

1 FENNEMORE CRAIG, P.C.  
Christopher L. Callahan (No. 009635)  
2 Theresa Dwyer-Federhar (No. 010246)  
Jennifer L. Blasko (No. 031540)  
3 2394 East Camelback Road, Suite 600  
Phoenix, AZ 85016-3429  
4 Telephone: (602) 916-5000  
Email: [ccallahan@fclaw.com](mailto:ccallahan@fclaw.com)  
5 Email: [tdwyer@fclaw.com](mailto:tdwyer@fclaw.com)  
Email: [jblasko@fclaw.com](mailto:jblasko@fclaw.com)

6 Attorneys for Plaintiff  
7 Desert Mountain Club, Inc.

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9 SUPERIOR COURT OF ARIZONA

10 MARICOPA COUNTY

11 DESERT MOUNTAIN CLUB, INC.,

12 Plaintiff,

13 v.

14 ERIC GRAHAM and RHONA  
GRAHAM, husband and wife,

15 Defendants.

16  
17 DESERT MOUNTAIN CLUB, INC.,

18 Plaintiff,

19 v.

20 THOMAS CLARK and BARBARA  
CLARK, husband and wife,

21 Defendants

22 DESERT MOUNTAIN CLUB, INC.,

23 Plaintiff,

24 v.

25 husband and wife,

26 Defendants

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

**MOTION FOR  
CLARIFICATION/RECONSIDERATION OF  
MINUTE ENTRY ORDER (FILED 02/04/2016)**

(Assigned to the Hon. David B. Gass)

1 On January 5, 2016, Desert Mountain Club, Inc. (the “Club”) filed a Motion to Delete  
2 and Replace Exhibits to Complaint (the “Motion to Delete”) in *Desert Mountain Club, Inc. v.*  
3 *Fabian*, No. CV2014-015335 (the “Fabian Action”). The Action had previously been  
4 consolidated with two other actions filed by the Club, which raised substantially identical factual  
5 issues raised in the Action—*Desert Mountain Club, Inc. v. Graham*, No. CV2014-  
6 015333 (the “Graham Action”), and *Desert Mountain Club, Inc. v. Clark*, No. CV2014-015334  
7 (the “Clark Action”).

8 The Motion to Delete sought to address two issues in the Action:

- 9 • Exhibit A to the Complaint, filed on December 29, 2014, in the Action,  
10 was intended to be only the Membership Agreement entered into between the  
11 and the Club—a crucial portion of the Contract at issue in that matter.  
12 However, the Club inadvertently included the Application for Club  
13 Membership with the Membership Agreement in Exhibit A. The Application  
14 contained information subject to Rule 5(f), Arizona Rules of Civil Procedure.  
15 Through the Motion to Delete, the Club sought to delete the inadvertently  
16 included Application, but did not seek to delete the proper portion of Exhibit A,  
17 specifically the Membership Agreement itself. That Membership Agreement is  
18 properly an exhibit to the Complaint and is pertinent to the summary judgment  
19 previously granted to the Club by Judge Bergin as it is part of the  
20 Contract with the Club.
- 21 • Exhibit A-1 to the Club’s Motion for Summary Judgment in the Action,  
22 filed on May 5, 2015, is identical to Exhibit A of the Complaint. Again, the  
23 Club sought to delete the Application that was inadvertently included with the  
24 Membership Agreement. Again, the Membership Agreement should remain and  
25 does not itself contain any information subject to Rule 5(f), Arizona Rules of  
26 Civil Procedure.,

27 The Motion to Delete does not seek to alter any filings made by the Club in either the Graham  
28 Action or the Clark Action. There was no Rule 5(f) information whatsoever filed in the

1 Graham Action or Clark Action.

2 The Court’s Minute Entry issued on February 1, 2016 and filed on February 4, 2016 (the  
3 “Minute Entry”) directed the Clerk to “delete Exhibit A from the Complaint filed December 29,  
4 2014 [specifying which action] and Exhibit A-1 to Plaintiff’s Separate Statement of Facts in  
5 Support of Motion for Summary Judgment filed January 13, 2016.” The Minute Entry further  
6 directed counsel for the Club to “file an Amended Plaintiff’s Separate Statement of Facts in  
7 Support of Motion for Summary Judgment with the correct exhibit attached thereto.”

8 On February 4, 2016, the Court issued a Nunc Pro Tunc Order amending the Minute  
9 Entry to indicate the Clerk “shall remove Exhibit A-1 to Plaintiff’s Separate Statement of Facts  
10 in Support of Motion for Summary Judgment electronically filed January 13, 2016, bearing ID#  
11 7122469, 7122537 and 7122320.”

12 The Club respectfully suggests that there are two statements in the Minute Entry that  
13 require clarification and/or correction. First, the Clerk should not delete Exhibit A to the  
14 Complaint in its entirety. Instead, the deletion should be limited to the Application that was  
15 inadvertently included in the Exhibit; the [redacted]’ Membership Agreement with the Club  
16 should remain as Exhibit A.

17 Second, in addressing the Statement of Facts, the Court has identified a filing date of  
18 January 13, 2016. This was the date upon which the Club filed Motions for Summary Judgment  
19 and Supporting Statements of Fact in the Clark and Graham Actions. As previously noted, the  
20 Motion to Delete does not relate in any way to the Clark and Graham Actions. The Minute  
21 Entry should reference the Supporting Statement of Facts in the [redacted] Action, which was filed  
22 by the Club on May 5, 2015.

23 Apart from these two specific statements, the Club respectfully requests that the Court  
24 clarify that the Motion to Delete and the Minute Entry relates solely to the [redacted] Action, and  
25 not to the Graham Action or the Clark Action. Further, insofar as Judge Bergin has previously  
26 granted summary judgment in favor of the Club in the [redacted] Action and has denied the  
27 [redacted]’ Motion to Vacate that ruling, the Club would ask the Court to provide that the Club’s  
28 refiling of the Supporting Statement of Facts in the [redacted] Action merely correct the

1 inadvertent inclusion of information protected under Rule 5(f), and does not reopen or  
2 otherwise impact the Court's prior ruling granting summary judgment to the Club.

3 Accordingly, the Club respectfully requests that the Court modify the third paragraph of  
4 the Minute Entry as follows:

5 **IT IS FURTHER ORDERED** that D&C Materials – CSC shall  
6 delete the final ten (10) pages of Exhibit A to the Complaint filed  
7 in CV2014-015335 on December 29, 2014 and the final ten (10)  
8 pages of Exhibit A-1 to the Statement of Facts in Support of  
9 Plaintiff's Motion for Summary Judgment filed in CV2014-015335  
10 on May 5, 2015 with filing ID#6580924, leaving both Exhibit A  
11 and Exhibit A-1 as five (5) page documents.

12 A sample of the foregoing corrected exhibits is attached hereto for the Court's convenience as  
13 Attachment 1. The Court should note that Exhibit A to the Complaint in the Action and  
14 Exhibit A-1 to the Statement of Fact in Support of Plaintiff's Motion for Summary Judgment in  
15 the Action are identical.

16 The Club submits that, if the Court is amenable to the foregoing approach there would be  
17 no need to file an Amended Statement of Facts in Support of Plaintiff's Motion for Summary  
18 Judgment in the Action. The Club believes that this approach may be preferable in that  
19 it would prevent any confusion that might arise in any appellate proceeding from the filing of an  
20 Amended Statement of Facts three months after the grant of summary judgment.

21 If, however, the Court believes that it would be preferable for the Club to file an  
22 Amended Statement of Facts, the Club will do so, but in that event would request the Court to  
23 include a statement in its ruling on this Motion for Clarification/Reconsideration providing that  
24 such filing does not impair the validity of the Court's October 19, 2015 Under Advisement  
25 Ruling granting summary judgment in favor of the Club in the Action.

26 The Club's counsel has contacted Michael Blair, counsel for the Grahams and the Clarks,  
27 regarding this matter, and he has stated that his clients will not oppose this Motion for  
28 Clarification. Club counsel left a voicemail message for on February 4, 2016, to  
discuss this matter, but Mr. did not return the call. If the Court would like a conference  
call regarding this matter, one can be scheduled upon contact with the .

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DATED this 5th day of February, 2016.

FENNEMORE CRAIG, P.C.

By /s/ Jennifer L. Blasko  
Christopher L. Callahan  
Theresa Dwyer-Federhar  
Jennifer L. Blasko  
Attorneys for Plaintiff  
Desert Mountain Club, Inc.

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The Honorable David Gass  
Maricopa County Superior Court  
101 W. Jefferson Street, Room 514  
Phoenix, AZ 85003-2243

COPIES both mailed via regular mail  
and emailed this 5th day of February, 2016,  
to:

Daryl M. Williams  
Baird, Williams and Greer, LLP  
6225 N. 24th Street, Suite 125  
Phoenix, AZ 85016  
Email: [darylwilliams@bwglaw.net](mailto:darylwilliams@bwglaw.net)  
*Attorneys for Defendants  
Eric and Rhona Graham  
Thomas and Barbara Clark*

/s/ Emilia Serrata

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