STATE OF NEW MEXICO
COUNTY OF CIBOLA
THIRTEENTH JUDICIAL DISTRICT COURT

RONALD SCHALI, MIKE REBB,
LINDA PEDERSEN, and DANNY MONTOYA,
as individuals, and on behalf of those
similarly situated,

Plaintiffs,

v. Case No.: D-1333-CV-2025-00156

TIMBERLAKE RANCH LANDOWNERS
ASSOCIATION, a New Mexico Non-Profit
Corporation, and THE BOARD OF DIRECTORS
FOR THE TIMBERLAKE RANCH LANDOWNERS
ASSOCIATION, individually, and in their capacity
as Board Members of the Timberlake Ranch Landowners
Association,

Defendants.

PLAINTIFFS' RESPONSE IN OPPOSITION TO DEFENDANTS' MOTION TO DISMISS PLAINTIFFS' CLASS ACTION COMPLAINT

Plaintiffs, by and through their undersigned counsel of record, Brendon Hischar, hereby respond in opposition to Defendants' Motion to Dismiss Plaintiffs' Class Action Complaint (the "Motion"). The Motion should be denied in its entirety because the Class Action Complaint states plausible claims for relief under New Mexico law and pleads sufficient facts in support of those claims; therefore, dismissal is inappropriate. For their Response in Opposition, the Plaintiffs state as follows:

a. **Introduction.**

As more fully described in Defendants' Motion, Plaintiffs, through their Class Action Complaint, seek on behalf of themselves and a proposed class of 570 similarly-situated landowners controlling 743 lots, the following relief: adjudication of easements, declaratory judgment, injunctive relief, and damages arising from alleged breach of duty on the part of the Timberlake Ranch Landowners Association (the "Association" or "TRLA"). The allegations of the Complaint

focus on the alleged wrongful denial of access to a recreational hiking trail system that has been under construction for years using volunteer labor from members of the community. The closure or restriction of the Timberlake Trail System, while disappointing to many residents of the community, is only, so Plaintiffs allege, a symptom of a much larger problem in the governance of the Association, in which certain members of the Association Board appear to have disregarded the governing documents of the community and New Mexico state law with impunity. Accordingly, Plaintiffs seek adjudication and declaration of easement and other rights with respect to the Trail System and governance issues in the Association, remedy for many alleged breaches of duty under the Homeowner Association Act, and injunctive relief pertaining to issues raised in each of the preceding causes of action.

Defendants seek dismissal on several grounds, including (i) that Plaintiffs have not properly named or served the TRLA Board Members in their individual capacities, (ii) that Plaintiffs do not have standing to bring their claims, (iii) that Plaintiffs have failed to include indispensable parties, and (iv) that Plaintiffs' other claims are subject to dismissal or referral to arbitration by reason of an arbitration provision in the Bylaws.

The Complaint should not be dismissed, because (i) the Defendant TRLA Board Members are properly named as a defendant class, (ii) Plaintiffs have standing to bring their claims as either or both members of the Association or as users of a right of way, (iii) the present action is aimed at the conduct and compliance of the Association, not any other party, and (iv) Plaintiffs' claims fall within an arbitration exception, but a separate motion to compel arbitration should decide issues of arbitrability.

b. **Relevant legal standards for a motion to dismiss.**

Under Rule 1-012(B)(6)

A motion to dismiss for failure to state a claim on which relief can be granted, such as this, tests several things. Relevant to this present Motion are the purposes of (i) testing the law of the claim, not the facts that support it (*see, e.g., McCasland v. Prather*, 1978-NMCA-098, ¶ 5, 92 N.M. 192); (ii) testing whether the plaintiff can recover or obtain relief from any set of facts provable under the claim (*see, e.g., Estate of Boyd v. United States*, 2015-NMCA-018, ¶ 11, 344 P.3d 1013); and (iii) testing whether the claim asserted is legally deficient (*see, e.g., Wills v. Bd. Of Regents of the Univ. of N.M.*, 2015-NMCA-105, ¶ 12, 357 P.3d 453).

At the pleading stage of the proceeding, the Court must accept the factual allegations of the pleadings as true. *See, e.g., Herrera v. Quality Pontiac*, 2003-NMSC-018, ¶ 2, 134 N.M. 43 (internal quotes and citations omitted). Moreover, all doubts are resolved in favor of the sufficiency of the complaint. *Delfino v. Griffo*, 2011-NMSC-015, ¶ 9, 150 N.M. 97.

Under Rule 1-012(B)(7)

A motion to dismiss for failure to join a party under Rule 1-019 NMRA tests whether "in his absence complete relief cannot be accorded among those already parties" or "he claims an interest relating to the subject of the action and is so situated that the disposition of the action in his absence may…(a) as a practical matter impair or impede his ability to protect that interest; or (b) leave any of the persons already parties subject to a substantial risk of incurring double, multiple or otherwise inconsistent obligations by reason of his claimed interest." Rule 1-019(A) NMRA. The determination that a party is necessary involves "a functional analysis of the effects of the person's absence upon the existing parties, the absent person, and the judicial process itself… Courts demonstrate a willingness to bring in an absent person whenever there exists a reasonable possibility that the person's interests will be affected by the conclusion of an action to which he has not been made a party." *Gallegos v. Pueblo of Tesuque*, 2002-NMSC-012, ¶ 42, 132 N.M. 207 (internal quotations and citations omitted).

c. **The Association Board is properly named as a Defendant Class.**

Rule 1-023 NMRA allows a class of persons to "sue or be sued." Although uncommon, Defendant classes are allowable under Rule and recognized under applicable case law. Plaintiffs have elected to identify the Defendant Board of Directors for the Association as "all natural persons who were board members designated to act on behalf of the Association pertaining to the events described in this Class Action Complaint[,]" rather than naming them all individually. *See* paragraph 12 of Plaintiff's Complaint.

This is consistent with proper use of the Rule. For example, a recent federal case from West Virginia named "all ballot commissioners for the state of West Virginia" as defendants in a suit challenging the constitutionality of a certain state statute, which the court in that case found to be a proper defendant class. *See Nelson v. Warner*, 336 F.R.D. 118 (S.D. W. Va. 2020). Much like the defendant class of ballot commissioners in *Nelson*, who were properly named as defendants because of state statutes that governed their duties and the manner in which they were

to be performed, Plaintiffs in the instant matter have similarly named the Association Board, whose actions are similarly governed by state statutes including the Homeowner Association Act and the Association's own Governing Documents (including the Bylaws and Covenants).

New Mexico class certification rules mirror the federal rules, and New Mexico courts may seek guidance from federal law in applying the Rule. *Davis v. Devon Energy Corporation*, 2009-NMSC-048, ¶ 3, 147 N.M. 157. Moreover, New Mexico case law also recognizes the propriety of naming persons or entities who have engaged in certain conduct as class defendants. *See, e.g., State Ex Rel. Salazar v. Humble Oil & Ref. Co.*, 1951-NMSC-059, ¶ 39, 55 N.M. 395 (upholding a trial court's decision as binding on the several classes of defendants named in the complaint according to their conduct and characteristics).

While Defendants may (and probably will) challenge the certification of the Defendant class of Association Board of Directors at the class certification stage, Plaintiffs have at least adequately pled the existence and extent of such a class in their Complaint; therefore, dismissal under Rule 1-012 NMRA is not appropriate.

d. **Plaintiffs have standing to pursue their claims based on use or based on their property interests in the Association's restrictive covenants.**

As a general rule, standing is based on whether a lawsuit is prosecuted in the name of the real party in interest, which is further determined by whether one is the owner of the right being enforced. *See, e.g., Marchman v. NCNB Texas Nat'l Bank*, 1995-NMSC-041, ¶ 15, 120 N.M. 74. For the easement claims at issue in their Complaint, Plaintiffs, including the prospective class they seek to represent, acquire an interest (and therefore standing to prosecute) in either or both of the following ways:

First, "[t]he privilege which one person, or particular description of persons, may have of passing over the land of another in some particular line is termed a right of way…he owns it, and may have his action for an injury to his residuary interest as fully as he would be entitled to were it all his own." *Trigg v. Allemand*, 1980-NMCA-151, ¶ 17, 95 N.M. 128. Like the plaintiff in *Trigg*, the Plaintiffs in the instant matter claim an interest in the right of way over the Timberlake Trail System, including the equestrian and other easements. As more fully alleged in their Complaint, the interest arises from their continuous and adverse use of the right of way over a period of years, which is sufficient to establish a public easement by prescription. *Id*., ¶¶ 13-14.

Second, the easements in question, because they are established and governed by the restrictive covenants of the Association, are a special kind of property right in which all lot owners within the TRLA community, including Plaintiffs, have an interest. *See, e.g., Leigh v. Village of Los Lunas*, 2005-NMCA-025, ¶ 7, 137 N.M. 119 (compiling the holdings of multiple cases: "such covenants constitute valuable property rights of the owners of all lots in the tract"; "A restrictive covenant is something of value to all lots in a tract…"; "reliance on restrictive covenants is a valuable property right"; "Restrictive covenants . . . constitute valuable property rights for *all* lot owners within the restricted area." Internal citations omitted.)

Far from being a private easement held by individual lot owners, the Association, in its own Governing Documents, claims in Exhibit A-4 of its Amended & Restated Bylaws (found on p. 42 of the Complaint) "[t]he right, title and interest in the portions of the following subdivided lands which have been designated as roads, streets, ***rights-of-way or equestrian easements*** on the subdivision plats in the following subdivisions: Timberlake Ranch subdivisions in Cibola (formerly Valencia) and McKinley Counties…" (emphasis added). These Bylaws further define several parcels and tracts, including those described above in Exhibit A-4, as "Common Areas" that the Association may govern (found on p. 19 of the Complaint). Similar definitions are found in the Second Amended and Restated Declaration of Covenants, Conditions and Restrictions, which, besides offering a similar definition of "Common Area" (*see* p. 48 of the Complaint), also expressly incorporate the Bylaws as part of these restrictive covenants (found in Article II on p. 50, and again in Section 8 of Article VII, found on p. 63).

Plaintiffs, consistent with the above-cited case law, and in the Association's own definitions and Governing Documents, are seeking adjudication of property rights in which they and the prospective class of plaintiffs have an interest as members of the Association and as landowners in the TLRA community, or, in the alternative, as actual users of the rights of way that are the subject of their Complaint. Besides standing to pursue claims that implicate these property rights, such as their easement claims, Plaintiffs also have standing to pursue a breach of duty claim under the Homeowner Association Act, as more fully described in their Complaint, for reasons that they are lot owners under a homeowners association, as these are defined. *See generally* NMSA 1978, 47-16-2. Accordingly, the Association and its Board of Directors owe duties to the Plaintiffs and other Association members, under both state law and the Association's own Governing Documents.

e. **The Association is the proper Defendant because it governs community common areas, including equestrian easements.**

Under the standards articulated in *Gallegos*, 2002-NMSC-012, there is no reasonable possibility that the rights of individual private property owners will be affected by the present litigation. Indeed, the Association has already claimed and apparently received a right to govern community common areas (in the Bylaws, Declaration of Covenants, and elsewhere, as alleged in the Complaint), including equestrian easements, as more fully described above. The allegations of the Complaint are solely and squarely aimed at the actions of the Association and its Board, including their compliance with those same Governing Documents. The Complaint does not seek to expand or change any property right that has not already been granted to the Association.

f. **The claims asserted fall within an exception to the Association's arbitration agreement, but such issues are better explored in a motion to compel arbitration.**

As Defendants note, the Bylaws contain an arbitration provision with an exception that allows New Mexico courts to hear "any action for injunctive relief to prevent or to remedy any breach of the Declarations, the Articles, these Bylaws and Regulations[,]" which is precisely what the Complaint seeks.

However, Plaintiffs respectfully state that a motion to dismiss under either Rule 1-012 or Rule 1-019 NMRA is not the place to raise such a defense. These should be brought in a separate motion to compel arbitration under the provisions of the Uniform Arbitration Act, specifically NMSA 1978, Section 44-7A-8, and its associated rule of procedure found in Rule 1-007.2 NMRA.

This is not procedural pedantry on behalf of Plaintiffs or their counsel. A motion to dismiss does not and should not test the arbitrability of claims—only whether the claims have pled sufficient facts and are supportable at law. Moreover, there are additional defenses Plaintiffs may wish to raise to a claim of arbitrability that are not appropriate for a response to a motion to dismiss, such as a defense of unconscionability of the arbitration provision, which would require the introduction of evidence and testimony in support.

g. **Conclusion.**

For the foregoing reasons, the Plaintiffs respectfully request this Court deny Defendants' Motion to dismiss their Complaint. As explained and demonstrated above, these claims are legally sufficient, and the Plaintiffs have explained how they can obtain relief under the facts presented. They have met at least the minimum standard for their claims to survive a motion to dismiss. Accordingly, the Complaint should not be dismissed; however, if this Court does find any of the claims factually or legally deficient in some way, then the Plaintiffs respectfully request dismissal without prejudice and leave to amend.

Dated: January 9, 2026.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing paper or pleading was submitted through this Court's electronic filing system for filing and service to all counsel of record and was also e-mailed on January 9, 2026 to counsel at the following e-mail address:

Mr. Paul Frame (pframe@framelawpllc.com)
Attorney for Defendants

By: 
Brendon Hischar