

ATTACHMENT 2

1 Kip M. Micuda - 011921
2 4900 N. Scottsdale Road, Suite 1500
3 Scottsdale, Arizona 85251
4 Office: (480) 305-8300
5 Email: Kip@hildebrandlaw.com
6 *Pro Se and Attorney for Plaintiff*

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

11 Plaintiffs,

12 and

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

26 Defendants.

NO. CV2019-012879

**SUPPLEMENTAL AFFIDAVIT
OF KIP M. MICUDA**

27 STATE OF ARIZONA)
County of Maricopa) ss.

I, KIP M. MICUDA, 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.
4

5 2. Some of My Background:

- 6 a. I grew up in a law enforcement family; my father was a federal special agent.
7
8 b. As a young attorney, I began my career as a federal judicial law clerk for four
9 different federal judges, including serving the Honorable Thomas Tang (now
10 deceased, U.S. Circuit Judge, United States Court of Appeals for the Ninth
11 Circuit).
12
13 c. I served the Arizona Office of Administrative Hearings as an Administrative
14 Law Judge and agency counsel.
15
16 d. I served the State Bar of Arizona as the Director of the Attorney/Consumer
17 Assistance Program and as Senior Bar Counsel.
18
19 e. The Honorable Jane Dee Hull, former Governor of the State of Arizona,
20 appointed me to the Arizona Structural Pest Control Commission ("SPCC") and
21 the Naturopathic Physicians Board of Medical Examiners. I served both
22 agencies as a member and Chair. The SPCC required a confirmation by the
23 Arizona State Senate.

24 3. Our Home Purchase:

- 25 a. I purchased 2.5 acres in the Rio Verde Foothills area ("RVFH area") more than
26 twenty years ago. I planned to build a home.
27

1 b. In 2015, my wife and I concluded the land I purchased was a mistake, not
2 suitable for our intended outdoor use. My wife and I started looking for a home
3 in the RVFH area in early 2016. We had very particular requirements:
4

5 i. The home we looked to purchase was somewhat inconsequential, we
6 focused on the land and our outdoor use.

7 ii. We wanted at least 2.5 acres.

8 iii. The front of the home needed to face west so our use and views of the
9 sunrise to the east were unobstructed.
10

11 iv. We wanted to know what was built to the east.

12 v. We did not want either the front of the house or rear of the house to be
13 close to a significant road.
14

15 vi. Affordable.

16 c. After months of looking, we found one property that met our requirements; the
17 property on which we currently reside. The home itself is nothing special;
18 similar homes can be purchased virtually anywhere in the Phoenix area. The
19 land and its use, we concluded after months of looking, were unique.
20

21 d. Our outdoor use was primarily being on the back patio intermittently between
22 about 4:00 a.m. and 6:30 a.m. and between 4:00 p.m. and 7:00 p.m. during the
23 week. On the weekends we were outside intermittently throughout the day. The
24 time outside was to talk, relax, enjoy the solitude and watch our dogs and other
25 critters.
26
27

1 e. Our outdoor use started decreasing with Defendants' increasing
2 commercial/industrial use of the LOT. Since early 2019, our outdoor use has
3 been minimal.
4

5 4. Defendants' Use of the LOT

6 a. Defendant DAMON BRUNS asserts Plaintiffs purchased their home when
7 Defendants' warehouse/barn was already built and their commercial/industrial
8 activity was ongoing. Defendant DAMON BRUNS misrepresents.
9

10 b. Plaintiffs closed on the purchase of their current home on May 31, 2016.
11 Defendants did not obtain a building permit for their warehouse/barn until July
12 7, 2016. No structure appeared on the LOT in 2016. Defendants did not engage
13 in noticeable commercial activity until mid-2017.
14

15 c. Defendants' assertion Plaintiffs moved to the nuisance is unequivocally false.

16 d. In early 2018, I drove to the LOT to observe the activity. Defendants were
17 operating Dynamite Water from the LOT. I noticed a container and 3-4 vehicles,
18 including two water hauling trucks. I informed my wife. Neither of us was
19 happy about the commercial activity.
20

21 e. Wanting to be "neighborly" and avoid conflict, we refrained from doing
22 anything about Defendants' activity and decided to monitor the activity. By fall
23 2018, there were as many as 5-6 water hauling trucks, as many as 3-4 other
24 vehicles and equipment on the LOT. We decided I should start researching the
25 applicable law and our rights. A major consideration was whether Defendants
26
27

1 would retaliate. Posts on the social network, Nextdoor, convinced us that many
2 in the area supported Defendant DAMON BRUNS.

3
4 f. Defendants' commercial/industrial use continued and expanded throughout
5 early 2019.

6
7 g. In June, 2019, Defendants began building another structure, appearing as a
8 smaller duplicate of the warehouse/barn. This activity signaled additional
9 expansion of Defendants' commercial/industrial activity. When I raised the
10 commercial use of the LOT with Defendant DAMON BRUNS, he denied any
11 such use. Putting our fears of retaliation by Defendants' aside, I submitted a
12 zoning complaint to the Maricopa County Planning and Development
13 Department ("Department").
14

15 h. At the time of Plaintiffs' zoning complaint, 6-7 large water hauling trucks left
16 the LOT every morning between 5:30 a.m. and 8:00 a.m. They returned every
17 day between 4:00 p.m. and 7:30 p.m. They came and left intermittently during
18 the day, as we observed mostly on the weekends.
19

20 i. The trucks would "warm-up" and "cool-down" each morning and evening,
21 meaning these vehicles ran idle for long periods of time, at least fifteen (15)
22 minutes.
23

24 j. On October 13, 2019, sunrise, I observed a water hauler truck exit the LOT. The
25 dust was significant and unmistakable. I took several photos.
26

27 k. The trucks cause tremendous dust and vibration as they operate. While
Defendant DAMON BRUNS claims dust is not an issue, I observed on October

1 25, 2019, at 4:30 p.m., for the first and only time, a water truck exit the LOT
2 spraying water on the roads, including the road to the north of our home. If dust
3 is not an issue, why are Defendants suddenly spraying water on the roads?
4

5 1. On November 3, 2019, about 7:00 a.m., I observed a water hauler truck exit the
6 LOT. The dust was significant and unmistakable. I took several photos. At
7 7:30 a.m. I watched another truck owned by Dynamite Water pass our home and
8 enter the LOT. Again, the dust covered the area, including our home.
9

10 m. We can feel the vibrations of the trucks come and go inside our home.

11 n. On occasion, I observed a diesel fuel truck appear to dispense fuel on the LOT.
12 I am therefore informed and believe that Defendants have fuel delivered on the
13 LOT and store fuel on the LOT. The fuel dispensing and storage is a toxic hazard
14 risk.
15

16 o. I have observed employees of Dynamite Water maintain and repair trucks inside
17 and outside the warehouse/barn. The LOT has a septic system. What happens
18 to the toxic chemical waste that cannot be processed in a septic system?
19

20 5. Our Lost Use and Enjoyment:

21 a. Because of Defendants' illegal commercial/industrial use (causing extreme
22 noise, dust, vibration and smell of diesel fuel), we lost the outdoor use of our
23 property, the reason for which we purchased the property in the first place.
24 These conditions caused by Defendants are substantial; offensive; and interfere
25 with our use and enjoyment, which is harmful. Such conditions attribute no
26 benefit to the public and only detract from Plaintiffs' rights, as well as public
27

1 interests. We do what we need to do outside, like water plants and watch our
2 dog, but little to nothing else.

3
4 b. I am also informed and believe that Defendants' illegal commercial/industrial
5 use has caused a diminution of value of our property.

6 c. Our indoor use and enjoyment are also damaged by the vibration of Defendants'
7 trucks.

8
9 6. Defendants' Retaliation:

10 a. In mid-July, 2019, Defendant DAMON BRUNS, without notice to us, removed
11 the water meter from our residential water tank with intent that we unknowingly
12 exhaust our water.

13
14 b. In mid-July, 2019, Defendant DAMON BRUNS, without notice to us,
15 terminated our potable water service with intent that we unknowingly exhaust
16 our water.

17
18 c. I believe it is more likely than not that Defendant DAMON BRUNS killed our
19 dog, which died on July 14, 2019.

20 d. On July 15, 2019, Defendant DAMON BRUNS obtained an Injunction Against
21 Harassment against me. Other than alleging that he and I communicated via
22 text; I visited the LOT on July 13, 2019; I spoke to people while at the LOT; and
23 that I took photos, all of Defendant DAMON BRUNS' allegations against me
24 are false. The Justice Court granted a directed verdict and quashed the order.
25

26 The court then apologized to me.
27

1 e. On July 18, 2019, Defendant DAMON BRUNS called John Hornewer, owner
2 of Rio Verde Water. Defendant DAMON BRUNS told Mr. Hornewer that I was
3 following water delivery trucks in the area and looking to have each served with
4 a cease and desist order from the County. This statement by Defendant DAMON
5 BRUNS is false. Defendant DAMON BRUNS then pressed Mr. Hornewer *not*
6 to provide us water; indeed, Defendant DAMON BRUNS stated he wanted to
7 cause us "to hurt" and disable us from obtaining water from any local water
8 delivery service.
9


10
11 f. After receiving several requests from people in the RVFH area for information
12 about the instant action, I posted a summary online on Nextdoor on October 9,
13 2019. Holly Lasley-Wagner, responded with a long post, making the same
14 assertions against me that Defendant DAMON BRUNS did, noted above, and
15 claimed that my wife and I will cause the cost of water delivery services to go
16 up. Defendant DAMON BRUNS uses Ms. Wagner as his spokes-person. Ms.
17 Wagner's clear intent was to incite hostility, if not violence, against us. The
18 effort worked. People called me the "most hated person" in the RVFH area; that
19 if Damon goes down, he will take others with him; and "where does he [me]
20 live." I contacted law enforcement. On October 17, 2019, while my wife was
21 on our patio, someone shot a gun in her direction from the road about 6:30 p.m.
22 I contacted Chief Deputy Corey Morrison, Maricopa County Sheriff Office
23 ("MCSO"). He sent a Deputy Sargent to our home on October 23, 2019. MCSO
24 is reviewing the matter.
25
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27

1 g. None of Defendants' commercial/industrial uses of the LOT are permitted under
2 the *Zoning Code, Articles 501 and 503*. Because *all* of Defendants' water hauling
3 trucks, as well as other vehicles, exceed the weight limit in the *Zoning Code*,
4 none can be parked or stored on the LOT or any other property zoned RU-43,
5 *Zoning Code, Article 1102.9, §1102.9.4*, which is why all the water haulers in
6 the area have been in violation for years. Further, while Defendants currently
7 build a residence of about 1300 square feet on the LOT, the operations of
8 Dynamite Water are still contrary to the *Zoning Code, Articles 501 and 503*, even
9 if Defendants DAMON and HOLLY BRUNS reside on the LOT, as the *Zoning*
10 *Code* requires for a home-based business. Further still, the *Zoning Code*,
11 *Articles 501 and 503*, significantly limits the use of RU-43 property, for example,
12 as to equipment and vehicles that may be stored or operated on such property.
13 There are limits as to the number of people who may be present on the property
14 for a commercial purpose, which is three (3). I have regularly observed many
15 more than three (3) people working on the property. The *Zoning Code* also
16 precludes "noise . . . , vibration, . . . , dust, odors . . . in the area that would exceed
17 that normally produced by a dwelling unit in a zoning district used solely for
18 residential purposes." *Zoning Code, Article 501.2, §501.2(10)(e)*. Such trucks
19 cause noise, vibration, dust and odors that exceed that normally produced by a
20 home in a residential area. There are other violations, like the presence of an
21 accessory building present on the LOT that has no permitted use. *Zoning Code*,
22 *Article 501.2, §501.2(15)*.
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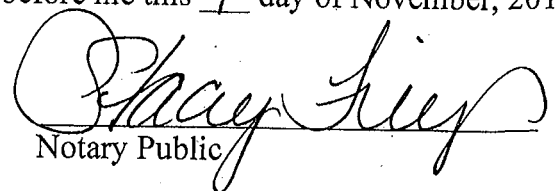
1 7. Our Dynamite Water Account

2 a. Until Defendant DAMON BRUNS unilaterally terminated our account without
3 notice to us, we received water delivery from Dynamite Water. In July, 2019,
4 we started receiving different weekly invoices from Dynamite Water. My wife
5 reviewed the account and concluded we owed Dynamite Water nothing. I told
6 my wife not to do anything, we should expect a reconciliation of the account
7 from Dynamite Water. About September 23, 2019, I picked up a letter from
8 Dynamite Water with a single invoice. I reviewed the account from late 2018.
9 I concluded Dynamite Water missed a payment from us and that we missed a
10 delivery. I concluded we owed Dynamite Water the sum of \$85.00. I explained
11 my finding and paid the balance, by letter, on October 24, 2019.
12
13
14

15 **Further, Affiant sayeth naught.**

16
17 
18 KIP M. MICUDA
Pro Se Plaintiff

19 SUBSCRIBED AND SWORN before me this 4th day of November, 2019, by KIP
20 M. MICUDA.

21 
22 Notary Public

23 My Commission Expires:

24 3.13.2020

