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11 Attorneys for Defendants Apache Wells
12 Homeowners Association, Inc., Johnson,
13 Stoll, Wood, Pasula, Larson, Bonnell,
14 Gregory, Resset, St. John, Miller and Finger

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CHEIFETZ IANNITELLI
MARCOLINI, P.C.

9 **SUPERIOR COURT OF THE STATE OF ARIZONA**
10 **COUNTY OF MARICOPA**

11 KEN DOSHIER and DOROTHY DOSHIER,
12 husband and wife; DOUG W. HENDERSON
13 and MARIAM HENDERSON, husband and
14 wife; JAY HOWLETT and KITTY L.
15 HOWLETT, husband and wife; WILLY
16 FERNANDEZ, an unmarried man;
17 HARRIETT JACKSON, an unmarried
18 woman; KAREN OLSEN, an unmarried
19 woman; RICHARD G. JAMES, an unmarried
20 man; DWANE SEELE, an unmarried man;
21 DENNIS O'CONNOR, an unmarried man;
22 RICK EICHER, an unmarried man; RAY
23 FITZGERALD, a married man; LARRY L.
24 WALSTON, a married man; ROBERT
25 TEAGUE and JUDI TEAGUE, husband and
26 wife; GEORGE W. FUGMAN and ELSIE M.
FUGMAN, husband and wife; LAVINA M.
JUNG, a married woman; DOLORES M.
MILLER, an unmarried woman; DENNIS M.
LANG and JOICE A. LANG, husband and
wife; CHARLES E. KILGORE and LORNA
KILGORE, husband and wife;
MARGUERITTE CURIN, an unmarried
woman; CHRISTINE KNIGHT, a married
woman; RONALD KNIGHT, an unmarried
man; RICHARD SWINGLE and CORA
SWINGLE, husband and wife; GARY
FRANCHER and BARBARA FRANCHER,
husband and wife; RITA TAYLOR, an
unmarried woman; JESSIE E. BENNETT, an

NO. CV2007-005085

**DEFENDANTS' INITIAL RULE
26.1 DISCLOSURE STATEMENT**

(Assigned to the Honorable Bethany G.
Hicks)

1 unmarried woman; GENE R. KRZYCKI and
2 MARJORIE KRZYCKI, husband and wife;
3 ED WHITE and TERRI WHITE, husband and
4 wife; DARLENE STEINER, a married
5 woman; DORA RICH, an unmarried woman;
6 LEW HANDELAND, an unmarried man;
7 CLARENCE LAMERS and SHARI
8 LAMERS, husband and wife; JANICE
9 CHRISTO, a married woman; OSCAR R.
10 FLORES, an unmarried man; JENNIAL
11 MARTIN, an unmarried woman;
12 GEORGIEANNA LANCUCKI, an unmarried
13 woman; JOAN PETERSON, a married
14 woman; DORA REED, an unmarried woman;
15 MARYANNE MILLER, an unmarried
16 woman; DALE ADAM and THERESE
17 ADAM, husband and wife; JAMES J.
18 KIRKPATRICK, an unmarried man; EMILE
19 DUFFY, a married woman; CHARLES LAIR
20 and LELA LAIR, husband and wife; MARGIE
21 STOCK, a married woman; JOHN
22 CORMACK, a married man; LEE WALTER,
23 a married man; WALTER STROMME, a
24 married man; DEVERE STEVENSON and
25 LOIS L. STEVENSON, husband and wife;
26 BONNIE WILCOX, a married woman; ROY
NELSON, a married man; SHARON ANTES,
a married woman; DONALD L. HILL and
NORMA L. HILL, husband and wife; ROGER
JOHANSON and DIXIE JOHANSON,
husband and wife; PAULINE PERMANN, a
married woman; DAVID STOWE and TONI
STOWE, husband and wife; LEROY
LANOUE and DONNA LANOUE, husband
and wife; PAUL WICHERTS, an unmarried
man; JAMES DANIELS and LOLA
DANIELS, husband and wife; CHARLES
RADCLIFF and VIRGINIA RADCLIFF,
husband and wife; JAMES DORRANCE, a
married man; JAMES PEARSON and JANE
PEARSON, husband and wife; BILL
VERNON and DORIS VERNON, husband
and wife; HARVEY BELL, an unmarried man;
WILLIAMS SCHUMACHER and LUCY
SCHUMACHER, husband and wife; JAMES
MASCORELLA and LOISMASCORELLA,
husband and wife; GERALD LENKA and
MARCY LENKA, husband and wife,

Plaintiffs,

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v.

APACHE WELLS HOMEOWNERS ASSOCIATION, INC., an Arizona non-profit corporation; APACHE WELLS COUNTRY CLUB, INC., an Arizona non-profit corporation; BRIAN JOHNSON and Susan JOHNSON, husband and wife; THOMAS H. FINGER, an unmarried man; MARVIN A. STOLL and MARY E. STOLL, husband and wife; GORDON WOOD and LINDA WOOD, husband and wife; TONY PASULA and VAL PASULA, husband and wife; MARVIN A. LARSON and RUTH J. LARSON, husband and wife; JAMES BONNELL and JOCILLE BONNELL, husband and wife; WILLIAM F. GREGORY and JOANNE GREGORY, husband and wife; ROBERT RESSETT and BERNYCE RESSETT, husband and wife; IRV ST. JOHN and PAT ST. JOHN, husband and wife; and L.J. MILLER and JOYCE MILLER, husband and wife,

Defendants.

Defendants, pursuant to Rule 26.1(b)(1), Arizona Rules of Civil Procedure, submits their initial disclosure statement. This disclosure statement includes information and data in the possession, custody and control of Defendants, as well as that which has been ascertained, learned, or acquired by reasonable inquiry and investigation. This initial disclosure is made as fully as possible within the time limits imposed by the Arizona Rules of Civil of Procedure and/or any agreements among the parties. Defendants will make additional or amended disclosures whenever new or different information is discovered or revealed. Therefore, this initial Rule 26.1 Disclosure Statement is subject to supplementation and amendment. In the event any part of this disclosure statement is introduced at trial, fairness requires that the jury be informed of its provisional nature and that any other party be allowed to contemporaneously offer any other disclosure statement

1 or supplemental disclosure statement which should in fairness be considered with the part
2 introduced.

3 **I. Factual Basis for the Defense**

4 This lawsuit arises from a proposal for the Association to acquire certain
5 property and to construct a community center for the benefit of all members of the
6 Association. The planning for the community center project began in 2005. The
7 Association retained the services of Dr. Wendy Hultzman, who is a land use professor at
8 Arizona State University. Dr. Hultzman conducted a comprehensive analysis of the
9 community and issued a detailed report. As a result of that study, the Association formed
10 the Long Range Planning Committee to explore the implementation of Dr. Hultzman's
11 recommendations. The Long Range Planning Committee's task was to investigate options
12 for the Association regarding a community center. Currently, the Association does not
13 have a community center.

14 The Long Range Planning Committee held over 55 meetings during the two
15 years this project was being planned. All homeowners were invited to attend so that the
16 Committee could get input from the residents. The Association also held 10 or more
17 "town hall" style meetings that were widely publicized and well attended. A detailed
18 Power Point presentation was made at several of the town hall meetings. The documents
19 used during those presentations were attached to Defendants' Opposition to Plaintiffs'
20 Application for Preliminary Injunction. The Association held four open joint Board
21 Meetings with the Country Club's Board of Directors, thirteen general homeowners
22 meetings, in addition to over twenty regulatory Board Meetings. The community center
23 project was discussed at every one of those meetings. Every meeting was widely
24 publicized and open to every member.

1 In addition to the above referenced meetings, the Board of Directors decided
2 to conduct a series of 54 smaller meetings in member's homes. Those meetings are
3 commonly referred to as "coffee parties". Again, the purpose of those meetings was to
4 inform the members of the Association of the plan to build a community center, and to
5 seek input from the members. Over 800 people attended these coffee meetings. Input
6 from the members was paramount, as the Board wanted to make certain that the proposed
7 project had the support of the community. If the project was not supported by the
8 community, a vote on the issue would have been a waste of time.

9 In addition to the dozens of open meetings held, the Association also
10 provided mailings to all members regarding the project. Furthermore, information
11 regarding the project was routinely provided in the newsletter of the Association.

12 In order to acquire the property and build the community center, the
13 Association needed to raise money for the project by way of a special assessment. The
14 vote for the special assessment was widely publicized and the voter turnout was 88% of
15 the eligible voters. The vote was held on February 21, 2007. The person in charge of the
16 counting of the ballots was Plaintiff Delores Miller. Ms. Miller has testified that the
17 outcome of the election was 644 yes votes and 594 no votes.

18 The applicable bylaw regarding special assessment votes states that:

19 **(1) Special Assessments shall be approved by a two-**
20 **thirds (2/3) vote of the Board at a duly called meeting at**
21 **which a quorum is present, and by the majority vote of the**
22 **residential unit owners at a special election called and**
23 **publicized for that specific purpose.**

24 The Board of Directors of the Association reads that provision to require a
25 majority of the votes cast at the special election, which is what happened. At the present
26 time, the Court in this matter has ruled that the provision requires the majority of all
eligible voters. Accordingly, the special assessment is not being collected at this time.

1 With respect to Plaintiffs' claim of a conflict of interest for the Board
2 Members that also are members of the Country Club, the reality is that the status of
3 certain Board Members as members of the Country Club was well known. The fact that
4 certain Board Members were also Country Club members was never concealed, and was
5 fully disclosed.

6 **II. Legal Theory for the Defense**

7 Plaintiffs' Amended Complaint contains three Counts. Defendants legal
8 theories of defense are as follows:

9 **Declaratory Relief/Injunction**

10 Defendants have conducted the affairs of the Association in accordance with
11 the applicable CC&Rs, Bylaws, and State Law at all time relevant to this lawsuit. At the
12 present time, the claim for a permanent injunction appears to be moot, as Judge Hicks has
13 issued a minute entry ordering the injunction. In the event Judge Hick's ruling is reversed
14 by way of a Motion for Reconsideration or Appeal, Defendants will supplement this
15 portion of their disclosure statement.

16 **Request for Documents**

17 Over 1000 documents have been produce so far. On information and belief,
18 Plaintiff's are going to request additional documents. Defendants will continue to
19 produce all non-privileged documents that are required to be produced under the Rules of
20 Civil Procedure.

21 **Breach of Fiduciary Obligation**

22 Arizona has long accepted the "business judgment rule" with respect to
23 claims against members of Boards of Directors. Furthermore, in order to establish a claim
24 of breach of fiduciary obligation against the individual Defendants in this matter, the
25

1 standard is *gross negligence*. See *United Dairymen of Arizona v. Schugg*, 212 Ariz. 133,
2 128 P.3d 756 (2006).

3 The former and current members of the Board of Directors did not breach
4 any duties owed to the Apache Wells Homeowners' Association. The affairs of the
5 Association have been conducted by way of open Board meetings. The minutes for each
6 of those meetings were provided to all members of the Association.

7 The allegations of failing to disclose a conflict of interest have no legal or
8 factual basis. Certain members of the Association's Board of the Directors are also
9 members of the Country Club. Those Board members' status as Country Club members
10 was not hidden and was well known. The golf course and country club are located
11 completely within the Apache Wells Association.

12 **III. Witnesses Defendants' Intend to Call and their Anticipated Testimony**

- 13 1. Brian Johnson
14 c/o Jones Skelton & Hochuli
15 2901 N. Central Ave., Suite 800
16 Phoenix, Arizona 85012

17 Mr. Johnson will testify consistent with his deposition already taken in this
18 matter. Mr. Johnson is a former Board Member and Board President of the Apache Wells
19 Homeowners Association. Mr. Johnson is expected to testify regarding his involvement
20 with the planning of the subject Community Center, as well as overall operation of the
21 Apache Wells Homeowners Association during his tenure as a Board Member and
22 Officer.

- 23 2. Marvin Stoll
24 c/o Jones Skelton & Hochuli
25 2901 N. Central Ave., Suite 800
26 Phoenix, Arizona 85012

Mr. Stoll is the current President of the Apache Wells Homeowners
Association. Mr. Stoll is expected to testify consistent with his Affidavit already

1 disclosed in this case. Mr. Stoll was the President of the Association at the time of the
2 subject election and is the current Present of the Association. Mr. Stoll is expected to
3 provide testimony regarding the decisions made by the Apache Wells Homeowners
4 Association with respect to the Special Assessment Election. Furthermore, Mr. Stoll is
5 expected to testify regarding the information provided to the members of the Association
6 by the Board of Directors with respect to the Community Center project.

7 3. Thomas Finger
8 c/o Jones Skelton & Hochuli
9 2901 N. Central Ave., Suite 800
 Phoenix, Arizona 85012

10 Mr. Finger is a current Board Member of the Apache Wells Homeowners
11 Association. Mr. Finger is expected to testify regarding his involvement with the Apache
12 Wells Board of Directors and the decisions made during his tenure.

13 4. Linda Wood
14 c/o Jones Skelton & Hochuli
15 2901 N. Central Ave., Suite 800
 Phoenix, Arizona 85012

16 Ms. Wood is a current Board Member and Secretary of the Apache Wells
17 Homeowners Association. Ms. Wood is expected to testify regarding her involvement
18 with the Apache Wells Board of Directors and the decisions made during her tenure.

19 5. Tony Pasula
20 c/o Jones Skelton & Hochuli
21 2901 N. Central Ave., Suite 800
 Phoenix, Arizona 85012

22 Mr. Pasula is a former Board Member and former Treasurer of the Apache
23 Wells Homeowners Association. Mr. Pasula is expected to testify regarding his
24 involvement with the Apache Wells Board of Directors and the decisions made during his
25 tenure.
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- 6. JoAnn Gregory
c/o Jones Skelton & Hochuli
2901 N. Central Ave., Suite 800
Phoenix, Arizona 85012

Ms. Gregory is a current Board Member of the Apache Wells Homeowners Association. Ms. Gregory is expected to testify regarding her involvement with the Apache Wells Board of Directors and the decisions made during her tenure.

- 7. Robert Ressel
c/o Jones Skelton & Hochuli
2901 N. Central Ave., Suite 800
Phoenix, Arizona 85012

Mr. Ressel is a current Board Member and First Vice President of the Apache Wells Homeowners Association. Mr. Ressel is expected to testify regarding his involvement with the Apache Wells Board of Directors and the decisions made during his tenure.

- 8. Irv St. John
c/o Jones Skelton & Hochuli
2901 N. Central Ave., Suite 800
Phoenix, Arizona 85012

Mr. St. John is a current Board Member Treasurer of the Apache Wells Homeowners Association. Mr. St. John is expected to testify regarding his involvement with the Apache Wells Board of Directors and the decisions made during his tenure.

- 9. L.J. ("Bing") Miller
c/o Jones Skelton & Hochuli
2901 N. Central Ave., Suite 800
Phoenix, Arizona 85012

Mr. Miller is expected to testify consistent with the deposition he has already provided in this case. Mr. Miller is a current Board Member and is expected to

1 testify regarding his involvement on the Apache Wells Homeowners Association Board of
2 Directors.

3 10. James Bonnell
4 c/o Jones Skelton & Hochuli
5 2901 N. Central Ave., Suite 800
6 Phoenix, Arizona 85012

7 Mr. Bonnell is a current Board Member of the Apache Wells Homeowners
8 Association. Mr. Bonnell is expected to testify regarding his involvement with the
9 Apache Wells Board of Directors and the decisions made during his tenure.

10 11. Marvin Larson
11 c/o Jones Skelton & Hochuli
12 2901 N. Central Ave., Suite 800
13 Phoenix, Arizona 85012

14 Mr. Larson is a former Board Member of the Apache Wells Homeowners
15 Association. Mr. Larson is expected to testify regarding his involvement with the Apache
16 Wells Board of Directors and the decisions made during his tenure.

17 12. Representative of The Apache Wells Country Club Board of
18 Directors
19 c/o Jones Skelton & Hochuli
20 2901 N. Central Ave., Suite 800
21 Phoenix, Arizona 85012

22 A representative of The Country Club Board of Directors is expected to
23 testify regarding their knowledge of the "Agreement in Principal" between the Country
24 Club and the Homeowners Association regarding the construction of a Community
25 Center.

26 13. Walter Stomme
 Dolores Miller
 Lois Stevenson
 Jennial Martin
 Robert Teague
 c/o Cheifetz Iannitelli Marcolini, P.C.
 1850 North Central Ave., 19th Floor

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Phoenix, Arizona 85004

These witnesses are expected to testify consistent with their depositions given in this matter.

- 14. Dan Smith
Nest Technologies

Mr. Smith is expected to testify regarding his inspection Apache Hall and his opinions regarding this current condition of the building and the costs to renovate same. Mr. Smith is also expected to testify regarding his participation in meetings with all members of the Association.

- 15. Representative of Concorde Construction

Concorde Construction provided a detailed estimate for the construction of the new Community Center. A representative of Concorde is expected to testify regarding the estimate prepared and the basis for that estimate.

- 16. Dan Brock, AIA
Brock, Craig & Thacker Architects

Mr. Brock was retained by the Association as a consultant regarding the Community Center Project. Mr. Brock is expected to testify regarding the estimates and plans he was involved with during the planning of the subject project. Mr. Brock is also expected to testify regarding the meetings he attended that were open to the entire Association, during which he discussed the project and answered questions.

- 17. Various members of the Association with relevant knowledge.

Defendants plan to call various members of the Association that hosted meetings regarding the Community Center Project in their homes. The meeting held are set for in a documents previously disclosed.

- 18. All other named Plaintiffs.
c/o Cheifetz Iannitelly Marcolini, P.C.

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19. All witnesses listed by Plaintiffs.

20. All witnesses listed by any other party to this litigation.

IV. Individuals Who May have Information Relevant to the Matter:

None other than the witnesses listed above.

V. Recorded Statements Given or Made:

Defendants were provided tapes of various Board of Director’s meetings, apparently recorded by some of the Plaintiffs, or other individuals. On information and belief, the recordings in question are of such poor quality that a transcription would be difficult, if not impossible.

VI. Experts Defendants’ Intend to Call:

This matter is in the early stages of discovery and Defendants’ have not yet determined the expert witnesses that will be called. Defendants expect to call expert witnesses in the areas of the operation of homeowners associations, and fiduciary obligations of board members. Defendants’ reserve the right to supplement this disclosure.

VII. Computation of Damages:

Defendants are not claiming any damages at this time. However, Defendants reserve the right to pursue attorneys’ fees and costs during the course of litigation. Attorneys’ fees will be sought pursuant to A.R.S. §12-341.01 and the language of the incorporating documents of the Association.

VIII. Exhibits Defendants Intend to Use at Trial/Hearing:

1. Homeowner Association’s documents previously disclosed (Bates Nos.

1 AWHOA00001 – AWHOA01319).

2 2. All deposition transcripts and exhibits related to depositions taken in this
3 matter.

4 3. All minutes from every Board meeting and Association meeting relevant
5 to this matter.

6 4. All statements, letters, comments, opinions, and documents posted on
7 Plaintiffs' website.

8 5. Any exhibit properly disclosed by Plaintiff, Co-Defendants, and any
9 other party, without waiver of disclosure.


10 **IX. Additional Documents and Insurance Information:**

11 As for insurance coverage, Defendants are covered by a policy of insurance
12 issued by Auto Owners Insurance Company, providing liability coverage of \$1,000,000
13 per occurrence, \$2,000,000 aggregate. This is a General Commercial Liability Policy,
14 with Directors and Officers coverage. Furthermore, the Association is required to defend
15 and indemnify current and former directors and officers pursuant to the CC&Rs and
16 Bylaws of the Association.
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DATED this 18th day of September, 2007.

JONES, SKELTON & HOCHULI, P.L.C.

By 
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Attorneys for Defendants Apache Wells
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Stoll, Wood, Pasula, Larson, Bonnell,
Gregory, Resset, St. John, Miller and
Finger

Original/Copy of the foregoing filed
this 18th day of September, 2007 to:

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