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MICHAEL K. JEANES, Clerk  
By *[Signature]*  
Deputy

**In the Matter Of:**

**COLETTE MCNALLY vs. SUN LAKES HOMEOWNERS**

CV2014-009496

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**COLETTE MCNALLY**

*January 15, 2015*

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DEPOSITION OF COLETTE MCNALLY

January 15, 2015

COLETTE MCNALLY,

having been first duly sworn, testified as follows:

EXAMINATION

BY MS. WINKLER:

Q. Good afternoon.

A. Good afternoon.

Q. Will you please state your name for the record.

A. My name is Colette McNally.

Q. Ms. McNally, have you ever had your deposition taken before?

A. No.

Q. Okay. I want to go through with you just some basic ground rules. As you can see, we have a court reporter here. Her job is to take down every word that is said in this room; and so we need to do some things to make that job a little bit easier to make sure we get a good, clear transcript; and one thing we need to do is to make sure that only one of us speaks at a time.

Do you understand that?

A. Uh-huh.

Q. Okay. And we need to make sure that your

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

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 --

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.

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

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?

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

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.

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

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,

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?

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.

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?

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 --

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?

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

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.

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

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?

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

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.

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

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.)

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

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

1 and Bill by Skype. I have no complete 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.

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.

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.

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

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

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

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

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?

.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.

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

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?

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

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

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,

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

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

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 --

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

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.

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 --

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

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.

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

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.

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

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.

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.

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.

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

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

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

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

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

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 --

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

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,

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 --

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

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

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:

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

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?

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

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

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

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

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

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

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

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

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

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

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

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

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.

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 --

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.

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.

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

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?

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

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

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?

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

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

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?

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

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.

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



C E R T I F I C A T I O N

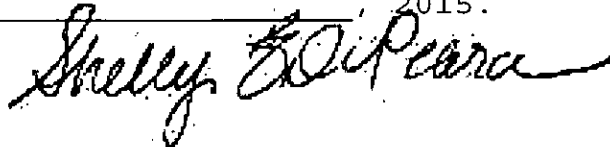
I, SHELLEY E.D. PEARCE, RPR, a Certified Reporter within and for the State of Arizona, do hereby certify:

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 questions propounded to the witness and the answers of the witness thereto were taken down by me in shorthand and thereafter reduced to typewriting; that the transcript is a full, true, and accurate record of the proceedings, all done to the best of my skill and ability; and that the preparation, production, and distribution of the transcript and copies of the transcript comply with the Arizona Revised Statutes and ACJA 7-206(J) (1) (g) (1) and (2).

The witness has not requested transcript review and signature.

I FURTHER CERTIFY that I am not related to any of the parties, nor am I in any way interested in the outcome hereof.

IN WITNESS WHEREOF, I have hereunto set my hand this \_\_\_\_\_ day of \_\_\_\_\_ 2015.



Shelley E.D. Pearce, RPR  
Arizona CR No. 50301

/s/

For Esquire Deposition Solutions  
Registered Reporting Firm No. R1048

Assignment No. 258543

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Exhibit I

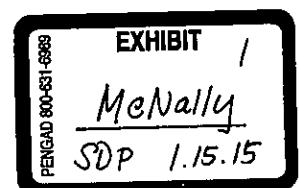
McNally, Colette

**From:** Colette Mc Nally <colettemc9412@gmail.com>  
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**Sent:** Tue, October 12, 2010 10:15:25 AM  
**Subject:** Re: Colette

I am sorry to hear that you are persisting with this Bill. There are too many questions about our policies and promises for this not to draw a lot of attention if it is discussed in public, which it would, given the procedures that apply. I have no wish to drag our board disagreements out in public. It could turn out badly for the board which even now struggles to retain its members. We don't need that.

I invite you to look at this from my viewpoint. I did what I am fully convinced was my duty. I found the help I needed to assist me with making one of the most important decisions we make as board members. This budget is complex and anyone who is not an expert in this area should seek out those they trust who can help them, especially if their vote imposes something on the community like increased fees that can be a make or break in these economic times. Our lack of expertise is no excuse. Imagine explaining to the homeowners that we voted on a budget we didn't understand nor had an informed opinion about. We cannot vote for or against something we do not understand or at least have tried to understand. We are all there to serve the community, not our own ideas or agendas or dreams for perfect harmony. That we follow the recommendations of the committee chair and raise dues without thought and consideration for the opposite would go against anyone's conscience, at least it does mine. We easily decided to give raises to the staff after one glance through the presented budget. I think the majority felt they were long overdue and there was a sense of self satisfaction about doing it. But we didn't stop to consider the reality and that is that the homeowners on social security did not see a raise in their incomes and will not see it next year either. Who are we representing? I sense your pride of ownership for the budget presented and justly so. Jim did a great job developing it and presenting it to us in a new format. But making these changes he also left us in quite a vacuum. It was very difficult to make comparisons with past years without a lot of work. I needed to do that, that is, compare it with past years to make an informed decision. Once presented, and before we are forced into a final decision it should be ready to face every possible scrutiny. What better than fully informed board members who can offer their vision to help the process? You know that all the figures and calculations I used are available on our web site and can be used by anyone in the community who takes the trouble. My motivation: that we make the best decision possible for the homeowners. I wanted to be able to explain and defend whatever decision I made. It was not my intention to put down the work you all expended putting it together.

According to our bylaws, once the budget has been presented to the Board it is then open to the public for comment and input. The laws regarding Executive Sessions tells us that the budget, once it was presented to the board, would be illegal to keep secret. I thought I was on firm ground here. We had lots of discussions about committees at the beginning of the year with a firm effort to meet the desires of the community for openness and transparency. That was our promise. That was our gift to the community that had been torn apart by decisions made in secret. To now use a stratagem to cover what was done saying it was not presented by the Chair doesn't hold water. It doesn't matter who presented it, the budget was presented and we were not told that it was not a valid presentation and so was still under wraps. And as a result of the short presentation we made a budget decision. It should have been presented at an open meeting but that was not even questioned or discussed at the time.



I put in a lot of time and effort and so did those I asked to help me. I know and trust them and know they would never use the knowledge they gained to in anyway hurt the community or the board. The community is harmed by secrecy and threats and angry conflict, not by good people looking at the budget to find improvements and to be helpful. I actually thought [how naive I must seem] that I would be praised for my diligence and wish to do what is best. Be very sure you are on solid legal grounds with your accusations. I am fulfilling my fiduciary duty to make a fiscally responsible decision about the budget proposal.

I encourage you also to take a look at the results of my attempt to understand the budget and this process. Maybe review it with Clint and/or Larry. The proposed budget the committee developed is great and it inspired me to delve into the process and see if there are sound reasons for going with an actual decrease in dues. It would break the trend of ever-increasing dues. It would win back the trust of the homeowners. Can you imagine what it would do to the community to actually find a reduction in their dues after all these years of sharp increases? ---And doing so, without sacrificing the operational budget or the reserve maintenance fund or BCI fund.

It would be nice to be able to work for the best decisions, and handle our conflicts in a friendly or at least civil fashion. The personal attacks and accusations made at that meeting not only of myself but of those not there to defend themselves is to me abhorrent and fully recorded for posterity. Listen to them again. Judge for yourself what was said and how it was said by you, Carl, Jim, and Bernadette. Listen to the anger, the disdain, the threats, the accusations, the interpretations, the conclusions. I hope we can do better in the future.

Sincerely,

Colette Mc Nally

On Mon, Oct 11, 2010 at 3:18 PM, [banddehoyt@juno.com](mailto:banddehoyt@juno.com) <[banddehoyt@juno.com](mailto:banddehoyt@juno.com)> wrote:

All,

I would like to commence recall action against Colette McNalley, based upon the breach of confidentiality regarding our unapproved 2011 budget.in accordance with Article III, Section 15a. of our By Laws. Directors have been recalled for far less, in the past. To pardon or otherwise dismiss this would be a failure on our part as directors of the Sun Lakes Country Club Board of Directors. Our financial integrity has been compromised and I feel that recall action is mandatory.

---

### **Obama Urges Homeowners to Refinance**

If you owe under \$729k you probably qualify for Obamas Refi Program

[SeeRefinanceRates.com](http://SeeRefinanceRates.com)

Exhibit 2

McNally, Colette



**MINUTES  
OPEN MEETING  
OF THE BOARD OF DIRECTORS**

**NAVAJO ROOM  
OCTOBER 29, 2010, 3:45 P.M.**

EXHIBIT 2  
McNally  
SDP 1.15.15  
PENGAD 800-681-6888

**BOARD OF DIRECTORS**

Bernadette Halpin, President	Larry Smith, Director
Jim Hoffmann, 1st Vice-President	*Dolores Leone, Director
*Carl Johnston, 2 <sup>nd</sup> Vice-President	Vacant
*Colette McNally, Secretary	Vacant
Bill Hoyt, Treasurer	

**\*Absent**

Clint Warrell, General Manager  
Jeannie Martens, Administrative Assistant

- 1. CALL TO ORDER/VERIFICATION OF QUORUM** – President Bernadette Halpin  
After it was ascertained a quorum was present, President Bernadette Halpin called the meeting to order at 3:50 p.m. As provided under Arizona law for master planned communities, the meeting was open for any members to attend.  
Carl Johnston was physically not in attendance, but was present via telephone during the entire meeting. Colette McNally and Dolores Leone were absent.

- 2. REMOVAL OF BOARD MEMBER**

PURPOSE OF THE MEETING – PRESIDENT BERNADETTE HALPIN READ THE FOLLOWING:

It is proposed that pursuant to Section 15 of the restated bylaws of the Sun Lakes Homeowners Association #1, Inc. that Colette McNally be removed as a director from the board of directors of Sun Lakes Homeowners Association #1, Inc. for CAUSE relating to and affecting the administration of the office of Director and that the cause is substantial in nature directly affecting the rights and interests of the members of the Association.

For information purposes it is necessary for five of the seven Directors to vote in favor, for the motion to pass.

On October 6, 2010, Ms. McNally and the other Directors had received a Budget Workbook from the Budget & Finance Committee which was to be considered by the Board of Directors at an upcoming meeting; now scheduled for November 1, 2010. The General Manager Clint Warrell stated that included in the packet was confidential information. On October 11, 2010 Ms. McNally admitted that she had provided her packet,

including such confidential information, to third parties who were not members of the Board of Directors and, in one case, who were not members of the Association. The General Manager acknowledged further that such disclosures of confidential information is contrary to Board Policy and protected by Arizona Statute §33-1804.

President Halpin introduced Jim Hoffmann, 1<sup>st</sup> Vice President, as the Mediator for the meeting. Jim Hoffmann read the following ground rules for the meeting:

- 1) Listen respectfully to the speaker. No murmurings of agreement or disagreement while the speaker talks. Each speaker has three minutes. I ask Clint or Jeannie to keep time for us.
- 2) When your turn comes to speak, do so respectfully. Stick to the issue of this meeting.
- 3) No abusive language against any person, no personal attacks or ridicule of any person.
- 4) No name calling.

Jim Hoffmann finished by stating that if we all follow the above ground rules, we show the respect that we all wish for and all need to give.

**FIRST SPEAKER – COUNSEL FOR COLETTE MCNALLY, ATTORNEY STEWART GROSS, (with the Law firm of Cheifetz, Iannitelli, Marcolini)**

Mr. Gross requested that as Colette's counsel, that he be afforded to be given the same deference to make statements as if Colette were there to speak for herself. He represented Colette as she was scheduled to be out of town for another meeting. He stated that in review of the budget, he did not see anything that he would consider to be confidential. Therefore, what Colette did, by seeking out others to share information that is important to the community was not wrong. Mr. Gross wanted to clarify that Colette only showed the proposed budget workbook to a member of the association and only spoke with another outside person about the budget. On behalf of Ms. McNally, he stated that she just wants to remain a member of the Board, to serve the community, and to make sure that the community is well informed about the issues and concerns that are happening. Mr. Gross does not believe that Ms. McNally did anything wrong or that she justifiably should be removed for cause.

**3. MEMBER COMMENTS/DISCUSSION**

The following members addressed the Board with their concerns/comments regarding the removal of Colette McNally from the Board of Directors:

- 1) Terry Buckley – Unit 5/Lot 256
- 2) Diane Beatty – Unit 0/Lot 21
- 3) Jim Grove – Unit 5/Lot 311
- 4) Jerry Dold – Unit 4/Lot 80
- 5) Roma Lidstone – Unit 5/Lot 456
- 6) Alexandra Coltran – Unit 9/Lot 203
- 7) Steve Wolfer – Unit 1/Lot 144
- 8) Joan Sealey – Unit 7/Lot 1
- 9) Deb Moore – Unit 9/Lot 205
- 10) Tom Sowell – Unit 5/Lot 222

#### 4. DIRECTOR'S COMMENTS/DISCUSSION

##### **Jim Hoffmann addressed the community:**

"The first key question in this matter is, "Is the Budget Committee workbook a confidential document until the committee offers its final proposed budget to the Board at an open Board meeting?" The answer is yes. The budget workbook contains individual wage information in certain sections and contract bidding information. I've seen it. Also, it is the working document of a committee that has been authorized by the Sun Lakes Country Club Policy to meet in closed meetings and here is the history of that policy. In the late spring of this year, June to be exact, the Board and the community had discussions about open and closed meetings for committees. The result was this: Arizona Statute §33-1804 requires open meetings for the community meetings at large like these and for the board meetings with four exceptions allowed for closed meetings by the Board. That statute word for word is now posted on the main bulletin board where you find the minutes. This same statute says nothing about committee meetings such as the Budget committee. The Budget committee wanted to have its working meetings closed because it would sometimes be dealing with confidential information. They would have an open meeting at the beginning of the budget season and then when the budget meetings were over, the budget would be presented in its final form to the Board at an open meeting, which is scheduled for Monday. These ideas were put in a policy that were approved at the June 7, 2010 open meeting. Jim quoted from the June 7<sup>th</sup> minutes: *Carl Johnston made a motion to approve the revisions to the Budget and Finance Committee Policy. Larry Smith seconded the motion. The Motion passed unanimously.* Jim went on to quote sections of the Policy: *The committee shall hold one open meeting in the first quarter of each year to solicit homeowner input...All other committee meetings shall be closed. Prior to the board of directors holding their first budget meeting in the fall, the committee shall present their budget recommendations to the board at an open meeting. The presentation must be clearly listed on the agenda for that meeting.* This is why the Board is struggling with what has happened.

The second key question, "Did Colette violate the confidentiality of the budget process by showing someone the budget workbook outside of the budget process at the point that she did?" The answer is yes. While her intention was good, she went about it very incorrectly. Her mistake was to go to people outside the budget process rather than consult the budget process experts, Clint Warrell - General Manager, Bill Hoyt - Budget & Finance Liaison, Larry Smith - board member, Jim Fischer - Budget & Finance Committee Chair, and all the budget committee members that were all available to Colette for her further study of the budget. Some would say that she made an honest mistake or an oversight. I could think that too but Colette never said that. When each one of us expressed our amazement and rejection of her behavior as a serious violation of confidentiality, she had an opportunity to reconsider what she did and admit that she made a mistake but that never happened. The first day or two into this conflict, I pointed this out very closely to all of the board, even Colette. Had she admitted that she had made a mistake, it would have changed the whole situation and it could have been worked out quietly. What has swayed me in this case more than anything else is Colette's inability and unwillingness to question herself in such a serious matter. She did not see it and didn't take the chance to back off. This is what most hurt me and what I think hurt our relationship. How can a Board have trust in someone who does this kind of behavior and seems unable to admit any doubt about it? I do not like having to do this and I wish to God we would have settled this early on in those first few weeks."

**Larry Smith addressed the community:**

"I agree with Jim Hoffmann 100%. I don't like having to remove someone from the Board. I like Colette and supported Colette in Communications. One thing I wanted to do is to remind everyone what Jim Fischer said about our Finance committee. The Finance committee is not the Board. The Finance committee is made up of all of you folks so it is very personal with them to get a job done. I think Jim Fischer did an excellent job and will present the best budget you will ever see or have ever seen."

**Bill Hoyt addressed the community:**

"I agree with what Jim and Larry both said about the situation. I'm totally in accord with the Bill of Particulars. It is too bad that this happened but the Board did the right thing."

**Carl Johnston addressed the community (via telephone):**

"I felt that Colette should have been on the Board before me. I understood her to be very intelligent, very knowledgeable about boards, and I thought she would be a good fit and she was. I was very proud because she was next in line and that she did get on the Board. But with the way the budget went, the way she went outside to get answers when we had all the answers, if she really wanted to know, from within, this is what caused me to think that there was something in the wind, still don't know what it is, but there is something there to cause her to do that. Therefore, I am very displeased with what she did."

**Bernadette Halpin addressed the community:**

"Since the Bill of Particulars has been issued, additional information has come forward. Colette has disclosed information that was subject to a non-disclosure agreement and in doing so subjected the association to a potential fine. This is not on the Bill of Particulars and will be handled in a subsequent open meeting."

President Halpin asked if there were any more comments. Several members addressed the Board with their questions/concerns. Discussion was closed.

President Halpin read the following resolution to the community:

The Board Hereby considers for approval the following resolution:

**WHEREAS, PURSUANT TO** Article III, Section 15 of the Restated Bylaws of Sun Lakes Homeowners Association #1, Inc., records of Maricopa County, AZ (hereafter, the "Bylaws"):

Any Director may be removed on a resolution for cause by an affirmative vote of two-thirds (2/3) of all the members of the Board of Directors. Not less than ten (10) days before any such vote is taken, the Director whose removal is contemplated shall receive, in writing, a bill of particulars setting forth the basis for the resolution and shall have the right to answer the bill of particulars in writing or in person before any vote is taken.

**WHEREAS,** on October 11, 2010, Director McNally disclosed in an Executive Session of the Board of Directors that she had released the Finance Committees unapproved budget

workbook to a specific member of the association as well as a specific non-member of the association; and

**WHEREAS**, the unapproved Finance Committee's budget workbook contained information relating to the personal financial information and compensation of association employees and contractors and had been designated by the Board of Directors as working document containing confidential information that was not to be disclosed to third parties; and

**WHEREAS**, such disclosure violated the policies and procedures of the Board of Directors and constitutes cause for such Director's removal pursuant to Section 15, Article III of the Bylaws.

**NOW THEREFORE, BE IT RESOLVED**, that the Board of Directors, pursuant to Article III, Section 15 of the Bylaws and upon the approval of two-thirds (2/3) of all the members of the Board of Directors, hereby removes Director McNally from the Association's Board of Directors.

**President Halpin called for a motion.**

**Larry Smith made the motion to accept the resolution. Bill Hoyt seconded the motion. Discussion commenced.**

**Carl Johnston asked President Halpin to call for the question to vote. President Halpin responded, "Shall this Board remove Colette McNally for cause? The Board voted in favor to remove, 5 – 0."**

President Halpin pointed out to Steve Wolfer that he recently sent out an email to community members that stated the board barely gave 24 hour notice. However, the agenda is clearly dated and timed three days ago.

## **5. ADJOURNMENT**

There being no further business, the meeting was adjourned at 4:55 p.m.

Date approved by the Board of Directors: December 6, 2010

\_\_\_\_\_  
Larry Smith, Secretary

Exhibit 3

McNally, Colette

**B. M. Halpin**

---

From: "Mark & Sheryl Wade" <mws Wade@yahoo.com>  
To: <mickey@wbhsi.net>  
Cc: <mws Wade@yahoo.com>  
Sent: Wednesday, October 20, 2010 8:43 AM  
Subject: Collette  
Bernadette,

I understand that Collette made a presentation yesterday to the community prior to the Board Meeting in which my name was mentioned as well as a slide that portrayed me in a negative light. If I understand correctly she said it was her goal to have me removed and the slide had that goal with a "mission accomplished" stamp next to it.

This is the second time that my name has been used by Sun Lakes HOA #1 in a negative way in violation of our agreement. The first being when I was unjustly accused of trying to claim benefits from unemployment that I was not qualified to receive. An appeal hearing was scheduled and later that hearing was dismissed, however, my name was, never the less, put into public records in a negative way. All of this is contrary to our agreement. The penalty for which, according to our agreement, is \$2,500.00. I was willing to let the first incident go, however, with a currently seated Board Member doing the damage of the second incident yesterday I am no longer willing to look the other way.

Therefore, consider this a letter of demand for damages incurred according to our agreement for the amount of \$2,500.00 for each incident for a total of \$5,000.00.

Mark Wade

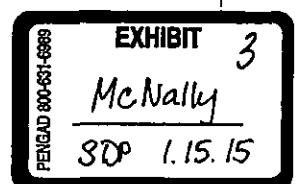


Exhibit 4

McNally, Colette



HOMEOWNERS ASSOCIATION #1, INC.

**EXECUTIVE SESSION**  
**MEETING MINUTES**

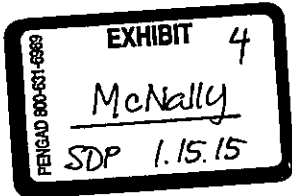
BOARD OF DIRECTORS

SEPTEMBER 5, 2012

EXECUTIVE BOARD ROOM

(Immediately Following Business Meeting)

JEAN TOLAR, PRESIDENT	PAUL BAUER, TREASURER
**BILL TOWNSEND, 1 <sup>ST</sup> VICE PRESIDENT	COLETTE MCNALLY, DIRECTOR
ROBERT SJOLIN, 2 <sup>ND</sup> VICE PRESIDENT	RICK SCHWARTZ, DIRECTOR
MICHAEL HERN, SECRETARY	



Clint J. Warrell, General Manager  
Jeannie Martens, Executive Assistant  
Roberta Laird, Human Resources Manager

\* Absent  
\*\* Videoconference

- 1. CALL TO ORDER/VERIFICATION OF QUORUM** – President Jean Tolar  
After it was ascertained a quorum was present, President Jean Tolar called the meeting to order at 10:19 a.m.
- 2. LEGAL §33-1804** – Attorney Charles Maxwell  
Attorney/Client Privilege:  
This meeting was called at large part at my request. I met recently with the President, Roberta of HR, and Clint. They brought to my attention a matter that they wanted my input on. I recommended that this be addressed at an Executive Session board meeting. Things that I am going to be discussing and that you all have the opportunity to review and analyze as board members, have the potential of liability for libel, slander, and/or defamation. Anyone that is involved in the publication of information that is libelous, slanderous, or defamatory, can be personally liable for any and all damages that arise from that dissemination of information. The only defense for a lawsuit of libel, slander, or defamation is the absolute truth of the information. What I am going to bring up here has to do with your General Manager. And if there is information that is false and is passed on and it caused him to leave his job or lose his job, then there could be serious liability. Anything discussed here (Executive Session), stays here and if anyone disseminates this information, the board has made a decision that that person or persons who disseminate will not be covered by any of the association's insurance policies, will not be covered by the association's indemnification obligations, and will not be covered under statutory indemnification obligations. If anyone has the misconception that they can discuss anything from Executive Session with others, I am going to go through with every board member as well as staff to see if anything is going to be discussed with anybody or disseminated and if you cannot agree to that, then I will tell you what the consequences will be from your attorney:

- You will be excused from this board meeting
- You will not be allowed into any future execution sessions of this board without a court order

I have seen some of the past minutes and some of the past issues where at least one of you thought you could review issues and discuss certain things with others; get their input. You don't get their input. You don't get to discuss it with anyone. You don't have that option. Arizona law is very clear on this. Even if you go discuss this with your attorney, you better hope that it never gets out that you discussed it with your attorney. You may want to get a court order first which allows you to discuss executive session issues with your attorney. I don't represent anyone in this room, I represent the corporation.

This issue that we are going to be discussing today, however, has been reviewed with both HR and the association's HR attorneys. After it was brought to me, I wanted to bring it to everyone's attention so that no one hereafter could say, "the President should have told me about this".

I want to make sure in this room that what will be discussed here, what you may have access to because of what is heard here, that you understand that you cannot repeat it to anybody else, you cannot go to them and ask them to counsel with you, you cannot go there and tell them how they can access the information through other sources. When it comes to a libel, slander, or defamation lawsuit, a person will not keep quiet but will identify the person who is the source of the information whether initially or during the process. That person will be brought into an indemnification lawsuit to indemnify and hold him harmless. Anybody in the chain that disseminates is individually and jointly liable for all the damage caused.

Mr. Maxwell then went around the room and asked the following question to board members and staff:

Do you understand the confidentiality that exists in Executive Session and do you agree to abide by it?

President Jean Tolar – Yes

General Manager Clint Warrell – Yes

Human Resource Manager Roberta Laird – Yes

Rick Schwartz, Board Member – I agree

Michael Hern, Board Member – I agree

Colette McNally, Board Member – I agree

Robert Sjolín, Board Member – I agree

Executive Assistant Jeannie Martens – I agree

Paul Bauer, Board Member – I agree

Bill Townsend, Board Member – I agree

I want this to be on the record that what we are going to discuss, we do not know if it is valid or invalid or if portions are valid or invalid. **Charles Maxwell proposed the following motion:** *That if any board member distributes or publishes anything that is discussed herein, and if there is a lawsuit against the board member for libel, slander, or defamation, that said board member will have been deemed to have acted in bad faith and will not be indemnified by the association or its insurance carrier in the event of a lawsuit.*

**Motion #1:** Paul Bauer made a motion to support Charles Maxwell's motion, Robert Sjolín seconded the motion, President Tolar called for a vote. Motion carried unanimously.

This issue came up from an issue that Miss McNally had previously with what you thought you could discuss with respect to a budget manual that had information with respect to employees, salaries, and things like that. You don't have the ability to make an individual call. As Board members you have no constituents. You do not answer to the members, you answer to the law.

There is a lawsuit in California with a prior association that Clint worked for. I cannot evaluate what is a well pled or creative novel that is put together. I do know from reading some of the information that has been passed on, and this was passed on to the President, is that a small group for several years were trying to pin some things on Clint and some other members. I make no comment about whether they are valid or invalid. But what I do know that if there is anything invalid about the comments, then either the written or oral publication of that information becomes libelous, slanderous, and/or defamatory and can subject the association to liability if it is said by someone who is deemed to be acting on behalf of the corporation. You can look at anything that was passed on to the President and do your own evaluation. But I warn you, that if you try to make any hints to try to help anybody look at this information so that there are claims made, then of course there could be liability. I hope no one will do anything so that we will have no lawsuits. If anyone should come up to you and ask you about the situation with Clint you could say "I have no comment".

Mr. Maxwell asked the board if they had heard anything in the past few weeks, months, or the past regarding a lawsuit against Clint. Colette McNally responded that a few months ago a board member did bring something up (accusations) about Clint that had come from board members from Clint's previous job in California. Charlie then went on to state that he had seen comments (whether valid or not) that Clint has no credit card. He stated he wasn't sure what relevance that had. Don't discuss things outside of the board, always bring it to the board to discuss in closed session. Sometimes you need to get your attorney involved, where in this case Roberta did the right thing by bringing this to the H.R. attorney first, and then brought it to me. The H.R. attorney said to see what your HOA attorney had to say as well.

Jean Tolar stated that the H.R. attorney said that because of her. They didn't know what her HOA liability was in the case of sharing this with the rest of the board. Jean stated that she had been sent a copy of the lawsuit which she took to Roberta.

Charlie stated that after he heard the issues, he said what he thought was best. He wanted to have a meeting as soon as possible. You can look at anything you want to look at. You cannot make copies, you cannot write anything down, you cannot use your cell phone to take photos. If you do, it will be assumed that you are taking that information in order to pass it off to someone else for them to do their research.

Charlie stated that sometimes when people don't get their way in a homeowner's association, they find a target. The board is often a target, a president of an association is often a target, the general manager is often a target, and the association attorney is often a target.

Clint stated that every person that's a part of this was sued by this association for architectural issues and one of them included an employee who was fired. That employee has been rehired and that employee has threatened me my entire life. That is the background of all of this and I am not going to let it go anymore.

Charlie went on to say that when board members are no longer board members, nothing that they get from Executive Session is theirs. When you leave the board, the privilege that you had when you were with the board goes with you. You cannot disseminate any information (verbal or written) as it belongs to the corporation. Nothing you have loses its character when you are off the board.

Jean inquired if Charlie could send a letter to these people and tell them to stop sending things to her.

Charlie responded that he really couldn't as he doesn't represent individual board members but the board could meet and say this is harassment. The board could vote and have me send a letter on your behalf as the president but the first thing you have to do is say, "Do not send me anything else, and if you do I am turning this over to our lawyer. I consider this a form of harassment".

Colette stated that we have had a case of past board presidents disseminating information that was executive, also disseminating false information. What is a way to handle this because some people are being defamed by some of the things that are out there in the community? Charlie responded that anyone can bring a lawsuit for libel, slander, or defamation. The statute of limitations is a year from when it became publication.

### **3. MEMBER DISCIPLINE §33-1804**

1) Therese Jimanowicz, 9317 E Cactus Lane S

Jean Tolar stated that T.J. called her twice and texted Jack McNulty 22 times.

Charlie stated that a restraining order could be obtained (which Jack did). (It is not known if it has been served to T.J. yet.) It has to be served to be effective and she has a right to challenge it. Once it is served, she has ten days to file her objection and request for a hearing. If after ten days and she doesn't do this, the injunction is good for one year. In order to be harassed, Charlie stated that there has to be at least two incidents of harassment or annoyance. If she continues harassment she may have to be suspended again.

Jean Tolar stated that T.J. is also in arrears with her dues.

Charlie stated that if someone is calling you and making harassing calls, in the state of Arizona you are allowed to record anyone who calls you. You are allowed to record conversations except in a confidential setting. If you are a part of a conversation, you don't have to tell the other party that you are recording the conversation.

### **4. EXECUTIVE SESSION MINUTES APPROVAL**

**Motion #2:** Jean Tolar made a motion that the Board of Directors approve the August 1, 2012 Executive Session Minutes. Motion carried. Bob Sjolín abstained.

**Motion #3:** Jean Tolar made a motion that the Board of Directors approve the August 17, 2012 Executive Session Minutes. Motion carried. Bob Sjolín abstained.

5. **ADJOURNMENT**

The meeting was adjourned at 11:20 p.m.

Date approved by the Board of Directors: \_\_\_\_\_

\_\_\_\_\_  
Michael Hern, Secretary

Exhibit 5

• McNally, Colette

**Janice Cournoyer**

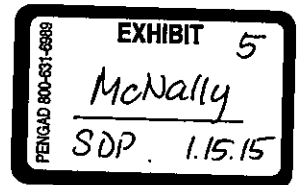
**From:** "Rick Schwartz" <servtype@yahoo.com>  
**To:** <kpbauer9877@yahoo.com>; <mjcournoyer@wbhsi.net>; <janicegc57@gmail.com>; <jeantolar@cox.net>; <colettemc9412@gmail.com>; <wtbtang67@netscape.com>  
**Sent:** Monday, August 05, 2013 5:23 PM  
**Attach:** JeannieMartens.docx  
**Subject:** Fw: 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](mailto:rglazieraz@hotmail.com), [west\\_thomas@msn.com](mailto:west_thomas@msn.com), [colettemc9412@gmail.com](mailto:colettemc9412@gmail.com)

Cc: [morrucin@aol.com](mailto:morrucin@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 Morrucin was also involved in this scheme and was the person who was paying the attorney.

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

However, the next day, Clint said he had given much thought to the situation and decided it was unethical of board members to do this and yes, we should think of something to do about this. Roberta Laird, Human Resources Manager was called over to Clint's office, told the situation, and the brainstorming began as to what we could do. Even though the plan was not mine, I am still guilty for being involved in it. The plan was for me to place the documents in an unmarked envelope and place them in Roberta's mailbox at the front office. She would then give them to Bill Hoyt and tell him she found them in her mailbox and that they were from an anonymous person. We felt this may be a good plan as Bill Hoyt was a friend of Roberta's at the time and trusted her. We assumed that Bill Hoyt

would probably distribute this information out to the community, which he did. Clint agreed we should do this. I was really nervous about this whole thing and I voiced to Clint and Roberta that "I was very uncomfortable doing this". However, I placed the documents in Roberta's mailbox even though I felt that it wasn't the right thing to do. Roberta passed on the documents to Bill Hoyt as planned and you know the rest of the story.

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

Jeannie Martens

Exhibit 6

Mc Nally, Colette

## EXECUTIVE SESSION MINUTES 8/14/2013

The meeting was called to order at 1 pm by President Rick Schwartz. Directors present were Colette McNally, Jean Tolar, Bob Sjolín, and Janice Cournoyer. Paul Bauer participated via phone and Bill Townsend on Skype.

Rick asked if all directors understood attorney client privilege and all answered that they understood. Attorney client privilege also means you cannot discuss advice with another lawyer.

The purpose of the meeting was to discuss the email sent by former employee Jeannie Martens.

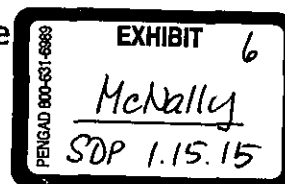
Rick reported on his conversation with attorney Charles Maxwell, Sun Lakes HOA 1's counsel. To summarize:

There are no privacy expectations from the board books. If a director leaves private information in a book it can be read. There is no recourse against Jeannie.

Colette felt Jeannie confessed to a conspiracy of divulging private information and our employees were no longer trustworthy and were "without blame."

Rick said the email was not distributed by the board. Jean said the board had discussed the situation at the time and agreed not to deal with it.

Janice asked who was harmed when the email and cover letter were then distributed at the community meeting.



Colette responded that Jeannie confessed to a conspiracy with Clint, Roberta and Bill Hoyt to harm Tom West and Ray Smith. Our staff decided to whom this should be published.

Bill Townsend stated that Clint felt what was described in the email may have been unethical but nothing could be done about it. The board makes those types of decisions not the GM.

Paul Bauer said it is all hear say.

Jean said that Clint and Jeannie brought it to the board.

Colette said she was not interested in what the attorney said and that Rick was making it difficult for a board member to express themselves. She then read the bylaws where it defines the authority of the board president. She asked what we tell the staff.

Rick said we tell them nothing.

Colette said she will get an attorney.

Rick pointed out that if Colette were to divulge this or any executive session information she could be expelled from future executive session meetings.

Colette said she is strongly opposed to how this is being handled and felt the matter should not be dropped.

Rick moved on to the topic of board members at a committee meeting and said you can be at a meeting but you cannot speak.

Colette said that is Charlie's interpretation of the rule.

The meeting adjourned at 1:35.

*J. Cournoyer* 10/2/13

Exhibit 7

Mc Nally, Colette

EXECUTIVE SESSION MINUTES 9/4/2013

The meeting was called to order at 8 am by President Rick Schwartz. Directors present were Colette McNally, Jean Tolar, Bob Sjolín, Paul Bauer, and Janice Cournoyer, and Bill Townsend on Skype.

The 7/3/2013 and 8/7/2013 minutes were approved. Janice making the motion and seconded by Bob.

The purpose of the meeting was to discuss President Schwartz's visit with attorney Charles Maxwell. Rick was accompanied by Janice to the meeting. Rick provided Mr. Maxwell with copies of Colette McNally's emails dated 8/14 & 8/15.

Janice made a motion that "the board disavow any approval of or responsibility for any of Colette McNally's emails maligning Clint Warrell, and to state that if legal action is brought by or on behalf of Clint Warrell against the association and/or any other board members, the association will make the resolution available to the judicial system to reduce or eliminate liability and place it upon the responsible party."

A role call vote was taken by Secretary Cournoyer;

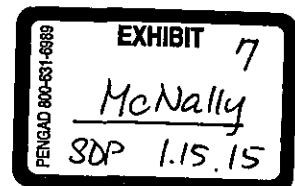
Bauer yes

Cournoyer yes

McNally no

Sjolín yes

Tolar yes



Townsend yes

Schwartz yes

Colette felt the resolution should be made public and was told by President Schwartz this is executive session information and is not to be made public.

Colette felt Rick should not go to the attorney without board approval. Rick had polled the directors and all felt he should go. Charlie said Rick represents the board not Clint. Colette felt she was not consulted and should have been told. Her emails were confidential and the attorney should not have been involved.

Rick said he doesn't care about the governing documents but clarified his remark saying the governing documents do not apply in this situation.

Colette handed out and read her statement (attached).

Janice told Colette the case was dismissed and she was missing the point.

Bill said there were no further charges against Clint and this was laid to rest. Yet Colette continues to bring up things that were cleared. Maxwell said to let it die. It does no good to rehash it we have procedures on place.

Discussion continued on whether the suit was dismissed and the meaning of same.

Rick got approval to go to the attorney from the majority of the board. He was protecting the community. Clint could sue us. He asked if Colette has a law degree.

Colette said we are all board members. She also said Kelly should not be establishing policy and doesn't have a clue about HOA's.

Paul as treasurer feels all is OK; we got a good report from the auditors. We have a credit card policy.

Colette stated that she has served with 4 presidents who have used bully tactics. It is illegal to call a meeting without the board. She then asked for President Schwartz to resign. Rick asked the rest of the board if he should resign and all said no.

The meeting adjourned at 8:40 am.

*J Cournoyer* 10/2/13

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 <sup>Janice</sup> 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:

RESOLUTION # ---

DATE: \_\_\_\_\_

*"Whereas the board has become aware that accusations were made against our general manager, Clint Warrell, by his previous employer, an HOA in California.*

*Whereas these accusations, which are public knowledge and available on the Internet and are accusations that while employed by them he misused HOA funds.*

*Whereas it has been stated that the alleged evidence of wrong doing on Mr. Warrell's part arose from a forensic accounting done by a professional firm.*

*Whereas if these accusations are true, then our HOA's funds might be in danger.*

*Whereas it is our duty to safe-guard these funds and to oversee the choice of a general manager and his actions as an employee.*

*Whereas to be aware of these accusations and not investigate their veracity would make us derelict in our duty.*

*It is resolved that we shall appoint a committee made up exclusively of those board members so inclined, to discretely contact the appropriate individuals in that California HOA to find if the allegations are true."*

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Board President

---

First Vice President

---

Second Vice President

---

Treasurer

---

Secretary

---

Member

---

Member

Exhibit 8

McNally, Colette

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

LAW OFFICES OF

# 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

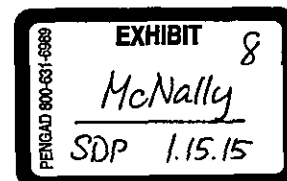
*Representing Hundreds of Homeowner Associations Throughout Arizona*

September 11, 2013

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

RE: *Unauthorized Disclosure*

Dear Ms. McNally:



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

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

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

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

McNally v. Sun Lakes HOA #1  
Case No. CV2014-009496  
HOA000094

September 11, 2013

Page 2 of 2

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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.

Exhibit 9

McNally, Colette

Search Mail

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Home

Rick



Compose Delete Move Spam More

Sponsored

- Inbox (41)
- Drafts (290)
- Sent
- Spam (320)
- Trash (21)
- Folders (1)
  - Collett email
  - Drafts
  - general
  - marine corp league
  - master file McNally case
  - mclfeb
  - mcljan
  - mclmar
  - McNally vs SLHOA
  - Outbox
  - Sun Lakes
  - Synced Messages
  - va (1)
  - VFW

### 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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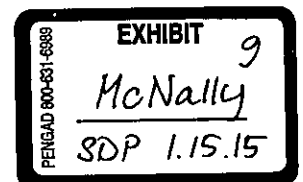
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McNally v. Sun Lakes HOA #1  
Case No. CV2014-009496  
HOA000005

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

Exhibit 10

McWally, Colette

**EXECUTIVE SESSION MINUTES**

**10/2/2013**

The meeting was called to order at 10:40 by President Rick Schwartz. Directors present were Paul Bauer, Bob Sjolín, Jean Tolar and Janice Cournoyer. Minutes were taken by Secretary Cournoyer.

The purpose of the meeting was to discuss the email sent by former employee Jeannie Martens.

The first guest was Tom West (SLCC resident and former director). Tom was asked if he understood executive session and he replied yes. Tom said the questions he had were for Clint and he was disappointed he was not in attendance. Tom said he was coming to this meeting differently than Ray Smith, he was coming in peace. When he first saw Jeannie's email he had no reaction. Ray and Colette made an issue and Tom did not want to be excluded from any discussions.

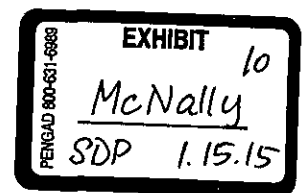
Rick told Tom Clint has an open door policy, the board spoke with HOA counsel and Clint's actions were bad judgment at worst.

Tom said if anyone felt his behavior was unethical by seeing an attorney, why they didn't just ask why he went. Tom went to the attorney because he was invited to go by Cindy Morrison. He has general HOA questions and went regarding HOA laws.

Jean said people didn't take the document at the community meeting, nothing happened and the comments were that a computer had been hacked.

Tom stated he has no axe to grind, this issue is over and the board will not hear from him regarding any legal issues.

Rick thanked Tom for his support.



Tom left and Ray Smith (SLCC resident and former director) entered the room.

Ray asked if he is restricted by executive session and Rick replied yes.

Rick told Ray the attorney said at worst it was poor judgment.

Ray felt it was collusion against a board member and wanted to know if Bill Hoyt had been questioned. Answer is no. Ray is disappointed that this was treated like nothing. Ray assumed we had questioned Clint and Roberta and done an investigation.

Jean asked if Ray had asked them and Ray asked Jean if she "was nuts."

Ray feels this situation should be treated no differently than a sexual harassment charge and someone should be hired to investigate. The info was handed out by Bill Hoyt and his buddies.

Ray said this will now go out to the community. He is disappointed about Jeannie leaving and Rick said Jeannie left on her own.

Ray feels we need to appoint an investigator not the "crappy attorney we have who we need to get rid of".

Ray wants a letter in someone's file that they have been reprimanded.

Ray left the meeting and Colette McNally (current director not allowed to attend executive session) entered the room.

Colette said she was here as a community member not a director and is not bound by executive session.

Colette read the Roberts Rules for presidents and said no one expects Rick to be impartial as he has his own agenda. Rick should not have gone to see the HOA attorney without her permission. She feels the email from Jeannie was personal and was not confidential and the minutes should be changed to reflect that.

Paul stated once we discuss a topic in executive session it stays there. Colette said it was two totally different issues.

Janice asked Colette how she was harmed by this situation. Colette did not answer.

Colette feels Clint and Roberta should not have seen the HOA attorney. It was a huge issue that Rick took Roberta to the attorney.

Rick said he went to the attorney and he represents the HOA.

Paul said we voted and it was 6-1 that the email would stay confidential.

Colette feels the board did not act impartially.

Rick stated the staff has been dealt with and the board is done with the situation.

Colette feels Rick doesn't understand the point and he should read Roberts Rules of order because we are making fools of ourselves.

The meeting adjourned at 11:30.



Janice Cournoyer

Secretary

2 attachments from Colette McNally

## **QUESTIONS THAT NEED TO BE ANSWERED:**

Given that three months have already passed since community members who received an email concerning the unauthorized, unprofessional, unethical tactics used by the management team, which bring grave doubts regarding the readiness of said staff to serve our community with due respect to all of its members, we the concerned community members most affected by this action, need answers to the following questions by the Board that represents the authority of this HOA community and who are elected to represent us using good business practices in this community on behalf of the residents.

### **1. Management staff involved in this action:**

- a. What motivated management staff to take private emails found in the board book of a board member and pass them on to a community member of their choice?
- b. Why did management staff choose to bypass the board in making this decision?
- c. Why did they choose to do so anonymously?
- d. What were the outcomes they expected with regard to the board members involved?
- e. What outcomes did they expect for themselves if they were discovered in this action?

### **2. Board:**

- a. What steps have the board taken up to now to correct the unprofessional, unethical behaviors done by management staff brought to them by concerned community members over two months ago?

# Robert's Rules for Dummies by C. Alan Jennings

## Pg 286 Ten Tips For Presiding Officers

### *Preside with Impartiality*

"Nobody expects you to actually be impartial..... But when you're presiding in your meeting, you must put your personal agenda aside and help the members make their decisions. You can't lose if you do this, because ultimately the decision belongs to the majority anyway. You're far better off being known as a leader who ensures that the minority has a full opportunity to present their case than as one who uses your power to thwart their efforts be he heard.

....{T} presiding officer must leave any personal or political agendas to those members on the floor who support the same program. As presiding officer you really only control the floor [and you're expected to follow clear and definite rules about how the floor's assigned]. Everything else is really in the members' hands. It's *always* in your best interest to be known as a leader who helps the minority to make its case—and to do so no matter how you personally feel about their position.

- ✓ **Don't enter into debate.** When a member concludes his speech, don't rebut him, or argue with him, or explain why he's wrong. Say "Thank you," and recognize someone on the other side of the issue.
- ✓ **Don't gavel through motions.** What clearer indication could there be that you don't have any respect for the opposition?
- ✓ **Don't refuse to recognize someone just because you don't want him to be heard.** Instead take extra care to assist all members in their efforts to be heard.

"The surest road to your success as a presiding officer is to take the position that the members control the decision, and you're there to help them do just that."

Exhibit 11

McNally, Colette

----- 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

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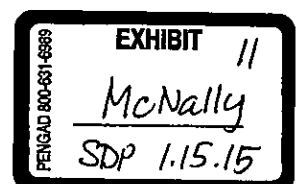
Date: Wed, 12 Mar 2014 13:15:23 -0700

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](mailto: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**  
**480.332.5439**

Exhibit 12

McNally, Colette

1 Steven W. Cheifetz (011824) - [swc@cimlaw.com](mailto:swc@cimlaw.com)

2 Jacob A. Kubert (027445) - [jak@cimlaw.com](mailto:jak@cimlaw.com)

3 **CHEIFETZ IANNITELLI MARCOLINI, P.C.**

4 111 West Monroe Street, 17<sup>th</sup> Floor

5 Phoenix, Arizona 85003

6 Tel. (602) 952-6000

7 Fax (602) 952-7020

8 Attorneys for Plaintiff

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

12 COLETTE MCNALLY, an individual,

13 Plaintiff,

14 -vs-

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

18 Defendant.

No. CV2014-009496

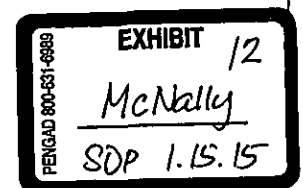
**PLAINTIFF'S RESPONSE TO  
DEFENDANT'S FIRST REQUEST  
FOR PRODUCTION OF  
DOCUMENTS**

(Assigned to The Honorable James Blomo)

19 Pursuant to Rule 34 of the Arizona Rules of Civil Procedure, Plaintiff, Collette McNally  
20 ("Plaintiff"), hereby responds to Defendant Sun Lakes Homeowners Association #1, Inc.'s First  
21 Request for Production of Documents. This Response to the Request for the Production of  
22 Documents is subject to both the general objections and reservations, and specific objections set  
23 forth below.

24 **GENERAL OBJECTIONS AND RESERVATIONS**

25 1. Plaintiff objects to defendant's Request for the Production of Documents to the extent  
26 that same requires or purports to require disclosure of information beyond the scope of discovery  
permissible under Rule 26(b) of the Arizona Rules of Civil Procedure. Plaintiff's responses, the



1 identification for production of documents included in those responses, and its production of  
2 documents shall neither waive nor prejudice any objections plaintiff may later assert, including, but  
3 not limited to, objections to the admissibility of any document or category of documents at trial.

4         2. Plaintiff objects to defendant's Request for the Production of Documents to the extent  
5 that same requires or purports to require the disclosure of documents, if any, prepared in  
6 anticipation of litigation, subject to a claim of privileged or protected from disclosure under the  
7 attorney work product doctrine. Any inadvertent production or identification of such documents  
8 shall not waive any such privileges.

9         3. Plaintiff objects to defendant's Request for the Production of Documents to the extent  
10 that same requires or purports to require the disclosure of documents, if any, subject to a claim of  
11 privileged or protected from discovery under the attorney-client privilege. Any inadvertent  
12 production or identification of such documents shall not waive any such privileges.

13         4. Plaintiff objects to defendant's Request for the Production of Documents to the extent  
14 that the request requires production of documents already in possession of defendant's counsel, on  
15 the grounds that such requests are overbroad and unduly burdensome, and compliance therewith  
16 would be unnecessarily inconvenient, disruptive and expensive.

17         5. Plaintiff objects to defendant's Request for the Production of Documents to the extent  
18 that same requires or purports to require the disclosure of documents that are confidential and  
19 proprietary to plaintiff.

20         6. All production of documents by plaintiff shall be at requestor's expense and shall take  
21 place at a mutually convenient time at plaintiff's attorneys' office in Phoenix, Arizona, and any  
22 reproductions, if necessary, will be performed by a photocopy service acceptable to plaintiff.

23         7. Plaintiff reserves the right to supplement the responses to defendant's Request for the  
24 Production of Documents with information and documentation that may be obtained upon  
25 continuing discovery.

26         8. Plaintiff reserves the right to challenge the competency, relevancy, materiality and

1 admissibility at trial, or any subsequent proceeding, of this or any other action, of any documents  
2 they produced and/or produce in response to defendant's Request for the Production of Documents.

3 9. Plaintiff objects to defendant's Request for the Production of Documents generally to  
4 the extent the defendant seeks to elicit the disclosure of information pertaining to privileged or  
5 work product protected materials calculated to defeat and otherwise diminish or negate the privilege  
6 asserted to any such documents by plaintiff.

7 Subject to these general objections and reservations, which plaintiff incorporates into each  
8 response given below, plaintiff responds to the requests made in defendant's Request for the  
9 Production of Documents as follows:

10 **RESPONSE TO REQUEST FOR PRODUCTION OF DOCUMENTS**

11 1. Produce any and all written communications and correspondence, including e-mail  
12 correspondence, between you and any member or employee of the Sun Lakes HOA, including  
13 but not limited to current or former members of the Board of Directors, relating to the matters set  
14 forth in Section I of Plaintiff's Initial Disclosure Statement.

15 **Response:** Plaintiff objects to this Request on the grounds of undue burden,  
16 vagueness and that the Request is overly broad. Notwithstanding and without waiver of  
17 the foregoing objections, presuming that Defendant intended for Plaintiff to produce  
18 communications and correspondence relating to the matters set forth in Section II of her  
19 Disclosure Statement (as Section I is the Objections section) and in addition to what has  
20 already been supplied in Plaintiff's Rule 26.1 Initial Disclosure Statement, Plaintiff refers  
21 Defendant to the documents attached hereto Bates Stamped PL00061-PL00071. Plaintiff  
22 hereby supplements her disclosure statement to include these documents and identifies as  
23 potential witnesses any persons identified therein. Plaintiff also reserves the right to  
24 supplement this response in a manner consistent with the Arizona Rules of Civil  
25 Procedure.

26 DATED this 12<sup>th</sup> day of December, 2014.

CHEIFETZ IANNITELLI MARCOLINI, P.C.  
Attorneys for Plaintiff

By: \_\_\_\_\_

Steven W. Cheifetz  
Jacob A. Kubert

1 ORIGINAL of the foregoing  
2 mailed and emailed this 12<sup>th</sup> day of December, 2014, to:

3 Robert Grasso, Jr., Esq.

4 [rgrasso@grassolawfirm.com](mailto:rgrasso@grassolawfirm.com)

5 Jenny J. Winkler, Esq.

6 [jwinkler@grassolawfirm.com](mailto:jwinkler@grassolawfirm.com)

7 GRASSO LAW FIRM, P.C.

8 2121 West Chandler Boulevard, Suite 100

9 Chandler, Arizona 85224

10 Attorneys for Defendant

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## Martens Confession

[Inbox]

RICHARD BERNARD Owner <bernie9211@centurylink.net>

9:53 AM (1 hour ago)

to me, franhoney, rglazieraz

Hello all, hope everyone is doing well, and you survived the past storms without damage.

In the past, I have thought that all three of you were influenced by Mr. Wolfer, in some decisions that were made. I certainly have a better understanding of what had been happening around here in executive sessions, etc.. I am sorry for some of my thoughts and words, even thou I did not agree with some decisions that were made, or did I always agree with Mr. Wolfer.

In reading Collette' complaint (assuming all is 100% accurate), correct me if I am wrong, but all three of you just wanted the conversations to stop that should be discussed in open meetings, not in executive session. I applaud you for standing up for what is right, and for trying to get things out in the open.

Is/was it possible that this board prevented Collette from voting, so that the Pro Shop could be remodeled? Seems like they rushed to get it started.

Just because Mr. Wolfer was giving suggestions to Mr Smith, doesn't seem like any type of violation, just a homeowner venting. A board member could do with it what he or she wanted, in fact, I feel board members should listen more often to homeowners. Just because we don't always agree, isn't a bad thing, so long as we learn from it, and discuss it.

Many of us have been discussing Collette' complaint, and if, as I say, it is accurate, we want to support her, and each of you. But, we would like to see the confession from Ms Martens, as it was stated that it had been passed around , but none of us have a copy. Since it was passed around, it should not be an issue to send me a copy of it.

Since this is in litigation, I'm sure there are only certain things that can be discussed, and I am not interested in getting anyone in trouble, only trying to put all the pieces together. Not sure how I can help, other than informing people of the truth.

Once again, thank you for your service to our community, and none of you should ever have to go thru this petty, B.S.!

Dick Bernard  
7-088  
7/16/14

PL 00061

RICHARD BERNARD Owner

5:25 PM (3 hours ago)

to JoAnn, C, Doug, David, Don, Phyllis, Ken, Sharon, Harold, me

Thank you ever so much, as I will forward this on, since it does contain all of the exhibits. I am so very sorry that this BOD, and MANAGEMENT has put you thru this. Nobody should have to go thru what you have been drug into.

How in God's name, have Roberta, and Clint been able to retain their jobs? Do we as homeowners want people like this handling our affairs and funds? Should we have a complete audit done? I realize you are not in a position to answer these questions, I am just thinking. How can this board justify this management team? Unbelievable. Sounds like to me, that once again, we should get rid of the board... Things don't have to be this way, why can't we get the right people? What is the solution.? Would the homeowners gather together once again, to make the changes?

It seems to me that these individuals (all, board and management) have opened themselves up for legal proceedings, more than likely hinging on the outcome of your complaint.

Thank you for your efforts, and keep your faith.

Dick Bernard  
7-088

---

**From:** "Colette Mc Nally" <colettemc9412@gmail.com>  
**To:** "RICHARD BERNARD Owner" <bernie9211@centurylink.net>  
**Sent:** Wednesday, July 16, 2014 11:27:41 AM  
**Subject:** Re: Martens Confession

Thanks Dick for your comments. Attached is the completed complaint. I think we will benefit as a community if we openly consider the complete facts and understand the laws that govern HOA Communities. We are not all going to agree on everything, but if there are laws in place to guide us, let us stick to the law. Regarding the Pro Shop. Yes it was a bit rushed. But the budget presented then seemed reasonable, but the time line [six weeks] seemed very uncertain. I voted it for it as it was presented with the proviso we get insurance to cover any overrides. Clint assured me he would look into it. I don't think that was done.

On Wed, Jul 16, 2014 at 9:53 AM, RICHARD BERNARD  
Owner <bernie9211@centurylink.net> wrote:

Hello all, hope everyone is doing well, and you survived the past storms without damage.

In the past, I have thought that all three of you were influenced by Mr. Wolfer, in some decisions that were made. I certainly have a better understanding of what had been happening around here in executive sessions, etc.. I am sorry for some of my thoughts and words, even thou I did not agree with some decisions that were made, or did I always agree with Mr. Wolfer.

PL 00062

In reading Collette' complaint (assuming all is 100% accurate), correct me if I am wrong, but all three of you just wanted the conversations to stop that should be discussed in open meetings, not in executive session. I applaud you for standing up for what is right, and for trying to get things out in the open.

Is/was it possible that this board prevented Collette from voting, so that the Pro Shop could be remodeled? Seems like they rushed to get it started.

Just because Mr. Wolfer was giving suggestions to Mr Smith, doesn't seem like any type of violation, just a homeowner venting. A board member could do with it what he or she wanted, in fact, I feel board members should listen more often to homeowners. Just because we don't always agree, isn't a bad thing, so long as we learn from it, and discuss it.

Many of us have been discussing Collette' complaint, and if, as I say, it is accurate, we want to support her, and each of you. But, we would like to see the confession from Ms Martens, as it was stated that it had been passed around , but none of us have a copy. Since it was passed around, it should not be an issue to send me a copy of it.

Since this is in litigation, I'm sure there are only certain things that can be discussed, and I am not interested in getting anyone in trouble, only trying to put all the pieces together. Not sure how I can help, other than informing people of the truth.

Once again, thank you for your service to our community, and none of you should ever have to go thru this petty, B.S.!

Dick Bernard  
7-088

bill <banddehoyt@wbhsi.net>

12:39 PM (3 hours ago)

to me

Colette,

You and I were never what I would call in-sync during our tenure on the board, however on reviewing your recent suit against the HOA, I feel, if the facts are correct as stated, that you have certainly been mistreated by this board. For a duly elected board member to be denied access to any formal board meeting including executive sessions, is intolerable. Equally disturbing is the reference to the 'theft' of personal electronic data, by a trusted Administration employee, that was the property of yet another board member. It is implied that Clint and Roberta were involved in this 'criminal act'. The suit referred to an apology letter from the employee, that later resigned, explaining the decision to compromise the data. The 'apology' letter was referred to as Exhibit A but was not included in the email I received. As I understand that this letter was circulated among certain members of the community, I would appreciate seeing a copy. I have been a very vocal opponent of Clint and Roberta and if the letter from Jeanie is accurate I believe both Clint and Roberta should be fired – at once. There are numerous other misdeeds that I have been privy to that has prompted me to call for their dismissal. This goes for certain board members, as well. I would appreciate receiving a copy of Jeanie's letter thus enabling me to proceed with my case against these two. Thank you.

July 14.14

PL 00064

Terry

10:00 AM (39 minutes ago)

to me

Colette – first I do apologize for putting an extra "l" in your name, over and over again.

The reactions I've received from all I've forwarded your "complaint" to are overwhelmingly supporting your case –We are all appalled at the dishonesty and lack of integrity of each Board member and our GM. They should be impeached...

We've had maverick Board members during my terms in office but never to this libelous extent. Congratulations for not letting these so-called upstanding citizens of Sun Lakes get away with their shananigans (guess that's a word from "the old country"... Have you had any reaction from the Board or is it in the hands of their attorney – They must have gone straight to him upon receipt..Terry B

7/17/14

Pat Nicholaisen <[pnicholais@aol.com](mailto:pnicholais@aol.com)>

7:15 PM (2 hours ago)

to me

Collette,

I wanted to thank you for your hard work, somehow we have to get rid of the evil people..

I give you a great deal of credit for standing up to them.

I also have Karen Hermes phone and e-mail, I know she left under the same circumstances.

Her phone is 480-532-2534

Her e-mail is [j\\_khermes@yahoo.com](mailto:j_khermes@yahoo.com)

My home # is 480-883-3231, cell is 480-720-0231

my e-mail is [pnicholais@aol.com](mailto:pnicholais@aol.com)

Please feel free to call or e-mail me anytime you need something or just to vent..

Pat

Hi,

I have been accumulating evidence against Clint, Roberta and Larry Brooks for over a year as I believe these three people have cost our HOA a great deal of money not to mention how many good employees have been victimized for simply doing their jobs. We are now down to two – Clint and Roberta. David Emerick and Dick Bernard spent a great deal of time this summer chronicling the many misdeeds of these two as well as dealing with a totally inept board of directors. I believe most of you are aware of the more recent events that has left no doubt that a change is necessary and mandatory. The deceit and lies by Clint go back to his initial interviews with the search committee and subsequently with the board president, at the time. His previous employment ended very badly which was not divulged, but surfaced later. Similar transgressions have shown up at SLCC but apparently have been excused by the board - **a leopard doesn't change its spots!** There is strong evidence that financials have been altered. Personal purchases have been uncovered; charged to Clint's company credit card. We have a board member that is suing the association. We have discharged employees that are waiting in the wings to sue, as well.

David attempted to divulge some of these charges at a recent open community meeting but felt that the audience was basically not interested in hearing him out. Flyers were handed out at the close of the meeting disputing the majority of the allegations. (how was his comments known in advance) So, here we are. A community apparently engulfed in apathy that seems OK with rising dues and assessments due to mismanagement and manipulating our money. Our board lacks business acumen and seem to be at the mercy of a crafty, slick adversary who has a proven record of deceit and misappropriations of HOA funds. Now --- what are we going to do about it? We need your help! If we stand by and let this continue – shame on us! Please, please help us put an end to this circus and bring some civility to SLCC. We deserve better.

Bill Hoyt 10/16/14

PL 00067

Dear concerned Community Members:

I am sending this out to those of you who have voiced your concerns. I have both been asked and volunteered to bring certain questions on behalf of the community to the Board when they meet Wednesday September 3. It is up to you to pass this on to all those you correspond with so that we can present a united front and get our message across. Those of you who are not at present here in the community can send your concerns, questions etc. to a trusted community member who can act as your representative at the upcoming Board Meeting. We must do everything possible to address the Board in a unified manner and with dignity so our voices can be heard and our concerns properly registered. I will give a copy of my statements to the Board Secretary so they are recorded and posted after the meeting.

Here are the main issues as I see them.

1. **THE BUDGET:** Over the past two years spending has been out of control with no accountability being asked for. A community which was once managed by a very low ratio of full time staff [I can count eight] in 2010 has now forty-six [46] full time staff, four of which are actually doing the job that the manager in 2010 did alone. And the community has not grown in number of members or households, or amenities, or any perceivable cost base in that time. Last year this uncontrolled budget showed \$137,000 in expenditures over budget. If you add in the loss of income over the past two years [especially recently in the lounge] we are in a very sad state. Finally this was brought up at the last Board/Budget & Finance Meeting in August and things have started to happen we are told, though what the board has done has not been reported on in an open board meeting. We are just hearing second hand of random firings. But what the overall plan is we have no idea.

**The Golf Lounge:** This was to take six weeks and cost \$180,000. The Board held an "unnoticed meeting" at the Golf Lounge which was not recorded, no minutes were taken, and no approval was made of the meeting at the following Board Meeting. At this meeting the board members present agreed to change the specifications on work to be done. This led to a six month project at the cost of \$370,000+.

A new Capital Reserves Study was initiated. The old one has been ignored for years. As soon as the new one was ready, or even before, extra projects which were not included in this year's plan were added and the entire amount allocated for the year has been completely used up, not leaving any for the remaining months or for the possibility of any emergency taking place. The Financial Audit usually takes place in March. To date it has not been released.

2. **MANAGEMENT PROBLEMS:** The manager is the professional leader in the community. He is there to guide the board, who are all volunteers, and mostly uneducated about HOA laws. It is his duty to see that the Board at all times governs within the parameters set by the HOA laws as expressed in our governing documents and the Arizona Revised Statutes. This is not happening. And this is why Colette has recorded her complaint with the courts. She was left with no other alternative except resignation which the Board might have preferred. But resigning and allowing this behavior to continue is not in the best interests of our community. I know the community who is informed of her law suit is firmly in support of her actions. She tells me she has received nothing but positive reinforcement and many expressions of thanks from a large number of community members.

The occurrence of repeatedly held "unnoticed" meetings, which is the center of her suit, is a grave infraction, and no court of law will allow this to go on, or approve any measure that was taken by a Board under such conditions. Community matters must always be addressed in open noticed meetings [with very few and well documented exceptions], but here they are instead often dealt with in "secret", i.e. the time, date and agenda are not known to the community. This goes against the law.

Another problem is the misuse of the credit card. This question was raised by a community member over a year ago. This should have been dealt with openly at the next Board Meeting, not just reported on a year later as having been "taken care of" behind closed doors.

The idea that management can bypass the board and target community and board members by appropriating private emails belonging to a board member, and lie to a community member about their provenance so they can be circulated throughout the community; and that the board should decide to not address these same issues brought to their attention, is beyond believable. That a Board member who brings to the Board's attention public documents found on the internet [and most of us have seen them] and which gravely impacts the financial safety of our community, should receive threats from the HOA lawyer, and such information suppressed, is an obvious lack of fiduciary responsibility. But these things happened. And they need to be addressed. And to think that Rick is firmly in favor of such a manager and thinks highly of him raises a lot of questions. How to resolve these issues is obvious. We need a new manager.

3. **HANDLING THE SITUATION:** So how does one deal with a board that doesn't follow the rules. We do not want to cause a "2009 crisis". There is absolutely no need to recall this board. All are good people and ran with good intentions and were elected. I'm sure

with better more informed leadership they will do much better. And with some HOA education can learn to act appropriately.

On behalf of the community who have asked me to present these issues I am asking Rick to resign as President, as it is clear with all good intentions, he has been badly advised and has set up an atmosphere that permits targeting of community and board members who question his knowledge and authority in dealing with fundamental issues such as board governance and responsive investigations to wrong doing. This would leave Paul in the position to become President if he wants and feels that he has a better grasp on what is required. [Well he didn't do too well as Treasurer last year by allowing overspending to the tune of \$137,000 without addressing the issues]. Or if you both step aside then the Board can call for nominations and we can hear from the candidates if they are prepared and willing to work more openly with the community in accordance with the HOA laws and put in place the necessary remedies to our fiscal and governing problems.

If you have any further suggestions to add or have need for clarification let me know.

Karen H.

4:45 PM (1 hour ago)

to me

On Friday, September 12, 2014 4:44 PM, Karen H. <[i\\_khermes@yahoo.com](mailto:khermes@yahoo.com)> wrote:

At that time HR was done in the accounting office.

I ordered all the Background checks for new employees and I also did them when SB1070 went into effect on ALL the current employees at that time (after I had informed the Acct. Mgr. and the GM that this had to be done or we could be shut down for having illegals employed!)

The Acct. Mgr. at that time was Karen Lawson and the Board President was Bernadette Halpin.

Ms. Lawson reported to Bernadette about the background check and other(lawsuit) information that had been acquired. Bernadette's response was "so what - even my kids have declaired bankruptcy"!

This information, I had assumed was placed in Clint's HR file. Shortly after, Roberta was made HR Mgr. and came into our office and demanded all the HR files and wasn't nice about it!

So I would almost bet that if anyone could get access to the HR files (Board President?) there would be no record of this backround check!

As far as the lawsuit in Canyon Lake - it was accessible to anyone on Google and the Riverside County Civil & Small Claims Court - the case number is RIC1210573 if you would like to go back and read it.

Nothing would make us happier than if SLHOA got rid of Clint & Roberta - I think we would have to throw a BIG party! Some of us already have plans to do a tailgate in the parking lot the day they are fired!

Let me know if you need anything else - would be happy to help the residents of Sun Lakes.

KAREN

PL 00071

Exhibit 13

McNally, Colette

1 Steven W. Cheifetz (011824) - [swc@cimlaw.com](mailto:swc@cimlaw.com)

2 Jacob A. Kubert (027445) - [jak@cimlaw.com](mailto:jak@cimlaw.com)

3 **CHEIFETZ IANNITELLI MARCOLINI, P.C.**

4 111 West Monroe Street, 17<sup>th</sup> Floor

5 Phoenix, Arizona 85003

6 Tel. (602) 952-6000

7 Fax (602) 952-7020

8 Attorneys for Plaintiff

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

11 COLETTE MCNALLY, an individual,

12 Plaintiff,

13 -vs-

14 SUN LAKES HOMEOWNERS

15 ASSOCIATION #1, INC., an Arizona non-  
16 profit corporation,

17 Defendant.

No. CV2014-009496

**PLAINTIFF'S RESPONSE TO  
DEFENDANT'S FIRST SET OF NON-  
UNIFORM INTERROGATORIES**

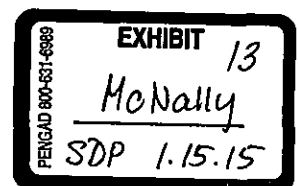
(Assigned to The Hon. James T. Blomo)

18 Plaintiff Collette McNally ("Plaintiff"), hereby responds to the First Set of Non-Uniform  
19 Interrogatories of Defendant Sun Lakes Homeowners Association #1, Inc. ("Defendant") pursuant  
20 to Rule 33 of the Arizona Rules of Civil Procedure, as follows:

21 **GENERAL OBJECTIONS AND RESERVATIONS**

22 1. Plaintiff objects to all Discovery Requests which seek the production of information  
23 that is protected by the attorney-client privilege, attorney work product doctrine and/or any other  
24 privilege applicable. This information shall not be disclosed.

25 2. Plaintiff objects to all Discovery Requests to the extent that same requires or  
26 purports to require disclosure of information beyond the scope of discovery permissible under Rule



1 26(b) of the Arizona Rules of Civil Procedure. Plaintiff's responses shall neither waive nor  
2 prejudice any objections plaintiff may later assert, including, but not limited to, objections to the  
3 admissibility of any response to the Discovery Requests at trial.

4 3. Plaintiff objects to all Discovery Requests to the extent that the same requires or  
5 purports to require the disclosure of information that is confidential and proprietary to plaintiff.

6 4. In responding to each of the Discovery Requests, plaintiff does not concede the  
7 relevancy of the subject matter to which the request refers. Plaintiff has responded to the Discovery  
8 Requests without waiving or intending to waive any objections to competency, relevancy or  
9 admissibility as evidence of any matter or document referred to or made the subject of any response  
10 or production provided at any proceeding, including the trial of this action.

11 5. Plaintiff reserves the right to amend, supplement or change its responses to the  
12 Discovery Requests with information learned from the course of further discovery.

13 6. The foregoing general objections and reservations are hereby incorporated into each  
14 of the responses to the Discovery Requests set forth below.

15  
16 **ANSWERS TO DEFENDANT'S FIRST SET OF  
NON-UNIFORM INTERROGATORIES**

17 **Interrogatory No. 1:** Concerning the allegation at Count Three, Paragraph 51 of your  
18 Verified Complaint that "the Association made false statements to the community that Plaintiff  
19 violated the executive session privilege and/or that Plaintiff could not be trusted as a Board  
20 Member," for each such "false statement" alleged, provide the following:

- 21 a. The exact wording of the statement that you allege was defamatory;  
22 b. The name of the person(s) whom you allege published the statement;  
23 c. The time, place, and manner of the alleged publication;  
24 d. The name and address of each person whom you allege received the  
25 published statement;  
26

- 1 e. The name, address, and a description of the testimony of each witness  
2 whom you intend to call at trial to prove the allegations; and  
3 f. Identify the documentary or other evidence that you intend to produce at  
4 trial to prove the allegations.

5 **Answer:**

6  
7 **Plaintiff states that the Association, through its Board Members, made various**  
8 **statements about Plaintiff and engaged in overall behavior that generally portrayed her as**  
9 **an untrustworthy Board Member ever since she read the Martens Confession at the**  
10 **September 2013 Board meeting in an effort to lower her esteem in the community,**  
11 **diminish her reputation as a trustworthy Board Member and to diminish her capability of**  
12 **adequately representing those members of the community who voted her into office. As if**  
13 **improperly removing Plaintiff from executive sessions to cover up their own wrongdoing**  
14 **and violating Arizona's Open Meeting Laws by concealing the confession were not bad**  
15 **enough, the Board has engaged in a concerted effort to justify their removal of Plaintiff by**  
16 **mistreating her, disrespecting her and making Plaintiff look bad to the community in a**  
17 **manner that made this unfortunate circumstance that much worse. In addition to the**  
18 **general snickering when Plaintiff spoke, dismissing her when she spoke and treating her**  
19 **with a diminished level of respect different from their treatment of fellow Board Members,**  
20 **which has generally occurred in one form or another since September 2013, Plaintiff**  
21 **recalls the following specific incidents of Association behavior that lowered her reputation**  
22 **and esteem in the community:**

23 1) **September 2013 Minutes of Open Board Meeting. These minutes stated that,**  
24 **"Director McNally was not pre-authorized to speak." This was a false statement published**  
25 **in the Association's August/September 2013 meeting minutes by Secretary Elaine Johnson**  
26 **which suggested that Plaintiff was untrustworthy and committed some improper type of**

1 action that made her no longer authorized to speak during Board Meetings. Upon belief,  
2 this statement was published on the Association's website for any community member to  
3 view. Plaintiff intends to call at trial Elaine Johnson and any other Board Member  
4 responsible for publishing this false statement.

5       2) November 2013 Candidates Meeting – President Schwartz told community  
6 member John Hoffman “don’t mind what she says.” This statement was made during an  
7 open meeting which was overheard by other Board Members and community members  
8 and made to suggest that Plaintiff was unauthorized to speak because she committed some  
9 improper action. This statement further lowered Plaintiff’s reputation and esteem in the  
10 community because the community could reasonably ascertain from this statement that the  
11 Board was justified for imposing its unlawful sanction against her and that Plaintiff  
12 committed some alleged wrongful conduct. Plaintiff intends to call President Schwartz,  
13 John Hoffman, other Board Members and, as discovery is continuing, other community  
14 members who may have overheard President Schwartz’s statement to Mr. Hoffman to  
15 “don’t mind what [Plaintiff] says.”

16       3) May 15, 2014 – Board Orientation Training. During this training session that  
17 was attended by Board Members and Association staff, at the behest of Association, the  
18 Association’s general counsel, Charles Maxwell, read from a memorandum that Plaintiff  
19 engaged in improper conduct reading the Martens Confession during the September 2013  
20 Board meeting, that she was wrong for doing so and asked Plaintiff to recant the substance  
21 of the Martens Confession in a manner that lowered Plaintiff’s esteem and reputation in  
22 front of those Board Members and staff members present during this training session.  
23 Plaintiff is not in possession of this memorandum but herein demands that the Association  
24 disclose same to Plaintiff pursuant to Rule 26.1 of the Arizona Rules of Civil Procedure.  
25 After the training session concluded, Mr. Maxwell and the Board made Plaintiff walk out  
26

1 in shame and then proceeded to hold an executive session without her presence. In  
2 addition to the presence of the Board Members, Plaintiff recalls that Kelly Haines, the  
3 Association's accountant, was present and intends to call her at trial to testify regarding  
4 the statements made by Mr. Maxwell on behalf of the Association at this meeting.

5       4) Two (2) Board Meetings after May 2014 – President Schwartz and First Vice  
6 President Mr. Bauer read from memoranda at these open meetings accusing Plaintiff of  
7 wrongfully reading the Martens Confession at the September 2013 meeting. Plaintiff is not  
8 in possession of these memoranda but herein demands that the Association disclose same to  
9 Plaintiff pursuant to Rule 26.1 of the Arizona Rules of Civil Procedure. The statements,  
10 which were false and lowered Plaintiff's esteem and reputation in the community, were  
11 made in an effort to convince the community that Plaintiff was an untrustworthy Board  
12 Member who committed improper actions. These statements were made to community  
13 members in attendance and, as discovery progresses, those members may be called at trial.

14       5) Refusal to provide Plaintiff with Board communication, managers' weekly  
15 reports and refusal to include Plaintiff in discussions regarding important Association  
16 issues – By refusing to keep Plaintiff informed, the Association has made Plaintiff left to  
17 look like a fool during Board Meetings because she is unable to answer questions or  
18 participate in the meetings without having this information and knowledge at her disposal.  
19 This refusal to provide Plaintiff with such information has placed Plaintiff in a false light  
20 and has lowered her esteem and reputation in the community as a capable Board Member.

21       6) November 2014 Board Meeting. Board Member Neil Peer made a mockery  
22 of Plaintiff when she tried to discuss agenda items during this meeting by smirking when  
23 she tried to speak. This member's disrespectful behavior has placed Plaintiff in a false  
24 light and has lowered her esteem and reputation in the community because, as discussed  
25  
26

1 throughout, the Association's overall behavior toward Plaintiff has portrayed her as a  
2 Board Member who cannot be trusted and who engages in improper conduct.

3 As discussed above and in detail in Plaintiff's Verified Complaint, the Association  
4 has engaged in a pattern of behavior of falsely suggesting that Plaintiff is untrustworthy  
5 and committed improper behavior by allegedly violating some executive privilege when she  
6 read the Martens Confession during the September 2013 meeting as she was lawfully  
7 required to do under Arizona's Open Meeting Law. These false accusations and attendant  
8 behavior have defamed Plaintiff and have placed her in a false light in the community who  
9 she was elected to serve. By precluding her from executive sessions and keeping her  
10 uninformed since September 2013, the Association has made Plaintiff look like a fool and  
11 someone not worthy of representing the community. Recently, Plaintiff has suffered  
12 unnecessary stress and has been treating with a heart doctor who has opined that she has a  
13 "rapid deterioration in her aorta valve" related to the unnecessary stress inflicted upon her  
14 by the rest of the Board. Plaintiff's doctor's name is Dr. Xavier and he is with Premier  
15 Heart Cardiovascular Center, 725 S. Dobson Road, Ste. 100, Chandler, Arizona 85224. Dr.  
16 Xavier may be called at trial to testify regarding the physical damages sustained by  
17 Plaintiff as a result of the Association's tortious conduct.

18 Plaintiff reserves the right to amend or supplement this response upon continued  
19 discovery.

20  
21 DATED this 12<sup>th</sup> day of December, 2014.

22 CHEIFETZ IANNITELLI MARCOLINI, P.C.  
23 Attorneys for Plaintiff

24 By: 

25 Steven W. Cheifetz  
26 Jacob A. Kubert

1 ORIGINAL of the foregoing  
2 mailed and emailed this 12<sup>th</sup> day of December, 2014, to:

3 Robert Grasso, Jr., Esq.

4 [rgrasso@grassolawfirm.com](mailto:rgrasso@grassolawfirm.com)

5 Jenny J. Winkler, Esq.

6 [jwinkler@grassolawfirm.com](mailto:jwinkler@grassolawfirm.com)

7 GRASSO LAW FIRM, P.C.

8 2121 West Chandler Boulevard, Suite 100

9 Chandler, Arizona 85224

10 Attorneys for Defendant

11 By: 

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Exhibit 14

Mc Nally, Colette



**Executive Sessions Minutes**  
**Board Orientation**  
**Thursday, May 15, 2014 – 9:00 AM**  
**Thursday, May 15, 2014 – 9:30 AM**  
**Conference Room – Sun Lakes Country Club**

**Board of Directors**

Rick Schwartz, President	Janice Cournoyer, Treasurer
Paul Bauer, 1 <sup>st</sup> Vice-President	Colette McNally, Director
Bill Townsend, 2 <sup>nd</sup> Vice-President	Joe Downs, Director
Neal Peer, Secretary	

\*Excused  
 \*\*Videoconference

CLINT WARRELL, CMCA, AMS, LSM, PCAM, General Manager  
 Katherine Giardina, Administrative Assistant

**CALL TO ORDER/VERIFICATION OF QUORUM** – President Rick Schwartz  
 After it was ascertained a quorum was present, President Rick Schwartz called the meeting to order at 9:10 AM. As provided under Arizona law for master planned communities, the meeting was open for members to attend.

**LEGAL ADVICE** – Charles Maxwell, Maxwell & Morgan, P.C

- Legal Overview & Training
  1. Minutes
  2. Rules of socialization between board members
  3. Executive Session vs Open Session
  4. Role of a Board Member
  5. Litigations and Indemnifications
  6. Charlie Maxwell Role to the Association
  7. Fiduciary Duties
  8. Questions directed at Board Members – How to Answer Members
  9. Modified Business Judgment Rule
  10. Attorney Client Privilege Rule
  11. Confidential Information & Restrictions
  12. A.R.S. 33-1804 (A)(1-5)
  13. A.R.S. 33-1805 (B)(1-5)
  14. Do's and Don'ts of Quorum

**EXHIBIT 14**  
*McNally*  
 SDP 1.15.15

15. Advice to the Board of Directors
16. Discussion of Agreement with Director Colette McNally

**DISMISSAL OF DIRECTOR COLETTE MCNALLY- 10:05 AM**

**LEGAL ADVICE** – Charles Maxwell, Maxwell & Morgan, P.C

- Discussion Executive Session Meeting Privileges
  1. Review of Director Colette McNally case
  2. Representation of Corporation & Association
  3. Open Session orientation suggestions
  4. Q & A

**ADJOURNMENT**

There being no further business, the meeting was adjourned at 10:25 AM.

Date approved by the Board of Directors: \_\_\_\_\_

\_\_\_\_\_  
Neal Peer, Secretary