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7 SUPERIOR COURT OF ARIZONA

8 MARICOPA COUNTY

9 Cheryl Marie McCoy et al,  
10 Plaintiff,

11 vs.

12 Brian Lindsey et al,  
13 Defendant  
14

Case No.: 2020010557

**REPLY TO PLAINTIFFS'  
OPPOSITION TO DEFENDANT'S  
MOTION FOR A DEFINITE  
STATEMENT**

15 Defendant Travis simply wants a more definite statement from the Plaintiffs so that  
16 Defendant can have Fair Notice of the allegations and for the Plaintiffs to remove vague and  
17 ambiguous language in the pleading. After this, Defendant believes he can offer up a proper  
18 defense. ARCP Rule 12(e) entitles the Defendant this request, and this request should be  
19 given liberally. Plaintiffs refuse to provide this simple request and so the Defendant must  
20 petition the Court for this relief.  
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23 **TIMELINE AND BACKGROUND**  
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1 Plaintiffs filed a lawsuit after being removed from power by a community vote recall. Finally,  
2 last month, the election from the vote recalled ended<sup>1</sup>. The community is now beginning to  
3 heal. The community would heal except for this frivolous lawsuit unfairly aimed at those  
4 both behind the recall and those that supported the recall and those that support the further  
5 election of community minded people.  
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8 Since the filing of this lawsuit, every single Answer and Motion to Dismiss has pointed out  
9 to the Court this lawsuit is another attack on the community members who have/had the  
10 audacity to stand up to the caustic tactics of the Plaintiffs.  
11

12 Many in the community and in the press have labeled these women, THE MEAN GIRLS<sup>2</sup>.  
13 Defendant has also embraced that characterization of the circumstances. Since the Plaintiffs  
14 have been removed from community power, the HOA has gone possibly its longest without  
15 filing a lawsuit against one of its 2500+ members. Instead, the Plaintiffs have kept up their  
16 lawsuit loving litigation against the community, and so the community and the Court must  
17 deal with this hurtful attempt to make others pay for speaking up during an election.  
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27 <sup>1</sup> Plaintiffs conveniently left this pertinent fact out. Or that the Plaintiffs threw their support and energy behind the wife of the  
Mormon Bishop. She is now on the community HOA Board.

28 <sup>2</sup> Reference to the blockbuster movie about three high school girls who run the school until the school members  
strike back.

1 Over a week after the response to Defendant's Motion for a More Definite Statement was  
2 due, Plaintiffs filed a very late response. Defendant requests that the Court strike Plaintiffs'  
3 late response and that the Plaintiffs be required to provide the requested information.  
4

5 Defendant is a long time HOA Board Member who has never been recalled. At 87 years old,  
6 Defendant is a Korean War Veteran, who is in frail health. He lives with his beautiful bride  
7 also near the same age, and she is also in frail health. The Defendant has always been  
8 approachable in the community, and spends his time trying to love his neighbor instead of  
9 making them pay for not voting for him<sup>3</sup>. A good man like this would never be recalled.  
10

11 Defendant understands that these women hurt, they have always hurt when they did not get  
12 their way. Defendant has known them for years. Defendant wishes he would have done  
13 more to stop them from lashing out at the community while they were fellow board members.  
14 Defendant should have realized that when they were fellow board members filing lawsuits,  
15 that this hurtful mentality would have bled over to now. If Defendant could do it all over  
16 again, he would teach these wayward girls correct principles, so that they would govern  
17 themselves appropriately later.  
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22 **PLAINTIFFS HAVE PROVIDED NO LEGAL JUSTIFICATION FOR THEIR**  
23 **ARGUMENTS AND IT SHOULD NOT BE REWARDED.**

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28 <sup>3</sup> If memory serves the Defendant correctly, he was usually one of the top vote getters in the elections, and that was without any shenanigans of a Manager 'harvesting commercial votes.'  
REPLY TO PLAINTIFFS' OPPOSITION TO DEFENDANT'S MOTION FOR A DEFINITE STATEMENT - 3

1 Plaintiffs’ response cites no legal authority for their legal positions. Plaintiffs also do not  
2 refute Defendant’s legal authority. Defendant requests that the Defendant’s position with  
3 legal authority be upheld by the Court. More specifically that the Court require the  
4 clarification and context the Defendant needs for Fair Notice in order to form an informed  
5 defense. Last week in another defamation case the Arizona Court of Appeals Division One  
6 wrote “Arizona courts afford “great weight to the context in which the statements are made,”  
7 *AMCOR*, 158 Ariz. At 570-71, and the “impression created by the words used as well as the  
8 general tenor of the expression, from the point of view of the reasonable person,” *Yetman*,  
9 168 Ariz. At 79”. *Rogers v. Mroz*, No. 1 CA-SA 19-0262, 2020 Ariz. App. LEXIS 793, at  
10 \*23 (Ct. App. Dec. 8, 2020). Plaintiffs’ allegations are filled with their own vitriolic  
11 commentary<sup>4</sup>. Defendant needs clarification, for Fair Notice. Defendant needs all vague and  
12 ambiguous terms clarified.

13 Defendant has the right to prepare a defense. Defendant should not have to guess.

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15 **PLAINTIFFS RESPONSE TO A SIMPLE REQUEST FOR A MORE DEFINITE**  
16 **STATEMENT SEEMS TO BE; ONLY WE CAN HAVE THE INFORMATION SO**  
17 **DEFENDANT WILL HAVE TO WAIT UNTIL DISCOVERY TO PREPARE A**  
18 **DEFENSE.**

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20 There is no legal justification for forcing the Defendant to have to fight in discovery to get  
21 information he needs for Fair Notice. However, there is much legal justification for  
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28 <sup>4</sup> This sad fact is the true irony of this case. The true vitriol and defamatory language comes from the Plaintiffs’ commentary  
about what the Plaintiffs wanted the Defendant to say, which has been shown to not be what the Defendant said.

1 providing the information the Defendant requests. “Under the aegis of the First Amendment,  
2 a particular word or phrase ordinarily cannot be defamatory unless in a given context it  
3 reasonably can be understood as having an easily ascertainable and objectively verifiable  
4 meaning.” *Levinsky’s*, 127 F.3d at 129; *Rogers v. Mroz*, No. 1 CA-SA 19-0262, 2020 Ariz.  
5 App. LEXIS 793, at \*28 (Ct. App. Dec. 8, 2020) Plaintiffs made the bold statement under  
6 each Count in the Complaint. They state that the cause of action is for “**All Plaintiffs Against**  
7 **All Defendants**” Complaint, page 20, line 11; page 21, lines 3 and 20; page 22, lines 6 and  
8 23. Plaintiffs even bold that statement; it must be very important to Plaintiffs.

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12 It almost seems to the Defendant that the Plaintiffs have realized what a frivolous lawsuit  
13 this is and now are hoping that they can somehow get a nuisance settlement. This is not a  
14 good faith position and is a waste of court resources and time.

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16 **REQUEST 1: The Fourth Plaintiff be named.**

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18 Defendant wants to know, without any legal word play the name of the fourth Plaintiff as  
19 mentioned in the Complaint. Plaintiffs have responded to this simple request with dramatic  
20 fashion. Plaintiffs call it a “facetious request” and say “it is made to tweak Plaintiffs”.  
21 Defendant has no idea what that means. Plaintiffs repeatedly name FOUR bad actors in the  
22 HOA recall. Then in paragraph 38 in the Complaint, as Plaintiffs admit, they name four  
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1 Plaintiffs. The less dramatic<sup>5</sup> approach would be to have the paragraph or number stricken  
2 from the Complaint. So that it is clear that there was no somewhat hidden fourth plaintiff  
3  
4 waiting to surprise the Defendants. Defendant requests that the Court strike the word FOUR  
5 from paragraph 38 of the Complaint with prejudice.

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7 **REQUEST 2: Plaintiffs must make clear connections between individual Plaintiffs and**  
8 **specific causes of action.**

9 Under 12(e) Defendant is simply requesting the following relating to each cause of action:

- 10 a. False light invasion of privacy; how do the “posts” associated to Defendant apply to  
11 each and every Plaintiff and this cause of action.  
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13 b. Arizona Fair Housing Action violations; how do the “posts” associated to Defendant  
14 apply to each and every Plaintiff and this cause of action.  
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16 c. IIED; how do the “posts” associated to Defendant apply to each and every Plaintiff  
17 and this cause of action.  
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19 d. Private nuisance; how do the “posts” associated to Defendant apply to each and  
20 every Plaintiff and this cause of action.

21 Plaintiffs are playing a shell game<sup>6</sup> with Defendant. The game is guess which allegations  
22 apply to which Plaintiff. Defendant needs a more definite statement.  
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27 <sup>5</sup> In the movie Mean Girls, the three girls after they lose power, become even bigger ‘drama queens’.  
28 <sup>6</sup> a game involving sleight of hand, in which three inverted cups or nutshells are moved about, and contestants must spot which  
is the one with a pea or other object underneath. Many times the pea is not under any shell, and so the game is played simply to  
take the time and money of another.

1 **REQUEST 3: Plaintiffs must give full quotes, since Plaintiffs’ snippets have been shown**  
2 **to be disingenuously arranged to fabricate vitriolic content with their commentary.**

3 **REQUEST 4: Vague and ambiguous language such as POST, SECRET MEETINGS,**  
4 **ADOPTED, and THEY’RE.**

5 Vague terms need to be clear to both parties. The Plaintiffs should not be rewarded with their  
6 hide and seek version of legal word maneuverings. “The vaguer a term, or the more meanings  
7 it reasonably can convey, the less likely it is to be actionable.” *Levinsky’s*, 127 F.3d at 129  
8 *Rogers v. Mroz*, No. 1 CA-SA 19-0262, 2020 Ariz. App. LEXIS 793, at \*29 (Ct. App. Dec.  
9 8, 2020). Defendant must be able to have a Fair Notice of the allegations, and be able to  
10 mount a reasonable defense based on actionable allegations.  
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12 Plaintiffs argue that because Defendant cites to “posts” when referencing other Defendants’  
13 corrections of Plaintiffs’ willful mischaracterizations, Defendant should know exactly what  
14 the Plaintiffs are referencing. (Response to Defendant Travis’ Motion for a More Definite  
15 Statement, page 2, lines 22-24). Defendant finds this argument bewildering. Not only are  
16 most of the allegations Plaintiffs want to attribute to Defendant filled primarily filled with  
17 the Plaintiffs’ own vitriolic commentary, but if it is so obvious to the Plaintiffs, please stop  
18 the cat and mouse game and provide the information requested. It would have taken the  
19 Plaintiffs less time to provide the requested clarifications than to pointlessly argue why they  
20 will not.  
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22 **REQUEST 5: How each “Post” leads or applies to each cause of action.**  
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1 The basis for any Complaint is to give the Defendant Fair Notice on how each cause of action  
2 applies to each Plaintiff and the allegations. Plaintiffs refuse to clarify their allegations and  
3 their causes of action, and the relationship to the Plaintiffs, because Plaintiffs strange view  
4 that clarification is “nothing more than a request for production” I.d. @ 3. Furthermore,  
5 Plaintiffs have decided that they do not have to clarify how each Plaintiff applies to each  
6 allegation. I.d. Defendant is either supposed to guess or wait until discovery and then maybe  
7 Plaintiffs will give the Defendant Fair Notice on how each Plaintiff applies to each cause of  
8 action. Plaintiffs go so far as to declare Defendant’s request for clarification as “harassment<sup>7</sup>”  
9 and “waste of Plaintiffs’ and their attorneys’ time”. I.d.

10 Plaintiffs or their attorney(s) give no legal justification for their position that clarification  
11 cannot be granted so as to give the Defendant Fair Notice. Defendant thus reminds the Court,  
12 that any request for Rule 12(e) clarity should be given liberally. *Vista Verde Homeowners*  
13 *Ass’n v. Maricopa County*, at 13 (Ct. App. Nov. 24, 2015).

## 14 CONCLUSION

15 Defendant requests that the Plaintiffs’ Response Motion be stricken for being too late.  
16 However, if the Court prefers not to do that, Defendant is simply requesting a Rule 12(e)  
17 Motion for a More Definite statement. These requests should be given liberally. Defendant

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27 <sup>7</sup> Defendant expects the Plaintiffs to mischaracterize any request for information as harassment during these proceedings.  
28 They did the same thing as Board Members for the HOA. Defendant expects the word “hostile” to be needlessly used a lot  
too. There was clearly a reason the Plaintiffs were recalled. It was not because they work well with others.



1 reminds the Court that the Defendant is the only party that has made any legal justification  
2 for a position in these Motions.  
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4 Defendant asks the Court to ignore Plaintiffs' conclusory attack on Defendant's Motion and  
5 to grant Defendant the simple but needed relief Defendant requests.  
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7 Defendant requests that the word FOUR be stricken from line 38 of the Complaint.

8 Defendant requests that the Plaintiffs be ordered to provide definite statements on how each  
9 allegation applies to each Defendant and that the vague and ambiguous language be clarified.  
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11 If not, Defendant requests that Counts II-V be dismissed with prejudice.

12 Dated this 14<sup>th</sup> day of December, 2020.  
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16 s/ Nathan Brown Attorney for  
17 Defendant Travis  
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19 Original of the foregoing filed electronically with TurboCourt AZ on this 14<sup>th</sup> Day  
20 of December, 2020.  
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22 s/ Nathan Brown  
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