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6 IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
7 IN AND FOR THE COUNTY OF MARICOPA

8 Desert Mountain Club, Inc.,
9 Plaintiff,

10 vs.

11 Eric Graham and Rhona Graham, husband
12 and wife, et al.
13 Defendants.

) No. CV2014-015333
) No. CV2014-015334
) No. CV2014-015335
) (Consolidated)

) **Defendants' Request for Rule 56(f)**
) **Relief and Expedited Hearing**

) (Assigned to the Honorable David Gass)

14
15 In this consolidated action, plaintiff filed separate motions for summary judgment on January
16 13. The motions are substantively identical with the only difference being the names of the parties
17 and dates of contracts. Defendants need additional time to respond to those motions.

18 Specifically, defendants are contemporaneously filing a motion to compel plaintiffs to
19 respond to non-uniform interrogatories. Defendants hereby incorporate their motion to compel.
20 Plaintiff's responses to defendants' interrogatories will provide information that is vital to
21 defendants' responses to plaintiff's motions.

22 As explained in more detail in defendants' motion to compel, one of defendants' defenses
23 is whether all members of the club were treated equally with respect to paying the penalty transfer
24 fee. To obtain that information, defendants served seven non-uniform interrogatories upon plaintiff.
25 In response, plaintiff objected to everything and only provided minimally responsive information
26 to one of the seven interrogatories.

27 Counsel for the parties held a meet and confer on January 14 to see if the discovery matter
28 could be resolved without court intervention. At that meet and confer, defense counsel advised that
defendants would be filing a rule 56(f) request for continuance to respond to the motions for

1 summary judgment. Unfortunately, that meet and confer was unsuccessful despite good faith efforts
2 by both parties. *See* Declaration of Michael C. Blair attached hereto as exhibit A.

3 *Grand v. Nacchio*, 214 Ariz. 9, 147 P.3d 763 (App. 2006), requires a party seeking a
4 continuance under rule 56(f) to provide a sworn statement describing the reasons justifying the
5 delay. These reasons include: “(1) the particular evidence beyond the party’s control; (2) the location
6 of the evidence; (3) what the party believes the evidence will reveal; (4) the methods to be used to
7 obtain it; and (5) an estimate of the amount of time the additional discovery will require.” *Id.* at 29,
8 ¶ 72, 147 P.3d at 783. The Blair declaration attached hereto provides the information required by
9 *Nacchio*.

10 **A. The Particular Evidence Beyond the Party’s Control**

11 Defendants need the names of all current and former members of plaintiff’s golf club.
12 Defendants have no way to get that information other than to obtain it from plaintiff.

13 **B. The Location of the Evidence**

14 Information about current and former membership is believed to be within plaintiff’s
15 exclusive control.

16 **C. What Defendants Believe the Evidence Will Reveal**

17 Defendants believe that many former members were allowed to depart the club either without
18 paying a transfer fee or were allowed to pay a significantly reduced fee.

19 **D. The Methods to be Used to Obtain it**

20 Defendants already served non-uniform interrogatories to obtain the information, but
21 plaintiffs refused to produce anything responsive. Defendants have now filed a motion to compel
22 asking the court to order plaintiffs to provide complete responses to the interrogatories.

23 **E. Estimate of the Amount of Time the Additional Discovery Will Require**

24 The motion to compel was filed on January 26. It will need to be fully briefed and argued
25 with a decision rendered. That could take approximately 30–45 days, depending upon the court’s
26 calendar. Assuming the court grants the motion to compel and orders plaintiff to provide complete
27 responses within ten days after its order, defendants will then still need time to review the
28 information, contact possible witnesses, and take depositions as needed to obtain admissible

1 evidence to use in response to plaintiff's motions. It is conservatively estimated that it will take
2 approximately 60 days after the date when plaintiff provides complete responses to defendants' non-
3 uniform interrogatories for defendants to conduct the necessary discovery to prepare and file a
4 response to the motions.

5 For the reasons set forth herein, defendants ask this court to defer considering the motions
6 for summary judgment to allow defendants time to obtain discovery to use in their response to
7 plaintiff's motions.

8 Respectfully submitted this 26th day of January 2016.

9
10 /s/ Michael C. Blair
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16 The Honorable David Gass
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25
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27 /s/ Diana L. Clark
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