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8 Attorneys for Plaintiffs

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

11 **KEN DOSHIER, et al.,**

12 Plaintiffs,

13 v.

14 **APACHE WELLS HOMEOWNERS**  
15 **ASSOCIATION, INC., an Arizona nonprofit**  
16 **corporation, et al.,**

17 Defendants.

No. CV2007-005805

**PLAINTIFFS' RULE 26.1 INITIAL  
DISCLOSURE STATEMENT**

18 Plaintiffs, pursuant to Rule 26.1 of the Arizona Rules of Civil Procedure, hereby submit  
19 their Initial Disclosure Statement. In submitting this disclosure statement, Plaintiffs do not waive  
20 nor intend to waive any objections to any cognizable privileges, including attorney-client  
21 privilege, attorney work product privilege, or any objections concerning the competency,  
22 relevancy, or admissibility as evidence of any matter or document referred to or made the subject  
23 of this disclosure statement at any proceeding, including the trial of this action. The foregoing  
24 general objections and reservations are hereby incorporated into each of the following disclosures  
25 set forth below.  
26

1       **I.       FACTUAL BASIS OF CLAIMS AND/OR DEFENSES.**

2       Plaintiffs reside in a community known as Apache Wells, which consists of approximately  
3 1,412 units and is located in Mesa, Arizona. As owners of units in the community, Plaintiffs are  
4 mandatory members of the Association. The Association was established by, and is bound to  
5 adhere to, the community's governing documents, including Covenants, Conditions and  
6 Restrictions (CC&Rs) and Bylaws.

7       The Apache Wells community is unique in that within the community, two entities exist  
8 and operate. The Country Club, a separate and distinct entity from the Association, consists of  
9 485 members that own and control a golf course in the community, and own a building that  
10 includes a golf pro shop, restaurant, bar and a meeting hall known as Apache Hall. Sharp  
11 division in the Apache Wells community has arisen due to differing views as to how Apache Wells  
12 should progress in the future.

13       The growing tension in the community has culminated in the issues presented in herein.  
14 Plaintiffs initiated this lawsuit due to significant concerns regarding the management of the  
15 Association, which is carried out through the Association's Board of Directors. Specifically,  
16 Plaintiffs believe the Association has repeatedly sought to raise funds in the community without  
17 honoring the governing documents or Arizona law, consistent with the Directors' goal in  
18 transforming the community into an upscale resort. The Director Defendants' efforts have been  
19 undertaken at significant expense to the Association. To begin, the Director Defendants began  
20 charging a transfer fee to new members in the amount of \$950.00. The transfer fee increase has  
21 been ruled invalid by an Administrative Law Judge, but the issue is currently on appeal before the  
22 Honorable Margaret Downie, at Case Number LC2007-000189. As described by Plaintiff Walter  
23 Stromme and the Administrative Law Judge in that related case, the Association's transfer fee  
24 increase is arbitrary, unreasonable, and contrary to Arizona law.

25       The Association has collected hundreds of thousands of dollars from the invalid transfer  
26 fee. Still, the Association has consistently raised the general assessment by ten percent (10%)

1 each year since 2001. Moreover, the Association has continued to collect the transfer fee in spite  
2 of the Administrative ruling, and in spite of the fact that it has not obtained a stay of that ruling.  
3 The Association claims it needs to collect the transfer fee because of financial hardship, yet the  
4 Association has continued to expend significant sums on seemingly unnecessary items. Perhaps  
5 most relevant, the Association purchased a building in the Apache Wells community in 2006. The  
6 cost to the Association was in excess of \$700,000.00. The Director Defendants did not put the  
7 issue of whether it should purchase the building to a vote of the homeowners. Instead, the  
8 homeowners discovered after the fact that the Director Defendants had obligated the Association  
9 to a \$600,000.00 loan, which the members of the Association would be responsible for paying  
10 through their assessments.

11 After purchasing the \$700,000.00 building, the Association began its efforts to pass an  
12 \$8.5 million special assessment, which would cost each member of the community \$6,020.00.  
13 The Honorable Bethany Hicks recently ruled the Board did not validly pass the special assessment,  
14 and therefore the Board's insistence on collecting the same is no longer an issue. Although the  
15 Court's ruling concerned only the actual number of votes the Association obtained, Plaintiffs had  
16 numerous other challenges to the proposed special assessment. Plaintiffs' challenges relate to the  
17 conduct of the Director Defendants, which constitutes a breach of the Directors' fiduciary duties  
18 to the Association as a whole, and to Plaintiffs individually.

19 Most members of the Association's Board of Directors (the Director Defendants) are  
20 members of the Country Club. In fact, prior to and during the events at issue in this matter,  
21 members of the Association's Board of Directors served on the Country Club's Board of  
22 Directors. As Country Club members, the Director Defendants have personal and pecuniary  
23 interests in any transaction involving the Country Club.

24 The Country Club, as the current owner of the building described above, bears all  
25 responsibility in maintaining the building, paying taxes for the building, and taking care of any  
26 other expenses that may arise associated with property ownership. Unfortunately, the Country

1 Club has been negligent in maintaining its building presumptively due to financial difficulties.  
2 The financial difficulties of the Country Club led to the Association providing "gifts" to the  
3 Country Club by imposing charges upon Association members. For instance, the Defendant  
4 Directors decided that \$100.00 of each transfer fee collected by the Association would be "gifted"  
5 to the Country Club.

6 The Country Club's failure to maintain its building led to general consensus in the  
7 community that some degree of renovation was needed. The Director Defendants, consistent with  
8 their plan to transform the community, saw this consensus as an opportunity to get a brand new  
9 facility that would be far more luxurious than the current Country Club facility. The  
10 Association's Board of Directors, comprised mostly of Country Club members, felt it was unfair  
11 for the Country Club "to shoulder the entire cost of providing a new and better facility."  
12 Accordingly, as early as 2001, the Association's Board of Directors began negotiating an  
13 agreement with the Country Club whereby the Association would take title to the Country Club  
14 facility and then build new facilities on that property, which would be available for use by both  
15 Association and Country Club members.

16 The proposal advanced in 2001 is essentially identical to the current \$8.5 million project.  
17 At that time, however, the Directors considered having the Country Club and Association "share  
18 in the construction or renovations with an aim to provide the maximum benefit to both."  
19 Nevertheless, when put to a vote, the homeowners in Apache Wells overwhelmingly voted against  
20 the proposal.

21 The Directors did not give up their planned project after it failed to pass a vote in the  
22 community. Instead, in 2004, the Board of Directors retained the services of Dr. Wendy  
23 Hultsman of Arizona State University. Dr. Hultsman's supposed task was to evaluate the wants  
24 and needs of the Apache Wells residents, which she apparently did through surveys that were sent  
25 to select homeowners. Dr. Hultsman then reached certain conclusions regarding the wants and  
26 needs of the Apache Wells residents, which included the following:

- 50% of Apache Wells residents believe the community does not need a larger building for meetings
- 70% of the Apache Wells residents believe the community serves residents well as is
- 22% of Apache Wells residents believe remodeling is needed
- 10.6% of Apache Wells residents believe the community has inadequate meeting and/or event space
- 85% of Apache Wells residents are satisfied with building maintenance
- 58% feel maintenance services of HOA and CC should be combined
- The Apache Wells residents do not want the Association and the Country Club to combine policies and procedures
- 77% of the Apache Wells residents are against sharing costs of golf course
- Country Club members are much more likely to support combining Association and Country Club policies and procedures than Association members are
- Country Club members are much more likely to support the Association sharing in the costs of the golf course than Association members are
- Country Club members are much more likely to support the Association subsidizing Apache Hall than Association members

Despite these results, the Directors proposed an \$8.5 million project whereby the Association will take title to the Country Club facility and build new facilities that can be used by both Country Club and Association members, purportedly relying on the results of Dr. Hultsman's study. Incidentally, the proposed building includes a golf pro shop, restaurant, and bar. The cost to the Association is \$8.5 million, and the only cost to the Country Club is the cost of its land, which has been valued at approximately \$650,000. Accordingly, the Association would contribute approximately fourteen times more than the Country Club to a facility that would benefit the Country Club greatly. The Country Club facility would shift from being the sole responsibility of the Country Club to being the sole responsibility of the Association.

The Director Defendants, as Directors for the Association, had the duty to act in the best interest of the Association. Numerous homeowners in the community felt that the Directors' proposed project was not, in fact, in the best interest of the Association. Rather, it seemed clear to homeowners that the proposed project was actually in the best interest of the Country Club. How could it possibly be in the Association's best interest to build an \$8.5 million facility that

1 includes a restaurant, bar and golf pro shop for the Country Club, especially when the Country  
2 Club is contributing fourteen times less than the Association? The burden of owning the facility  
3 completely shifts from the Country Club to the Association, yet the day-to-day use of the facility  
4 would not change at all.

5 In an effort to finance the transaction with the Country Club, the Association's Board of  
6 Directors sought to impose a special assessment upon Association members in the amount of  
7 \$6,020.00 each. The Country Club members, on the other hand, have no assessment  
8 responsibility in financing the transaction and instead simply reap the benefits of brand new  
9 facilities. The Board of Directors, as members of the Country Club, therefore save substantial  
10 money personally by spreading the costs over the entire Association, as the Country Club has  
11 approximately one-third of the members the Association has. More specifically, if the Country  
12 Club bore the costs of building the new facilities, the cost would be over \$17,500.00 per member,  
13 as opposed to the \$6,020.00 cost if the entire Association pitches in.

14 The Association's Board of Directors undertook significant effort to obtain the votes  
15 needed to impose the special assessment. The Directors refused to disclose the factual details  
16 relating to the transaction with the Country Club to Association members, yet consistently  
17 campaigned for the special assessment by claiming it would be in the Association's best interest.  
18 Certain members of the Association, including Plaintiffs, made legitimate requests to review  
19 documentation relating to the transaction with the Country Club, but the Board of Directors  
20 repeatedly refused to provide key documents, and instead selectively chose what they would  
21 disclose to the homeowners of the community. Plaintiffs therefore included a count in their  
22 Complaint regarding their demand for documents, which the Association responded to by claiming  
23 in its Answer that, "Plaintiffs sought information, and were provided with all information  
24 requested."

25 Plaintiffs have since confirmed through depositions of the Association's Directors,  
26 however, that the Association has in fact withheld several records. Indeed, Defendants Brian

1 Johnson and Bing Miller have testified about several documents Plaintiffs have never been  
2 provided, including:

- 3 • Two surveys of the property at issue,
- 4 • Evaluations as to the cost of maintenance,
- 5 • Bids,
- 6 • Proposals from three architects,
- 7 • Various contracts, and
- 8 • Letters and other communications.

9 Plaintiffs' efforts to obtain records from the Association have been significant. Not only  
10 did Plaintiffs make requests for records prior to this lawsuit, but multiple times thereafter through  
11 counsel. As early as April 2007, Plaintiffs' counsel requested all documentation from the  
12 Association concerning the proposed project. On April 26, 2007, the Association produced  
13 certain documents to Plaintiffs' counsel, claiming all relevant documentation was included. A  
14 review of the produced documents demonstrated, however, that virtually no documents actually  
15 detailing to the proposed project were disclosed. The Association merely produced numerous  
16 community newsletters, meeting minutes, and similar items that Plaintiffs had already obtained.  
17 Very little was produced that actually documented the \$8.5 million project. Accordingly, on May  
18 2, 2007, Plaintiffs' counsel formally requested the Association provide certain documents, which  
19 appeared to be missing from the production. Plaintiffs' counsel also requested, pursuant to  
20 A.R.S. § 10-11601, a list of homeowner names and addresses.

21 On May 22, 2007, Plaintiffs' counsel sent another letter to the Association requesting  
22 documentation. Specifically, Plaintiffs' requested "all communications between the homeowners  
23 association and the country club concerning the matters at issue, including all e-mail  
24 correspondence or other means by which the matters at issue were communicated amongst the  
25 parties . . . all bids or other documentation which would evidence how the association determined  
26 the pricing for the matters at issue . . . a complete set of all documents evidencing any agreements

1 between the homeowners association and the country club, and all internal notes and memoranda  
2 concerning these issues.” Having received no response, again on June 5, 2007, Plaintiffs’ counsel  
3 requested documentation from the Association. Again, Plaintiffs requested “bids, estimates,  
4 proposals, contracts, and other such records,” as well as “all communications amongst board  
5 members regarding Association business of any kind from January 1, 2005 through the date of this  
6 letter.”

7 On June 27, 2007, Plaintiff Judi Teague submitted a written request to receive a list of  
8 homeowner addresses. After having received no response within the ten-day period provided by  
9 A.R.S. § 33-1805, Ms. Teague contacted the Association’s management office. Enga Bach, the  
10 Association’s manager, advised Ms. Teague that she had been instructed not to provide the  
11 records requested. Ms. Bach confirmed these statements in her July 19, 2007 letter, wherein she  
12 stated “the association’s president has instructed me that the mailing list contains information that  
13 is both personal and private and therefore not to be released. Your request for the current mailing  
14 address of each homeowner has been denied.”

15 Many of the homeowners that were denied access to information and documentation  
16 concerning the Association’s purported transaction with the Country Club, including the Plaintiffs  
17 herein, correctly became suspicious about the true facts relating to the special assessment. They  
18 therefore formed a group called “Save Apache Wells,” and registered that name with the Arizona  
19 Corporation Commission. The Save Apache Wells group distributed information regarding the  
20 special assessment, and urged voters to vote “No” in the upcoming election. Faced with growing  
21 opposition to their plan, the Board of Directors allowed signs to be posted in the community that  
22 read “Save Apache Wells – Vote Yes.” The Association’s former President, Defendant Brian  
23 Johnson, prominently displayed one such sign on the front of his home.

24 Plaintiffs submitted a written complaint to the Association regarding the misleading and  
25 inappropriate signs. In response, the Association’s current President, Defendant Marvin Stoll,  
26 wrote to Plaintiffs claiming the Directors had no authority to take any action relating to the signs.



1 Mr. Stoll called the signs "subterfuge," and vowed that no member of the Board or Long Range  
2 Planning Committee had anything to do with the "confusing" signs. At the deposition of Bing  
3 Miller, however, Plaintiffs confirmed that the Board of Directors had expressly approved of the  
4 signs it claimed it had no authority to regulate. Moreover, the CC&Rs for Apache Wells are  
5 absolutely clear that no signs are allowed in the community unless approved by the Board.

6 The Director Defendants took control of all community media to favor their proposed  
7 project, and sharply criticize any opposition. The Director Defendants repeatedly utilized  
8 Association media such as the community newspaper to attack Plaintiffs and their supporters,  
9 calling them liars, destructive forces in the community, and numerous other callous insults. The  
10 Directors did not allow Plaintiffs to respond to these accusations and insults, nor did the Directors  
11 present any information that could negatively impact their planned project. Instead, the Directors  
12 presented only information that positively reflected on their planned project, and rather than  
13 present other viewpoints, aggressively attacked anyone offering views different than their own.

14 Despite the lack of information provided to community members, and the confusion  
15 regarding the special assessment, the Board of Directors proceeded to hold a vote regarding the  
16 special assessment on February 21, 2007. The Directors created new rules and procedures for  
17 this vote, significantly shortening deadlines such as the absentee ballot return date, shortening the  
18 time for which voters have to cast their vote in person by six hours, and intimidating voters by  
19 taking away their privacy and "hovering" over them while they cast their votes. Further,  
20 pursuant to Section 4.A and 4.B of the CC&Rs, and Article X(D) of the Bylaws, a special  
21 assessment must be approved by a majority of all unit owners. The Association claimed to have  
22 obtained the required approval for the special assessment. However, only 644 votes were  
23 allegedly cast in favor of the special assessment, which is 63 votes short of the required majority  
24 of owners. Plaintiffs therefore contested the validity of the special assessment based upon the  
25 clear lack of required votes, however the Association's Board of Directors insisted on going  
26 forward with imposition of the special assessment. It was not until the Honorable Bethany Hicks

1 expressly ruled that the Association did not obtain the required majority of homeowner votes that  
2 the Directors finally announced that they would not collect the special assessment.

3 In addition to the majority vote issue, Plaintiffs have discovered numerous irregularities  
4 with the voting procedure that cast significant doubt on the number of votes the Association claims  
5 to have obtained. As described above, the Association adopted a new procedure for this vote  
6 whereby homeowners were required to identify themselves on their ballots through ballot  
7 numbers. A review of the ballots demonstrates, however, that several duplicate ballot numbers  
8 exist, some ballots were not numbered at all, and some owners cast more than one vote, among  
9 other things. In addition, the Association did not provide sufficient time for absentee voters to  
10 submit their ballots. In total, there are 69 ballots that cannot be validated due to the irregularities  
11 described above.

12 Plaintiffs also contested the validity of any agreement reached with the Country Club due  
13 to the inherent unfairness to Association members. It is unfair for the Association members to  
14 absorb all costs associated with facilities that will predominantly benefit Country Club members,  
15 including the Board of Directors. The Board of Directors did not disclose this conflict of interest  
16 to Association members, nor did they disclose their conflict resulting from the pecuniary interest  
17 they have in this transaction.

## 18 **II. LEGAL THEORIES UPON WHICH CLAIMS/DEFENSES ARE BASED.**

### 19 **1. Injunctive Relief.**

20 The Court granted Plaintiffs' injunctive relief claim when it granted Plaintiffs' Motion for  
21 Partial Summary Judgment. An injunction is currently in place prohibiting the Association and its  
22 Directors from collecting the \$8.5 million dollar special assessment.

### 23 **2. Declaratory Judgment**

24 As the Court has granted the injunctive relief requested by Plaintiffs, a declaratory  
25 judgment is no longer required. Plaintiffs' requested declaratory judgment concerned the validity  
26 of the special assessment and related agreement with the Country Club. The special assessment

1 has been declared invalid, and therefore there is no longer a disputed issue regarding the validity  
2 of either the special assessment or agreement.

3 **3. Breach of Fiduciary Duty and Violation of A.R.S. § 10-3830.**

4 The Director Defendants, as Board members of the Association, owe Plaintiffs and other  
5 members of the Apache Wells community fiduciary duties. Specifically, Directors of  
6 homeowners associations have the duty to “act in good faith, to act in compliance with the law  
7 and the governing documents, to deal fairly with the association and its members, and to use  
8 ordinary care and prudence in performing their functions.” RESTATEMENT (THIRD) PROPERTY -  
9 SERVITUDES, § 6.14. As the Board of Directors in this case knowingly persisted in acting  
10 contrary to the governing documents and applicable law, acted with conflicts of interest,  
11 conducted an unfair election, and refused to share required information with homeowners, they  
12 acted in bad faith, did not deal fairly with the Association or its members, and did not use  
13 ordinary care and prudence in performing their duties. The Directors’ actions constitute breach of  
14 their fiduciary duties, for which the Association is liable, and the Directors are individually liable.

15 **4. Demand for Documents.**

16 As described above, the Association and the Director Defendants have refused to provide  
17 requested documentation to Plaintiffs, in direct violation of applicable law. Pursuant to A.R.S. §  
18 §§ 10-11602 and 33-1805, the Association is required to provide records to Plaintiffs upon their  
19 request. To date, the Association has provided nothing more than generic material that does not  
20 address the requests repeatedly made by Plaintiffs. Further, Plaintiffs have confirmed that  
21 documents in response to their requests exists, but has been withheld. Defendants Brian Johnson  
22 and Bing Miller testified at their depositions regarding several documents that exist, but have not  
23 yet been provided despite repeated requests.

24 **III. WITNESSES.**

25 **1. Judith Teague**

26 c/o Cheifetz Iannitelli Marcolini, P.C.  
1850 North Central Avenue, 19<sup>th</sup> Floor

1 Phoenix, Arizona 85004  
2 (602) 952-6000

3 Ms. Teague is a Plaintiff in this matter, and in such capacity, is expected to testify about  
4 all facts relating to this matter. Specifically, Ms. Teague is expected to testify about her  
5 experiences as a homeowner in the Apache Wells community over the past several years. Ms.  
6 Teague is expected to testify about the changes that have occurred in the community since the  
7 Director Defendants took control of the Board, and in particular, the Director Defendants' efforts  
8 to transform the Apache Wells community into a more luxurious, resort-type setting. Ms. Teague  
9 is expected to testify about the manner in which the Director Defendants proposed the \$8.5  
10 million dollar project to the homeowners of the community, and the information they shared with  
11 the homeowners regarding that project. She is expected to testify that she and many other  
12 homeowners felt they were not fully informed about the proposed project, and the Director  
Defendants were not providing all available information.

13 Ms. Teague is expected to testify about the Director Defendants' conduct in campaigning  
14 for the proposed \$8.5 million dollar project and carrying out the election for that project. She is  
15 expected to testify about the fact that the Director Defendants presented only select information to  
16 homeowners, repeatedly. Ms. Teague will testify that crucial information was withheld from  
17 homeowners, despite repeated requests. Ms. Teague will also testify as to the fact that the  
18 Directors refused to consider any alternatives to their proposed project, and presented information  
19 relating to their proposed project in a skewed and misleading manner.

20 Ms. Teague is further expected to testify about her experiences as a member of SAW in the  
21 Apache Wells community. Ms. Teague is expected to testify about how she and other SAW  
22 members were treated by the Director Defendants in both public meetings, and in the community  
23 media. Ms. Teague was present during many Association meetings. Ms. Teague is expected to  
24 testify about the Director Defendants' refusal to allow her or other SAW members an opportunity  
25 to present their views, or respond to the sharp criticism offered by the Director Defendants. Ms.  
26

1 Teague is also expected to testify about the Director Defendants' involvement in posting  
2 misleading signs that read "Save Apache Wells - Vote Yes."

3 Finally, Ms. Teague is expected to testify about the repeated actions of the Director  
4 Defendants that she believes are in complete disregard of the homeowners in Apache Wells, and  
5 also the governing documents for the community. Ms. Teague is expected to testify about the  
6 Director Defendants' purchase of a \$700,000 building without a vote of the homeowners, the  
7 Director Defendants' unauthorized raise of the transfer fee charged to new members, and the  
8 Director Defendants' general policy of taxing and spending.

9  
10 **2. Robert Teague**

c/o Cheifetz Iannitelli Marcolini, P.C.  
11 1850 North Central Avenue, 19<sup>th</sup> Floor  
Phoenix, Arizona 85004  
12 (602) 952-6000

13 Mr. Teague is a Plaintiff in this matter, and in such capacity, is expected to testify about  
14 all facts relating to this litigation. Specifically, Mr. Teague is expected to testify about all facts  
15 described above in Judith Teague's summary, as well as his experiences as a SAW member. Mr.  
16 Teague is the operator for the SAW website, [www.saveapachewells.com](http://www.saveapachewells.com). Mr. Teague is  
17 therefore expected to testify about homeowner response to the SAW group, as well as the  
18 response from the Director Defendants.

19 **3. Walt Stromme**

c/o Cheifetz Iannitelli Marcolini, P.C.  
20 1850 North Central Avenue, 19<sup>th</sup> Floor  
21 Phoenix, Arizona 85004  
22 (602) 952-6000

23 Mr. Stromme is a Plaintiff in this matter, and in such capacity, is expected to testify about  
24 all facts relevant to this litigation. Specifically, Mr. Stromme is expected to testify about all facts  
25 described above in Judith Teague's summary, as well as his involvement in the SAW group,  
26 which he and another homeowner formed in the summer of 2006. Mr. Stromme will testify that

1 he and another homeowner formed the SAW group in response to the Director Defendants'  
2 apparent disregard for their duties to the homeowners, beginning with the purchase of a \$700,000  
3 building without obtaining the consent of the homeowners. Mr. Stromme is expected to testify  
4 that SAW began holding meetings in approximately July 2006, which meetings were open to all in  
5 the Apache Wells community. The SAW meetings originally focused on the building purchase  
6 and transfer fee, but then shifted to the \$8.5 million dollar project.

7 Mr. Stromme will testify that the Director Defendants have utilized Association media to  
8 say terrible things about SAW supporters, often directing their name-calling and insults at him  
9 specifically. Mr. Stromme will testify about his efforts to express his views in the community,  
10 including his efforts to run for the Board member election, all of which were rebuffed by the  
11 Director Defendants. Mr. Stromme will testify that the Director Defendants have persisted in  
12 their efforts to control the community, and in so doing, have disregarded the rights and opinions  
13 of the homeowners.

14 **4. Dolores Miller**

15 c/o Cheifetz Iannitelli Marcolini, P.C.  
16 1850 North Central Avenue, 19<sup>th</sup> Floor  
17 Phoenix, Arizona 85004  
(602) 952-6000

18 Ms. Miller is a Plaintiff in this matter, and in such capacity, is expected to testify about all  
19 facts relevant herein. Specifically, Ms. Miller is expected to testify about all facts described  
20 above in Judith Teague's summary, as well as her participation in Association affairs, including  
21 her role as President and Director for the Association in the past. Ms. Miller will testify that she  
22 has served on the Association's election committee for nearly twenty years, and has been the  
23 Chair of that committee for the past ten years. Ms. Miller is expected to testify regarding the  
24 manner in which the Director Defendants carried out elections in Apache Wells since members of  
25 the community began opposing their plans. Ms. Miller will testify that the Director Defendants  
26 suddenly and without reason dramatically changed election procedures, such that homeowners

1 were no longer afforded privacy, felt intimidated, felt harassed, and simply could not meet the  
2 time deadlines arbitrarily imposed. Ms. Miller will further testify that many homeowners refused  
3 or simply were unable to vote because of the Director Defendants' new procedures.

4  
5 **5. Jennial Martin**

6 c/o Cheifetz Iannitelli Marcolini, P.C.  
7 1850 North Central Avenue, 19<sup>th</sup> Floor  
8 Phoenix, Arizona 85004  
9 (602) 952-6000

10 Ms. Martin is a Plaintiff in this matter and in such capacity, is expected to testify about all  
11 facts relevant herein. Specifically, Ms. Martin is expected to testify about all facts described  
12 above in Judith Teague's summary, as well as her experiences as both an Association member,  
13 and Country Club member. Ms. Martin is expected to testify about the inherent unfairness  
14 associated with the agreement the Director Defendants reached with the Country Club. Ms.  
15 Martin is expected to testify that although the Director Defendants' proposed project would save  
16 her personally a significant amount of money, she was opposed to the project because it is unfair  
17 to require the homeowners association as a whole to pay for a building that primarily benefits the  
18 Country Club.

19 Ms. Martin is further expected to testify about the manner in which the Director  
20 Defendants and Country Club campaigned for the special assessment project. She is expected to  
21 testify about the Director Defendants' personal goals of saving money and transforming the  
22 community into a more luxurious environment, which goals the Directors intended to reach at the  
23 expense of all homeowners. Ms. Martin is expected to testify about the practical aspects of the  
24 Directors' proposed project, such as the fact that the day-to-day use of the Country Club facility  
25 would not have changed, yet the burden of owning that facility would have shifted from the  
26 Country Club to the Association entirely. Ms. Martin will testify about the benefits specific to

1 Country Club members that would have resulted from the Directors' proposed project, as well as  
2 the burdens to homeowners that would have resulted.

3 **6. Lois Stevenson**

4 c/o Cheifetz Iannitelli Marcolini, P.C.  
5 1850 North Central Avenue, 19<sup>th</sup> Floor  
6 Phoenix, Arizona 85004  
7 (602) 952-6000

8 Ms. Stevenson is a Plaintiff in this matter and in such capacity, is expected to testify about  
9 all facts relevant herein. Specifically, Ms. Stevenson is expected to testify about all facts  
10 described above in Judith Teague's summary. Ms. Stevenson has attended nearly every  
11 Association meeting since she has resided in the community, and in so doing, is personally  
12 knowledgeable about the Director Defendants' disclosure of information relating to their proposed  
13 project to homeowners in the community. Ms. Stevenson was a Director for the Association in  
14 the past, wherein she served a three-year term. Ms. Stevenson is expected to testify that the  
15 Director Defendants did not disclose all available information, and refused to answer questions or  
16 requests for that information. Ms. Stevenson will testify that the Director Defendants sharply  
17 criticized any opposition or differing view, and in fact stifled such differing or opposing opinions.

18 **7. Dora Rich**

19 c/o Cheifetz Iannitelli Marcolini, P.C.  
20 1850 North Central Avenue, 19<sup>th</sup> Floor  
21 Phoenix, Arizona 85004  
22 (602) 952-6000

23 Ms. Rich is a Plaintiff in this matter and in such capacity, is expected to testify about all  
24 facts relevant herein. Specifically, Ms. Rich is expected to testify about all facts described above  
25 in Judith Teague's summary. Further, Ms. Rich is expected to testify about her experiences in  
26 working for the Association in its management office from March 2001 through September 2004.

Ms. Rich will testify about the typical procedure utilized for elections in Apache Wells, which  
was significantly changed by the Director Defendants when homeowners began opposing the plans



1 of the Director Defendants. Ms. Rich will testify that the new procedures adopted by the Director  
2 Defendants and the manner in which they began carrying out elections made her uncomfortable,  
3 such that she resigned her position in the Association office.

4 **8. Kitty and Jay Howlett**

c/o Cheifetz Iannitelli Marcolini, P.C.  
5 1850 North Central Avenue, 19<sup>th</sup> Floor  
Phoenix, Arizona 85004  
6 (602) 952-6000

7 Mr. and Mrs. Howlett are Plaintiffs in this matter, and in such capacity, are expected to  
8 testify about all facts relevant herein. Specifically, Mr. and Mrs. Howlett are expected to testify  
9 about all facts described above in Judith Teague's summary. Further, Mrs. Howlett is expected to  
10 testify about her experiences working for the Country Club from November 2005 until March  
11 2007. Mrs. Howlett will testify that the Country Club was negligent in maintaining its building,  
12 such that it was in a state of disrepair. Mrs. Howlett will also testify that the Country Club  
13 instructed her to refrain from cleaning certain areas, such as the women's restroom, so that the  
14 facility could appear worse than it actually is in an inspection. Mrs. Howlett is expected to testify  
15 that the Country Club members deliberately attempted to depict their facility as being in far worse  
16 condition than it actually was.

17 **9. Kathy and Ross Turnbull**

5820 East Lawndale Street  
18 Mesa, Arizona 85215

19 Mr. and Mrs. Turnbull are homeowners in Apache Wells and in such capacity, they are  
20 expected to testify about all facts relevant herein. Specifically, Mr. and Mrs. Turnbull are  
21 expected to testify about the difficulties they encountered in participating in the special assessment  
22 election in February 2007. They are expected to testify that like many other homeowners in the  
23 community, they reside in Canada on a seasonal basis. They will testify that they did not receive  
24 their absentee ballot for the special assessment election until February 12, 2007, leaving them only  
25 four days to get the ballot back to the Apache Wells office. Mr. and Mrs. Turnbull will testify  
26 that mail from Canada to the United States takes at least one week, and accordingly, in order to

1 have their ballot in by the deadline imposed by the Directors, they had to utilize FedEx overnight  
2 mailing. Mr. and Mrs. Turnbull are expected to testify that they had never encountered problems  
3 voting in any past Apache Wells elections.

4 **10. Rachel and George Morgan**  
5 2143 North Higley Road  
6 Mesa, Arizona 85215

7 Mr. and Mrs. Morgan are homeowners in Apache Wells, and in such capacity, are  
8 expected to testify about all facts relevant herein. Specifically, Mr. and Mrs. Morgan are  
9 expected to testify about the difficulties they encountered in attempting to vote in the February  
10 2007 special assessment election. Mr. and Mrs. Morgan will testify that they never received any  
11 information regarding the new voting procedures implicated by the Director Defendants, and  
12 instead found that they were unable to vote when they arrived at their usual time of approximately  
13 5:30 pm. Mr. and Mrs. Morgan will testify that they have always voted in Apache Wells at  
14 approximately 5:30 pm, as they both hold full-time jobs. Mr. and Mrs. Morgan will testify that  
15 they did not receive an absentee ballot, and therefore, had no way to vote in the special  
16 assessment election. Mr. and Mrs. Morgan will testify that the Director Defendants' decision to  
17 shorten the voting time to only four hours for the special assessment election caused several  
18 problems.

19 **11. Brian Johnson**  
20 c/o Jones, Skelton & Hochuli, P.C.  
21 2901 North Central Avenue, Suite 800  
22 Phoenix, Arizona 85012

23 Mr. Johnson is a Defendant in this matter, and served on the Association's Board of  
24 Directors during the time the Directors proposed the \$8.5 million dollar project to the Apache  
25 Wells homeowners. In such capacity, Mr. Johnson is expected to testify about the Director  
26 Defendants' efforts to pass the special assessment to fund their planned project, and about the  
details of the agreement reached with the Country Club. Mr. Johnson is expected to testify about  
the Director Defendants' goals in evaluating options for the future of Apache Wells, the

1 alternatives considered (or not considered) by the Directors, and the information obtained by the  
2 Directors regarding their planned project. Mr. Johnson is further expected to testify about the  
3 benefits he expected to experience as a member of the Country Club if \$8.5 million dollar project  
4 would have been approved by the homeowners in Apache Wells.

5 Mr. Johnson is also expected to testify about his treatment of SAW members and  
6 participation in the campaign for the \$8.5 million dollar project. Mr. Johnson is expected to  
7 testify about his personal role in insulting and sharply criticizing SAW members in Association  
8 media, and refusing to allow such individuals to offer a response or even neutral information in  
9 Association media. Mr. Johnson is further expected to testify about the Directors' refusal to allow  
10 SAW members running for the Board to participate equally in the election process when compared  
11 to those candidates nominated by the Directors. Mr. Johnson is further expected to testify about  
12 the use of misleading "Save Apache Wells - Vote Yes" signs, and the decision to change election  
13 procedures significantly for the special assessment election.

14 **12. Bing Miller**

15 c/o Jones, Skelton & Hochuli, P.C.  
16 2901 North Central Avenue, Suite 800  
Phoenix, Arizona 85012

17 Mr. Miller is a Defendant in this matter, and currently serves on the Association's Board  
18 of Directors. Mr. Miller has also served on the Country Club Board, at one time as President,  
19 and has extensive knowledge regarding the \$8.5 million dollar project. Mr. Miller was a member  
20 of the Long Range Planning Committee before he became an Association Director. As such, Mr.  
21 Miller is expected to testify about all facts relevant herein. Specifically, Mr. Miller is expected to  
22 testify about his role in developing the agreement reached with the Country Club, the details of  
23 that agreement, and the fact that the Directors refused to consider any other options or  
24 alternatives. Mr. Miller is expected to testify about the information and documentation obtained  
25 relating to the project, which was only selectively provided to homeowners.  
26

1 Mr. Miller is further expected to testify about the Directors' approval of the misleading  
2 "Save Apache Wells - Vote Yes" signs, as well as the Directors' sharp criticism of SAW  
3 members in Association media. Finally, Mr. Miller is expected to testify about the benefits he  
4 would personally realize as a member of the Country Club if the proposed \$8.5 million dollar  
5 project went forward.

6 **13. Marv Stoll**

c/o Jones, Skelton & Hochuli, P.C.  
2901 North Central Avenue, Suite 800  
Phoenix, Arizona 85012

8 Mr. Stoll is a Defendant in this matter, and is the current President for the Association's  
9 Board of Directors. As such, Mr. Stoll is expected to testify about all facts relevant herein.  
10 Specifically, Mr. Stoll is expected to testify about the Directors' decision to drastically change  
11 voting procedures for the special assessment election. Mr. Stoll is further expected to testify  
12 about the Directors' efforts in campaigning for the special assessment, including use of misleading  
13 signs that read "Save Apache Wells - Vote Yes."

14 **14. Enga Bach**

c/o Jones, Skelton & Hochuli, P.C.  
2901 North Central Avenue, Suite 800  
Phoenix, Arizona 85012

18 **15.** Any Plaintiff not previously identified herein.

19 **16.** Any and all members of the Board of Directors for the Association at any time  
20 relevant to this dispute, including the individual Defendants named herein.

21 **17.** Any and all witnesses identified or relied upon by the Association, the Country  
22 Club and/or the individual Defendants.

23 **18.** Any and all custodians of record necessary to establish the foundation and  
24 authenticity of any exhibit.

25 **IV. ADDITIONAL PERSONS WITH RELEVANT KNOWLEDGE.**

1 Other than those listed above, Plaintiffs believe all members of the Apache Wells  
2 community likely have relevant knowledge regarding this matter. Plaintiffs also believe  
3 representatives and/or agents of various companies have relevant knowledge regarding this matter,  
4 including but not limited to Nest Technologies, Concord Construction, and Arizona State  
5 University.

6  
7  
8 **V. EXISTENCE OF WRITTEN OR RECORDED STATEMENTS.**

9 Plaintiffs are aware of several written and recorded statements, all of which have been  
10 disclosed by Plaintiffs to Defendants. Plaintiffs believe Defendants may be in the possession of  
11 additional written and/or recorded statements.

12 **VI. EXPERT WITNESSES.**

13 Plaintiffs have not retained any expert witnesses in this matter. If, however, such a witness  
14 is retained, Plaintiffs will timely supplement this disclosure statement.

15 **VII. COMPUTATION AND MEASURE OF DAMAGES.**

16 With respect to the individual Defendants' and the Association's breach of fiduciary duty,  
17 Plaintiffs seek monetary damages in an amount to be proven at trial. In addition, because the  
18 breaches of fiduciary duties herein were undertaken in gross, wanton, or reckless disregard of the  
19 rights of Plaintiffs and the other members of the Apache Wells community, Plaintiffs seek  
20 punitive damages against Defendants in an amount to be proven at trial.

21 Finally, because this matter arises out of contract, Plaintiffs seek their reasonable  
22 attorneys' fees and costs pursuant to the Declaration and/or A.R.S. § 12-341.01.

23 **VIII. EXPECTED TRIAL EXHIBITS.**


24 Plaintiffs have previously disclosed to Defendants all relevant documentation in their  
25 possession. If through the course of these proceedings additional documentation is obtained,  
26 Plaintiffs will timely supplement this Disclosure Statement.

1 Plaintiffs reserve the right to utilize any document disclosed by Defendants as a potential  
2 trial exhibit in this matter.

3 DATED this 14<sup>th</sup> day of September, 2007.

4 CHEIFETZ IANNITELLI MARCOLINI, P.C.

5 By

  
Steven W. Cheifetz

Melanie C. McKeddie

Attorneys for Plaintiffs

6  
7  
8 ORIGINAL of the foregoing hand-delivered  
9 this 18<sup>th</sup> day of September, 2007 to:

10 J. Gary Linder, Esq.  
11 JONES, SKELTON & HOCHULI, P.L.C.  
12 2901 North Central Avenue, Suite 800  
Phoenix, Arizona 85012  
Attorneys for Defendants

13 By: 

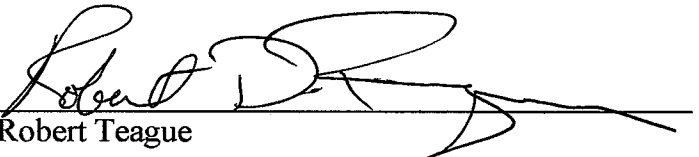
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**VERIFICATION**

I am one of the Plaintiffs in this matter. I have read the foregoing Initial Disclosure Statement pursuant to Rule 26.1 of the Arizona Rules of Civil Procedure and know the contents thereof. The information contained therein is true and accurate to the best of my knowledge, information and belief.

I DECLARE (OR CERTIFY, VERIFY OR STATE) UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE AND CORRECT.

**EXECUTED** this 14<sup>th</sup> day of September, 2007.

  
Robert Teague