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April 2, 2008

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**Hand Delivery**

Ms. Cheryl Flemming  
Department of Business and Industry  
Division of Real Estate- Compliance Section  
2501 East Sahara Ave., Suite 202  
Las Vegas, Nevada 89104

Re: Case No. IS-07-1588

Dear Ms Fleming:

As you know, I represent Colonel Robert E. Frank, USAF (Ret.) ("Col. Frank") in the referenced matter.

The March 12, 2008 letter to my client states the Division has obtained sufficient evidence to commence a disciplinary action against my client and intends to do so. The letter further states that the violations alleged **include**:

**NRS 116.3103 Powers of executive board to act on behalf of association; members and officers are fiduciaries; duty of care; application of business-judgment rule; limitations on power.**

1. Except as otherwise provided in the declaration, the bylaws, this section or other provisions of this chapter, the executive board may act in all instances on behalf of the association. In the performance of their duties, the officers and members of the executive board are fiduciaries. The members of the executive board are required to exercise the ordinary and reasonable care of directors of a corporation, subject to the business-judgment rule.

There has never been a specific statement of what exactly Col. Frank did that allegedly violates NRS 116.3103 or how the business-judgment rule might be implicated. The letter does not identify any other statutes at issue or the specifics of any of the violations.

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Instead, the letter merely advises Col. Frank could be subject to \$1,000 fines per violation and that he could be removed from the **executive board**, plus be ordered to pay costs of the investigation and hearing, including attorney's fees. The letter adds that Col. Frank should bring to your attention any documentation or other evidence to demonstrate his previous and continuing compliance with NRS 116.3103.

Please accept this letter in response to your correspondence directed to Col. Frank dated March 12, 2008.

***Due Process Violations***

As we have previously advised, the Intervention Process must allow Col. Frank due process of law, and this requires notice of each specific allegation against him and a meaningful opportunity to respond. USCA Const. Amend. 14; Nevada Const. Art. 1, §8.5. The March 12, 2008 letter to Col. Frank confirms the gravity of this situation by threatening Col. Frank that he could be fined and have to pay the costs of the investigation including attorneys fees (i.e., deprived of liberty and property).

The March 12, 2008 letter states that the allegations against Col. Frank "**include**" claims that he somehow violated NRS 116.3103. The Division has not responded to, or even considered, the problems and deficiencies encountered at the commencement of this matter. The Division failed to meaningfully follow the procedural requirements of NRS 116 and has never responded to Col. Frank's detailed response to the Affidavit of January 4, 2008, and never provided Col. Frank with information as to what specific acts he allegedly committed that the Division believes may have violated the statute.

The demand that Col. Frank respond to these unknown allegations, which might at some point in the future come within the general assertion "**include**", is fundamentally unfair. It is impossible for Col. Frank to identify documentation or evidence to refute unknown charges.

The style of unfair and unreasonable demands for compliance with unsubstantiated statute violations began with the original affidavit filed on September 7, 2007. It was more than one month later that Col. Frank was provided with the "supporting" documentation filed with the Affidavit. All of this was addressed in Col. Frank's January 4, 2008 response. The Division should never have accepted the original Affidavit without specific acts of statute violations being described in detail. We must hereby restate our continuing demand for this case to be immediately dismissed, with prejudice. The Affidavit never complied with statutes, and we have shown that this case should not go forward.

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Over the past few weeks, we have learned of **additional** violations of Col. Frank's rights including improper *ex parte* communication between Mr. Dixon and the Division, as well as other flagrant statutory violations by Mr. Dixon, and other Directors, that are prejudicial to the rights of Col. Frank and impact the unit owners at SCACAI.

For example, Mr. Dixon and others recently excluded Col. Frank from SCACAI business under the guise of labeling the business as a private "workshop." Mr. Dixon and others attempted to conduct this "workshop" despite assurances to the Division less than 24 hours earlier that it would not be conducted.

The most recent violations involve the confidentiality mandate of NRS 116.757. This statute was violated on March 27 and 28, 2008 by the complainant, Mr. Dixon, who published the below SCA "President's Message" on the SCA Community Website and via the SCA email list after first reading it aloud to over 200 SCACAI members at the March 27, 2008 Board of Director's meeting.

*"As many of you know, last year an Affidavit was filed against Bob Frank with the Ombudsman's office. . . The Ombudsman offered mediation. When that offer was declined, the complaint was sent Real Estate Division for investigation. This week I was informed that the Division completed their investigation several weeks ago and determined that the allegations are not frivolous, not fraudulent, and not false. They determined that there was good cause to proceed with a hearing on the alleged violations and **filed a formal complaint** with the Commission. (sic)" (emphasis added)*

Mike Dixon, *President's Message*, March 27, 2008, page 1 of 2.

Mr. Dixon's *President's Message* starts out by acknowledging that "many" of the 200 or so people in the audience are aware that an Affidavit was filed against Col. Frank. He is then disingenuous in stating that mediation was declined. Col. Frank did not flatly refuse mediation, he merely insisted that he be provided with the specifics of his alleged violation(s) of law. It should be fairly obvious that a meaningful mediation cannot occur unless all parties understand precisely what issues are involved.

Mr. Dixon then falsely stated as a matter of **existing fact** that a Complaint was already filed by the Division. This false statement violates section 757 and defames Col. Frank. Mr. Dixon's violation of the confidentiality mandate of section 757 was the result of communications with the Division last week. Mr. Dixon's misconduct is magnified in the context of the hotly contested upcoming election at SCACAI, which is one of the underlying reasons the Affidavit was filed.

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Since last summer, Col. Frank has been asking tough questions about the finances of SCACAI. Rather than working together to look for answers and find solutions, Mr. Dixon and others decided it would be best to exclude Col. Frank from any meaningful participation at SCACAI. This pattern of retaliation against Col. Frank started when he was abruptly removed as a Vice President of SCACAI in spite of the fact that approximately 3 months earlier Col. Frank received nearly 80% of the votes at the time of his election to the Board. As early as last August, Mr. Dixon and others recognized they could not obtain sufficient unit owner support to recall Col. Frank. See Dixon Affidavit dated 9/5/07, page 3 of 3 ("[g]etting sufficient votes for a recall is unrealistic in a community of 7,000 homes."). The Intervention Process in NRS 116 was the next best option for Mr. Dixon to retaliate against Col. Frank for asking tough questions for which Mr. Dixon did not want to provide answers.

***Retaliation and Possible Violations of NRS 116 & Sarbannes - Oxley***

Nevada and Federal Law provide protection from retaliation in circumstances like this, and Col. Frank intends to pursue and fully enforce his rights. In particular, NRS 116.31183 provides:

*"An executive board, a member of an executive board or an officer, employee or agent of an association shall not take, or direct or encourage another person to take, any retaliatory action against a unit's owner because the unit's owner has:*

- 1. Complained in good faith about any alleged violation of any provision of this chapter or the governing documents of the association; or*
- 2. Requested in good faith to review the books, records or other papers of the association prohibits."*

Col. Frank's status as a Board Member does not preclude his protection under this statute; and, he can provide extensive documentation to strongly support a claim of retaliation by Mr. Dixon and his associated Directors.

Similarly, the Sarbanes-Oxley Act of 2002 ("SOX") (PL 107-204, 116 Stat 745) and related statutes, likely afford protection to Col. Frank. Typically, SOX applies to public companies, and typically, it excludes non-profit corporations such as SCACAI. However, the special circumstances of this case involving alleged financial mismanagement of corporate monies in the millions of dollars, and the failure to accurately file Federal income tax reports, fall within protections of SOX. Just one of the relevant statutory sections states:

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“... any person who knowingly, with the **intent to retaliate**, takes any action harmful to **any person**, including interference with the lawful employment or livelihood of any person, for providing a law enforcement officer any truthful information relating to the commission or possible commission of any Federal offense, shall be fined under this title or imprisoned not more than 10 years, or both.”

One commentator<sup>1</sup> has noted that “[t]he scope of this provision potentially is tremendously broad. It is important to recognize that, unlike the civil whistleblower provisions, the criminal provision is not restricted to protecting employees of publicly traded companies. Rather, the statute protects ‘**any person**’ without limitation.”

***Demand for Immediate Dismissal and Closure of Case No. IS-07-1588.***

In view of the foregoing, please accept this letter as Col. Frank’s demand that Case No. IS-07-1588 be dismissed and closed by **Wednesday, April 9, 2008**. Alternatively, if this matter is to proceed, the Division should file and serve its Complaint by that date. After that date, **Col. Frank will be compelled to initiate actions to vigorously defend his reputation in every way possible, and to pursue all remedies available to him by law for (1) the denial of his due process rights, (2) the abuses and damages he and his family have been subjected, and (3) the violation of any and all others statutes. This includes, but is not limited to, claims for affirmative relief and claims against the Division seeking Writs of Prohibition and/or Mandamus. Col. Frank is prepared to pursue the full litigation process including discovery of electronic data, metadata, and depositions under the penalty of perjury of all witnesses.**

In addition, if a Complaint is filed, Col. Frank intends to fully exercise his First Amendment rights to inform the public with all of the specific sordid details. Col. Frank will contact all news outlets and publicize the abuses he has endured. Most consumers of media are also unit owners and have a proprietary interest in news stories involving NRS 116. And, as you all know, stories like this one “have legs” to run in the press for a very long time. As a retired senior military officer and gifted public speaker with a passion for fair play and justice, you can be assured that Col. Frank will prove to be an effective spokesperson in defending his honor and reputation in the court of public opinion.

In short, Col. Frank has been extremely patient and has fully cooperated with this unfair and complex intervention process since September 7, 2007. We believe that before Mr. Dixon and his spouse became involved in SCA politics, there had never been an SCA

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<sup>1</sup>/ See <http://www.hklaw.com/id24660/PublicationId1785/ReturnId31/contentid47965/>

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Intervention Affidavit filed with the Division. However, in the past two years since the Dixons have lived at SCA, it is a fact that the Dixon's have filed and stimulated the filing of numerous affidavits. In fact, it appears that Mr. Dixon has adopted a routine style of provoking outraged disagreement with his statute violations and then directing SCA homeowners to file affidavits with the Division.

Col. Frank and his spouse have not been involved in the Intervention Affidavit process except to defend themselves against the unfair allegations in this and one other case involving Mr. Dixon's complaints. The major problems the Division is having with SCA are due primarily to Mr. Dixon's and his associate's personalities and leadership styles. Col. Frank and his spouse believe in the principle of solving community problems within the community, and the Division should be encouraging that style of management.

But, at this point, Col. Frank has reached his limit. He is truly outraged at the systematic denial of his basic due process rights. If this unfair and groundless case is referred upwards to the CIC for further harassment and retaliation, Col. Frank and his spouse of 43 years are prepared to do whatever it takes to defend their good names and spotless reputations earned while serving in this nation's military service and as a Chief Scientist in the nation's top weapons laboratory.

***Documentation and other Evidence***

Notwithstanding the foregoing, and in furtherance of the March 12 letter to Col. Frank, we believe the following evidence (un-redacted) is necessary to any determination and essential to Col. Frank's ability to respond to the claim(s) against him:

1. Agenda and Minutes of all SCA meetings including requests by Col. Frank to add items to the Agenda for SCA meetings. Notes, minutes, transcripts and recordings of any meeting(s) of the SCA, or any committee thereof, for the period 2002 to the present.
2. Mike Dixon, *President's Message*, March 27, 2008, and Mike Dixon, Letter Denying Attendance at Board Meeting, March 6, 2008
3. For the period 1/1/2005 to the present, all Letters, E-mails and other communications by, among and or between SCA Board members including, but not limited to, Col. Frank and following individuals or entities concerning matters which tend to prove or disprove allegations that Col. Frank violated NRS 116.3103:
  - A. John Leach, Esq.
  - B. Any other Current and Former SCA board members and SCA Standing Committee Members

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- C. Gary Lien, CPA
- D. Representatives of Pulte - Del Webb
- E. Current and Former Representatives of Del Webb Community Management Company
- F. Current and Former Representatives of RMI
- G. State of Nevada, Real Estate Division (Compliance)
- H. State of Nevada, Real Estate Division (Office of Ombudsman)
- I. State of Nevada, Department of Business and Industry
- J. Members of the NV Legislature
- K. Unit owners / Residents at SCA
- L. Unit owners / Residents of other Del Webb/Pulte-built HOAs

4. For the period 6/1/2007 to the present, all Letters, E-mails and other communications which tend to prove or disprove allegations that Col. Frank violated NRS 116.3103 by, among and or between representatives of the Real Estate Division and:

- A. John Leach, Esq.
- B. Mike Dixon
- C. Unit owners / Residents at SCA
- D. Any other employee of the State of Nevada, Real Estate Division (Compliance)
- E. Any other employee of the State of Nevada, Real Estate Division (Office of Ombudsman)

5. For years 2002-to present time: US Dept of Treasury Tax returns, SCA Board Meetings Minutes, SCA Board Resolutions, SCA Executive Board Meetings Minutes, and IRS REVENUE RULING 70-604.

6. Financial information regarding Reserve Funding including the Co-Generation fund of \$1.375 Million dollars and other evidence of negotiations between SCA and Pulte - Del Webb in furtherance of attempts to settle reserve funding shortfalls during the time of community transition.

7. Settlement Agreement and all related SCA correspondence and emails relating to the Villas Reserves Payments Agreement--at issue

8. Investigative Audit request for the Division concerning SCA finances and document/records management practices.

9. Financial information regarding the SCA Restaurant operations, lease management issues, and law suit data for the years 2001 to present time.

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10. SCA Bylaws, CC&R's and corporate minute book for 1998 to present time.
11. All original time records and invoices for any accounting, legal, and any other professional firm that have rendered professional services to SCA for the period 2002 - present.
12. NEVADA DEPARTMENT OF JUSTICE, Office of the Attorney General, **A GUIDE TO NON-PROFITS.**
13. Copy of the original Affidavit and related Sun City Anthem Board of Directors documents and emails used to initiate proceedings for the Complaint against Col. Frank which have not yet been filed.
14. Robert's Rules of Order.
15. Robert Frank reserves the right to identify and use all other documents and evidence which are relevant to the allegations against him.

**Conclusion**

It is my sincere desire that this matter be dismissed and concluded immediately. All concerned will significantly benefit if this matter is closed without further delay. If you wish to discuss any part of this letter, please contact me.

Very truly yours,

LIPSON, NEILSON, COLE, SELTZER & GARIN, P.C.



JOSEPH P. GARIN

JPG/\*\*

cc: Mr. Bruce Alitt  
Ms. Lindsey Waite  
Ms. Ann M. McDermott  
Ms. Mendy K. Elliott