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17 OCT -2 AM 8:38

William M. Brown  
6751 E. Amber Sun Drive  
Scottsdale, AZ 85266  
(480) 595-9131

Plaintiff on his own behalf

SUPERIOR COURT OF ARIZONA

MARICOPA COUNTY

William M. Brown, an individual,

Case No. CV2017-055475

Plaintiff,

Application for Provisional  
Remedy with Notice

(Assigned to the Hon. John R.  
Hannah, Jr.)

vs.

Terravita Country Club, Inc., an Arizona  
non-profit corporation; Sterling J. Laaveg,  
President TCC, Inc., and his spouse; Paul  
David Tolk, Vice-President TCC, Inc., and  
his spouse; William H. Greig, Secretary  
TCC, Inc., and his spouse; Michael T.  
Ellington, Treasurer TCC, Inc., and his  
spouse; John Does I-X and Jane Does I-X  
and their spouses; Carpenter, Hazlewood,  
Delgado & Bolen, PLC; Joshua M. Bolen  
024053 and Anjali J. Patel 028138,

Defendants.

Plaintiff, William M. Brown, petitions this Court for both preliminary and permanent injunctions against Defendants, Terravita Country Club, Inc., et al., compelling defendants' compliance with Administrative Law Judge Velva Moses-Thompson's July 10, 2017 Administrative Hearings' Recommended Order, "... Terravita comply with the applicable provisions of A.R.S. § 33-1805 regarding Petitioner's request of Terravita's records within 10 days of the Order in this matter," the Commissioner of the Arizona Department of Real Estate's July 11, 2017 Department's Final Order, "...that Respondent (Terravita Country Club, Inc.) comply with the applicable provisions of A.R.S. § 33-1805 regarding Petitioner's (William M. Brown) request of Respondent's records within 10 days of the Order in this matter" and the Commissioner of the Arizona Department of Real Estate's August 16, 2017 Order Denying Request for Rehearing, "It was further ORDERED that Terravita comply with the applicable provisions of A.R.S. § 33-1805 regarding Petitioner's request of Terravita's records within 10 days of the Order entered in this matter."

#### Factual Background

Defendant, Terravita Country Club, Inc. ("TCC"), is an Arizona non-profit corporation formed May 28, 1998 to operate as a private social recreational club for the social and recreational benefit of its members; Defendant's principal place of business is maintained in Maricopa county at 34034 N. 69th Way, Scottsdale, Arizona 85266 where all its corporate business is transacted.

Defendant is a planned community created for the purpose of managing, maintaining or improving the property and in which the owners (Plaintiff, et al.) of separately owned lots/parcels are mandatory members and, as such, Title 33, Chapter 16, Article 1, Arizona's Planned Community Statutes, applies to Defendant.

Defendants Laaveg, Tolk, Greig and Ellington, officers of the defendant corporation, constitute a quorum (4 of 7) of the corporation's board of directors who are charged with the management of the affairs of the corporation and are authorized to make all decisions and take all actions not specifically reserved to the County Club Members pursuant to the Amended and Restated Bylaws of Terravita Country Club, Inc., March 2016.

After the OAH's Decision/Recommended Order, the Department's Final Order and Order Denying Request for Rehearing and multiple entreaties by Plaintiff to Defendants to comply with the law, § 33-1805, the decision of the OAH and orders of the Department, the Defendants have not provided the records requested in Plaintiff/Petitioner's July 29, 2016 records request prior to Plaintiff's September 5, 2017 complaint and remain in defiance (contempt) of the decision and orders in 17F-1716005-REL, William M. Brown vs. Terravita Country Club, Inc.

Plaintiff's Verified Complaint, Application for An Order to Show Cause (Enforcement of An Administrative Law Order No. 17F-H1716005-REL; Arizona Department of Real Estate Final Order No. 17E-H1716005-REL and ADRE Order Denying Request for Rehearing [contempt]), the Court's September 12, 2017 Order To Appear (October 18, 2017 at 8:45 AM) and the order's Application for Provisional Remedy with Notice which gives rise to Plaintiff's request for preliminary and permanent injunctive relief while awaiting the Court's decision respecting Plaintiff's allegation of the Defendants' contempt, further illustrates that the Defendants are in contempt of the OAH's Decision and the ADRE's Final Orders (2) and, as such, their contempt warrants this Court's sanctions against the Defendants.

## Points and Authorities

### Legislative Intent and Jurisdiction

In 2006, the Arizona Legislature passed HB2824 which amended A.R.S. § 41-2198 et seq. and A.R.S. § 33-1801 et seq. permitting an owner or a planned community association to file a petition with the Department of Fire, Building and Life Safety ("DFBLS") for a hearing concerning violations of the planned community documents or violations of the statutes that regulate associations, and that such petitions be heard before the Office of Administrative Hearings ("OAH") as an alternative to filing an action in

the Superior Court. § 41-2198.02(B) provided that "...the order issued by the administrative law judge is enforceable through contempt of court proceedings."

In 2007, OAH submitted its annual report to the Governor, Arizona Senate President and Speaker of the House of Representatives citing their new responsibilities from HB2824 as their number one priority in OAH's "Continued Development of the Office" section. In their report OAH acknowledged that their limited jurisdiction does not extend to contempt of court proceedings:

"If the petition item has been decided by a court or previously has been addressed in a hearing before the OAH, it cannot be revisited, OAH has no authority for contempt proceedings or enforcement of prior decisions. However, failure by a party to comply with a decision issued by the OAH may result in the other party seeking enforcement of the Administrative Law Judge's decision through a contempt of court proceeding in the Superior Court." (Emphasis added)

In 2016, the Arizona Legislature by passing SB1530 substituted the Arizona Department of Real Estate ("ADRE") for DFBS and left OAH in place as the venue for administrative law proceedings.

The legislature's intent and statutory language is unambiguous.

An administrative law judge's jurisdiction is limited to "order any party to abide by the statute, condominium documents, community

documents or contract provision at issue," and does not include contempt of court proceedings jurisdiction. § 32-2199.02(A)

An order of an administrative law judge is enforceable through contempt of court proceeding. § 32-2199.02(B)

"The order issued by the administrative law judge is binding on the parties unless a rehearing is granted pursuant to section 32-2199.04 based upon a petition setting forth the reasons for the request for rehearing, in which case the order issued at the conclusion of the rehearing is binding on the parties. The order issued by the administrative law judge is enforceable through contempt of court proceedings and is subject to judicial review as prescribed by section 41-1092.08," (Emphasis added)

ALJ Velva Moses-Thompson's May 3, 2017 Order in 17F-H1716006-REL, the matter subject of Plaintiff's Verified Complaint to this Court respecting the Defendants' contempt, memorializes Petitioner's Motion for Contempt was denied by Judge Moses-Thompson, "The Administrative Law Judge does not have contempt powers." Exhibit A

Plaintiff requests preliminary and permanent injunctive relief while awaiting the Court's decision respecting Defendants' contempt of the OAH's Decision and the ADRE's Final Orders (2).

### Argument

This Court may grant injunctions "When it appears that the party applying for the writ is entitled to the relief demanded, and such relief or any

part thereof requires the restraint of some act prejudicial to the applicant." Arizona Revised Statutes § 12-1801. That includes the authority to issue a mandatory injunction, which is "an injunction which compels some positive action by the party enjoined." *State ex rel. Corbin v. Portland Cement Ass'n*, 142 Ariz. 421, 690 P.2d 140 (App. 1984). Plaintiff requests a mandatory injunction compelling Defendants' compliance with the law, decision and orders in 17F-H1716005-REL.

In order for the Court to grant the Plaintiff's request for a preliminary injunction, a four-part test is applied. The Plaintiff must establish "(1) a strong likelihood of success on the merits; (2) the possibility of irreparable injury not remediable by damages; (3) a balance of hardships in that party's favor; and (4) public policy favoring the requested relief." *Cerkoney v. TCR-Montana Ranch Joint Venture*, 175 Ariz. 275, 280, 860 P.2d 1328, 1333 (Ct.App. 1993).

Arizona courts have adopted a four-part test to apply when considering requests for injunctive relief. Courts should consider the "relative hardships and injustice; the public interest; misconduct of the parties, if any; delay on the part of the plaintiff; and the adequacy of other remedies." *Ahwatukee Custom Estates Mgmt Ass'n, Inc. v. Turner*, 196 Ariz. 631, 635, 2 P.3d 1276, 1280 (Ct.App. 2000). The Court's equitable discretion should not be used to protect an intentional wrongdoer. *Id.*, citing *Decker v. Hendricks*, 97 Ariz. 36, 41-42, 396 P.2d 609, 612 (1964).

Plaintiff is entitled to preliminary and permanent injunction relief as described in the complaint as the Defendants have violated the law, § 33-1805, the decision/recommended order of the OAH and the orders of ADRE.

The first prong of the test, the balancing of hardships, favors the Plaintiff while precluding the Defendants from receiving any benefit of the balance of hardships test given the Defendants' notice on multiple occasions of the specificity of Plaintiff's records request, the law, the OAH's decision and the Department's orders which the Defendants remain in non-compliance in defiance of all. *Flying Diamond Airpark, LLC v. Meienberg*, 215 Ariz. 44, 156 P.3d 1149 (Ct.App. 2007) and *Burke v. Voicestream Wireless Corp II*, 207 Ariz. 393, 87 P.3d 81 (Ct.App. 2004)

The public interest favors enforcement of the law and the decisions and orders of the State's agencies and departments.

The Plaintiff has not delayed at all in this matter and, in-fact, has made multiple entreaties to the Defendants to resolve the matter prior to Plaintiff seeking the Defendants' compliance and Plaintiff's requested relief from the Superior Court.

Plaintiff lacks other adequate legal remedies for Defendants' continuing violation of Arizona law, the decision of a State agency and the orders of a State department.

As the Plaintiff seeks injunctive relief to enforce the law and the decision and orders of the State's agencies and departments, the Plaintiff need not prove actual damages or irreparable harm.

The Plaintiff will prevail on the merits in this matter. The records request is unambiguous, the law, the OAH's decision and the Department's orders are equally unambiguous.

For the foregoing reasons, the Plaintiff has satisfied the test for the Court's issuance of injunctive relief.

#### Conclusion

For the reasons above and the Plaintiff's Verified Complaint, incorporated by reference, the Plaintiff respectfully requests injunctive relief as a provisional remedy.

#### Prayer for Relief

Given Defendants' long history of non-compliance with Arizona's Planned Community Statutes, their notorious defiance of Judge Moses-Thompson's Decision and Commissioner Lowe's Final Orders in 17F-H1716005-REL and Defendants' and counsel's non-responsiveness in this matter which gives rise to Plaintiff's Verified Complaint, Application for An Order to Show Cause, Plaintiff requests this Court grant:

1. Grant the requested provisional remedy, injunctive relief;

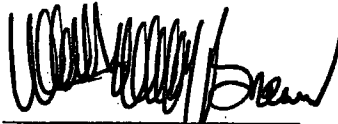
2. The Court, subsequently finding the Defendants in contempt of the OAH's Decision and the ADRE's Final Orders, declare Defendants' contempt warrants sanctions against Terravita Country Club, Inc., its corporate officers and the corporation's counsel for their willful failure to comply with Arizona law and their notorious defiance of OAH's decision and ADRE's orders evidencing the Defendants' disrespect for the administration of justice and the dignity of the law in the amount of \$10,000 per defendant and/or an amount determined by the Court sufficient to deter any further defiance of the State's administrative tribunals and courts; defiance intended to frustrate the administration of justice, to harass Plaintiff, to cause unnecessary litigation and unnecessary delay and to needlessly increase costs in furtherance of a just outcome (Defendant's 2015 total revenues, \$3,748,429 [2015 Form 990 beginning May 1, 2015 and ending April 30, 2016]);

3. Grant Plaintiff his taxable costs in bringing this matter, and

4. Grant further relief as the Court deems appropriate.

Respectfully submitted this 2nd day of October 2017.

William M. Brown  
6751 East Amber Sun Drive  
Scottsdale, Arizona 85266-7029



William M. Brown  
Plaintiff, Pro Se

### Verification

William M. Brown pursuant to Rule 80(i), Ariz.R.Civ.P., verifies under penalty of perjury as follows:

I am the Plaintiff in this matter. I have read the Verified Complaint, Application for Provisional Remedy with Notice and know their contents. The information in the complaint and application are true and accurate to the best of my knowledge, information and belief.

October 2, 2017



William M. Brown  
Plaintiff, Pro Se

Exhibit A

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11

**IN THE OFFICE OF ADMINISTRATIVE HEARINGS**

William M. Brown

No. 17F-H1716005-REL

Petitioner,

**ORDER**

vs.

Terravita Country Club, Inc.

Respondent

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12 On May 1, 2017, Respondent filed an objection to the April 12, 2017 subpoena  
13 that requested documents directly from Frances Eleanor Wylie. Respondent  
14 contended that the subpoena was sent personally to Ms. Wylie and not to Respondent  
15 or Respondent's attorney. Respondent also contended that Ms. Wylie has no authority  
16 over the documents requested in her personal capacity. On May 1, 2017, Petitioner  
17 filed a Motion for Contempt against Respondent for failing to comply with the  
18 subpoena.

19 Considering the Petitioner's motion and the objection to the subpoena, the  
20 portion of the subpoena which requests documents from Frances Eleanor Wylie in her  
21 personal capacity is quashed. Furthermore, the motion for contempt is denied as the  
22 Administrative Law Judge does not have contempt powers.

23 **IT IS ORDERED** quashing the portion of the April 12, 2017 subpoena that  
24 requests documents maintained by an entity other than the named party.

25 **IT IS FURTHER ORDERED** denying Petitioner's motion for contempt. The  
26 Administrative Law Judge does not have contempt powers.

27 **IT IS FURTHER ORDERED** that all filings be sent to Respondent's attorney.

28  
29 Done this day, May 3, 2017.  
30

Office of Administrative Hearings  
1400 West Washington, Suite 101  
Phoenix, Arizona 85007  
(602) 542-9826

/s/ Velva Moses-Thompson  
Administrative Law Judge

Copy mailed/e-mailed/faxed May 3, 2017 to:

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Carpenter, Hazlewood, Delgado & Bolen, PLC  
1400 E. Southern Ave., Suite 400  
Tempe, AZ 85282

Terravita County Club, Inc.  
34034 N. 69<sup>th</sup> Way  
Scottsdale, AZ 85266

Judy Lowe, Commissioner  
Arizona Department of Real Estate  
2910 North 44th Street, Room 100  
Phoenix, AZ 85018

By M. Johnson