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**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.

**SUSAN NICOLSON,  
COMMISSIONER,  
ARIZONA DEPARTMENT OF  
REAL ESTATE**

**and**

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

**and**

**SUNLAND SPRINGS VILLAGE  
HOMEOWNERS ASSOCIATION,**

Defendants

No. CV2026-008484

**Plaintiff's Reply to  
Interim Director Eigenheer's  
Limited Response of  
Judicial Defendants**

**Assigned to the  
Hon. Adele Ponce**

1 Interim Director Eigenheer (“Director”) claims through her lawyer that she is a “Judicial  
2 Defendant” pursuant to RPSA 5(b)(2) and is “prohibited from substantively responding to this  
3 action” relying upon *Hurles v. Superior Court*, 174 Ariz. 331, 333 (Div. 1, 1993).

4 **I. RPSA 5(b)(2)**

5 RPSA 5(b)(2) applies only to Appellate Special Actions; the Rule specifically, has no  
6 application in Original Special Actions (such as the present case). The introduction to the Rule  
7 states: “**(b) In Appellate Special Actions.**” RPSA 5(b).

8 Moreover, it is apparent from the 2025, rules that, where RPSA 5 does apply, it only applies  
9 to Article VI judicial officers. Ariz. Const. art. VI, § 1 (the Office of Administrative Hearings  
10 [“OAH”] is not a court). The Director is not a judicial officer or judicial defendant. See RPSA  
11 2: “*Original Special Actions*. An original special action begins a case in court. It does not  
12 request review of an earlier decision of a court.” (Italics in original.)

13  
14 **II. Hurles v. Superior Court (1993) – Not Applicable**

15 If *Hurles, supra*, applied as a prohibition as claimed by the Director, it applies only to  
16 matters where there the Defendant must “advocate the correctness of an individual ruling in a  
17 single case.” *Hurles* at 333. In this Original Special Action there is no challenge to any ruling  
18 by the Director on any case. Further, if *Hurles* did apply, the Appeals Court specifically stated:  
19 “We hold that it is proper for a judge named as a respondent in a special action to file a  
20 responsive pleading if the purpose of the response is to **explain or defend an administrative**  
21 **practice, policy, or local rule . . . .**” *Id* (bold added).

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1       **III.    Director Required for Complete Relief**

2       The Court has been asked to issue a stay of proceedings in the OAH. Such a stay ensures the  
3 *status quo* is undisturbed and Plaintiff’s substantive rights are protected during the pendency of  
4 this Original Special Action. At the moment, the Commissioner of the Arizona Department of  
5 Real Estate has been given the OAH jurisdiction over the subject matter and parties in a  
6 contested administrative hearing. The Director is necessary to this matter so that the Director  
7 may oppose such stay if she chooses to do so, and so that the Director is within the personal  
8 jurisdiction of this Court and subject to the Court’s authority and Orders.  
9

10       **IV.    The Director Has Chosen a Litigation Strategy**

11       This Court must presume that AAG Karlson’s decision - not to defend the action - is a  
12 litigation strategy. *See, e.g., State v. Webb*, 164 Ariz. 348, 351 (1990) (courts presume that  
13 counsel’s conduct is trial strategy). There is a “strong presumption” that “counsel’s actions were  
14 made for strategic or tactical reasons.” *Id.*

15       Counsel’s strategic or tactical decisions are often influenced by the client. *State v. Santanna*,  
16 153 Ariz. 147, 150 (1987). “If counsel is commanded by his client to present a certain defense,  
17 and if he does thoroughly explain the potential problems with the suggested approach, then his  
18 ultimate decision to follow the client’s will may not be lightly disturbed.” *Id.* See Arizona  
19 Supreme Court Rule 42, *Rules of Professional Conduct* (“RPC”) E.R. 1.2(a) (counsel shall abide  
20 by a client’s decisions concerning the objectives of representation and shall consult with the  
21 client as to the means by which they are to be pursued). See RPC E.R. 1.2(b) (a government  
22 lawyer has a duty to abide by decisions that are made by the appropriate client representative  
23 regarding the goals of representation in a particular matter).

24       Based on the above authorities, the Plaintiff and this Court must presume that the decision –  
25 *not to defend the action* – was made by counsel after consultation with her client (who is also a  
26 lawyer). This Court should not disturb that decision. *Santanna, supra.*

Respectfully submitted,

Dated this 6<sup>th</sup> day of March, 2026.

/s/ John F. Sullivan

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### **Certificate of Service**

A copy hereof shall be sent via the Court's electronic filing and delivery system this date, to:

Asst. Attorney General Deanie Reh (counsel for Az. Dept. of Real Estate) at Deanie.Reh@azag.gov;

Asst. Attorney General Raya Gardner (counsel for Az. Dept. of Real Estate) at Raya.Gardner@azag.gov; and,

Asst. Attorney General Kara Karlson (counsel for Tammy Eigenheer, Interim Director, Arizona Office of Administrative Hearings) at Kara.Karlson@azag.gov.

A courtesy copy shall be sent to Atty. Chad Gallacher (the last known attorney for Sunland Springs Village Homeowners Association) at cgallacher@hoalaw.biz.

Copy sent also to the Judicial Assistant of:  
Hon. Adele Ponce (cvj06@jbazmc.maricopa.gov)