

1 LAW OFFICES
2 PHELPS & MOORE
3 PROFESSIONAL LIMITED LIABILITY COMPANY
4 4045 EAST UNION HILLS DRIVE
5 SUITE A-102
6 PHOENIX, ARIZONA 85050
7 (602) 788-2089

8 Jon L. Phelps (027152)
9 jon@phelpsandmoore.com
10 Shannon A. Lindner (026688)
11 shannon@phelpsandmoore.com
12 Counsel for Plaintiff Norman Zwicky

13 EDWARD L. BARRY
14 ATTORNEY AT LAW
15 2120 COMPANY STREET
16 THIRD FLOOR
17 CHRISTIANSTED, VIRGIN ISLANDS 00820
18 (340) 719-0601

19 Edward L. Barry (005856)
20 ed@AttorneyEdBarry.com
21 Co-Counsel for Plaintiff Norman Zwicky

22 **THE SUPERIOR COURT OF THE STATE OF ARIZONA**
23 **IN AND FOR THE COUNTY OF MARICOPA**

24 NORMAN ZWICKY,
25 Plaintiff,

26 vs.

PREMIERE VACATION COLLECTION
OWNERS ASSOCIATION, f.k.a. Premiere
Vacation Club, an Arizona nonprofit
corporation,

Defendant.

CASE NO. CV2015-051911

**PLAINTIFF'S RESPONSE TO
DEFENDANT'S MOTION RE
SUPERSEDEAS BOND
AND STAY OF JUDGMENT PENDING
APPEAL**

(ASSIGNED TO HON. JOHN HANNAH)

Plaintiff, Norman Zwicky ("Zwicky"), by and through undersigned counsel, hereby responds to Defendant, Premiere Vacation Collection Owners Association's ("PVCOA" or "Association") Motion to Set Amount of Supersedeas Bond at \$0 and Stay Enforcement or

1 Execution of Judgment Pending Appeal.

2 Zwicky opposes any stay of the Court's September 14, 2016 Order, whether issued
3 pursuant to Arizona Revised Statute §12-2108, Rule 7 of the Arizona Rules of Appellate
4 Procedure, or Arizona Rules of Civil Procedure 62(c). The grounds for appeal are
5 insubstantial and any stay would merely forestall the inevitable. A stay would frustrate—
6 or at least inordinately delay—the achievement of Plaintiff's essential purpose in these
7 proceedings, which was to conduct due diligence as a prelude to possible class action
8 litigation. Moreover, the Association has made no compelling demonstration of irreparable
9 harm caused by any aspect of the relief ordered by the Court.

10 **I. Supersedeas Bond**

11 In the appeal, the Defendant-Association challenges the Court's ruling that permits
12 Zwicky to disclose, for limited purposes, the contents of documents obtained for inspection.
13 The Association wants the prior blanket prohibition of the disclosure, in effect prior to entry
14 of the final judgment, to remain in place pending the appeal. The Association also seeks to
15 stay the order affirmatively requiring the Association to issue a prescribed Notice to
16 Association members. No monetary damages were awarded. The Court ordered purely
17 injunctive relief.

18 The purpose of a supersedeas bond is to preserve the status quo and protect the
19 interests of the appellee pending appeal. *Bobrow v. Herrod*, 239 Ariz. 180, ¶ 13, 367 P.3d
20 84, 87 (App. 2016); *Hunt v. Super. Ct. in and for Maricopa Cty.*, 21 Ariz. App 96, 97, 515
21 P.2d 1194, 1195 (1973).¹ The bond amount is calculated based on the damages awarded
22 and the procedure outlined in Rule 7 of the Arizona Civil Rules of Appellate Procedure.

23
24

¹ The Court of Appeals in *Hunt* directed the trial court to determine a supersedeas bond as an
25 adjunct to a stay pending appeal of ruling changing custody of a child, *unless* the trial court upon
26 remand found that it would be "detrimental to the health or well-being of the child to remain in the
custody of the petitioner pending the disposition of the appeal." 21 Ariz. App. at 98, 515 P.2d at
1196.

1 Ariz. R. Civ. App. P. 7(a)(4). However, the Court, before reaching the issue of a
2 supersedeas bond, must first determine whether issuing any stay pending at all should be
3 issued. That is a separate, threshold question.

4 The Arizona Court of Appeals has declined to decide whether A.R.S. § 12-2108 and
5 Appellate Rule 7 apply only to money judgments. *Wells Fargo Bank N.A. v. Rogers*, 239
6 Ariz. 106, ¶ 10, 366 P.3d 583, 585 (App. 2016). However, under Rule 62 of the Arizona
7 Rules of Civil Procedure and Appellate Rule 7(a)(2), the issuance of a stay of injunctive
8 relief pending appeal upon posting a supersedeas bond is discretionary and not mandatory.

9 Civil Procedure Rule 62(a) provides: “Unless otherwise ordered by the court, an
10 interlocutory or final judgment in an action for an injunction ... shall not be stayed ...
11 during the pendency of an appeal. The provisions of subdivision (c) of this Rule govern the
12 suspending, modifying, restoring, or granting of an injunction during the pendency of an
13 appeal.” Ariz. R. Civ. P. 62(a). Rule 62(c) in turn provides: “When an appeal is taken from
14 ... [a] judgment granting, dissolving, or denying an injunction, the court in its discretion
15 may suspend, modify, restore, or grant an injunction during the pendency of the appeal upon
16 such terms as to bond or otherwise as it considers proper for the security of the rights of the
17 adverse party.” Ariz. R. Civ. P. 62(c). Defendant has cited no contravening statute or rule
18 in Arizona that makes a stay automatic or mandatory in injunctive relief cases upon posting
19 a supersedeas bond and Plaintiff’s research revealed none (except in the landlord-tenant and
20 related contexts). *See* A.R.S. § 12-2108(A) (setting criteria for amounts of stays of
21 execution on money judgments); *cf.*, *Grady v. Barth ex rel. Cty. of Maricopa*, 233 Ariz. 318,
22 322, 312 P.3d 117, 121 (App. 2013) (“[W]e construe A.R.S. § 12-1182(B) as requiring the
23 Superior Court to stay execution of [a forcible entry and detainer] judgment pending appeal
24 when the party in possession posts a bond....”).

25 Federal cases applying the corresponding Federal Rule 62 in injunctive relief cases
26 are in full accord. *E.g.*, *Lair v. Bullock*, 697 F.3d 1200, 1203 (9th Cir. 2012) (“A stay is not

1 a matter of right.... It is instead ‘an exercise of judicial discretion’ ... [that] ‘is dependent
2 upon the circumstances of the particular case.’”) (quoting *Nken v. Holder*, 556 U.S. 418,
3 433, 129 S. Ct. 1749, 1760, 173 L. Ed. 2d 550 (2009)); *Nken*, 556 U.S. at 428, 129 S. Ct. at
4 1757–58 (finding that a stay “is not a matter of right, even if irreparable injury might
5 otherwise result to the appellant.”), *Sentry Ins. v. Pearl*, 662 F.Supp 1171, 1172-73 (D.C.
6 Penn. 1987) (holding that “an order granting a stay pending arbitration is injunctive in
7 nature” and therefore the adverse party is not entitled to a stay as a matter of right even upon
8 the posting of a supersedeas bond).

9 In this case, the Court did not award monetary damages in its September 14, 2016
10 ruling, but rather modified its previous injunctive order. Therefore, the amount of the
11 supersedeas bond would be \$0. Plaintiff does not demand a supersedeas bond (and waives
12 the requirement or consents to any nominal amount if the Court disagrees with Plaintiff and
13 elects to issue a stay), nor is it legally required. The issue before the Court is not whether a
14 *bond* is appropriate; the issue is whether a *stay* is appropriate.

15 **II. Discretionary Standard for Stay Pending Appeal**

16 The Supreme Court of Arizona not only established a discretionary standard for
17 issuing a stay under Rule 62(c) but set forth a comprehensive and definitive standard in
18 *Smith v. Arizona Citizens Clean Elections Commission*. A party seeking to stay a judgment
19 on appeal must establish: “(1) a strong likelihood of success on the merits; (2) irreparable
20 harm if the stay is not granted; (3) that the harm to the requesting party outweighs the harm
21 to the party opposing the stay; and (4) that public policy favors the granting of the stay.”
22 *Smith v. Ariz. Citizens Clean Elections Comm'n*, 212 Ariz. 407, 410, ¶10, 132 P.3d 1187,
23 1190 (2006).

24 These factors are not to be applied in a checklist, mechanical fashion, but on a sliding
25 scale, in which the moving party must prove either “1) probable success on the merits and
26 the possibility of irreparable injury; or 2) the presence of serious questions and that the

1 balance of hardships tips sharply in favor of the moving party.” *Id.* (citations omitted).
2 “The greater and less reparable the harm, the less the showing of a strong likelihood of
3 success on the merits need be. Conversely, if the likelihood of success on the merits is weak,
4 the showing of irreparable harm must be stronger.” *Id.* The determination of the existence
5 of a serious question requires an analysis of whether there is a serious question “going to the
6 merits,” *Ariz. Ass'n of Providers for Persons with Disabilities v. State*, 223 Ariz. 6, 12, ¶ 13,
7 219 P.3d 216, 222 (App. 2009) (*emphasis provided by Court*) (quoting *Luckette v. Lewis*,
8 883 F.Supp. 471, 474 (D.Ariz. 1995), and focuses upon “the strength of the legal claim.”
9 *Id.*, citing *Sports Form, Inc. v. United Press Int'l, Inc.*, 686 F.2d 750, 754 (9th Cir.1982).

10 Federal courts have similarly imported preliminary injunction standards in deciding
11 motions for stays, and have widely accepted the sliding scale test.² E.g., *Chan v. Wodnicki*,
12 67 F.3d 137, 139 (7th Cir. 1995) (Posner, J.) (stating that a stay is the “appellate analogue”
13 of preliminary injunction); *Humane Soc'y of U.S. v. Gutierrez*, 523 F.3d 990, 991 (9th Cir.
14 2008) (recognizing a sliding scale “in which the required degree of irreparable harm
15 increases as the probability of success decreases.”).

16 A stay is an extraordinary equitable remedy, *Cuomo v. U.S. Nuclear Regulatory*
17 *Comm'n*, 772 F.2d 972, 978 (D.C.Cir.1985); *Shays v. Fed. Election Comm'n*, 340 F. Supp.
18 2d 39, 41 (D.D.C. 2004) (holding applicant for stay must “meet the stringent standards
19 required to justify the extraordinary remedy of a stay pending appeal”), and should not be
20 reflexively granted. The United States Supreme Court stated in *Nken v. Holder* that a stay is
21 not a matter of right, even in light of irreparable injury because the parties and the public are
22 “entitled to the prompt execution of orders.” 556 U.S. at 428, 129 S. Ct. at 1757–58.

23 There is also a basic difference between a preliminary injunction and a stay of an
24

25 ² “Because the Arizona rule [Rule 62(c)] came from the federal rule, [federal court]
26 interpretations are useful in determining the scope of the rule.” *State ex rel. Corbin v. Tolleson*, 152 Ariz. 376, 379, 732 P.2d 1114, 1117 (App. 1986).

1 order granting permanent injunctive relief or other final judgment. In the preliminary
2 injunction setting, a court must typically decide a question in a short time on a limited
3 record; its ruling is by definition tentative, before a trial on the merits. *See Univ. of Texas v.*
4 *Camenisch*, 451 U.S. 390, 394-96, 101 S. Ct. 1830, 1834, 68 L. Ed. 2d 175 (1981)
5 (acknowledging that a party “is not required to prove his case in full at a preliminary-
6 injunction hearing). By contrast, a party seeking a stay of permanent equitable relief (as the
7 Association does here) has had a full and fair opportunity to litigate the merits with the
8 benefit of a complete evidentiary record. *See Fullmer v. Mich. Dep't of State Police*, 207
9 F.Supp.2d 663, 664 (E.D.Mich.2002) (movant seeking stay under Rule 62(c) in different
10 “procedural posture” from one seeking preliminary injunction; party seeking a stay must
11 ordinarily demonstrate to a reviewing court that there is a likelihood of reversal, not merely
12 the possibility of success on the merits); *Dayton Christian Sch. v. Ohio Civil Rights*
13 *Comm'n*, 604 F. Supp. 101, 103 (S.D. Ohio 1984) (acknowledging “that a court will seldom
14 deny an injunction, then turn around and grant one pending appeal”).

15 In this case, the parties have already exhaustively litigated the merits of Zwicky’s
16 right to inspect the Defendant’s financial records and the necessity of Defendant-
17 Association to notify its members of the inspection action. Zwicky established beyond all
18 serious question that the annual assessments and dues charged by the Association for
19 vacation rights had become so exorbitant—so dramatically and unexpectedly high—that his
20 timeshare investment of \$26,000 has become absolutely worthless. His current cost of an
21 annual 10-day vacation at a Diamond International resort, if annual charges are added to his
22 initial investment cost amortized over 7 years, exceed \$600 per night’s stay. Zwicky further
23 convincingly showed that the economic benefits of this timeshare scheme had been rendered
24 illusory—he bought a “certificate” of ownership in “the blue sky in fee simple.” Moreover,
25 Zwicky is on a financial treadmill to oblivion, facing out-of-control annual financial
26 liabilities unilaterally imposed by a nonprofit Association dominated by a NYSE

1 corporation.

2 Zwicky wanted to know how and why his annual charges skyrocketed. Specifically,
3 he sought through this inspection action to determine whether his annual assessments were
4 imposed in accordance with fiduciary principles of honesty, fair dealing and commercial
5 reasonableness by the developer-controlled Board, or whether they were unlawfully inflated.
6 He got his answer.³

7 Based on the foregoing, Defendant-Association's burden is higher. More than a
8 showing of a possibility of success, Defendant must show this Court's judgment is likely to
9 be reversed. A trial court, when attempting an objective assessment of the prospects for
10 reversal for purposes of evaluating a motion for stay pending appeal, should consider the
11 standard of review the appellate court will impose. *E.g., Hayes v. City Univ. of N.Y.*, 503 F.
12 Supp. 946, 963 (S.D.N.Y. 1980), *aff'd* 648 F.2d 110 (2d Cir. 1981).

13 **A. Success on the Merits**

14 Confidentiality-disclosure rulings, remedial in nature, will be reviewed on appeal for
15 an abuse of discretion. *Gries v. Plaza Del Rio Mgmt. Corp.*, 236 Ariz. 8, 12, ¶ 15, 335 P.3d
16 530, 534 (App. 2014) (grant of equitable relief reviewed for abuse of discretion); and *id.* (“A
17 discretionary decision involves assessing ‘conflicting procedural, factual or equitable
18 considerations which vary from case to case and which can be better determined or resolved
19 by the trial judge.’”) (quoting *City of Phoenix v. Geyley*, 144 Ariz. 323, 329, 697 P.2d 1073,
20 1079 (1985); *Scholten v. Blackhawk Partners*, 184 Ariz. 326, 331, 909 P.2d 393, 398 (App.
21 1995) (“An injunction is an equitable remedy. . . [and t]he discretion in injunctive
22

23 ³ The Association argues, inappropriately: “Mr. Zwicky has not alleged that PVCOA has
24 engaged in any wrongdoing or financial mismanagement, and indeed, there is no basis for
25 any such allegations.” Motion for stay, p. 2-3. The purpose of this lawsuit was to
26 *investigate* those issues, not to *decide* them. However, as undersigned counsel have advised
the Court, there appears to be substantial evidence of significant hidden overcharges in the
annual assessments.

1 proceedings lies with the trial court, not the reviewing court.”); *Fin. Associates, Inc. v. Hub*
2 *Properties, Inc.*, 143 Ariz. 543, 545, 694 P.2d 831, 833 (App. 1984) (noting that “[t]he
3 scope of review on appeal of an order granting or denying an injunction is limited to the
4 consideration of whether a clear abuse of judicial discretion has been shown.”); *Berry v.*
5 *Foster*, 180 Ariz. 233, 235, 883 P.2d 470, 472 (App. 1994) (stating that “[t]he granting of
6 [an] injunction is a matter of judicial discretion, which we . . . review[] for abuse.”); *see*
7 *also H.D.V.-Greektown, LLC v. City of Detroit*, 568 F.3d 609, 619 (6th Cir. 2009) (holding
8 that “[the] ultimate decision regarding injunctive relief is reviewed under the ‘highly
9 deferential’ abuse-of-discretion standard.”).

10 The Defendant-Appellant herein has identified no issue of law underpinning the
11 Court’s exercise of discretion that would be reviewed *de novo* and likely reversed.⁴
12 Defendant’s belated “trade secrets” contentions and supporting affidavit in its Motion are
13 nothing more than a misguided motion for reconsideration, offering no evidence or
14 arguments that could not reasonably have been brought previously to the attention of the
15 Court. These new arguments will likely also be rejected by the Court of Appeals as an
16 impermissible “do-over”—a second bite at the apple—as the Court of Appeals does “not
17 consider arguments raised for the first time on appeal except under exceptional
18 circumstances.” *In re MH 2008-002659*, 224 Ariz. 25, 27, ¶ 9, 226 P.3d 394, 396 (App.
19 2010).

20 This Court, agreeing with the overwhelming weight of authority, also determined that
21 Zwicky’s purpose in inspecting the books with possible future litigation in mind was a
22 “proper purpose.” Defendant never—even in the present Motion—adduced any contrary
23 legal authority. It seems extremely unlikely that an appellate court would disagree with this
24

25 ⁴ A grant of summary judgment will be reviewed *de novo*; however, the underlying denial of
26 the injunction will be reviewed for an abuse of discretion. *See Berry*, 180 Ariz. at 235, 883
P.2d at 472; *Andrews v. Blake*, 205 Ariz. 236, 240, ¶ 12, 69 P.3d 7, 11 (2003).

1 Court's ruling on this core, outcome-determinative, issue of law. To do so would involve
2 repudiation of basic principles established in 50 year-old Arizona precedent. *Tucson Gas &*
3 *Elec. Co. v. Schantz*, 5 Ariz. App. 511, 513-14, 428 P.2d 686, 688-89 (1967)
4 (acknowledging that "the right of a stockholder extends to all books, papers, contracts,
5 minutes or other instruments from which he can derive any information that will enable him
6 to protect his interest.").

7 These same essential points weigh strongly against a stay pending appeal of the
8 Court's ruling requiring Defendants to send notice of this inspection action to members of
9 the Association. Once again, the Court, exercising its discretion, narrowly tailored this
10 equitable relief to carefully balance the interests of the parties. The Association, in asking
11 the Court to stay this part of the order, does not offer any specific legal authority tending to
12 show that the Court was legally wrong. Accordingly, Defendant-Association is unlikely to
13 prevail on appeal and the motion for a stay should be denied.

14 **B. Irreparable Harm**

15 Defendant's trade secret arguments are also unpersuasive. They do not demonstrate
16 irreparable harm to a legally cognizable interest. The "secrets" in question are alleged to
17 consist of fraudulent business practices of a *nonprofit association kept secret from its own*
18 *members*. Defendant's Board (developer-controlled) and property manager (developer-
19 controlled) served the Association and its thousands of members in a *fiduciary capacity*.
20 See A.R.S. § 33-2203(B) ("The managing entity [of a timeshare entity] shall act in the
21 capacity of a fiduciary to the owners of timeshare interests in the timeshare plan."); *accord*,
22 Restatement (Third) of Property (Servitudes) § 6.13(1)(d) (2000) ("In addition to duties
23 imposed by statute and the governing documents, the association has the following duties to
24 the members of the common-interest community: ... to provide members reasonable access
25 to information about the association, the common property, and the financial affairs of the
26 association."). Therefore, this Court should deny Defendant-Association's motion.

1 The Association has also not identified any actual harm—let alone legally-
2 cognizable, *irreparable* harm—that would flow from notifying Zwicky’s fellow members of
3 the mere existence of the inspection action or disclosure of the documents inspected. The
4 required Notice is phrased in completely neutral, non-pejorative terms. These owners have
5 a right to know. Moreover, the order, which requires *direct communication* only between
6 the Association and its members, represents a good faith accommodation of timeshare
7 owners’ privacy rights recognized in A.R.S. §33-2210(D),⁵ and balances and reconciles all
8 of the competing interests in play.

9 **C. Balance of Hardships**

10 Where, as here, a reversal on the merits appears to be a long-shot, an applicant for a
11 stay must show that the balance of hardships “tips sharply” in its favor.” *Smith*, 212 Ariz. at
12 411, ¶ 10, 132 P.3d at 1191. The Association has not done so. It has not shown that the
13 prejudice to its purported confidentiality interests—which are tenuous at best because they
14 are irreconcilable with its fiduciary disclosure duties—justifies perhaps years of delay in
15 Plaintiff’s ordinary use in litigation the evidence that this inspection action has brought to
16 light. Plaintiff, moreover, has shown his “right to know” clearly outweighs the
17 Association’s claim of secrecy. This Court already carefully considered, and carefully
18 balanced, those competing interests.

19
20
21 ⁵ That statute is in clear derogation of common law inspection rights (and the corporate
22 shareholder list inspection statutes) which allows examination of ownership lists for the
23 important purpose of facilitating communication and cooperation between
24 shareholders/members in order to join forces and collectively pursue their common interests.
25 *Durnin v. Allentown Fed. Sav. & Loan Ass'n*, 218 F. Supp. 716, 718 (E.D. Pa. 1963) (“The
26 right to examine the stockholders list is a basic privilege of every stockholder of a
corporation and should be given the widest recognition as fundamental to corporate
democracy.”). It is entirely unclear why timeshare owner lists should be concealed from
fellow owners when shareholder lists are openly available, although it certainly *is* clear why
a *timeshare developer* would want it that way.

1 This Court has indeed at all times exercised its discretion in a thoughtful, precisely-
2 tailored manner that sought a fair balance between any legitimate confidentiality interests of
3 the Association and Zwicky's right to inspect, and right to meaningfully utilize, the
4 Association's business records relating to the calculation of his annual assessments. At the
5 outset of the case, Zwicky's counsel *consented* to a temporary and provisional
6 confidentiality order, representing to the Court and to opposing counsel that if the records
7 obtained in this inspection action did not appear to support any claim of managerial
8 misfeasance or malfeasance, they would be disclosed no further. *Ruling*, May 6, 2016.⁶
9 Only after the records were examined, and after counsel advised the Court and opposing
10 counsel that they *do* appear to reveal actionable wrongdoing, did the Court grant Plaintiff
11 relief from the confidentiality order. Even then, the Court did not rescind the order but
12 rather modified it. The Court carefully limited Zwicky's scope and use of the disclosures to
13 *legitimate litigation purposes*. The Court further continued to prohibit improper extraneous
14 use of these materials, and preserved the subsequent trial court's prerogative to
15 *independently* issue any appropriate protective orders upon motion. *Ruling*, August 19,
16 2016.⁷

17
18 ⁶ The Ruling of May 6th states:

19 The Court is of the view that it may well be appropriate for the
20 plaintiff to be permitted to disclose this information in other
21 forums including other litigation, government agencies and so
22 on but those matters are not before the Court now. There is no
23 imperative for the Court to make that decision now. ... The
24 basis for the Court's order today is the agreement of the parties
and the plaintiff's current need for the information as opposed to
any finding by the Court that any of this information is in fact
entitled to be treated as confidential.

25 ⁷ The order of August 19th (reflected in the terms of the Final Judgment) states:

26 IT IS ORDERED [that] the protective order set forth on the
record on May 6, 2016 and memorialized in the minute entry of

1
2
3 **D. Public Interest**

4 Defendant’s legal position throughout this case reflects an overall strategy of
5 keeping thousands of individual timeshare owners in a state of ignorance and isolation.
6 Claiming “trade secret” protections as a means of enshrouding the fiscal affairs of a
7 nonprofit association of timeshare owners is fundamentally antithetical to the transparency
8 and accountability that over 20,000 timeshare owners have a right to expect from their
9 Association and its fiduciaries. Public policy must forbid using a confidentiality order to
10 shield wrongdoing. E.g., Douglas G. Baird & Robert K. Rasmussen, Four (or Five) Easy
11 Lessons from Enron, 55 Vand. L. Rev. 1787 (2002) (comparing Enron’s frequent claims of
12 “trade secret” to those of Charles Ponzi); 5A Fletcher Cyc. Corp. § 2213 (“Those in charge
13 of the company may be guilty of gross incompetence or dishonesty for years and escape
14 liability if the shareholders cannot inspect the records and obtain information.”).

15 Public policy does not support the Association’s litigation tactics of suppression,
16 avoidance and delay. Consequently, Defendant-Association’s motion should be denied.

17 **III. Appellate Court’s Independent Power to Issue Stay**

18 Furthermore, the Association is not without a remedy should this Court deny a stay.
19 Under Rule 7(c) of the Arizona Rules of Appellate Procedure, the Court of Appeals has the
20 independent discretionary power to issue a stay if this Court declines to do so. Ariz. R. Civ.
21 App. P. 7(c).

22 that date is hereby modified to permit the plaintiff or his
23 attorneys to quote or refer to the information produced in
24 connection with this litigation in a complaint or other court
25 filing in the proposed class action litigation. The protective
26 order, as modified, shall remain in effect until 60 days after the
proposed class action lawsuit is filed in the District Court, and
shall then expire.

1 on this 21st day of November, 2016 to:

2 The Honorable John Hannah
3 Northeast Regional Center
4 18380 N. 40th Street
5 Phoenix, Arizona 85032

6 COPY of the foregoing delivered via email and U.S. mail
7 on this the 21st day of November, 2016 to:

8 John E. DeWulf
9 Katherine DeStefano
10 COPPERSMITH BROCKELMAN PLC
11 2800 North Central Avenue, Suite 1200
12 Phoenix, Arizona 85004
13 Counsel for Defendant

14 By /s/ Kelly Naddaff _

15
16
17
18
19
20
21
22
23
24
25
26