

ATTACHMENT 9

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6 *Pro Se*

7 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**

8 **IN AND FOR THE COUNTY OF MARICOPA**

9 **KIP M. MICUDA**, a married man;
10 **ANN HAUGEN**, a married woman,

NO. CV2019-012879

11 Plaintiffs,

12 and

13 **DAMON BRUNS**, a married man;
14 **HOLLY BRUNS**, a married woman;
15 **HOLLY K. WAGNER**; **JOHN DOE**
16 **WAGNER**; **DYNAMITE WATER,**
17 **LLC**, an Arizona limited liability
18 company; **GRANITE MOUNTAIN**
19 **INVESTMENTS, LLC**, an Arizona
20 limited liability company; **SCOTT**
21 **MUCH**, a married man; **ANGELA**
22 **MUCH**, a married woman; **JANE** and
23 **JOHN DOE**; **ABC CORPORATION**;
24 **123 COMPANY** or **LLC** or
25 **PARTNERSHIP**;

SUPPLEMENTAL AFFIDAVIT OF JOHN
HORNEWER

26 Defendants.

27 STATE OF ARIZONA)
County of Maricopa) ss.

I, **JOHN HORNEWER**, having first been duly sworn upon oath, depose and say:

1 1. I know the following to be true and correct to the best of my knowledge. To the
2 extent I lack personal knowledge of the following, I am informed and believe the following to be
3 true and accurate. This affidavit supplements a prior affidavit I signed on August 5, 2019.

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5 2. I reside at 35617 N. 136th Street, Scottsdale, Arizona 85262. I am an owner of Rio
6 Verde Foothills Potable Water Hauling, LLC, ("Rio Verde Water"), which started business in
7 2003. At that time and since, I investigated purchasing land in the Rio Verde Foothills area
8 ("RVFH are") to establish and run my business. Purchasing such land for my business operations
9 would have decreased my costs of doing business significantly. However, the land is zoned rural
10 and residential. I concluded running a business such as mine would violate the Maricopa County
11 *Zoning Code* ("*Zoning Code*"). I also learned of the deep cultural tradition in the RVFH area that
12 has consistently prevented any kind of significant commercial or industrial use in the area. People
13 in the area care about horses, animals and want to avoid commerce and industry. Consequently,
14 I parked my water hauling trucks at my residence in the area and at the homes of my drivers,
15 exactly as all other water haulers in the area do, including Damon Bruns, owner of Dynamite
16 Water, LLC, ("Dynamite Water"). All potable water haulers in the RVFH area continue to operate
17 in this fashion, despite the *Zoning Code*, but for, more recently, Mr. Bruns and Dynamite Water.
18 I am informed and believe that water hauling trucks being parked in the RVFH area violate the
19 *Zoning Code*, in part, because of the excessive weight. I recently received a code violation for
20 such use of my property, as did Mr. Bruns.

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22 3. Mr. Bruns and Dynamite Water started business in the RVFH area after 2006. I
23 drive nearly daily around the RVFH area, including around the LOT in issue, where Mr. Bruns
24 currently operates Dynamite Water. I noticed some construction on the LOT in late 2016. By
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1 spring 2017, Mr. Bruns had built what appeared to be a barn. This was the only structure on the
2 LOT, but for fencing of three horse stall and perimeter fencing. During the summer and winter
3 of 2017, I started noticing Dynamite Water trucks being operated from and stored on the LOT.
4 The operation and storage started with just a couple trucks. Since that time, Mr. Bruns's operation
5 has expended significantly. I have observed as many as eight different trucks operate from the
6 LOT, as many as seven at one time. Also, since the summer of 2018, I have observed numerous
7 pieces of commercial/industrial equipment and building materials being used and stored on the
8 LOT, as many as twenty pieces of heavy equipment at one time. As to the trucks, I have observed
9 Dynamite Water employees maintaining and repairing such vehicles throughout the day, inside
10 and outside of the barn. Indeed, the mechanic and a driver (the Rohrs) for Dynamite Water
11 reside in the house across 166th street from the LOT and park Dynamite Water trucks on their
12 residential property. Further, such trucks require "warm-up" and "cool-down" each morning and
13 evening, meaning these vehicles must run idle for long periods of time to reach optimum running
14 temperatures. The idle time is regularly at least fifteen (15) minutes. These trucks cause
15 tremendous dust and vibration when they travel down the dirt roads in the RVFH area. I run
16 similar trucks daily requiring the same idle time. The trucks cause extreme noise, dust, vibration
17 and smell of diesel fuel. I understand the *Zoning Code* precludes "noise . . . , vibration, . . . , dust,
18 odors . . . in the area that would exceed that normally produced by a dwelling unit in a zoning
19 district used solely for residential purposes." *Zoning Code, Article 501.2, §501.2(10)(e)*. Such
20 trucks cause noise, vibration, dust and odors that exceed that normally produced by a home in a
21 residential area. Even though I run the same business as Dynamite Water in the RVFH area, I am
22 very much aware of the obnoxious, offensive and annoying setting such vehicles and operations
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1 cause, which is why I and other water haulers limit such use of our residential properties; that is,
2 at least attempt to be good and thoughtful neighbors.

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4 4. In light of the code violations recently incurred by the water haulers in the RVFH
5 area, Kip Micuda and I met with officials with the Maricopa Department of Planning and
6 Development (“Department”) and with the Chief of Staff for Supervisor Chucuri, Maricopa County
7 Board of Supervisors. We proposed a change to the Zoning Code that would allow water haulers
8 to park one or two trucks at their homes in the area. The Department is currently working on such
9 a proposal. I am informed and believe that even under such a change to the *Zoning Code*,
10 Dynamite Water’s use of the LOT in issue will still be completely non-complaint with the *Zoning*
11 *Code*.

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14 5. Mr. Bruns and Dynamite Water claim to provide unique potable and emergency
15 water delivery services to the RVFH area. Such assertions are misleading, if not false. *Every*
16 *potable water delivery service in the RVFH area provides residential potable water and emergency*
17 *water delivery; indeed, generally private water haulers show first on the scene of an emergency*
18 *before the local fire department. Other than having more equipment and trucks used for services*
19 *outside the RVFH area, Dynamite Water offers little to nothing more to the residences of the area*
20 *than what other water haulers provide. If Dynamite Water did not exist, other water haulers,*
21 *including me, would fill the void. Further, I am informed and aware that Dynamite Water has*
22 *contracts with the federal government, state government and Morgan Taylor, a land developer,*
23 *for water delivery services.*

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27 6. Mr. Bruns is also an owner and manager, with James K. Cantelme, of Emergency
Water Services, LLC, (“EWS”) an Arizona limited liability company. I observed EWS utilize

1 trucks from Dynamite Water at the Grand Canyon. The website of EWS claims to do business in
2 Arizona, as well as in a number of states around Arizona.

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4 7. Mr. Bruns obtained certificates from the Arizona Department of Transportation
5 (“ADOT”) to place signage on his trucks stating, “emergency service vehicle” in red-colored
6 letters. The certificates required Mr. Bruns to certify that each such vehicle will be used for fire-
7 fighting services “only.” I view Dynamite Water using such vehicles to deliver regular potable
8 water to residences of the RVFH area daily. The deliveries are not for emergency nor for fire-
9 fighting. If Mr. Bruns is entitled to such certifications under these circumstances, then virtually
10 every potable water hauler in Arizona is entitled to the same designation. The designation is
11 important because it provides a tax exemption for each truck that costs upwards of \$4,500.00 per
12 truck per year. I am informed and believe Mr. Bruns misrepresented his certifications and has
13 perpetrated a fraud on the State of Arizona. I complained to ADOT and was recently informed
14 its fraud unit is investigating the matter.

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17 7. As noted in my prior affidavit, on July 18, 2019, I returned a called to Mr. Bruns at
18 11:23 a.m. At no time during that call did Mr. Bruns indicate anything about the status of the
19 account of Kip Micuda and Ann Haugen with Dynamite Water. Indeed, Mr. Bruns made plain
20 that he intended for them to exhaust their water supply without knowing he terminated their water
21 delivery service.
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24 **Further, Affiant sayeth naught.**

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26 
JOHN HORNEWER

27 **[NOTARY ACKNOWLEDGMENT FOLLOWS ON NEXT PAGE]**

1 SUBSCRIBED AND SWORN before me this 4th day of November, 2019, by **JOHN**
2 **HORNEWER.**

3 *Stacey Friesen*
4 Notary Public

5 My Commission Expires:

6 3.13.2020

