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11 **IN THE SUPERIOR COURT OF THE**
12 **COUNTY OF MARICOPA, STATE OF ARIZONA**

13 AZNH REVOCABLE TRUST, by and
14 through JOHN and SUSAN SULLIVAN,
15 Trustees, Real Parties In Interest,

16 Plaintiff/Appellant,

17 vs.

18 **Case No. CV2025-036466**

19 **RESPONSE TO PLAINTIFF'S**
20 **MOTION TO DISMISS SUNLAND**
21 **SPRINGS VILLAGE HOMEOWNERS**
22 **ASSOCIATION**

23 KAY ABRAMSOHN; TAMMY
24 EIGENHEER; ARIZONA DEPARTMENT
25 OF REAL ESTATE; and SUNLAND
26 SPRINGS VILLAGE HOMEOWNERS
27 ASSOCIATION,

28 Defendants/Appellees.

Assigned to:
Hon. Scott Blaney

(Oral Argument Requested)

Defendant/Appellee Sunland Springs Village Homeowners Association
(“Association”), the real party in interest, files this partial objection to and response to
Plaintiff’s Motion to Dismiss Sunland Springs Village Homeowners Association. Plaintiff
asserts that because Defendants Kay Abramsohn, the administrative law judge who presided
over the hearing at the Office of Administrative Hearings, Tammy Eigenheer, Interim
Director of the Office of Administrative Hearings, and the Department of Real Estate have all
advised that they will not be defending against the appeal, that the Association should be
dismissed and Plaintiff should be granted the relief he requested. The Association does not

1 oppose dismissal of the Special Action in its entirety, but it does oppose dismissal while
2 simultaneously granting relief to Plaintiff he requested.
3

4 Contrary to Plaintiff's assertions, the Association is the real party in interest and will
5 be prejudiced if relief is granted to Plaintiff. The current state of the matter is that it was
6 dismissed. Granting the relief Plaintiff requests will require the Association to participate in
7 a third hearing on this same matter. The Association should not be forced to participate in a
8 third hearing on the same issue due to Plaintiff's gamesmanship of attempting to dismiss the
9 Association. Consequently, if this Court is inclined to reject jurisdiction, which the
10 Association asserts should be the case, and dismiss the matter in its entirety, the Association
11 has no objection. However, the Association strenuously objects to being dismissed from this
12 matter as requested by Plaintiff so that Plaintiff can obtain the improper relief he requested
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14 without the Association present to oppose his Special Action.
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16 **I. Factual Background.**

17 Plaintiff brought this current matter as a single-issue petition to the Department of Real
18 Estate. Plaintiff asserted that the Association had failed to produce all its records related to
19 the 2024 election that took place in February of that year. The Association responded and
20 asserted that it had produced all its records, which included a complete accounting of the votes
21 cast electronically by over 1,400 homeowners within the Association. Although the records
22 of the votes cast electronically produced by the Association included a unique identifier for
23 each homeowner who cast a vote and information sufficient to corroborate that each vote was
24 cast by a homeowner and to identify the individual votes cast for each candidate, Plaintiff
25 essentially argued that the if the Association did not produce a screenshot from each
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1 homeowner before they pressed the submit button to cast their electronic vote, then the ballot
2 used by the homeowner was not truly produced. The Honorable Kay Abramsohn presided
3 over the hearing and ruled in favor of the Association and against Plaintiff.
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5 Plaintiff appealed Judge Abramsohn's ruling to the Superior Court. Plaintiff asserted
6 that he found additional evidence that he believed would affect the outcome of the hearing.
7 The Superior Court on appeal determined that if there was new evidence, it should be
8 presented to the administrative law judge rather than evaluated for the first time on appeal.
9 As such, the Court dismissed the appeal and ordered that a hearing be conducted to allow
10 Plaintiff the opportunity to present the new evidence to see if it affected the Administrative
11 Law Judge's ruling.
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14 The hearing was originally scheduled to take place on July 24, 2025. However, due to
15 the schedule of the Association's Board Members who wished to attend the hearing, the
16 Association moved to continue the hearing. The continued hearing was scheduled to take
17 place on September 26, 2025, at 9:00 a.m.

18
19 In the early hours of September 26, 2025, Plaintiff filed a peremptory challenge against
20 the judge seeking to remove Judge Abramsohn and have the matter be heard by a different
21 judge. Neither Judge Abramsohn nor the Association received the last-minute filing by
22 Plaintiff until arrival at the Office of Administrative Hearings prepared to proceed with the
23 scheduled hearing. Plaintiff's challenge was based on a change to A.R.S. § 41-1092.07 that
24 first took effect on September 26, 2025. Prior to September 26, 2025, A.R.S. § 41-1092.07
25 allowed a party to pursue a change of Administrative Law Judge only for cause. Beginning
26 September 26, 2025, the parties to a matter before an Administrative Law Judge were given
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1 a new right to seek a change of Administrative Law Judge as a matter of right, without having
2 to establish good cause. As such, Plaintiff waited surreptitiously in the wings to spring his
3 challenge as soon as the statute became effective but did not give any advance notice to any
4 of the parties or the Court of his intention or desire to utilize the newly codified change to the
5 statute.
6

7 Before the hearing commenced, Judge Abramsohn attempted to discuss the timeliness
8 of Plaintiff's request with him, but Plaintiff, from the Association's perspective, was
9 extremely rude, disrespectful and condescending in his communication with Judge
10 Abramsohn and stormed out of the room without allowing the Judge to talk through her
11 concerns. Upon Plaintiff's voluntary departure from the Office of Administrative Hearings,
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13 Judge Abramsohn dismissed the matter for Plaintiff's failure to participate in the hearing. This
14 Special Action, and a contemporaneously proceeding appeal, followed.
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16 **II. Legal Analysis.**

17 A.R.S. § 1-244 provides that "No statute is retroactive unless expressly declared
18 therein." Arizona Courts have repeatedly held that the statutory scheme in place at the time a
19 matter is filed generally governs the action. *See eg., Stuart v. Insurance Co. of N. Am.*, 152
20 Ariz. 78, 730 P.2d 255 (Ct. App. 1986). Courts have emphatically emphasized the non-
21 retroactive application of statutes in situations where vested rights are affected by a statutory
22 change. *See id.*
23
24

25 Additionally, Rule 42.1 of the Arizona Rules of Civil Procedure, provides guidance on
26 how peremptory challenges to a judge should be handled. Rule 42.1, ARCP, explains that
27 while each side is entitled to one change of judge as a matter of right, that right expires if not
28

1 timely utilized. Specifically, Rule 42.1(c) and (d), ARCP, explain that to exercise the right to
2 change a judge, the right must be exercised within 90 days after a party first appears in the
3 case, or the judge rules on a contested issue, or a hearing begins. Moreover, Rule 42.1(c),
4 ARCP, provides that “A notice of change of judge is ineffective if filed within 3 days of a
5 scheduled proceeding The filing of an ineffective notice neither requires a change of
6 judge nor bars the party who filed it from later filing a notice of change of judge that satisfies
7 this rule’s requirements.” Consequently, the procedural rules governing the manner in which
8 judges are changed without cause establish clear timeliness guidelines under which the right
9 expires if not utilized.
10

11
12 Moreover, hearings before the Office of Administrative Hearings are governed by the
13 Office of Administrative Hearing Procedural Rules (“OAH Rules”). R2-19-102, OAH Rules,
14 entitled “Applicability,” explains that “If a procedure is not provided by statute or these rules,
15 an administrative law judge may issue an order using the Arizona Rules of Civil Procedure
16 and related local rules for guidance.” Additionally, R2-19-106, OAH Rules, explains that “A
17 party requesting a ruling from an administrative law judge shall file a motion.” R2-19-106,
18 OAH Rules, continues by establishing a filing deadline of 15 days before the scheduled
19 hearing for any motion.
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22 In this matter, Plaintiff filed a Peremptory Change of Administrative Law Judge (the
23 “Notice”) in the early morning hours of September 26, 2025 seeking to utilize a statutory
24 change that first became effective on September 26, 2025. The statutory change materially
25 affected the substantive rights of the parties in the litigation. Prior to the September 26, 2025
26 statutory change, neither party had the right to seek a change of Administrative Law Judge as
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1 a matter of right. The only possibility for pursuing a change of Administrative Law Judge
2 prior to September 26, 2025 was for cause. As such, the change to A.R.S. § 42-1092.07
3 created a new right for the parties that previously did not exist. Based on the plain language
4 of A.R.S. § 1-244 as well as case law holding that statutory changes do not affect matters
5 already in progress especially when the statutory change affects the substantive rights of the
6 parties, the newly created peremptory right utilized by Plaintiff should not have been
7 applicable to this matter. *See Stuart*, 152 Ariz. 78, 730 P.2d 255.
8
9

10 Even if the early-morning change to A.R.S. § 41-1092.07 did vest a new right on
11 Plaintiff despite statutory direction and case law confirming that statutory changes should not
12 be applied retroactively, there is always a timeliness element when it comes to exercising such
13 rights. Although A.R.S. § 41-1092.07 does not set timeliness parameters, the Arizona Rules
14 of Civil Procedure and the OAH Rules do. The Arizona Rules of Civil Procedure provide that
15 the right to have a judge changed does not exist indefinitely. It expires either 90 days after the
16 matter is filed, or once a judge has issued a substantive ruling, or three days before a scheduled
17 hearing, or once the hearing or trial begins, which ever occurs first. *See Rule 42.1, ARCP*. If
18 those timeliness parameters are applied to this matter, Plaintiff's right to strike the
19 Administrative Law Judge had long since expired. Plaintiff originally filed his petition on or
20 about April 25, 2024. Plaintiff did not file his Notice until over a year later. Thus, the 90-day-
21 from-filing requirement had long since expired. Additionally, the Administrative Law Judge
22 had conducted a complete evidentiary hearing on this matter and issued a ruling by the time
23 Plaintiff filed his Notice. The Administrative Law Judge had also issued a ruling on Plaintiff's
24 Motion for Rehearing. Consequently, Plaintiff's Notice was fatally untimely under the Rule
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1 42.1 requirements that a notice be filed before the judge issues a ruling on a substantive matter
2 in the case and also before a trial or hearing is held. The Administrative Law Judge had issued
3 rulings on several substantive matters and the evidentiary hearing had long since concluded
4 by the time Plaintiff filed his Notice. Moreover, Plaintiff did not even give the minimal notice
5 required under Rule 42.1, ARCP, of 3 days before the scheduled hearing. Nevermind that all
6 the other deadlines had been blown, Plaintiff's Notice was filed the very day of the re-hearing,
7 less than 9 hours before the re-hearing was scheduled to begin. Having missed all the
8 timeliness deadlines established by the Rules of Civil Procedure, he also failed to meet the
9 15-day deadline established by the OAH Rules.

10
11 Plaintiff will likely argue that because the statutory change did not take effect until
12 September 26, 2025, he could not have filed his Notice before then. However, that is not true.
13
14 Plaintiff, who was clearly aware of the pending statutory change, could have filed a notice
15 more than 15 days in advance of the hearing explaining that he wished to utilize the statutory
16 change that would become effective on September 26, 2025 that would arguably allow him
17 to change Administrative Law Judges as a reason to continue the September 26, 2025 hearing.
18 Instead, he allowed all possible timeliness deadlines to expire and then filed his Notice the
19 day of the re-hearing.

20
21 Plaintiff's last-second attempt to have a new judge preside of the re-hearing in this
22 matter amounted to nothing more than judge shopping by Plaintiff. The Arizona Supreme
23 Court, in *King v. Superior Court (Taber)*, 108 Ariz. 492, 494, 502 P.2d 529, 531 (1971),
24 explained that "[w]hat the [waiver] rule means is that the right to a peremptory challenge
25 against the trial judge is lost as soon as the parties have reason to know how he feels about
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1 any aspect of the merits of the case.” In this matter, Plaintiff knew how the Administrative
2 Law Judge felt about the case because she presided over the evidentiary and ruled against
3 Plaintiff. Thus, Plaintiff pursued judge shopping under the guise that a statutory change to
4 A.R.S. § 41-1092.07 created a peremptory right to change Judge Abramsohn despite the fact
5 that every possible timeliness deadline expired. Nevertheless, according to the Arizona
6 Supreme Court, regardless of whether the statutory change was effective in vesting a new
7 right in a matter that had been ongoing for over a year, any “peremptory challenge against the
8 [Administrative Law Judge was] lost as soon as [Plaintiff had] reason to know how [she felt]
9 about . . . the merits of the case.” *See King*, 108 Ariz. At 494, 502 P.2d at 531.

12 No matter how Plaintiff’s Notice is analyzed, it was ineffective and did not operate to
13 require the Office of Administrative Hearings to change Administrative Law Judges. Plaintiff
14 was wrong to storm out of the hearing and refuse to participate. And the Administrative Law
15 Judge acted properly and within her proper discretion to dismiss the case due to Plaintiff’s
16 voluntary refusal to participate in the rehearing. Consequently, this Special Action should be
17 dismissed in its entirety. But if the Court is inclined not to dismiss it in its entirety, the
18 Association, who is the real party in interest and whose rights could be severely impacted by
19 this matter, should not be dismissed.


22 **III. CONCLUSION.**

23 As explained by the foregoing, the Association objects to dismissal of this matter under
24 the terms sought by Plaintiff. The Association does not object to dismissal if the matter is
25 dismissed in its entirety with no relief afforded to Plaintiff. However, the Association objects
26 to its dismissal so that Plaintiff can have unimpeded access to impair the Association’s rights.
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1 As further explained above, Plaintiff's Notice was fatally untimely no matter statutory or
2 regulatory scheme under which the matter is analyzed. As such, Plaintiff's Motion to Dismiss
3 must be denied as requested. The Association also seeks recovery of its attorneys' fees and
4 costs pursuant to the Declaration and A.R.S. § 12-341.01.
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6
7 RESPECTFULLY SUBMITTED this 22nd day of December, 2025.

8 **MAXWELL & MORGAN, P.C.**

9 By 
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14 **ORIGINAL** of the foregoing E-filed
15 this 22nd day of December, 2025, to:

16 Maricopa County Superior Court

17 **COPY** of the foregoing emailed
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