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

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

Plaintiff,

vs.

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.

Case No. CV2026-008484

**DEFENDANT SUNLAND SPRINGS
VILLAGE HOMEOWNERS
ASSOCIATION MOTION TO DISMISS
SPECIAL ACTION COMPLAINT**

Assigned to:
Hon. Adele Ponce

(Oral Argument Requested)

Defendant Sunland Springs Village Homeowners Association (“Association”), hereby moves to dismiss Plaintiff’s Complaint for Special Action pursuant to Rule 12(b)(6), ARCP. Plaintiff brought this special action seeking to stay proceedings in Case #25F-H115 filed with the Arizona Department of Real Estate and scheduled to be heard by the Office of Administrative Hearings on April 6, 2026 (“DRE Matter”). Plaintiff’s reason for seeking a stay of the proceedings was alleged “fraud perpetrated upon the Commissioner of the Arizona Department of Real Estate.” *See* Special Action Complaint, p. 2, lns. 2-3. According to

1 Plaintiff's Complaint, the alleged fraud was twofold: (1) the response to Plaintiff's DRE
2 Matter filed by the Association was signed by the Board President using a pseudonym without
3 first holding a meeting of the Board; and (2) undersigned counsel filed the Response to
4 Plaintiff's DRE Matter on behalf of the Association without first being specifically retained
5 by the Association to represent them in the DRE Matter. Neither of these bases has any merit.
6 They are both factually and legally false. Moreover, Plaintiff does not have standing to raise
7 these frivolous arguments. As such, this matter must be dismissed.
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10 **I. FACTUAL BACKGROUND.**

11 The underlying DRE Matter from which this Special Action has arisen is the second
12 Department of Real Estate Matter brought by Plaintiff over the exact same issue and with the
13 exact same underlying facts. In 2024, the Association conducted its annual meeting using a
14 third-party vendor, Vote HOA Now, to assist in providing an electronic voting option for its
15 homeowners. Following the conclusion of the 2024 annual meeting, Plaintiff requested to
16 review the records of the annual meeting, including the ballots. In response, the Association
17 provided to Plaintiff all records related to the annual meeting, including all ballots cast by
18 paper, all signed envelopes and sign-in sheets, and a record of all votes cast electronically as
19 captured on a spreadsheet provided to the Association by Vote HOA Now. Plaintiff disagreed
20 that the spreadsheet containing the complete record of all votes cast electronically satisfied
21 the Association's obligations under A.R.S. § 33-1812 to allow him to review the ballots cast.
22 And so, Plaintiff filed Case #24F-H047-REL with the Department of Real Estate asserting
23 that the Association failed to disclose the records of the annual meeting as required by A.R.S.
24 § 33-1812 (hereafter "First Petition").
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1 Following the filing of Plaintiff's First Petition, the Association filed a Response
2 denying the allegations raised by Plaintiff. The Response was signed by then-Board President
3 Paul Marena, and filed on behalf of the Association by undersigned counsel. A hearing was
4 held on the merits of the First Petition and the Administrative Law Judge found that the
5 Association had complied with the requirements of A.R.S. § 33-1812 to disclose documents
6 related to the annual meeting by providing the electronic record of the vote. Plaintiff both
7 appealed the ruling of the Administrative Law Judge and filed a separate Special Action case
8 to address what he perceived as errors in the decision. However, as of the filing of this Motion
9 to Dismiss, none of Plaintiff's efforts to challenge the ruling of the Administrative Law Judge
10 on the First Petition have been successful.

11 The currently pending DRE Matter that forms the basis for the Special Action before
12 this Court is based on the exact same underlying facts. In 2025, the Association conducted its
13 annual meeting and election of directors. As it did in 2024, the Association employed Vote
14 HOA Now to help the Association provide an electronic voting option to its homeowners.
15 Following the conclusion of the 2025 annual meeting, Plaintiff requested to review the records
16 related to the election. As it did in 2024, the Association provide all of its records related to
17 the annual meeting. The Association provided to Defendant the complete record of all votes
18 cast electronically through the spreadsheet used by Vote HOA Now to capture the same.
19 Unfortunately, Plaintiff filed this DRE Matter as the second petition before the Department
20 of Real Estate, asserting the same issues raised in the First Petition.

21 As with the First Petition, then-President Paul Marena signed the Response on behalf
22 of the Association. Additionally, in the exact same manner as occurred with the First Petition,
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1 undersigned counsel filed the Response on behalf of the Association. Undersigned counsel
2 also filed a Motion to Dismiss based on the doctrines of *Res Judicata* and claim preclusion.
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4 However, no ruling has been issued on the Association's Motion to Dismiss. While the
5 Association's Response to the current DRE Matter was the same as the Response it filed to
6 the First Petition, and while Paul Marena signed both Responses, Plaintiff has filed the
7 pending Special Action asserting that then-President Marena's signature on the Response is
8 somehow improper and fraudulent, and that undersigned counsel's submission of the
9 Response on behalf of the Association was also somehow fraudulent and improper.
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11 **II. LEGAL ANALYSIS.**

12 **A. Plaintiff's Complaint Must Be Dismissed as It Contains Nothing More than** 13 **Conclusory Statements and Conjecture.**

14 "When adjudicating a Rule 12(b)(6) motion to dismiss, Arizona courts look only to the
15 pleading itself and consider the well-pled factual allegations contained therein." *Cullen v.*
16 *Auto-Owners Insurance Co.*, 218 Ariz. 417, 419, 189 P.3d 344 (2008). "Courts must also
17 assume the truth of the well-pled factual allegations and indulge all reasonable inferences
18 therefrom." *Id.* "Because Arizona courts evaluate a complaint's well-pled facts, mere
19 conclusory statements are insufficient to state a claim upon which relief can be granted. The
20 inclusion of conclusory statements does not invalidate a complaint," but a complaint that
21 states only legal conclusions and lacks supporting factual allegations does not satisfy
22 Arizona's notice pleading standard under Rule 8, ARCP. *Long v. Ariz. Portland Cement Co.*,
23 89 Ariz. 366, 369, 362 P.2d 741, 743 (1961).
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27 Plaintiff's Complaint must be dismissed pursuant to Rule 12(b)(6), ARCP, as it fails
28 to properly plead a claim under which Plaintiff could obtain relief. Plaintiff's Complaint fails

1 both the procedural and factual standard set by the Arizona Supreme Court and the Arizona
2 Rules of Civil Procedure for well-pled complaints. As explained above, “[b]ecause Arizona
3 courts evaluate a complaint’s well-pled facts, mere conclusory statements are insufficient to
4 state a claim upon which relief can be granted. The inclusion of conclusory statements does
5 not invalidate a complaint,” but Plaintiff’s complaint states primarily legal conclusions based
6 on speculation and lacks supporting factual allegations and so does not satisfy Arizona’s
7 notice pleading standard under Rule 8, ARCP. *Long v. Ariz. Portland Cement Co.*, 89 Ariz.
8 366, 369, 362 P.2d 741, 743 (1961).

11 Plaintiff’s Complaint fails to allege sufficient elements of any claim against the
12 Association upon which relief could be granted to Plaintiff. Notwithstanding the fact that
13 Plaintiff’s Complaint lacks sufficient allegations of elements to establish a claim for relief,
14 Plaintiff’s Complaint also fails to allege anything more than conclusory statements and bald
15 conjecture, unsupported by a well-pled factual basis that would allow Plaintiff to seek
16 recovery upon any claim against the Association. As Plaintiff has failed to allege sufficient
17 facts or legal bases for recovery of damages against the Association, the Court must dismiss
18 Plaintiff’s Complaint against the Association.

21 **B. Plaintiff’s Complaint Must Be Dismissed as Plaintiff Does Not have Standing**
22 **to Raise the Issues Brought in the Complaint.**

23 Even if Plaintiff’s allegations of fraud were based on more than mere speculation,
24 Plaintiff does not have standing to assert the claims raised. “To initiate a claim, a party must
25 have standing—that is, ‘a personal stake in the controversy’s outcome’ caused by ‘a distinct
26 and palpable injury.’” *Workman v. Verde Wellness Ctr., Inc.*, 240 Ariz. 597, 603, ¶ 17 (Ct.
27 App. 2016). “Standing generally requires an injury in fact, economic or otherwise, caused by
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1 the complained-of conduct, and resulting in a distinct and palpable injury giving the plaintiff
2 a personal stake in the controversy's outcome." *Strawberry Water Co., v. Paulsen*, 220 Ariz.
3 401, 405, ¶ 7 (Ct. App. 2008).
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5 In this case, Plaintiff has asserted that he was injured by the filing of a Response to his
6 DRE Matter by the Association. However, Plaintiff's alleged injury is non-existent. Plaintiff
7 brought the DRE Matter against the Association. The Association has the right to file a
8 Response, which it timely did. Plaintiff does not have the right to a judgment in his favor
9 automatically because he filed the DRE Matter. The fact that the Association filed a Response
10 to his DRE Matter, which will now require Plaintiff to prove his case before he can obtain a
11 ruling in his favor, is not a palpable injury. The filing of a Response by the Association to
12 Plaintiff's DRE Matter did not "create an injury in fact," nor did it result in a "distinct and
13 palpable injury." *See Strawberry Water Co.*, 220 Ariz. At 405. Requiring Plaintiff to present
14 evidence sufficient to prove the allegations raised in his DRE Matter is not an injury to
15 Plaintiff. As such, Plaintiff has no standing to bring the Special Action pending before this
16 Court. Consequently, this matter must be dismissed.
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20 **C. Plaintiff's Complaint Must Be Dismissed as the Allegations Asserted by**
21 **Plaintiff Are Themselves Frivolous and Possibly Even Fraudulent as**
22 **Compared with the Facts as Known to Plaintiff.**

23 Ironically, Plaintiff's Complaint, which asserts without merit that the Association's
24 Response constituted a fraud, contains multiple blatant representations that could themselves
25 be considered fraudulent. On page 6, Line 20 of his Complaint, Plaintiff makes the following
26 assertion: "As of this writing, **the HOA has not submitted a Response** to the Petition." *See*
27 Complaint, p. 6, ln. 20. However, Plaintiff knew his statement was false and misleading
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1 because Plaintiff submitted a copy of the Association's Response as Exhibit "E" to his
2 Complaint. The Response was signed by the then-President of the Board of Directors as the
3 Association's Response to his DRE Matter.
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5 Arizona law has long recognized the principle of agency, which allows an agent of a
6 corporation to bind the corporation. In *Miller v. Mason-Mcduffie Co.*, 153 Ariz. 585 (1987),
7 the Arizona Supreme Court explained that even if a director does not have actual authority to
8 enter a contract or take action that binds a corporation, such director may legally bind the
9 corporation because of application of the principle of apparent authority. *See id.* In this matter,
10 the then-Board President signed the Response as President of the Board of Directors for the
11 Respondent. According to the principle of apparent authority, even if the President did not
12 have actual authority to sign the Response, which he did, both Plaintiff and the Department
13 of Real Estate were entitled to rely on the representation that the Response was filed on behalf
14 of the Association. *See id.* Thus, for Plaintiff to assert that the Respondent did not file a
15 Response is both legally and factually false.
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19 Another example of Plaintiff's knowing misrepresentations to the Court in his
20 Complaint is found initially on page 7, lines 5-7. Plaintiff asserts that the Response was signed
21 by "Pen Mann." However, review of the Response attached as Exhibit "E" to Plaintiff's
22 Complaint reveals that Plaintiff's assertion is demonstrably false. Exhibit "E" contains both
23 the printed name of the agent of the Respondent Association typed out as well as the signature.
24 The name of the agent who signed the Response on behalf of the Respondent is clearly legible
25 as "Paul Marenda", not "Pen Mann" as asserted by Plaintiff. *See Exhibit "E"*. The signature
26 line is directly below the line with the printed name. *See Exhibit "E"*. Although signatures
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1 can be more difficult to decipher than a printed name, Mr. Marena's signature, which is
2 directly below his printed name, clearly appears to be "Paul Marena", not "Pen Mann" as
3 asserted by Plaintiff. The Association does not see how Plaintiff could make the argument in
4 good faith that someone other than Paul Marena, as President of the Board of Directors for
5 Respondent, signed the Association's Response. Yet, that is exactly what Plaintiff asserted.
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7 A third example of Plaintiff's knowing misrepresentations center around Plaintiff's
8 frequently repeated allegation that the Association did not hire undersigned counsel to
9 represent the Association in the DRE Matter. As explained above, and as demonstrated by the
10 Notice of Local Rule 3.1 Related Cases filed by the Arizona Department of Real Estate in this
11 matter ("Notice"), beginning in 2024 Plaintiff has established an extensive history of suing
12 his homeowners' association. In every case identified on the Notice, undersigned counsel
13 personally, or his firm, has been involved in representing the Association. Review of the Court
14 docket for prior cases filed by Plaintiff against the Association in LC2025-000397 and
15 CV2025-036466 shows that "Chad Gallacher" is identified as counsel for the Association.
16 The Court docket for Case No. LC2025-000025 shows B Baillio, who is undersigned
17 counsel's partner, as the Association's attorney. For Plaintiff to assert that the Association did
18 not retain undersigned counsel to represent it is blatantly and knowingly false.
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22 If there is any fraud that has been perpetuated upon this Court, it has been by Plaintiff
23 and not by the Association. Consequently, this Special Action should be dismissed in its
24 entirety pursuant to Rule 12(b)(6), ARCP.
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