

1 FENNEMORE CRAIG, P.C.
Andrew M. Federhar (No. 006567)
2 Dawn Meidinger (No. 017373)
3003 North Central Avenue
3 Suite 2600
Phoenix, AZ 85012-2913
4 Telephone: (602) 916-5000
Email: federhar@fclaw.com
5 Email: dmeidinger@fclaw.com

6 Attorneys for Plaintiffs

7
8 SUPERIOR COURT OF ARIZONA

9 YAVAPAI COUNTY

10 HARVARD SIMON I, LLC, an
Arizona limited liability company; THE
11 PRESERVE AT THE RANCH, LLC,
an Arizona limited liability company;
12 OLD CAPITOL INVESTMENTS,
LLC, an Arizona limited liability
13 company; WHISPERING CANYON
DEVELOPMENT, LLC, an Arizona
14 limited liability company,

15 Plaintiffs,

16 v.

17 INSCRIPTION CANYON RANCH
SANITARY DISTRICT, an Arizona
18 sanitary district; GENE LEASURE and
SHIRLEY LEASURE, husband and
19 wife; CHARLIE TURNEY and
MICHELLE TURNEY, husband and
20 wife; DAYNE TAYLOR and
MARLESS TAYLOR, husband and
21 wife; JOHN and JANE DOES I-X,

22 Defendants.

Case No.: P1300CV201000036

**PLAINTIFFS' INITIAL DISCLOSURE
STATEMENT**

23
24 Plaintiffs submit their initial disclosure statement pursuant to Rule 26.1, Arizona
25 Rules of Civil Procedure. The following disclosures are based solely on information
26 currently in Plaintiffs' possession. Plaintiffs incorporate by reference all documents,

1 pleadings, disclosure statements and correspondence exchanged between the parties.
2 Plaintiffs will amend and supplement their disclosure pursuant to the Arizona Rules of
3 Civil Procedure as additional information becomes available.

4 **I. FACTUAL BASES OF CLAIMS.**

5 **A. The District And The Existing Wastewater Treatment Plant.**

6 Defendant Inscription Canyon Ranch Sanitary District (the "District") operates a
7 wastewater treatment plant (the "Existing Plant") that has approximately 444 connections
8 within four residential communities located in Yavapai County. Plaintiffs are real estate
9 developers that developed certain of the above referenced communities to which the
10 District provides services and the Plaintiffs continue to own platted lots within the District
11 boundaries that are awaiting sale. Certain of Plaintiffs also financed the construction of
12 the Existing Plant pursuant to a development agreement entered into with the District.

13 The Existing Plant has a design capacity of 62,500 gallons per day ("GPD") and
14 operates pursuant to the Arizona Department of Environmental Quality ("ADEQ")
15 Aquifer Protection Permit No. P103119 ("APP") issued in 2002. The APP authorizes
16 expansion up to 455,500 GPD in four phases and the Existing Plant is phase one of the
17 four authorized. The Existing Plant is operating at approximately 43% of its 62,500 GPD
18 design capacity as documented by flow records submitted by the District to ADEQ known
19 as Self Monitoring Report Forms ("SMRFs"). This fact is further supported by the
20 District's own newsletter dated June 1, 2009, wherein the District acknowledged that the
21 Existing Plant was operating under 60% capacity.

22 **B. The District and Plaintiffs' Plan To Construct A New Wastewater**
23 **Treatment Plant.**

24 Following resolution of a prior District moratorium in 2006, and in anticipation of
25 future demand increases for plant capacity, certain Plaintiffs and the District began
26 working toward the design, permitting and construction of a new and expanded

1 wastewater treatment plant. Specifically, the District, Harvard Simon I, LLC (“Talking
2 Rock”), Whispering Canyon Development, LLC (“Whispering Canyon”), Old Capitol
3 Investments, LLC (“Old Capitol”) and First American Title Insurance Agency executed a
4 Memorandum of Understanding (the “MOU”) on October 16, 2006 and an Amended
5 Escrow Agreement dated April 30, 2007 (the “Escrow Agreement”), which set forth each
6 party’s obligations, including funding, with respect to the Existing Plant. The Preserve at
7 the Ranch, LLC’s (the “Preserve”) obligation for funding participation arises solely
8 through its obligation to pay a specified amount of money upon a lot sale into an
9 administered escrow account.

10 Neither the MOU nor the Escrow Agreement contain any provisions with respect to
11 timing of the new plant construction, which is consistent with a prior Development
12 Agreement between Talking Rock and the District that specifies: “[the] District hereby
13 acknowledges and agrees that the [p]roperty may be developed in separate phases and that
14 the [d]eveloper may construct and install the [f]acilities in phases in a manner that will
15 allow for the provision of sewer utility services to each phase as necessary and in a timely
16 manner.” Nevertheless, pursuant to the MOU and the Escrow Agreement, and at varying
17 levels of participation, Plaintiffs have, to date: (i) funded the design, permitting and
18 acquisition of certain components for the planned new plant at a cost of approximately
19 \$500,000; and (ii) escrowed an additional \$591,000 toward advancement of construction.
20 While substantial, these funding efforts are but a portion of the total funding required for
21 the ultimate plant construction.

22 On July 23, 2009, representatives of Talking Rock and the District met in executive
23 session at a regularly scheduled meeting of the District’s Board of Directors (the “Board”)
24 to discuss the ultimate timing for construction of the new plant in light of the delay in
25 permitting and severe economic slow down which has reduced the demand for a new
26 plant. At that meeting, the District’s representatives indicated their willingness to discuss

1 the issue further and demonstrated an understanding that lot sales and home construction
2 would likely be slow for the foreseeable future. At this meeting, it was further agreed that
3 Talking Rock and the District would explore increasing the efficiency of the Existing
4 Plant or possibly expanding the Existing Plant as an interim measure.

5 **C. The District Seeks A Building Moratorium To Prevent Any New Use Of**
6 **The Existing Plant.**

7 Despite the Board's agreement regarding the process set forth above, on September
8 28, 2009, the District wrote a letter to the Director of Yavapai County Development
9 Services seeking a County imposed building permit moratorium. The letter threatened
10 that the District would impose a sewer moratorium if Yavapai County refused to impose a
11 building moratorium. No prior public notice, meeting or discussion was had in advance of
12 the District's determination to impose a sewer moratorium in the absence of a Yavapai
13 County building moratorium, which is a violation of the Arizona's Open Meeting Laws.¹
14 None of Plaintiffs were copied on the District's letter to Yavapai County and only
15 obtained it just prior to filing their complaint. Yavapai County did not accede to the
16 Board's demands. Consequently, the District chose to adopt a moratorium that precludes
17 any new or additional sewer hookups within the District. The District did so without any
18 consideration of available solutions to the perceived operating issues or without
19 consultation with the Existing Plant manufacturer. Plaintiff's will show at trial that
20 simple, inexpensive solutions are readily available to the District and that substantial
21 efficiencies have already been achieved as a result of the District operator implementing

22
23 ¹ In fact, the only public discussion regarding the possibility of a moratorium can be found
24 in the District Board's meeting minutes from August 13, 2009 (adopted and made public
25 on August 26, 2009) and November 11, 2009 meeting (adopted and made public on
26 December 12, 2009). In the District's August 13, 2009 minutes Defendant Leasure
declared that a moratorium should be considered to prompt payment of outstanding bills.
In the November 11, 2009 meeting minutes, there is a reference to an "Action Item" that
states "Charlie [Turney] and Dayne [Taylor] will look to see if he has the draft
Moratorium that Doug [Nelson] previously prepared."

1 post-moratorium suggestions made by the Existing Plant manufacturer.

2 Notably, the District is the only source of sewer service in the area and the District
3 recently adopted an ordinance that mandates “[a]ny building within the District inhabited
4 or used by human beings that discharges wastewater shall be connected to the District’s
5 wastewater system.” Approximately 650 of the initial 1,100 lots that were promised
6 service by the District await construction and/or sale.

7 **D. The District Purported To Pass The Moratorium On December 9, 2009,**
8 **In Violation Of The Open Meeting Laws.**

9 On December 9, 2009, the District held a regularly scheduled meeting of the Board
10 (the “December Meeting”) in which it purported to approve a sewer moratorium through
11 Resolution No. 2009-01. Gene Leasure, Charlie Turney and Dayne Taylor attended the
12 December Meeting as members of the Board. Upon information and belief, and as
13 evidenced by the letter the District sent to Yavapai County, the District had already
14 concluded that it would adopt a moratorium and the purported approval of Resolution No.
15 2009-01 was pre-ordained without any public notice, meeting or discourse in violation of
16 Arizona’s Open Meeting Law.

17 Although Resolution No. 2009-01 declares that a moratorium is needed to address
18 inadequate capacity at the Existing Plant, upon information and belief, the District’s
19 moratorium was wrongfully enacted to force the repayment of alleged outstanding debts
20 from a certain Plaintiff and to hurry construction of an unnecessary new wastewater
21 treatment plant. Specifically, Resolution No. 2009-01 states that the moratorium will not
22 be lifted until (i) “all outstanding invoices have been paid in full by Old Capitol [] and any
23 other developer-entity that owes monies to the District;” and (ii) “no sooner than one
24 hundred sixty (160) days of when the new and expanded wastewater treatment plant will
25 actually be in operation in the District.”

26 Prior to the December Meeting, the District provided an agenda which purported to

1 include the matters to be discussed and decided. The agenda failed to provide the
2 information reasonably necessary to inform the public of the matters to be discussed or
3 decided in direct violation of the Open Meeting Law. Specifically, the "New Business"
4 section of the agenda merely stated "Resolution No. 2009-01 discussion and possible
5 action." The agenda did not provide any other information regarding the substance of
6 Resolution No. 2009-01 or that a moratorium related to new or additional sewer hook ups
7 was contemplated. Accordingly, members of the public had no way of knowing that such
8 a drastic action was about to be taken. In fact, the public would not even have suspected
9 such a course of action was contemplated because six months earlier, the District reported
10 to its members in its June, 2009 newsletter that the Existing Plant was operating at 60% of
11 its capacity.

12 At the December Meeting, and in further violation of the law, the members of the
13 Board attempted to pass Resolution No. 2009-01 without any public discussion. Only
14 after being prompted by a Talking Rock representative did the Board address the public
15 by responding to a question about the subject matter of Resolution No. 2009-01. No other
16 public discussion was had. Following the December Meeting, the District further
17 violated the Open Meeting Law by failing to make available for public inspection the
18 minutes or recordings from the December Meeting within three working days after the
19 meeting. In fact, those minutes were not made available for public inspection until
20 January 13, 2010.

21 On December 22, 2009, Plaintiffs, through counsel, put the District on notice that
22 the adoption of Resolution No. 2009-01 and the December Meeting violated Arizona's
23 Open Meeting Laws and that any actions taken with regard to Resolution No. 2009-01
24 were null and void.

25
26

1 **E. The District Purported To Ratify The Moratorium On January 6, 2010,**
2 **In Violation Of The Open Meeting Laws.**

3 On January 6, 2010, the District held a special meeting of its Board (the “January
4 06 Meeting”) in which it purported to ratify Resolution No. 2009-01. Gene Leasure,
5 Charlie Turney and Dayne Taylor attended the January 06 Meeting as members of the
6 Board. Proper notice of the January 06 Meeting was not provided to the public.

7 Prior to the January 06 Meeting, the District provided an agenda, which purported
8 to include the matters to be discussed or decided at the January 06 Meeting. Once again
9 the District violated the law by failing to provide any information reasonably necessary to
10 inform the public of the matters to be discussed or decided. Specifically, the only
11 reference to Resolution No. 2009-01 was in the section labeled “New Business” which
12 stated “Resolution No. 2009-01 moratorium on sewer hook up.” The District also failed
13 to make available to the public any written description of the action to be ratified as
14 required by the Open Meeting Law, nor did the District provide documentation related to
15 the Board’s deliberations, consultations or decisions that preceded and related to such
16 action.

17 Despite these failures, the Board purported to ratify Resolution No. 2009-01 at the
18 January 06 Meeting, which was tape recorded by the District and conducted with the
19 District’s legal counsel present. Upon information and belief, the ratification motion at
20 the January 06 Meeting was moved and seconded without any public discourse. In fact,
21 upon information and belief, the only opportunity provided for public discourse occurred
22 after a Preserve representative interrupted the Board prior to the Board’s attempted
23 ratification of Resolution No. 2009-01.

24 Furthermore, during the January 06 Meeting, a Preserve representative requested
25 the Board provide a copy or verbatim transcript of the recorded proceedings. Board
26 members Gene Leasure, Dayne Taylor and their legal counsel, however, replied that the

1 District had no such obligation to provide any such copy or related transcript. Following
2 the January 06 Meeting, the District refused to make available for public inspection the
3 minutes or recordings of the January 06 Meeting within three working days after the
4 meeting. In fact, those minutes were not made available for public inspection until
5 February 10, 2010.

6 Upon information and belief, immediately following the January 06 Meeting, all of
7 the members of the Board and their counsel met with two District lot owners behind
8 closed doors for over two hours further deliberating about the District's business. The
9 Plaintiffs, as well as all other members of the public, were denied advance notice of this
10 closed-door meeting. Contrary to Open Meeting Law mandates, the post-public meeting
11 gathering was not advertised as any sort of Special or Executive Session and Plaintiffs
12 were not invited to participate, despite certain Plaintiffs being present at the January 06
13 Meeting immediately prior.

14 **F. The District Again Purported To Ratify The Moratorium On January**
15 **13, 2010, In Violation Of The Open Meeting Laws.**

16 Apparently recognizing the inadequacy of its purported ratification during the
17 January 06 Meeting, on January 7, 2010, the District publicly noticed yet another meeting
18 of the Board to be held on January 13, 2010 (the "January 13 Meeting") for purposes of a
19 second attempted ratification of Resolution No. 2009-01.

20 The notice for the January 13 Meeting properly provided that "[t]he public may
21 obtain a copy of the Resolution 2009-01 and all deliberations, consultations and decisions
22 by the [District] Board of Directors that preceded and relate to this action to be ratified by
23 making a written request at least 72 hours in advance of the meeting."

24 On January 7, 2010, Talking Rock requested a copy of every item set forth in the
25 notice. On January 8, 2010, the Preserve also requested a copy of every item set forth in
26 the notice, along with minutes and recordings from the January 06 Meeting and

1 information on deliberations from the meeting in which the Board, counsel for the Board
2 and lot owners met behind closed doors. In direct violation of the law, the District failed
3 to provide Talking Rock or the Preserve with the information requested in advance of the
4 January 13 Meeting.

5 Prior to the January 13 Meeting, the Board made available an agenda for the
6 January 13 Meeting. Once again, the District failed to comply with the Open Meeting law
7 by omitting information reasonably necessary to inform the public of the matters to be
8 discussed or decided. Specifically, the only reference to Resolution No. 2009-01 occurred
9 in the section labeled "New Business" and merely stated "Ratify Resolution No. 2009-
10 01." No reference to the substance of Resolution No. 2009-01 was provided. Despite this
11 and other documented failures, the Board purported to ratify Resolution No. 2009-01 at
12 the January 13 Meeting for a second time. Only after the Board purported to ratify
13 Resolution No. 2009-01 did the District provide Talking Rock and the Preserve with some
14 of the information Plaintiffs had previously requested.

15 At the end of the January 13 Meeting, the Board continued their disregard for the
16 Open Meeting Law by holding an unnoticed executive session without public vote or
17 specification of the specific provision of the law authorizing the executive session.

18 Following the January 13 Meeting, the District further failed in its obligation to
19 make available for public inspection the minutes or recordings of the January 06 Meeting
20 within three working days after the meeting. In fact, those minutes were not made
21 available for public inspection until January 27, 2010.

22 **G. Defendants Further Violate the Open Meeting Law by Expending**
23 **Public Monies For Legal Services to Defend Plaintiff's Complaint.**

24 Plaintiffs warned Defendants by letter dated January 26, 2010 of the prohibition
25 against expending public monies to employ or retain counsel in any legal action
26 commenced pursuant to the Open Meeting Law absent other provisions of law providing

1 authority and taking legal action at a properly noticed open meeting approving such
2 expenditure prior to incurring any such obligation or indebtedness. During its meeting on
3 January 27, 2010 the Board voted to expend public monies to defend against Plaintiffs'
4 lawsuit in violation of the law.

5 **II. LEGAL THEORIES SUPPORTING PLAINTIFFS' CLAIMS.**

6 **A. The District's Violations Of The Open Meeting Law.**

7 The District is a public body within the meaning of A.R.S. § 38-431.07 *et. seq.* (the
8 "Open Meeting Laws"). Defendants Gene Leasure, Charlie Turney and Dayne Taylor are
9 public officers as contemplated under the Open Meeting Laws. Plaintiffs are persons
10 affected by the District's violations of the Open Meeting Laws, as Plaintiffs are owners of
11 platted lots within the District's boundaries that were previously approved for service
12 from the Existing Plant. As set forth in more detail below, the District transacted certain
13 actions in clear violation of the Open Meeting Laws and the violations evidence a pattern
14 of deceptive behavior, dating back to the July 2009 meeting with Talking Rock
15 representatives, which actions were designed to prevent public involvement. Defendants
16 Gene Leasure, Charlie Turney and Dayne Taylor, as members of the Board, also violated
17 the Open Meeting Laws and/or knowingly aided, agreed to aid or attempted to aid other
18 persons in violating the Open Meeting Laws.

19 1. **Defendants Failed To Provide Proper Agendas In Accordance With**
20 **The Open Meeting Laws.**

21 A.R.S. § 38-431.02(h) provides:

22 Agendas required under this section shall list the **specific**
23 **matters to be discussed, considered or decided at the meeting.**
24 **The public body may discuss, consider or make decisions**
only on matters listed on the agenda and other matters related
thereto. (Emphasis added).

25 Additionally, A.R.S. § 38-431.09(A) provides:

26 It is the public policy of this state that meetings of public

1 bodies be conducted openly and that notices and agendas be
2 provided for such meetings which contain **such information**
3 **as is reasonably necessary to inform the public of the**
4 **matters to be discussed or decided. Toward this end, any**
5 **person or entity charged with the interpretations of this**
6 **article shall construe this article in favor of open and**
7 **public meetings. (Emphasis added).**

8 Defendants violated A.R.S. §§ 38-431.02(h) and 38-431.09(A) by, among other actions:

9 (i) failing to provide specific information reasonably necessary to inform the public
10 regarding its consideration of Resolution No. 2009-01 in the agenda for the December
11 Meeting; (ii) failing to provide specific information reasonably necessary to inform the
12 public regarding its purported ratification of Resolution No. 2009-01 in the agenda for the
13 January 06 Meeting; and (iii) failing to provide specific information reasonably necessary
14 to inform the public regarding the second attempt to ratify Resolution No. 2009-01 at the
15 January 13 Meeting.

16 2. Defendants Failed To Comply With Statutory Ratification Procedures
17 On Multiple Occasions When Attempting To Ratify Resolution No.
18 2009-01 In Violation Of The Open Meeting Laws.

19 A.R.S. § 38-431.05(B) provides:

20 A public body may ratify legal action taken in violation of
21 this article in accordance with the following requirements: 1. Ratification shall take place at a public meeting within thirty
22 days after discovery of the violation or after such discovery
23 should have been made by the exercise of reasonable
24 diligence. 2. **The notice of the meeting shall include a**
25 **description of the action to be ratified, a clear statement**
26 **that the public body proposes to ratify a prior action and**
27 **information on how the public may obtain a detailed**
28 **written description of the action to be ratified. 3. The**
29 **public body shall make available to the public a detailed**
30 **written description of the action to be ratified and all**
31 **deliberations, consultations and decisions by members of**
32 **the public body that preceded and related to such action.**
33 The written description shall also be included as part of the
34 minutes of the meeting at which ratification is taken. 4. The
35 public body shall make available to the public the notice and
36 detailed written description required by this section at least
37 seventy-two hours in advance of the public meeting at which
38 the ratification is taken. (Emphasis added).

1 Defendants violated A.R.S. § 38-431.05(B) by, among other actions, entirely failing to
2 provide notice of its January 06 Meeting. Moreover, the agenda for the January 06
3 Meeting could not serve as sufficient notice because, among other failures, the agenda: (i)
4 did not contain a clear statement that the Board proposed to ratify a prior action; (ii) did
5 not contain information on how the public may obtain a detailed written description of the
6 action to be ratified; and (iii) did not make available to the public a detailed written
7 description of the action to be ratified and all deliberations, consultation and decisions by
8 members of the District that preceded and related to such action.

9 Defendants also violated A.R.S. § 38-431.05(B)(3) on multiple occasions by failing
10 to make available any of the District's deliberations, consultations, and decisions that
11 preceded such action at both the January 06 Meeting or in advance of the January 13
12 Meeting.

13 3. Defendants Failed To Make Minutes Or Recordings Available For
14 Public Inspection In Violation Of The Open Meeting Laws.

15 A.R.S. § 38-431.01(D) provides that “[t]he minutes or a recording of a meeting
16 shall be available for public inspection three working days after the meeting except as
17 otherwise specifically provided by this article.”

18 Defendants violated A.R.S. § 38-431.01(D) by, among other actions, failing to
19 make the minutes or recordings of the December Meeting, the January 06 Meeting or the
20 January 13 Meeting available for public inspection within three working days after the
21 meeting.

22 4. Defendants Failed To Comply With The Statutory Requirements
23 Regarding Executive Sessions.

24 A.R.S. § 38-431.02(B) provides, “[i]f an executive session will be held, the notice
25 shall be given to the members of the public body, and to the general public, stating the
26 specific provision of law authorizing the executive session.” Defendants violated A.R.S.

1 § 38-431.02(B) by failing to state the specific provision of law authorizing the executive
2 session during the January 13 Meeting.

3 A.R.S. § 38-431.03(A) provides, “[u]pon a public majority vote of the members
4 constituting a quorum, a public body may hold an executive session[.]” Defendants
5 violated § 38-431.03(A) by holding an executive session at the commencement of the
6 January 13 Meeting without first holding a public majority vote.

7
8 5. Defendants Expended Public Funds to Retain Counsel in Violation of
the Open Meeting Law.

9
10 A.R.S. § 38-431.07(B) provides that

11 A public body shall not expend public monies to employ or
12 retain legal counsel to provide legal services or representation
13 to the public body or any of its officers in any legal action
14 commenced pursuant to any of the provisions of this article,
unless the public body has authority to make such expenditure
pursuant to other provisions of law and takes a legal action at
a properly noticed open meeting approving such expenditure
prior to incurring any such obligation or indebtedness.

15 Defendants violated this statute because: (i) Defendants do not have independent authority
16 to make such expenditure; (ii) Defendants did not provide proper public notice of the
17 Board’s consideration of the matter; and (iii) Defendants did not take the necessary legal
18 action prior to expending funds or incurring the obligation.

19 6. Defendants Engaged In Other Actions In Violation Of The Open
20 Meeting Laws.

21 A.R.S. § 38-431.01(A) provides, “[a]ll legal action of public bodies shall occur
22 during a public meeting.” A.R.S. § 38-431.01(A) further provides, “[a]ll meetings of any
23 public body shall be public meetings and all persons so desiring shall be permitted to
24 attend and listen to the deliberations and proceedings[.]” Pursuant to A.R.S. § 38-431, a
25 meeting is defined as “the gathering, in person or through technological devices, of a
26 quorum of members of a public body at which they discuss, propose or take legal action,

1 including any deliberations by a quorum with respect to such action.”

2 The Board’s letter to Yavapai County, declaring its intent to adopt a sewer
3 moratorium absent a County building moratorium, constituted the taking of legal action
4 without a public meeting in direct violation of the Open Meeting Laws. In addition, upon
5 information and belief, all members of the Board held a two-hour, closed door, non-
6 noticed meeting with Board counsel and two District property owners directly following
7 the January 06 Meeting in violation of the Open Meeting Laws. Plaintiffs, upon
8 information and belief, anticipate that discovery will uncover other un-noticed, impromptu
9 gatherings attended by a quorum of the Board including at times the two referenced lot
10 owners or other landowners in the District.

11 7. The Court Should Impose The Penalties Set Forth In A.R.S. § 38-
12 431.07.

13 Pursuant to A.R.S. 38-431.07(A), as a result of the above violations of the Open
14 Meeting Laws, and others, “the court may impose a civil penalty not to exceed five
15 hundred dollars” against each Defendant, including the District and Defendants Gene
16 Leasure, Charlie Turney and Dayne Taylor.

17 Additionally, A.R.S. § 38-431.07 provides:

18 If the court determines that a public officer with intent to
19 deprive the public of information violated any provision of
20 this article the court **may remove the public officer from**
21 **office** and shall assess the public officer or a person who
22 knowingly aided, agreed to aid or attempted to aid the public
officer in violating the article, or both, with all of the costs
and attorney fees awarded to the plaintiff pursuant to this
section.

23 Defendants Gene Leasure, Charlie Turney and Dayne Taylor violated the Open Meeting
24 Laws with intent to deprive the public of information on multiple occasions indicating a
25 intentional pattern of deception undertaken to impose a moratorium at any cost. This fact
26 is evidenced by: (i) the numerous and repeated violations of the Open Meeting Laws; (ii)

1 the failure to comply with the Open Meeting Laws even after being apprised of their
2 applicability and content; and (iii) the pre-ordained decision making by the Board.
3 Consequently, Plaintiffs are entitled to an order from the Court removing Defendants
4 Gene Leasure, Charlie Turney and Dayne Taylor from office. Plaintiffs are also entitled
5 to an award of their attorneys' fees under A.R.S. 38-431.07(A).

6
7 8. The Court Should Declare Resolution No. 2009-01 Null And Void.

8 A.R.S. § 38-431.05(A) provides “[a]ll legal action transacted by any public body
9 during a meeting held in violation of any provision of this article is **null and void** [.]”
10 (Emphasis added). As set forth above, the Board adopted Resolution No. 2009-01 in
11 violation of the Open Meeting Laws at the December Meeting. The Board also failed to
12 ratify the adoption of Resolution No. 2009-01 in accordance with the Open Meeting Laws
13 at the January 06 Meeting. The Board similarly failed to ratify the adoption of Resolution
14 No. 2009-01 in accordance with the Open Meeting Laws at the January 13 Meeting.

15 A.R.S. § 38-431.05(B)(1) states that “[r]atification shall take place at a public
16 meeting within thirty days after discovery of the violation or after such discovery should
17 have been made by the exercise of reasonable diligence.” Defendants knew or should
18 have reasonably known that their purported adoption of Resolution No. 2009-01 was a
19 violation of the Open Meeting Laws on December 21, 2009, the day Plaintiffs, through
20 legal counsel, put Defendants on notice that the purported adoption of Resolution No.
21 2009-01 was a violation of the Open Meeting Laws. Consequently, Defendants had until
22 January 20, 2010 to ratify the adoption of Resolution No. 2009-01. Because Defendants
23 failed to properly ratify Resolution No. 2009-01 by January 20, 2010, the time to do so
24 has expired. As a result, the Board's adoption of Resolution No. 2009-01 is null and void
25 and cannot be ratified.

1 **B. Plaintiffs' Special Action Claims.**

2 The District and its Board have no discretion to proceed arbitrarily or capriciously.
3 *Rhodes v. Clark*, 92 Ariz. 31, 373 P.2d 348 (1962); *Hertz Drive-Ur-Self Sys., Inc. v.*
4 *Tucson Airport Authority*, 81 Ariz. 80, 299 P.2d 1071 (1956). The District's purported
5 adoption of Resolution No. 2009-01 is arbitrary and capricious, and thus, an abuse of
6 discretion.

7 Specifically, the District is the sole source of sewer service to the residential
8 communities within its annexed boundaries and it has an obligation to provide adequate
9 service. In fact, the District (through a prior adopted ordinance) mandates that all
10 residential structures within its annexed territory connect to the Existing Plant thereby
11 foreclosing the use of any alternative wastewater system (e.g., septic). The result is that
12 the adoption of Resolution No. 2009-01 effectively precludes residential construction
13 because sewer service is not available. The resulting harm renders Plaintiffs' property
14 valueless.

15 Certain Plaintiffs paid for the construction of the Existing Plant with the
16 expectation of service to their development projects. In addition, Plaintiffs invested
17 millions of dollars in infrastructure related to the Existing Plant on the expectation of
18 service from the District.² Their investment was based solely on the District's
19 unconditional agreement to provide service pursuant to various Water and Sewer Service
20 agreements signed by the District, which then induced Yavapai County to issue related
21 construction approvals.

22
23 ² To date, Talking Rock incurred sewer infrastructure costs (not including costs to
24 construct the Existing Plant) are approximately \$4,564,220; Whispering Canyon's
25 incurred costs are approximately \$1,184,210 and the Preserve's incurred costs are
26 approximately \$215,424. Each of the Plaintiffs has been required to construct their
 respective infrastructure and then turn it over to the District for operation and
 maintenance. With the exception of the Preserve's infrastructure, the District has refused
 to accept and take ownership of any of the constructed infrastructure or the Existing Plant,
 the later of which was completed in 2003.

1 Moreover, the reasons set forth in Resolution No. 2009-01 for imposing a
2 moratorium, (i.e. inadequate capacity) are erroneous. Specifically, the Existing Plant is
3 operating at only 43% percent of its design capacity and there are no existing permit
4 violations related to capacity exceedance or APP monitored constituent exceedences. In
5 fact, ADEQ completed an inspection of the Existing Plant on July 29, 2009 for the
6 purposes of compliance with the terms and conditions of the APP and filed a subsequent
7 report dated August 6, 2009. The ADEQ report documented that the District was in full
8 compliance with the APP permit with the exception of two “Major Deficiencies,” which
9 could lead to a Notice of Violation (“NOV”) if not addressed. The first deficiency related
10 to missed monitoring reports and a second related to fact that the District “does not claim
11 ownership of the plant ... even though it is located on ICR Sanitary district property” and
12 that “[t]he Aquifer Protection Permit was issued to ICR Sanitary District, not to Harvard
13 Investments, with the idea that the Sanitary District would own and operate the treatment
14 plant.”³ To the extent Defendants contend that the Existing Plant is operationally
15 deficient, any potential limitations are due to the District’s failure to optimize the
16 operation of the Existing Plant according to its specifications and/or the District’s failure
17 to make rudimentary adjustments consistent with prudent operating practices, which
18 Plaintiffs will demonstrate throughout this litigation, including in their expert reports.

19 Additionally, Resolution No. 2009-01’s stated conditions for lifting the moratorium
20 evidence its improper enactment to cure a monetary dispute with one of the Plaintiffs.⁴
21 The notion that the District would deny service to hundreds of lots within its annexed
22 boundaries to settle a dispute with one Plaintiff is plainly arbitrary and capricious.

23 _____
24 ³ This is an ongoing issue between Talking Rock and the District in that the District has
25 refused to accept and take ownership of the Existing Plant since 2003 when constructed
26 was completed.

⁴ This is further corroborated by Defendant Leasure’s comments in the Board’s August
13, 2009 minutes.

1 Furthermore, Plaintiffs are a party beneficially interested in procuring the
2 enforcement of the District's public duties, as Plaintiffs are owners of platted lots within
3 the District's boundaries. The District is abusing its authority by using moratoriums as
4 tools of manipulation. The District imposed an unlawful moratorium in 2006 to demand a
5 new plant be constructed using technology of its choosing and have now adopted a
6 second, and equally unlawful, moratorium for purposes of forcing premature construction
7 of a new plant and the payment of alleged debts. The District cannot be allowed to
8 simultaneously: refuse to serve the property within its annexed territory; bar the use of
9 septic systems; fail to explore readily available solutions to perceived problems at the
10 Existing Plant; ignore less costly alternatives to expansion of the Existing Plant; and shirk
11 its responsibility to accept the Existing Plant and associated infrastructure without any
12 repercussion. The District must perform its statutory duties and Plaintiffs have no equally
13 plain, speedy and adequate ability to obtain relief in this matter.

14 For these reasons, Plaintiffs are entitled to an expeditious ruling by this Court that
15 the adoption of Resolution No. 2009-01 is arbitrary and capricious and is an abuse of
16 discretion.

17 **C. Plaintiffs' Declaratory Judgment Claims.**

18 An actual controversy exists between Plaintiffs and Defendants as to the respective
19 rights, obligations, relationships and/or legal relations with respect to Resolution No.
20 2009-01. Moreover, Plaintiffs are legal entities and the declaratory relief sought will
21 terminate the controversy and remove any uncertainty. Accordingly, for the same reasons
22 set forth in Section II(B) and pursuant to A.R.S. § 12-1831, *et seq.*, and Rule 57, Arizona
23 Rules of Civil Procedure, Plaintiffs are entitled to a declaratory judgment from the Court
24 that Defendants acted arbitrarily and capriciously by adopting Resolution No. 2009-01
25 and thus the adoption is an abuse of discretion.
26

1 **III. THE NAMES, ADDRESSES AND TELEPHONE NUMBERS OF ANY**
2 **WITNESSES WHOM THE DISCLOSING PARTY EXPECTS TO CALL AT**
3 **TRIAL.**

4 Discovery is just beginning in this case and Plaintiffs have not yet determined
5 which witnesses they will call at trial. Plaintiffs reserve the right to call any of the
6 individuals listed below, any witnesses identified by any other party and/or any custodians
7 of record. Plaintiffs will supplement this portion of the disclosure statement as necessary.

7 Gene Leasure
8 5531 Inscription Canyon Drive
9 Prescott, Arizona 86305

10 Mr. Leasure is the chairperson of the District's Board of Directors and resides in
11 Inscription Canyon Ranch. Plaintiffs anticipate that Mr. Leasure will testify regarding all
12 aspects of the Board's adoption of Resolution No. 2009-01, including, but not limited to,
13 testimony regarding each meeting at which the Board discussed Resolution No. 2009-01
14 and/or the need for a sewer moratorium; the reasons for adopting Resolution No. 2009-01;
15 and any other matters to which Mr. Leasure has relevant knowledge including the site
16 visit to the Existing Plant on January 5, 2010.

16 Charlie Turney
17 5875 West Turning Mountain Lane
18 Prescott, Arizona 86305

19 Mr. Turney is a member of the District's Board of Directors and resides in
20 Inscription Canyon Ranch. Plaintiffs anticipate that Mr. Turney will testify regarding all
21 aspects of the Board's adoption of Resolution No. 2009-01, including, but not limited to,
22 testimony regarding each meeting at which the Board discussed Resolution No. 2009-01
23 and/or the need for a sewer moratorium; the reasons for adopting Resolution No. 2009-01;
24 and any other matters to which Mr. Turney has relevant knowledge.

24 Dayne Taylor
25 13868 Grey Bears Tr.
26 Prescott, Arizona 86305

Mr. Taylor is a member of the District's Board of Directors and resides in

1 Inscription Canyon Ranch on the lot immediately adjacent to the Existing Plant. Plaintiffs
2 anticipate that Mr. Taylor will testify regarding all aspects of the Board's adoption of
3 Resolution No. 2009-01, including, but not limited to, testimony regarding each meeting
4 at which the Board discussed Resolution No. 2009-01 and/or the need for a sewer
5 moratorium; the reasons for adopting Resolution No. 2009-01; and any other matters to
6 which Mr. Taylor has relevant knowledge.

7 Gloria Lorntzen
8 5531 Inscription Canyon Drive
9 Prescott, Arizona 86305

10 Ms. Lorntzen is the clerk of the District. Plaintiffs anticipate that Ms. Lorntzen
11 will testify regarding the content of the Board's discussions at its public meetings and
12 instruction given to her in regard to the preparation of minutes of the Board meetings.

13 Chris Williamson
14 P.O. Box 264
15 Williams, AZ 86046

16 Mr. Williamson is an employee of A Quality Water Company LLC, who is the
17 current operator of the Existing Plant. Plaintiffs anticipate that Mr. Williamson will
18 testify regarding the operation, maintenance and repair of the Existing Plant, APP
19 reporting and interface with ADEQ, discussions with and direction from the Board related
20 to operations, maintenance and repair of the Existing Plant, the site visit to the Existing
21 Plant on January 5, 2010 and District permitting for the new plant.

22 Pat Carpenter
23 P.O. Box 264
24 Williams, AZ 86046

25 Mr. Carpenter is the President of A Quality Water Company LLC, who is the
26 current operator of the Existing Plant. Plaintiffs anticipate that Mr. Carpenter will testify
regarding the operation, maintenance and repair of the Existing Plant, APP reporting and
interface with ADEQ, discussions with and direction from the Board related to

1 operations, maintenance and repair of the Existing Plant, the site visit to the Existing Plant
2 on January 5, 2010 and permitting for the new plant.

3 Jimmy Stoner
4 13410 N. Iron Hawk Dr.
5 Prescott, AZ 86305

6 Mr. Stoner resides in Inscription Canyon Ranch and serves on the Inscription
7 Canyon Ranch Water Users Association Board. Mr. Stoner was present during the
8 December Meeting and the January 06 Meeting. Plaintiffs anticipate that Mr. Stoner will
9 testify regarding both those meetings. Plaintiffs also anticipate that Mr. Stoner will testify
10 regarding meetings he attended with Board members following the January 06 Meeting
11 and any other meetings and/or discussions he may have had with the Board.

11 Chris Stoner
12 13410 N. Iron Hawk Dr.
13 Prescott, AZ 86305

14 Ms. Stoner resides in Inscription Canyon Ranch and was present during the
15 December Meeting and the January 06 Meeting. Plaintiffs anticipate that Ms. Stoner will
16 testify regarding both those meetings. Plaintiffs also anticipate that Ms. Stoner will testify
17 regarding meetings she attended with Board members following the January 06 Meeting
18 and any other meetings and/or discussions she may have had with the District Board of
19 Directors.

19 Hugh Pryor
20 15105 N. Doubtful Canyon Road
21 Prescott, AZ 86305

22 Mr. Pryor is a resident in Talking Rock and was present during the December
23 Meeting and the January 13 Meeting. Plaintiffs anticipate the Mr. Pryor will testify
24 regarding both those meetings.

25 Davin Benner
26 Granite Basin Engineering, Inc.
3605 Crossings Drive, Suite B
Prescott, AZ 86305

1 Mr. Benner is an engineer with Granite Basin Engineering Inc. Plaintiffs anticipate
2 that Mr. Benner will testify regarding the permitting for the Existing Plant, wastewater
3 generation flow rates, operational issues and the capacity of the Existing Plant.

4 Tim Emberlin
5 P.O. Box 4337
6 Prescott, AZ 86302

7 Mr. Emberlin is a general contractor and member of Copper Tree Construction
8 Group LLC. Plaintiffs anticipate that Mr. Emberlin will testify regarding the content of
9 various District Board meetings; the site visit to the Existing Plant that occurred on
10 January 5, 2010; and other matters related to the moratorium.

11 Cole Johnson
12 P.O. Box 4337
13 Prescott, AZ 86302

14 Cole Johnson is a developer and is a manager of Old Capital Investments LLC and
15 Whispering Canyon Development LLC via his interest in Four Capital Group Inc.
16 Plaintiffs anticipate that Mr. Johnson will testify regarding the District's claim of money
17 owed to it by Old Capital Investments LLC that formed the basis for the moratorium, the
18 District's operation of the Existing Plant; and the harm to Whispering Canyon as a result
19 of the moratorium.

20 Jim Heitel
21 P.O. Box 12760
22 Scottsdale, AZ 85267

23 Mr. Heitel is a developer and is the manger of the Preserve at the Ranch LLC via
24 his management interest in Chubasco 49 LLC. Plaintiffs anticipate that Mr. Heitel will
25 testify regarding a telephone conversation he had with Gene Leasure and Dayne Taylor
26 between December 9th and 11th, 2009 regarding the moratorium, the District's January 06
meeting, the site visit to the Existing Plant that occurred on January 5, 2010, as well as
harm to Preserve as a result of the moratorium.

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Brian Siever
P.O. Box 12760
Scottsdale, AZ 85267

Mr. Siever is a developer and is the manger of the Preserve at the Ranch LLC via his management interest in Hiland Holdings LLC. Plaintiffs anticipate that Mr. Siever will testify regarding the District's January 06 meeting, the site visit to the Existing Plant on January 5, 2010 as well as harm to the Preserve as a result of the moratorium.

Clint Poteet
Harvard Investments LLC
177700 N. Pacesetter Way
Scottsdale, AZ 85255

Mr. Poteet is an engineer and employee of Harvard Investments LLC. Plaintiffs anticipate that Mr. Poteet will testify about the July 23, 2009 meeting he attended with Mr. Craig Krumwiede following with Board's public meeting on that same date, the content and discussion with members of the Board at various Board meetings, the site visit to the Existing Plant on January 5, 2009, observations as the January 06 post-meeting gathering, the current operating conditions at the Existing Plant; and conversations and communication Mr. Poteet has had with A Quality Water representatives.

Craig Krumwiede
Harvard Investments LLC
177700 N. Pacesetter Way
Scottsdale, AZ 85255

Mr. Krumwiede is President of Harvard Investments Inc., Manager of Harvard Talking Rock, LLC, and Operating Member of Harvard Simon I, LLC. Mr. Krumwiede will testify about the July 23, 2009 meeting he attended with Mr. Poteet following with Board's public meeting on that same date, the site visit to the Existing Plant on January 5, 2010, conversations and communication Mr. Krumwiede has had with various District Board members as well as harm to Talking Rock as a result of the moratorium.

1 Hal Lobaugh
2 516 Lotus Court
3 Prescott, AZ 86301

4 Mr. Lobaugh was present at the January 13 Meeting. Plaintiffs anticipate that Mr.
5 Lobaugh will testify regarding the content and discussion at the meeting.

6 Cheryl Ibbotson
7 5531 Inscription Canyon Drive
8 Prescott, Arizona 86305

9 Ms. Ibbotson is the District accountant with Wallace & Associates. Ms. Ibbotson
10 was present at the December Meeting and the January 13 Meeting. Plaintiffs anticipate
11 that Ms. Ibbotson will testify regarding the content and discussion of both those meetings.

12 Dwight Zemp
13 Santec Corporation
14 220 Malibu St.
15 Castle Rock, Co 80108

16 Mr. Zemp is an engineer and the Executive Vice President/Cofounder of Santec
17 Corporation based in Castle Rock, Colorado. Santec designed and constructed the
18 Existing Plant. Plaintiffs anticipate that Mr. Zemp will testify regarding design
19 specifications and the current capacity of the Existing Plant, as well as operation and
20 maintenance of the Existing Plant.

21 Scott Rogers
22 Aqua Engineering Inc.
23 533 W. 2600 S. , Suite 275
24 Bountiful, UT 84010

25 Scott Rogers is an engineer with Aqua Engineering Inc., the District's engineer
26 responsible for permitting the new plant. Plaintiffs anticipate that Mr. Rogers will testify
regarding the ADEQ permitting process for the new plant, alternatives for retro-fitting the
Existing Plant and conversations with the Board regarding the operation of the Existing
Plant.

1 Richard Hanna
2 Prescott Realty Inc.
3 5360 West Inscription Canyon Drive
4 Prescott, AZ 86305-4506

5 Mr. Hanna is the designated broker for Prescott Realty Inc., and for many years
6 has occupied the same office in Inscription Canyon Ranch where the Board previously
7 held its regular public meetings. Plaintiffs anticipate Mr. Hannah will testify to multiple
8 observed post-public meeting deliberations by a quorum of the Board and their counsel.

9 Steve Mauk
10 Yavapai County Interim Director of Development Services
11 Marina Street Annex
12 500 South Marina Street
13 Prescott, AZ 86303

14 Mr. Mauk is the Interim Director of Dev. Services of Yavapai County. Plaintiffs
15 anticipate that Mr. Mauk will testify regarding Yavapai County's issuance of various
16 development approvals to the Plaintiffs, the County's decision not to impose a building
17 moratorium and conversations and correspondence Mr. Mauk has had with District Board
18 Members and counsel for the District.

19 **IV. THE NAMES AND ADDRESSES OF ALL PERSONS WHOM THE PARTY**
20 **BELIEVES MAY HAVE KNOWLEDGE OR RELEVANT INFORMATION.**

21 Plaintiffs incorporate the individuals identified in the previous section and reserve
22 the right to add other individuals to this section at a later date.

23 **V. THE NAMES AND ADDRESSES OF ALL WITNESSES WHO HAVE**
24 **GIVEN STATEMENTS.**

25 At this time, Plaintiffs are unaware of any person who has provided a written or
26 recorded statement related to the issues in this action other than the affidavits it submitted
with its Reply in Support of its Application for Order to Show Cause.

1 **VI. EXPERT WITNESSES.**

2 At this time, Plaintiffs anticipate designating GHD Inc. as expert witnesses for
3 trial. This disclosure will be supplemented as necessary under the local rules and the
4 Court's scheduling order.

5 **VII. MEASURE OF DAMAGES.**

6 Plaintiffs are seeking the following relief: (i) an order from the Court imposing
7 civil penalties not to exceed five hundred dollars each against the District, Gene Leasure,
8 Charlie Turney and Dayne Taylor; (ii) an order from the Court removing Gene Leasure,
9 Charlie Turney and Dayne Taylor from office; (iii) an order from the Court declaring that
10 the Board's adoption of Resolution No. 2009-01 is null and void and cannot be ratified.;
11 (iv) an order from the Court accepting jurisdiction of this special action; (v) an order from
12 the Court that the District and its Board acted arbitrarily and capriciously and abused their
13 discretion by attempting to adopt Resolution No. 2009-01; (vi) a declaratory judgment
14 from the Court that Defendants acted arbitrarily and capriciously by adopting Resolution
15 No. 2009-01 and thus the adoption is an abuse of discretion; (vii) an award of the
16 reasonable attorneys' fees and costs incurred in bringing this action; (viii) any other relief
17 this Court deems just or proper.

18 Plaintiffs reserve the right to seek other damages in this action, including but not
19 limited to, any damages resulting from Plaintiffs' inability to sell their lots due to
20 Defendants' refusal to issue additional sewer hookups.

21 **VIII. THE EXISTENCE, LOCATION, CUSTODIAN, AND GENERAL**
22 **DESCRIPTION OF ANY TANGIBLE EVIDENCE, RELEVANT**
23 **DOCUMENTS OR ELECTRONICALLY STORED INFORMATION**
24 **DISCLOSING PARTY PLANS TO USE AT TRIAL AND RELEVANT**
25 **INSURANCE AGREEMENTS.**

26 Plaintiffs have not made any determination regarding the specific documents or
other tangible materials that they may introduce as trial exhibits. At present, Plaintiffs
anticipate using any and all of the documents listed in Section IX.

1 **IX. A LIST OF DOCUMENTS OR ELECTRONICALLY STORED**
2 **INFORMATION, OR CATEGORIES OF DOCUMENTS OR**
3 **ELECTRONICALLY STORED INFORMATION WHICH THE**
4 **DISCLOSING PARTY BELIEVES MAY BE RELEVANT TO THE**
5 **SUBJECT MATTER OF THE ACTION.**

6 Plaintiffs are aware of the following categories of documents that may be relevant
7 to this case:

- 8 1. ICRSD Agendas and Meeting Minutes [DEV000001-000152].
- 9 2. ICRSD Resolutions [DEV000153-000208].
- 10 3. ICRSD Operator's Notes and Flow Reporting [DEV000209-000222].
- 11 4. ICRSD SMRFs [DEV000223-000257].
- 12 5. ICRSD Correspondence [DEV000258-000379].
- 13 6. ICRSD Annual Reports and Financial Statements [DEVP000380-476].
- 14 7. ICRSD Reporting Data [DEV000477-000592].
- 15 8. Yavapai County Special Districts Handbook [DEV000593-000686].
- 16 9. ADEQ/APP Documentation [DEV000687-000724].
- 17 10. Talking Rock Sewer Service Agreements / Infrastructure / County
18 Approvals [DEV000725-000750].
- 19 11. Preserve Sewer Service Agreements / Infrastructure / County Approvals
20 [DEV000751-000766].
- 21 12. Whispering Canyon Sewer Service Agreements / Infrastructure / County
22 Approvals [DEV000767-000783].
- 23 13. Santec Evaluations [DEV000784-000809].
- 24 14. Affidavits [DEV000810-000818].
- 25 15. Development and Escrow Agreement Documentation [DEV000819-
26 000881].
16. Plaintiffs' Correspondence [DEV000882-000913].
17. Defendant Answer Exhibits (excepting documents disclosed in other

1 categories) [DEV000914-001060].

2 18. Plaintiff Homeowner Letters [DEV001061-001068].

3 19. Miscellaneous [DEV001069-001071].

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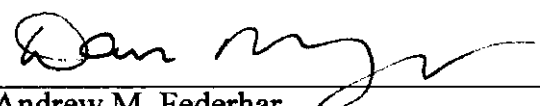
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DATED this 30th day of April, 2010.

FENNEMORE CRAIG, P.C.

By 
Andrew M. Federhar
Dawn Meidinger
Attorneys for Plaintiffs

COPY of the foregoing mailed this 30th day of April, 2010, to:

Douglas C. Nelson
Law Offices of Douglas C. Nelson, P.C.
7000 North 16th Street, Suite 120-307
Phoenix, AZ 85020
Attorney for Inscription Canyon Ranch Sanitary District,
Gene Leasure, Shirley Leasure, Charlie Turney, Michelle
Turney, Dayne Taylor, and Marless Taylor



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