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MAY 28 2015

Baird Williams & Greer

1 FENNEMORE CRAIG, P.C.  
2 Christopher L. Callahan (No. 009635)  
3 Seth G. Schuknecht (No. 030042)  
4 Emily Ward (No. 0299663)  
5 2394 East Camelback Road, Suite 600  
6 Phoenix, AZ 85016-3429  
7 Telephone: (602) 916-5000  
8 Email: [ccallahan@fclaw.com](mailto:ccallahan@fclaw.com)  
9 Email: [sschuknecht@fclaw.com](mailto:sschuknecht@fclaw.com)  
10 Email: [eward@fclaw.com](mailto:eward@fclaw.com)

11 Attorneys for Plaintiff  
12 Desert Mountain Club, Inc.

13 SUPERIOR COURT OF ARIZONA

14 MARICOPA COUNTY

15 DESERT MOUNTAIN CLUB, INC.,

16 Plaintiff,

17 v.

18 THOMAS CLARK and BARBARA  
19 CLARK, husband and wife,

20 Defendants.

No. CV2014-015334

**JOINDER IN ROBERT JONES'S MOTION  
FOR PROTECTIVE ORDER AND MOTION  
FOR ORDER REQUIRING DEFENDANTS  
TO PROVIDE COMPLETE WRITINGS  
UPON REQUEST**

(Assigned to the Hon. Dawn Bergin)

21 Plaintiff Desert Mountain Club, Inc. (the "Club") joins the motion filed by Mr. Robert  
22 Jones, the Club's Chief Operating Officer, requesting the Court to issue a protective order  
23 restricting access to the transcript and video of Mr. Jones's deposition to the parties, their  
24 counsel, their consultants and experts.

25 In addition to the confidentiality obligations contractually owed by Mr. Jones covering  
26 the period that he was employed by Desert Mountain Properties Limited Partnership (prior to  
January 1, 2011), Mr. Jones also has a Non-Disclosure Clause in his employment agreement with  
the Club that prohibits him from disclosing any confidential information of the Club.  
Immediately upon learning of this provision on May 15, 2015, counsel for the Club notified  
Defendants' counsel, Mr. Daryl Williams, of the restriction and advised that the Club would

1 waive the Non-Disclosure Clause so that Mr. Jones could testify fully on questions relating to  
2 activities after January 1, 2011 so long as Defendants would agree to restrict dissemination of the  
3 transcript and the video deposition to parties, counsel and consultants in this action. The  
4 proposal expressly allowed Defendants to challenge the proposed restriction on dissemination  
5 following Mr. Jones's deposition in the event they found a need to disseminate the transcript or  
6 video to a larger audience. A true and correct copy of the Club's communication to Defendants'  
7 counsel is attached as Exhibit 1. Defendants' counsel did not respond to this proposal prior to  
8 Mr. Jones's deposition.

9 On the date of the deposition (May 20), immediately prior to taking testimony,  
10 Defendants' counsel announced that "Daryl Williams never agrees to confidentiality provisions."  
11 Despite this announcement, the Club agreed to proceed with the deposition to see whether  
12 Defendants intended to inquire into topics covered by the Non-Disclosure Clause. During the  
13 approximate ninety minutes that the deposition proceeded before adjournment, it became clear  
14 that Defendants intended to ask a number of questions that called for confidential information.

15 The Club has a real concern with the dissemination of the transcript. Defendants and/or  
16 their counsel have a demonstrated propensity for disseminating materials from this litigation in a  
17 public forum. Specifically, whether done by Defendants or their counsel, all of the prior  
18 pleadings in this case and an otherwise privileged letter from defense counsel to his clients have  
19 been posted on a publicly accessible website ([www.desertmountaingolfscam.com](http://www.desertmountaingolfscam.com)) (the  
20 "Website"). In addition to the public dissemination of confidential material and case filings,  
21 Mr. Williams has solicited Members of the Club to join, in some capacity, in Defendants' lawsuit  
22 with the Club. A true and correct copy of Mr. Williams's solicitation letter is attached as  
23 Exhibit 2.

24 As the Club industry is highly competitive, the Club has a reasonable interest in keeping  
25 its finances, policies and procedures confidential. The Club acknowledges that Defendants have  
26 a right to ask Mr. Jones questions regarding the policies and procedures of the Club as they relate

1 to the Club's claims against Defendants. The Club's request for confidentiality, however, does  
2 not inhibit Defendants' right to this information in any way. It allows them to ask questions  
3 without restriction, but merely requires that the transcript and video not be distributed outside of  
4 this litigation. Defendants have no legitimate reason to disseminate these materials more  
5 broadly.

6 In order to minimize the need for a further imposition on the Court's time, the Club seeks  
7 guidance on another issue that arose during the partial deposition of Mr. Jones. In conducting  
8 the examination, defense counsel used electronic versions of documents and, in so doing, showed  
9 only isolated pages. Mr. Jones noted that, because of vision impairments, he would prefer hard  
10 copies of the documents. Undersigned counsel requested that defense counsel, at a minimum,  
11 provide Mr. Jones with copies of the entire document, as required by Rule 106, Arizona Rules of  
12 Evidence. Defense counsel refused to do so. Accordingly, the Club respectfully requests the  
13 Court to direct defense counsel to provide Mr. Jones (and any other witnesses to be deposed in  
14 this case) with complete, hard copies of any documents on which he seeks to conduct  
15 examination.

16 DATED this 26th day of May, 2015.

17 FENNEMORE CRAIG, P.C.

18  
19 By /s/ Seth G. Schuknecht

20 Christopher L. Callahan  
21 Seth G. Schuknecht  
22 Emily Ward  
23 Attorneys for Plaintiff  
24 Desert Mountain Club, Inc.  
25  
26

1 ELECTRONICALLY FILED  
on the 26th day of May, 2015, with the  
2 Clerk of the Maricopa County Superior  
Court using AZTurboCourt.  
3

4 COPY transmitted via eFiling system to:

5 The Honorable Dawn Bergin  
Maricopa County Superior Court  
6 201 W. Jefferson Street, Room 7D  
Phoenix, AZ 85003-2243  
7

8 COPY mailed this 26th day of May, 2015, to:

9 Daryl M. Williams  
Baird, Williams and Greer, LLP  
6225 N. 24<sup>th</sup> Street, Suite 125  
10 Phoenix, AZ 85016  
Email: [darylwilliams@bwglaw.net](mailto:darylwilliams@bwglaw.net)  
11 *Attorneys for Defendants*

12

13 /s/ Phyllis I. Warren

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# EXHIBIT 1

## SCHUKNECHT, SETH

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**From:** CALLAHAN, CHRISTOPHER  
**Sent:** Friday, May 15, 2015 11:14 AM  
**To:** Daryl M. Williams  
**Cc:** SCHUKNECHT, SETH  
**Subject:** FW: Executive Employment Agreement between the Desert Mountain Club and Mr. Jones [FC-Email.FID6446486]

Mr. Williams:

At the request of the President of Desert Mountain Club, Inc., I am forwarding to you an email that I received from him this morning. As you can tell from the email, Bob Jones has a Non-Disclosure Clause in his Employment Agreement with the Club. The Club is willing to waive this clause for purposes of Mr. Jones' deposition in the instant litigation on the condition that the transcript is designated as confidential and is not disseminated outside of the parties, the attorneys and their consultants in this matter.

We would propose that, so as not to disrupt the previously agreed-to deposition schedule, we agree that: (1) the transcript shall be designated as confidential; (2) neither the transcript nor the video recording of the deposition may be provided to anyone other than your clients, your firm, our firm and any consultants retained by either your firm or ours in connection with this matter; (3) the attorneys, their firms and their consultants would be advised that the transcript is confidential and that it may not be further disseminated; and (4) this agreement shall be made without prejudice to your clients' ability to challenge the confidentiality designation at a later date should you feel the need to do so.

Please let me know at your earliest convenience whether you are amenable to this proposal. If you are, please confirm. If not, please let me know as well so that we can make an attempt to bring this matter to the Court's attention. I look forward to hearing from you.

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**From:** Maslick, Joseph [<mailto:jmaslick@griffithlaboratories.com>]  
**Sent:** Friday, May 15, 2015 6:14 AM  
**To:** CALLAHAN, CHRISTOPHER  
**Subject:** Executive Employment Agreement between the Desert Mountain Club and Mr. Jones

Dear Chris:

I understand that the attorney for Tom and Barbara Clark intends to take the deposition of Bob Jones on May 20, 2015 in connection with the Club's lawsuit to collect from the Clarks the amounts that they owe to the Club.

There is an Executive Employment Agreement between the Club and Mr. Jones that contains a Non-Disclosure Clause. That clause provides, in part, as follows:

In performing work for the Club, Executive will be exposed to confidential information of the Club and others. Executive will not at any time, during or after Executive's employment with the Club, without the express written consent of an officer of the Club, publish, disclose, or divulge to any Person . . . any confidential information of the Club.

Executive Employment Agreement, § 8.

The Club regards its executive compensation, internal policies and procedures, disciplinary practices and personnel matters as confidential and subject to Mr. Jones' non-disclosure obligations under the Employment Agreement.

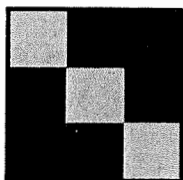
The Club consents to Mr. Jones providing testimony regarding his activities as the General Manager/Chief Operating Officer of Desert Mountain Club, Inc. pertinent to the Club's dealings with Mr. and Mrs. Clark in the deposition so long as the deposition transcript is marked confidential, is used only in connection with the pending lawsuit between the Club and the Clarks and is not disseminated to any individuals who are not parties to the suit or their attorneys.

Please provide a copy of this communication to the Clarks' attorney. Since this consent will allow Mr. Jones to testify fully regarding all matters at issue since the inception of Desert Mountain Club, Inc. and will allow the Clarks' full and complete use of his testimony in the pending action, we trust that he will have no objection to this position. Please let us know his position as soon as he responds to this notification.

Joseph Maslick  
President  
Desert Mountain Club, Inc.

# **EXHIBIT 2**





BAIRD WILLIAMS  
& GREER LLP  
Attorneys at Law

6225 N. 24<sup>th</sup> Street, Suite 125  
Phoenix, Arizona 85016  
Local: (602) 256-9400  
Fax: (602) 271-9308  
[www.bwglaw.net](http://www.bwglaw.net)

Business • Trials  
Aviation

Daryl M. Williams  
[DarylWilliams@bwglaw.net](mailto:DarylWilliams@bwglaw.net)

March 9, 2015

***Re: Membership v. Desert Mountain Club, Inc.***

Dear Interested Party:

Desert Mountain Club, Inc., is asserting claims against individual members of the club based upon rights the club claims it has because of various bylaws and agreements. The club has taken the position that no one can resign from the club without (1) paying a substantial transfer fee, and (2) having a continuing obligation for ongoing dues and assessments until a transfer of membership has been effected. This could take years. I am willing to represent a group of members of the club who take issue with the club's position providing enough interested parties join together to fund the legal work necessary to fight the position being taken by the club.

Litigation is very expensive. Desert Mountain Club has an annual operating budget of between \$25 million and \$30 million, so it has a substantial war chest and incentive to enforce its interpretation and views with regard to agreements and bylaws in its favor. Since the legal work needed to defend against Desert Mountain's positions will be virtually the same for any club member, it makes sense for members to join together in a united effort to prevail against the club.

It is my present experience that commercial cases proceeding to trial can easily cost more than \$250,000.00 to prepare and try. That sort of expense makes a \$65,000.00 transfer fee seem reasonable by comparison, which militates in favor of simply paying the transfer fee rather than fighting the club. If twenty people join together, however, and each contribute \$10,000.00 toward the litigation, the contributors can have their day in court for a reasonable fee.

I am willing to represent those who join together and contribute to the legal expense in our attempt to stymie the club's efforts to collect penalties and unreasonable exactions from residents and club members at Desert Mountain. I am willing to take this representation providing I receive payment into my trust account of \$200,000.00. It would be understood that payments into my trust account would be an advance against costs and attorneys fees and that I may withdraw from my trust account funds sufficient to pay my monthly bills. It would be further understood that I could not

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require more money of those who join the group; in other words, I would put a cap on my fees. I will refund all money paid into trust if \$200,000.00 is not received. I will be authorized to use any amount of money paid into trust in excess of \$200,000.00, as well. More money is better in a case like this. Any money not used for fees and costs will be refunded in proportion to the amounts paid in. Fees for work done prior to your agreement to be involved will be paid out of the funds generated by this group effort; indeed, I have already done enough work to know that defenses and claims against the club are viable.

The fact that I am putting a cap on my fees does not mean that you would have no exposure for the payment of the attorneys fees of Desert Mountain should it prevail in a litigation. Arizona allows recovery of attorneys fees in cases like this, so you would have that exposure if joined as a party in any litigation. Contribution to the fund, however, does not mean that you are required to be a party to a law suit if one has not already been instituted against you. You would be insulated from fees incurred by Desert Mountain if you are not a party.

A group representation always involves potential conflicts. One of the most significant potential conflicts is the different discovery required for individual members of the group. It could be more costly, for example, to process documents and discovery for one member than another, but each member of the group waives any issues regarding apportionment of fees to one party or the other.

Another potential conflict could be that one member of the group or another may desire to withdraw and be done with the litigation before other members are. Again, the parties to this united effort agree that they would not be entitled to a refund of monies from those deposited with my firm if they want out because that could adversely effect the rights of others.

Another potential conflict could arise if Desert Mountain assumed a divide-and-conquer strategy. Desert Mountain may try to offer certain settlements to individual parties but not others as a part of its attempt to minimize exposure. Again, you need to recognize that the group needs to stand firm against this sort of divide-and-conquer tactic.

Another potential conflict could arise if any one of the group wanted to keep something secret from anyone else in the group. That cannot happen in a group representation. Everyone is entitled to know what everyone else is saying, what the evidence is, and be involved on all discussions with regard to Desert Mountain.

Litigation is not certain. It is impossible to predict the outcome of any law suit because process of discovery and trial always lead to their share of unforeseen and unforeseeable surprises. Everyone must know, in addition, that the defenses against Desert Mountain are not the ordinary sorts of contract defenses one raises when confronted with a claim based upon a contract. The defenses are based upon equitable issues: fairness and what is right. The use of defenses like this in

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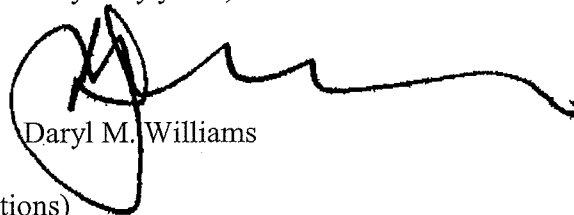
the face of written paperwork or contracts—bylaws have been interpreted as contracts—is by no means certain. Viable. But not certain.

There is a division of responsibility between us. I know what the objective is, so I decide how to achieve that objective. Nonetheless, you are an important resource for me, so I will expect you to be responsive to my needs and available for court hearings, depositions, and other matters that may require your presence.

If you agree to be a member of this group, I want you to print a copy of this letter and sign it. Likewise, fill out the other information I need to be in contact with you. Return the letter with your payment, indicating on the letter how much you are enclosing or wiring to my trust account. Wiring instructions for my trust account are attached. I will keep careful account of those who have paid into my trust account. If I do not receive at least \$200,000.00, I will refund all the money I have received to those who paid it, and that will be the end of this group representation.

I look forward to representing you in this matter. I want to meet with everyone together once we know who will be involved so we can discuss conflicts and my intended course of action. Questions and answers.

Very truly yours,



Daryl M. Williams

DMW/dlc

Attachments (Billing rates) (Wiring instructions)

Acknowledged: \_\_\_\_\_

Signature

Amount you will deposit at Baird, Williams & Greer: \$ \_\_\_\_\_

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Email: \_\_\_\_\_

Contact phone(s): \_\_\_\_\_

**BAIRD, WILLIAMS & GREER, L.L.P.**  
**Billing Rates as of January 2015**

Attorney Name	Initials	Hourly Rate
Daryl M. Williams	DMW	\$625.00
J. Ernest Baird	JEB	\$400.00
Robert L. Greer	RLG	\$375.00
James B. Reed	JBR	\$225.00
Michael C. Blair	MCB	\$350.00
Daniel B. Mestaz	DBM	\$400.00
William D. Sawkiw	WDS	\$350.00
Legal Assistant Name	Initials	Hourly Rate
Jeff H. Elder	JHE	\$165.00
Stefanie M. Garigal	SMG	\$165.00
Milo C. Leach	MCL	\$125.00
Viviana Castellanos	VJC	\$ 40.00

**WIRING INSTRUCTIONS FOR BWG TRUST ACCOUNT**

Wells Fargo Bank  
100 W. Washington Street, 13<sup>th</sup> Fl.  
Phoenix, Arizona 85003

Domestic Incoming Wire # 121000248  
International Incoming Wire Routing # WFBIUS6S  
Incoming ACH Routing #: 122105278

Baird, Williams & Greer, L.L.P.  
Trust Account  
6225 N. 24<sup>th</sup> Street, Suite 125  
Phoenix, Arizona 85016

Trust account # 3943610786