

1 Steven C. Mahaffy, ASBN. 022934
2 MAHAFFY LAW FIRM, P.C.
3 PO Box 12959
4 Chandler, Arizona 85248
5 Phone: 480-659-7180
6 Fax: 480-659-5614
7 steve@mahaffylaw.com

8 *Attorneys for Plaintiffs*

9
10 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**
11
12 **IN AND FOR THE COUNTY OF MARICOPA**

13 GERALD FREEMAN and JANICE FREEMAN,
14 husband and wife,

15 Plaintiffs,

16 v.

17 TOWN OF CAVE CREEK, a municipal corporation
18 of the State of Arizona; and CAHAVA SPRINGS
19 CORP, a corporation of the State of Minnesota; AND
20 DONALD SORCHYCH and SHARI JO
21 SORCHYCH, husband and wife,

22 Defendants.

Case No. CV2012-092643

**PLAINTIFFS' BENCH BRIEF IN
SUPPORT OF GRANTING
PRELIMINARY INJUNCTION**

**Evidentiary Hearing
Scheduled For March 15, 2013 At
9:30 A.M.**

**(Assigned to the Hon. David
Talamante)**

23 Comes now counsel for Plaintiffs Gerald and Janice Freeman ("Freemans"), Mahaffy Law
24 Firm, PC, by Steven C. Mahaffy, and submits this bench brief for and in support of the evidentiary
25 hearing on the preliminary injunction sought against the Town of Cave Creek ("the Town"),
26 Cahava Springs Corp., ("Cahava") and Donald and Shari Jo Sorchych ("Sorchychs")¹.

27 **1) INTRODUCTION:**

28 ¹ as previously stated, defendants Sorchych's are named parties to this suit only because they hold rights for use of the 1969 easement and so they will be bound by any ruling of this court concerning that easement.

1 Freemans and Sorchychs are dominant tenements in private roadway easement "for existing
2 roadway as it existed on October 2, 1969...." (the "1969 Easement"). The 1969 Easement travels
3 from Morning Star Road (the public roadway maintained by Maricopa County/Town of Cave
4 Creek) and essentially ends at Lot 5J; Sorchych's own Lot 5J. Freemans are the dominant tenement
5 and Sorchychs are the servient tenement for Freeman's private easement crossing the southern
6 boundary of Lot 5J which consists of "an exclusive easement for ingress, egress, utilities and water
7 lines over the South 33 feet of the within described property." This easement will be referred to as
8 the "33 Foot Easement." The 1969 Easement meets the exclusive 33 Foot Easement at Lot 5J.
9 Freemans are the only landowners who access their land over the 33 Foot Easement.
10

11 Freemans built the roadway to their property in 1991 in reliance upon the 1969 easement
12 reservation. The Freemans constructed their driveway on the easement at considerable expense to
13 them. The driveway is not located on flat ground, but is constructed at a steep, uphill angle;
14 consequently, extensive work was required to layout, grade and construct the driveway. Freemans
15 built this driveway at their sole expense and have maintained and repaired it continuously at their
16 sole expense. At no time have any other persons ever maintained, repaired, or paid for maintenance
17 or repair of the Freemans' driveway located upon the exclusive 33 Foot Easement.
18

19 Cahava is the servient tenement landowner for the 1969 easement. Freeman and
20 Sorchych are the dominant tenement holders of the easement which is the sole means of ingress
21 and egress for each. The easement is appurtenant to Freeman and Sorchych property. Cahava has,
22 upon information and belief, offered to deed an easement to the Town for construction of a bridle
23 trail. Originally, Cahava and Town intended to use the existing Freeman easement as the bridle
24 trail and, after institution of this suit, Cahava and Town have provided a map with a new proposed
25 location for the bridle trail. Cahava and Town believe they can forcibly move the existing easement
26 entrance (at Old Stage Road) or force Freemans to allow the easement (at the entrance) to be used
27
28

1 by members of the public who desire to use the bridle trail. There is no law which would allow
2 Cahava and Town to force Freemans to move their existing, deeded easement. As such, Cahava
3 and the Town have taken unreasonable positions in this lawsuit and should pay Freemans' attorney
4 fees and costs pursuant to ARS §12-349, 350.

5
6 **2) ANY USE OF FREEMANS' EASEMENT BY THE PUBLIC WILL**
7 **UNREASONABLY INTERFERE WITH THE FREEMANS' USE**

8 **Interpretation of An Easement Is A Matter Of Law.**

9 The interpretation of an easement is generally a matter of law. *Freeman v. Sorchych*, 226
10 Ariz. 242, 245 P.3d 927 (App. 2011)(citing *See Powell v. Washburn*, 211 Ariz. 553, 555, ¶ 8, 125
11 P.3d 373, 375 (2006); *Squaw Peak Cmty. Covenant Church of Phoenix v. Anozira Dev., Inc.*, 149
12 Ariz. 409, 412, 719 P.2d 295, 298 (App. 1986).

13 In the absence of controlling statutory or case authority, Arizona courts generally follow the
14 Restatement of the Law on a particular subject if its position, as applied to the claim at
15 issue, "is logical, furthers the interests of justice, is consistent with Arizona law and policy,
16 and has been generally acknowledged elsewhere." *Ramirez v. Health Partners of S. Ariz.*,
17 193 Ariz. 325, 332, ¶ 26, 972 P.2d 658, 665 (App. 1998) [***16] (citing *Ft. Lowell-NSS*
18 *Ltd. P'ship v. Kelly*, 166 Ariz. 96, 800 P.2d 962 (1990); *Cannon v. Dunn*, 145 Ariz. 115,
19 116, 700 P.2d 502, 503 (App. 1985)). Further, Arizona courts routinely look to guidance
20 from courts of other states on matters of first impression. *See, e.g., Tritschler v. Allstate Ins.*
21 *Co.*, 213 Ariz. 505, 513, ¶ 20, 144 P.3d 519, 527 (App. 2006) (citing *Hull v.*
22 *DaimlerChrysler Corp.*, 209 Ariz. 256, 258, ¶ 10, 99 P.3d 1026, 1028 (App. 2004)).

23 *Freeman v. Sorchych*, 226 Ariz. 242, 245 P.3d 927 (App. 2011).

24 The Court should rule that only Freemans (and not Sorchychs) may grant permission to
25 anyone (third parties) to use Freemans' exclusive easement. In "The Law of Easements & Licenses
26 in Land," Chapter 8: Utilization and Maintenance of Easements, § 8:33 "Interference with easement
27 by third parties," it states:

28 An easement holder, as the owner of a property interest, is entitled to protection
from acts of third parties that interfere with enjoyment of the easement. Such
protection is available against third parties to the same extent that it is available
against the servient estate owner. For example, an easement holder may recover
damages from or obtain an injunction against third parties who construct a

1 building encroaching on the easement area, *use the easement without*
2 *authorization*, or hamper travel by parking cars on the easement area. (emphasis
3 added).

4 In looking to other state courts for guidance in *Kao v. Haldeman*, 556 Pa. 279, 728
5 A.2d 345 (Pa. 1999), the Pennsylvania Supreme Court held that the easement owners were entitled
6 to obtain injunctive relief to prevent their neighbor from trespassing on their private roadway
7 easement. The neighbor who was using the roadway was not the servient owner, but was a third
8 party who was using the private roadway, as a matter of preference, not necessity.

9 In this case, the use of the 1969 Easement by the public (third parties), will violate the
10 easement, will violate the law interpreting the easement, will interfere with Freemans' quiet
11 enjoyment of their property, will damage the road constructed by Freemans on the easement and will
12 subject Freemans to extra labor and expense in keeping it in repair. This Court should agree that
13 Cahava Springs Corp. may not permit third persons to use the easement.

14 **3) BECAUSE ARIZONA COURTS GENERALLY FOLLOW THE RESTATEMENT**
15 **OF THE LAW; THE FOLLOWING RESTATEMENTS SHOULD BE**
16 **APPLIED/FOLLOWED BY THIS COURT**

17 **§ 4.1 Interpretation of Servitudes**

18 (1) A servitude should be interpreted to give effect to the intention of the parties ascertained
19 from the language used in the instrument, or the circumstances surrounding creation of the
20 servitude, and to carry out the purpose for which it was created.

21 (2) Unless the purpose for which the servitude is created violates public policy, and unless
22 contrary to the intent of the parties, a servitude should be interpreted to avoid violating public
23 policy. Among reasonable interpretations, that which is more consonant with public policy should
24 be preferred.

25 *Restat 3d of Prop: Servitudes, § 4.9.*

26 **§ 4.9 Servient Owner's Right to Use Estate Burdened by a Servitude**

27 Except as limited by the terms of the servitude determined under § 4.1, the holder
28 of the servient estate is entitled to make any use of the servient estate that does not

1 unreasonably interfere with enjoyment of the servitude.

2 *Restat 3d of Prop: Servitudes, § 4.9.*

3 **Comment to Restat 3d of Prop: Servitudes, § 4.9 provides:**

4 *e. Creation of additional servitudes.* Under the rule stated in this section, the
5 holder of the servient estate may create additional servitudes in land burdened by
6 a servitude if the additional servitudes do not unreasonably interfere with the
7 enjoyment of the prior servitude holders.

8 **Illustrations:**

9 O, the developer of a 10-lot subdivision near a lake, retained title to Blackacre, a
10 lot fronting on the lake which included a beach. O granted an appurtenant easement
11 for use of Blackacre for recreational purposes in the deeds conveying each of the
12 10 lots in the subdivision. Twenty years later, a successor in title to Blackacre
13 granted an easement to the owner of Whiteacre, property outside the subdivision,
14 for recreational purposes. Whiteacre is used as a campground and draws hundreds
15 of visitors during the summer. In the absence of other facts or circumstances, the
16 owner of Blackacre was not entitled to create the additional easement rights
17 because the likely increased use will unreasonably interfere with enjoyment of the
18 previously created easements.

19 **§ 4.10 Use Rights Conferred by a Servitude.**

20 Except as limited by the terms of the servitude determined under § 4.1, the holder
21 of an easement or profit as defined in § 1.2 is entitled to use the servient estate in
22 a manner that is reasonably necessary for the convenient enjoyment of the
23 servitude. The manner, frequency, and intensity of the use may change over time
24 to take advantage of developments in technology and to accommodate normal
25 development of the dominant estate or enterprise benefited by the servitude.
26 Unless authorized by the terms of the servitude, the holder is not entitled to cause
27 unreasonable damage to the servient estate or interfere unreasonably with its
28 enjoyment.

Restat 3d of Prop: Servitudes, § 4.10.

**§ 4.11 Use of Appurtenant Easement or Profit to Serve property Other Than
 Dominant Estate**

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Unless the terms of the servitude determined under § 4.1 provide otherwise, **an appurtenant easement or profit may not be used for the benefit of property other than the dominant estate.**

b. Appurtenant easement cannot be used to serve nondominant estate. Under the rule stated in this section, unless otherwise provided an appurtenant easement cannot be used to serve property other than the dominant estate. **The rationale is that use to serve other property is not within the intended purpose of the servitude.** This rule reflects the likely intent of the parties by setting an outer limit on the potential increase in use of an easement brought about by normal development of the dominant estate, permitted under the rules stated in § 4.10. Where it applies, *the rule avoids otherwise difficult litigation over the question whether increased use unreasonably increases the burden on the servient estate.*

Restat 3d of Prop: Servitudes, § 4.11.

4) IN SEEKING TO CONSTRUCT THE PROPOSED BRIDLE PATH OVER/ALONG THE FREEMANS’ EASEMENT, THE TOWN IS VIOLATING ITS OWN GUIDELINES AND POLICIES² (“THE GUIDELINES”):

In addition to the issues concerning the Freemans right to prohibit the creation of a public right of use by the Town, the Town has failed to comply with numerous sections of its own ordinances as required (*see Section 2.2 for example*), several of which are outlined in the following section:

A. Section 2.1 of the Guidelines addresses Public Trail Easement Requirements:

Guideline 2.1.9, General Requirements, states:

Trails outside of a public right-of-way or a public street tract shall be placed in a minimum 20’ wide Public Trail Easement (PTE) located within a dedicated tract (portion of a drainage tract or open space tract) unless approved otherwise by the Planning Department.

The Town proposes the construction of a bridle trail which is 20 feet wide, although other bridle trails in the Town are generally less than 20 feet. The Town is in violation of this Guideline as it is impossible to construct a bridle trail in the proposed location which is 20 feet wide.

² Town of Cave Creek Technical Design Guidelines, Approved/Amended 3/26/09.

1 **B. Section 2.6, Project Trail Design Report Requirements, states:**

2 When required by the TOCC, a Project Trails Design Report shall be prepared in
3 accordance with this technical design guideline by a professional engineer and/or designer.
4 The Project Trails Design Report shall address, but not be limited to the following:

5 The section goes on to detail many items, including compliance with the Technical Design
6 Guideline and other applicable design standards, a description of the existing topography, existing
7 rights-of-way, washes, maintenance responsibilities, to name a few. Why hasn't the Town
8 required such a report? If such a report was required, the Town could have easily ascertained the
9 very issues that Freemans have been forced to raise by filing this action.

10 **C. Section 2.10 Trail Design Considerations, states:**

11 ***2.10.1 Purpose:***

12 The TOCC's objective is to design, construct and maintain trails that:

13 . . .

14 5. Minimize impacts on adjacent landowners.

15 6. Require minimum levels of maintenance.

16 The Town is in violation of this Guideline as it continues to ignore the pleas of the adjacent
17 landowners who clearly oppose the location of the proposed bridle trail. The Town further ignores
18 the fact that the proposed location would require maximum (not minimum) levels of maintenance.

19 See also Guideline 2.15.5, Special Structure Maintenance which states "Structures such as . .
20 .wash crossings and bridges, etc. are rather expensive and labor intensive to construct.

21 **D. Section 2.10.2 of the Guidelines is entitled Human Factors.**

22 Section 2.10.2 states in part:

23 . . . Trail users tend to favor the easiest, most obvious route. If the designated trail is not
24 the easiest and most obvious, trial users will begin to create new, unauthorized trails.

25 Again, these Guidelines (which are not being followed by the Town) set forth another issue
26 of grave concern for Freemans. The proposed bridle path overlaps the existing roadway at the
27

1 beginning. Thereafter, most of the proposed bridle trail follows the roadway on the Freemans’
2 easement. The “designated trail” which will be constructed through the natural desert, near sage,
3 cacti, and rocks; over snakes, stickers, and other natural hazards etc. will not be the “easiest and
4 most obvious!” The Human Factor will lead the trail users straight up the Freemans’ beautifully
5 maintained, eight foot wide road. Gerald Freeman and Jim Ferguson will testify about the damage
6 which will be and has been incurred by vehicles, horse hooves, 4-wheelers, etc. if the public is
7 allowed to use this road.

8 **E. Section 2.11 of the Guidelines lays out the trail classifications.**

9 Section 2.11.6, Equestrian Trails, states in part:

10 *The objective for Equestrian Trails is to provide safe and enjoyable equestrian*
11 *opportunities where appropriate within the TOCC. Equestrian Trails are typically*
12 *multi use trails with specific equestrian design considerations. Typical design*
13 *considerations include but are not limited to the following:*

- 14 1. *Avoidance of motorized road crossings whenever possible.*
- 15 2. *Avoidance of steep slopes*

16 The bridle trail as proposed violates 2.11.6(1) as the location proposed by the Town crosses
17 the Freemans’ easement in two places. The Freemans’ easement is clearly as “motorized road
18 crossing” as it is used primarily by motor vehicles driven by the Freemans and Sorchych for
19 ingress and egress to their property, along with their guests and invitees (garbage truck, paper,
20 mail, service providers, etc.)

21 The bridle trail as proposed violates 2.11.6(2). The evidence will show that the slopes on
22 the Freemans’ easement where the trail is proposed are well above 17% . (Freemans’ driveway
23 slope is 17% and it has been constructed such that the slope is as low as possible). *See also, Exhibit*
24 *I, prepared by James Lemon, which lays out the Trail Classification Standards found at 2.12 of the*
25 *Guidelines, and which shows that the slope of the proposed trail is in excess of the maximum trail*
26 *slope requirements for an equestrian trail.*

27 **F. Section 2.12.3 of the Guidelines, Vegetation Clearance, states:**

28 *Vegetation clearance is the removal of vegetation within specified clearing limits*

1 (see Figure 2.12-1 for specifications for each trail classification).

2 **2.15.2 Vegetation Clearance Maintenance:**

3 All plants encroaching into the vegetation clearance limits for the particular trail
4 classification shall be cut back. Plants being removed must be cut flush with the
5 ground and stumps must be removed to prevent safety hazards. All plants growing
6 within the trail tread must be grubbed-out.

7 The upper part of the proposed bridle trail is located directly next to the Freemans' fence
8 line in violation of the Town's ordinance. The Trail marked on the exhibits is located just outside
9 the Freemans' fence. The proposed trail is located directly on the area designated as Zone A which
10 is prohibited ordinance. Said another way, the Town is going put the "bridle path" right smack in
11 the area that they say no one else can use.....not even to blow away dead leaves! The Town
12 website summarizes its ordinances as follows:

13 **Four Zones in Desert Rural Property**

14 Desirable plants and prohibited species for each of the four zones are listed in the
15 link below. Palms, pines, olives and mulberry trees, for example, are prohibited
16 along with invasive species.

- 17 • The native habitat corridor, or **Zone A, includes the 12 feet inside lot boudaries.**
18 **It must be left alone. That means no leaf-blowers and no trimming branches or**
19 **shrubs. Even dead leaves and branches play a role in the complex ecosystem.**
- 20 • The natural buffer area, or **Zone B, is the land between Zone A and the building**
21 **envelope, or buildable area where your house sits. This area also must be kept**
22 **natural. Limited debris clearing and trimming may be allowed with prior town**
23 **approval, along with restoration of destroyed desert.**
- 24 • *Transitional area, or Zone C, is the portion of buildable area that lies between*
25 *Zone B and a wall or building, so it's visible from the street or a neighbor's home.*
- 26 • *Zone D is private area, shielded from public view.*

27 Chapter 12 of the zoning ordinance, including lists of approved and prohibited
28 plants.

Clearing vegetation also interferes with the natural state of the desert and encourages
erosion which is also addressed in the Town Ordinances. .

G. Section 2.10.7 of the Guidelines, Archaeological and Cultural Resources,
states:

*Trail design and construction shall be evaluated in terms of the effect the trail will
have on archaeological and cultural resources. Such activities should be done in*

1 *accordance with the Arizona State Historic Preservation Office requirements.*
2 *Potential options to prevent and mitigate damage to these resources include:*

- 3 *1. Altering the trail alignment to avoid archaeological and cultural resources.*
4 *2. Protecting the resources by utilizing methods to obscure them from view.*
5 *3. Mitigating the cultural resource, this involves removal and*
6 *Thorough documentation of all found artifacts by a professional archaeologist.*
7 *The documentation of any found cultural resources may be utilized as part of the trail*
8 *opportunity.*

9 The trail location proposed by the Town passes directly over petroglyphs that are registered
10 with the State Historical Society in violation of this ordinance, despite the fact that the Town has
11 no need to construct this particular bridle path in the proposed location. Nowhere does the Town
12 state its documentation of the petroglyphs let alone documentation and/or preservation by a
13 professional archaeologist.

14 A bridle trail is presently located on Morning Star Road. A second bridle trail is located one
15 road to the north of Morning Star Road on Honda Bow. The Town's proposed trail shows one trail
16 going right across Jim Ferguson's property and over his house. Clearly, this proposed bridle trail
17 has not been well-thought out by the Town in addition to violating the Town Ordinances, it is
18 completely unnecessary.

19 **H. Section 2.12.7 of the Guidelines, Wash Crossing, states:**

20 *Wash crossings shall be kept to a minimum when evaluating all trail designs. Natural*
21 *crossings are favored.*

22 There is no way to cross the Cave Creek wash without using Freemans' driveway;
23 Freemans' driveway is not a natural crossing. An additional crossing (which is not practical)
24 violates the Town's own guidelines of keeping crossing at a minimum.

25 **I. Section 2.12.10, Trail Safety Barriers, states:**

26 *1. Location: The location of safety barriers should not restrict sight distances for*
27 *roadway traffic or trail users. Special attention to the design and construction of*
28 *safety barriers is particularly important near intersections.*

Safety barriers shall be installed between a trail and a roadway if the trails
located within an unsafe distance to the roadway, or if the trail shares an
underpass or overpass with a roadway. Safety barriers should also be
installed if the trail is elevated above an adjacent roadway and the side

1 *slope is greater than 6:1, or where trails are in close proximity to other*
2 *steep drop-offs. All safety barriers shall be at least 3' from the edge of the*
3 *trail.*

4 As is supported by the evidence already before this Court, it is not safe for horses and cars
5 both to use the easement due to the narrow width of the driveway. *See the Declaration of Gerald*
6 *Freeman, filed in support of the complaint/application for the TRO, dated April 13, 2011, at*
7 *paragraphs 25, 26, 27, and 28.* Further, danger to users due to the sheer face of the cliff is also
8 present. *See Exhibit I, prepared by Freemans' expert, James Lemon, PE, RLS, photograph 1.* The
9 Town has failed to adhere to its own guidelines by its failure to recognize the need for safety
10 barriers – although it would be impossible to construct a safety barrier between the location of the
11 proposed trail and the side of the cliff.

12 **J. Section 2.13 of the Guidelines, Trail Access Facilities, states in part:**

13 *The planning, design and construction of trail access facilities shall be conducted*
14 *on a case-by-case basis and will require various levels of Town review and*
15 *approval beyond the scope of this guideline. Potential trailhead amenities*
16 *include, but are not limited to the following:*

- 17 *1. Pull-through horse trailer parking spaces.*
- 18 *2. Regular vehicle parking spaces.*

19 The Town will be required to establish trail parking on Cahava Springs Corp.'s land at the
20 entrance to the proposed trail. Such parking will require bridle path users to cross the Freemans'
21 easement to use the bridle path thus increasing damage to the easement. The testimony of Jim
22 Ferguson will also show that he recently had trespassers on his land that literally destroyed part of
23 his property – and the trespassers' use was prior to the establishment of a bridle trail.

24 **K. Section 2.14.1 of the Guidelines, General Sign Standards, states in part:**

25 *Trail signage should be created to perform some or all of the following functions:*

- 26 *1. Direction: On-street signs designed so as to direct trail users to trail*
27 *access points. Location coordination with the Town's Engineering*
28 *Department and compliance with the TOCC Technical Design Guideline*
No. 2 – Transportation requirements are mandatory.
- 2. Trailhead: Identify trail access points and parking areas.*

The Town will also be installing public signs which would direct trail users to the trail. This

1 makes it the equivalent of public park or ROW that will be an attractive nuisance. Horses and cars
2 on the same driveway with the cliffs nearby are an accident waiting to happen.

3
4 **L. Section 2.15.1 Slough & Berm Removal, of 2.15, Trail Maintenance, states:**

5 *1. Slough: The slough process causes trail users to travel along the outside*
6 *edge of the trail. The tread eventually narrows and moves downhill from its*
7 *original location resulting in an unsafe situation. The slough material must*
8 *be removed to reestablish the proper backslope. The excess material may be used*
9 *to fill holes in the trail tread and to reestablish the outslope, or to build up the*
10 *downhill side of waterbars.*

11 *2. Berms: Berms prevent water from flowing off the side of the trail and*
12 *allows water to channel down the trail causing erosion. Berms may also*
13 *cause nuisance water to pool on the trail surface resulting in soil saturation.*
14 *Saturated soil is damaged easily and forces trail users to detour around the area*
15 *causing the trail to widen. Berms should never be constructed intentionally and*
16 *should be eliminated whenever present.*

17 Maintenance on any bridle trail in this area would be difficult. For example, the existing
18 Spur Cross trail is now so badly “V”d that it is not passable and thus, unusable. In the location,
19 where the Town has proposed the bridle trail, the Town admits to having maintenance issues which
20 will be heightened due to the slope/grade of the area.

21 **5) Conclusion.**

22 Based on the foregoing, this Court should grant Freemans a preliminary injunction as
23 granting a public use is in contravention of the Freemans’ grant of exclusive easement, violates
24 section 4.11 of Restatement 3d of Property, “an appurtenant easement ... may not be used for the
25 benefit of property other than the dominant estate,” and because the Town’s proposed bridle trail is
26 in violation of its own Ordinances.

27 Further, Cahava and the Town have taken unreasonable positions in this lawsuit and should
28 pay Freemans’ attorney fees and costs pursuant to ARS §§12-349 and 350 (defending a claim
without substantial justification and/or failure to make any effort after the commencement of this
action to reduce the defenses being asserted or to dismiss claims or defenses found not to be valid

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

and in consideration of the readily available facts which would have assisted the defendants in determining the validity of a their defenses).

RESPECTFULLY submitted this 15th day of March, 2013.

MAHAFFY LAW FIRM, P.C.

By /s/ Steven C. Mahaffy
Steven C. Mahaffy
P.O. Box 12959
Chandler, AZ 85248
Attorneys for Plaintiffs

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

CERTIFICATE OF MAILING OR DELIVERY

ORIGINAL of foregoing hand-delivered
To those present defendants this 15th day of
March, 2013 to:

The Honorable David Talamante
Courtroom 207
Maricopa County Superior Court
222 E. Javelina
Mesa, AZ 85210

Copies of the foregoing hand-delivered
this same day to:

Jeffrey T. Murray
Sims Murray Ltd.
2020 N Central Ave. Ste 670
Phoenix AZ 85004-4581
Attorneys for Town of Cave Creek

George U. Winney
Gammage & Burnham, PLC
Two North Central Avenue, 15th Floor
Phoenix, Arizona 85004
Attorneys for Cahava Springs Corp.

Donald and Shari Jo Sorchych
PO Box 4887
Cave Creek, Arizona 85327
Defendants pro per

By: /s/ Leah K. Mahaffy
Leah K. Mahaffy