

1 **DANIEL L. BONNETT (AZ # 014127)**  
2 **RAVI PATEL (AZ#030184)**  
3 **MARTIN & BONNETT, P.L.L.C.**  
4 1850 North Central Avenue, Suite 2010  
5 Phoenix, Arizona 85004  
6 (602) 240-6900  
7 [dbonnett@martinbonnett.com](mailto:dbonnett@martinbonnett.com)  
8 [rpatel@martinbonnett.com](mailto:rpatel@martinbonnett.com)

9 *Attorneys for Plaintiff*

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

12 Usama Abujbarah, ) Case No.: CV 2013-011198  
13 )  
14 Plaintiff, ) **PLAINTIFF’S SEPARATE**  
15 v. ) **STATEMENT OF FACTS IN**  
16 ) **SUPPORT OF MOTION FOR**  
17 ) **SUMMARY JUDGMENT**  
18 Town of Cave Creek; Vincent Francia; ) **(ORAL ARGUMENT REQUESTED)**  
19 Adam Trenk; Mike Durkin; Reg )  
20 Monachino; Charlie Spitzer; Ernie Bunch; )  
21 and Thomas McGuire, )  
22 )  
23 Defendants. )  
24 )

25 Pursuant to Ariz. R. Civ. P. 56 (c)(3), Plaintiff hereby submits his separate  
26 statement of facts and attached exhibits in support of his motion for summary judgment.<sup>1</sup>

27 **A. Plaintiff, Usama Abujbarah’s Employment with the Town of Cave Creek**

28 1. Mr. Abujbarah was and is a resident of Cave Creek, Arizona who was  
employed by the Town of Cave Creek (“Town” or “Cave Creek”) between 1996 and  
2013. (Complaint ¶¶ 2 & 8; Answer ¶¶ 2 & 4)

2. During the period 1999 to 2013, Mr. Abujbarah held the position of Town  
Manager until his termination on June 10, 2013. (*Declaration of Usama Abujbarah*,  
dated August 26, 2013 (“Abujbarah Decl.”) ¶¶ 1 & 2, previously filed on August 26,

<sup>1</sup> Various documents referenced as Exhibits to Plaintiff’s Separate Statement of Facts contain Confidential Information as defined in the Stipulated Protective Order entered by the Court on April 7, 2014. Pursuant to this order, a redacted copy of this statement of facts and attached exhibits is being filed electronically, with unredacted copies being served directly on the counsel and the Court. Exhibits which are Confidential or contain Confidential Information under the Protective Order are being filed under seal, pursuant to the Order.

1 2013, attached hereto as **Exhibit 8**; *Deposition of Usama Abujbarah taken on November*  
2 *7, 2013*, (“Abujbarah Dep.”) at 8:8-10, attached hereto as **Exhibit 1**).

3 3. Mr. Abujbarah signed an Employment Agreement (the “Agreement”) with  
4 Cave Creek on August 6, 2012. (**Exhibit 8**, Abujbarah Decl., at ¶ 3; Complaint at ¶ 2;  
5 Answer at ¶ 2).

6 4. The position of Town Manager and the associated duties are set forth in the  
7 Town Code and Agreement. (**Exhibit 8**, Abujbarah Decl. at ¶ 4 and Exhs.1-2).<sup>2</sup>

8 5. Section 31.25 of the Town Code provides, in part:

9 The Manager shall be the chief administrative . . . and shall: . . . (1)  
10 [e]xecute, on behalf of the Town Council, general administrative  
11 supervision and control of the affairs of the town; (2) [a]ttend all meetings  
12 of the Town Council . . . ; (4) [c]oordinate administrative functions and  
13 operations of the various departments, boards, divisions, and services of the  
14 town government . . . ; (5) [a]nalyze the functions, duties, and activities of  
15 the various departments, boards, and services of the town . . . and  
16 recommend . . . changes which, in his or her judgment, would result in a  
17 more efficient town government; . . . (7) [s]upervise the expenditures of all  
18 departments, divisions, or services of the town . . . ; (10) [i]nvestigate all  
19 complaints concerning the administration of the government and any  
20 contract and/or service maintained by the town . . . ; (11) [p]erform such  
21 other duties as may be required . . . and devote full time to the discharge of  
22 official duties.

23 (**Exhibit 8**, Abujbarah Decl. at ¶4, and Exh.2 at 25-26).

24 6. Applicable provisions of the Agreement regarding duties of Town Manager  
25 state, in pertinent part, that Plaintiff’s duties:

26 shall consist of those duties and obligations imposed upon the Town  
27 Manager by the Town Code, ordinances and regulations . . . [and] shall  
28 include the performance of all acts necessary and proper to attain the  
Town’s policy objectives as established from time to time by the Town  
Council within the time limitations . . . and constraints imposed by the  
Town’s annual operating and capital budget, and periodic appropriations . .  
. . . It is recognized . . . that the duties of Town Manager require work  
outside the normal office hours . . . to carry out those duties with the  
highest degree of professionalism possible.

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<sup>2</sup> The August 26, 2013, Declaration of Usama Abujbarah **Exhibit 8**, was filed with twelve  
numbered exhibits. These exhibits are attached as part **Exhibit 8**, and have not been  
renumbered, but are referenced as Exh. \_\_\_\_).

1 (Exhibit 8, Abujbarah Decl. at ¶ 3 and Exh.1 at ¶2.1 and ¶2.4 ).

2 **B. The 2013 Election of Members to the Cave Creek Town Council**

3 7. Cave Creek is a town located outside of metropolitan Phoenix in Maricopa  
4 County. (Complaint at ¶ 3; Answer at ¶ 3).

5 8. The Town maintains a public website with which Plaintiff is familiar as  
6 Town Manager. (Exhibit 8, Abujbarah Decl. at ¶ 5).

7 9. The Town operates under a Town Code which provides, in pertinent part,  
8 for a Town Council, Mayor and Town Manager. (Exhibit 8, Abujbarah Decl. at ¶ 4,  
9 Exh. 2 at 14, §30.01, and 26, §31.25).

10 10. The Town Manager is a full-time employee who reports directly to the  
11 Town Council. (Exhibit 8, Abujbarah Decl. at ¶ 4, Exh.1 at 2.4, and Exh.2 at 26,  
12 §31.25(H)).

13 11. The Mayor is a member of the Town Council. (Exhibit 8, Abujbarah Decl.  
14 at ¶ 4, Exh. 2 at 14, §30.01).

15 12. The Town Code provides that the Mayor and Council Members are elected  
16 to 2 year terms. (Exhibit 8, Abujbarah Decl. at ¶ 4, Exh. 2 at 14, §30.02).

17 13. The named-Defendants who are individuals each stood for election in 2013.  
18 (Exhibit 8, Abujbarah Decl. at ¶¶ 8-11).

19 14. Defendant, Vincent Francia, is the Mayor and a member of the Town  
20 Council who was elected to his current term on March 12, 2013. (Exhibit 8, Abujbarah  
21 Decl. at ¶ 8)

22 15. Defendant, Adam Trenk was elected to his current term as a  
23 councilmember on March 12, 2013. (Exhibit 8, Abujbarah Decl. at ¶ 10)

24 16. Defendants, Ernie Bunch, and Thomas McGuire, were elected to their  
25 current terms as councilmembers on March 12, 2013 and May 21, 2013, respectively.  
26 (Exhibit 8, Abujbarah Decl. at ¶ 9)

27 17. Defendants, Mike Durkin, Reg Monachino and Charlie Spitzer, each were  
28 elected to their current terms as councilmembers in a special runoff election held on May

1 21, 2013, and became Council members-elect at that time. Eileen Wright was also a  
2 candidate in this special election but she was not elected to the Council. (**Exhibit 8**,  
3 Abujbarah Decl. at ¶ 11).

4 18. Defendants, Vincent Francia, Ernie Bunch and Thomas McGuire were  
5 incumbents at the time of the election to their current terms. (**Exhibit 8**, Abujbarah Decl.  
6 at ¶¶ 8 & 9) They held office continuously during the relevant timeframe set forth in the  
7 Complaint. (**Exhibit 8**, Abujbarah Decl. at ¶¶ 4, 8, 9 and Exh.2 at 14, §30.02).

8 19. Defendants, Adam Trenk, Mike Durkin, Reg Monachino and Charlie  
9 Spitzer were officially sworn in as Council members at the June 3, 2012 Regular Meeting  
10 of the Town. Each had previously appeared at the May 28, 2013 Special Meeting of the  
11 Town Council as members-elect. (**Exhibit 8**, Abujbarah Decl. at ¶6(a), (b) & (d)).

12 **C. Defendant Trenk’s Request for Meeting Agenda Item Before Assuming Office**

13 20. Defendant Trenk appeared at the May 28, 2013 Regular Meeting of the  
14 Town Council and stated that in the past months before the meeting, there had been much  
15 speculation over the position of the “challenging candidates” (Defendants Trenk, Durkin,  
16 Monachino and Spitzer) with regard to the Town Manager which he claimed undermined  
17 their ability to work together. (**Exhibit 8**, Abujbarah Decl. at ¶ 6 and Exh. 4 at 2).

18 21. At that meeting, Defendant Trenk requested verbally and in writing that an  
19 item be placed on the June 3, 2013 Regular Meeting Agenda for the purpose of Council  
20 discussion and possible action concerning Plaintiff’s employment as Town Manager.  
21 (**Exhibit 8**, Abujbarah Decl. at ¶ 12 and Exh. 4 at 2).

22 22. Defendants, Durkin, Monachino and Spitzer also appeared at the May 28,  
23 2013 Regular Meeting of the Town Council, expressing similar sentiments. (**Exhibit 8**,  
24 Abujbarah Decl. at ¶ 6(b) and Exh. 4 at 2).

25 23. An effort was made to get the item on the June 3, 2013 Regular Council  
26 Meeting Agenda, however, due in part to the fact that Plaintiff’s counsel was unavailable  
27 for the June 3, 2013 meeting, a Special Council Meeting was noticed for June 10, 2013.  
28

1 (Exhibit 8, Abujbarah Decl. at ¶¶ 6(e), 7, 13 & 14)

2 24. Trenk, Monachino, Durkin and Spitzer terminated Plaintiff's Agreement  
3 with the Town, and immediately removed him as Town Manager, without reviewing any  
4 of Mr. Abujbarah's prior performance evaluations. (*Trenk's January 10, 2014 Response*  
5 *to Non-Uniform Interrogatory No. 11*, attached hereto as **Exhibit 9**; Spitzer Dep. 53:5-12,  
6 attached hereto as **Exhibit 5**; *Durkin's January 10, 2014 Response to Non-Uniform*  
7 *Interrogatory No. 10*, attached hereto as **Exhibit 10**; *Monachino's January 10, 2014*  
8 *Response to Non-Uniform Interrogatory No. 10*, attached hereto as **Exhibit 11**).

9 25. Trenk, Monachino, Durkin and Spitzer terminated Plaintiff's Agreement  
10 with the Town, and immediately removed him as Town Manager, without establishing  
11 any goals or expectations for Plaintiff's performance, or providing Plaintiff any  
12 opportunity to work as Town Manager under the direction of the new Town Council.  
13 (**Exhibit 8**, Abujbarah Decl. at ¶ 17).

14 26. Mr. Abujbarah's Agreement as Town Manager was set to expire on August  
15 5, 2014. (**Exhibit 8**, Abujbarah Decl., Exh. 1 at 2, ¶3). Hiring a new Town Manager  
16 required action of the Town Council. (**Exhibit 8**, Abujbarah Decl., Exh. 2 at 25-26,  
17 §31.25(A)(1) & (E)(2)). Removing Plaintiff as Town Manager does not have to be  
18 preceded by hiring a replacement because the Town Code empowers the Town Clerk to  
19 undertake the duties of Town Manager on an interim basis. (**Exhibit 8**, Abujbarah Decl.,  
20 Exh. 2 at 25-26, §31.25(E)(1)).

21 27. The Council could call for an audit of Town funds at any time and but  
22 would have to approve such action and expenditure of any public funds associated with  
23 the undertaking. (**Exhibit 8**, Abujbarah Decl., Exh.2); Ariz. Stat. Rev. §9-240(A).

24 **D. The Plan to Remove Plaintiff As Town Manager And Replace Him With**  
25 **Rodney Glassman**

26 28. Rodney Glassman testified in his deposition that he recalled Adam Trenk  
27 informing him, while jogging together, that he was planning to run for City Council and  
28

1 stating, "If I get elected, we're probably going to change the manager." (*Deposition of*  
2 *Rodney Glassman taken April 10, 2014*, ("Glassman Dep.") at 31:13-14, attached hereto  
3 as **Exhibit 4**).

4 29. Rodney Glassman also testified that he recalled that sometime prior to  
5 April 15, 2013, while jogging, Adam Trenk had asked him if he "would be willing to  
6 come up [to Cave Creek] and serve as Interim Town Manager if they needed one."  
7 (**Exhibit 4**, Glassman Dep. at 41:25-43:7).

8 30. On March 20, 2013, Rodney Glassman emailed Adam Trenk, stating, [REDACTED]  
9 [REDACTED]  
10 [REDACTED]  
11 [REDACTED]  
12 [REDACTED] (**Exhibit 4**, Glassman Dep. at 35:5-38:4; *E-mail communications*  
13 *between produced from Adam Trenk's E-mail, string ending April 03, 2013, Bates*  
14 *numbered TRENK003963-3965, which are also excerpts from Exhibit 6 to Glassman*  
15 *Dep. April 10, 2014*, ("TRENK003963") at 2, TRENK003964, attached hereto as  
16 **Exhibit 12**).<sup>3</sup>

17 31. On March 22, 2013 after being copied on an email from Adam Trenk, Reg  
18 Monachino emailed Rodney Glassman, stating, [REDACTED]  
19 [REDACTED]  
20 [REDACTED]  
21 [REDACTED]  
22 (**Exhibit 4**, Glassman Dep. at 37:11-14; *E-mail communication between Reg Monachino*  
23 *and Rodney Glassman, dated March 22, 2013, Bates numbered*  
24

25  
26  
27 <sup>3</sup> Documents with the Bates prefix "TRENK" were produced over a period of time beginning on  
28 January 21, 2014, by Adam Trenk's employer, the Rose Law Group in response to a Third Party Subpoena Duces Tecum issued and served on The Rose Law Group on November 12, 2013.

1 RG0000001 (“RG0000001”), attached hereto as **Exhibit 13**).<sup>4</sup>

2 32. On March 20, 2013, Adam Trenk emailed Charlie Spitzer, Reg Monachino,  
3 Mike Durkin, and Eileen Wright (a Town Council challenger who lost her campaign),  
4 copied Rodney Glassman, and forwarded Glassman’s March 20 email, [REDACTED]  
5 [REDACTED]. Trenk stated, [REDACTED]  
6 [REDACTED]  
7 [REDACTED]” (**Exhibit 4**, Glassman Dep. at 35:5-  
8 38:4; *Deposition of Adam Trenk, taken May 6, 2014*, (“Trenk Dep.”) at 102:14-21;  
9 attached hereto as **Exhibit 6**); **Exhibit 12**, TRENK 003963 at 2, TRENK 003964; *Email*  
10 *communications between Adam Trenk, Charlie Spitzer, Reg Monachino, Mike Durkin,*  
11 *Elaine Wright and Rodney Glassman, string ending March 20, 2013*, Bates numbered  
12 RG0000002 (“RG0000002”), attached hereto as **Exhibit 14**).

13 33. Various meetings with Glassman in March, April, and May 2013, were  
14 discussed, scheduled and took place. On April 3, 2013, Mike Durkin emailed about  
15 [REDACTED]. Glassman responded [REDACTED]  
16 [REDACTED]  
17 [REDACTED]” (**Exhibit 4**, Glassman Dep at 35:5-38:4; **Exhibit 12**, TRENK 003963 at 1,  
18 TRENK 003963).

19 34. Rodney Glassman and Reg Monachino [REDACTED]  
20 [REDACTED]. (**Exhibit 4**, Glassman Dep. at 35:5-38:4; *E-mail*  
21 *communications produced by Rodney Glassman and Bates numbered RG0000004 – 0010*  
22 (“RG0000004-0010”) attached hereto as **Exhibit 15**).

23 35. Rodney Glassman and Charlie Spitzer [REDACTED]  
24 [REDACTED]. Glassman [REDACTED]  
25 [REDACTED]. (**Exhibit**

26  
27 <sup>4</sup> Documents with the Bates prefix “RG” were produced on February 19, 2014 by counsel for  
28 Defendants on behalf of Rodney Glassman in response to a Third Party Subpoena Duces Tecum  
issued and served on Rodney Glassman on November 12, 2013. (**Exhibit 36**)

1 **4**, Glassman Dep. at 35:5-38:4); *E-mail communications produced by Rodney Glassman*  
2 *and Bates numbered RG0000012 – 0031(RG0000012-0031)* at 16, RG0000028; attached  
3 hereto as **Exhibit 16**).

4 36. On May 9, 2013, before Plaintiff had been removed as Town Manager,  
5 Rodney Glassman emailed Adam Trenk [REDACTED]

6 [REDACTED] [REDACTED]  
7 [REDACTED]  
8 [REDACTED]. (**Exhibit 4**, Glassman Dep. April 10, 2014, Exh. 4; *E-mail communication*  
9 *between Rodney Glassman and Adam Trenk, dated May 9, 2013, RG00000035*  
10 *(“RG00000035”)*, attached hereto as **Exhibit 17**).

11 37. On May 25, 2013, Glassman [REDACTED]  
12 [REDACTED], Defendant Durkin. (*E-mail communication between Rodney Glassman and Mike*  
13 *Durkin, dated May 25, 2013, Bates numbers RG00000033-0034, and 0045, which are*  
14 *Exhibits 10 and 13 to the Glassman Dep.*, attached hereto as **Exhibit 18**).

15 38. On May 29, 2013, Adam Trenk forwarded to Rodney Glassman a copy of  
16 Trenk’s request to amend the agenda for "possible termination of Town Manager" that he  
17 submitted the day before. The title of the email read, “this is what I submitted at the  
18 meeting last night” (*Bates number RG00000038, which is Exhibit 12 to the Glassman*  
19 *Dep.*, attached hereto as **Exhibit 19**).

20 39. On June 3, 2013, Glassman emailed Trenk, stating “Per your request,  
21 attached is the draft we discussed. You would, print 8 copies, have someone make the  
22 motion and second the motion, and then once it’s made and seconded, pass them out the  
23 all (*sic*) of the Mayor and Council members and the Town Clerk. That's all you need to  
24 do if you wanted to. The motion would be sound, articulated, and move the issues you  
25 were wanting to drive.” (*E-mail communication between Adam Trenk and Rodney*  
26 *Glassman, Bates numbers TCC 00751-00754, (“TCC 00751-754”)* attached hereto as  
27 **Exhibit 20**, produced with *Defendant’s Second Supplemental Disclosure Statement on*  
28



1 April 18, 2014, attached hereto as **Exhibit 21**).

2 40. Glassman continued, “You would want to have the motion outline the  
3 whole process because this may be the only chance he gives you to steer the process.  
4 Once you make this, pass it, and lock it down, the tracks are set so it's just a matter of the  
5 train driving down it. Anything less and you leave him in the driver’s seat. Are you Vice  
6 Mayor yet?” (**Exhibit 20**, TCC 00751-754 at 2, TCC 00752).

7 41. On June 3, 2013, Glassman emailed Trenk and asked “What are the  
8 chances of you getting two other guys to make and second the motion with NO  
9 discussion?” (*Email communication between Rodney Glassman and Adam Trenk, dated*  
10 *June 4, 2013, Bates number TRENK004101, which is Exhibit 14 to the Glassman Dep.*  
11 *(“TRENK004101”)*, attached hereto as **Exhibit 22**).

12 42. On June 4, 2013, Glassman emailed Trenk again, stating, “Remember.  
13 There’s 7 which means you can talk to any 2. You’re the vice mayor. You’ll get it done.  
14 Most importantly, that motion, when sitting in their hands and read completely, will  
15 resonate. We running Friday?” (**Exhibit 22**, TRENK004101)

16 43. On June 4, 2013, Adam Trenk emailed Rodney Glassman with the  
17 instruction “you need to join ICMA today”. Glassman asked Trenk, “It’s \$200 for a  
18 random person to join. What’s the theory?” Trenk responded, “That *we* will want a  
19 manager bound by their code of ethics... it’s written in the current manager’s contract.  
20 Go to the Cave Creek agenda archives for August 6, 2012 and you will be able to pull up  
21 the contract.” (emphasis added) (*Email communication between Rodney Glassman and*  
22 *Adam Trenk, dated June 4, 2013, Bates numbers RG00000054-55, which are Exhibit 15*  
23 *to Glassman Dep. April 10, 2014; (“RG00000054-55”)*, attached hereto as **Exhibit 23**).

24 44. On June 4, 2013, Trenk emailed the Town Clerk, Carrie Dyrek, and asked  
25 for a copy of the Town Manager’s Employment Contract and Town Manager’s job  
26 description. Later that same day, Trenk forwarded the email containing the materials to  
27 Rodney Glassman. Glassman responded at 10:44 p.m., “Nice. 1. Agenda item looks  
28

1 good – if I were you I would say nothing other than read the motion. You guys have  
2 nothing to gain by bantering prior to. 2. Job description looks good. 3. Gas and other  
3 random expenses are all in there. Ironically, so is the ICMA. 4. Do you have the  
4 agreement as a word doc to tinker with? *My six months will be made up of the audit,*  
5 *the search, and bringing in high profile public administrators to educate on best*  
6 *practices. You guys will certainly get your money's worth.”* (emphasis added) (*Exhibit*  
7 *16 to Glassman Dep. April 10, 2014*, attached hereto as **Exhibit 24**).

8 45. On June 6, 2013, Rodney Glassman emailed Adam Trenk attaching a draft  
9 of his Cave Creek Interim Manager Consulting Agreement, (*Bates numbers*  
10 *RG00000081-90*, which are *Exhibit 20 to Glassman Dep. April 10, 2014*; attached hereto  
11 as **Exhibit 24**); and Trenk responded with revisions on June 7, 2013. (*Bates*  
12 *RG00000096*; attached hereto as **Exhibit 26**).

13 **E. The June 7, 2013 Meeting Between Defendants, Trenk and Francia**

14 46. Defendant Adam Trenk met with Mayor Vincent Francia on June 7, 2013 at  
15 Houston's in Scottsdale. Defendant Trenk recorded the conversation without notifying  
16 Mayor Francia. (**Exhibit 6**, Trenk Dep. at 51:1-3; 51:24-53:18; *Deposition of Vincent*  
17 *Francia taken April 24, 2014* (“Francia Dep.”) at 50:9-19, attached hereto as **Exhibit 3**).

18 47. In that June 7, 2013 meeting, Defendant Trenk and Mayor Francia  
19 discussed Usama Abujbarah:

20  
21 Francia: “... he’s been the best of all town managers we’ve had... to  
22 get rid of him now doesn't feel right to me. Morally, ethically, in  
23 terms of energy the town, what I know will happen if that what all  
24 transpires, it will plunge the community in to a place neither you nor  
25 I want it to go and, quite frankly, although I can write until my  
26 fingers bleed, I don't think I'm going to be persuasive enough to stop  
27 what's coming. And that is very destructive to you and to the town.  
28 When I look at that, I say, now how can this possibly be beneficial to  
the community?... You're asking me to ... what I think you're asking  
me is to possibly join in something that is ... has to do with his  
removal.

Trenk: His eventual removal.

Francia: Well ....

1           Trenk: I understand that you wouldn't vote for his removal on the  
2 spot. I can appreciate that. I'm not telling you that I'm going to do  
3 this. But I'm telling you that if given the choice ....

4           Francia: It's what you would do for a middle ground ....

5           Trenk: Right. Given the choice between the status quo and removal  
6 on the spot. ... *I'm choosing removal on the spot.*... (emphasis  
7 added)

8           "I can't do it without you. I cannot be a uniter without you. *There is*  
9 *no unity if I'm the leader of a 4/3 vote.* Especially on an issue as  
10 divisive as this. And so, that's what I want to talk to you about. This  
11 is your opportunity, I believe, first of all, to make those, there are  
12 people in town, and I wouldn't want to say this to you because I  
13 don't want to hurt your feelings, there are people in town who don't  
14 like you, who think you are a weak leader, who think you have been  
15 complicit in letting Usama run roughshod over the Town. *This is*  
16 *your opportunity to change that perception, to stand together with*  
17 *me to make all parties here happy...*" (Emphasis added)

18           (This is an excerpt from a June 7, 2013 audio recording produced by  
19 Defendants on January 10, 2014, a copy of which is attached hereto  
20 as **Exhibit 27**).

21           48.    Trenk also referred back to an earlier meeting that he and Mayor Francia  
22 had the week before in the same location:

23           Trenk: "I don't think the waters have calmed down at all. When that  
24 was my intent and *when we met for lunch last week at this - I think*  
25 *it was actually this exact same table* - I thought, I thought I had  
26 relayed that to you and if, *if you kept our conversation in*  
27 *confidence, I am happy about that.* If you didn't ....

28           Francia: *Not even my wife knows.*"  
(emphasis added) (Emphasis added)

          (This is an excerpt from **Exhibit 27**, a June 7, 2013 audio recording  
produced by Defendants on January 10, 2014).

          49.    Mayor Francia did not admit in his April 24, 2014 deposition that this  
earlier lunch meeting at Houston's had taken place when asked about all meetings with  
Trenk during this timeframe. (**Exhibit 3**, Francia Dep. at 47:16-48:15; 49:13-50:12).

          50.    Emails between Mayor Francia and Defendant Trenk confirm the May 29,  
2014 lunch meeting at Houston's. *Email communications, Bates numbered TCC 1309-*

1 1326, produced with Defendant's Second Supplemental Disclosure Statement on April  
2 18, 2014 ("TCC 1309-1326") attached hereto as **Exhibit 29**).

3 51. The June 7, 2013 lunch meeting at Houston's between Defendant Trenk  
4 and Mayor Francia continued:

5 Trenk: "If these people were encouraged to reach out to you,  
6 between now and Monday, would that make any difference?"

7 Francia: These people?

8 Trenk: The people that I have heard from that you may not  
9 necessarily have heard from. Would it make a difference? I'm just  
10 asking.

11 Francia: Out of respect for them, uh, um, no. I mean I will listen to  
12 everything Monday because the citizens will speak at some point.  
13 The procedure for Monday night's meeting is different than most  
14 agendas."

15 (This is an excerpt from a June 7, 2013 audio recording produced by  
16 Defendants on January 10, 2014, a copy of which is attached hereto  
17 as **Exhibit 27**)

18 **F. Additional Emails Regarding The Plan to Remove Plaintiff As Town Manager  
19 And Replace Him With Rodney Glassman**

20 52. On June 7, 2013, Adam Trenk emailed Rodney Glassman attaching a June  
21 10 Motion that had been sent to the Town Attorney for approval, and then told Glassman,  
22 "Once on the agenda for the 12, I leave it to you to get Reg to nominate you." (**Exhibit 6**,  
23 Trenk Dep. at 117:15-118:1; *Email communications produced as Bates RG00000121*,  
24 *RG00000124, TRENK 4331*; attached hereto as **Exhibit 30**).

25 53. Glassman responded, "Are you going to talk to him first? At what point do  
26 you want me to visit with him? Does he have 4 votes? Should the three of us visit?"  
27 (**Exhibit 6**, Trenk Dep., 118:2-10; *Email communications produced as Bates TRENK*  
28 *004330*, ("TRENK 004330") attached hereto as **Exhibit 31**).

54. Trenk responded, "***He will have the votes*** – you should contact him,  
Charlie, and Mike Durkin – lobby for yourself. You may even wait until Tuesday and  
reach out to the mayor and the other council people, nothing wrong with that." (emphasis

1 added) (**Exhibit 6**, Trenk Dep. at 118:2-119:7; *Email communications produced as Bates*  
2 *numbers RG000000140*, (“RG00000140”) attached hereto as **Exhibit 32; Exhibit 31,**  
3 **TRENK 4330).**

4 55. Glassman, asked, “So is your point get my 3 other votes NOW? Should I  
5 reach out to Charlie and Mike *even before you fire the manager?*” (emphasis added)  
6 (**Exhibit 4**, Glassman Dep., 93:1-17; *Bates TRENK 004328 – 4329, which is in Exhibit*  
7 *22 to Glassman Dep. April 10, 2014, at 2 (TRENK 004329), attached hereto as Exhibit*  
8 **33).**

9 56. Trenk continued the June 7<sup>th</sup> email discussion, “Those two yes – no sense in  
10 waiting there – be sure to emphasize you are just the INTERIM town manager, and the  
11 importance of that position being filled by an outsider to get an accurate assessment of  
12 town operations. If you want full time permanent you will have six months to make the  
13 case, and you will be controlling the process so don’t even discuss that now. On  
14 Tuesday [June 11<sup>th</sup>] you reach out to McGuire, Bunch, and the Mayor – saying merely, ‘I  
15 heard this job opened up, and would be interested’ and send them your resume with a  
16 cover letter about how fucking awesome you would be at being the interim. Good?”  
17 (*TRENK 004328 – 4329, which are Exhibit 22 to the Glassman Dep., attached hereto as*  
18 **Exhibit 33).**

19 57. Glassman responded, “If you have your 4 I wonder if there is value in  
20 lobbying everyone. What we need is one champion with four votes. Too much process  
21 for this interim thing could only muddy it.” (**Exhibit 34** at 1, TRENK 4328).

22 58. In another email to Trenk on June 7, 2013, Glassman asked “Are you  
23 getting that draft to Reg?” (Exhibit 23 to the Glassman Dep., attached hereto as **Exhibit**  
24 **34).**

#### 25 **G. The June 9, 2013 Meeting Between Plaintiff and Defendant Trenk**

26 59. Plaintiff Usama Abujbarah and Defendant Adam Trenk and Ray Fontaine,  
27 a Cave Creek Planning Commissioner, met on June 9, 2013. The audio of that meeting  
28

1 was recorded. (**Exhibit 6**, Trenk Dep. at 62:17-63:8; 63:23-65:11; 65:17-67:11).

2           60. In that meeting, Adam Trenk stated that Mr. Abujbarah needed to cease his  
3 relationship and communications with Don Sorchych, the owner and editor of the  
4 *Sonoran News* newspaper:

5                   Trenk: “I came to see you in April, we had a nice conversation and  
6 then for the next six weeks the rhetoric continued. *I know that you*  
7 *claim that you have no control over Don Sorchych but he certainly*  
8 *thinks that he has control over you.* Okay? Take it for what it is.  
9 This is not just my perception, this is a public perception. *For that*  
10 *rhetoric to continue, undermines our ability to work together.*  
11 Period. I said it at the podium when I called for this review  
12 tomorrow night and I'm saying it to your face and looking you man  
13 to man and looking you in the eye. It undermines our ability to work  
14 together. . . . There can't ... this incestuous relationship between the  
15 local media and uh ... the town hall is not good for the Town. . . .  
16 What does that mean? It could take on any number of forms but I'm  
17 gonna be perfectly blunt with you, *it won't satisfy my objectives for*  
18 *you to fill out your contract til August 14 with no change.*”  
19 (emphasis added)

20                   (This is an excerpt from a June 9, 2013 audio recording produced by  
21 Defendants on January 10, 2014, a copy of which is attached hereto  
22 as **Exhibit 28**).

23 **H. Further Emails Regarding The Plan to Remove Plaintiff As Town Manager**  
24 **And Replace Him With Rodney Glassman**

25           61. On June 10, 2013, Rodney Glassman sent Adam Trenk his resume and then  
26 asked, “You gonna get this done?” Trenk responded by sending his Motion to Remove  
27 Usama Abujbarah as Town Manager (*Email communications Bates numbered*  
28 *RG000000200-202* attached hereto as **Exhibit 35**; *Letter from Dickinson Wright dated*  
*February 19, 2014, producing emails with the Bates prefix “RG” in response to*  
*Subpoena Duces Tecum* attached hereto as **Exhibit 36**).

          62. On June 10, 2013, Glassman also emailed Trenk, asking, “Think you’re  
going to get it?” Trenk responded, “I really hope so – if not it will be a disaster.”  
Glasman also emailed Trenk, “Got your voicemail re Durkin. When do you want to

1 talk?” Trenk replied “call you in 45 min.” (*Email communications Bates numbered*  
2 *RG000000207*, attached hereto as **Exhibit 37**; *Email communications Bates numbered*  
3 *TRENK 004412*, attached as *Exhibit 27 to the Glassman Dep.*, attached hereto as **Exhibit**  
4 **38**).

5 63. On June 11, 2013, Trenk emailed Glassman stating, “I will make it happen  
6 if I have to.” Glassman replied, “I don’t plan on letting them make any changes. I think  
7 since you may need to explain, articulate, it may be worthwhile. Plus, it shows I carry 4  
8 if you come. Or do you think that’s implied?” Trenk responded, “That’s implied – *you*  
9 *got 4 last night*.” (emphasis added) (*Exhibit 30 to the Glassman Dep.*, attached hereto as  
10 **Exhibit 39**).

11 64. On June 11, 2013, Trenk introduced Glassman to attorney Fredda Bisman  
12 at Dickinson Wright via email, stating, “I assume you two would like to be in touch  
13 before Wednesday’s meeting.” (*Email communications produced as Bates number*  
14 *RG00000213*, attached hereto as **Exhibit 40**; *Email communications produced as Bates*  
15 *number RG00000239-0243*, which are *Exhibit 30 to Glassman Dep. April 10, 2014*,  
16 attached hereto as **Exhibit 39**).

17 65. Rodney Glassman then reached out to Ms. Bisman himself, stating, “I hope  
18 I’m not being presumptuous, but I have taken the time to download a copy of the current  
19 City Manager’s [Mr. Abujbarah] agreement and combine it with a previous consulting  
20 agreement I have used. I have attached a copy for your convenience so that we may  
21 discuss it as a draft.” (*Email communications produced as Bates number RG00000224*,  
22 attached hereto as **Exhibit 41; Exhibit 39**)

23 **I. Email Communications Between And Among Defendants Trenk, Spitzer,**  
24 **Durkin, Monachino, Glassman And Others In Furtherance Of The Plan**

25 66. On May 31, 2013, Mr. Spitzer received an email from Adam Trenk  
26 regarding Spitzer’s plans to be in New York City, from June 4 to 16, when the vote  
27 concerning the removal of Mr. Abujbarah would occur. Adam Trenk offered his aunt’s  
28 residence in New York, as well as his family’s two offices at the Wall Street Pier and at

1 34<sup>th</sup> Street for Mr. Spitzer to telephone in to the June 10<sup>th</sup> Council meeting to participate  
2 and vote remotely. He wrote in his email, “Let me know – we obviously NEED your  
3 vote.” Defendant Spitzer testified in his deposition that he and Trenk discussed Trenk’s  
4 offer of a family location again on the telephone on June 3, 2013. (**Exhibit 5**, Spitzer  
5 Dep. at 33:17-34:15; **Exhibit 6**, Trenk Dep. at 43:15-46:14; 96:1-18; 98:10-100:11;  
6 *Email communications produced as Bates number TCC 0779*, attached hereto as **Exhibit**  
7 **42**).

8 67. Durkin was aware as early as June 4, 2013, that Spitzer planned to  
9 participate in the June 10, 2013 meeting telephonically and that it was important for him  
10 to do so. (**Exhibit 2**, Durkin Dep. at 46:11-49:17).

11 68. Defendant Spitzer did not attend the June 10 meeting telephonically from  
12 New York. Instead, at the last minute, he changed his plans and flew to Arizona on June  
13 10 to attend in person. He then flew back to New York the next day on June 11th.  
14 (**Exhibit 5**, Spitzer Dep. at 31:11-20; 32:9-33:16; **Exhibit 2**, Mike Durkin Dep at 50:11-  
15 51:11).

16 **J. Other Relevant Email Communications Between May 28, 2013 and June 10,**  
17 **2013**

18 69. On May 30, 2013, Charlie Spitzer received an email from Mike Chutz, a  
19 supporter of Trenk, Durkin, Monachino and Spitzer, containing a proposal to remove Mr.  
20 Abujbarah as Town Manager, as well as an email from Eileen Wright referencing a  
21 document “not in the public domain” stating that he “wants to help with *the UA effort*.”  
22 (**Exhibit 5**, Spitzer Dep. at 57:24-58:13; *Exhibit 55 to Spitzer Dep. May 7, 2014, Bates*  
23 *numbered 0787*, attached hereto as **Exhibit 43**; *Email communications produced as Bates*  
24 *number TCC 0777*, attached hereto as **Exhibit 44**).

25 70. On June 2, 2013, Charlie Spitzer emailed Adam Trenk regarding whether it  
26 was true or not that his “power” as Vice Mayor allowed him to set an agenda and call a  
27 special meeting when Vincent Francia was out of town. Trenk responded “it is :)”  
28



1 (**Exhibit 5**, Spitzer Dep. at 62:3-16; *Exhibit 56 to Spitzer Dep., Bates numbered TCC*  
2 *0795*, attached hereto as **Exhibit 45**).

3 71. On June 6, 2013, Vincent Francia emailed Adam Trenk, stating, “If Council  
4 should vote to dismiss the Town Manager before giving him a chance to work with the  
5 new council, then paths will diverge and a lot of promise will be lost.” (  
6 **Exhibit 3**, Francia Dep. at 48:16-49:12; *Exhibit 40 to Francia Dep., Bates Numbered*  
7 *TCC 1027 – 1028*, attached hereto as **Exhibit 46**).

8 **K. The June 10, 2013 Special Meeting Notice and Agenda**

9 72. A Notice and Agenda for the June 10, 2013 was issued by the Town Clerk.  
10 (**Exhibit 8**, Abujbarah Decl. at ¶¶ 6(e), Exh.7)

11 73. Plaintiff’s employment status was the sole issue on the agenda for the June  
12 10, 2013 Special Meeting of the Council. (**Exhibit 8**, Abujbarah Decl. at ¶¶ 6(e), Exh.7)

13 74. Plaintiff requested that this meeting be held in open session rather than in  
14 an executive session. (**Exhibit 8**, Abujbarah Decl. at ¶ 7)

15 **L. The June 10, 2013 Special Meeting and Motion**

16 75. At the June 10, 2013 Special Meeting, Defendant Trenk made a single  
17 motion consisting of multiple parts by reading from a document prepared in advance of  
18 the meeting.<sup>5</sup> (**Exhibit 8**, Abujbarah Decl. at ¶¶ 15, 16 & Exh.12)

19 76. The Trenk Motion was prepared in advance, presented at the June 10, 2013  
20 Special Meeting and adopted as a resolution of the Town. (**Exhibit 8**, Abujbarah Decl.  
21 Exh.12).

22 77. The Trenk Motion was not provided to the Town Clerk in a timely manner  
23 and was never distributed to other Council members or made available to the public at  
24 any time in advance of the meeting. (**Exhibit 8**, Abujbarah Decl. Exh. 2).

25  
26 <sup>5</sup> For purposes of identification and brevity, Plaintiff has referred to this single, multi-  
27 part motion as the “Trenk Motion.” As used herein, that label is intended to mean the  
28 only motion made by Defendant Trenk and seconded by Defendant Durkin at the June  
10, 2013 Special Meeting that is the subject of this action.

1 78. Durkin, Monachino and Spitzer each claim to never have seen it before the  
2 June 10, 2013 Meeting despite evidence that Trenk shared it with others. (**Exhibit 2,**  
3 **Durkin Dep. at 67:25-68:5; Exhibit 5, Spitzer Dep. at 76:23-77:2; Exhibit 7, Monachino**  
4 **Dep. at 48:9-13).**

5 79. The motion was as follows:

6 **Motion to Remove Usama Abujbarah as Town Manager**

7 Pursuant to Section 31.25(F) of the Town of Cave Creek  
8 Code and Section 3.1 of the August 6, 2012 Employment  
9 Agreement between the Town of Cave Creek and Mr.  
10 Abujbarah as follows (1) immediately deliver written notice  
11 of intent to terminate (*sic*) employment to Town Manager  
12 Usama Abujbarah with a termination date of September 9,  
13 2013; (2) immediately relieve (*sic*) Mr. Abujbarah from  
14 duties as Town Manager and re-assign him to a limited  
15 special assignment for the purpose of facilitating the  
16 transition of his successor as needed from off-site, effective  
17 immediately for the duration of his employment; (3) continue  
18 to pay Mr. Abujbarah regular pay and benefits through the  
19 termination date; **(4) pay Mr. Abujbarah a lump sum**  
20 ***severance payment equivalent to five months base salary***, as  
21 defined in the employment Agreement, conditioned on Mr.  
22 Abujbarah's execution of a release as provided in Sections  
23 3.1(c) and (d) of the Employment Agreement together with  
24 all accrued vacation and one-third of his accrued sick leave  
25 not used on the termination date; and (5) request Mr.  
26 Abujbarah return the Town's property no later than noon  
27 tomorrow pursuant to Section 8 (*sic*) (5) agenda and notice  
28 a special meeting to be held no later than June 12, 2013 at  
**7:00pm for the purpose of appointing Rodney Glassman as**  
**Acting Town Manager to perform the Powers and Duties of**  
**the Office of Town Manager** in accordance with Section  
31.25(E)(2) of the Cave Creek Town Code, by and through an  
independent contractor agreement, whereby the Town will  
compensate the independent contractor at a rate not to exceed  
the total compensation paid to the outgoing Town Manager,  
beginning June 17, 2013 for a term not to exceed 6.5 months  
with the following directives:

1. To carry out the duties of the Town Manager as described in Cave Creek Town Code Section 31.25(H).
2. ***Oversee the selection of an independent third party for the purpose of conducting an audit of the funds of the Town of Cave Creek***, with results to be presented to Council no later than December 1, 2013.
3. Oversee a process of selecting a new permanent

1 Town Manager for the Town of Cave Creek  
2 prior to the expiration of the Acting Town  
3 Manager's interim contract.  
4 (emphasis added)

5 80. The Trenk Motion was seconded by Defendant Durkin. (**Exhibit 8,**  
6 Abujbarah Decl. at ¶ (6(f), Exh. 8).

7 81. No amendments were offered to the Trenk Motion and it was called for a  
8 vote by Mayor Francia. (**Exhibit 8,** Abujbarah Decl. ¶ 15; **Exhibit 2,** Durkin Dep.,  
9 66:6-16).

10 82. The Trenk Motion passed by a vote of 4-3 with Defendants, Trenk, Durkin,  
11 Monachino and Spitzer voting in favor of the motion and Defendants, Francia, Bunch and  
12 McGuire opposing it. (**Exhibit 8,** Abujbarah Decl., Exh. 8).

13 83. No Defendant raised a point of order that the motion was out-of-order or  
14 otherwise procedural defective. (**Exhibit 8,** Abujbarah Decl. Exh. 8).

#### 15 **M. The Notice and Effect of Intent to Terminate Plaintiff as Town Manager**

16 84. The day following the June 10, 2013 Special Meeting, Plaintiff received a  
17 Notice of Intent to Terminate his employment as Town Manager. (**Exhibit 8,** Abujbarah  
18 Decl. at ¶ 17, Exh. 12).

19 85. The Notice was undated but refers to the Council's action at the June 10,  
20 2013 Special Meeting. (**Exhibit 8,** Abujbarah Decl. Exh. 12).

#### 21 **N. Glassman Becomes Interim Town Manager**

22 86. On June 24, 2013, Rodney Glassman was selected as Acting Town  
23 Manager by the new Town Council. (Plaintiff hereby requests that the Court take  
24 Judicial Notice, pursuant to Ariz. R. Evid. 201, of the Town of Cave Creek, Special  
25 Town Council Meeting Minutes on June 24, 2013;  
26 <https://cavecreek.civicweb.net/Documents/DocumentDisplay.aspx?Id=16944>, attached  
27 hereto as **Exhibit 47**).

28 87. On June 25, 2013, Durkin sent Glassman an email titled "Congratulations  
Mr. Town Manager." (*Email communications produced as Bates number RG00000471,*

1 attached hereto as **Exhibit 48**).

3 **O. ADDITIONAL RELEVANT FACTS**

4 88. The Town Code also mandates that all agenda items be clearly identified with  
5 specificity and that the Town distribute and make public certain materials prior to a Town  
6 Council meeting.

7  
8 . . . at least seven calendar days prior to each Town Council  
meeting . . . , the Clerk, . . . *shall collect* all . . . *communications*, .  
9 . . *resolutions*, contracts, and other documents to be submitted to  
10 the Town Council, prepare an agenda . . . *make a copy of the*  
agenda and *submission documents* available for public inspection .  
11 . . at the Town Hall, *and provide a copy of the* agenda and  
*submission documents* to each Council Member, the Mayor, and  
12 the Town Attorney. The agenda may include a consent agenda of  
one or more items.

13 \* \* \*

14 To fully effect the intent of this section, *all information required*  
15 *for submittal of the action item* to the Town Council *shall be*  
16 *provided* to the Town Clerk *no less than seven days prior* to the  
Town Council meeting at which the action item is to be  
considered. (Emphasis added)

17 (**Exhibit 8**, Abujbarah Decl. at ¶4, and Exh.2 at 18-19, §30.38).

18 RESPECTFULLY SUBMITTED this 1st day of August, 2014.

19 MARTIN & BONNETT, P.L.L.C.

20  
21 By: s/Daniel L. Bonnett  
Daniel L. Bonnett  
22 Ravi Patel  
1850 N. Central Avenue, Suite 2010  
23 Phoenix, Arizona 85004  
(602) 240-6900

24 *Attorneys for Plaintiff*

25  
26 **CERTIFICATE OF SERVICE**

27 **COPY** served on the following Defendants (Town of Cave Creek, Vincent Francia,  
28 Adam Trenk, Mike Durkin, Reg Monachino, Charlie Spitzer, Ernie Bunch, and Thomas  
McGuire) by hand delivery to the Clerk of Town of Cave Creek on August 1, 2014:

1 Town Clerk  
2 Town of Cave Creek  
3 37622 North Cave Creek Road  
4 Cave Creek, AZ 85331

5 The Honorable Douglas Gerlach  
6 Superior Court, Maricopa County  
7 201 W. Jefferson  
8 Phoenix, AZ 85003

9 s/ \_\_\_\_\_

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