

1 Christopher A. LaVoy, State Bar No. 016609



3 SEVENTH FLOOR CAMELBACK ESPLANADE II
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10 **SUPERIOR COURT OF ARIZONA**
11 **MARICOPA COUNTY**

12 Desert Mountain Club, Inc.,

13 Plaintiff,

14 vs.

15 Thomas Clark and Barbara Clark,
16 husband and wife,

17 Defendants.

18 Case No. CV2014-015334

19 **AMENDED MOTION TO QUASH**
20 **SUBPOENA**

21 (Hon. Dawn Bergin)

22 (Oral Argument Requested)

23 **Introduction**

24 The original subpoena that defendants served on undersigned counsel, Christopher
25 A. LaVoy, has been mooted by the amended subpoena they served on him after receiving
26 the Motion to Quash. *See* Ex. 1, Amended Subpoena Duces Tecum. The amended
subpoena included a witness-fee check and moved the deposition date to Friday, June 19,
2015. This Amended Motion to Quash is directed at the amended subpoena.

Mr. LaVoy represents Non-party Robert Jones, II whose deposition was noticed
by defendants. Mr. LaVoy has made a limited appearance in the case to file a motion for
a protective order on Mr. Jones's behalf.

Defendants responded to Mr. LaVoy's appearance by subpoenaing him. They
contend Mr. LaVoy has a conflict of interest representing Mr. Jones based on his free
consultation with a prospective client, Ronald Yelin, earlier this year. Mr. Yelin is not a

1 party in this case. The apparent purpose of the amended subpoena is to investigate this
2 purported conflict.

3 Defendants' amended subpoena should be quashed because:

- 4 • Defendants lack standing to investigate and assert Mr. Yelin's interests;
- 5 • There is no conflict—defendants cite the wrong ethical rule;
- 6 • The requested documents and information are irrelevant and confidential;
- 7 and
- 8 • Defendants failed to obtain plaintiff's consent or leave of Court to depose
9 undersigned counsel.

10 The amended subpoena is a tacit acknowledgement of the invalidity of the original
11 subpoena. An award of attorneys' fees as to the original subpoena is therefore
12 appropriate. Attorneys' fees incurred filing this Amended Motion to Quash should also
13 be granted because the amended subpoena is equally frivolous.

14 Argument

15 **I. DEFENDANTS LACK STANDING.**

16 The well-established rule in Arizona is that “only a client or a former client has
17 standing to challenge legal representation on grounds of conflict of interest.” *State ex rel.*
18 *Romley v. Superior Court in & for Cnty. of Maricopa*, 181 Ariz. 378, 380, 891 P.2d 246,
19 248 (App. 1995); *see also State v. Garaygordobil*, 89 Ariz. 161, 164, 359 P.2d 753, 755
20 (1961) (“[T]he only ones entitled to object to such representation on the ground of
21 conflicting interests is one who holds the relation of client to an attorney who undertakes
22 to represent conflicting interests”).

23 Defendants do not contend they consulted with undersigned counsel. They
24 contend non-party Ron Yelin did. Defendants seek to assert Mr. Yelin's interests, which
25 they lack standing to do.

26

1 **II. THERE IS NO CONFLICT.**

2 The applicable rule is ER 1.18, not ER 1.9. Entitled “Duties to Prospective
3 Client,” ER 1.18 provides in relevant part:

4 A lawyer . . . shall not represent a client with interests materially adverse
5 to those of a prospective client in the same or a substantially related matter
6 if the lawyer received information from the prospective client that could be
significantly harmful to that person *in the matter*

7 Ariz. R. S. Ct., Rule 42, ER 1.18(c) (emphasis added).¹

8 The question under ER 1.18 is whether the information Mr. LaVoy received from
9 Mr. Yelin in the consultation could be “significantly harmful” to Mr. Yelin “in the
10 matter.” *Id.* The answer is no for multiple reasons.

11 First, Mr. LaVoy’s appearance in this case is temporary and limited in scope to
12 seeking a protective order on Mr. Jones’s behalf. Mr. Jones’s motion for a protective
13 order does not go to the merits of the controversy, but concerns his contractual
14 confidentiality obligations to his former employer.

15
16
17 ¹ Prospective clients “receive some but not all of the protection afforded” former clients
18 under ER 1.9. “[U]nder paragraph (c), the lawyer is not prohibited from representing a
19 client with interests adverse to those of the prospective client in the same or a
20 substantially related matter unless the lawyer has received from the prospective client
21 information that could be significantly harmful if used against the prospective client in
22 the matter.” *Id.*, Editor’s Notes, cmt. “This is a higher standard for the person to meet
23 than is found in ER 1.9 (Duties to Former Clients), making it harder for the prospective
24 client to disqualify the once-prospective lawyer.” David D. Dodge, *Disclaimers, Good
25 Faith and the Prospective Client*, ARIZ. ATT’Y, February 2012, at 10; *see also*
26 RESTATEMENT (THIRD) OF LAW GOVERNING LAW § 15 (2000) (“Thus, . . . [the]
prohibition exists only when the lawyer has received from the prospective client
information that could be significantly harmful to the prospective client in the matter.”);
State ex rel. Thompson v. Dueker, 346 S.W.3d 390, 396 (Mo. App. 2011) (“Thus, one of
the primary differences between Rule 4–1.9 and Rule 4–1.18 is that representation is not
barred by Rule 4–1.18 unless the lawyer has received from the prospective client
information that could be significantly harmful if used in the matter”) (internal quotation
marks omitted).

1 Second, even if the merits were in play, Mr. Yelin would not be bound by the
2 outcome. Mr. Yelin is not a party in this case. His rights are not being adjudicated. He is
3 free to re-litigate everything.

4 Third, none of the documents that Mr. Yelin provided to Mr. LaVoy for the
5 consultation could harm him. The club already has copies of its bylaws, other
6 membership documents, and the demand letter it sent Mr. Yelin. The strategy e-mail that
7 Mr. Yelin forwarded to Mr. LaVoy, entitled “Points Favoring the Defendants,” was *not*
8 drafted by Mr. Yelin as defendants falsely imply, but rather by Gary W. Moselle, a
9 former club member whose retirement hobby is following and publicly commenting on
10 this case. Mr. Moselle runs the website www.desertmountaingolfscam.com. Upon
11 information and belief, Mr. Moselle blasted the unsolicited e-mail to hundreds of club
12 members, including Mr. Yelin. Mr. Yelin forwarding Mr. Moselle’s widely disseminated
13 e-mail to undersigned counsel does not transform it into a privileged attorney-client
14 communication. In fact, defendants themselves produced a copy of Mr. Moselle’s e-mail
15 with their Rule 26.1 disclosure statement. Defendant’s argument that Mr. Moselle’s e-
16 mail and other publicly available documents must be protected is groundless.

17 Fourth, defendants have not identified any information shared verbally with Mr.
18 LaVoy that could be used to “significantly harm” Mr. Yelin “in the matter.” Ariz. R. S.
19 Ct., Rule 42, ER 1.18(c).²

20 Defendants’ theory of harm seems to be that undersigned counsel is interfering
21 with Mr. Yelin’s desire to acquire information that might potentially aid him in

22 ²The burden is on the movant to establish the prospective client shared confidential
23 information with the attorney that could significantly harm the prospective client in the
24 matter. *See Burch & Cracchiolo, P.A.*, 2015 WL 3511835, at *7 (holding that “party
25 seeking disqualification bears the burden of demonstrating why the disqualification is
26 warranted”); RESTATEMENT (THIRD) OF THE LAW GOVERNING LAWYERS § 15 cmt. *c*
(2000) (“When a tribunal is asked to disqualify a lawyer based on prior dealings with a
former prospective client, that person bears the burden of persuading the tribunal that the
lawyer received such information.”).

1 evaluating his legal rights. However, “in order for information to be deemed
2 ‘significantly harmful’ . . . , disclosure of that information cannot be simply detrimental in
3 general to the former prospective client, but the harm suffered must be prejudicial in fact
4 to the former prospective client within the confines of the specific matter in which
5 disqualification is sought.” *O Builders & Associates, Inc. v. Yuna Corp. of NJ*, 19 A.3d
6 966, 976 (N. J. 2011); *see also Burch & Cracchiolo, P.A. v. Myers*, No. 1 CA-SA 15-
7 0013, 2015 WL 3511835, at *7 (Ariz. App. June 4, 2015) (discussing *O Builders*
8 decision); *Dueker*, 346 S.W.3d at 396 (holding that “speculative or hypothetical claims of
9 harm are not enough”); *People v. Shepherd*, 26 N.E.3d 964, 974, ¶ 33 (Ill. App. 2015)
10 (reversing trial court’s finding of ethical violation because “speculation was not enough
11 to establish that a violation of Rule 1.18 occurred”).

12 Defendants have previously cited *Foulke v. Knuck*, 162 Ariz. 517, 784 P.2d 723
13 (App. 1989), but it is inapposite. *Foulke* construes ER 1.9, not ER 1.18. *Id.* at 521, 784
14 P.2d at 727. ER 1.18 superseded ER 1.9 as to prospective clients.

15 **III. THE DOCUMENTS AND INFORMATION ARE IRRELEVANT.**

16 Discovery of any relevant, non-privileged information is generally permissible.
17 *See* Ariz. R. Civ. P. 26(b)(1). Information is not discoverable if it is not reasonably
18 calculated to the lead to admissible evidence. *See id.* The liberality of the discovery rules
19 “may seriously implicate privacy interest of litigants and third parties.” *Seattle Times Co.*
20 *v. Rhinehart*, 467 U.S. 20, 35 (1984). Thus, “[t]he court may, for good cause, issue an
21 order to protect a party or person from annoyance, embarrassment, oppression, or undue
22 burden or expense, including . . . [that] confidential . . . commercial information not be
23 disclosed or be disclosed only in a designated way.” Ariz. R. Civ. P. 26(c)(7).

24 The requested documents and information have no plausible bearing on the merits
25 of this controversy. Nothing requested would be admissible at trial on the substantive
26 issues, nor are the requests reasonably calculated to lead to the discovery of admissible

1 evidence. The requests relate entirely to a collateral, irrelevant ethics issue that
2 defendants have no standing to raise.

3 Beyond relevance, given the abuses and burdens associated with deposing
4 opposing counsel, courts have imposed the additional requirements that (1) no other
5 means exist to obtain the information and (2) the information is critical to preparing the
6 case. *See Shelton v. Am. Motors Corp.*, 805 F.2d 1323, 1327 (8th Cir 1986); *Sterne*
7 *Kessler Goldstein & Fox, PLLC v. Eastman Kodak Co.*, 276 F.R.D. 376, 380-82 (D.D.C.
8 2011); *N.F.A. Corp. v. Riverview Narrow Fabrics, Inc.*, 117 F.R.D. 83, 86 (M.D.N.C.
9 1987); *Tow Int'l, Inc. v. Pontin*, 246 F.R.D. 421, 425 (E.D.N.Y. 2007). These additional
10 requirements are not satisfied here.

11 **IV. THE DOCUMENTS AND INFORMATION ARE CONFIDENTIAL.**

12 Any information Mr. Yelin shared with Mr. LaVoy is confidential under ER 1.6
13 and/or the attorney-client privilege. Defendants have no right to Mr. Yelin's confidential
14 information. Producing the requested documents and answering deposition questions
15 about the consultation would waive Mr. Yelin's confidentiality. Mr. Yelin has not
16 notified undersigned counsel that he waives confidentiality.³

17 **V. DEFENDANTS MAY NOT DEPOSE MR. LAVOY.**

18 Defendants have made clear they intend to inquire into more than document
19 foundation at undersigned counsel's deposition. Their questioning will focus on "how
20 badly Mr. LaVoy's perfidy has infected Fennemore Craig." Resp. to Joiner in Robert
21 Jones's Motion for Protective Order, filed 6/4/2015, at 4:26-27. This is a videotaped
22

23 ³ The irony is that defense counsel has the conflict here. He recently disclosed (only *after*
24 undersigned counsel appeared at Mr. Jones's deposition and filed the motion for a
25 protective order on Mr. Jones's behalf) that he also represents Mr. Yelin. Thus, defense
26 counsel, on behalf of client A, served a subpoena for client B's privileged
communications, effectively waiving client B's privilege if undersigned counsel complies
with the subpoena. Client A's interest in obtaining the privileged communications is
adverse to client B's interest in preserving confidentiality.

1 deposition—no one videotapes a true document custodian deposition. No third-party
2 deposition that goes beyond document foundation is allowed except by agreement of the
3 parties or leave of Court, neither of which defendants obtained. *See* Ariz. R. Civ. P. 30(a).

4 **VI. DEFENDANTS AND THEIR ATTORNEY SHOULD BE SANCTIONED.**

5 Serving the amended subpoena on Mr. LaVoy to obtain Mr. Yelin’s confidential
6 records was an abuse of the subpoena power. If Mr. Yelin wanted his records, all he had
7 to do was ask for them.⁴ If defendants wanted Mr. Yelin’s records, they should have
8 asked Mr. Yelin for them. Defendants had no right to subpoena this firm for confidential
9 communications with Mr. Yelin. This is especially true after seeing the original Motion
10 to Quash explaining the impropriety of defendants’ conduct. They served the amended
11 subpoena with knowledge of impropriety. This was improper and needless discovery that
12 unreasonably burdened undersigned counsel and unnecessarily expanded these
13 proceedings. Rule 45(e)(1) and A.R.S. § 12-349(A)(3) and (4) specifically authorize fee-
14 shifting for such misconduct.

15 **Conclusion**

16 For the foregoing reasons, the Court should quash the amended subpoena and
17 award reasonable attorneys’ fees incurred in this proceeding.

18 DATED this 17th day of June, 2015.

19 TIFFANY & BOSCO, P.A.

20 By: /s/ Christopher A. LaVoy
21 Christopher A. LaVoy
22 Seventh Floor Camelback Esplanade II
23 2525 East Camelback Road
24 Phoenix, Arizona 85016-4237
Attorneys for Non-party Robert Jones, II

25 ⁴ As of this date, Mr. Yelin has not requested copies of the documents associated with
26 undersigned counsel’s brief meeting with him on January 27, 2015. However, in an
abundance of caution, undersigned counsel sent copies of such documents to Mr. Yelin’s
counsel.

1 ORIGINAL of the foregoing **electronically**
2 **filed** and a COPY **electronically mailed** this
3 17th day of June, 2015 to:

4 Daryl M. Williams, Esq.
5 Baird, Williams, & Greer, LLP
6 darylwilliams@bwglaw.net
7 *Attorneys for Defendants*

8 Christopher L. Callahan, Esq.
9 Seth G. Schuknecht, Esq.
10 Fennemore Craig, PC
11 ccallahan@fclaw.com
12 sschuknecht@fclaw.com
13 *Attorneys for Plaintiff*

14 By: s/ Emily Kingston

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23
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25
26

Exhibit 1

BAIRD, WILLIAMS, & GREER, L. L. P.
6225 N 24TH ST STE 125
PHOENIX, AZ 85016-2036

WELLS FARGO BANK, N.A.
www.wellsfargo.com
91-527/1221

2017

6/8/2015

PAY TO THE
ORDER OF

Christopher A. LaVoy

\$ **18.00

Eighteen and 00/100*****

DOLLARS

Christopher A. LaVoy



AUTHORIZED SIGNATURE

MEMO

Witness Fee

⑈0000002017⑈ ⑆122105278⑆ 5775578494⑈

Details on Back.
Security Features Included

BAIRD, WILLIAMS, & GREER, L. L. P.

2017

Christopher A. LaVoy
Client Costs: Witness Fees

6/8/2015

DesertMtn.DesertMountain

18.00

1 Wells Fargo Gen 84 Witness Fee

18.00

1
2
3 BAIRD, WILLIAMS & GREER, L.L.P.
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9 Attorneys for Thomas and Barbara Clark

10 IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
11 IN AND FOR THE COUNTY OF MARICOPA

12 Desert Mountain Club, Inc.,
13 Plaintiff,

14 vs.

15 Thomas Clark and Barbara Clark, husband
16 and wife,
17 Defendants.

18) No. CV2014-015334

19) **Amended Subpoena Duces Tecum**

20) (Assigned to the Honorable Dawn Bergin)

21 _____
22 Amended due to clerical error. The corrected date is below.

23 **THE STATE OF ARIZONA TO:**

24 Chris Lavoy as Custodian of Records
25 2525 E Camelback Rd #300,
26 Phoenix, Arizona 85016

27 **For Taking of Depositions**

28 **YOU ARE COMMANDED** to appear at the place, date and time specified below to
testify at the taking of a deposition in the above cause:

Address: **Law Office of Baird Williams & Greer, LLP**
6225 North 24th Street, Suite 125
Phoenix, AZ 85016
Date: **Friday, June 19, 2015**
Time: **9:00 a.m. MST**

For Production of Documentary Evidence or Inspection of Premises

YOU ARE COMMANDED to produce and permit inspection, copying, testing, or
sampling of the following designated documents, electronically stored information or
tangible things, or to permit the inspection of premises:

1. Notes taken by you or anyone at your firm in conjunction to the telephone conversation you had with Ron Yelin, during the week of January 19, 2015, regarding a letter Mr. Yelin received from Seth Schuknecht at Fennemore Craig dated 01/16/15.
2. Ron Yelin's email to you on January 23, 2015, with all of its attachments.
3. Time records maintained by you or anyone at your firm with respect to consultation you had with Ron Yelin on January 27, 2015.

- 1 4. Notes you or anyone at your firm kept with regard to the meeting with Ron Yelin on
2 January 27, 2015.
- 3 5. Copies of all communications to or from Ron Yelin or interoffice communications
4 about Ron Yelin.
- 5 6. All documents reflecting the date upon which you were retained to represent Bob
6 Jones in his individual capacity with respect to claims made by Fennemore Craig
7 against Ron Yelin and other residents of Desert Mountain, including Tom Clark and
8 his wife.
- 9 7. All emails or other correspondence between you and anyone at your firm and
10 Fennemore Craig or anyone at that firm with regard to Desert Mountain's law suit
11 against Tom Clark.
- 12 8. All time records reflecting any discussions or contact you had with Bob Jones or
13 anyone at Fennemore Craig regarding the Tom Clark law suit.
- 14 9. Documents and communications between you and anyone at Fennemore Craig
15 regarding the conduct of Bob Jones deposition, objections and the motions filed by
16 you and Fennemore Craig in regard to that deposition.
- 17 10. Communications you had with any other officer, board member or club member at
18 Desert Mountain regarding the claims asserted by Desert Mountain against Ron Yelin,
19 Tom Clark, and other members of Desert Mountain.
- 20 11. To the extent any of the forgoing documents are maintained as electronically stored
21 information then the native files of these documents are to be produced in their
22 original native file format with metadata.

23 Place of Deposition and Production:

24 Address: **Law Office of Baird Williams & Greer, LLP**
25 **6225 North 24th Street, Suite 125**
26 **Phoenix, AZ 85016**
27 Date: **Friday, June 19, 2015**
28 Time: **9:00 a.m. MST**

Your Duties in Responding to This Subpoena

21 ***Attendance at a Trial.*** If this subpoena commands you to appear at a trial, you must appear
22 at the place, date and time designated in the subpoena unless you file a timely motion with the court
23 and the court quashes or modifies the subpoena. *See* Rule 45(b)(5) and Rule 45(3)(2) of the Arizona
24 Rules of Civil Procedure. *See also* "Your Right To Object To This Subpoena" section below. Unless
25 a court orders otherwise, you are required to travel to any part of the state to attend and give
26 testimony at a trial. *See* Rule 45(b)(3)(A) of the Arizona Rules of Civil Procedure.

27 ***Attendance at a Hearing or Deposition.*** If this subpoena commands you to appear at a
28 hearing or deposition, you must appear at the place, date and time designated in this subpoena unless
either: (1) you file a timely motion with the court and the court quashes or modifies the subpoena;
or (2) you re not a party or a party's officer and this subpoena commands you to travel to a place
other than: (a) the county in which you reside or you transact business in person; or (b) the county
in which you were served with the subpoena or within forty (40) miles from the place of service;
or (c) such other convenient place fixed by a court order. *See* Rule 45(b)(3)(B) and Rule

1 45(e)(2)(A)(ii) of the Arizona Rules of Civil Procedure. *See also* “Your Right To Object To This
2 Subpoena” section below.

3 ***Production of Documentary Evidence or Inspection of Premises.*** If this subpoena
4 commands you to produce and permit inspection, copying, testing or sampling of designated
5 documents, electronically stored information, or tangible things, you must make the items available
6 at the place, date and time designated in this subpoena, and in the case of electronically stored
7 information, in the form or forms requested, unless you provide a good faith written objection to the
8 party or attorney who served the subpoena. *See* Rule 45(c)(5) of the Arizona Rules of Civil
9 Procedure. *See also* “Your Right To Object To This Subpoena” section below. Similarly, if this
10 subpoena commands you to make certain premises available for inspection, you must make the
11 designated premises available for inspection on the date and time designated in this subpoena unless
12 you provide a good faith written objection to the party or attorney who served the subpoena. *See*
13 Rule 45(c)(5) of the Arizona Rules of Civil Procedure. *See also* “Your Right To Object To This
14 Subpoena” section below.

15 You should note that a command to produce certain designated materials, or to permit the
16 inspection of premises, *may* be combined with a command to appear at a trial, hearing or deposition.
17 *See* Rule 45(b)(2) of the Arizona Rules of Civil Procedure. You do not, however, need to appear in
18 person at the place of production or inspection unless the subpoena *also* states that you must appear
19 for and give testimony at a hearing, trial or deposition. *See* Rule 45(c)(3) of the Arizona Rules of
20 Civil Procedure.

21 If the subpoena commands you to produce documents, you have the duty to produce the
22 designated documents as they are kept by you in the usual course of business, or you may organize
23 the documents and label them to correspond with the categories set forth in the subpoena. *See* Rule
24 45(c)(4) of the Arizona Rules of Civil Procedure.

25 **Your Right To Object To This Subpoena**

26 ***Generally.*** If you have concerns or questions about this subpoena, you should first contact
27 the party or attorney who served the subpoena. The party or attorney serving the subpoena has a duty
28 to take reasonable steps to avoid imposing an undue burden or expense on you. The superior court
enforces this duty and may impose sanctions upon the party or attorney serving the subpoena if this
duty is breached. *See* Rule 45(3)(1) of the Arizona Rules of Civil Procedure.

19 ***Procedure for Objecting to a Subpoena for Attendance at a Hearing, Trial or Deposition.***
20 If you wish to object to a subpoena commanding your appearance at a hearing, trial or deposition,
21 you must file a motion to quash or modify the subpoena with the court to obtain a court order
22 excusing you from complying with this subpoena. *See* Rules 45(b)(5) and 45(3)(2) of the Arizona
23 Rules of Civil Procedure. The motion must be filed in the superior court of the county in which the
24 case is pending or in the superior court of the county from which the subpoena was issued. *See* Rule
25 45(e)(2)(A) and (B) of the Arizona Rules of Civil Procedure. The motion must be filed before the
26 time specified for compliance or within 14 days after the subpoena is served, whichever is earlier.
27 *See* Rule 45(e)(2)(D) of the Arizona Rules of Civil Procedure. You must send a copy of any motion
28 to quash or modify the subpoena to the party or attorney who served the subpoena. *See* Rules
45(e)(2)(E) of the Arizona Rules of Civil Procedure.

25 The court *must* quash or modify a subpoena:
26 (1) if the subpoena does not provide a reasonable time for compliance;
27 (2) unless the subpoena commands your attendance at a trial, if you are not a party or a
28 party’s officer and if the subpoena commands you to travel to a place other than: (a) the county in
which you reside or transact business in person; (b) the county in which you were served with a
subpoena, or within forty (40) miles from the place of service; or (c) such other convenient place
fixed by a court order; or

1 (3) if the subpoena requires disclosure of privileged or other protected matter, if no exception
or waiver applies; or

2 (4) if the subpoena subjects you to undue burden.

3 *See* Rule 45(e)(2)(A) of the Arizona Rules of Civil Procedure.

4 The court *may* quash or modify a subpoena;

5 (1) if the subpoena requires you to disclose a trade secret or other confidential research,
development or commercial information;

6 (2) if you are an unretained expert and the subpoena requires you to disclose your opinion
or information resulting from your study that you have not been requested by any party to give on
matters that are specific to the dispute;

7 (3) if you are not a party or a party's officer and the subpoena would require you to incur
substantial travel expense; or

8 (4) if the court determines that justice requires the subpoena to be quashed or modified.

9 *See* Rule 45(e)(2)(B) of the Arizona Rules of Civil Procedure.

10 In these last four circumstances, a court may, instead of quashing or modifying a subpoena, order
your appearance or order the production of material under specified conditions if: (1) the serving
party or attorney shows a substantial need for the testimony or material that cannot be otherwise met
without undue hardship; and (2) if your travel expenses or the expenses resulting from the
production are at issue, the court ensures that you will be reasonably compensated. *See* Rule
11 45(e)(2)(C) of the Arizona Rules of Civil Procedure.

12 ***Procedures for Objecting to Subpoena For Production of Documentary Evidence.*** If you
13 wish to object to a subpoena commanding you to produce documents, electronically stored
information or tangible items, or to permit the inspection of premises, you may send a good faith
14 written objection to the party or attorney serving the subpoena that objects to: (1) producing,
inspecting, copying, testing or sampling any or all of the materials designated in the subpoena; (2)
15 inspecting the premises; or (3) producing electronically stored information in the form or forms
requested. You must send your written objection to the party or attorney who served the subpoena
before the time specified for compliance or within 14 days after the subpoena is served, whichever
16 is earlier. *See* Rule 45(c)(5)(A)(ii) of the Arizona Rules of Civil Procedure.

17 If you object because you claim the information you requested is privileged, protected,
or subject to protection as trial preparation material, you must express the objection clearly, and
18 support each objection with a description of the nature of the document, communication or item not
produced so that the demanding party can contest the claim. *See* Rule 45(c)(5)(C) of the Arizona
19 Rules of Civil Procedure.

20 If you object to the subpoena in writing, you do not need to comply with the subpoena until
a court orders you to do so. It will be up to the party or attorney serving the subpoena to first
21 personally consult with you and engage in good faith efforts to resolve your objection and, if the
objection cannot be resolved, to seek an order from the court to compel you to provide the
22 documents or inspection requested after providing notice to you. *See* Rule 45(e)(5)(B) of the
Arizona Rules of Civil Procedure.

23 If you are not a party to the litigation, or a party's officer, the court will issue an order to
24 protect you from any significant expense resulting from the inspection and copying commanded. *See*
Rule 45(e)(6)(B) of the Arizona Rules of Civil Procedure.

25 Instead of sending a written objection to the party or attorney who served the subpoena, you
26 also have the option of raising your objections in a motion to quash or modify the subpoena. *See*
Rule 45(e)(2) of the Arizona Rules for Civil Procedure. The procedure and grounds for doing so are
27 described in the section above entitled "Procedure for Objecting to a Subpoena for Attendance at
a Hearing, Trial or Deposition."
28

1 If the subpoena *also* commands your attendance at a hearing, trial or deposition, sending a
2 written objection to the party or attorney who served the subpoena does not suspend or modify your
3 obligation to attend and give testimony at the date, time and place specified in the subpoena. See
4 Rule 45(e)(5)(A)(iii) of the Arizona Rules of Civil Procedure. If you wish to object to the portion
5 of this subpoena requiring your attendance at a hearing, trial or deposition, you must file a motion
6 to quash or modify the subpoena as described in the section above entitled "Procedure for Objecting
7 to a Subpoena for Attendance at a Hearing, Trial or Deposition." See Rule 45(b)(5) and 45(e)(5)(iii)
8 of the Arizona Rules of Civil Procedure.

9 **ADA Notification**

10 Requests for reasonable accommodation for persons with disabilities must be made to the
11 court by parties at least 3 working days in advance of a scheduled court proceeding.

12 SIGNED AND SEALED this date: _____

13 Clerk of the Court

COPY

14 By: _____

15 Deputy Clerk

JUN 8 2015



MICHAEL K. JEANES, CLERK
J. FIERRO
DEPUTY CLERK

1 Copy mailed this 8th day
of June, 2015, to:

2 Christopher L. Callahan
3 Seth G. Schuknecht
4 *Fennemore Craig, P.C.*
5 2394 E. Camelback Rd., Suite 600
Phoenix, AZ 85016-3429
6 ccallahan@fclaw.com
sschuknecht@fclaw.com
attorneys for plaintiff

7 Coash & Coash
8 Court Reporters
1802 N. 7th St.
Phoenix AZ 85006

9 /s/ Diana L. Clark

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3 BAIRD, WILLIAMS & GREER, L.L.P.
4 6225 NORTH 24TH STREET, SUITE 125
5 PHOENIX, ARIZONA 85016
6 TELEPHONE (602) 256-9400

7 Daryl M. Williams (004631)
8 darylwilliams@bwglaw.net
9 Attorneys for Thomas and Barbara Clark

10
11 IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
12 IN AND FOR THE COUNTY OF MARICOPA

13 Desert Mountain Club, Inc.,
14 Plaintiff,

15 vs.

16 Thomas Clark and Barbara Clark, husband
17 and wife,
18 Defendants.

19 No. CV2014-015334

20 **Amended Notice of Videotaped
21 Deposition of Chris LaVoy**

22 (Assigned to the Honorable Dawn Bergin)

23
24
25 This notice of deposition is being amended pursuant to a clerical error. The actual date of
26 the deposition has been corrected below.

27 The undersigned party will take the deposition upon oral examination of the person whose
28 name is stated below at the time and place stated below, before an officer authorized by law to
administer oaths. The deposition will be recorded by a court reporter from the court reporting
firm of Coash & Coash and videotaped by a videographer from the firm of Coash & Coash. One
camera will be used, and it will be focused on the witness unless the lawyer taking the deposition
directs the videographer otherwise.

PERSON TO BE EXAMINED:

Chris LaVoy
c/o Tiffany & Bosco, P.A.
2525 E. Camelback Rd., # 300
Phoenix, AZ 85016

DATE OF DEPOSITION:

Friday, June 19, 2015

TIME OF DEPOSITION:

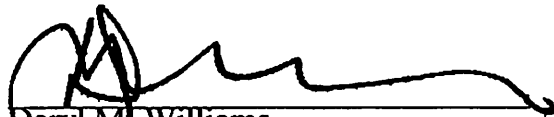
9:00 a.m.

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PLACE OF DEPOSITION:

Baird, Williams & Greer, LLP
6225 N. 24th Street, Suite 125
Phoenix, Arizona 85016

Dated this 8th day of June 2015.



Daryl M. Williams
Baird, Williams & Greer, LLP
6225 North 24th Street, Suite 125
Phoenix, Arizona 85016
Attorneys for plaintiff

Original mailed this 8th day
of June, 2015, to:

Christopher L. Callahan
Seth G. Schuknecht
Fennemore Craig, P.C.
2394 E. Camelback Rd., Suite 600
Phoenix, AZ 85016-3429
ccallahan@fclaw.com
sschuknecht@fclaw.com
attorneys for plaintiff

Copy mailed this same day to:

Coash & Coash
Court Reporters
1802 N. 7th St.
Phoenix, AZ 85006

/s/ Diana L. Clark

Exhibit 2

1 Christopher A. LaVoy, State Bar No. 016609



3 SEVENTH FLOOR CAMELBACK ESPLANADE II
4 2525 EAST CAMELBACK ROAD
5 PHOENIX, ARIZONA 85016-4219
6 TELEPHONE: 602-255-6000
7 FACSIMILE: 602-255-0103
8 E-Mail: cal@tblaw.com

9 *Attorneys for Non-Party Robert Jones, II*

10 **SUPERIOR COURT OF ARIZONA**
11 **MARICOPA COUNTY**

12 Desert Mountain Club, Inc.,

13 Plaintiff,

14 vs.

15 Thomas Clark and Barbara Clark,
16 husband and wife,

17 Defendants.

18 Case No. CV2014-015334

19 **DECLARATION OF CHRISTOPHER**
20 **A. LAVOY**

21 (Hon. Dawn Bergin)

22 I, Christopher A. LaVoy, do hereby declare as follows:

23 1. I am counsel for non-party Robert Jones, II whose deposition was noticed
24 by defendants. I entered a limited appearance in the case to file a motion for a protective
25 order on Mr. Jones's behalf. I do not represent plaintiff.

26 2. No check was delivered with the subpoena that defendants served on me.

3. I have provided copies of the documents associated with my free
consultation with Ronald Yelin on January 27, 2015 to his attorney Daryl Williams.

4. I have not disclosed any documents that Mr. Yelin e-mailed me for the
consultation to plaintiff, its attorneys, or Mr. Jones. Nor have I disclosed to them any of
the information that Mr. Yelin verbally communicated to me in the consultation.

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I declare under penalty of perjury that the foregoing is true and correct. Dated this
10th day of June, 2015.

By: 
Christopher A. LaVoy