

1 FENNEMORE CRAIG, P.C.
Christopher L. Callahan (No. 009635)
2 Theresa Dwyer-Federhar (No. 010246)
Seth G. Schuknecht (No. 030042)
3 Emily Ward (No. 029963)
2394 East Camelback Road, Suite 600
4 Phoenix, AZ 85016-3429
Telephone: (602) 916-5000
5 Email: ccallahan@fclaw.com
Email: tdwyer@fclaw.com
6 Email: sschuknecht@fclaw.com
Email: eward@fclaw.com

7 Attorneys for Plaintiff
8 Desert Mountain Club, Inc.

9
10 SUPERIOR COURT OF ARIZONA

11 MARICOPA COUNTY

12 DESERT MOUNTAIN CLUB, INC.,

No. CV2014-015333

13 Plaintiff,

JOINT STATUS REPORT

14 v.

(Assigned to the Hon. David B. Gass)

15 ERIC GRAHAM and RHONA
GRAHAM, husband and wife,

16 Defendants.
17

18 Pursuant to the Court's Minute Entry filed October 1, 2015, Plaintiff Desert Mountain
19 Club, Inc. ("Plaintiff" or the "Club") and Defendants Eric and Rhona Graham ("Defendants" or
20 the "Grahams") submit this Joint Status Report.

21 ***1. Brief Description of the Case and Related Cases.***

22 On December 29, 2014, the Club sued the Grahams, seeking a declaration concerning the
23 respective rights and obligations under the parties' contract. Complaint, ¶¶ 29-34. The complaint
24 also included a claim for the Grahams' breach of that contract. *Id.* at ¶¶ 35-41. The Club alleges
25 that the Grahams have unilaterally and improperly attempted to resign their Club membership, in
26 breach of their contractual obligations, and that the Club has suffered damages as a result of the

1 Grahams' breach.

2 Simultaneous with the filing of its lawsuit against the Grahams, the Club filed two other
3 complaints against other Club members who have engaged in similar conduct, albeit under
4 different contracts with the Club, specifically, CV2014-015334 (the "Clark lawsuit") and
5 CV2014-015335 (the " lawsuit"). The defendants in the Clark and the Graham lawsuits
6 are represented by the same counsel (Daryl M. Williams). The defendants in the lawsuit
7 represent themselves.

8 The Clark and the lawsuits have been consolidated before the Honorable Dawn M.
9 Bergin. On August 21, 2015, Judge Bergin heard oral argument in the lawsuit on the
10 defendants' motion for judgment on the pleadings and the Club's motion for summary
11 judgment. Judge Bergin took both motions under advisement. On October 16, 2015 (filed
12 October 19, 2015), Judge Bergin ruled by minute entry granting the Club's motion for summary
13 judgment in the lawsuit and denying the defendants' motion for judgment on the
14 pleadings. Judge Bergin also denied a motion for judgment on the pleadings filed by the Clark
15 defendants in the Clark lawsuit. The Club has filed a motion for entry of a Rule 54(b) judgment
16 and an application for attorneys' fees and costs in the Fabian lawsuit, both of which are currently
17 pending.

18 A brief summary of the procedural background is as follows:

- 19 • December 29, 2014: The Club files its complaint against the Grahams.
- 20 • May 14, 2015: The Grahams are served with the complaint, summons, etc., in
21 Scotland, in accordance with Scottish law.
- 22 • June 23, 2015: The Club files an application for default against the Grahams.
- 23 • June 24, 2015: Daryl Williams files a notice of appearance on behalf of the
24 Grahams.
- 25 • June 25, 2015: The Grahams file a motion to dismiss the Club's complaint.
- 26 • July 15, 2015: The Club files a response to the Grahams' motion to dismiss.

- 1 • July 21, 2015: The Court denies the application for default against the Grahams.
- 2 • August 5, 2015: The Court denies the Grahams' motion to dismiss.
- 3 • August 18, 2015: The Grahams file their answer to the Club's complaint.
- 4 • October 29, 2015: The Club filed a motion to consolidate this case with the Clark
- 5 and Fabian lawsuits (which have already been consolidated). The Club's motion
- 6 to consolidate is currently pending. The Court's Minute Entry filed December 3,
- 7 2015 in the Clark lawsuit provides that the Court intends to grant the Club's
- 8 motion to consolidate this case with the Fabian and Clark lawsuits.
- 9 • The parties anticipate further motion practice and discovery in this case.

10 *A. The Club's Position/Statement.*

11 This is an action for breach of contract and declaratory relief regarding the parties'
12 respective rights and obligations under the Membership Agreement and Conversion Agreement
13 between the Grahams and the Club, dated January 6, 2006 and November 22, 2010, respectively
14 (the "Agreements"). The Club is a private equity golf, social, and fitness club located in the
15 Desert Mountain community in Scottsdale, Arizona. The Grahams are Club Members. The
16 Agreements expressly incorporate and, in executing the Agreements, the Grahams agreed to be
17 bound by the terms and conditions not only of the Agreements, but also of the Club Bylaws,
18 Rules and Regulations, Schedule of Dues, Fees and Charges and the Membership Guidelines.

19 The Agreements and the Bylaws address the methods by which a Club Member can
20 terminate his or her Membership in the Club and the nature and extent of the Member's
21 obligations to pay dues, charges and other assessments imposed by the Club. In essence, the
22 Agreements provide that a Member may not simply resign from the Club and thereby terminate
23 his obligation for ongoing dues, charges and assessments. Instead, a Member wishing to exit the
24 Club must tender his Membership to the Club for reissuance and, until such time as the
25 Membership has been reissued, continues to enjoy all rights and obligations of Club Members.
26 These rights include usage rights for all Club Facilities previously available to the Member.

1 These obligations include, but are not limited to, the payment of dues, charges and other
2 assessments. Provisions such as this are common in membership agreements for private clubs
3 throughout the Country.

4 On or about May 20, 2014, the Grahams attempted to resign their Membership and have
5 paid none of the dues or other charges against their Membership Account since that date. By
6 failing to pay dues and other charges, the Grahams have breached their contractual obligations to
7 the Club. As of December 31, 2014, the Grahams owed a total of \$75,631.46 (plus the \$65,000
8 transfer fee that must be paid to the Club upon reissuance of the Membership) to the Club. This
9 amount will continue to increase on a monthly basis, reflecting additional dues, other
10 assessments, and late charges, until such time as the Membership is either reissued or resold by
11 the Club.

12 Based on the foregoing, the Club intends to file a motion for summary judgment within
13 approximately 30 days in this case as well as in the Clark lawsuit, which may affect these
14 proceedings. The Club also asserts that Judge Bergin's summary judgment ruling in the
15 lawsuit may preclude any different result with regard to the Grahams under various legal
16 doctrines (e.g., law of the case). Given the pending motion to consolidate and the Club's
17 upcoming dispositive motions, the Club respectfully requests that the Court postpone the
18 issuance of a scheduling order under Rule 38.1, Ariz. R. Civ. P.,¹ pending resolution of the
19 Club's motion to consolidate and upcoming dispositive motions. The granting of such motions
20 may negate the necessity of setting the deadlines set forth in Rule 38.1. Given the procedural
21 history presented in this case, and in the and Clark lawsuits, it is clear that the Club has
22 not requested a postponement of Rule 38.1 obligations for purposes of delay.

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¹ All references to court procedural rules shall mean the Arizona Rules of Civil Procedure
unless otherwise indicated.

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B. The Grahams' Position/Statement.

This is a breach of contract action where the Club wants damages for breach and a judgment declaring that the Grahams must continue to perform under the terms of what it claims are the contract documents. The contract is for membership in a golf club. The Grahams say they have resigned or quit the Club, so they claim they have no further obligations to the Club. The Grahams also claim they are not liable for the claims being asserted by the Club because of the nature and effect of the bylaws and contract law. There is no liability under the agreements signed by the Grahams, and the bylaws only address the methods by which a member can transfer his or her membership and the nature and extent of a member's obligations to pay dues, charges, and other assessments imposed by the Club if the member elects to proceed by the permissive but not mandatory transfer procedures set forth in the various club documents. No agreement addresses resignation of a member, and it is the Grahams' position that bylaws of a non-profit organization are only for the regulation and management of corporate affairs, not the establishment and enforcement of substantive rights. Moreover, because A.R.S. § 10-3620 is part of any and every contract, the Grahams and other members have the legal right to resign at any time; after all, no agreement addresses resignation. The Grahams also take the position that the court may not change the terms of any agreement or the bylaws by saying that the transfer process, which includes surrender of a member's membership, is equivalent to or synonymous with a resignation to thereby avoid the effects of the statute. The words *transfer* and *resign* are not synonymous. In addition, the Grahams claim that Arizona law, A.R.S. § 10-3610 requires that all members be treated the same and that the Club has not done so over the years. The Club has allowed some members to leave without payment of the claims that are being asserted against the Grahams, so the Grahams are entitled to the same treatment. The Grahams also assert that the rights and obligations under its agreements with the Club are to be determined based upon the intention of the parties at the time the Grahams became members and that the Club cannot thereafter change its terms and conditions by unilateral action. In addition, the Grahams claim the

1 Club has breached its obligations under the terms of the agreement between the Grahams and the
2 Club because the Club's actions have destroyed the value of Club membership rather than
3 enhancing it, as was promised would happen. Being in breach, therefore, the Club may not assert
4 breach of contract claims against the Grahams. The Grahams further contend that Judge Bergin's
5 summary judgment ruling in the Fabian lawsuit may not be applied to them.

6 **2. Amendments:** The Club does not presently anticipate amending its complaint,
7 but the Grahams believe that discovery may give rise to claims for fraud in the inducement or
8 other misrepresentations. Consequently, the Grahams may seek to amend their answer to assert
9 additional legal and equitable defenses.

10 **3. Special case management:** Special case management is not appropriate for this
11 case.

12 **4. Settlement:** The Grahams and the Club are both willing to engage in settlement
13 negotiations on remaining issues.

14 **5. Readiness:** The Club does not anticipate the need for trial in this case; however,
15 in that event, the case will be ready for trial by June 1, 2016. The Grahams believe that this case
16 could be tried any time after September 1, 2016.

17 **6. Jury:** The Club does not believe a jury trial is necessary. The Grahams want a
18 jury trial.

19 **7. Length of trial:** The Club estimates that a trial will require three days, while the
20 Grahams believe their case will require eight trial days.

21 **8. Summary jury:** The parties do not agree to a summary jury trial.

22 **9. Preference:** This case is not entitled to a preference for trial.

23 **10. Special requirements:** None.

24 **11. Scheduling conference:** There is no need for a scheduling conference at this
25 time. The Club requests that the Court postpone the issuance of any Rule 38.1 scheduling order
26 as indicated in Section 1(A) above, and notify the Court Administration of the postponement so

1 that this case will not be placed on either the Dismissal or Inactive Calendar.

2 DATED this 11th day of December, 2015.

3 FENNEMORE CRAIG, P.C.

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5 By /s/ Christopher L. Callahan
6 Christopher L. Callahan
7 Theresa Dwyer-Federhar
8 Seth G. Schuknecht
9 Emily Ward
10 Attorneys for Plaintiff
11 Desert Mountain Club, Inc.

12 Daryl M. Williams

13 By /s/ Daryl M. Williams (with permission)
14 BAIRD, WILLIAMS AND GREER, LLP
15 Attorneys for Defendants
16 Eric and Rhona Graham

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1 ORIGINAL OF THE FOREGOING
electronically filed this 11th day of December, 2015.

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3 Copy transmitted via eFiling system to:
The Honorable David B. Gass

4 Copy of the foregoing mailed to:

5 Civil Court Administration
6 Maricopa County Superior Court
125 W. Washington Street
Phoenix, AZ 85003-2243

7
8 Daryl M. Williams
Baird, Williams and Greer, LLP
6225 N. 24th Street, Suite 125
9 Phoenix, AZ 85016
Email: darylwilliams@bwglaw.net
10 *Attorneys for Defendants Eric and Rhona Graham*

11
12 /s/ Phyllis Warren

13 11123835

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