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VIA FACSIMILE - (480) 464-5642
(Original by U.S. Mail)

Eric M. Jackson, Esq.
JACKSON, WHITE, GARDNER, WEECH & WALKER, P.C.
40 N. Center Street, #200
Mesa, Arizona 85201-7300

Re: Apache Wells Homeowners Association

Dear Eric:

We understand you represent Apache Wells Homeowners Association. We are in the process of filing and serving the enclosed lawsuit. We allege that the special assessment claimed by the Association has not been validly approved.

Our goal is not to preclude any sort of reasonable sharing of facilities between the homeowners association and the country club. We seek to insure that any such arrangement shall only be entered into after members of the homeowners association have had a fair and reasonable opportunity to make an informed decision based upon all the relevant facts, while considering reasonable alternatives, and while avoiding any conflict of interest.

While we suspect it will take some time to resolve these issues, we are concerned about the potential immediate harm that may be suffered by certain members of the Association if the Association follows through with its threats to enforce the special assessment and make negative reports on the individual credit histories of the Association's members. We believe the Board of Directors has a fiduciary duty to act in the opposite manner, and refrain from undertaking any such actions until the facts have been properly evaluated. In the event this Board of Directors does insist on collecting assessments and/or defaming individual credit histories, then we shall seek injunctive assistance from the Court to prevent severe and irreparable harm until the merits are addressed.

We would be happy to meet to discuss our concerns and otherwise seek to address this unfortunate dispute in a cooperative manner. We hope the Board of Directors recognizes that

STEVEN W. CHEIFETZ
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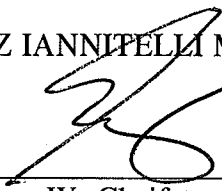
* ALSO ADMITTED IN NEW YORK AND NEW JERSEY
** ALSO ADMITTED IN NEW YORK AND WASHINGTON
*** ALSO ADMITTED IN CALIFORNIA
† ALSO ADMITTED IN PENNSYLVANIA
†† ALSO ADMITTED IN NEW YORK
††† ALSO ADMITTED IN NEW YORK, CALIFORNIA AND HAWAII
†* ALSO ADMITTED IN CALIFORNIA AND OHIO
†† ADMITTED IN NEW YORK AND NEW JERSEY
††* ADMITTED IN CALIFORNIA

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their days of “bullying” the members of the Association are over. The sooner the Board recognizes that they are obligated to act with the utmost care and good faith when addressing such issues of significant concern to the individual members, the sooner we will be able to reasonably resolve what may end up otherwise being a drawn out and contentious dispute.

Very truly yours,

CHEIFETZ IANNITELLI MARCOLINI, P.C.

By: 

Steven W. Cheifetz
For the Firm

SWC/car
Enclosures

1 Steven W. Cheifetz (011824)
2 Stewart F. Gross (019804)
3 **CHEIFETZ IANNITELLI MARCOLINI, P.C.**
4 1850 North Central Avenue, 19th Floor
5 Phoenix, Arizona 85004
6 (602) 952-6000

7 Attorneys for Plaintiffs

8
9 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**
10 **IN AND FOR THE COUNTY OF MARICOPA**

11 **KEN DOSHIER and DOROTHY DOSHIER,**
12 **husband and wife; DOUG W. HENDERSON**
13 **and MIRIAM HENDERSON, husband and**
14 **wife; JAY HOWLETT and KITTY L.**
15 **HOWLETT, husband and wife; WILLY**
16 **FERNANDEZ, an unmarried man; HARRIETT**
17 **JACKSON, an unmarried woman; KARREN**
18 **OLSEN, an unmarried woman; RICHARD G.**
19 **YOUNG, an unmarried man; DWANE SEELE;**
20 **an unmarried man; DENNIS O'CONNOR; an**
21 **unmarried man; RICK EICHER; an unmarried**
22 **man; RAY FITZGERALD; a married man;**
23 **LARRY L. WALSTON; a married man;**
24 **ROBERT TEAGUE and JUDI TEAGUE,**
25 **husband and wife; GEORGE W. FUGMAN and**
26 **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

No.

COMPLAINT

(Civil- Declaratory Relief, Injunctive Relief)

1 unmarried woman; CHERYL ROLULLARD,
2 an unmarried woman; JESSIE E. BENNETT,
3 an unmarried woman; GENE R. KRZYCKI and
4 MARJORIE KRZYCKI, husband and wife; ED
5 WHITE AND TERRI WHITE, husband and
6 wife; DARLENE STEINER, a married woman;
7 DORA RICH, an unmarried woman; LEW
8 HANDELAND, an unmarried man;
9 CLARENCE LAMERS and SHARI LAMERS,
10 husband and wife; JANICE CHRISTO, a
11 married woman; OSCAR R. FLORES, an
12 unmarried man; JENNIAL MARTIN, an
13 unmarried woman; GEORGIEANNA
14 LANCUCKI, an unmarried woman; JOAN
15 PETERSON, a married woman; DORA REED,
16 an unmarried woman; MARYANNE MILLER,
17 an unmarried woman; DALE ADAM and
18 THERESE ADAM, husband and wife; JAMES
19 J. KIRKPATRICK, an unmarried man; EMILE
20 DUFFY, a married woman; CHARLES LAIR
21 and LELA LAIR, husband and wife; MARGIE
22 STOCK, a married woman; JOHN
23 CORMACK, a married man; LEE WALTER, a
24 married man; WALTER STROMME, a married
25 man; DEVERE STEVENSON and LOIS L.
26 STEVENSON, husband and wife; EARL
PEARSON and ISABEL PEARSON, husband
and wife; BONNIE WILCOX, a married
woman; ROY NELSON, a married man;
SHARON ANTES; 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

1 PEARSON and JANE PEARSON, husband and
2 wife; BILL VERNON and DORIS VERNON,
3 husband and wife; HARVEY BELL, an
4 unmarried man; WILLIAMS SCHUMACHER
5 and LUCY SCHUMACHER, husband and
6 wife; JAMES MASCORELLA and LOIS
7 MASCORELLA, husband and wife; GERALD
8 LENKA and MARCY LENKA, husband and
9 wife,

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Plaintiffs,

v.

9 APACHE WELLS HOMEOWNERS
10 ASSOCIATION, INC., an Arizona nonprofit
11 corporation, APACHE WELLS COUNTRY
12 CLUB, INC. an Arizona non-profit corporation;
13 BRIAN JOHNSON and SUSAN JOHNSON,
14 husband and wife; THOMAS H. FINGER, an
15 unmarried man; MARVIN A. STOLL and
16 MARY E. STOLL, husband and wife;
17 GORDON WOOD and LINDA WOOD,
18 husband and wife; TONY PASULA and VAL
19 PASULA, husband and wife; MARVIN A.
20 LARSON and RUTH J. LARSON, husband and
21 wife; JAMES BONNELL and JOCILLE
22 BONNELL, husband and wife; WILLIAM F.
23 GREGORY and JOANNE GREGORY, husband
24 and wife; ROBERT RESSETT and BERNYCE
25 RESSETT, husband and wife; IRV ST. JOHN
26 and PAT ST. JOHN, husband and wife; and
L.J. MILLER and JOYCE MILLER, husband
and wife,

Defendant.

Plaintiffs, for their Complaint against Defendant, allege:

THE PARTIES, JURISDICTION, AND VENUE

1. Plaintiffs, reside in and are the owners of separate homes located in the subdivision and community known as Apache Wells located in Mesa Arizona.

1 2. Defendant Apache Wells Homeowners Association, Inc. (the "Association" or
2 "HOA"), is an Arizona nonprofit corporation, doing business and having its principal place of
3 business in Maricopa County, Arizona.

4 3. Defendant Apache Wells Country Club, Inc. (the "Country Club"), is an Arizona
5 nonprofit corporation, doing business and having its principal place of business in Maricopa
6 County, Arizona.

7 4. Defendants Brian Johnson and Susan Johnson ("Johnson"), Mary E. Stoll and
8 Marvin A. Stoll ("Stoll"), Linda Wood and Gordon Wood ("Wood"), Tony Pasula and Val
9 Pasula ("Pasula"), Marvin A. Larson and Ruth J. Larson ("Larson"), James Bonnell and Jocille
10 Bonnell ("Bonnell"), JoAnn Gregory and William F. Gregory ("Gregory"), Robert Ressel and
11 Bernyce Ressel ("Ressel"), Irv St. John and Pat St. John ("St. John"), L.J. Miller and Joyce
12 Miller ("Miller") are residents and/or owners of homes located in Apache Wells. All acts alleged
13 herein by Defendants Johnson, Stoll, Wood, Pasula, Larson, Bonnell, Gregory, Ressel, St. John,
14 and Miller were done for and on behalf of their respective marital community.

15 5. Defendant Thomas H. Finger ("Finger") is an unmarried man who resides and/or
16 is an owner of a home located in Apache Wells.

17 6. Defendants Johnson, Stoll, Wood, Pasula, Larson, Bonnell, Gregory, Ressel, St.
18 John, Miller, and Finger (Collectively, the "Individual Defendants" or "Individual Directors")
19 are current or were previous members of the Association's Board of Directors and have caused
20 damage to the Plaintiffs as alleged herein.

21 7. The amount in controversy is within the jurisdiction of the Court, and venue is
22 proper in Maricopa County.

23 GENERAL ALLEGATIONS

24 6. Apache Wells is a Homeowners Association comprised of approximately 1,412 units
25 located in Mesa, Arizona.

26

1 7. Apache Wells historically began as a mobile home community. Over the past 40
2 years, Apache Wells has grown into a community comprised of both mobile homes and built in
3 place homes.

4 8. Adjacent to Apache Wells is a large golf course owned and operated by the non-
5 profit corporation known as Apache Wells Country Club. The Apache Wells Country Club owns
6 a golf course, as well as a building currently housing a restaurant, lounge, meeting hall, and a
7 golf pro shop.

8 9. The Country Club allows a maximum of 485 membership certificates, each which
9 allows a maximum of two members to play golf. Members must be homeowners in Apache Wells
10 HOA or The Wells or in what is referred to as "track 19." The Apache Wells Country Club
11 maintains a separate Board of Directors from the Apache Wells Homeowners Association, and
12 Apache Wells Country Club members must pay annual dues and golfing fees. All members of the
13 Apache Wells Country Club must be approved by the Apache Wells Country Club Board of
14 Directors.

15 10. At times, members of the Board of Directors of the Homeowners Association have
16 also served as members of the Board of Directors of the Country Club.

17 11. In or around 2004, the Association formed a community Long Range Planning
18 Committee ("LRPC"), comprised largely of members of the Country Club to study, observe and
19 opine and recommend long range plans for Apache Wells Homeowners Association. In that
20 regard, the Association and the Country Club hired Dr. Wendy Holtzman, of the Department of
21 Recreation and Tourism Management from Arizona State University, to develop a comprehensive
22 long range plan and to recommend improvements for Apache Wells for the benefit of both the
23 homeowners and the Country Club.

24 12. The results of the comprehensive long range plan study completed by Arizona State
25 University suggested that it would benefit the HOA and the Country Club if they shared the use of
26 certain facilities.

1 13. Thereafter, the Association's Long Range Planning Committee undertook efforts to
2 analyze, discuss and agree upon a long range plan for both the Homeowners Association and the
3 Country Club. The majority, if not all of the members of the Long Range Planning Committee
4 for the Homeowners Association were actually members of the Country Club.

5 14. Although the Board of Directors of the Association owed a fiduciary duty to each
6 homeowner in the Association to act with the utmost care and good faith to insure that their
7 actions were in the interest of the members of the Association, due to the fact that the Board of
8 Directors of the Association was also dominated by members of the Country Club, the duties and
9 loyalties of the members of the Long Range Planning Committee authorized and created by the
10 Board of Directors of the Homeowners Association became blurred and confused. Rather than
11 proceeding in an independent manner where the members of the Association's Long Range
12 Planning Committee acted in the interest of the HOA and the members of the Country Club Long
13 Range Planning Committee acted in the interest of the Country Club by negotiating at arm's
14 length in an effort to determine a clear and reasonable means by which the Association and the
15 Country Club could benefit each other by sharing facilities and expenses, the discussion, analysis,
16 evaluation, planning and implementation of the long range planning was dominated by the
17 Country Club members and thereby skewed to the benefit of members of the Apache Wells
18 Country Club.

19 15. When homeowners of Apache Wells HOA sought to evaluate, investigate, and
20 obtain information from the Board of Directors and the Long Range Planning Committee of the
21 Association, both the members of the HOA Long Range Planning Committee and members of the
22 HOA Board of Directors acted contrary to their fiduciary duties to each of these homeowners and
23 rather than seeking to address their concerns and explain their reasoning, in an open and honest
24 manner, and instead of allowing scrutiny and review of documentation and information obtained
25 by both the Board of Directors and the Long Range Planning Committee, each such group acted
26 contrary to the interests of those they were there to serve, the homeowners of Apache Wells, and

1 rather they sought to conceal that they were unreasonably influenced by their present financial
2 duties and obligations they owed to the Country Club and the significant expense they would
3 personally incur as members of the Country Club if the Association did not assume the significant
4 burden of construction and maintenance of the Country Club's facilities.

5 16. When homeowners sought to obtain documentation and information to which they
6 are entitled as homeowners, both pursuant to Arizona law and pursuant to the applicable rules and
7 guidelines of the Association, the members of the Board of Directors and the members of the
8 Long Range Planning Committee failed and refused to provide such information and
9 documentation to the homeowners. To the contrary, the Board of Directors and Long Range
10 Planning Committee sought to act in a secretive manner pursuant to which they sought to
11 selectively provide information to the homeowners in a manner that promoted their personal
12 agenda of benefiting the Country Club to the detriment of the HOA, all in an effort to influence
13 the homeowners into believing the process was in their interest, without actually sharing
14 information or documentation from which the homeowners could evaluate on their own whether
15 or not the Long Range Planning Committee and the Board of Directors were truly acting in their
16 interest.

17 17. The Long Range Planning Committee and the Board of Directors, recognizing that
18 they ultimately would need the approval of the homeowners of Apache Wells, thereafter sought to
19 act in a manner pursuant to which they controlled and distorted information so as to suggest that
20 their plans were in the best interests of Apache Wells HOA, while at the same time seeking to
21 quell and otherwise prevent any dissent or scrutiny by homeowners. When members of the Long
22 Range Planning Committee suggested that the Homeowners Association should purchase the
23 facilities of the Apache Wells Country Club and build new buildings on these facilities including a
24 pro shop and when they suggested that the cost of the facilities would be \$8.5 million, they failed
25 and refused to explain how they determined whether or not \$8.5 million was a fair and reasonable
26 price to be paid by the Homeowners Association to provide the Country Club with such a benefit,

1 they failed to explain how they priced the cost of construction of new facilities, and whether
2 competitive bids were obtained or not, they failed to adequately explain what the future
3 relationship would be between the Country Club and the Homeowners Association, and what
4 amounts the Country Club would pay, if any for the construction and future use of a pro shop by
5 the Country Club, they failed to reveal who would pay for the maintenance and use of the joint
6 facilities and whether they had prepared a "pro forma" which evaluated the expected construction
7 costs, financing, operating costs and cash flow, and they rather sought to conceal information and
8 mislead members of the Association and otherwise intimidate members of the Association so as to
9 insure that they could continue to utilize their positions of trust and confidence to promote the
10 Country Club rather than the HOA they were obligated to serve.

11 18. As a result of the Association's effort to proceed promptly in a manner which
12 avoided scrutiny and evaluation, the Association acted without fully considering the implications
13 of their actions or whether their actions would be contrary to Arizona law, due to obvious
14 conflicts of interest, and whether the Association's actions would be in violation of the Internal
15 Revenue Tax Code, and thereby put their tax-exempt status at risk. Both the Apache Wells
16 Homeowners Association and Apache Wells Country Club are non-profit corporations that have
17 an obligation to proceed in a manner which does not result in "profits" to their members. The
18 Association's actions may preclude the Association from claiming a tax-exempt status pursuant to
19 § 501(C)(7) of the Internal Revenue Code because the Code prohibits exemption of any part of the
20 organization's net earnings that inures to the benefit of any person having personal and private
21 interests in the activities of the organization. The Apache Wells Country Club has repeatedly
22 acknowledged that without the assistance of the Homeowners Association in the construction and
23 maintenance of their facilities, that the burden upon individual members of the Country Club
24 would drastically increase, and as such, the actions of the directors of the Association when
25 determining that the Homeowners Association should shoulder the majority of the burden of the
26 expense of construction and maintenance of these facilities not in effect have provided a benefit to

1 these very directors who also have an ownership interest in the Country Club, thereby providing
2 to them a benefit which may run afoul of the tax exempt limitations required of both the
3 Homeowners Association and the Country Club.

4 19. Arizona law also requires that corporations having the same officers and/or directors
5 only make contracts with one another that are entirely fair and honest. The members of the HOA
6 Board of Directors failed to adequately disclose their inherent conflicts of interest, resulting from
7 their personal ownership interest in the Country Club, and as such, Arizona courts shall scrutinize
8 their contracts closely and will set them aside upon the slightest showing of unfairness to either
9 corporation. Since the negotiations between the Country Club and the Association were not
10 undertaken by separate members seeking to benefit their particular entities, but rather were jointly
11 undertaken in an effort to limit the burden upon individual Country Club members and to rather
12 cause that burden to be shared generally by the Association, regardless of whether the Association
13 homeowners they represented were members of the Country Club or not, any such agreements
14 should be determined by the Court to be void and unenforceable.

15 20. Despite their knowledge of the inherent unfairness of the proposed agreements
16 between the Apache Wells HOA and Country Club, which remain concealed from the
17 homeowners, the Board of Directors presented their ill begotten plan to "improve Apache Wells"
18 to the members of the Apache Wells community by proposing that homeowners pay a special
19 assessment to facilitate the agreements. The Association's Board of Directors' lobbying tactics in
20 regards to the agreements were deceitful, selfish, and with complete disregard for the welfare of
21 the individual members. At all relevant times mentioned herein, in order to gain the approval they
22 needed from the members of the Association to obtain a special assessment, the Individual Board
23 of Directors, intentionally failed to disclose pertinent information about any agreements with the
24 Country Club; failed to disclose a copy of the agreements to the members of the Association;
25 misinformed homeowners that the proposed agreements with the Country Club would be the best
26 way to facilitate the "long range plan" for Apache Wells; failed to apprise the homeowners of the

1 present assessed cash value of the land the Association intended to purchase from the Country
2 Club; failed to propose any alternatives to homeowners; failed to inform the homeowners that the
3 proposals unfairly benefited the Golf Club; failed to disclose to the members of the Association of
4 the likelihood of the conflict of interest created from the unfair negotiations of members of the
5 Association who sat on both Boards; and failed to solicit or allow opposing viewpoints from other
6 members of the Association.

7 21. In addition, Pursuant to Section 4.A. and 4.B. of the Association's Revised
8 Declaration of Covenants, Conditions and Restrictions ("CC & Rs"), authorization of special
9 assessments for the purchase of real property and for the alteration of the common facilities
10 requires at least a two-thirds vote of the Association's Board of Directors. The Association's
11 Board of Directors has never indicated whether they achieved a two-thirds vote to authorize a
12 special assessment.

13 22. The Association's Board of Directors called for a special election on February 21,
14 2007 ("Special Election") to have the Apache Wells HOA members ratify by majority vote the
15 proposed Special Assessment of \$6,020.00 ("Special Assessment") pursuant to the CC&Rs.

16 23. Prior to the Special Election, despite requests made by homeowners to the
17 Association including the Plaintiffs herein, the Board of Directors of the Association failed to
18 provide pertinent information relating to the Agreement, including, but not limited to, a copy of
19 the Agreement, an assessment of the actual value of the land that was being acquired from the
20 Country Club, the costs of the construction of new buildings rather than the improvement of
21 existing ones, what competing bids, if any, were obtained from competing developers, copies of
22 minutes from the Board of Directors and the LRPC, and what alternatives were available that
23 could benefit the Association without entering into the Agreement.

24 24. In response to the Association's call for the Special Election, a group of
25 homeowners including some of the Plaintiffs herein, known throughout the community as "Save
26

1 Apache Wells” organized meetings, distributed various leaflets, fliers, posters, and launched a
2 website, in order to voice their opposition.

3 25. In addition to the many improprieties perpetrated by the Association’s Board of
4 Directors during their election campaign as stated above, the Board of Directors attempted to
5 intentionally confuse members of the Association in order to gain their vote. “Save Apache
6 Wells” was well known and established throughout the Apache Wells Community for its firm
7 opposition to the Board’s special assessment proposal and encouraged members of the Association
8 to “Vote No”. Save Apache Wells had also previously reserved the name “Save Apache Wells”
9 with the Arizona Corporation Commission. However, in order to create confusion in the minds of
10 voters and sway votes to their side, the Association’s Board of Directors distributed misleading
11 fliers and placed posters outside of homes and the common areas using the “Save Apache Wells”
12 name to encourage voters to “Vote Yes” to the Special Assessment proposal. Despite demands
13 made by members of Save Apache Wells to the Association’s Board of Directors to discontinue
14 the use of their name and symbol, the Association’s Board of Directors allowed and encouraged
15 the misappropriation of the Save Apache Well’s trademark.

16 26. The Defendant Association conducted the Special Election unreasonably and
17 unfairly and based upon some arbitrary scheme in utter disregard of prior and accepted practices.
18 Non-profit organizations, such as the Association are charged with the duty of fair and reasonable
19 procedures with respect to their members, including elections. Some of the unfair tactics the
20 Defendants used in conducting the Special Election included the mailing of absentee ballots in a
21 manner that did not allow enough time for individual homeowners to return them prior to the
22 deadline stated on the absentee ballot. In addition, the absentee ballot failed to contain enough
23 information to allow each individual homeowner to make an informed decision whether to approve
24 or disapprove of the proposed Special Assessment

25 27. In conducting the Special Election, the Association’s Board of Directors resorted to
26 intimidation and dilatory tactics including holding the election without the advice or observation of

1 certain members of the Association's Election Committee including Plaintiff, Delores Miller who
2 was previously appointed by the Board of Directors for such purposes; voters were encouraged to
3 simply hand over ballots to the office administrators rather than place them in a secured ballot box
4 or they were turned away; ballots were placed in unsecured drawers in the general office of the
5 Association; the Association distributed ballots that were not anonymous and required each voter
6 to indicate his/her address and member number in order intimidate homeowners and the
7 Association's Board of Directors threatened to ostracize homeowners if they did not vote for the
8 Special Assessment which also inhibited some of the homeowners from voting. The Board of
9 Directors of the Association and members of the LRPC have since acknowledged problems with
10 the voting procedure calling it a "learning experience" and that the ballots could have been
11 subjected to tampering, and most recently proposed new voting procedures for future elections
12 which are in violation of Association Bylaws.

13 28. Because of the Association's Board of Directors' insistence in moving forward with
14 their scheme to purchase land from the Country Club with its eyes closed to fairness and equity
15 and in complete and utter disregard of the Association's Bylaws and CC & R's, the Association's
16 Board of Directors wrongly announced to the Association members that they had achieved a
17 majority vote to approve the Special Assessment when they had actually not achieved a true
18 majority vote from all of the members. Pursuant to the Bylaws, Special Assessments may only be
19 approved by a two-thirds vote by the Board of Directors and by a majority vote of all residential
20 owners at a special election. The Board of Directors announced that the vote passed with 644
21 votes in favor, 594 against. A true majority would have required 707 votes. As a result, pursuant
22 to the established Association Bylaws and CC &Rs, the vote did not pass and the Association's
23 Board of Directors has intentionally refused to permit members of the Association including the
24 plaintiffs to inquire about the validity of the election. Despite its knowledge that the election was
25 invalid, the Association's Board of Directors has announced to the members of the Association
26 that the Special Assessment will become due on April 2, 2007 and the Board has continued its

1 intimidation tactics by threatening to immediately institute collection actions against any
2 homeowner who fails to pay the Special Assessment and to “ruin the credit ratings” of any
3 homeowner who dares to oppose them.

4 29. Plaintiffs are not opposed to combining and/or sharing facilities with the Country
5 Club so long as the decision as to what facilities should be shared is made in a fair and reasonable
6 manner after full and complete disclosure and discussion devoid of any bias and conflicts of
7 interests, and so long as the costs associated with the construction of the facilities and the resulting
8 maintenance expense is fairly allocated based upon the anticipated use of such facilities as
9 determined after full and complete disclosure and discussion.

10 **COUNT ONE**

11 **(Declaratory Judgment/Injunctive Relief)**

12 30. Plaintiffs hereby incorporate by reference each of the allegations set forth above.

13 31. Declaratory relief is being brought pursuant to Uniform Declaratory Judgment Acts,
14 A.R.S. §§12-1831, et al. The rights, status, and legal relations of the parties are affected by the
15 disputes between parties.

16 32. Arizona non-profit corporation laws require elections to be held fairly and reasonably in
17 order to benefit members of the non-profit corporation.

18 33. The Special Election on February 21, 2007 was held unreasonably and unfairly and was
19 invalid for the reasons stated above.

20 34. Defendants’ actions failed to comply with Arizona law.

21 35. Defendants’ actions failed to comply with the Association’s Bylaws and CC & Rs.

22 36. The Defendants’ attempted enforcement of the Special Assessment will cause Plaintiffs
23 to suffer injuries for which there is no adequate remedy at law. Accordingly, Plaintiffs are
24 entitled to injunctive relief in enjoining the Association from collecting the Special Assessment.
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26

1 37. Pursuant to A.R.S. §12-1831 et seq., Plaintiffs are entitled to declaratory judgment to
2 set aside the Special Election for Special Assessments and to enjoin the Association from seeking
3 the Special Assessment from the plaintiffs and members of Apache Wells.

4 38. Defendants attempted enforcement of the Special Assessment has caused Plaintiffs to
5 suffer damages to be proven at trial.

6 **THEREFORE**, Plaintiffs request the following relief:

- 7 A. A declaratory judgment to set aside the Special Election and to determine a
8 procedure and/or mechanism by which the HOA and Country Club may share
9 in the use of facilities after full disclosure is made by the Defendants devoid of
10 any bias and conflicts of interests, and so long as the costs association with the
11 construction of the facilities and the resulting maintenance expense is fairly
12 allocated based upon the anticipated use of such facilities as determined after
13 full and complete disclosure and discussion.
- 14 B. A permanent injunction enjoining the Defendants from taking any action to
15 enforce the Special Assessment;
- 16 C. An award of damages in an amount to be proven at trial;
- 17 D. An award of fees and costs pursuant to the provisions of the CC&R's and/or
18 A.R.S. § 12-341.01; and
- 19 E. Other relief the Court deems just and proper.

20 **COUNT TWO**

21 **(Demand for Documents)**

22 39. Plaintiffs hereby incorporate by reference each of the allegations set forth above.

23 40. Pursuant to A.R.S. § 10-11602 concerning non-profit corporations and pursuant to
24 A.R.S. § 33-1805 concerning planned communities, Plaintiffs sought to obtain documentation and
25 information relevant to the Special Election and the proposed purchase of land from the Golf Club
26 and construction of new buildings.

1 41. Despite repeated efforts to review such documentation pursuant to both the non-profit
2 corporation statutes and planned community statutes, Defendants have sought to unreasonably
3 confound Plaintiffs' efforts and avoid producing the documentation or information to Plaintiffs.

4 42. As such, Plaintiffs bring these claims before this Court to obtain an order from the
5 Court pursuant to A.R.S. § 10-11604 compelling Defendants to comply with its obligations
6 pursuant to A.R.S. §§ 10-11602 and 33-1805, and to provide the Plaintiffs with the following
7 records: (a) all ballots regarding the Special Election on February 21, 2007; (b) the minutes of
8 the LRPC as it concerns the Agreement between the Country Club and the Association; (c) all
9 agreements, documentation, budget, planning, financial statement, cost assessments, and other
10 documentation relating to the purchase of land from the Country Club and construction of the
11 Community Center, pro shop, restaurant and any other facilities for the benefit of the Association
12 and the Country Club; (d) all documentation and information provided by the Defendants to
13 prospective voters concerning the purpose of the Special Election; (e) all documentation and
14 information concerning any and all individuals who were involved in the election procedures; (f)
15 any and all other documentation relevant to the purchase of the land and construction of the
16 various buildings.

17 **THEREFORE**, Plaintiff requests judgment as follows:

- 18 A. For an order of this Court compelling Defendants to produce the records specified
19 above;
- 20 B. For an order of this Court awarding Plaintiffs its attorneys' fees and costs;
- 21 C. For an order of this Court awarding Plaintiffs damages arising from Defendants'
22 failure to fulfill its fiduciary obligations to Plaintiffs;
- 23 D. For such other and further relief that this Court deems is proper.

24 **COUNT THREE**

25 **(Breach of Fiduciary Duty)**

26 43. Plaintiffs hereby incorporate by reference each of the allegations set forth above.

1 44. At all relevant times as stated herein, the Association and the Individual Directors were
2 in a fiduciary relationship with the members of the Association, including the Plaintiffs, and owed
3 Plaintiffs a duty of fair dealing, and required to exercise their authority in the utmost good faith,
4 care and diligence to protect the members of the Association, including Plaintiffs, and their
5 respective interests.

6 45. The Association and the Individual Board of Directors breached their fiduciary
7 duties to the Association as a whole and to the Plaintiffs who are members of the Association, as
8 discussed above, by failing to adequately disclose their inherent conflicts of interest with the
9 Country Club and by concealing that they were unreasonably influenced by their present financial
10 duties and obligations owed to the Country Club and the significant expense they would personally
11 incur as members of the Country Club if the Association did not assume the significant burden of
12 construction and maintenance of the Country Club's facilities; by acting in a secretive manner
13 pursuant to which they sought to selectively provide information to the homeowners in a manner
14 that promoted their personal agenda of benefiting the Country Club to the detriment of the HOA,
15 all in an effort to influence the homeowners into believing the process was in their interest without
16 actually sharing information or documentation from which the homeowners could evaluate on
17 their own whether or not the Long Range Planning Committee and the Board of Directors were
18 truly acting in their interest; by refusing to explain how they determined whether or not \$8.5
19 million was a fair and reasonable price to be paid by the Homeowners Association to provide the
20 Country Club with such a benefit; by failing to explain how they priced the cost of construction of
21 new facilities, and whether competitive bids were obtained or not; by failing to adequately explain
22 what the future relationship would be between the Country Club and the Homeowners
23 Association, and what amounts the Country Club would pay, if any for the construction and future
24 use of a pro shop by the Country Club; by failing to reveal who would pay for the maintenance
25 and use of the joint facilities and whether they had prepared a "pro forma" which evaluated the
26 expected construction costs, financing, operating costs and cash flow; and by concealing

1 information and misleading members of the Association and otherwise intimidating members of
2 the Association so as to insure that they could continue to utilize their positions of trust and
3 confidence to promote the Country Club rather than the HOA they were obligated to serve; by
4 intimidating members of the Association to obtain votes in order to ratify the Special Assessment
5 proposal; by conducting an unreasonable and unfair Special Election in violation of the Bylaws
6 and CC & Rs; by falsely submitting to the members of the HOA that the Special Assessment was
7 ratified by a majority of the members of the HOA when it was not; by wrongfully enforcing the
8 Special Assessment; by threatening and intimidating members of the HOA, including the Plaintiffs
9 herein, that if the HOA members did not pay for the Special Assessment they would be subject to
10 collection actions instituted by the HOA and that they would attempt to "ruin their credit" ; all of
11 which resulted in damages to the Plaintiffs.


12 46. The Association and the Individual Board of Directors acted maliciously, with the intent
13 to cause as much harm as possible to the Plaintiffs, warranting the imposition of punitive damages
14 against them.

15 **THEREFORE**, Plaintiffs request judgment against Defendants as follows:

- 16 A. For Plaintiffs' damages in an amount to be proven at trial;
- 17 B. For punitive damages against the Association in amount to be proven at trial;
- 18 C. For such other further and additional relief as this Court deems just and proper.

19 DATED this 20th day of March, 2007.

20 **CHEIFETZ IANNITELLI MARCOLINI, P.C.**

21 
22 By _____
23 Steven W. Cheifetz
24 Stewart F. Gross
25 Attorneys for Plaintiffs

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