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TERRAVCC.0155.1

Attorneys for Defendants

**IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**

**IN AND FOR THE COUNTY OF MARICOPA**

**WILLIAM M. BROWN, an individual,**

**Plaintiff,**

**v.**

**Case No. CV2017-055475**

**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; ANJALI J.  
PATEL 028138,**

**Defendants.**

**MOTION TO DISMISS DEFENDANTS  
BOLEN, PATEL AND CARPENTER  
HAZLEWOOD DELGADO & BOLEN,  
LLP**

Defendants Carpenter Hazlewood Delgado & Bolen, LLP, Joshua M. Bolen (“Bolen”), and Anjali J. Patel (“Patel”), (collectively, the “Defendants”) by and through undersigned counsel, hereby move to dismiss Plaintiff’s claims for the reason that Plaintiff has failed to state a claim upon which relief may be granted against the Defendants

1 pursuant to Ariz. R. Civ. P. 12(b)(6). This Motion is supported by the pleadings in this  
2 matter and the following Memorandum of Points and Authorities, all of which are  
3 incorporated by reference.  
4

5 **MEMORANDUM OF POINTS AND AUTHORITIES**

6 **I. INTRODUCTION**

7 William M. Brown (“Plaintiff”) is the record owner of property located at 6751  
8 East Amber Sun Drive, Scottsdale, Arizona 85266-7029 (“Property”) by virtue of a Joint  
9 Tenancy Deed recorded at Instrument No. 2016-0233841, records of Maricopa County,  
10 State of Arizona. Plaintiff and the Property are bound members of Terravita County  
11 Club, Inc. (“Association” or “TCC”) by virtue of the Club Terravita Social Membership  
12 Agreement recorded at Instrument No. 1996-0386532, records of Maricopa County, State  
13 of Arizona. TCC is a planned community and non-profit corporation subject to Arizona’s  
14 Planned Communities Act codified at A.R.S. § 33-1801 *et seq.*  
15  
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17 Carpenter Hazlewood Delgado & Bolen, Bolen and Patel are the general counsel  
18 attorneys for TCC.  
19

20 Although Defendants are never mentioned in the Complaint outside of the  
21 caption, it appears that Plaintiff’s complaint seeks a declaratory judgment finding the  
22 Defendants in contempt of the final order of the Arizona Department of Real Estate’s  
23 (“ADRE”) Case No. HO17-16/005, Docket No. 17F-H1716005-REL. Again although not  
24 named specifically in the Complaint, we assume that the Plaintiff further seeks the Court to  
25 sanction each Defendant with a penalty of ten thousand dollars (\$10,000.00) or any other  
26 amount found by the Court sufficient to deter further noncompliance. Lastly, Plaintiff  
27  
28

1 requests an award of his taxable costs and any further relief the Court deems appropriate.  
2 For the reasons addressed below, the Defendants should be dismissed from this matter  
3 with respect to all claims.  
4

## 5 II. LEGAL ARGUMENT

### 6 A. Standard of review

7 In evaluating a motion to dismiss for failure to state a claim, “well-pleaded material  
8 allegations of the complaint are taken as admitted, but conclusions of law or unwarranted  
9 deductions of fact are not.” *Aldabbagh v. Arizona Dep't of Liquor Licenses & Control*, 162  
10 Ariz. 415, 417, 783 P.2d 1207, 1209 (Ct. App. 1989) (citing *Folk v. City of Phoenix*, 27  
11 Ariz. App. 146, 150, 551 P.2d 595, 599 (1976)). In doing so, “the court must determine  
12 whether the complaint, construed in light most favorable to the plaintiff, sufficiently sets  
13 forth a valid claim.” *Id.* (citing *Anson v. Am. Motors Corp.*, 155 Ariz. 420, 421, 747 P.2d  
14 581, 582 (Ct. App. 1987)).  
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17 For purposes of this motion, Plaintiff’s Complaint must be analyzed as if all “well-  
18 pleaded material allegations” of the Complaint are true. At the same time, this Court should  
19 ignore the Complaint’s conclusions of law and unwarranted deductions. In this case, the  
20 Plaintiff fails to address any breaches, duties, claims, obligations or rights against or owed  
21 to the Plaintiff by Carpenter, Hazlewood, Delgado & Bolen, LLP, Bolen or Patel. Plaintiff  
22 clearly has not stated a claim upon which relief may be granted with regard to his claims  
23 against these Defendants because (1) Plaintiff does not actually assert any claims and, (2)  
24 the ADRE final order is against only the Association and not the Defendants. *See Exhibit*  
25 “E” to Plaintiff’s Complaint. Further, the Defendants *do not owe Plaintiff any duties and*  
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1 *are not named in or bound by the ADRE decision.* Even if the Court assumes Plaintiff's  
2 allegations are true, the allegations do not give rise to a cognizable cause of action against  
3 the Defendants as a matter of law.  
4

5 **B. Plaintiff fails to state a claim against the Defendants and, therefore, the**  
6 **Defendants should be dismissed from this matter with prejudice.**

7 The Defendants have only been named individually in the caption as a party to this  
8 action. Plaintiff's Complaint fails to articulate any claims specifically against the  
9 Defendants. Assuming the Plaintiff seeks to bind the Defendants to the ADRE final order,  
10 the ADRE final order that is the subject of this proceeding was between the parties to the  
11 ADRE matter—Plaintiff and the Association. Importantly, the ADRE matter and final  
12 order did not include the Defendants as named parties, and the Defendants are not  
13 individually subject to the ADRE final order. Further, Plaintiff's Complaint fails to allege  
14 that the Defendants owe Plaintiff any type of duty or obligation under Arizona law. It is  
15 clear that the Defendants were named individually solely as a means of harassment.  
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18 As with the Director Defendants, Plaintiff fails to allege any argument that the  
19 Defendants were parties to the ADRE final order Plaintiff seeks to have enforced. Plaintiff  
20 fails to allege any argument that the Defendants acted in any way outside the scope of their  
21 corporate duties to the Association or other basis for the Court to impose sanctions against  
22 the Defendants in this case. It is inappropriate to allow this matter to proceed against the  
23 Defendants individually. Plaintiff simply fails to state a claim upon which relief may be  
24 granted against an individual Defendant by virtue of the Defendants' representation of the  
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1 Association. Consequently, the Defendants must be dismissed from this action with  
2 prejudice.

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4 **III. CONCLUSION**

5 For the reasons stated above, Plaintiff has failed to state a claim in his Complaint  
6 against the Defendants. Thus, there is no claim upon which relief can be granted  
7 against the Defendants. The Defendants respectfully request that the Court dismiss all  
8 of Plaintiff's claims with prejudice against the Carpenter, Hazlewood, Delgado &  
9 Bolen, LLP, Bolen and Patel, and request that the Court award costs expended in  
10 defending against these frivolous claims.  
11

12 RESPECTFULLY SUBMITTED this 16<sup>th</sup> day of October 2017.

13  
14 Carpenter, Hazlewood, Delgado & Bolen, LLP

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16  
17 By: 

18 Joshua Bolen 024053  
19 Allison Preston 029346  
20 1400 E. Southern Ave., Suite 400  
21 Tempe, Arizona 85282  
22 *Attorneys for Defendants*  
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1 **CERTIFICATE OF SERVICE**

2 ORIGINAL of the foregoing electronically  
3 filed this 16<sup>th</sup> day of October, 2017, with:  
4 Clerk of the Court  
5 Maricopa County Superior Court  
6 [www.AZTurboCourt.gov](http://www.AZTurboCourt.gov)

7 COPY of the foregoing mailed  
8 this 16<sup>th</sup> day of October, 2017, to:

9 William M. Brown  
10 6751 East Amber Sun Drive  
11 Scottsdale, AZ 85266  
12 *Plaintiff*

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14 \_\_\_\_\_