
10 interview. We went as individuals to try to understand
11 what we should be doing. So then Ray left copies of the
12 e-mails we had been sending back and forth in his board
13 book.
14 Q. Let me stop you right there.
15 How do you know that?
16 A. Because he told me.
17 Q. Okay. Did you -- did you see them? Did you
18 find them --
19 A. Yes.
20 Q. -- in his board book?
21 A. No, I didn't find them. Jeannie said she found
22 them.
23 Q. So your belief that these events happened is
24 based on what Ray told you and what Jeannie told you?
25 A. And what actually happened.

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1 Q. You don't have any knowledge of what actually
2 happened other than what Ray told you and what Jeannie
3 told you. Did you find the e-mail in the board book
4 yourself?
5 A. I don't see any need for me to do it. Jeannie
6 is telling the truth. Why would she confess to something
7 that she didn't do?
8 Q. Well, she may be telling the truth or she may
9 not be telling the truth, but what I'm trying to find out
10 is, how do you know?
11 A. How do I know? How do I know that anything is
12 the truth, then? I have to have firsthand knowledge? I
13 can't read about it? Can't use my judgment?
14 Q. Well, if you're going to use your judgment to
15 publish potentially defamatory material, you might want to
16 make sure it's true and that you know that --
17 MR. KUBERT: All right, Counsel.
18 THE WITNESS: That's -- that's a little absurd,
19 but, anyways, go ahead.
20 BY MS. WINKLER:
21 Q. Is there anything in this e-mail, besides the
22 fact that you were a target, as you put it, that you have
23 firsthand knowledge is true? Not based on what Jeannie
24 told you or Ray told you anything, based on your own
25 personal --

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1 A. Yes.
2 Q. -- conduct.
3 A. I have, yes.
4 Q. What's that?
5 A. So what happened was, we went to a meeting and
6 then these papers were being passed out. I was one of the
7 last people, because I was a board member at the time.
8 And I came down and I found a bunch of these and I -- I
9 picked them up, the original e-mails. You'll probably
10 have a copy of that, the original e-mails.
11 The author of the cover letter, who hated my
12 guts at the time and hated Steve's guts at the time and
13 had mentioned here many times and is now very much aware
14 that I was treated badly, is Bill Hoyt. Bill Hoyt was the
15 person who received the anonymous e-mail from Roberta.
16 Bill Hoyt, at the time, had no place for me or for Steve
17 because of circumstances and because of what was -- had
18 been going on previously and how -- you saw his e-mail
19 that he was beginning the process of recall against me.
20 Okay.
21 So Bill has no reason to tell me his story,
22 except that he now understands the whole process and knows
23 he was deceived and lied to. So Bill did that, as he is
24 accused here by Jeannie, and now he admits it and realizes
25 that he was conned and lied to. So if that's not enough

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1 evidence...
2 Q. Oh, I think you're misunderstanding. I didn't
3 ask you about evidence. I asked you what your personal
4 knowledge is.
5 A. Well, then, if that's not enough personal
6 knowledge...
7 Q. So you didn't find this e-mail in the board
8 book?
9 A. No, I didn't find the e-mail in the board book.
10 I'm certain --
11 Q. Your knowledge of that whole episode where
12 somebody found the e-mail in a board book and planted it
13 in Bill Hoyt's inbox and then he circulated it, your
14 knowledge of all of that and of Mr. Clint Warrell's
15 supposed involvement in that and Ms. Roberta Laird's
16 supposed involvement in that, your knowledge of that is
17 based solely on what Ms. Martens put in her,
18 quote/unquote, confession?
19 A. No. As I said --
20 MR. KUBERT: Objection, form. I think she's
21 answered the question.
22 THE WITNESS: I said Mr. Hoyt got these. They
23 were given to him anonymously.
24 BY MS. WINKLER:
25 Q. Okay.

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1 A. He realizes now that he was lied to.
2 Q. So it's based on what Mr. Hoyt told you?
3 A. Uh-huh.
4 Q. Let me ask you this. Let's assume that
5 Ms. Martens' e-mail was false. Let's assume the content
6 of the e-mail was false. Do you see any problem with the
7 board of directors of the HOA circulating that e-mail?
8 MR. KUBERT: Object to form.
9 THE WITNESS: I'd have to -- could you put it in
10 a simpler form for me to understand.
11 BY MS. WINKLER:
12 Q. Let's assume that Ms. Martens' e-mail is false,
13 that the contents of that e-mail is false.
14 A. I cannot assume that.
15 Q. I'm asking you, for purpose of my question, to
16 assume that it's inaccurate; that it's false. Would there
17 be a problem with you standing up and reading it at the
18 board of directors' meeting?
19 MR. KUBERT: Same objection.
20 THE WITNESS: If I assumed that it was false, I
21 would never read it.
22 BY MS. WINKLER:
23 Q. That's a -- we'll take that as a given. But my
24 question is that if, in fact, it was false, would it have
25 been a problem for you and for the association for you to

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1 stand up and read it at a board meeting?
2 MR. KUBERT: Objection, form.
3 THE WITNESS: For me, it would have been a
4 problem. I would not like to spread around information
5 that was false.
6 BY MS. WINKLER:
7 Q. And defamatory?
8 MR. KUBERT: Objection.
9 THE WITNESS: As I said, the -- even though
10 the -- Roberta and Clint sent me a notification that they
11 were going to sue me. I had to get a lawyer, and he
12 certainly put them straight right away. I never heard any
13 more about it.
14 BY MS. WINKLER:
15 Q. But my question is, you -- you agree that it
16 would be a problem for a board member, you or any other
17 board member, to stand up and read something that was
18 defamatory?
19 MR. KUBERT: Form.
20 THE WITNESS: It would be a problem for anybody
21 that I have heard. I mean...
22 MR. KUBERT: This be a good time to take a
23 break?
24 MS. WINKLER: Sure.
25 MR. KUBERT: Okay.

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1 (Recess taken from 3:16 to 3:25 p.m.)
2 (Exhibit 7 marked.)
3 MS. WINKLER: So you should -- Counsel, you
4 should have received a copy of what we just marked as
5 Exhibit 7. It's executive session minutes, dated
6 9/4/2013; and, again, this is a document that has been
7 designated as confidential.
8 BY MS. WINKLER:
9 Q. And I want to direct your attention to the last
10 few pages of this document. You see in the lower
11 right-hand corner, there's what we call a Bates number.
12 It says HOA and then it has a bunch of zeros.
13 A. Uh-huh.
14 Q. So if you go to HOA000056, and would you just
15 confirm for me that this is a statement that you prepared.
16 A. This looks like one, yeah.
17 Q. And --
18 MR. KUBERT: Counsel, may I interrupt?
19 MS. WINKLER: Sure.
20 MR. KUBERT: Is this document also confidential?
21 MS. WINKLER: No.
22 MR. KUBERT: The e-mail or whatever this letter
23 is.
24 MS. WINKLER: This is my understanding of where
25 this document came from, that this document, the one with

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1 the Bates number HOA 56 through HOA 61 was provided to the
2 board at this executive session. So it's part of the
3 minutes, but the document itself would not be
4 confidential, in my opinion --
5 MR. KUBERT: Okay.
6 MS. WINKLER: -- because it was prepared by your
7 client.
8 MR. KUBERT: Okay. I just don't want to step
9 over our stipulation. So do you want me to count it as
10 confidential under Exhibit 7 or since you had it clipped
11 together like that...
12 MS. WINKLER: Um.
13 MR. KUBERT: I don't remember how you logged it
14 or not.
15 MS. WINKLER: So Exhibit 7, I think we can -- I
16 understand what you're saying. I think we can sort it
17 out. So Exhibit 7 is confidential except for pages
18 bearing the Bates number HOA 56 through HOA 61.
19 MR. KUBERT: Okay.
20 MS. WINKLER: Okay?
21 BY MS. WINKLER:
22 Q. And the question that I had for you was, did you
23 write this -- this statement that is HOA 56 through HOA
24 61?
25 A. It looks like what I sent to the board.

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1 Q. Okay. Do you remember presenting this to your
2 fellow board members at an executive session in September
3 of 2013?
4 A. Yes, I do.
5 Q. If I can direct your attention back to the first
6 page of Exhibit 7, the fourth paragraph on there talks
7 about a motion that was made by Janice. It says [as
8 read]: Janice made a motion that the board disavow any
9 approval of or responsibility for any of Colette McNally's
10 e-mails maligning Clint Warrell and to state that if legal
11 action is brought by or on behalf of Clint Warrell against
12 the association and/or any other board members, the
13 association will make the resolution available to the
14 judicial system to reduce or eliminate liability and place
15 it upon the responsible party.
16 Do you remember discussion of that motion at the
17 executive session?
18 A. No, I don't.
19 Q. Okay. Do you remember discussion of Rick
20 Schwartz and Janice Cournoyer's meeting with the
21 association's attorney Mr. Maxwell?
22 A. Do I -- excuse me. I didn't get the part you
23 said.
24 Q. Let me rephrase it.
25 A. Yes.

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1 Q. So in this Exhibit 7, I'm looking at the
2 paragraph right above the one I just read.
3 A. Uh-huh.
4 Q. There's a paragraph in the minutes there that
5 says [as read]: The purpose of the meeting was to discuss
6 President Schwartz's visit with Attorney Charles Maxwell.
7 And then it says [as read]: Rick was
8 accompanied by Janice to the meeting. Rick provided
9 Mr. Maxwell with copies of Colette McNally's e-mails,
10 dated 8/14 and 8/15.
11 Do you remember discussion about their visit
12 with the attorney?
13 A. I remember the -- Rick saying that he had gone
14 to the attorney and that we were not going to do anything
15 about the e-mail. That's what I remember.
16 Q. And you understood that that was based on
17 whatever the attorney had told Rick at this meeting?
18 A. That that? What's "that"?
19 Q. When Rick -- when Rick said he had gone to the
20 attorney and we were not going to do anything about this
21 e-mail, did you understand that he was saying he had
22 consulted with the association's attorney and, based on
23 his advice, the association was not going to take any
24 action on the e-mail?
25 A. That's what he said.

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1 Q. Okay. Oh, and I think this must be where I -- I
2 mentioned earlier that I had seen a statement from you
3 that -- about not going to attorneys without board
4 approval. I think that must be where I got this --
5 A. Yes.
6 Q. -- statement on page 2. It says [as read]:
7 Colette felt Rick should not go to the attorney without
8 board approval.
9 A. Correct. I remember that we discussed that at a
10 previous meeting, that -- and that was a few years
11 previous. And we discussed it at the board, because we
12 were having problems with people calling up the attorney
13 and seeking out advice individually and our bills were
14 tremendous. So an agreement was -- and I can't exactly
15 tell you when that was, what date, but it should be in the
16 minutes, that only the -- the board would give approval
17 for anybody to go to see an attorney.
18 Q. And I think you told me earlier that you don't
19 remember this motion about disavowing approval or
20 responsibility for the e-mails?
21 A. Correct.
22 Q. Okay.
23 A. And, again, this is not on official paper. So
24 I'm very weary about how it has been changed.
25 Q. On page 2, it says [as read]: Colette handed

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1 out and read her statement attached. And this is HOA 56
2 through 61, we've established, is the statement that you
3 prepared, right?
4 A. Correct.
5 Q. And if we can turn, now, to page HOA 56, I think
6 you may be on it already.
7 A. Uh-huh.
8 Q. The very first paragraph of your statement says
9 [as read]: Before proceeding to the signing of Maxwell's
10 recommended resolution, I personally have no objection to
11 it if that is what you want to do.
12 So do you remember what resolution you were
13 referring to there?
14 A. No, I don't remember now.
15 Q. Was there something that Mr. Maxwell had
16 recommended that the board do?
17 A. That's -- that's what it looks like.
18 Q. But you don't remember what the content --
19 A. I don't remember, no.
20 Q. Okay. If you'll look at paragraph 7 of your
21 statement, it's HOA 59. It says [as read]: So once a
22 resolution is passed, a copy must also be posted in the
23 lobby and in all our usual means of communication with the
24 community or are we going to keep it secret? I will need
25 a copy, which then makes it a public document, and I will

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1 then be forced to discuss the reasons for such action with
2 whoever asks. This is not a good recommendation for this
3 board to follow. This is only going to increase the
4 community's need to know what is being done, which you,
5 tried to avoid in the first place. This will, once again,
6 divide the community and bring out all the old criticisms
7 and battles, but that is your choice and Maxwell's
8 recommendation.
9 The statement there about "that is your choice
10 and Maxwell's recommendation," did you -- were you
11 referring there to the association's attorney Charles
12 Maxwell?
13 A. That's right.
14 Q. And if I understand paragraph 7 correctly,
15 you're stating your disagreement with Mr. Maxwell's
16 recommendation?
17 A. Disagreeing with the resolution, it seems.
18 Q. That -- and was that the resolution that
19 Mr. Maxwell proposed or --
20 A. It must have been. I have absolutely no
21 recollection of it at this point.
22 Q. It doesn't look like it was part of the minutes.
23 And, then, I think we've already established
24 that after this executive session on September 4, 2013,
25 the board then went into open session and it was -- it was

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<p>1 at the conclusion of that open meeting that you actually 2 read the Jeannie -- or started to read the Jeannie 3 Martens' e-mail? 4 A. You know, I think he had some dates wrong, 5 because our meeting of the board -- open meeting of the 6 board was in the morning at 9:00. So if we had an 7 executive session, it would have been afterwards. There's 8 something not quite clicking here. 9 Q. So you think that the executive session would 10 have been held after the board meeting? 11 A. This -- I remember this was certainly in the 12 afternoon in the boardroom. It had no connection with 13 the -- with the open board meeting, none whatsoever. 14 Q. Your -- 15 A. This letter, when I read it to them -- 16 Q. Okay. 17 A. -- I was trying to -- yeah. 18 Q. So when you say it had no connection, what 19 you're saying is that you -- you presented this statement 20 to the board at an executive session, but you -- and that 21 was before you read the Martens' e-mail at an open board 22 meeting, but it may have been on a different day? 23 A. Yes. I think it was -- if I remember correctly, 24 I didn't present until the -- until October. I gave them 25 a full month to try to resolve the issue; and all of this</p>	<p>1 date. 2 MR. KUBERT: Is it possible that this HOA 56 3 letter could have been given to the board at the September 4 meeting and not the -- I mean, the August meeting and not 5 the September? 6 THE WITNESS: I'm trying to think. I'm getting 7 confused at this moment. Jeannie's e-mail came in June, 8 the very end of June, and we had the first open board 9 meeting in July. Okay? And that's when Rick hits the 10 gavel and said, No comment. So then we had -- I said, 11 I'll give you a month. And at a month, trying to write 12 e-mails to him, trying to -- to establish an understanding 13 of what was going on. And, then, the following month, 14 which would be August, then Ray stood up and tried again, 15 which he wasn't allowed, and that's -- so I did the 16 statement in August. 17 BY MS. WINKLER: 18 Q. Okay. 19 A. So this is okay, yeah. 20 Q. Okay. So if you'll go back to Exhibit No. 5, 21 that has Ms. Martens' e-mail -- 22 A. Uh-huh. 23 Q. -- and her e-mail is dated August 4, 2013. And 24 so then -- 25 A. So on 5, I sent it on to --</p>
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<p>1 was trying to help resolve the issue, come to some 2 agreement in how we were going to handle it and how we 3 were going to answer the community, who were all wanting 4 to know what was going on. 5 Q. Okay. So you -- you think that you didn't read 6 the Martens' e-mail until October -- until the October 7 open board meeting? 8 A. That's what I'm beginning to think. And, of 9 course, at this stage, there's so many dates, it's very 10 difficult to remember. It could have been in -- let's 11 see -- 12 (Exhibit 8 marked.) 13 BY MS. WINKLER: 14 Q. Right. It can be hard -- 15 A. It -- it -- yeah -- 16 Q. Let me just interrupt you for a minute. 17 It can be hard to remember the specific dates -- 18 A. Uh-huh. 19 Q. -- several years down the road. 20 A. Uh-huh. 21 Q. So some of these documents -- 22 A. Yes. 23 Q. -- I'm showing you, that's exactly what I'm 24 trying to do is establish dates. 25 A. Yeah, and I'm really sure this one has a wrong</p>	<p>1 Q. And then we saw -- we looked at Exhibit 6, which 2 was executive session minutes from August 14, 2013. This 3 is just 10 days after her e-mail. 4 A. Uh-huh. 5 Q. And, then, Exhibit 7 is executive minutes from 6 September 4, 2013, where we have your statement to the 7 board members attached. And then we have a letter from 8 Mr. Maxwell, which is Exhibit 8 -- a letter from 9 Mr. Maxwell dated September 11, 2013, and that's 10 Exhibit 8. So do you think, as you're sitting here today, 11 that that's probably the -- 12 A. Yes. 13 Q. Okay. So that's probably the correct sequence. 14 A. That's right. 15 Q. Okay. So you think Mr. Maxwell, when he said 16 September 5th, that's the wrong date? 17 A. I think he meant September 4th. 18 (Exhibit 9 marked.) 19 BY MS. WINKLER: 20 Q. So we've handed you what we've marked as 21 Exhibit 9 to your deposition, and I just need you to take 22 a look at this Exhibit 9 and then confirm for me. This 23 appears to be an e-mail from you and attached to it 24 appears to be a signed letter or statement from you. So 25 if you'll just confirm that those are -- that that's your</p>

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1 signature and that you drafted -- you wrote this document.
2 A. Yes.
3 Q. I'm sorry. That was a yes?
4 A. Yes, this is an e-mail letter that I sent.
5 Q. So I want to direct you to -- again, I'm going
6 to refer to the Bates number at the bottom of the page.
7 So if you'll turn to HOA 7 -- so I'm sorry. I'm still on
8 Exhibit 9, which is your e-mail titled, Reply to Letter
9 from Lawyer 9.11.
10 A. Uh-huh.
11 MR. KUBERT: These are the Bates numbers. See
12 the HOA?
13 THE WITNESS: Oh, yeah.
14 BY MS. WINKLER:
15 Q. And I'm asking you to turn to, basically, the
16 second page of your attached letter. And I want to -- I
17 want to focus on the first full paragraph on that page
18 that says, Why I read the e-mail.
19 A. Uh-huh.
20 Q. The second sentence of that -- well, let me
21 just -- it says [as read]: Why I read the e-mail, which
22 is public property and known to a group of residents and
23 could be disseminated by those who received it as widely
24 as they so choose, is very clear to me. My action was to
25 defend our legitimate right to a fair and open discussion,

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1 as the First Amendment provides for and which guides the
2 Arizona Statute 33-1804 and our governing documents as to
3 what can be kept secret. This issue is not one that can
4 be discussed in executive session.
5 So if I understand the statement there, what
6 you're saying is that because you disagreed with
7 Mr. Maxwell and the rest of the board, that this was an
8 issue that should be discussed in executive session,
9 that's why you read the e-mail at the open meeting?
10 MR. KUBERT: Objection to form.
11 THE WITNESS: No, that is not correct. I had
12 disagreement with a lot that Mr. Maxwell said, and I have
13 seen a lot of things that he has said and done that have
14 been -- have not been good for the community, but I did
15 not do it because I had not got Mr. Maxwell's letter at
16 that point. I read it because I thought it was the right
17 thing to do.
18 BY MS. WINKLER:
19 Q. Okay. And you disagreed that it was an issue
20 that could be discussed and kept confidential in executive
21 session?
22 MR. KUBERT: Objection to form.
23 THE WITNESS: I was pointing out to them that
24 this is not one of the issues that may be discussed in
25 executive session. I understand that the -- and we did --

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1 that the board come together and develop something,
2 develop a -- a form or a statement but, in reality, they
3 couldn't -- what I was here referring to was that this
4 e-mail, which was sent to me personally could not be
5 kept -- they could not tell me that I could not speak
6 about an e-mail that was sent to me as a person; not as a
7 board member, as a person. That's what I was trying to
8 get across.
9 BY MS. WINKLER:
10 Q. So when you say a little further [as read]: I
11 had warned the president, when he inappropriately
12 suppressed discussion and comments of members and board
13 members at an open meeting, that I would again address the
14 issue if it was not dealt with appropriately -- do you see
15 where I'm reading?
16 A. No.
17 Q. I'm in the same paragraph --
18 A. Okay.
19 Q. -- and I'm almost right in the middle of it.
20 A. I've got it.
21 Q. I had warned...
22 A. Uh-huh.
23 Q. Okay. Then you continue [as read]: It was not
24 dealt with appropriately. I was fulfilling my duty as an
25 elected board member, who is bound by law to deal with

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1 issues of community concern in an open and forthright
2 manner and not to shroud in secrecy that which violates
3 the open meeting laws.
4 So is it your testimony that you were not acting
5 pursuant to your duty as a board member when you read the
6 e-mail? Is that your testimony today?
7 A. I don't exactly know what you're asking me.
8 What my testimony is, that I understand the
9 Arizona statute 33-1804 and what is allowed in executive
10 session, and that I am disclosing what had been sent to me
11 personally was not violating the Arizona statute 33-1804.
12 That's what I was trying to convey.
13 I had and I have -- we have spoken about it
14 before when -- when Rick, President Schwartz banged his
15 gavel and closed down the meeting, the first time it was
16 brought up by a community member, I had told him that I
17 would give him a month to resolve the issue. I did not
18 tell him how he was to do it. I tried to help him. I
19 sent him an outline how it could be done, etcetera, but I
20 was not telling him whether or what he had to do. All I
21 needed is for a solution.
22 Q. And on the next page, HOA 8, the first full
23 sentence there [as read]: My actions are also justified
24 by the board trying to resolve an issue not protected by
25 the exceptions permitted by AZRS 33-1804 and that were

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1 dealt with as if they had protection. I was driven to act
2 for the sake of the association who elected me to this
3 responsible position.
4 So, again, you were acting in a way that you
5 felt you had a duty to act as a board member of the
6 association?
7 A. Correct. And even in training that Mr. Maxwell
8 gave us, although, you know, some of it -- some of his
9 things aren't -- are not pleasing to me, he did say, when
10 in err, go for openness. So if there's a question about
11 anything being kept in executive privilege, we have to err
12 on the side of openness. So that was one of the
13 considerations I did give on how I should proceed.
14 Q. You're not -- it's not your testimony today that
15 Mr. Maxwell advised you to publicize the Martens' e-mail,
16 right? That's not your testimony?
17 A. Absolutely not.
18 Q. Okay.
19 (Exhibit 10 marked.)
20 MS. WINKLER: Counsel, this was a document
21 that was -- I gave you a copy of prior to the deposition,
22 executive session minutes.
23 MR. KUBERT: Okay.
24 MS. WINKLER: 10/2/13.
25 BY MS. WINKLER:

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1 Q. So I've handed you what we've marked as
2 Exhibit 10 to your deposition. And, again, I want to
3 direct your attention to the last two pages of this -- of
4 Exhibit 10. They have the Bates numbers HOA 70 and HOA
5 71. Are these documents that you prepared and provided to
6 the board?
7 A. Correct. That is correct.
8 MR. KUBERT: Counsel, are these documents
9 confidential as well, 70 and 71?
10 MS. WINKLER: No.
11 MR. KUBERT: Okay.
12 BY MS. WINKLER:
13 Q. So just to make sure the record's clear,
14 Exhibit 10 is confidential, except for the last two pages
15 which are Bates numbers HOA 70 and HOA 71.
16 (Exhibit 11 marked.)
17 BY MS. WINKLER:
18 Q. I've handed you what was marked as Exhibit 11 to
19 your deposition, and this appears to be -- at least the
20 bottom portion of it appears to be an e-mail from you to
21 rsglazieraz@hotmail.com. And did we establish earlier
22 that that's Ray Smith?
23 A. That's correct.
24 Q. Dated May -- March 12th, 2014. And so if you'll
25 just look at that and confirm for me that this is an

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1 e-mail that you sent to Mr. Smith.
2 A. It looks like it.
3 Q. Do you remember receiving a request for
4 production of documents from our office?
5 A. Yes, I do.
6 Q. And we asked you to produce any and all written
7 communications and correspondence, including e-mail
8 correspondence, between you and any member or employee of
9 the Sun Lakes Homeowners Association.
10 A. Can you tell me what -- when that was dated?
11 Q. Your response was dated December 12, 2014.
12 A. December 12th, okay.
13 Q. And this e-mail was not produced with that
14 response, and I'm wondering if you can tell me why?
15 A. Only because I didn't keep a copy.
16 Q. Okay. So what did you do to collect e-mails and
17 other communications that were responsive to our request
18 for production?
19 A. I looked in my files, went back through my
20 Gmail, you know, sort of pages that exist and anything
21 that I found, I sent it on to my lawyers.
22 Q. So is it possible that there are other e-mails
23 that -- that you have that relate to -- that are
24 responsive to our request for production that you haven't
25 produced?

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1 A. I tried my best. I have tried. I didn't see
2 this. It wasn't there, obviously, or it didn't occur to
3 me that it had anything to do with it. I just ran through
4 my list and tried get them everything that I had. A lot
5 of people, you know, e-mailed me and asked me for copies
6 of my statement.
7 Q. Right. And --
8 A. It was passed around.
9 Q. There were several -- there were several e-mails
10 that you did produce in response to our request for
11 production.
12 A. Right, I saved them because they were worth
13 saving.
14 Q. Okay.
15 (Exhibit 12 marked.)
16 BY MS. WINKLER:
17 Q. So I've handed you what we've marked as
18 Exhibit 12 to your deposition, and this is a copy of your
19 response to our request for production and it has the
20 e-mails attached to it that you produced in response to
21 our request, and there's several of them here.
22 Would you agree with me that, overall, these
23 e-mails express support for you and approval of you?
24 A. Those are the ones I kept.
25 Q. Did you receive any that did not express support

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1 or approval?
2 A. You know, I would say that, at the beginning
3 when this thing came out and the board started making
4 comments, etcetera, yes, there was a lot of -- not hate
5 mail, but people were very upset and didn't understand
6 what was going on and I got -- there were certain people
7 who targeted me and blamed me for everything, etcetera.
8 But once the statement became public, the
9 community turned around and they began to understand what
10 was going on. So far, as just a couple of weeks ago, in
11 spite of some people saying, Well, I don't like people who
12 sue, I was elected president of the women's association,
13 which is a very prestigious organization for all of the
14 Sun Lakes community. So the community has changed
15 enormously, and a lot of what you read earlier -- you
16 know, referring to Steve and all those issues that we had
17 before -- they were put off the board also by the board
18 until we changed the bylaws. There was a lot of animosity
19 in the community. But I think that, right now, the
20 community's coming together in a way that I would never
21 have foreseen. This is something that people are
22 beginning to understand, that they're being appreciated
23 and looked after.
24 Q. So you said certain people who targeted you at
25 the beginning, I think is the words you used. Who was

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1 that?
2 A. Oh, my goodness. Let me think. Some of them I
3 don't even know them by name. People who have, you know,
4 engrained understanding and their imagination of what's
5 going on. There was -- I mean, yes, there was one there.
6 Michael Hern. Michael was on the board with me. We were
7 friends, and she suddenly took the other -- it's only just
8 a few months ago, she stood up before the whole community
9 and said, Colette is a liar. She is just nothing --
10 nothing but lies. This is all lies. You just let it go.
11 She'll get over it. You know, that type of thing. People
12 are inclined to jump to conclusions.
13 Q. And you said that was Mica Hern?
14 A. Michael.
15 Q. Oh, Michael?
16 A. Uh-huh. She is a woman, but she's called
17 Michael.
18 Q. So any -- any other people from the -- not on
19 the board but --
20 A. Yeah, no, she's not on the board. Now, she only
21 lasted two years on the board, but she was the one who got
22 to be secretary after me.
23 The other -- the other one, there's another one
24 that attacked me at a meeting a couple months ago when I
25 was coming out and, you know, You're all to blame. It's

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1 all your fault. Well, she's a cousin of Janice's or maybe
2 she's even a sister. I have no idea. Joan Sicily is her
3 name, and she was very upset. I feel sorry. I mean, I
4 don't want people to be upset, but there's nothing I can
5 do. They just have to read the stuff and understand.
6 Q. So is -- is it your impression that people --
7 when you say "read the stuff," are you talking about the
8 complaint that you filed with the court?
9 A. Right.
10 Q. And so the reactions that you're getting are
11 based on what people are reading in the complaint?
12 A. Right.
13 Q. Would you say, overall, that you've
14 received the -- the majority of the responses that you've
15 received has been positive?
16 A. As I said, lately, yes, very positive.
17 Q. Would you turn to -- on Exhibit 12, would you
18 turn to the page that has the Bates number PL 68, and this
19 appears to be a letter from somebody, but it doesn't have
20 a name on it. Do you know who this is from?
21 A. I do, yes. This is Dave Emmerick. Dave was the
22 board president after the 2009 board was removed. Dave
23 became the president of the -- the appointed board that I
24 was part of, and then he left for business reasons. He
25 had a lot of business going on and he left the board. And

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1 he's just -- this has just pulled him in so many -- rumors
2 going around and all sorts of things going on. The
3 community appointed him to speak to the board on their
4 behalf, and this was to get -- what he sent me to -- what
5 he planned to say.
6 Q. When you say "the community appointed him," who
7 in the community appointed --
8 A. Well, hundreds and hundreds of people were
9 e-mailing back and forth; and, in the middle of it, I was
10 drawn in to answer some questions. And I noticed that
11 most of the board members' names were on the e-mail
12 addresses. So the whole board was conscious of what was
13 going on and knew this was coming up.
14 Q. So on page PL 69, Mr. Emmerick writes in
15 paragraph 2 there, the last sentence it says -- paragraph
16 2 is management problems.
17 A. Uh-huh.
18 Q. And then the last sentence in that paragraph
19 says [as read]: She tells me she has received nothing but
20 positive reinforcement and many expressions of thanks from
21 a large number of community members.
22 Do you agree with that?
23 A. Yes, I agree with that. As I say, this was in
24 error. I can give -- this was in October. I can give you
25 a date for this, because he read this at the October open

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1 board meeting.
2 Q. October of 2014?
3 A. Of 2014.
4 (Exhibit 13 marked.)
5 BY MS. WINKLER:
6 Q. I'm sorry. I've handed you what we've marked as
7 Exhibit 13 to your deposition, and this document is titled
8 Plaintiff's Response to Defendant's First Set of
9 Non-Uniform Interrogatories. Do you recall preparing
10 these answers or helping your attorney prepare these
11 answers?
12 A. Yes, I do.
13 Q. This is actually just one single interrogatory,
14 and it was asking for you to disclose to us what false
15 statements you claim the association had made to the
16 community, and so you have several pages here in your
17 answer. And I'm looking now on page 3 of --
18 A. Yes.
19 Q. -- Exhibit 13.
20 A. Uh-huh.
21 Q. So page 3, at about line 17, says [as read]: In
22 addition to general snickering when plaintiff spoke,
23 dismissing her when she spoke, or treating her with a
24 diminished level of respect different from their treatment
25 of fellow board members, plaintiff recalls the following

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1 specific incidents of association behavior that lowered
2 her reputation and esteem in the community.
3 A. Correct.
4 Q. And so the first one -- and then there's --
5 they're numbered. So number 1 is minutes that stated that
6 Director McNally was not preauthorized to speak.
7 A. Yes.
8 Q. And I think that those minutes, the
9 September 2013 open board meeting is the meeting where you
10 read the Jeannie Martens' e-mail, correct?
11 A. That's right.
12 Q. Number 2 refers to a November 2013 candidates
13 meeting. Tell me what -- what's a candidates' meeting?
14 A. That's what we had yesterday or the day before.
15 That's when people who are running for the board get a
16 chance to speak to the community. They get three minutes
17 to present themselves to the community. It happened to me
18 last year, because I was running for my second term. You
19 get three minutes to speak to the community and tell them
20 why you're there, what you want to accomplish, etcetera,
21 whatever way you want to approach it.
22 Q. So you weren't running in November of '13?
23 A. I was -- yes, that was -- that was when I --
24 that was 2013. Yes, right. I have been on the board
25 since March of the following year. Yes, that's right. I

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1 was running for office.
2 Q. Okay. So in number 2 here, the November 2013
3 candidates' meeting --
4 A. I was a candidate.
5 Q. Okay. [As read]: President Schwartz told
6 community member John Hoffmann, Don't mind what she says.
7 A. Yes.
8 Q. What was the context in which Mr. Schwartz told
9 Mr. Hoffmann that?
10 A. The context was, I had run, from the very
11 beginning, on a platform of openness and transparency, a
12 group of us did. We signed -- a lot of us -- a lot of the
13 people who had come and gone, we signed and that's what we
14 were going to do. It would be an outcome of the removal
15 of the 2009 board for what -- all the things that had gone
16 on there.
17 So when it came to talk about what I wanted,
18 that's what I presented. And one of the things I said to
19 them was, I'm -- you may not be aware, but we have not
20 come in on budget not one single month this year. And
21 there was [descriptive noise], you know, from the
22 community. And so got to the end of my speech; and, then,
23 as soon as the meeting was over, John Hoffmann, who was
24 also a board member with me on the appointed committee and
25 then on the elected committee and part of the people who

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1 stopped the removal, although they went ahead and did it,
2 anyway -- John came up to the -- the table and to Rick,
3 and I was sitting here and Rick was sitting there, and he
4 said, Rick, what was that all about? And he said, Oh,
5 don't mind her.
6 Q. How many people attended this candidates'
7 meeting?
8 A. I think that that year, there was probably a
9 couple hundred people.
10 Q. How many people are in your community
11 altogether?
12 A. It's a community of about two thousand.
13 Q. Okay. And, then, were you elected?
14 A. I was elected by one vote. Oh, until they
15 opened the votes and tried to find more votes to get the
16 other guy to win, and then I got five more votes. Honest
17 to God truth. Tampering with the votes is just another
18 little issue.
19 Q. So number 3 discusses a statement by Attorney
20 Charles -- or by the association's general counsel,
21 Charles Maxwell, during the May 15th, 2014, board
22 orientation training.
23 A. Correct. And if I may say, you have a copy of
24 that here, but I know it's been altered in the packet that
25 we got earlier. There was a copy of the minutes of that

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1 meeting, but I noticed that it was altered. The copy I
2 got actually marked me absent, and the one here marked me
3 present.
4 THE WITNESS: Do you remember that?
5 MR. KUBERT: You can't ask me. I'm looking for
6 what you're...
7 THE WITNESS: May 14th, right? Yeah, May 15th
8 board orientation.
9 MR. KUBERT: Oh.
10 MS. WINKLER: We'll just mark it.
11 MR. KUBERT: Okay.
12 THE WITNESS: And I brought it to their
13 attention that they had marked me absent, and I was
14 actually there.
15 (Exhibit 14 marked.)
16 BY MS. WINKLER:
17 Q. So just so we're --
18 A. And there were many people there than what's
19 listed here also.
20 Q. So just so the record's clear --
21 A. Uh-huh.
22 Q. -- what we were discussing is, we've marked as
23 Exhibit 14 to your deposition -- this document is
24 designated confidential. It's executive session minutes
25 for a board orientation held May 15, 2014. And what

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1 you're telling me is that you saw a version of these
2 minutes that had you marked absent --
3 A. Correct.
4 Q. -- and you called that to the attention of
5 whoever prepared these minutes, and that they corrected it
6 to show that you were there --
7 A. But --
8 Q. -- correct?
9 A. -- the other piece of it is, they weren't
10 executive session. It was training, board training, and
11 there was a lot of staff there, as well as ourselves.
12 Q. Okay.
13 A. And, then, Mr. Maxwell took it upon himself or
14 maybe with the board's consent, I don't know, he took
15 over -- he was doing part of the training. When I went
16 in, he was the person that was going to do the training,
17 legal overview and training. Okay?
18 And in that training, he brought up the whole
19 issue of the Martens' problem. And -- and then just, I
20 recall in my Irish dialogue, balled me out. He just
21 lambasted me with all the wrong things I was doing and
22 told me that I had to sign this paper if I wanted to get
23 back into executive session, saying that I had done wrong
24 and that I was guilty of -- I don't remember. I never saw
25 the paper. I never got a copy of it. That was just what

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1 went on.
2 And so, then, as soon as he had finished all of
3 that, he told me to leave.
4 Q. Okay.
5 A. That was the board training.
6 Q. Okay. Let me back up for a minute. So you're
7 telling me that Mr. Maxwell told you that the only way
8 that you could continue to participate in executive
9 sessions was if you signed some piece of paper, but you
10 never actually saw the piece of paper?
11 A. Not that I continue, that I be readmitted,
12 because I hadn't been in executive session for 18 months.
13 Q. Okay. So it's your understanding that whatever
14 this piece of paper was, it was something that if you
15 signed it, you would be readmitted to executive session?
16 A. If I signed saying that I had done everything
17 wrong that he was pointing out to, but I was not going to
18 do that.
19 Q. Okay. But just a minute. You just told me that
20 you never saw the paper.
21 A. That's right. I heard him. He read it out.
22 Q. I see.
23 A. He read it out loud in front of all of the
24 staff, everybody else. Just a real nice humiliation.
25 Q. Was any portion of that statement that you were

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1 asked to sign, did it ask you to promise that you would
2 maintain the content of executive sessions as confidential
3 regardless of whether you agreed or not?
4 A. I'm sure it was, yes, in it.
5 Q. And you will not agree to that, right?
6 A. No, that's not true. I will not agree to
7 signing that I did wrong. That's what I -- and that's
8 what I explained to him. I did nothing wrong, and there's
9 no way I can sign a paper saying that I did.
10 Q. But would you -- are you telling me that you
11 would sign a paper promising not to reveal anything that
12 was discussed in executive session even if you thought it
13 was being wrongly kept from the community?
14 MR. KUBERT: Objection to form.
15 THE WITNESS: I can't answer that, because
16 that's -- I would have to discuss it with the people to
17 see if they would change their mind and not try to put
18 into executive session -- right now, everything is done in
19 executive session. Financial policy, executive session.
20 Restructuring of the -- the budget, everything is being
21 discussed in executive session. That's the hard fact.
22 BY MS. WINKLER:
23 Q. And so --
24 A. Because I'm not there, so you say, Oh, how do
25 you know? Because Rick tells us.

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1 Q. So if I understand what you're telling me, your
2 answer is that, no, you will not agree to keep the
3 contents of an executive session confidential?
4 MR. KUBERT: Objection to form.
5 THE WITNESS: I will not agree to do what is
6 wrong. Okay. So if they are discussing something that
7 should be discussed in an open meeting, it should be
8 discussed in an open meeting. I have learned now what to
9 do, which is to say time out. Let's consider this. But,
10 I mean, I have gotten my education bit by bit. I wasn't
11 born knowing everything that has to be done on a board.
12 I've been studying year after year, taking two courses a
13 year, to make sure that I make the right decision.
14 BY MS. WINKLER:
15 Q. And if, in your opinion, the right decision is
16 that what's being discussed in executive session should
17 not be discussed in executive session but should be
18 discussed in an open session of the board --
19 A. I will bring it to their attention.
20 Q. In the open session?
21 A. Not necessarily. I would bring it right there
22 and then, if I were allowed to be in the executive
23 session.
24 Q. And if they persisted with their wrong -- in
25 your opinion, their wrong headed view of it --

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1 A. If it's doing harm to anybody in the community,
2 I would have to bring it out in the open.
3 Q. So returning to paragraph -- or Exhibit 13,
4 number 4, so these are the -- this is, again, your answer
5 to our non-uniform interrogatories. So you list two board
6 meetings after May 2014. [As read]: President Schwartz
7 and first president -- First Vice President Mr. Bauer read
8 from memoranda at these open meetings accusing plaintiff
9 of wrongfully reading the Martens' confession of the
10 September 2013 meeting. Plaintiff is not in possession of
11 these memoranda, but herein demands that the association
12 disclose same to plaintiff pursuant to Rule 26.1,
13 etcetera.
14 So there was some sort of -- they were reading
15 from some document --
16 A. Uh-huh.
17 Q. -- but you --
18 A. Yes.
19 Q. -- haven't seen it?
20 A. No, I haven't seen it. I was listening to it,
21 as the whole community was.
22 Q. Okay. And was it -- what was the context?
23 Again, why was this being read?
24 A. The context, again, was -- I think, if I
25 remember correctly, the community was asking questions.

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1 Why are you doing this to Colette? Why are you not
2 allowing her into executive session, etcetera? The
3 community kept asking questions, and so they get this
4 piece of paper and they read it.
5 Q. Okay. So it was -- they were reading something
6 in response to an inquiry from a community member?
7 A. That's correct.
8 Q. Okay. Number 5 [as read]: Refusal to provide
9 plaintiff with board communication and manager's weekly
10 reports and refusal to include plaintiff in discussions
11 regarding important association issues. By refusing to
12 keep plaintiff informed, the association is made plaintiff
13 left to look like a fool during board meetings.
14 So it's your -- one basis for your claim here is
15 that you're not adequately informed and so you look like a
16 fool during board meetings?
17 A. That's correct. I haven't gotten, in 18 months,
18 a manager's report. A manager's report is supposed to
19 come to the board members once a month -- once a week.
20 And as soon as they closed the executive session to me,
21 they closed all communications. I get no e-mails. I'm
22 not told -- I'm told after the fact. And so when they
23 come up and there's a resolution or a motion to approve
24 this budget or approve this, whatever it is, I have to
25 ask, What are we talking about? It's ridiculous.

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1 Q. So do you get notice of the board meetings?
2 A. I get notice of the board meetings same as
3 everybody in the community, the open board meeting. No,
4 they don't call it an open board meeting now. They call
5 it a work session, which is confusing the heck out of
6 people. But, anyway, that's a whole other issue.
7 Q. And so are there any sort of board packets or
8 something that's --
9 A. And I get a board packet, uh-huh --
10 Q. And --
11 A. -- couple of days before the board meeting.
12 Q. Okay.
13 A. So, then, I go through the packet and I have so
14 many questions to ask, because I don't understand. Why
15 are you choosing this instead of that? Why are you doing
16 this instead of that? What's the problem here? I have no
17 idea. Usually, some of the community comes up and tells
18 me, you know, what's going on, and then I learn some of
19 the issues.
20 Q. And so do you have the opportunity to discuss
21 your questions and the contents of the board packet at the
22 open board meeting?
23 A. I have, about the only one who has to open their
24 mouth.
25 Q. Number 6. During the November 2014 board

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1 meeting, Board Member Neal Peer smirked at you when you
2 tried to speak.
3 A. Made a mockery of plaintiff.
4 Q. Right, by smirking?
5 A. By smirking, by, you know, making all
6 sorts of -- that was very interesting. I had asked --
7 since last March, I had asked the board to put 10 items on
8 the agenda, which were a concern to me because they were
9 things that referred to our governing documents that were
10 not being taken care of. And so for 10 months, I'm asking
11 this. And, then, what they did was, have -- they put it
12 on the new agenda: Colette McNally, Director McNally,
13 agenda items. I thought, thank goodness, now we're going
14 to resolve this issue.
15 Instead of that, Neal just got them, read
16 them -- that you couldn't understand what he was talking
17 about. I had -- I have no -- no problem with this. Where
18 are you -- where are you getting the problem? And went
19 right down through them and just made me feel the biggest
20 fool. I've never been harassed like that in my life. I
21 guess I've led a very sheltered life until now.
22 Q. Anything other than what is in your answer to
23 the uniform interrogatory that you claim the association
24 has done to put you in a false light or lower your esteem
25 in the community?

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1 A. Well, it's always, always little incidents but,
2 at this point, I can't -- I don't want to add to this.
3 Q. Is there anything in your mind right now that's
4 not in this document?
5 A. I really can't recall at this moment.
6 MS. WINKLER: Okay. Let's take a short break.
7 Let me review my notes. I'm probably done, but we'll just
8 come back in, like, five minutes.
9 (Recess taken from 4:22 to 4:30 p.m.)
10 MS. WINKLER: I don't have any further questions
11 for the witness.
12 MR. KUBERT: I have a few.
13
14 EXAMINATION
15 BY MR. KUBERT:
16 Q. Colette, counsel went through some earlier
17 executive session minutes prior to 2013. I think they
18 were 2010 and 2012. And during the course of that
19 testimony, I think it came out that you were recalled from
20 the board once or twice during that period. Do you recall
21 that testimony?
22 A. Yes, I do.
23 Q. Does this lawsuit have anything to do with the
24 avenging -- you know, personal vendettas or anything like
25 that or exacting some sort of revenge for being recalled

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1 or taking any action of that nature?
2 A. Absolutely not. At that time, they were
3 completely different people involved. And the person,
4 Bernadette, who recalled me is my next door neighbor. We
5 chat. We -- I celebrated Christmas at her house. I mean,
6 you name it. There's no -- it's nothing personal
7 whatsoever. I like the people who are on my board. Rick
8 is a fun guy to be around. I'm just worried about how
9 they're conducting the business. I have nothing -- I can
10 sit down with them. Nothing.
11 Q. And I think toward the end of -- before we
12 broke, you were talking about how the board has been
13 conducting business in executive sessions and not during
14 the open portion of the meetings. Do you recall that
15 testimony?
16 A. Yes, I do.
17 Q. Can you be more specific and discuss what type
18 of business they're conducting in executive session and
19 how you would know that if you're not back there?
20 A. Correct.
21 You know, at the beginning when they excluded
22 me, part of the pain and humiliation -- you know, what's
23 important about an executive session? There's very little
24 to deal with in one. But when Rick comes out and tells
25 the community, Oh, we're going to -- we had a big issue

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1 with the credit card. The manager was using the credit
2 card for himself personally, and that's been going on for
3 some time and we had a big issue. It came out to the
4 community. Nothing was done until the community came back
5 and said, We want to know what's going on. So Rick told
6 them, Oh, we're developing new policies. Now, I know that
7 policies are not developed in executive session, and they
8 have to be approved in an open board meeting. They still
9 have not appeared. I have not seen them anywhere.
10 He talked about restructuring, because we're,
11 like, 200,000 over budget, and I'm trying to get at where
12 the money is going, etcetera, etcetera. We're
13 restructuring. Not in an open board meeting, we don't.
14 There's a number of issues. Even from green
15 fees. They come out from an executive session, I'm
16 sitting out in the community at the table for the open
17 meeting, and the green fees is on the agenda, and so fine.
18 And then the question is, should we raise the -- I can't
19 decide that without knowing what they were last year. And
20 the executive runs back into the board room, brings me out
21 the copy. Obviously, it was discussed and decided in the
22 boardroom before they came out to the open meeting. That
23 kind of thing goes on all the time, and it's unfortunate.
24 Q. So are they discussing and resolving budgetary
25 issues in executive session?

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1 A. Absolutely.
2 MS. WINKLER: Form.
3 THE WITNESS: I was -- I was -- one day, I found
4 them in an executive session. I was going down the hall
5 and -- oh, we had a meeting outside, and then -- we used
6 the chairs that belong to the boardroom on the stage when
7 we were meeting for the open board meeting in the Arizona
8 Room. And after the meeting, to help the maintenance
9 people, we would just roll our chairs back into the
10 boardroom. So I was rolling my chair in, and I find
11 they're all in there.
12 And so I sit down. I said, You're having an
13 executive session? You can't be here. Well, I said, You
14 get security and we'll settle that. So I talked to them.
15 And there's Janice with the board -- with the budget
16 saying, Guys, we have to get on with this meeting. We
17 have a lot of the budget to discuss. What can I say?
18 They don't know the rules.
19 BY MR. KUBERT:
20 Q. Has the association circulated agenda of what is
21 being -- of what is going to be discussed during executive
22 sessions?
23 A. No, they don't --
24 MS. WINKLER: Form.
25 THE WITNESS: -- they do not send out -- and I

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1 didn't notice that, if it happened before. I didn't
2 notice it, because I got my notice and e-mail saying
3 executive session and with the agenda of the executive
4 session, and I didn't think twice. But the moment they
5 shut me out, I got that no longer. So the community
6 wasn't getting it, because I get the general ones from --
7 about the open board meeting, but they did not send -- and
8 I have told them a number of times, date, agenda -- time,
9 place, and agenda is what -- Rick says, Oh, doesn't
10 matter. They're not going to know what's going on,
11 anyway. So why should we send it out?
12 BY MR. KUBERT:
13 Q. If you could pull Exhibit 14 out of your pile
14 there.
15 A. I have it here on top.
16 Q. I think you mentioned that you have seen this --
17 these minutes before today; is that correct?
18 A. Yes, yes. They were in my -- in my board book
19 when I got it for the following month.
20 MS. WINKLER: Form.
21 BY MR. KUBERT:
22 Q. Can you recall when you saw these minutes?
23 MS. WINKLER: Form.
24 THE WITNESS: I saw them on the following month
25 when -- when I got my board book to go for -- so this was

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1 May. So in June, when I got my board book for the
2 following open meeting. Oh, no, no, no, no, no. Wait a
3 minute. These were not the same at all. They were not
4 executive session, because it wasn't an executive session.
5 It was a board training. So I got them in my board book.
6 If it had been an executive session, I wouldn't have
7 gotten them.
8 You understand, so this -- the whole thing, I
9 told them -- now, you see, I told that what I got looked
10 like an agenda. So if this was an executive session, this
11 is maybe part of the meeting; and if it was the executive
12 session, I wasn't there, but I was at the board
13 orientation training. So it's very confusing what they're
14 trying to portray here. It's a mixture of -- I don't know
15 what they are trying to do, because I got the minutes from
16 the board training --
17 BY MR. KUBERT:
18 Q. Okay.
19 A. -- and I was marked absent. So I reminded them
20 that I actually was there until Charlie Maxwell threw me
21 out.
22 Q. That's what I was going to ask you. Can you
23 recall, sitting here today, any differences between the
24 minutes that you saw in your board book that you just
25 explained and this Exhibit 14?

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1 MS. WINKLER: Form.
2 THE WITNESS: Yes, lots of differences.
3 BY MR. KUBERT:
4 Q. Can you discuss them?
5 A. One, I was marked absent. Two, it was much,
6 much longer. There was much more to it, because it wasn't
7 just the legal. It was the board training. Here, it says
8 dismissal of Colette McNally, 10:05. So this is an
9 extract. So this is confusing. This is an extract from
10 the board training that I got. That's all I can say.
11 It's too confusing at this stage to know what on earth is
12 going on.
13 Q. Is this the -- is this Exhibit 14, is this the
14 same minutes that was in your board book?
15 A. No, it's not the same as it looks. It's
16 altered. But I took it to be that, but it's -- it says
17 I'm there in this one; and the other one, it said I wasn't
18 there. The other one that I had in my book was much
19 longer. So I'm beginning to think that they're trying
20 to -- for some -- but I wasn't there for this piece
21 because I was -- it's too difficult to understand what
22 they're trying to convey here.
23 MR. KUBERT: That's all I have.
24 THE WITNESS: All I know is, I got -- I brought
25 it to their attention that I actually was at that meeting

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1 and that's the last I saw.
 2 MS. WINKLER: Re-cross.
 3
 4 EXAMINATION
 5 BY MS. WINKLER:
 6 Q. Your testimony earlier about budget being
 7 discussed and what you believed was an executive
 8 session --
 9 A. Uh-huh.
 10 Q. -- do you know if this budget that you believed
 11 was being discussed was some sort of a draft budget or a
 12 budget in process; do you know?
 13 A. I have to think when it happened. Whether we
 14 had -- it wasn't a draft budget, 'cause the draft budgets
 15 are developed by the budget and finance committee.
 16 Q. So you don't believe it was a draft budget, but
 17 do you know? Did you see it? Were you part of the
 18 discussion?
 19 A. No, I was not part of the discussion.
 20 Q. Going back to Exhibit 14, did you prepare this
 21 exhibit?
 22 A. No.
 23 MS. WINKLER: I don't have anything further.
 24 THE WITNESS: I just received it.
 25 MS. WINKLER: That's it.

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1 MR. KUBERT: I have -- if I could ask one
 2 further question.
 3 MS. WINKLER: Okay.
 4 MR. KUBERT: Is there a problem?
 5 MS. WINKLER: Well, it's unusual. You've done
 6 your redirect.
 7 MR. KUBERT: You're right, I did. I missed one
 8 page of notes.
 9 MS. WINKLER: That's fine.
 10
 11 EXAMINATION
 12 BY MR. KUBERT:
 13 Q. Did the board ever tell you not to discuss the
 14 Martens' letter?
 15 A. No, no, they didn't.
 16 MR. KUBERT: That's it.
 17 (Deposition concluded at 4:39 p.m.)
 18 (Signature was not requested.)
 19
 20
 21
 22
 23
 24
 25

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1 DEPOSITION SIGNATURE PAGE
 2 Colette McNally, an individua. Case No.
 CV2014-009496
 3 Plaintiff,
 v.
 4 Sun Lakes Homeowners Association #1,
 5 Inc., an Arizona non-profit
 corporation,
 6 Defendant.
 7
 8 Assignment No. 258543
 9
 10 DECLARATION UNDER PENALTY OF PERJURY
 11 I declare under penalty of perjury that I have
 12 read the entire transcript of my deposition taken in the
 13 above-captioned matter or the same has been read to me and
 14 the same is true and accurate, save and except for changes
 15 and/or corrections, if any, as indicated by me on the
 16 DEPOSITION ERRATA SHEET hereof, with the understanding
 17 that I offer these changes as if still under oath.
 18 Signed on the _____ day of _____,
 19 20____.
 20
 21 (Signature not requested.)
 22
 23 COLETTE MCNALLY
 24
 25 ** Arizona does NOT require that your signature be
 notarized.

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1 CERTIFICATION
 2
 3 I, SHELLEY E.D. PEARCE, RPR, a Certified
 Reporter within and for the State of Arizona, do hereby
 certify:
 4
 5 That the foregoing deposition was taken before
 me; that an oath or affirmation was duly administered to
 COLETTE MCNALLY pursuant to A.R.S. 41-324(B); that the
 6 questions propounded to the witness and the answers of the
 witness thereto were taken down by me in shorthand and
 7 thereafter reduced to typewriting; that the transcript is
 a full, true, and accurate record of the proceedings, all
 8 done to the best of my skill and ability; and that the
 preparation, production, and distribution of the
 9 transcript and copies of the transcript comply with the
 Arizona Revised Statutes and ACJA 7-206(J)(1)(g)(1) and
 10 (2).
 11 The witness has not requested transcript review and
 signature.
 12
 13 I FURTHER CERTIFY that I am not related to any of
 the parties, nor am I in any way interested in the outcome
 hereof.
 14
 15 IN WITNESS WHEREOF, I have hereunto set my hand this
 16 _____ day of _____
 17 *Shelley E.D. Pearce*
 18 Shelley E.D. Pearce, RPR
 Arizona CR No. 50301
 19
 20
 21 /s/
 22 For Esquire Deposition Solutions
 23 Registered Reporting Firm No. R1048
 Assignment No. 270217
 24
 25



Janice Cournoyer

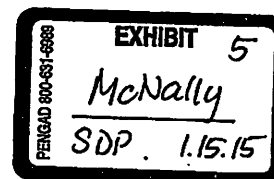
From: "Rick Schwartz" <servtype@yahoo.com>
To: <kpbauer9877@yahoo.com>; <mjcournoyer@wbhsi.net>; <janicegc57@gmail.com>; <jeantolar@cox.net>; <colettemc9412@gmail.com>; <wtbtang67@netscape.com>
Sent: Monday, August 05, 2013 5:23 PM
Attach: JeannieMartens.docx
Subject: Fw: Fwd: Please Read Regarding 2011 Board Member(s) Incident

Ray Smith and Colette send this to me. I have not forwarded this to Clint or Roberta. I am going to need some help on this one also I didn't send it to Bob I can fill him in later. Give me some feed back I Colette's feed back.

Rick Schwartz
 480.332.5439

----- Forwarded Message -----

From: Colette Mc Nally <colettemc9412@gmail.com>
To: Rick Schwartz <servtype@yahoo.com>
Sent: Monday, August 5, 2013 3:07 PM
Subject: Fwd: Please Read Regarding 2011 Board Member(s) Incident



I just opened this.

The background for this is the illegal removal of myself by the then Board. You have only to read the minutes of the last executive meeting before my removal to understand just how illegal it was. The actual removal was done through secret meetings [no minutes] and an illegal vote which only passed because Bernadette, then president, voted. I tried to get Jean to allow me to expose the improper behavior after I had been voted back on the Board, but she refused. There is nothing illegal in board members or community members consulting a lawyer. My lawyer represented me at that same board meeting and a letter was sent to the Board by my lawyer. That the Manager colluded in such illegal behavior as using communication that came into his hands accidentally {Ray left a copy of his correspondence in his Board Board by mistake} is just another example of what was going on in those days. The proper procedure would be to call an executive meeting to discuss the incident and not pass out copies of private correspondence to all and sundry at a community meeting. The consultation with a lawyer that is alluded to was used to bring about a bad interpretation of what we were doing and was seemingly instituted by Clint and Roberta was brought about by a community member Cindy Morrison, who came with her concern for the illegal behavior of the Board and asked for our help {Ray Tom and I and Steve] We were all concerned but let the problem drop once Bernadette resigned. The illegal behavior we were concerned about was Bernadette appointing herself back on the Board and taking actions at the Organizational Meeting which were inappropriate and led to all the problems we later had. In all of this Clint as Manager had the duty to point out the things that they were doing that were not in accordance with our Governing Documents. But he colluded with it all and led the Board astray. And that was not the last time he did this as you yourself are a witness at our last Organizational Meeting and afterwards. Tom is going to come to our next meeting and expose this whole problem. I think it is appropriate that Clint should resign or be dismissed and probably Roberta also.

If you would like to discuss this give me a call and we can set up a meeting.

McNally v. Sun Lakes HOA #1
 Case No. CV2014-009496
 HOA000064

----- Forwarded message -----

From: <JeannieMartens@aol.com>

Date: Sun, Aug 4, 2013 at 8:17 PM

Subject: Please Read Regarding 2011 Board Member(s) Incident

To: rglazieraz@hotmail.com, west_thomas@msn.com, colettemc9412@gmail.com

Cc: morrrein@aol.com

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 Morrrein 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

CONFIDENTIAL

EXHIBIT 7
McNally
SDP 1.15.15
PENGAD 800-881-8888

McNally v. Sun Lakes HOA #1
Case No. CV2014-009438
HOA000053

Dear Fellow Board Members

I would ask you to spend a few moments with me reviewing what has been happening in our community and which has brought about this meeting, before proceeding to the signing of Maxwell's recommended RESOLUTION. I, personally have no objection to it if that is what you want to do. It clearly puts me on the side of dealing with the issues involved with rectitude and fairness. Fear should not be our motivating factor.

1. I received an email from Jeannie in which she apologized for her involvement in the act of publishing private emails between community members found in a board member's book. Jeannie said she took the emails to Clint who passed them on to Roberta who completed the dirty deed by passing them on to Bill Hoyt, a member of the community well known for his hateful emails already circulating in the community attacking some of the members mentioned in these emails. Good choice! The perfect person for the role. The important thing here for me and why I see it as beyond contempt is this: The Board's authority was bypassed, their right to make decisions as to how these private emails should be treated was not even considered. I suppose the management team thought the board wouldn't do the right thing and take advantage of the situation to act as they did! So the board's authority was taken away, and an ugly hoax was played on the community, and a group of residents whom they obviously disliked, was treated with disrespect and contempt. On receiving Jeannie's email I forwarded it to Rick so he could be prepared to meet the comments of the concerned community members, who also received it. Rick did not call a meeting of his board to deal with the issue as I had expected, [there was plenty of time between receiving Jeannie's email and the date of the community meeting] but instead proceeded to share said email with the very staff that had committed the wrong, and even took them to our HOA lawyer so they could receive his counsel. These actions made it very clear where Rick's sympathy lay. It certainly did not show any support for those harmed by the actions of the management staff. In fact, Rick asked for my resignation for my part in the meetings with the other community members, making negative comments on the emails and condemning me for my actions, though he had never even seen the emails. He didn't ask me for any information. He got his information obviously from a biased source. No disciplinary action was taken or even considered regarding the actions of the management staff. To take no disciplinary action in the face of inappropriate behavior and to seek to shield those who do such as this generally signifies that you approve of it or that you fear to take appropriate action. That really shocked me. I have served on the board with six presidents and have seen a lot of problematic behaviors, but never anything like this. At the Board Meeting, instead of listening to the community, Ray in particular, he silenced the community and the Board [not permissible under our governing docs or Robert's Rules] and said that the board was taking care of it. We were not. We did not. We have not. We have

just tried to ignore it, do a cover-up, and have let the wrong go as if it didn't matter. In fact you are now attempting to punish the messenger instead.

2. So I wrote emails to the Board, as any concerned board member should, sharing very public information, of which at least some of the board seemed unaware, which related allegations about what was happening to Clint, the very person we were exonerating from any responsibility in the actions before mentioned. Clint's involvement in an investigation was only once brought to the attention of the Board by Maxwell who was consulted and brought into an Executive Meeting with Clint present. The information was brief and included such ideas that it was all the fault of others and that Clint was just being persecuted. This was given together with threats of suits that Clint would bring against us each and every one of us if we discussed it. I informed Maxwell that this information was already on the internet and therefore public. Jean did not discuss the information with the Board or seek their advice before bringing in Maxwell to scold us all into silence. No discussion was held about appropriate action as board members should. Message: You are not to be trusted. You are just a bunch of irresponsible know-nothings who must be told what to do.
3. Only after Rick's visit to Maxwell with Jean, did Rick convene a special meeting of his Board, and we were dictated to as to how we should ignore the unethical behavior of Clint and Roberta and not take any action. You all agreed. In my code of ethics a reasonable effort should be made to rectify the harm done. I don't agree with this kind of cover-up of unsavory behavior, and feel that at least an apology is due those affected by their unethical and underhand act. I was one of the ones who suffered because of what they did. I recommended that they should be let go. But the board's decision is what it is, and I can live with it, though it was made under pressure and without other possible options being presented.
4. And now we receive an email from Maxwell with all kinds of insinuations and "speculations" about myself [and my "friends" {that's Jean's usual attack} threatening me with all sorts of dire consequences for doing what I did. So what did I do?
 - a. Forward the email from Jeannie with a recommendation for disciplining staff.
 - b. Forward public information to my fellow board members that is available on the web.

Which of those actions merits another visit to the lawyer [expense] and an email back with such dire warnings? [more expense] How much of our community's money has been spent on these visits so far?

Now I must look at the actions Rick took, but before that a little tutorial on our Governing Documents and the Role of the President.

1. The President of the Board has only one thing he can do by direct authority, and that is "to convene and preside at meetings of his/her Board". That is the only function s/he can do without Board Approval and/or consent.
2. There is a list of "duties" s/he has to perform listed in our governing documents, all of which need the approval of the Board of course. One of the main duties is to supervise the general manager and see that he follows the directives of the Board and the governing documents, not his own politics or inclinations, not even those of the President.
3. That's it. They do not say he can approach the HOA lawyer or any other consultant without board authority. Board Authority is given by a VOTE of the board which is done in a meeting of the board. The HOA lawyer is not a member of the Board, nor is he entitled to read communications between board members without their consent. He is not entitled to dictate to the Board how they should think, decide or act. If he is needed for counseling on a legal matter, that is to be decided by the Board after they have had their meeting, been fully informed, discussed the options, and have made their decisions. To act otherwise is to put in place a Dictatorship which disenfranchises the board and disregards our governing documents.
4. If Rick does not like my comments or recommendations [not speculations by the way] no problem, he has the rest of the board to offer their recommendations, and it takes only four votes for the final decision about what to do. He doesn't have to agree, but he should listen with openness, respect, and consideration due any elected board member.
5. So, why take those emails to the HOA lawyer? I wondered as I read the long convoluted email, what value he [Maxwell] was offering the Board for resolving our present problems. Maxwell did not once comment on appropriate actions to be taken regarding the problems we were discussing: How we should put in place policies and procedures to protect our assets and our staff from possible accusations in the future. He offered nothing of value to the board. He just made insinuations and threats which are completely off track. Is Clint in any position to sue the Board for an email HIS former assistant sent to various members of our community which gave an explanation for his strange, secretive, and inappropriate behavior that led to an attack on board members? How could that be? Can he sue us for information that is readily available on the web? Not likely. So, what was the result of Rick and ^{Janice} Jean's visit to the attorney? A letter that threatens me, tries to silence me, and bullies me in what appears like a cover-up or diversion. The HOA will be billed more attorney fees, there is no attempt to create a policy that prevents a GM or other employee from engaging in secretive and inappropriate political shenanigans, and we are not looking at what we must do to responsibly examine the allegations Clint's former employers made public both before and after their forensic audit. Look at what this ugly letter from our own attorney is doing to us. We don't attempt to correct behavior we don't want from an employee and set things right in that arena. We don't do our due diligence regarding the allegations of financial

misconduct against our general manager. We leave ourselves totally open to accusations of cover-up and gross negligence as the homeowners become aware of these very public allegations - as they most certainly will.

6. **MY CONCLUSIONS:** It seems to me that Rick has violated the trust of the board, in particular this board member by giving my communications [emails] that were sent to board members, to Maxwell and without discussing his concerns about them with me, or with the Board first, with the one intent to silence me. By doing so without the advice of his board, he disrespected us and treated us like a bunch of sheep whose advice he does not want or consider worth seeking. He has overstepped his authority more than once in this and caused grave harm to the board's integrity and our duty as elected officers to give advice and counsel. He has treated me personally with disrespect and negativity and created a climate of hurt, divisiveness, and irrelevance, in an effort, it seems to me, to influence the rest of the board against me and to keep them from acting responsibly. He has misused his position by giving Maxwell power over the board, to bully board members directly and indirectly who have just a difference of opinion with himself. He has taken away the authority of the board as it is defined in our governing documents. I cannot support such behavior. I think it is reckless and harmful to the community. I think he should step down as Board President and allow the board to function as it is meant to, and go about repairing the harm that has been done.
7. So, once a RESOLUTION is passed, a copy must also be posted in the lobby and in all our usual means of communication with the community, or are we going to keep it secret? I will need a copy which then makes it a public document and I will then be forced to discuss the reasons for such action with whoever asks. This is not a good recommendation for this board to follow. This is only going to increase the community's need to know what is being done, which you tried to avoid in the first place. This will once again divide the community and bring out all the old criticisms and battles. But that is your choice and Maxwell's recommendations. Completely and openly discussing the problems we face among the board with respect and intent to find a just and honest solution might be a better way.
8. To assist the board in performing the duty we have as a board to show ourselves proactive and diligent in protecting the community assets and preventing any accusations of the contrary I have put together the following RESOLUTION for you to sign:

Jeffrey B. Corban
Chad M. Gallacher
Charles E. Maxwell
Brian W. Morgan*
Paul R. Neil**
W. William Nikolaus
Allen F. Quist
Mark W. Waldron
* Also admitted in Utah
** Also admitted in California

LAW OFFICES OF

Maxwell & Morgan, P.C.

Pierpont Commerce Center
4854 East Baseline Road
Suite 104
Mesa, Arizona 85206

Telephone: 480.833.1001
Facsimile: 480.969.8267
Email: mail@hoalaw.biz
www.hoalaw.biz

Representing Hundreds of Homeowner Associations Throughout Arizona

September 11, 2013

Colette McNally

RE: *Unauthorized Disclosure*

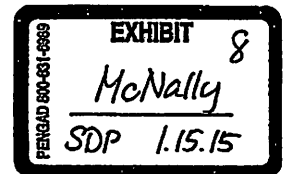
Dear Ms. McNally:

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



McNally v. Sun Lakes HOA #1
Case No. CV2014-009486
HOA000094

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,



Paul R. Neil, Esq.

for

MAXWELL & MORGAN, P.C.

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

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Reply to letter from Lawyer 9.11

Colette Mc Nally

Sep 16, 2013

To Me, Robert Sjolín, Townsend, Bill, and 3 More...

Attached is my reply to the letter received. I hope this further clarifies for all of you the implications of what is going on. I just got an email from Rick about the Executive Session to which I am not invited. This is not an Executive Session but a Special Meeting to discuss the issue we are having such a hard time handling. I want to just remind you that I am one of those who were injured by the staff behavior and therefore one of the interested parties. I have written to Rick to encourage him to invite all of those involved so this issue can finally be put to rest. To ignore them is to invite more comments at the Community Meeting. Please read the attached. I have tried to speak as plainly and clearly to the issue as I can.

ANSWER TO LETTE...docx

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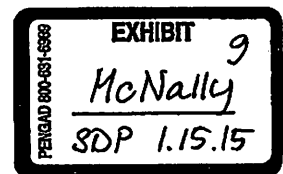
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McNally v. Sun Lakes HOA #1
Case No. CV2014-009498
HOA000005

Fellow Board Members: Here is my answer to the letter of September 11 from Niel/Maxwell. I will not send it to the learned council who wrote me. I do not see the point in wasting community assets. You have my permission to do what you wish with its contents.

There is a lot of misinformation in the letter dated September 11. Your information is it seems to me being supplied to you by someone who is trying to malign me and discredit my reputation. I would ask you to verify such information before using it in a letter that could lead to further discord. Let me clarify some of your assumptions and accusations.

PARAGRAPH 1: If the vote you refer to here, was "not to MALIGN" I would have agreed completely. I would have no part in "uttering injuriously misleading or false reports about" anybody. I have never in my life participated in such an act as to attempt to malign anybody. There was no false reporting on my part. The information was all true to my best knowledge, and opinions given to fellow Board members had the intent to help them make the right decision about an issue which they were dealing with in an executive session, and which did not pertain in any way to executive session. The intent of the vote was, it seemed to me, to avoid dealing with the issues involved, in a correct manner. The actions of the staff revealed through the email mentioned, were in fact an attempt to malign a group of residents, mainly former board members, myself included, by broadcasting private emails of said residents with a cover letter naming their lawful and legal meetings as a "conspiracy". What the vote intended was to absolve the Board from any responsibility towards the residents affected, and to protect the wrongful actions of staff, without discussion with the affected residents. There is no doubt in my mind that what Ms Martins said is true, no denial of the actions by staff or by the Board has ever been offered in my hearing. The intent was to shroud in "secrecy" the wrongdoing and not to give legitimate redress for said actions of the staff. This was followed by another meeting in which members of the board tried to label my concerns and information given to them as malign, when the information was truthful and public and for which we have a responsibility to address.

PARAGRAPH 2: Stating that I read "without prior notice" the email sent by Ms Martins is again incorrect. When the President of the Board silenced any comment on the email sent to a group of residents [former board members], myself included, whose intent was to malign [see cover letter to our copied emails] was revealed. My only intent was to bring about a just and sincere investigation of the injury brought about by our management staff, and effectively curtail a repetition of such unprofessional and unethical behavior. My intent was to redress a very uncalled for action of the President in silencing comments from members at the Board meeting. This is not the way board meetings are supposed to be run under our governing documents or those of the AZ Revised Statutes. Comment by those attending is always to be encouraged and

provided for, however unpleasant it may be to any one of us. At the time of the July Board Meeting I told the President that I would give him the opportunity to make appropriate redress and would remain silent until the next Board Meeting and not address the issue publicly until then. I did so.

Why I read the email, which is public property, and known to a group of residents and could be disseminated by those who received it as widely as they so choose, is very clear to me. My action was to defend our legitimate right to a fair and open discussion as the First Amendment provides for, and which guides the AZ Statute 33-1804 and our governing documents, as to what can be kept secret. This issue is not one that can be discussed in Executive Session. It is not a legal matter, as our counselor correctly stated, and neither does it fall within any of the other guidelines which provide executive protection. This was an issue that should have been promptly dealt with in a Special Session to include all of the parties concerned. This did not happen. I had warned the President when he inappropriately suppressed discussion and comments of members and board members at an open meeting that I would again address the issue if it was not dealt with appropriately. It was not dealt with appropriately. I was fulfilling my duty as an elected board member who is bound by law to deal with issues of community concern in an open and forthright manner, and not to shroud in secrecy that which violates the open meeting laws. Just because something is addressed in an Executive meeting does not automatically make it subject to protection. It must fall within the appropriate guidelines. The President is also at liberty to express his own decision to not address the issue and why he thinks it is not necessary when he is asked, as are all of the other board members who support his action.

PARAGRAPH 3: My conduct was completely appropriate given the hostile environment encouraged by the board president. By seeking legal advice without consulting his board, revealing the contents of the emails to the staff involved without board council, and taking them [staff] to our HOA legal council to prepare their defense, he violated by attorney client privileges. Our legal council is employed to look out for the good of the board and the community. How could he do so if he is involved in the defense of the very staff who have offended the community? This was followed by demanding adherence to a "no action necessary" vote of the board without any discussion or options considered, in the vain hope I imagine, to contain damage that had already spread throughout the whole community. Acting in this manner he is bringing disrepute to the whole board. My action was appropriate when the President insisted on continuing to seek legal advice in a case where it was not warranted, and with no intention of resolving the issue [malicious actions by staff towards community members without prior authorization from the board of directors] but instead with the intent to harass myself into submission to his view. My actions were completely justified when community members were not given an opportunity to express their concerns, as is their right,

in an open meeting of the Board or special meeting held in a timely manner to pursue a resolution to the matter. My actions are also justified by the Board trying to resolve an issue not protected by the exceptions permitted by AZRS33-1804 and that were dealt with as if they had protection. I was driven to act for the sake of the Association who elected me to this responsible position. A Board is not a "club" where we can pick and choose our rules. We are a "governing" entity bound by law. This often escapes those who are not fully aware of the consequences

PARAGRAPH 4: To try to reclassify information as confidential when it is the property of a group of members who are free to distribute, comment, and seek redress on, is at a minimum rather futile. I did not discuss the Board's action or non-action as it was; I read an email that is in the public domain and addressed to me. Not addressing this email publicly and fairly with the concerned community in an open and timely manner is not to fulfill our duty as elected board members. Yes, I absolutely agree "we owe duties of confidentiality and loyalty to the Association". That is my primary intent. We were elected by our community to do just that. To malign board members who try to do so and harass them with threats from lawyers so they come into line with the board's desire, to not address issues, is not to serve the community or be loyal to our promise to serve. Sharing the information that Ms Martins sent to me can never be construed as a lack of loyalty to the Association or to the Board. You are interpreting "loyalty" here in a very strange manner. Loyalty is not without principals, and sometimes needs a stick. If I perceive that the Board is acting in bad faith, or is being advised badly in how to handle the situation, and I can do anything to help them make redress, I am bound to do so, otherwise I have the appearance of lacking in the courage of my convictions and acting out of cowardice and conforming for the sake of acceptance by the stronger, i.e. lacking conviction and principals. My loyalty to the Board lies in assisting, pushing or dragging, whatever you like to call it, towards a proper treatment of the issues as I interpret them to the best of my ability. I am solely obligated by the vote of the Board with whom I disagree to accept their decision if it is legitimate and done according to the rules that bind us. It does not oblige me to kneel down before it and shed my values or conscience or ignore correct procedures. I strongly urged the board to get a second opinion on all of this, as the real issue is being ignored, while they pursue harassment and silencing of a board member who only wishes them to resolve the issue in a manner that will bring them recognition and support from the community, and bring redress to those offended. Am I wrong to pursue this end? I will let history judge.

Finally: There is absolutely no provision in our governing documents or in the AZ Revised Statutes for the Board to even suggest that they can call a legitimate meeting without noticing all board members. Any meeting held without noticing all board members would be invalid. To disallow access to a duly elected board member on a whim or judgment which is based on an incorrect interpretation of our governing documents is abhorrent and sets a precedent for

more unlawful actions. To impose the necessity of a court order to attend is to overstep all present legislation on planned communities and is totally unsupported. As your letter to me is my property I feel free to communicate its contents with anyone I please and receive the counseling I need through this unlawful act and this continued harassment. If this goes into effect I will station myself in the lobby during all Executive Meetings for the foreseeable future and explain to all passersby why I am there instead of in the appropriate meeting. Let that be a lesson to those who are considering serving on future boards of what to expect.

A comment from our legal counsel in one of his emails received prior to this letter referred to my "friends" with allegations of impropriety. It would be very enlightening to me to know which of my friends at any time performed any act in their service to the community which had the intent to do, or did any harm to the community. I promise I will answer for any you can produce. These types of unfounded statements which are fueled by gossip and negative comments by those who are biased, are not founded in truth and are dangerous to repeat and very hurtful to those of us who are their friends. The fact is, I have served with six HOA Presidents during my time on the board here. They have all made mistakes which is only natural and to be expected as they came to serve with various levels of preparation. Of the six HOA Presidents I served with most did not take kindly to any correction, and some made threats and retaliated. Only one thanked me for my interventions. That's as much as I can expect. Power gets a little heady at times.

As an ending to this pleasant dialogue let me comment on one of the questions put by our legal councilor who asked if I were a lawyer, as if not being so meant I had no legitimacy in uttering an opinion. The answer is: Thank God, no. And no other board member is either. It is not a prerequisite for serving. We are only called on to do our best. But I do have a Masters in Education Administration and Certification in Non Profit Management and forty [40] units of training in HOA Board Management. I have done what I can, and will continue to do so. My goal is to conduct myself in a professional manner in the service of my community and give the best of myself to the service of truth.

Respectfully,



September 15, 2013

— Original Message —

From: Rick Schwartz

To: Janice Cournoyer

Sent: Wednesday, March 19, 2014 2:08 PM

Subject: This is interesting

From: Raymond Smith

Sent: Wednesday, March 19, 2014 12:12 PM

To: Ed Foster

Subject: FW: Question

Ed, I asked Colette if she was ok with me sending this to you and she said she has no problem with that so here it is. She has no litigation against the HOA but retained a lawyer after threats from Clint and Roberta who as you know were involved in the situation involving all three of us and the management persons I told you about. Thanks, Raymond

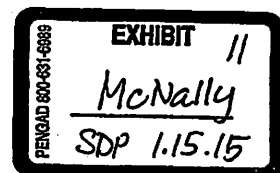
Date: Wed, 12 Mar 2014 13:15:23 -0700

Subject: Re: Question

From: colettemc9412@gmail.com

To: rsglazieraz@hotmail.com

Here is the situation: I had to initiate a response to a threat from management to sue me, which was obviously an attempt at intimidation from the board HOA lawyers [they were quoted in the letter of intent] to silence me. For that I had to hire a lawyer. My lawyer has sent a letter to the board stating that they are unjustly keeping me from executive sessions but they refuse to reconsider. Their position is ridiculous. They are co-opting an email sent to me and a group of community members which they cannot possibly say is privileged because it did not originate from knowledge which belongs to the board, and originated from the board. I have been tempted to bring a lawsuit or bring the item to the Office of Administrative Hearings both of which will cost me and what will I really achieve? Getting entrance into the executive meetings is such a minor issue and just an act of vengeance and an attempt, as you so correctly stated, an attempt to push the issue under the rug because they do not wish to deal with it, and it will come back to haunt them and is tainting the board as unjust and biased.



At the moment I am not going forward with these possibilities as really participating in executive session, if they were held according to the rules is a minor issue. I will instead pressure the board from outside bringing to their attention and that of the community the many ways they are not conforming with the bylaws and Arizona State Statutes. Not having any communication from the board about what they are doing gives me more opportunity to bring these items before the public in the open meetings, indeed it forces me to act in this way, as I have an obligation to the community as an elected member to address these issues.

So you can tell Ed that I retain the option to sue the Board for their wrong doing but as they continue to do so and are involved in many other things which are wrong, I am having a good time "helping" them to see the error of their ways. I know there is a group in the community who are very upset and thinking about challenging the board. That is their affair. I can just be as open with them as possible and wait to see what happens next. If there were a recall it would not be of the entire board as this does not affect the newly elected members, and the board could continue to function by appointing another member [in this case Marv]. It won't be a repeat of 2009 when the board decided to leave everything in the hands of the HOA lawyer!

Here are some of the issues that I feel important: [You may adopt any you wish]

Non publishing of the 2013 budget: Did you realize that the budget sent out to the homeowners with the notice of the annual meeting contained only budget estimate figures not actual numbers? The community does not know that we came in way over budget on expenses and way under budget on income to the tune of nearly \$200,000. That's something the manager should be held accountable for and the board should address immediately.

Clint's beautiful new office. Completely new furniture. When was this approved? Where did the money come from? Budget items may not be discussed and/or decided in executive session. This certainly cannot be made a "crisis" situation. So who authorized this expenditure? What did it cost?

Pro Shop budget: It's been known for months by those involved that the Pro Shop is way over budget but the issue has been postponed for discussion over and over at the open meetings. When did the board decide to give the go-ahead for an increase in spending? It's another example of rushing into an expenditure without doing a thorough investigation of possible problems. Just like the kitchen affair of 2009 which brought down the board at that time.

Elections: Robert's Rules tells us that the board never ever interferes in elections. In our bylaws we are not told how to resolve a close call but election laws do: When there is a tie or close call it is up to the Nomination Committee to consult with the candidates and it is the choice of the candidates whether to have a recount or not. The candidates were not told about the close call [at least I wasn't]. Before the meeting to announce the results the board had a special meeting to decide how to proceed. I believe I was one vote ahead. Would they have done the same if Marv was ahead? The Board made the decision. That is called playing politics and that left

them open to really negative criticism from the community and they are quite vocal in their criticisms.

Organizational Meeting: The agenda for the Organizational Meeting showed the 2013 board setting an agenda for the 2014 board [choosing liaisons and chairs]. This was not appropriate. This was done last year and I afterwards brought it to Rick's attention. So he knew it was inappropriate. The 2013 board cannot set an agenda for the 2014 board and the 2014 board is not seated until the Annual Meeting and therefore cannot address the agenda. I had that part of the meeting canceled. When the minutes did not reflect this I sent in an amendment which drew attention to this fact. So the published Agenda was changed just before the meeting for the Annual Meeting and substituted the Organization Meeting minutes to give us an opportunity to approve the already approved minutes from the Annual Meeting of 2013 instead of the Organizational Meeting, so as not to address [cover up] their wrong doing.

Annual Meeting. For the first time ever the President decided that we had to approve the minutes [already approved and acted on] from the Annual Meeting of 2013 and that the motion must come from the floor. They decided to postpone the work of the Annual Meeting [to appoint liaisons and chairs] and do nothing at the meeting. This is so ridiculous its funny. One, this option of approving the Annual Meeting Minutes from 2013 is only applicable if we didn't have another meeting since. Two, if the motion is to come from the floor, then the voting to approve must also come from the floor and there should have been people prepared to collect, count and verify the votes. Three, To postpone the approval of the Organizational Meeting Minutes means that technically Janice is still the secretary and Paul the treasurer because the minutes were not approved and it meant that there were no liaisons or chairs for the committees in January! Actions can only be taken when the minutes are approved.

Executive Meetings: One of the most important issues on the table is that of the Executive Meetings. In general, boards such as ours can close a part of the open meetings to go into executive session if there is anything pertinent to ARS 33-1804. Now you know just how narrow the items are that can be discussed and rarely even happen. **BUT** the Agenda items for the executive session must be part of the Open Meeting Agenda and the decisions must be reported back in open meeting. In our case we schedule separate executive meetings. **But** they are still ruled by the open meeting law: i.e. The Agenda, the where and when of these meetings must be posted just as we post our open meetings and the decisions [or at least reasons for meeting] must be reported back in open meeting. [See Cottonwood's minutes reported in the Splash for an example of how this is done.] Since I have been banned from attending the executive meetings and don't get the board notices, I have noticed that the community is not informed about the executive meetings, their agenda or time and place. This is a serious violation of the open meeting laws which must be addressed.

Sanctioned Club Policy: Here is another issue that has been a terribly mistake. At the time of the development of this policy I objected as strongly as I could. I saw the policy of giving free rooms to sanctioned clubs as wrong. I asked the question at the time of how we were to make up for lost income. We had a fairly good policy about room rental prices at the time approved

by the board. What was the advantage of changing it? Now management has seen the error of its ways and is bringing back the room rental agreements but with some differences. They are at the same time retaining the Sanctioned Club Policy so that any club that doesn't have 60% of its membership from SLCC #1 must pay a higher rate. Here is the situation for one club. Computer Booters was founded in 1987. They have held their meetings here ever since. They had always paid their room fees for their monthly meeting but were never charged for classes. Not having 60% of their membership from here they are now going to be charged the higher fees and class fees which will come to \$1,775 per month. [It doesn't matter that they have more SLCC#1 members on their roster than most other clubs] That is impossible. If they give a class for 5-10 members at night in the Arts & Crafts Room [no competition for space at that time there] they must pay \$125. This is for "set up". I think 15 mins would set up 10 chairs and turn around a few tables. So \$125 for doing so seems a little excessive. Are they to charge those participating \$25 each time they come to class? The club has offered to do their own set up. No go. This club has a long history with us. They got wi fi for the club at no charge. They installed and gave us our first TV again getting the services for free for the community. They have installed all our screens, improved our sound system, serviced our electronics etc. etc. They have even been invited to train our employees so they can do their job! Theirs has been a great service to the community which brings countless people into our community who get to know us and return for other events. Without Computer Booters many in the community would not know we exist. They spend \$2,000 a year to have a luncheon for their volunteers each year. We are destroying our relationships with the broader community and bringing about endless harm by our policies which are detrimental to the overall feelings in the community.

This is rather a long answer to your question. I appreciate your comments and feedback. So, please adopt any issue you have an interest in. I am open to questions and comments.

On Tue, Mar 11, 2014 at 11:44 AM, Raymond Smith <rsglazieraz@hotmail.com> wrote:
Colette, Just another note to ask you about any litigation you might have against the HOA?? I hear Ed Foster bring that up all the time and I want to put his persistent whining to rest. Do you have any litigation going against our Sun Lakes HOA #1???????????? Thanks, Raymond

Rick Schwartz
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