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9 CHAD M. GALLACHER, ESQ. SBN-025487
10 *Attorneys for Defendant/Appellee SUNLAND SPRINGS VILLAGE HOMEOWNERS ASSOCIATION*

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 KAY ABRAMSOHN; TAMMY
19 EIGENHEER; ARIZONA DEPARTMENT
20 OF REAL ESTATE; and SUNLAND
21 SPRINGS VILLAGE HOMEOWNERS
22 ASSOCIATION,

23 Defendants/Appellees.

Case No. CV2025-036466

**RESPONSE TO PLAINTIFF'S
MOTION FOR JUDGMENT ON THE
CASE FILINGS**

Assigned to:
Hon. Scott Blaney

(Oral Argument Requested)

24 Defendant/Appellee Sunland Springs Village Homeowners Association
25 (“Association”), the real party in interest, files this Response in Opposition to Plaintiff’s
26 Motion for Judgment on the Case Filings (“Motion for Judgment”). Plaintiff’s Motion for
27 Judgment is premature as the time for the Association to file an Answer to the Complaint for
28 Special Action has not yet passed. Additionally, Plaintiff is not entitled to judgment on the
allegations of the Complaint. The Association requests that this Court deny Plaintiff’s Motion
for Judgment.

1 **I. FACTUAL BACKGROUND.**

2 Plaintiff brought this current matter as a single-issue petition to the Department of Real
3 Estate. Plaintiff asserted that the Association had failed to produce all its records related to
4 the 2024 election that took place in February of that year. The Association responded and
5 asserted that it had produced all its records, which included a complete accounting of the votes
6 cast electronically by over 1,400 homeowners within the Association. Although the records
7 of the votes cast electronically produced by the Association included a unique identifier for
8 each homeowner who cast a vote and information sufficient to corroborate that each vote was
9 cast by a homeowner and to identify the individual votes cast for each candidate, Plaintiff
10 essentially argued that the if the Association did not produce a screenshot from each
11 homeowner before they pressed the submit button to cast their electronic vote, then the ballot
12 used by the homeowner was not truly produced. The Honorable Kay Abramsohn presided
13 over the hearing and ruled in favor of the Association and against Plaintiff.
14

15 Plaintiff appealed Judge Abramsohn's ruling to the Superior Court. Plaintiff asserted
16 that he found additional evidence that he believed would affect the outcome of the hearing.
17 The Superior Court on appeal determined that if there was new evidence, it should be
18 presented to the administrative law judge rather than evaluated for the first time on appeal.
19 As such, the Court dismissed the appeal and ordered that a hearing be conducted to allow
20 Plaintiff the opportunity to present the new evidence to see if it affected the Administrative
21 Law Judge's ruling.
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23 The re-hearing was originally scheduled to take place on July 24, 2025. However, due
24 to the schedule of the Association's Board Members who wished to attend the hearing, the
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1 Association moved to continue the hearing. The continued re-hearing was scheduled to take
2 place on September 26, 2025, at 9:00 a.m.
3

4 In the early hours of September 26, 2025, Plaintiff filed a peremptory challenge against
5 the judge seeking to remove Judge Abramsohn and have the matter be heard by a different
6 judge. Neither Judge Abramsohn nor the Association received the last-minute filing by
7 Plaintiff until arrival at the Office of Administrative Hearings prepared to proceed with the
8 scheduled hearing. Plaintiff's challenge was based on a change to A.R.S. § 41-1092.07 that
9 first took effect on September 26, 2025. Prior to September 26, 2025, A.R.S. § 41-1092.07
10 allowed a party to pursue a change of Administrative Law Judge only for cause. Beginning
11 September 26, 2025, the parties to a matter before an Administrative Law Judge were given
12 a new right to seek a change of Administrative Law Judge as a matter of right, without having
13 to establish good cause. As such, Plaintiff waited surreptitiously in the wings to spring his
14 challenge as soon as the statute became effective but did not give any advance notice to any
15 of the parties or the Court of his intention or desire to utilize the newly codified change to the
16 statute.
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20 Before the hearing commenced, Judge Abramsohn attempted to discuss the timeliness
21 of Plaintiff's request with him, but Plaintiff, from the Association's perspective, was
22 extremely rude, disrespectful and condescending in his communication with Judge
23 Abramsohn and stormed out of the room without allowing the Judge to talk through her
24 concerns. Upon Plaintiff's voluntary departure from the Office of Administrative Hearings,
25 Judge Abramsohn dismissed the matter for Plaintiff's failure to participate in the hearing. This
26 Special Action, and a contemporaneously proceeding appeal, followed.
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1 **II. LEGAL ANALYSIS.**

2 **A. The Time for the Association to File an Answer has Not Yet Expired.**

3
4 On October 10, 2025, Plaintiff sent undersigned counsel correspondence asking if
5 undersigned counsel was “able to accept service” of the Complaint for Special Action. *See*
6 Exhibit “A” attached hereto. On October 13, 2025, counsel undersigned sent correspondence
7 back to Plaintiff stating “Yes, I can accept service on behalf of the Association.” *See* Exhibit
8 “A”. However, counsel undersigned left town and did not sign to accept service on behalf of
9 the Association until November 12, 2025. *See* Exhibit B.

11 Plaintiff provided to undersigned counsel a pre-written letter for undersigned counsel
12 to use to accept service. *See* Exhibit B. As originally drafted by Plaintiff, the letter required
13 undersigned counsel to acknowledge that the Association’s Answer to the Complaint for
14 Special Action would be due sixty days from October 10, 2025. However, as the holiday
15 season was in full swing by the time undersigned counsel returned to the office and was able
16 to review the Complaint for Special Action, he was not willing to accept service under those
17 terms as drafted by Plaintiff. Moreover, although Plaintiff asked if the Association would
18 “accept” service and undersigned counsel agreed to “accept” service, Plaintiff’s letter sought
19 to have the Association waive service instead. As such, Plaintiff’s counsel signed the waiver
20 form sent by Plaintiff after changing the language to confirm that the Association would waive
21 service of process provided the Association’s Answer would be due sixty days from
22 November 12, 2025. Undersigned counsel advised Plaintiff that the language of the waiver
23 letter had been modified and returned the signed waiver to Plaintiff. *See* Exhibit “C”. Plaintiff
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1 did not dispute or object to the due date for the Association's answer as identified by
2 undersigned counsel in the signed waiver of service.

3
4 If Plaintiff relies on the signed waiver of service as confirmation that his Complaint in
5 Special Action was served on the Association, he must accept the terms under which the
6 Association agreed to waive service. Despite Rule 4.1(c)(3), ARCP, parties can agree to
7 modified timelines for the filing of an Answer following service of a Complaint. Plaintiff
8 cannot assert to this Court that the Association was properly served through waiver by
9 Association's counsel yet ignore the terms under which waiver was acknowledged by
10 Association's counsel. If Plaintiff disliked or disagreed with the terms under which the
11 Association agreed to waive service, he was welcome to have his Summons and Complaint
12 served personally on the Association. Plaintiff, however, was not able to ignore the terms
13 under which the Association agreed to waive service and proceed as though the Association's
14 deadline to file an Answer had expired. As the Association agreed to waive service of
15 Plaintiff's Summons and Complaint only as of November 12, 2025 with the Association's
16 Answer due sixty days therefrom, the Association's Answer is not due until January 12, 2026.
17 Consequently, Plaintiff's Motion for Judgment is untimely and must be denied.
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21 **B. Plaintiff Is Not Entitled to Relief on His Complaint for Special Action.**

22 Plaintiff's Complaint for Special Action is based on his contention that the
23 Administrative Law Judge did not recognize as effective his peremptory challenge seeking to
24 get a new judge to preside over the case. However, as explained in the Association's Response
25 in Opposition to Motion to Dismiss the Association and as repeated here, A.R.S. § 1-244
26 provides that "No statute is retroactive unless expressly declared therein." Arizona Courts
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1 have repeatedly held that the statutory scheme in place at the time a matter is filed generally
2 governs the action. *See eg., Stuart v. Insurance Co. of N. Am.*, 152 Ariz. 78, 730 P.2d 255 (Ct.
3 App. 1986). Courts have emphatically emphasized the non-retroactive application of statutes
4 in situations where the substantive rights of the parties are affected by a statutory change. *See*
5 *id.*

7 Additionally, Rule 42.1 of the Arizona Rules of Civil Procedure, provides guidance on
8 how peremptory challenges to a judge should be handled. Rule 42.1, ARCP, explains that
9 while each side is entitled to one change of judge as a matter of right, that right expires if not
10 timely utilized. Specifically, Rule 42.1(c) and (d), ARCP, explain that to exercise the right to
11 change a judge, the right must be exercised within 90 days after a party first appears in the
12 case, or the judge rules on a contested issue, or a hearing begins. Moreover, Rule 42.1(c),
13 ARCP, provides that “A notice of change of judge is ineffective if filed within 3 days of a
14 scheduled proceeding The filing of an ineffective notice neither requires a change of
15 judge nor bars the party who filed it from later filing a notice of change of judge that satisfies
16 this rule’s requirements.” Consequently, the procedural rules governing the manner in which
17 judges are changed without cause establish clear timeliness guidelines under which the right
18 expires if not utilized.

22 Moreover, hearings before the Office of Administrative Hearings are governed by the
23 Office of Administrative Hearing Procedural Rules (“OAH Rules”). R2-19-102, OAH Rules,
24 entitled “Applicability,” explains that “If a procedure is not provided by statute or these rules,
25 an administrative law judge may issue an order using the Arizona Rules of Civil Procedure
26 and related local rules for guidance.” Additionally, R2-19-106, OAH Rules, explains that “A
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1 party requesting a ruling from an administrative law judge shall file a motion.” R2-19-106,
2 OAH Rules, continues by establishing a filing deadline of 15 days before the scheduled
3 hearing for any motion.
4

5 In this matter, Plaintiff filed a Peremptory Change of Administrative Law Judge (the
6 “Notice”) in the early morning hours of September 26, 2025 seeking to utilize a statutory
7 change that first became effective on September 26, 2025. The statutory change materially
8 affected the substantive rights of the parties in the litigation. Prior to the September 26, 2025
9 statutory change, neither party had the right to seek a change of Administrative Law Judge as
10 a matter of right. The only possibility for pursuing a change of Administrative Law Judge
11 prior to September 26, 2025 was for cause. As such, the change to A.R.S. § 42-1092.07
12 created a new right for the parties that previously did not exist. Based on the plain language
13 of A.R.S. § 1-244 as well as case law holding that statutory changes do not affect matters
14 already in progress especially when the statutory change affects the substantive rights of the
15 parties, the newly created peremptory right utilized by Plaintiff should not have been
16 applicable to this matter. *See Stuart*, 152 Ariz. 78, 730 P.2d 255.
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20 Even if the early-morning change to A.R.S. § 41-1092.07 did vest a new right on
21 Plaintiff despite statutory direction and case law confirming that statutory changes should not
22 be applied retroactively, there is always a timeliness element when it comes to exercising such
23 rights. Although A.R.S. § 41-1092.07 does not set timeliness parameters, the Arizona Rules
24 of Civil Procedure and the OAH Rules do. The Arizona Rules of Civil Procedure provide that
25 the right to have a judge changed does not exist indefinitely. It expires either 90 days after the
26 matter is filed, or once a judge has issued a substantive ruling, or three days before a scheduled
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1 hearing, or once the hearing or trial begins, which ever occurs first. *See* Rule 42.1, ARCP. If
2 those timeliness parameters are applied to this matter, Plaintiff's right to strike the
3 Administrative Law Judge had long since expired. Plaintiff originally filed his petition on or
4 about April 25, 2024. Plaintiff did not file his Notice until over a year later. Thus, the 90-day-
5 from-filing requirement had long since expired. Additionally, the Administrative Law Judge
6 had conducted a complete evidentiary hearing on this matter and issued a ruling by the time
7 Plaintiff filed his Notice. The Administrative Law Judge had also issued a ruling on Plaintiff's
8 Motion for Rehearing. Consequently, Plaintiff's Notice was fatally untimely under the Rule
9 42.1 requirements that a notice be filed before the judge issues a ruling on a substantive matter
10 in the case and also before a trial or hearing is held. The Administrative Law Judge had issued
11 rulings on several substantive matters and the evidentiary hearing had long since concluded
12 by the time Plaintiff filed his Notice. Moreover, Plaintiff did not even give the minimal notice
13 required under Rule 42.1, ARCP, of 3 days before the scheduled hearing. Nevermind that all
14 the other deadlines had been blown, Plaintiff's Notice was filed the very day of the re-hearing,
15 less than 9 hours before the re-hearing was scheduled to begin. Having missed all the
16 timeliness deadlines established by the Rules of Civil Procedure, he also failed to meet the
17 15-day deadline established by the OAH Rules.

22 Plaintiff will likely argue that because the statutory change did not take effect until
23 September 26, 2025, he could not have filed his Notice before then. However, that is not true.
24 Plaintiff, who was clearly aware of the pending statutory change, could have filed a notice
25 more than 15 days in advance of the hearing explaining that he wished to utilize the statutory
26 change that would become effective on September 26, 2025 that would arguably allow him
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1 to change Administrative Law Judges as a reason to continue the September 26, 2025 hearing.
2 Instead, he allowed all possible timeliness deadlines to expire and then filed his Notice the
3 day of the re-hearing.
4

5 Plaintiff's last-second attempt to have a new judge preside of the re-hearing in this
6 matter amounted to nothing more than judge shopping by Plaintiff. The Arizona Supreme
7 Court, in *King v. Superior Court (Taber)*, 108 Ariz. 492, 494, 502 P.2d 529, 531 (1971),
8 explained that "[w]hat the [waiver] rule means is that the right to a peremptory challenge
9 against the trial judge is lost as soon as the parties have reason to know how he feels about
10 any aspect of the merits of the case." In this matter, Plaintiff knew how the Administrative
11 Law Judge felt about the case because she presided over the evidentiary and ruled against
12 Plaintiff. Thus, Plaintiff pursued judge shopping under the guise that a statutory change to
13 A.R.S. § 41-1092.07 created a peremptory right to change Judge Abramsohn despite the fact
14 that every possible timeliness deadline expired. Nevertheless, according to the Arizona
15 Supreme Court, regardless of whether the statutory change was effective in vesting a new
16 right in a matter that had been ongoing for over a year, any "peremptory challenge against the
17 [Administrative Law Judge was] lost as soon as [Plaintiff had] reason to know how [she felt]
18 about . . . the merits of the case." *See King*, 108 Ariz. At 494, 502 P.2d at 531.
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22 No matter how Plaintiff's Notice is analyzed, it was ineffective and did not operate to
23 require the Office of Administrative Hearings to change Administrative Law Judges. Plaintiff
24 was wrong to storm out of the hearing and refuse to participate. And the Administrative Law
25 Judge acted properly and within her proper discretion to dismiss the case due to Plaintiff's
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1 voluntary refusal to participate in the rehearing. Consequently, Plaintiff is not entitled to relief
2 on his Special Action Complaint, and the Special Action should be dismissed in its entirety.

3
4 **III. CONCLUSION.**

5 As explained by the foregoing, the Association's Answer to Plaintiff's Complaint for
6 Special Action is not due until January 12, 2026. As such, Plaintiff's Motion for Judgment is
7 premature and must be denied. As further explained above, Plaintiff's Notice in the
8 Department of Real Estate was fatally untimely no matter the statutory or regulatory scheme
9 under which the matter is analyzed. As such, Plaintiff's Motion for Judgment must be denied.
10 The Association also seeks recovery of its attorneys' fees and costs pursuant to the
11 Declaration and A.R.S. § 12-341.01.
12

13
14 RESPECTFULLY SUBMITTED this 22nd day of December, 2025.

15
16 **MAXWELL & MORGAN, P.C.**

17 By 
18 Chad M. Gallacher, Esq.
19 4854 East Baseline Road, Suite 104
20 Mesa, Arizona 85206
Attorneys for Defendant/Appellee

21 **ORIGINAL** of the foregoing E-filed
22 this 23rd day of December, 2025, to:

23 Maricopa County Superior Court

24 **COPY** of the foregoing emailed
25 this 23rd day of December, 2025, to:

26 John F. Sullivan, Esq.
27 1909 E. Ray Rd., Suite 9198
28 Chandler, Arizona 85225
info@sullivanappeals.com
Attorney for Plaintiff/Appellant

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Asst. Attorney General
Deanie Reh, Esq.
Deanie.Reh@azag.gov
Attorney for AZ Dept. of Real Estate

Asst. Attorney General
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Raya.Gardner@azag.gov
Attorney for AZ Dept. of Real Estate

Asst. Attorney General
Kara Karlson, Esq.
Kara.Karlson@azag.gov
Attorney for Defendants Abramsohn and Eigenheer

Leah LaMont

Exhibit “A”

Chad M. Gallacher

From: Chad M. Gallacher
Sent: Monday, October 13, 2025 11:26 AM
To: 'John Sullivan'
Subject: RE: Notice of Action - Waiver of Service - Sunland Springs Village HOA

Hi John,

Yes, I can accept service on behalf of the Association.

Regards,

MMI Maxwell & Morgan™
COMMUNITY ASSOCIATION LAW

Chad M. Gallacher, CCAL
Partner



☎ [480-833-1001](tel:480-833-1001) ☎ [520-812-7841](tel:520-812-7841)

🏠 [480-969-8267](tel:480-969-8267)

✉ cgallacher@hoalaw.biz 🌐 hoalaw.biz

📍 [4854 E. Baseline Rd., Suite 104 Mesa, AZ 85206](#)

📍 [6760 N. Oracle Rd., Suite 120A Tucson, AZ 85704](#)



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From: John Sullivan <info@sullivanappeals.com>
Sent: Friday, October 10, 2025 12:50 AM
To: Chad M. Gallacher <cgallacher@hoalaw.biz>
Subject: Notice of Action - Waiver of Service - Sunland Springs Village HOA

Please see attached documents.

Please let me know if you are able to accept service.

Thank you.

Respectfully,
John F. Sullivan
Attorney at Law
1909 East Ray Road, Suite 9198
Chandler, AZ 85225
480-818-5070
Fax 480-210-8328

Exhibit “B”

Atty. JOHN SULLIVAN
1909 E. Ray Rd., Suite 9198
Chandler, Arizona 85225
(480) 818-5070
Bar No. 023018
Attorney for Plaintiff

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

**AZNH REVOCABLE TRUST,
by and through
JOHN and SUSAN SULLIVAN,
TRUSTEES, REAL PARTIES IN
INTEREST**

Plaintiff

v.

**KAY ABRAMSOHN,
ADMINISTRATIVE LAW JUDGE,
ARIZONA OFFICE OF
ADMINISTRATIVE HEARINGS,**

and

**TAMMY EIGENHEER,
INTERIM DIRECTOR,
ARIZONA OFFICE OF
ADMINISTRATIVE HEARINGS,**

and

**ARIZONA DEPARTMENT OF REAL
ESTATE,**

and

**SUNLAND SPRINGS VILLAGE
HOMEOWNERS ASSOCIATION,**

Defendants

No. CV2025-036466

**Waiver of Service of
Summons & Complaint**

//

To Counsel for Plaintiff, AZNH Revocable Trust:

I acknowledge receipt of your request that I waive service of a summons in the action of AZNH Revocable Trust v. Kay Abramsohn, et al, which is case number CV2025-036466 in the Superior Court of the State of Arizona in and for the County of Maricopa. I also have received a copy of the complaint in the action.

I agree to save the cost of service of a summons and complaint in this lawsuit by waiving such service.

I (or the person or entity whom I represent) will retain all defenses or objections to the lawsuit or to the jurisdiction or venue of the court except for objections based on a defect in the summons or in the service of the summons.

I understand that a judgment may be entered against me (or the person or entity whom I represent) if an answer or motion under Civil Rule 12 is not served upon you within sixty (60) days after the date shown below.

Dated this 12th day of November, 2025.

Signed: 

Printed or Typed Name: chad M. Gallacher, Esq.

Title: Attorney-in-fact for Sunland Springs Village Homeowners Association
//
//

Exhibit “C”

Chad M. Gallacher

From: Chad M. Gallacher
Sent: Wednesday, November 12, 2025 10:55 AM
To: 'John Sullivan'
Subject: RE: Notice of Action - Waiver of Service - Sunland Springs Village HOA
Attachments: Signed Waiver of Service Form.pdf

Mr. Sullivan,

Please find attached the signed Waiver of Service Form. I made a minor modification to the language of the form to reflect the date of signing as the effective date for waiver of service and the countdown to file an Answer as is both appropriate and customary.

Regards,

MMI Maxwell & Morgan™

COMMUNITY ASSOCIATION LAW

Chad M. Gallacher, CCAL

Partner



☎ [480-833-1001](tel:480-833-1001) ☎ [520-812-7841](tel:520-812-7841)

📠 [480-969-8267](tel:480-969-8267)

✉ cgallacher@hoalaw.biz 🌐 hoalaw.biz

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From: John Sullivan <info@sullivanappeals.com>
Sent: Monday, November 10, 2025 2:58 PM
To: Chad M. Gallacher <cgallacher@hoalaw.biz>
Subject: Re: Notice of Action - Waiver of Service - Sunland Springs Village HOA

Hello Mr. Gallacher.

Please sign the waiver and acceptance, and email it to me. See my email dated 10/10/25.

Thank you.

Respectfully,
John F. Sullivan
Attorney at Law
1909 East Ray Road, Suite 9198
Chandler, AZ 85225
480-818-5070
Fax 480-210-8328

On Mon, Oct 13, 2025 at 11:25 AM Chad M. Gallacher <cgallacher@hoalaw.biz> wrote:

Hi John,

Yes, I can accept service on behalf of the Association.

Regards,

MM Maxwell & Morgan™
COMMUNITY ASSOCIATION LAW

Chad M. Gallacher, CCAL

Partner



📞 [480-833-1001](tel:480-833-1001) 📞 [520-812-7841](tel:520-812-7841)

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✉️ cgallacher@hoalaw.biz 🌐 hoalaw.biz

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From: John Sullivan <info@sullivanappeals.com>

Sent: Friday, October 10, 2025 12:50 AM

To: Chad M. Gallacher <cgallacher@hoalaw.biz>

Subject: Notice of Action - Waiver of Service - Sunland Springs Village HOA

Please see attached documents.

Please let me know if you are able to accept service.

Thank you.

Respectfully,

John F. Sullivan

Attorney at Law

1909 East Ray Road, Suite 9198

Chandler, AZ 85225

480-818-5070

Fax 480-210-8328