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8

9 SUPERIOR COURT OF ARIZONA
10 YAVAPAI COUNTY

11 TALKING ROCK LAND, LLC, an
Arizona limited liability company,

12 Plaintiff,

13 v.

14 INSCRIPTION CANYON RANCH
15 SANITARY DISTRICT, an Arizona
sanitary district,

16 Defendant.
17

No. P1300CV201900298

FIRST AMENDED COMPLAINT

(Breach of Contract; Breach of the Implied
Covenant of Good Faith and Fair Dealing;
Defamation; Trade Libel; Interference with
Business Expectancy; Abuse of Process;
Promissory Estoppel)

(Assigned to the Hon. David L. Mackey)

18
19 Plaintiff Talking Rock Land, LLC (“Talking Rock”) for its First Amended
20 Complaint (“Complaint”)¹ against Inscription Canyon Ranch Sanitary District (the
21 “District”) alleges as follows:
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23
24 ¹ No responsive pleading has been served in this action, and this amended pleading is filed
25 pursuant to Ariz.R.Civ.P. 15(a)(1)(B) (“A party may amend its pleading once as a matter
26 of course... no later than 21 days after a responsive pleading is served ...”). David
Barreira is now omitted as a defendant because he is no longer a member of the District’s
Board of Directors.

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PARTIES, JURISDICTION, AND VENUE

- 1. Talking Rock is an Arizona limited liability company doing business in Yavapai County and owns and controls land within the boundary of the District.
- 2. The District is an Arizona sanitary district established under A.R.S. § 48-2001 *et seq.*
- 3. The events giving rise to Talking Rock’s claims occurred in Yavapai County.
- 4. Jurisdiction and venue are proper in this Court.
- 5. Pursuant to Ariz. R. Civ. P. 8(b)(2), this case qualifies as a Tier 3 because the damages exceed \$300,000.

GENERAL ALLEGATIONS

I. The Sterling Ranch Lots

- 6. Talking Rock owns the Talking Rock master planned community located in Prescott, Arizona. Symmetry Companies, LLC (“Symmetry Companies”), an Arizona limited liability company, is a luxury real estate acquisition, management, and marketing company that manages the master planned community for Talking Rock, and the Symmetry Companies’ President, Peter Burger, is an authorized agent of Talking Rock.
- 7. The master planned community is a mature community, established in 2000, with developed infrastructure that includes a luxury club-house, a Jay Morrish Championship Golf Course, residential homes, state of the art fitness facilities, a dog-park, a community garden, and miles of recreational use trails.
- 8. A new phase of the master planned community is under development, which is known as Sterling Ranch. Sterling Ranch is a premiere phase of the master planned community with home-sites ranging from two to ten acres in size abutting Arizona state trust land (the “Sterling Ranch Lots”).
- 9. Talking Rock actively worked for more than two years to bring 45 of the

1 largest Sterling Ranch Lots to market (the “Sterling Ranch Sales Campaign”).

2 10. The Sterling Ranch Sales Campaign involved more than two years of active
3 real estate development, which has included substantial engineering and site development
4 work.

5 11. The Sterling Ranch Sales Campaign also involved an elaborate marketing
6 initiative involving national television advertising, web and social media platforms, and
7 direct customer outreach.

8 12. The purpose of the media effort was to create client goodwill and gain
9 momentum ahead of the commencement of public sales which was scheduled for June 2,
10 2018.

11 13. Talking Rock’s Sterling Ranch Sales Campaign was imperiled by the
12 improper and illegal actions of the District, which is the sanitary sewer service provider
13 for Talking Rock.

14 14. The District refused to execute the required Yavapai County forms
15 evidencing its intent to provide sanitary sewer service to the Sterling Ranch Lots.

16 15. The District’s refusal to grant the necessary approvals constituted an illegal
17 moratorium in violation of state law.

18 16. The actions of the District prevented Talking Rock from timely obtaining
19 plat and public report approvals necessary for offering the Sterling Ranch Lots for public
20 sale as scheduled on the heavily marketed June 2 date.

21 17. Talking Rock was unable to offer the Sterling Ranch Lots for sale on June 2,
22 2018 consistent with the Sterling Ranch Sales Campaign, which caused significant
23 damage to Talking Rock.

24 18. Due to the District’s implementation of an illegal moratorium, Talking Rock
25 has suffered significant damage to both its reputation and customer goodwill.

26 19. In addition, Talking Rock has suffered significant damages in connection

1 with its Sterling Ranch Sales Campaign.

2 20. The District also made a series of false and defamatory statements alleging
3 that insufficient wastewater treatment plant capacity existed to serve the Sterling Ranch
4 Lots.

5 21. The District falsely stated that the treatment plant's capacity is 62,500
6 gallons per day, which was proven to be false during an evidentiary hearing.

7 22. The District falsely stated the treatment plant only has capacity for an
8 increased average daily flow of 375 gallons per day before it reaches an alert level.

9 23. Having failed to evaluate actual plant capacity, the District made its
10 statements about plant capacity acting in reckless disregard of the truth or falsity of the
11 statements or while negligently failing to ascertain the truth or falsity of the statements.

12 24. Throughout the Sterling Ranch Launch campaign, the misleading rumors of
13 the inadequate provision of wastewater services among the Talking Rock community
14 owners, neighboring community owners, and outside real estate broker community were a
15 detriment to the campaign's success.

16 25. The District also disseminated a series of defamatory false statements
17 asserting that Talking Rock was to blame for failing to obtain its approvals due to the
18 submission of incomplete and / or inaccurate forms. These false assertions have been
19 judicially rejected.

20 26. The District's defamatory false statements and other wrongful conduct
21 created a stigma over the development that has caused Talking Rock injury.

22 27. The District demanded an evidentiary hearing concerning current plant
23 capacity which caused additional delay in Talking Rock obtaining its approvals.

24 28. Talking Rock explained that the hearing was unnecessary, yet the District
25 would not grant the approvals without a hearing.

26 29. The Superior Court cautioned the District against demanding an

1 unnecessary evidentiary hearing. However, the District maintained its position that an
2 evidentiary hearing was necessary.

3 30. The Superior Court concluded that the District could not produce any
4 evidence that approving service to the Sterling Ranch Lots created a capacity issue for the
5 plant.

6 31. The Superior Court determined that the witnesses called by the District did
7 not know the plant's capacity.

8 32. The Superior Court determined that the District had set an artificially low
9 number for capacity and that approving service to the Sterling Ranch Lots would not
10 create a capacity issue for the plant.

11 33. Accordingly, the Superior Court determined that the evidentiary hearing
12 demanded by the District was unnecessary.

13 34. The District forced "Talking Rock ... to litigate the capacity issue at an
14 evidentiary hearing before the District acquiesced" despite the fact that the District had no
15 evidence to support its position on capacity. *Talking Rock Land, LLC v. Inscription*
16 *Canyon Ranch Sanitary District, CA-CV 19-0284, 2020 WL 113380, at *6 (Ariz. Ct.*
17 *App. Jan. 9, 2020).*

18 35. In 2020, the Arizona Court of Appeals affirmed the Superior Court's
19 findings.

20 36. The Arizona Court of Appeals recognized that "[d]ata from the District's
21 own documents established the District's capacity value was artificially low and the
22 treatment plant had sufficient capacity for Sterling Ranch." *Talking Rock Land, LLC v.*
23 *Inscription Canyon Ranch Sanitary District, CA-CV 19-0284, 2020 WL 113380, at *3*
24 *(Ariz. Ct. App. Jan. 9, 2020).*

25 37. Accordingly, the District acted negligently or recklessly in regards to its
26 false statements about capacity.

1 38. Due to the District’s defamatory false statements, Talking Rock has suffered
2 damages to its reputation, business, and anticipated revenue.

3 **II. Yavapai County Superior Court Declared the District’s 2009 Moratorium**
4 **Void and Unenforceable.**

5 39. Unfortunately, the District’s wrongful refusal to provide service is simply
6 the most current example of the District’s ongoing pattern and practice of enacting
7 moratoriums on sewer service without the legal authority to do so.

8 40. In December of 2009, the District unlawfully adopted a resolution imposing
9 a sewer moratorium on all property within the District’s annexed boundaries (the “2009
10 Moratorium”).

11 41. An affiliate owner of Talking Rock, Harvard Simon I, LLC (“Harvard”),
12 was negatively affected by the 2009 Moratorium.

13 42. In January of 2010, Harvard and a coalition of developers affected by the
14 2009 Moratorium filed a lawsuit against the District in the Yavapai County Superior
15 Court alleging violations of Arizona’s Open Meeting Laws, arbitrary and capricious
16 action, and inaccurate capacity assumptions. The other plaintiffs in that case were the
17 owners of other master planned communities served by the District.

18 43. In 2011, the Court granted the developers’ motion for partial summary
19 judgment, and declared the 2009 Moratorium null and void as a violation of Arizona’s
20 Open Meeting Laws.

21 44. Specifically, the Court found that the District unlawfully imposed a
22 moratorium “outside of and apart from any properly agendized open meeting.”

23 45. The Court simultaneously denied the District’s motion as to their assertions
24 that: (1) the District has police power to regulate sewage treatment capacity and
25 connections; (2) the moratorium adopted by the District is presumed valid; (3) the
26 standard of review of the moratorium is whether it was fraudulent or adopted in bad faith;

1 and (4) the District must not allow additional hookups until lot buyers are assured that the
2 treatment capacity they purchased is presently available at a constructed treatment plant or
3 financial guarantees have been provided by plaintiffs for construction of a plant to treat
4 that capacity.

5 46. Notably, the Court denied the District's motion as to its assertion that the
6 proper standard of review of the moratorium was "whether it was fraudulent or adopted in
7 bad faith."

8 47. In rejecting the standard purported by the District, the Court cited the proper
9 standard as follows, "if the actions of a municipality are arbitrary, capricious and in error
10 with prevailing law, mandamus and/or special action injunctive relief will lie" *See id.*

11 **III. The Arizona Legislature Enacted A.R.S. § 48-2033 to Combat the Adoption of**
12 **Unlawful Moratoriums by Sanitary Districts.**

13 48. In direct response to the unlawful actions taken by the District in adopting
14 the 2009 Moratorium, the legislature enacted A.R.S. § 48-2033 in order to prevent
15 sanitary districts from adopting moratoriums without first adhering to explicit procedural
16 requirements. *See* A.R.S. § 48-2033.

17 49. Pursuant to A.R.S. § 48-2033(A),

18 A. A sanitary district shall provide continuous service and shall not adopt a
19 moratorium on construction or land development unless the board of
directors of the district first:

20 1. Provides notice to the public that is published once in a newspaper
21 of general circulation in the community at least thirty days before a
22 final public hearing is held to consider the adoption of the
moratorium.

23 2. Makes written findings justifying the need for the moratorium as
provided for in subsection B of this section.

24 3. Holds a public hearing on the adoption of the moratorium and the
25 findings that support the moratorium.

26 50. The statute provides that a moratorium may only be justified by

1 demonstration of a need to prevent a shortage of essential public facilities that would
2 otherwise occur during the effective period of the moratorium.

3 51. The statute further provides that the required demonstration must include at
4 least the following findings: (1) the actual capacity of the existing essential public
5 facilities based on current use; (2) the extent of need beyond the estimated capacity of
6 existing essential public facilities expected to result from construction or new land
7 development, including identification of any essential public facilities currently operating
8 beyond capacity and the portion of this capacity already committed to development; (3)
9 the moratorium is reasonably limited to those areas of the sanitary district where a
10 shortage of essential public facilities would otherwise occur and on property that has not
11 received development approvals based on the sufficiency of existing essential public
12 facilities; and (4) the housing and economic development needs of the area affected have
13 been accommodated as much as possible in any program for allocating any remaining
14 essential public facility capacity.

15 52. A.R.S. § 48-2033(G) defines a “moratorium on construction or land
16 development” as “engaging in a pattern or practice of delaying or stopping issuance of
17 permits, authorizations or approvals necessary for a subdivision and partitioning of,
18 construction on, or provision of sewer service to, any land in the district.”

19 53. The statute expressly provides that a landowner aggrieved by a sanitary
20 district’s adoption of a moratorium may file an action in the superior court, and that such
21 action must be given preference on the Court calendar on the same basis as condemnation
22 matters.

23 54. A.R.S. § 48-2033(F) provides an express statutory basis for the award of
24 reasonable attorney fees to a plaintiff aggrieved by an unlawful moratorium.

25 . . .

26

1 **IV. The District Is Contractually Bound to Not Withhold Sewer Service**
2 **Approvals for Any Reason.**

3 55. In addition to promoting the enactment of A.R.S. § 48-2033, Talking Rock
4 and the other Developers entered into an Amended and Restated Development Agreement
5 with the District in 2012 (the “Development Agreement”).

6 56. The Development Agreement was intended, among other things, to
7 “establish . . . clear procedures for the expansion of sewer capacity when needed in the
8 future” and “a protocol or approving future phases of Developers property”

9 57. The Development Agreement provides that future expansions to provide
10 additional constructed capacity “will commence when the average monthly flow rate into
11 the Waste Water Treatment Plant exceeds 85% of design capacity for a period of two
12 consecutive months.”

13 58. The Development Agreement expressly provides that it is the District’s
14 obligation to “determine appropriate modifications for capacity and or efficiency
15 enhancements,” and that “[a]ll permitting, design and construction will be undertaken by
16 the District.”

17 59. Accordingly, it is the District’s obligation to plan for and build additional
18 capacity when the “85% of design capacity for two months” threshold is reached.

19 60. A central feature of the Development Agreement is the District’s promise
20 that it will not withhold sewer service approvals for any reason whatsoever:

21 As consideration for the Developer’s covenants in Sections
22 5(a), 9(b), (c) and (d), the **District agrees it will not withhold**
23 **approval of any Sewer Service Agreement (or future**
24 **Yavapai County equivalent requirement) for Talking Rock**
or Whispering Canyon plat approval for any reason or no
reason.

25 (Emphasis added).

26 61. Unfortunately, as described below, the District has as little regard for its

1 contractual obligations to its landowner constituents as its disregard for its statutory
2 obligations.

3 **V. The District Enacted an Illegal Moratorium Without Abiding by the**
4 **Procedural Mandates Set Forth in A.R.S. § 48-2033, in Violation of the**
5 **Development Agreement, and the Implied Covenant of Good Faith and Fair**
6 **Dealing.**

7 62. The District owns and operates a sewer plant and associated collection
8 facilities that services the Talking Rock master planned community and three surrounding
9 master planned communities.

10 63. The Inscription Canyon Wastewater Treatment Plant (“WWTP”) has a
11 permitted capacity of 455,5550 gallons per day (“GPD”) and was built to be expanded in
12 phases.

13 64. Only Phase I of the WWTP has been constructed.

14 65. The industry standard is to commence construction of additional capacity
15 when actual average daily flows reach 85% of capacity for a sustained period.

16 66. Yavapai County Development Services requires three specific forms be
17 signed by the sanitary service provider before the County will approve a plat for
18 recordation which forms are called: (i) Notice of Intent to Discharge for a Sewage
19 Collection System Type 4.01 General Aquifer Protection Permit; (ii) Sewage Collection
20 System Capacity Assurance; and (iii) Sewage Treatment Facility Capacity Assurance
(collectively, the “Capacity Assurance Approvals”).

21 67. In an effort to address the District’s stated concerns over potential capacity
22 constraints, Talking Rock met with the District numerous times during March of 2018.

23 68. During the course of those meetings, Talking Rock made an offer at the time
24 to vacate previously approved capacity assurances for three large phases comprised of a
25 total of 115 lots, in exchange for approval for the 45 Sterling Ranch Lots (resulting in an
26 overall reduction of 70 approved lots).

1 69. The District Chair and District Manager were agreeable to granting the
2 requested approvals for the Sterling Ranch Lots in light of what would be an overall
3 reduction of 70 approved lots. The District Chair and District Manager promised Talking
4 Rock that the Sterling Ranch approvals would be granted if Talking Rock vacated the
5 previously approved capacity assurances, and they requested a letter from Talking Rock
6 memorializing Talking Rock’s commitment to vacate the previously approved capacity
7 assurances.

8 70. Pursuant to the District’s request, Talking Rock memorialized its previous
9 commitment in a letter to Mr. David Barreira, the then-District Chair, on March 29, 2018.

10 71. On March 30, 2018, the District held an open meeting placing the approval
11 of the Sterling Ranch Lots on the agenda.

12 72. During the March 30, 2018 meeting, the District’s representatives went into
13 executive session purportedly to discuss the Capacity Assurance Approvals for the
14 Sterling Ranch Lots.

15 73. Upon the adjournment of the executive session, the District Board stated
16 that the Capacity Assurance Approvals “would not be signed at this time” and passed a
17 motion “that the board proceed as advised in executive session by legal counsel.”

18 74. Bob Hilb, a former board member present at the March 30, 2018 meeting,
19 expressed his belief “that the motion did not satisfy the requirements of the Open Meeting
20 Laws without the board saying what they were doing.”

21 75. The District failed to fulfill any of the requirements of A.R.S. § 48-2033(A)
22 or (B) prior to the adoption of a “moratorium on construction or land development” as
23 defined in A.R.S. § 48-2033(G)(2).

24 76. The refusal by the District to provide the Capacity Assurance Approvals for
25 the Sterling Ranch Lots constituted an illegal moratorium on construction or land
26 development in violation of A.R.S. § 48-2033.

1 77. Thereafter, the District Board went into executive session on at least two
2 more occasions, on April 3, 16, and 23, 2018, to consult with counsel concerning the
3 District’s refusal to provide the Capacity Assurance Approvals for the Sterling Ranch
4 Lots.

5 78. In each instances, upon reconvening from executive session, the District
6 failed to withdraw its illegal moratorium.

7 79. Also in each instance, the District perpetuated its failure to fulfill any of the
8 requirements of A.R.S. § 48-2033(A) or (B) prior to the adoption of a “moratorium on
9 construction or land development” as defined in A.R.S. § 48-2033(G)(2).

10 80. The District repeatedly invoked the advice of counsel as its rationale for
11 refusing to grant the assurances.

12 81. In each instance, the District failed to reveal any aspect of its decision-
13 making.

14 82. Without the Capacity Assurance Approvals, Talking Rock was precluded
15 from offering the Sterling Ranch Lots for sale with sewer service.

16 83. Accordingly, Talking Rock was forced to invoke the judicial remedy
17 provided under A.R.S. § 48-2033. In addition to its various other false defamatory
18 statements, the District disseminated false statements suggesting that Talking Rock
19 violated a legal obligation by pursuing the statutory judicial remedy provided under
20 A.R.S. § 48-2033.

21 84. This conduct by the District was a clear replication of their actions taken in
22 enacting the 2009 Moratorium, evidencing a disturbing pattern and practice of unlawful
23 conduct.

24 85. As set forth above, the District agreed in the Development Agreement that it
25 would not withhold approval of sewer service for Talking Rock for any reason
26 whatsoever, or for no reason.

1 86. The District's enactment of the moratorium, during which it withheld its
2 approval of the required Capacity Assurance Forms for a provision of sewer service to
3 Talking Rock's Sterling Ranch Lots, constituted a breach the Development Agreement by
4 enacting an unlawful Moratorium during which it withheld its approval of the required
5 Capacity Assurance Forms for a provision of sewer service to Talking Rock's Sterling
6 Ranch Lots.

7 87. The District's 2018 Moratorium is, in effect, a repudiation of the District's
8 obligations to Talking Rock, and an effort to preclude Talking Rock from enjoying the
9 benefits of the Development Agreement.

10 88. By impairing the rights of Talking Rock to receive the benefits flowing from
11 the Development Agreement, while simultaneously enjoying the benefits that the District
12 receives under the contract, the District's 2018 Moratorium is a breach of the covenant of
13 good faith and fair dealing that is implied in every contract in Arizona.

14 **VIII. Talking Rock Has Suffered Immense Damages As a Result of the District's**
15 **Implementation of the Unlawful Moratorium and the Significant Delays**
16 **Caused by the District in Refusing to Lift the Moratorium and Execute the**
16 **Necessary Approvals.**

17 89. A substantial portion of the value of the Sterling Ranch Lots was based on
18 Talking Rock's ability to initiate sale of the Sterling Ranch Lots on the highly-advertised
19 June 2, 2018 launch date.

20 90. The District's actions in refusing to lift the moratorium and causing
21 significant delay, including by demanding an unnecessary evidentiary hearing, caused
22 Talking Rock to suffer injury in connection with the Sterling Ranch Marketing Campaign.

23 91. In accordance with Talking Rock's multiyear marketing campaign, buyers
24 were expecting the sales launch of the Sterling Ranch properties to take place on the
25 highly-advertised June 2, 2018 date.

26 92. Talking Rock was unable to meet buyer expectations due to the moratorium

1 imposed by the District, which has placed the sale of the Sterling Ranch Lots and future
2 construction of home-sites in jeopardy.

3 93. In this highly-competitive environment, if buyer expectations are not met, or
4 if there is uncertainty or doubt with respect to the stability of utility service, potential
5 customers simply move on to other development projects that are free of such stigma.

6 94. The District's unlawful moratorium not only placed the sale of the Sterling
7 Ranch Lots in jeopardy, it cast a dark cloud over the balance of the Talking Rock master
8 planned community and future phases of development.

9 95. Talking Rock has been damaged as a direct result of the District's unlawful
10 moratorium.

11 **COUNT ONE**

12 **(Breach of Contract)**

13 96. Talking Rock re-alleges and incorporates by reference each and every
14 preceding allegation of this Complaint.

15 97. Talking Rock and the District, along with the other Developers, entered into
16 the Development Agreement in 2012, therefore, the relationship between Talking Rock
17 and the District is contractual in nature.

18 98. In the Development Agreement, the District expressly promised that it
19 would not withhold sewer service approvals for any reason whatsoever, or for no reason:

20 As consideration for the Developer's covenants in Sections
21 5(a), 9(b), (c) and (d), the **District agrees it will not withhold**
22 **approval of any Sewer Service Agreement (or future**
23 **Yavapai County equivalent requirement) for Talking Rock**
or Whispering Canyon **plat approval for any reason or no**
reason.

24 *Id.* at § 8 (emphasis added).

25 99. The District breached the Development Agreement by enacting an unlawful
26 moratorium during which it withheld its approval of the required Capacity Assurance

1 Forms for the provision of sewer service to Talking Rock's Sterling Ranch Lots.

2 100. Talking Rock has suffered damages as a consequence of the District's
3 breach of contract. Talking Rock is entitled to a judgment in its favor for all damages
4 incurred as a result of the breach, including, without limitation, an award of any and all
5 consequential damages flowing from the District's breach.

6 101. Talking Rock has been damaged as a direct and proximate result of the
7 District's breaches in an amount to be proven at trial.

8 102. Pursuant to applicable law, including, without limitation, A.R.S. §§ 12-
9 341.01, 12-341, 48-2033(F), and the Development Agreement, Talking Rock is entitled to
10 an award of its attorneys' fees and costs incurred in this action.

11 **COUNT TWO**

12 **(Breach of the Implied Covenant of Good Faith and Fair Dealing)**

13 103. Talking Rock re-alleges and incorporates by reference each and every
14 preceding allegation of this Complaint.

15 104. Arizona law implies a covenant of good faith and fair dealing in every
16 contract.

17 105. The covenant of good faith and fair dealing creates a duty that prohibits each
18 party from acting to impair the right of the other to receive the benefits that flow from
19 their agreement and contractual relationship.

20 106. Talking Rock and the District entered into the Development Agreement,
21 which contains an implied covenant of good faith and fair dealing.

22 107. The District breached the implied covenant of good faith and fair dealing by
23 enacting the unlawful Moratorium thereby depriving Talking Rock the benefits and
24 protections that flow from the Development Agreement, including, but not limited to: (a)
25 causing Talking Rock to be unable to offer the Sterling Ranch Lots for sale with sewer
26 connections on the highly marketed June 2 date; (b) forcing Talking Rock to proceed to

1 litigation of this matter to assert its express rights under the Development Agreement; and
2 (c) forcing Talking Rock to endure significant delay in offering the Sterling Ranch Lots
3 for sale with sewer connections due to the District's refusal to execute the necessary forms
4 and the District's request for an unnecessary evidentiary hearing.

5 108. Talking Rock has suffered damages as a consequence of the District's
6 breach of the implied covenant of good faith and fair dealing. Talking Rock is entitled to
7 a judgment in its favor for all damages incurred as a result of the breach, including,
8 without limitation, an award of any and all consequential damages flowing from the
9 District's breach.

10 109. As a direct and proximate result of the District's breach of the implied
11 covenant of good faith and fair dealing, Talking Rock has been damaged in an amount to
12 be proven at trial.

13 110. Pursuant to applicable law, including, without limitation, A.R.S. §§ 12-
14 341.01, 12-341, 48-2033(F), and the Development Agreement, Talking Rock is entitled to
15 an award of its attorneys' fees and costs incurred in this action.

16 **COUNT THREE**

17 **(Defamation)**

18 111. As described above, the District made a number of false statements that
19 defamed Talking Rock.

20 112. Among its false statements that defamed Talking Rock, the District claimed
21 that the treatment plant had insufficient capacity to serve Talking Rock's Sterling Ranch
22 Lots and that Talking Rock was at fault for the delay in issuance of the approvals.

23 113. Through its false statements that defamed Talking Rock, the District
24 disparaged Talking Rock's services as a real estate developer and its product comprised of
25 lots and infrastructure improvements constructed in Talking Rock.

26 114. The District published the false defamatory statements to third parties acting

1 in reckless disregard of the truth or falsity of the statements.

2 115. The District published the false defamatory statements to third parties while
3 negligently failing to ascertain the truth or falsity of the statements.

4 116. As the Superior Court determined, the District did not know the capacity of
5 the plant. However, the District had no evidence to support its statements about
6 insufficient capacity, and “[d]ata from the District’s own documents established the
7 District’s capacity value was artificially low and the treatment plant had sufficient
8 capacity for Sterling Ranch.” *Talking Rock Land, LLC v. Inscription Canyon Ranch*
9 *Sanitary District*, CA-CV 19-0284, 2020 WL 113380, at *3 (Ariz. Ct. App. Jan. 9, 2020).
10 Accordingly, the District acted negligently or recklessly in publishing the false
11 defamatory statements to third parties.

12 117. The District’s publication of the false defamatory statements to third parties
13 is a direct and proximate cause of damages to Talking Rock’s reputation, business, and
14 anticipated revenue.

15 118. The District’s defamatory false statements and other wrongful conduct
16 created a stigma over the development that has caused Talking Rock injury.

17 119. Talking Rock is entitled to compensatory damages as a result of the
18 District’s tortious conduct.

19 120. Talking Rock is entitled to recover consequential damages as a result of the
20 District’s tortious conduct, including, without limitation, the attorneys’ fees that Talking
21 Rock has been forced to incur.

22 **COUNT FOUR**

23 **(Trade Libel)**

24 121. Talking Rock re-alleges and incorporates by reference each and every
25 preceding allegation of this Complaint.

26 122. Through the false statements described above, the District published

1 injurious falsehoods disparaging the quality of Talking Rock's property and services.

2 123. The District should have recognized that the false statements were likely to
3 disparage the quality of Talking Rock's property and services.

4 124. The District claimed that the treatment plant had insufficient capacity to
5 serve Talking Rock's Sterling Ranch Lots and that Talking Rock was at fault for the delay
6 in issuance of the approvals.

7 125. Through its false statements, the District disparaged the quality of Talking
8 Rock's services as a real estate developer, Talking Rock's development, the Sterling
9 Ranch Lots, and Talking Rock's other real estate produced for sale to consumers.

10 126. As a direct and proximate result, the District has caused pecuniary loss to
11 Talking Rock.

12 127. The District published the injurious falsehoods acting in reckless disregard
13 of the truth or falsity of its statements.

14 128. The District's injurious falsehoods and other wrongful conduct created a
15 stigma over the development that has caused Talking Rock injury.

16 129. The District's tortious conduct caused Talking Rock a loss of use of its
17 property.

18 130. Talking Rock is entitled to compensatory damages as a result of the
19 District's tortious conduct.

20 131. Talking Rock is entitled to recover consequential damages as a result of the
21 District's tortious conduct, including, without limitation, the attorneys' fees that Talking
22 Rock has been forced to incur.

23 **COUNT FIVE**

24 **(Interference with Business Expectancy)**

25 132. Talking Rock had a business expectancy that it would obtain over \$5 million
26 in sales during the sales launch in the summer of 2018.

1 capacity which caused additional delay in Talking Rock obtaining its approvals.

2 145. Talking Rock explained that the hearing was unnecessary, yet the District
3 would not grant the approvals without a hearing.

4 146. The Superior Court cautioned the District against demanding an
5 unnecessary evidentiary hearing. However, on the advice of counsel, the District
6 maintained its position that an evidentiary hearing was necessary.

7 147. During the hearing, it was proven that “[d]ata from the District’s own
8 documents established the District’s capacity value was artificially low and the treatment
9 plant had sufficient capacity for Sterling Ranch.” *Talking Rock Land, LLC v. Inscription*
10 *Canyon Ranch Sanitary District*, CA-CV 19-0284, 2020 WL 113380, at *3 (Ariz. Ct.
11 App. Jan. 9, 2020).

12 148. The Superior Court concluded that the District could not produce any
13 evidence that approving service to the Sterling Ranch Lots created a capacity issue for the
14 plant.

15 149. The Superior Court determined that the witnesses called by the District did
16 not know the plant’s capacity.

17 150. The Superior Court determined that the District had set an artificially low
18 number for capacity and that approving service to the Sterling Ranch Lots would not
19 create a capacity issue for the plant.

20 151. Accordingly, the Superior Court determined that the evidentiary hearing
21 demanded by the District was unnecessary.

22 152. The District forced “Talking Rock ... to litigate the capacity issue at an
23 evidentiary hearing before the District acquiesced” despite the fact that the District had no
24 evidence to support its position on capacity. *Talking Rock Land, LLC v. Inscription*
25 *Canyon Ranch Sanitary District*, CA-CV 19-0284, 2020 WL 113380, at *6 (Ariz. Ct.
26 App. Jan. 9, 2020).

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COPY transmitted via eFiling system to:

The Honorable David L. Mackey
Yavapai County Superior Court

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