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9 **SUPERIOR COURT OF ARIZONA**

10 **MARICOPA COUNTY**

11 ADAM TRENK, individually, REG  
12 MONACHINO, individually, and  
13 CHARLIE SPITZER, individually,

Case No. CV 2014-008303

14 Plaintiffs,

15 vs.

16 **APPLICATION FOR ORDER TO**  
17 **SHOW CAUSE AND FOR**  
18 **PRELIMINARY AND PERMANENT**  
19 **INJUNCTIVE RELIEF**

20 SUSAN CLANCY, individually and as  
21 Chair of Cave Creek Caring Citizens; HANI  
22 SABA, individually and as Treasurer of  
23 CAVE CREEK CARING CITIZENS;  
24 CAVE CREEK CARING CITIZENS, an  
25 Arizona political committee; HELEN  
26 PURCELL, a public employee; BOARD  
27 OF SUPERVISORS OF MARICOPA  
28 COUNTY, a public entity; CARRIE  
DYREK, a public employee; and TOWN  
COUNCIL OF CAVE CREEK, ARIZONA,  
a public entity,

Defendants.

I. **APPLICATION**

Pursuant to Rules 6(d) and 65 of the Arizona Rules of Civil Procedure, Plaintiffs Reg Monachino, Adam Trenk and Charlie Spitzer ("Plaintiffs") respectfully move this Court for an Order (i) directing the Defendants to show cause why Plaintiffs should not

1 be granted the relief sought in their Complaint for Special Action and this Application,  
2 (ii) setting a hearing within five days, and (iii) temporarily enjoining the Cave Creek  
3 Town Clerk and the Town of Cave Creek from issuing an order calling a special recall  
4 election. Plaintiff requests the hearing be set as soon as possible in order to resolve these  
5 matters so that all the parties, and the citizens of Cave Creek, can know whether the recall  
6 election will proceed.  
7

8 The following memorandum of points and authorities supports this Application  
9 and Motion.  
10

## 11 **II. THE FACTS AND PROCEDURE FOR RECALL PETITION**

### 12 **VERIFICATION**

13 The main facts in this case are fairly simple and not likely to be disputed.  
14 Defendants Susan Clancy and Hani Saba (the "Recall Proponents") formed a political  
15 committee under Arizona law for the purpose of trying to recall four Cave Creek Town  
16 Councilmembers. Those members are the Plaintiffs as well as Councilman Mike Durkin.  
17 The political committee was given the name "Cave Creek Caring Citizens".  
18

19 The Recall Proponents printed recall petitions targeting the four Councilmembers.  
20 These petition sheets (the "Petition Sheets") were turned into the Cave Creek Town  
21 Clerk. Pursuant to A.R.S. § 19-208.01, the Town Clerk went through the steps required  
22 by the law in terms of signature verification. In doing so, she disqualified a number of  
23 signatures and whole Petition Sheets.  
24

25 After the Town Clerk had performed her statutory duties, the Petition Sheets were  
26 sent to the Maricopa County Recorder for that office to perform their statutory duties  
27 pursuant to A.R.S. § 19-208.02. The County Recorder completed this task and sent its  
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1 report on the number of signatures verified for the four targeted candidates on May 21,  
2 2014.

3         Once the Petition Sheets were returned to the Town Clerk, she made a  
4 determination that there were sufficient signatures to force a recall election against the  
5 four members of Council. On May 22, 2014, pursuant to A.R.S. § 19-208, she issued the  
6 statutory notice to the candidates that they may resign in the next five days, in which case  
7 the vacancies will be filled as provided by law. The deadline for resigning in this fashion  
8 is 5 p.m. on Friday, May 30, 2014. Plaintiffs have no intention of resigning.  
9

10         After this five day resignation period runs, A.R.S. § 19-209 calls for the Town  
11 Clerk to, within 15 days, issue an order calling a special recall election to occur on the  
12 next consolidated election date that is at least 90 days away.  
13

### 14 **III. THE LAW REGARDING RECALL PETITION SHEETS**

15         **A. All of the signatures collected by the Recall Proponents to recall**  
16 **Monachino, Trenk, Durkin and Spitzer are invalid because the Petition Sheets used**  
17 **by the Recall Proponents do not “substantially comply” with the law regarding**  
18 **recall petitions.**  
19

20         As it is with candidate petitions and initiative petitions, “[t]o be eligible for  
21 certification, recall petitions must ‘substantially comply’ with the constitutional and  
22 statutory framework” relating to recall petitions. *Ross v. Bennett*, 228 Ariz. 174, 176,  
23 265 P.3d 356, 358 (2011).  
24

25         To elaborate on the burden that the Recall Proponents must meet, “substantial  
26 compliance means that the petition as circulated fulfills the purpose of the relevant  
27  
28

1 statutory or constitutional requirements, despite a lack of strict or technical compliance.”

2 *Feldmeier v. Watson*, 211 Ariz. 444, 447, 123 P.3d 180, 183 (2005).

3 A review of Petition Sheets submitted shows that the Recall Proponents have  
4 fallen far short of the standard they must meet of “substantial compliance” with the law.  
5 As such, this Court must invalidate all of the signatures collected and enjoin the Town  
6 Clerk from taking any further action to effect a recall election.  
7

8 In terms of the legal requirements for recall petitions, Arizona Revised Statutes §  
9 19-204 states:

10  
11 “A. The caption and body of a recall petition shall be substantially as follows:

12 Recall Petition

13 We, the qualified electors of the electoral district from which  
14 \_\_\_\_\_ (name and title of office) was  
15 elected, demand his recall.

16 The grounds of this demand for recall are as follows:  
17 (State in two hundred words or less the grounds of the demand)

18 **B. The remaining portion of the petition shall be as prescribed for initiative  
19 and referendum** except that a designation for paid or volunteer circulators is not  
20 required on the petition and signatures are valid without regard to whether they  
21 were collected by a paid or volunteer circulator.” (Emphasis added).

1 Referendum and initiative petitions are required by A.R.S. §§ 19-101 and 19-102  
2 to conclude with the following language:

3  
4 “and each [signer] for himself says:

5 I have personally signed this petition with my first and last names. I have  
6 not signed any other petition for the same measure. I am a qualified elector of the  
7 state of Arizona, county of (or city or town and county of, as the case may be)  
8 \_\_\_\_\_.

9  
10 ‘Warning

11 It is a class 1 misdemeanor for any person to knowingly sign an initiative or  
12 referendum petition with a name other than his own, except in a circumstance  
13 where he signs for a person, in the presence of and at the specific request of such  
14 person, who is incapable of signing his own name because of physical infirmity, or  
15 to knowingly sign his name more than once for the same measure, or to knowingly  
16 sign such petition when he is not a qualified elector.’”

17 All of the Petition Sheets contain the language required by subsection (A) of  
18 A.R.S. § 19-204(A). However, they do not include the entire section of language  
19 required by A.R.S. § 19-204(B)(See Attachment 1<sup>1</sup>).

20 To wit, the Petition Sheets omit the affirmation by the petition signer that they are  
21 legally eligible to sign the petition, and also the warning that it is illegal to sign a petition  
22 with a name other than one’s own. The Petition Sheets omit an entire subsection of  
23 statutorily required language embodying two important parts of the recall petition. As  
24 such, they do not substantially comply with the legal requirements.

25 To put it a different way, the actual language of a recall petition sheet that is  
26 correct should contain four things: 1) a demand for recall, 2) a statement of the grounds  
27 for the recall, 3) a verification by the signer that he or she has personally signed the  
28 \_\_\_\_\_

<sup>1</sup> Only one petition sheet for each of the four councilmembers is included with this Application,  
but all of the Petition Sheets are identical in that they are missing the statutory language as  
described in this Application.

1 petition and that he or she is a qualified elector, and 4) a warning that it is a class 1  
2 misdemeanor for a person to sign someone else's name or to sign if the person is a  
3 qualified elector.

4 The Petition Sheets at issue here contain items 1 and 2 but not items 3 and 4.  
5 Clearly it cannot be said that the "petition as circulated fulfills the purpose of the relevant  
6 statutory or constitutional requirements, despite a lack of strict or technical compliance,"  
7 which is how the Court in *Feldmeier* described the substantial compliance standard. 211  
8 Ariz. at 447, 123 P.3d at 183. The Petition Sheets cannot have fulfilled the purpose of  
9 the two statutory requirements they omitted precisely because those were omitted  
10 completely! This is not an example of making an error in the wording or putting  
11 something in the wrong place—two separate, legally required elements are missing  
12 completely.

13 On this basis alone, the signatures must be invalidated.

14 **B. Even if this Court deems the Petition Sheets in substantial compliance**  
15 **with legal requirements, the Recall Proponents have failed to meet the statutory**  
16 **signature requirements to force a recall of Monachino**

17 A.R.S. §19-205(A) requires that all signers of a recall petition also personally print  
18 their first and last names, their address, and the date of signing. A.R.S. § 121.01(A)(3)(f)  
19 requires the Town Clerk to invalidate signatures for which the Clerk "determines that the  
20 petition circulator has printed the elector's first and last names or other information in  
21 violation" of Arizona law.

22 A.R.S. § 19-205(B) requires that the affidavit of a circulator of a recall petition be  
23 in the same form as the affidavit for a circulator or a referendum or initiative petition.

24 A.R.S. § 19-112(D) requires, in relevant part, that the circulator's affidavit state  
25 that "under the penalty of a class 1 misdemeanor, [I] depose and say that subject to  
26 section 19-115, Arizona Revised Statutes, each individual printed the individual's own  
27 name and address..."

28

1 All Petition Sheets submitted by the Recall Proponents against Monachino bear  
2 this statutory circulator affidavit language. Under *Parker v. Tucson*, a violation of  
3 A.R.S. § 19-205(A)'s requirement that each individual signer personally print their  
4 address and the date, accompanied by a false circulator affidavit claiming that the signer  
5 did in fact print this, invalidates the entire petition. 233 Ariz. 422, 314 P.3d 100 (App.  
6 2013).

7 The Court in *Parker* explained it this way:

8  
9 Our Supreme Court made clear in *Brousseau v. Fitzgerald*, 138 Ariz. 453,  
10 456, 675 P.2d 713, 716 (1984), that "petitions containing false certifications  
11 by circulators are void, and the signatures on such petitions may not be  
12 considered in determining the sufficiency of the number of signatures to  
13 qualify for placement on the ballot." The circulator affidavits on the petition  
14 sheets used here stated, among other things, that "each individual printed  
15 the individual's own name and address." Because the petition circulators  
16 avowed that each signer wrote his or her own address, and the evidence  
17 demonstrated that avowal was false, the signature sheets are void pursuant  
18 to the rule announced in *Brousseau*.

19 And whereas the express language of the statute gives election officials the power  
20 to strike individual signatures on this basis, it is clear that the Court must go further and  
21 strike the entire sheet where it bears a false affidavit. *Id.* ("Section 19-121.01(A)  
22 describes the procedure to be used and the sheets and signatures subject to removal by the  
23 Secretary of State for various faults in the signatures and/or petition sheets. It does not  
24 purport to limit the remedies available to a trial court and, critically, does not address the  
25 issue of fraudulent affidavits.")

26 Out of the 314 signatures for the Monachino recall that the County Recorder found  
27 to be valid, 70 are invalid on the basis of false circulator affidavits. Thus, the 244  
28 signatures gathered against Monachino fall short of the 293 needed to force a recall  
election.

1           **C. Even if this Court deems the Petition Sheets in substantial compliance**  
2 **with legal requirements, the Recall Proponents have failed to meet the statutory**  
3 **signature requirements to force a recall of Trenk**

4  
5           As with Monachino, a number of the Petition Sheets submitted against Trenk bear  
6 false circulator affidavits. A total of six petition sheets must be invalidated because of  
7 precisely the false affidavit discussed in *Parker v. Tucson*.

8  
9           An additional two Petition Sheets must be invalidated because one or more of the  
10 signatures were witnessed by someone other than the person who signed the circulator  
11 affidavit.

12           Out of the 368 signatures the County Recorder found to be valid, 85 are invalid on  
13 the basis of false circulator affidavits. Thus, the 283 signatures gathered against Plaintiff  
14 Trenk fall short of the 293 needed to force a recall election.

#### 16 **IV. THE LAW ON PRELIMINARY INJUNCTIONS**

17           A Court should grant a preliminary injunction when the Plaintiff establishes: “(1)  
18 there is a real threat of irreparable injury not remediable by damages; (2) the threatened  
19 harm to the plaintiffs weighs more heavily in the balance than the actual injury to the  
20 defendants; (3) the plaintiffs are likely to succeed in the trial on the merits and (4) public  
21 policy favors the injunction.” *See, e.g., Burton v. Celentano*, 134 Ariz. 594, 595, 658  
22 P.2d 247, 248 (Ct. App. 1982).

23  
24           Temporary restraining orders are issued to prevent irreparable injury by preserving  
25 the status quo long enough to conduct a hearing on the preliminary injunction. *Granny*  
26 *Goose Foods, Inc. v. Brotherhood of Teamsters*, 415 U.S. 423, 439 (1974).



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In our case, the four factors weigh in the Plaintiff's favor.

The Plaintiff, and all the voters of Cave Creek suffer the real possibility of irreparable harm should the injunction not be granted. And there are no conceivable damages available.

This matter is very ill-suited for a traditional civil action because all parties have an interest in seeing this matter resolved quickly. And there is the harm to Plaintiffs of having to proceed with running in a recall election.

The third factor also favors an injunction, because Plaintiffs are likely to prevail on the merits. The questions presented here are largely questions of law that can be answered without resort to the traditional civil process.

Lastly, the fourth factor, the public interest and whether that supports injunctive relief, is clearly met here. In short, the public deserves to know the rules of the election as quickly as possible. Plaintiffs submit that even the Recall Proponents have an interest in a speedy resolution.


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**V. CONCLUSION**

For the foregoing reasons, Plaintiffs ask that this Court enter the requested show cause order, set a hearing on this matter as promptly as possible, and issue a temporary restraining order to prevent a premature election call.

RESPECTFULLY SUBMITTED this 27th day of May, 2014.

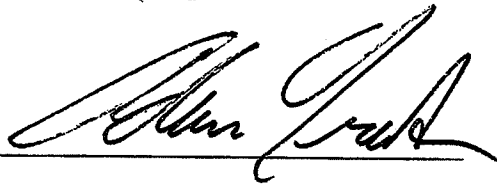
**TB** TIFFANY & BOSCO  
P.A.

By:   
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*Attorneys for Plaintiffs*

**Rule 80(i) Declaration**

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I declare under penalty of perjury of the laws of the State of Arizona that the foregoing Application for an Order to Show Cause and for Preliminary and Permanent Injunctive Relief is true and correct to the best of my knowledge and belief and that this Declaration is executed by me on the 27 day of May, 2014, in Maricopa County, Arizona.

  
\_\_\_\_\_

# Attachment 1

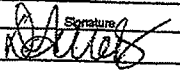
**Recall Petition**

We, the qualified electors of the electoral district from which Reg Monachino, Town of Cave Creek Council Member was elected, demand his recall.  
The grounds of this demand for recall are as follows:  
(Name and title of office)  
 We find that Reg Monachino's inability to govern the Town of Cave Creek, AZ., as prescribed, should be recalled for the following reasons: 1) Fiscal Irresponsibility, 2) Material misrepresentation to the public in the 2013 election, and 3) Lack of transparency with regard to the operation of Town Government.  
(State in two hundred words or less the grounds of the demand)

Signature	Name (first and last name printed)	Actual address (street & no. and if no street address, describe residence location)	Arizona post office address & zip code	City or town (if any)	Date signed
<i>[Signature]</i>	BERNARD SELLERS	6221 E. HARK WAY #12	85331	CAVE CREEK	4/12/14

**Recall Petition**

We, the qualified electors of the electoral district from which Adam Trenk, Town of Cave Creek Vice Mayor and Council Member was elected, demand his recall. The grounds of this demand for recall are as follows:  
 We find that Adam Trenk's inability to govern the Town of Cave Creek, AZ., as prescribed, should be recalled for the following reasons: 1) Fiscal Irresponsibility, 2) Material misrepresentation to the public in the 2018 election, and 3) Lack of transparency with regard to the operation of Town Government.  
 (State in two hundred words or less the grounds of the demand)

Signature	Name (first and last name printed)	Actual address (street & no. and if no street address, describe residence location)	Arizona post office address & zip code	City or town (if any)	Date signed
	DEBORAH SELLERS	6261 E. MARK WAY #12	85331	CAVE CREEK	4/12/18

Secretary of State  
 Revised 7/20/2011

The validity of signatures on this sheet must be sworn to by the circulator before a notary public on the form appearing on the back of this sheet.

Number: RECALL 2018-02

**Recall Petition**

We, the qualified electors of the electoral district from which Charlie Spitzer, Town of Cave Creek Council Member was elected, demand his recall.  
 The grounds of this demand for recall are as follows:  
 We find that Charlie Spitzer's inability to govern the Town of Cave Creek, AZ., as prescribed, should be recalled for the following reasons: 1) Fiscal Irresponsibility, 2) Material misrepresentation to the public in the 2013 election, and 3) Lack of transparency with regard to the operation of Town Government.  
 (State in two hundred words or less the grounds of the demand)

Signature	Name (first and last name printed)	Actual address (street & no. and if no street address, describe residence location)	Arizona post office address & zip code	City or town (if any)	Date signed
<i>[Signature]</i>	DEBORAH BELLERS	6231 E. MARK WAY #12	85331	CAVE CREEK	4/12/14

Secretary of State  
 Revised 7/20/2011

The validity of signatures on this sheet must be sworn to by the circulator before a notary public on the form appearing on the back of this sheet.

Number RECALL 2013-01

Recall Petition

We, the qualified electors of the electoral district from which Mike Durkin, Town of Cave Creek Council Member was elected, demand his recall.  
 The grounds of this demand for recall are as follows: (Name and title of office)  
 We find that Mike Durkin's inability to govern the Town of Cave Creek, AZ., as prescribed, should be recalled for the following reasons: 1) Fiscal Irresponsibility, 2) Material misrepresentation to the public in the 2013 election, and 3) Lack of transparency with regard to the operation of Town Government.  
(State in two hundred words or less the grounds of the demand)

Signature	Name (first and last name printed)	Actual address (street & no. and if no street address, describe residence location)	Arizona post office address & zip code	City or town (if any)	Date signed
<i>[Signature]</i>	DEBORAH SELLERS	6231 E. MARK WAY #12	85331	CAVE CREEK	4/21/14