

COPY

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James H. Campbell, pro se
13771 Fountain Hills Blvd., PMB 226
Fountain Hills, Arizona 85268



MICHAEL L. GIBBS, CLERK
DEPUTY CLERK

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF MARICOPA

<p>JAMES H. CAMPBELL, a single man, Plaintiff, v. MINUTEMAN CIVIL DEFENSE CORPS, INC., an Arizona organization, DIENER CONSULTANTS, INC., a Pennsylvania Corporation, DECLARATION FOUNDATION, a Virginia non-profit corporation, DECLARATION ALLIANCE, a Virginia non-profit corporation, CHRIS SIMCOX and ALENA SIMCOX, husband and wife, PHILLIP SHELDON and KATHLEEN SHELDON, husband and wife, PETER KUNZ and JOANN KUNZ, husband and wife, MARY PARKER LEWIS and MARLO LEWIS, wife and husband, JOHN DOES I-X, JANE DOES I-X, ABC CORPORATIONS, XYZ LIMITED LIABILITY COMPANIES, BLACK AND WHITE PARTNERSHIPS, Defendants.</p>	<p>CV2007-051492 No. <i>*Amended*</i> COMPLAINT (Fraudulent Misrepresentation/ Breach of Contract/Rescission of Contract)</p>
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Plaintiff James H. Campbell ("Campbell"), representing himself, as and for its Complaint against Minuteman Civil Defense Corps, Inc., Diener Consultants, Inc., Declaration Foundation, Declaration Alliance, Chris Simcox, Phillip Sheldon, Peter Kunz, and Mary Parker Lewis (collectively "Defendants"), hereby alleges the following:

1. Upon information and belief, Minuteman Civil Defense Corps, Inc. ("MCDC") is a corporation that has its principal place of business in Arizona.
2. Upon information and belief, Declaration Foundation is a foreign non-profit corporation that has its principal place of business in Virginia.
3. Upon information and belief, Declaration Alliance is a foreign non-profit corporation that has its principal place of business in Virginia.
4. Upon information and belief, Diener Consultants, Inc. ("Diener Consultants") is a foreign corporation organized in and has its principal place of business in Pennsylvania.
5. Chris Simcox ("Simcox") and Alena Simcox are both residents of Maricopa County, Arizona.
6. Upon information and belief, Phillip Sheldon ("Sheldon") and Kathleen Sheldon are both residents of Lancaster County, Pennsylvania.
7. Upon information and belief, Peter Kunz ("Kunz") and Joann Kunz are both residents of Lancaster County, Pennsylvania.
8. Upon information and belief, Mary Parker Lewis ("Lewis") and Marlo Lewis are both residents of Los Angeles County, California.
9. Upon information and belief, if married, defendants Simcox, Sheldon, Kunz and Lewis were acting with the intent and purpose of benefiting their marital communities which are therefore jointly and severally liable for the damages hereinafter alleged.
10. At all times material to this Complaint, Defendants, acting on their own behalf and/or on behalf of and for the benefit of each other, entered into transactions and caused events to occur in Maricopa County, State of Arizona, such that this Court has jurisdiction and venue over each of them.
11. Fictitiously named Defendants John Does I-X, Jane Does I-X, ABC Corporations, XYZ Limited Liability Companies, and Black and White Partnerships may be partially or

wholly liable for all events complained of herein. Upon discovering the true names and/or identities of these fictitiously named defendants, this Complaint will be amended to reflect said true identities.

12. Campbell is a resident of Maricopa County, State of Arizona

GENERAL ALLEGATIONS

13. On April 19, 2006, Simcox represented through public statements that the MCDC intended to build "Israeli-style" security fencing along the Arizona-Mexico border.

14. On April 20, 2006, the MCDC and/or Simcox published the design of the intended "Israeli-style" security fencing to the public, which fencing consisted of multiple layers of protection, including concertina wire, heavy steel construction fencing, motion-detecting cameras, and large ditches to prevent vehicles from penetrating it.

15. On April 19, 2006, Simcox represented through public statements that: "a half-dozen ranchers have said they would allow fencing to be placed on their borderlands".

16. On April 20, 2006, Simcox represented through public statements that: "Six private landowners have 'partnered' with the Minutemen for commencement of construction of border fencing on their land".

17. In response to an e-mail inquiry by Campbell as to what were the total donations as of May 16, 2006, Connie Hair (MCDC Media Director) responded: "As of about four days ago the number was \$220,000 (the last time I checked) and over 1,000 volunteers!".

18. On May 25 and/or 26, 2006, the MCDC announced that it had received in excess of \$225,000 in donations (excluding Campbell's donation), which it had solicited and received from the general public since April 19, 2006.

19. In the year that has transpired since the groundbreaking, there have been no disclosures by the MCDC of either fence donations or expenditures.

20. Immediately after Campbell's having read these April 19th and 20th public announcements, Campbell contacted the MCDC and announced his desire to help financially the MCDC reach its goal of building security fencing along the Arizona-Mexico border.

21. After Campbell extended his offer to help financially, Campbell was then told by Connie Hair to contact Kunz, whom she identified as being with Diener Consultants and the border fence project manager.

22. Campbell then twice called Kunz by telephone on May 17, 2006, and they talked for a total of sixty minutes.

23. During the first of these May 17th conversations between Campbell and Kunz, Kunz asserted to Campbell that the "Israeli-style" fence would be built along ten miles of border frontage of the Jack and John Ladd property.

24. In reliance upon these specific assertions by Kunz, Campbell (later that same day by phone and follow-up e-mail) offered to loan MCDC \$100,000.00 toward the construction of this "Israeli-style" security fencing, with the condition that Campbell's loan would be used exclusively for the purchase of structural steel tubing to be used in the construction of this specific ten miles of fence on the Ladd property.

25. In a subsequent May 21st telephone conversation with Kunz, and in a follow-up e-mail to both Kunz and Sheldon (both of whom are with Diener Consultants), and to MCDC Headquarters (Simcox), Campbell offered to donate \$100,000 outright and, again, conditioned his donation upon the express purpose of purchasing the structural steel tubing to be used in the construction of this ten miles of "Israeli-style" fence, which condition was not objected to by any of these three Defendants.

26. After the agreement between Campbell and the MCDC was reached, Campbell was contacted by Lewis, who identified herself as a representative of the MCDC and, in that capacity, was fully aware of the day-by-day border fence plans and operations.

27. Lewis, as Executive Director of Declaration Foundation, failed to advise Campbell that Declaration Foundation was then currently negotiating a consent agreement and order with the Pennsylvania Attorney General's Office whereby criminal prosecution for having submitted false information would be avoided.

28. Lewis acknowledged that this steel "~~would be a linch-pin element~~" of the upcoming fence project on Ladd's property and communicated "knowledgeably", openly, and frequently with Campbell about the anticipated purchase of steel with his donation and its integration into, and its coordination with, the actual fence construction activities on the Ladd property.

29. During the conversation between Campbell and Lewis, Lewis assured Campbell that his \$100,000.00 donation was specifically earmarked for the construction of the Arizona-Mexico border fence.

30. During that conversation between Campbell and Lewis, Lewis informed Campbell that his donation would be tax-deductible pursuant to the tax-exempt status of Declaration Foundation, which is an affiliate of the MCDC's parent organization, Declaration Alliance.

31. Based upon the assertions by Defendants (and using his personal residence as collateral), Campbell borrowed \$100,000.00 and wired these proceeds to the MCDC border fence project account, named "Declaration Foundation – Minuteman Border Fence Project 571" on or after May 22, 2006.

32. Upon information and belief, Defendants Declaration Alliance, Declaration Foundation, and/or Diener Consultants took part of Campbell's donation for their own benefit, despite the agreement that Campbell's donation was to go specifically toward the MCDC border fence project.

33. Neither Campbell nor any other donor were ever informed that Defendants Declaration Alliance, Declaration Foundation, and/or Diener Consultants would take part of their donation for their own benefit.

34. Campbell attended the border fence groundbreaking ceremony in Palominas, Arizona on May 27, 2006.

35. At that groundbreaking ceremony the MCDC began construction of a fence that was flimsy and not in accordance with the agreement that was reached between Campbell and the MCDC.

36. On the evening of May 27, 2006, the MCDC announced, via its website, that the advertised "Israeli-style" border fence would not be built on the property where the groundbreaking ceremony took place, contrary to what had been exclusively represented to Campbell by Kunz, Sheldon, and Lewis and to Campbell and the public at-large (including every other donor) in the MCDC's April 19th and 20th website announcements.

37. Neither Simcox, Sheldon, Kunz, or Lewis (nor anyone else in the MCDC organization) made any public announcements of this change in plans and continued - right up until this May 27th surprise announcement - to solicit and accept donations from Campbell and the general public for this represented "Israeli-style" fence on Ladd's property.

38. On the evening of May 27, 2006, Campbell informed the MCDC that he intended to request a refund of his \$100,000.00 donation.

39. In response to Campbell's complaint, Simcox called Campbell and gave his assurances that the border fence project would go forward as planned, and Simcox and Campbell agreed that Campbell's donation would be used to immediately purchase available structural steel tubing for the fence.

40. Shortly thereafter, the MCDC publicly announced that the "Israeli-style" border

fence would be built on a total of three other landowners' properties.

41. Based upon the assurances by the MCDC and its representatives that it would use Campbell's donation to immediately purchase the then-available structural steel tubing to be used on these three alternative properties for the construction of an "Israeli-style" fence as previously agreed, Campbell relented from his demand that his \$100,000.00 donation be returned.

42. In addition, with the knowledge and approval of Kunz and Lewis, Campbell spent approximately \$8,000.00 to have a truck fitted, tagged, insured, delivered, and dedicated to the MCDC for its exclusive use in transporting (among other things) the steel posts that were to be fabricated from this structural steel and used in the construction of the fencing on these three alternative properties.

43. To ensure that the structural steel tubing (with its limited availability) would be purchased as agreed, Campbell spent an additional \$63,329.00 to acquire this steel before it was completely sold off to others.

44. The MCDC reimbursed Campbell \$58,584.00 for the structural steel tubing that he purchased but has yet to reimburse Campbell for the remaining \$4,745.00.

45. To date the MCDC has not constructed any "Israeli-style" border fencing on the property where the groundbreaking ceremony took place, in breach of the agreement between it and Campbell.

COUNT I

(Fraudulent Misrepresentation – All Defendants)

46. Plaintiff re-alleges Paragraphs 1 through 45 of this Complaint as if fully set forth herein.

47. Defendants, for their individual and/or collective benefits, intentionally, falsely and materially misrepresented to Campbell, in an effort to induce Campbell into making a \$100,000.00 donation to the MCDC border fence project, that his donation was to specifically be used for the purchase of structural steel tubing for the construction of an "Israeli-style" border fence on the ten miles of border frontage on the Ladd property.

48. At the time that Defendants made their misrepresentations, they knew that the misrepresentations were false.

49. In their efforts to induce Campbell into making a \$100,000.00 donation to the MCDC border fence project, Defendants also falsely and materially concealed from Campbell that significant portions of Campbell's donation would be shared between the MCDC, Declaration Foundation, Declaration Alliance, and/or Diener Consulting.

50. Such diversions have, collectively, undermined and diluted both the intended and actual impact of not only Campbell's donation, but (and more importantly), that of every donor to the MCDC border fence project.

51. As a direct and proximate result of this diversion, the nine tenths of a mile of fence under construction has languished in a ongoing state of distress and/or inactivity.

52. Prior to Campbell making a \$100,000.00 donation to the MCDC border fence project, Defendants knew or had reason to know that Campbell would not have made his donation if he had been made aware that his donation would not be used for the purchase of structural steel tubing to be used in the initial stage of an "Israeli-style" fence which had been represented to Campbell to have had the landowners' approval to advance for ten consecutive miles along the border frontage of that Ladd property.

53. Prior to Campbell making a \$100,000.00 donation to the MCDC border fence project, Defendants knew or had reason to know that Campbell would not have made his donation if he had been made aware that - of the total of six to nine landowners represented in the MCDC website - only a maximum of two of them ever existed, and - of these two - only one would actually allow an "Israeli-style" fence to be built, and that fence on that one property would be limited to nine tenths of a mile in length.

54. Prior to Campbell making a \$100,000.00 donation to the MCDC border fence project, Defendants knew or had reason to know that, had Campbell been made aware that his donation would be shared between the MCDC, Declaration Foundation, Declaration Alliance, and/or Diener Consulting, Campbell would not have made the donation.

55. Campbell rightfully relied upon Defendants' misrepresentations, without knowledge of their falsity, to his detriment.

56. Because Defendants' misrepresentations were made with the intent to benefit themselves individually and collectively, Defendants are jointly and severally liable for Campbell's damages.

57. As a direct and proximate result of Campbell's reliance upon Defendants' misrepresentations and material concealment, Campbell has sustained combined actual and consequential damages in the amount of \$120,845.00, plus exemplary damages of \$1,000,000.00 together with post-judgment interest thereon at the rate of 10% per annum.

COUNT II

(Breach of Contract - MCDC)

58. Plaintiff re-alleges Paragraphs 1 through 57 of this Complaint as if fully set forth herein.

59. When Campbell made his \$100,000.00 donation to the MCDC border fence project and Defendants exercised control over the donation, a bilateral contract was formed wherein the MCDC would specifically use Campbell's donation for the express purpose of purchasing the structural steel tubing from which to fabricate the steel posts for the construction of the "Israeli-style" border fence along 10 miles of border frontage on the Ladd property.

60. Because there would not be any of the represented "Israeli-style" fencing built along the 10 miles of border frontage on the Ladd property, MCDC did not use Campbell's donation for the purpose of purchasing structural steel tubing to be used in the construction of 10 miles of the "Israeli-style" border fence along 10 miles of border frontage on the Ladd property, MCDC breached the contract between it and Campbell, such that Campbell is entitled to the return of his \$100,000.00 donation.

61. This matter arises out of contract, such that Campbell, as the prevailing party, is entitled to the recovery of its attorneys' fees and costs incurred herein pursuant to A.R.S. § 12-341 and § 12-341.01.

COUNT III

(Rescission of Contract – Fraudulent Inducement and Concealment)

62. Plaintiff re-alleges Paragraphs 1 through 61 of this Complaint as if fully set forth herein.

63. Defendants, for their individual and/or collective benefits, intentionally, falsely and materially misrepresented to Campbell, in an effort to induce Campbell into making a \$100,000.00 donation to the MCDC border fence project, that his donation was to specifically be used for the purchase of structural steel tubing to be used in the construction of an "Israeli-style" fence that would be built along ten miles of border frontage of the Ladd property.

64. At the time that Defendants made their misrepresentations, they knew that the misrepresentations were false.

65. In their efforts to induce Campbell into making a \$100,000.00 donation to the MCDC border fence project, Defendants also falsely and materially concealed from Campbell that significant portions of Campbell's donation would be shared between the MCDC, Declaration Foundation, Declaration Alliance, and/or Diener Consulting.

66. Prior to Campbell making a \$100,000.00 donation to the MCDC border fence project, Defendants knew or had reason to know that Campbell would not have made his donation if he had been made aware that his donation would not be used for the purchase of structural steel tubing to be used in the initial stage of an "Israeli-style" fence which had been represented to Campbell as having the landowners' approval to advance for ten consecutive miles along the border frontage of that Ladd property.

67. Prior to Campbell making a \$100,000.00 donation to the MCDC border fence project, Defendants knew or had reason to know that Campbell would not have made his donation if he had been made aware that - of the total of six to nine landowners represented in the MCDC website - only a maximum of two of them ever existed, and - of these two - only one would actually allow an "Israeli-style" fence to be built, and that fence on that one property would be limited to nine tenths of a mile in length.

68. Prior to Campbell making a \$100,000.00 donation to the MCDC border fence project, Defendants knew or had reason to know that, had Campbell been made aware that his donation would be shared between the MCDC, Declaration Foundation, Declaration Alliance, and/or Diener Consulting, Campbell would not have made the donation.

69. Campbell rightfully relied upon Defendants' misrepresentations, without knowledge of their falsity, to his detriment.

70. When Campbell made his \$100,000.00 donation to the MCDC border fence project and Defendants exercised control over the donation, a bilateral contract was formed wherein the MCDC would specifically use Campbell's donation for the express purpose of purchasing structural steel tubing for the construction of the "Israeli-style" border fence along the 10 miles of border frontage of the Ladd property.

71. Because the MCDC did not use Campbell's donation for the purpose of purchasing structural steel tubing to be used in the construction of an "Israeli-style" fence that would be built along 10 miles of border frontage of the Ladd property, the bilateral contract is subject to rescission under the doctrine of fraudulent inducement.

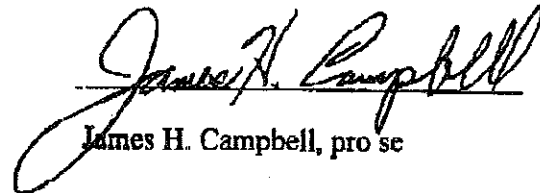
72. This matter arises out of contract, such that Campbell, as the prevailing party, is

entitled to the recovery of his attorneys' fees and costs incurred herein pursuant to A.R.S. § 12-341 and § 12-341.01.

WHEREFORE, Campbell requests this Court to enter Judgment in his favor and against Defendants as follows:

- A. Awarding Campbell's actual damages in the amount of \$100,000.00;
- B. Awarding Campbell's exemplary damages in the amount of \$1,000,000.00.
- C. Awarding Campbell's consequential damages for financing obligations in the amount of \$8,100.00;
- D. Awarding Campbell's consequential damages for the \$8,000.00 incurred in efforts to transport the steel posts;
- E. Awarding Campbell's un-reimbursed consequential damages spent in purchasing steel posts in the amount of \$4,745.00;
- F. Ordering rescission of the contract between MCDC and Campbell; and that the parties be returned to their status quo by ordering MCDC to return the donation made to it in the amount of \$100,000.00;
- G. Awarding Campbell's reasonable attorney's fees and costs herein; and
- H. Awarding whatever further relief this Court deems just and proper in the premises.

DATED this 22nd day of May, 2007.


James H. Campbell, pro se