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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 Response to  
Commissioner's Motion to Dismiss**

**Assigned to the  
Hon. Adele Ponce**

1 NOW COMES THE PLAINTIFF (“AZNH”) in Response to Motion to Dismiss by Susan  
2 Nicolson, Commissioner (“Commissioner”) of the Ariz. Dept. of Real Estate.

3 The Commissioner has filed a single document combining a Motion to Dismiss with a  
4 Response to Motion for Judgment on the Pleadings (sic) without separating those arguments or  
5 identifying what part is a Motion and what is a Response. To the extent it is possible to do so,  
6 Plaintiff shall address the Motion and Response with separate filings: (1) Plaintiff’s Response to  
7 Commissioner’s Motion to Dismiss and (2) Plaintiff’s Reply to Commissioner’s Response on  
8 Motion for Judgment on the Case Filings.

9  
10 **I. Commissioner’s Motion to Dismiss**

11 The Commissioner’s Conclusion (sec. VI of the Motion) reads:

12 The Commissioner should be dismissed as defendant in the SA Petition (sic), and  
13 there is nothing in the pleadings that would justify a judgment of any kind against  
14 the Commissioner.”

15 When the motion is read as a whole, and considering the Commissioner’s Conclusion, it is clear  
16 that the Commissioner has filed a Rule 12(b)(6) motion to dismiss for failure to state a claim. A  
17 Rule 12(b)(6) motion attacks the legal sufficiency of the complaint. *Harper v. State*, 241 Ariz.  
18 402, 404, ¶ 7 (Div. 1, 2016).

19  
20 **II. The Complaint Satisfies Pleading Requirements to State a Claim**

21 The Complaint and AZNH’s Motion for Judgment on the Case Filings set forth  
22 incontrovertible facts:

- 23 ➤ AZNH submitted a Petition to the Commissioner alleging Sunland Springs Village  
24 HOA (a nonprofit corporation) (“Corporation”) had violated the Planned  
25 Communities Act;

- 1           ➤ The Commissioner sent the Petition to the Corporation with instructions for the  
2           Corporation to submit a Response within 20 days;
- 3           ➤ Per A.R.S. § 10-3302, whether to defend a matter is a corporate power;
- 4           ➤ Per A.R.S. § 10-3801, all corporate powers are vested in the corporate board of  
5           directors;
- 6           ➤ Per A.R.S. § 10-3801 and the Corporation’s Articles of Incorporation, the  
7           Corporation’s corporate powers cannot be delegated;
- 8           ➤ The Corporation’s Board took no action on the Petition or a Response;
- 9           ➤ Per A.R.S. § 32-2199.01(E), failure of the Corporation to submit a Response is  
10           deemed an admission of the allegations made in the petition, and “the commissioner  
11           shall issue a default decision;”
- 12           ➤ With knowledge that the Corporation’s Board had not authorized anyone to submit a  
13           Response, the now-former president of Sunland Springs Village HOA signed a  
14           Response and caused it to be delivered to the Commissioner; and,
- 15           ➤ The Commissioner subsequently and unknowingly treated the Response as one  
16           submitted by the Corporation, and sent the matter for hearing to the Office of  
17           Administrative Hearings (“OAH”) and the Commissioner did not issue the mandated  
18           default decision.

19           The Commissioner was duped, and because she was duped, she had no actual authority to do  
20           anything other than issue a default decision. See A.R.S. § 32-2199.01(E).

21           An Original Special Action may be brought by Complaint (not Petition)<sup>1</sup> when the  
22           Commissioner has “failed to perform a duty required by law for which [the Commissioner has]  
23           no discretion” or “proceeded, or threatened to proceed, without, or in excess of, jurisdiction or  
24           legal authority.” RPSA 2(b)(1), 4(a) & (b) & 6(a)(2).

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<sup>1</sup> See RPSA 7 & 14 distinguishing a Complaint from a Petition.

1 The question is not whether the Commissioner believed she acted within her statutory  
2 authority, but whether she had actual authority to send the matter to the OAH and not issue a  
3 default decision. In this case, the statute required her to issue a default decision in favor of  
4 AZNH because she had not received a Response from the Corporation. See A.R.S. § 32-  
5 2199.01(E). Thus, the referral to the OAH for a hearing is a nullity and the OAH has neither  
6 personal nor subject matter jurisdiction on the matter.

7 “[M]otions to dismiss for failure to state a claim are not favored in Arizona. A court should  
8 not grant such a motion unless it appears certain that the plaintiff would not be entitled to relief  
9 under any state of facts susceptible of proof under the claim stated.” *Acker v. CSO Chevira*, 188  
10 Ariz. 252, 255 headnote 4 (Div. 1, 1997).

11 “To survive a motion to dismiss for failure to state a claim under Rule 12(b)(6), a complaint  
12 generally must satisfy only the minimal notice pleading requirements of Rule 8(a)(2). That rule  
13 requires only that the complaint include ‘a short and plain statement of the claim showing that  
14 the pleader is entitled to relief.’” *Rowland v. Kellogg Brown & Root, Inc.*, 210 Ariz. 530, 534, ¶  
15 15 (Div. 2, 2005) citing *Porter v. Jones*, 319 F.3d 483, 494 (9th Cir. 2003). See also *Cullen v.*  
16 *Auto-Owners Ins. Co.*, 218 Ariz. 417, 419, ¶ 7 (2008) (rule 12(b)(6) dismissal available if  
17 Complaint does not comply with rule 8). “When adjudicating a Rule 12(b)(6) motion to dismiss,  
18 Arizona courts look only to the pleading itself and consider the well-pled factual allegations  
19 contained therein.” *Cullen* at ¶ 7. “Courts must also assume the truth of the well-pled factual  
20 allegations and indulge all reasonable inferences therefrom.” *Id.*

21 The Commissioner has failed to present any basis for the Court to conclude with certainty  
22 “that the plaintiff would not be entitled to relief under any state of facts susceptible of proof  
23 under the claim stated.” *Acker* at 255.

24 As shown herein-above, by looking to the Complaint and considering the well-pled factual  
25 allegations contained therein (*Cullen* at ¶ 7), the Complaint satisfies “the minimal notice  
26 pleading requirements of Rule 8(a)(2)” (*Rowland* at ¶ 15). And, therefore, the Complaint states

1 a claim for which this Court may grant relief pursuant to RPSA 4 & 10. See *Rowland, infra*  
2 (compliance with R.Civ.P. 8(a)(2) defeats a 12(b)(6) Motion).

Respectfully submitted,

Dated this 29<sup>th</sup> day of April, 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 Commissioner) at Deanie.Reh@azag.gov;  
Asst. Attorney General Raya Gardner (counsel for Commissioner) at Raya.Gardner@azag.gov;  
Asst. Attorney General Kelly Gillilan-Gibson (counsel for Tammy Eigenheer, Interim Director,  
Arizona Office of Administrative Hearings) at kelly.gillilan-gibson@azag.gov; and  
Atty. Chad Gallacher (counsel 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)

/s/ *John F. Sullivan*

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Attorney for Plaintiff