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7 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**  
8 **IN AND FOR THE COUNTY OF MARICOPA**

9 COLETTE MCNALLY, an individual, )  
10 Plaintiff, ) Case No. CV2014-009496  
11 vs. ) **REQUEST FOR RULE 16**  
12 SUN LAKES HOMEOWNERS ASSOCIATION #1, ) **SCHEDULING CONFERENCE**  
13 INC, an Arizona non-profit corporation, ) (Assigned to the Honorable  
14 Defendant. ) James Blomo)

15 Defendant Sun Lakes Homeowners Association #1, Inc., by and through undersigned  
16 counsel, respectfully requests that the Court set a pretrial scheduling conference in this  
17 matter.

18 **1. Plaintiff has failed to cooperate in the preparation and filing of a Joint**  
19 **Report and Scheduling Order.**

20 Pursuant to Rule 16(d) and this Court’s Order filed December 10, 2014, the parties  
21 were required to prepare and submit a Joint Report and proposed Scheduling Order to the  
22 Court by April 6, 2015. Plaintiff’s counsel contacted undersigned counsel on the day these  
23 documents were due and stated that he wanted Defendant to stipulate to expedited discovery  
24 and an evidentiary hearing on Plaintiff’s claims for declaratory and injunctive relief (Count  
25 I of Plaintiff’s Complaint). Defense counsel suggested that the parties stipulate to extend the  
26 deadline for completing the Joint Report, and that Plaintiff’s counsel provide a draft Joint  
27 Report and Scheduling Order outlining the details of Plaintiff’s proposal. The parties so  
28 stipulated, and this Court entered an Order extending the deadline for the filing of the Joint

1 Report and Scheduling Order to April 15, 2015. Once again, Plaintiff's counsel waited until  
2 the day the Joint Report and Scheduling Order were due to forward a draft to undersigned  
3 counsel. Undersigned counsel advised that Plaintiff had not given her enough time in  
4 advance of the deadline to give adequate consideration to or confer with Defendant  
5 concerning Plaintiff's proposal, which included a requirement that Defendant stipulate to an  
6 evidentiary hearing on Count I of Plaintiff's Complaint without the need for Plaintiff to file  
7 a motion, and also that Defendant stipulate to complete all discovery on all Counts of  
8 Plaintiff's Complaint within a very compressed time frame. Undersigned counsel suggested  
9 that Plaintiff's counsel contact the Court and request additional time to complete the Joint  
10 Report and Scheduling Order. *See attached* e-mail correspondence between counsel, **Exhibit**  
11 **1**.

12 The following week, undersigned counsel informed Plaintiff's counsel that Defendant  
13 would not agree to Plaintiff's proposed stipulations concerning an evidentiary hearing and  
14 expedited discovery. Undersigned counsel suggested that Plaintiff file an appropriate motion  
15 under Rule 65, and also submit an amended draft of the Joint Report and proposed  
16 Scheduling Order. Undersigned counsel suggested that the parties confer on the scheduling  
17 of any depositions that would be needed in advance of an evidentiary hearing on Plaintiff's  
18 motion after Plaintiff filed the motion. *See attached* e-mail correspondence between counsel,  
19 **Exhibit 2**. Plaintiff responded by unilaterally noticing depositions of two non-parties (the  
20 President of the Association and the Human Resources Manager of the Association) and  
21 demanding that Defendant agree within 72 hours to proceed with all depositions Plaintiff is  
22 seeking or Defendant would move to compel. *See attached* letter from Plaintiff's counsel to  
23 undersigned counsel, **Exhibit 3**.

24 **2. Plaintiff has unilaterally noticed depositions of non-party witnesses, and**  
25 **has refused to vacate those depositions even after being informed that**  
26 **defense counsel is out of town on the dates noticed, as is one of the**  
27 **witnesses.**

28 Upon receiving the letter from Plaintiff's counsel, undersigned counsel contacted  
Plaintiff's counsel by phone and advised that undersigned counsel is out of town on the dates

1 Plaintiff unilaterally noticed the depositions of the Board President and the Association's  
2 Human Resources Manager. Defense counsel further advised that the Association's Board  
3 President was leaving town at the end of the week and was not scheduled to return until after  
4 July 4. Defense counsel proposed scheduling the deposition of the Association's Board  
5 President to July 15, 2015, suggested that she would consider Plaintiff's request for other  
6 depositions after she had the opportunity to review Plaintiff's expected motion under Rule  
7 65, and proposed that Plaintiff prepare an amended draft of the Joint Report and proposed  
8 Scheduling Order and allow defense counsel to set forth the areas of Defendant's  
9 disagreement, as required by the Rule. Plaintiff's counsel initially agreed, but then revoked  
10 his agreement, sending an e-mail demanding that defense counsel "produce" the  
11 Association's Board President sooner than July 15 and insisting that the deposition of the  
12 Association's Human Resources Manager would go forward as noticed, even though defense  
13 counsel had advised that defense counsel would be out of town on the date the deposition  
14 was noticed, and even though Defendant has not agreed to the deposition under Rule 30. *See*  
15 *attached* e-mail correspondence between counsel, **Exhibit 4**.

16 **3. Plaintiff has filed a Motion for Preliminary Injunction that necessitates**  
17 **the scheduling of a hearing and a determination of what discovery, if any,**  
18 **must be completed in advance of that hearing.**

19 On April 29, 2015, Plaintiff filed an Application for Preliminary Injunction and  
20 Request for Expedited Evidentiary Hearing, by which she seeks to have the Court "bifurcate  
21 Count One from the rest of Plaintiff's claims." (Application for Preliminary Injunction, filed  
22 4/29/15, at 4.) She states that her other claims (for breach of contract, defamation, and  
23 punitive damages) require further discovery before they will be ready for trial, yet also states,  
24 confusingly, that the outcome of an evidentiary hearing on her Count One will dictate how  
25 those other claims proceed. (*See id.*) Meanwhile, Plaintiff's counsel *still* has not provided  
26 a revised draft of the Joint Report and proposed Scheduling Order.

27 As a result, it is apparent that the parties require the Court's assistance with managing  
28 the above matters, and Defendant respectfully requests that the Court set a Rule 16

1 Scheduling Conference for the purpose of addressing scheduling of an evidentiary hearing  
2 on Plaintiff's Application for Preliminary Injunction, the necessity for and scheduling of  
3 depositions in advance of that hearing, and the entry of a scheduling order as contemplated  
4 under Rule 16(d).

5 RESPECTFULLY SUBMITTED this 30th day of April, 2015.

6 **GRASSO LAW FIRM, P.C.**

7  
8 By /s/Jenny J. Winkler  
9 Robert Grasso, Jr.  
10 Jenny J. Winkler  
11 2121 West Chandler Boulevard, Suite 100  
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13 Attorneys for Defendant

14  
15 COPY mailed this 30th day  
16 of April, 2015 to:

17 Steven W. Cheifetz  
18 Jacob A. Kubert  
19 **CHEIFETZ IANNITELLI MARCOLINI, P.C.**  
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20 By /s/R. Nelson  
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