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5 Attorneys for Plaintiff  
6 Desert Mountain Club, Inc.

8 SUPERIOR COURT OF ARIZONA

9 MARICOPA COUNTY

10 DESERT MOUNTAIN CLUB, INC.,

11 Plaintiff,

12 v.

13 ERIC GRAHAM and RHONA GRAHAM,  
husband and wife,

14 Defendants.

No. CV2014-015333

No. CV2014-015334

No. CV2014-015335  
(Consolidated)

**JUDGMENT**

15 DESERT MOUNTAIN CLUB, INC.,

16 Plaintiff,

17 v.

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

20 Defendants.

(Consolidated Action: Assigned to the Hon. David Gass)

1 On December 29, 2014, Plaintiff Desert Mountain Club, Inc. (the “Club”) filed separate  
2 complaints for declaratory relief and breach of contract against certain Equity Club Members as  
3 follows:

- 4 • Defendants Eric and Rhona Graham (collectively, the “Grahams”) in  
5 CV2014-015333 (the “*Graham Lawsuit*”);
- 6 • Defendants Thomas and Barbara Clark (collectively, the “Clarks”) in  
7 CV2014-015334 (the “*Clark Lawsuit*”); and
- 8 • Defendants \_\_\_\_\_ (collectively, the “\_\_\_\_\_”) in CV2014-  
9 015335 (the “\_\_\_\_\_ Lawsuit”).

10 The *Clark* and \_\_\_\_\_ Lawsuits were consolidated for all purposes on July 1, 2015. The *Graham*  
11 Lawsuit was later consolidated with the *Clark* and \_\_\_\_\_ Lawsuits, again for all purposes, on  
12 December 10, 2015.

13 On or about October 19, 2015, the Court (Judge Bergin) resolved a variety of motions,  
14 including a motion for summary judgment filed by the Club against the \_\_\_\_\_, and a motion for  
15 judgment on the pleadings filed by the Clarks in the \_\_\_\_\_ and *Clark* Lawsuits. Accordingly, on  
16 April 21, 2016, the Court entered a Rule 54(b) Judgment in the \_\_\_\_\_ Lawsuit (CV2014-  
17 015335): (a) in favor of the Club and against the \_\_\_\_\_ on all claims asserted by the Club  
18 against the \_\_\_\_\_ (including claims for attorneys’ fees and costs), and (b) on the \_\_\_\_\_’  
19 counterclaim against the Club. The \_\_\_\_\_ did not appeal the Rule 54(b) Judgment against them.

20 On or about January 13, 2016, the Club filed a motion for summary judgment against the  
21 Clarks in the *Clark* Lawsuit and a motion for summary judgment against the Grahams in the  
22 *Graham* Lawsuit. After additional discovery, and upon briefing and oral argument, the Court  
23 (now Judge Gass) granted the Club’s motions for summary judgment against the Clarks and the  
24 Grahams, respectively, in a November 21, 2016 minute entry ruling. The Court found that all  
25 three cases presented identical issues and involved substantially similar contracts between the  
26 Club and the Defendant Club Members (i.e., the \_\_\_\_\_, the Clarks, and the Grahams), and  
27 confirmed the reasoning set forth in the prior October 19, 2015 order against the \_\_\_\_\_ and the  
28 Clarks. The Court further found that neither the Grahams nor the Clarks were permitted under

1 Arizona law and the unambiguous terms of the parties' respective contracts (which included the  
2 Club's Bylaws and Regulations) to resign their Equity Club Memberships unilaterally. Instead,  
3 the Clarks and the Grahams were required to surrender their Memberships to the Club for  
4 reissuance as provided by the Bylaws and to continue paying all dues and fees to the Club until  
5 the completion of such reissuance.

6 **THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED** granting  
7 judgment: (a) in favor of the Club and against the Grahams with respect to all claims asserted by  
8 the Club against the Grahams in the Club's complaint in CV2014-015333 (the *Graham* Lawsuit);  
9 and (b) in favor of the Club and against the Clarks with respect to all claims asserted by the Club  
10 against the Clarks in the Club's complaint in CV2014-015334 (the *Clark* Lawsuit).

11 **(The *Graham* Lawsuit)**

12 **IT IS FURTHER ORDERED** declaring that:

- 13 1. The Contract between the Club and the Grahams, which governs the  
14 manner in which Club Members may terminate their Equity Club  
15 Memberships, is valid, binding, and enforceable;
- 16 2. The Grahams' attempted unilateral resignation of their Equity Club  
17 Membership on or about May 20, 2014, was contrary to their Contract with  
18 the Club, and is, therefore, a nullity and of no effect;
- 19 3. The Grahams remain Equity Members of the Club and, as such, remain  
20 obligated for all past, current, and future dues, fees, assessments and other  
21 charges properly posted to their Club account, including any and all  
22 applicable late fees, until such time as their Equity Club Membership is  
23 reissued by the Club under its Bylaws; and
- 24 4. At such time as the Grahams' Equity Club Membership is reissued by the  
25 Club, the Grahams will owe a transfer fee in the amount of \$65,000 to the  
26 Club, as set forth in the Club's Bylaws.

27 **IT IS FURTHER ORDERED** awarding the Club damages in the amount of **\$37,022.09**  
28 (as of January 13, 2016) against Eric and Rhona Graham, jointly and severally, with interest to

1 accrue thereon at the statutory rate of 4.75% per annum from the date judgment is entered until  
2 paid in full pursuant to A.R.S. § 44-1201.

3 **IT IS FURTHER ORDERED** awarding the Club damages in the amount of **\$24,377.00**  
4 (for obligations incurred thereafter through November 30, 2016) against Eric and Rhona Graham,  
5 jointly and severally, with interest to accrue thereon at the statutory rate of 4.75% per annum  
6 from the date judgment is entered until paid in full pursuant to A.R.S. § 44-1201.

7 **IT IS FURTHER ORDERED** awarding reasonable attorneys' fees to the Club in the  
8 amount of **\$89,645.00** against Eric and Rhona Graham, jointly and severally, with interest to  
9 accrue thereon at the statutory rate of 4.75% per annum from the date judgment is entered until  
10 paid in full pursuant to A.R.S. § 44-1201.

11 **IT IS FURTHER ORDERED** awarding the Club taxable costs in the amount of  
12 **\$1,223.31** against Eric and Rhona Graham, jointly and severally, with interest to accrue thereon at  
13 the statutory rate of 4.75% per annum from the date judgment is entered until paid in full pursuant  
14 to A.R.S. § 44-1201.

15 **(The Clark Lawsuit)**

16 **IT IS FURTHER ORDERED** declaring that:

- 17 1. The Contract between the Club and the Clarks, which governs the manner  
18 in which Club Members may terminate their Equity Club Memberships, is  
19 valid, binding, and enforceable;
- 20 2. The Clarks' attempted unilateral resignation of their Equity Club  
21 Membership on or about January 1, 2014, was contrary to their Contract  
22 with the Club, and is, therefore, a nullity and of no effect;
- 23 3. The Clarks remain Equity Members of the Club and, as such, remain  
24 obligated for all past, current, and future dues, fees, assessments and other  
25 charges properly posted to their Club account, including any and all  
26 applicable late fees, until such time as their Equity Club Membership is  
27 reissued by the Club under its Bylaws; and
- 28 4. At such time as the Clarks' Equity Club Membership is reissued by the

1 Club, the Clarks will owe a transfer fee in the amount of \$65,000 to the  
2 Club, as set forth in the Club's Bylaws.

3 **IT IS FURTHER ORDERED** awarding the Club damages in the amount **\$47,531.74** (as  
4 of January 13, 2016) against Thomas and Barbara Clark, jointly and severally, with interest to  
5 accrue thereon at the statutory rate of 4.75% per annum from the date judgment is entered until  
6 paid in full pursuant to A.R.S. § 44-1201.

7 **IT IS FURTHER ORDERED** awarding the Club damages in the amount of **\$26,439.72**  
8 (for obligations incurred thereafter through November 30, 2016) against Thomas and Barbara  
9 Clark, jointly and severally, with interest to accrue thereon at the statutory rate of 4.75% per  
10 annum from the date judgment is entered until paid in full pursuant to A.R.S. § 44-1201.

11 **IT IS FURTHER ORDERED** awarding reasonable attorneys' fees to the Club in the  
12 amount of **\$140,939.00** against Thomas and Barbara Clark, jointly and severally, with interest to  
13 accrue thereon at the statutory rate of 4.75% per annum from the date judgment is entered until  
14 paid in full pursuant to A.R.S. § 44-1201.

15 **IT IS FURTHER ORDERED** awarding the Club taxable costs in the amount of  
16 **\$2,171.60** against Thomas and Barbara Clark, jointly and severally, with interest to accrue  
17 thereon at the statutory rate of 4.75% per annum from the date judgment is entered until paid in  
18 full pursuant to A.R.S. § 44-1201.

19 **(Rule 54(c) Certification)**

20 **IT IS FURTHER ORDERED** that no further matters remain pending and that this  
21 judgment is entered pursuant to Rule 54(c), Arizona Rules of Civil Procedure.

22 Dated this 20<sup>th</sup> day of 2016.

23  
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25 \_\_\_\_\_  
The Honorable David Gass  
Maricopa County Superior Court  
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# eSignature Page 1 of 1

Filing ID: 7964697 Case Number: CV2014-015333  
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**Granted with Modifications**



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/S/ David Gass Date: 12/20/2016  
Judicial Officer of Superior Court

**ENDORSEMENT PAGE**

CASE NUMBER: CV2014-015333

SIGNATURE DATE: 12/20/2016

E-FILING ID #: 7964697

FILED DATE: 12/22/2016 8:00:00 AM

CHRISTOPHER L CALLAHAN

DARYL M WILLIAMS