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6 *Attorneys for Plaintiff*

7 IN THE SUPERIOR COURT OF ARIZONA  
8 COUNTY OF MARICOPA

9 PATRICIA BOCCHINO,

Plaintiff,

No. Case No. CV2015-012434

11 vs.

**STATEMENT OF FACTS IN SUPPORT  
OF PLAINTIFF'S MOTION FOR  
SUMMARY JUDGMENT**

12 FOUNTAIN SHADOWS HOMEOWNERS  
ASSOCIATION,

Defendant.

15 Plaintiff Patricia Bocchino ("Bocchino"), by and through undersigned counsel, hereby  
16 submits the following Statement of Facts in support of her Motion for Summary Judgment filed  
17 contemporaneously herewith:

18 1. On March 4, 2015, Defendant Fountain Shadows Homeowners Association (the  
19 "Association") filed an *ex parte* Petition for Injunction Against Workplace Harassment against  
20 Bocchino. [Exhibit 1 (Verified Petition for Injunction Against Workplace Harassment)]

21 2. The Petition did not include a request for an award of attorneys' fees in connection  
22 with the Injunction Against Harassment filed against Bocchino. [Exhibit 1; Exhibit 3  
23 (Defendant's Response to Plaintiff's First Request for Admissions), ¶ 6]

24 3. On March 5, 2015, an Injunction Against Workplace Harassment was issued  
25 against Bocchino at an *ex parte* hearing in the Manistee Justice Court. [Exhibit 2 (Injunction  
26 Order)]

1           4.       The Injunction did not award the Association the recovery of its attorneys' fees  
2 and costs. [Exhibit 2; Exhibit 3, ¶ 7]

3           5.       A redacted version of a "Transactions Listing Report," provided by the  
4 Association's counsel, shows that its attorneys' fees were incurred through the rendering of  
5 legal services, which included obtaining and serving an *ex parte* Injunction Against Workplace  
6 Harassment, communicating with an attorney Bocchino had retained to inquire about the  
7 presence of charges on her account, reviewing videos, responding to inquiry from Bocchino  
8 regarding why the Association was assessing late charges on timely payments made through the  
9 Association's web portal, and sending two attorneys to cover an *ex parte* hearing. [Exhibit 5  
10 (Transactions Listing Report)]

11          6.       The counsel retained by the Association, in connection with the Injunction matter,  
12 submitted six invoices to the Association, between January 2015 and September 2015, totaling  
13 \$3,867.28. [Exhibit 4 (Carpenter, Hazelwood, Delgado & Bolen Invoices)]

14          7.       Invoice No. 135871, dated January 31, 2015, amounted to \$1,101.50 in charges  
15 for rendered legal services, including the review of emails from community manager and the  
16 drafting of Verified Petition Against Workplace Harassment. [Exhibit 4, pgs. 1-2]

17          8.       Invoice No. 138684, dated March 31, 2015, amounted to \$1,832.28 in charges for  
18 a process server fee and rendered legal services, including the review of emails, strategizing,  
19 preparing for the *ex parte* hearing, the attendance of two attorneys at the *ex parte* hearing.  
20 [Exhibit 4, pgs. 3-4]

21          9.       Invoice No. 142153, dated June 30, 2015, amounted to \$120.00 in charges for the  
22 receipt and review of email from property manager. [Exhibit 4, pg. 5]

23          10.       Invoice No. 143657, dated July 31, 2015, amounted to \$573.50 in charges for  
24 legal services rendered, including a series of correspondences with the Association's community  
25 manager, Bocchino, an attorney previously retained by Bocchino, and review of Transactions  
26 Listing Report. [Exhibit 4, pgs. 6-7]

1 11. Invoice No. 144998, dated August 31, 2015, amounted to \$168.00 in charges for  
2 legal services rendered, including a series of correspondences with Bocchino and the  
3 community manager. [Exhibit 4, pgs. 8-9]

4 12. Invoice No. 146534, dated September 30, 2015, amounted to \$72.00 in charges for  
5 legal services rendered, consisting solely of "Review current status of matter". [Exhibit 4, pg.  
6 10]

7 13. The Association maintained two separate ledgers in connection with Bocchino's  
8 HOA assessments. [Exhibit 6 (Accounting Transaction ledger); Exhibit 7 (Financial Transaction  
9 ledger)]

10 14. Both ledgers reflect that, between May 2015 and September 2015, the Association  
11 unilaterally assessed Bocchino its \$3,867.28 in attorneys' fees. [Exhibit 6; Exhibit 7, pgs. 4-6]

12 15. Both ledgers reflect that on June 14, 2015, Bocchino's HOA Account was  
13 assessed \$1,126.50, which is \$25.00 more than Invoice No. 135871, submitted to the  
14 Association from its counsel on or around January 31, 2015. [Exhibit 4, pg. 1; Exhibit 6, pg. 1;  
15 Exhibit 7, pg. 4]

16 16. Both ledgers reflect that on May 12, 2015, Bocchino's HOA Account was  
17 assessed \$1,832.28 for attorneys' fees, directly correlating with Invoice No. 138684, dated  
18 March 31, 2015. [Exhibit 6, pg. 1; Exhibit 7, pg. 4; Exhibit 4, pgs. 3-4]

19 17. Both ledgers reflect that on July 17, 2015, Bocchino's HOA Account was assessed  
20 \$120.00 for attorneys' fees, directly correlating with Invoice No. 142153, dated June 30, 2015.  
21 [Exhibit 6, pg. 1; Exhibit 7, pg. 5; Exhibit 4, pg. 5]

22 18. Both ledgers reflect that on August 6, 2015, Bocchino's HOA Account was  
23 assessed \$573.50 for attorneys' fees, directly correlating with Invoice No. 143657, dated July  
24 31, 2015. [Exhibit 6, pg. 1, Exhibit 7, pg. 5, Exhibit 4, pgs. 6-7]

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1 19. Both ledgers reflect that on September 5, 2015, Bocchino's HOA Account was  
2 assessed \$168.00 for attorneys' fees, directly correlating with Invoice No. 144998, dated August  
3 31, 2015. [Exhibit 6, pg. 2; Exhibit 7, pg. 5; Exhibit 4, pgs. 8-9]

4 20. Both ledgers reflect that on September 8, 2015, Bocchino's HOA Account was  
5 assessed \$72.00 for attorneys' fees, directly correlating with Invoice No. 146534, dated  
6 September 30, 2015. [Exhibit 6, pg. 2; Exhibit 7, pg. 5; Exhibit 4, pg. 10]

7 21. Bocchino made three payments towards the attorneys' fee assessments, the first on  
8 June 11, 2015 for \$25.00; the second on July 31, 2015 for \$25.00; and the third on August 21,  
9 2015 for \$5.00, totaling \$55.00. [Exhibit 6; Exhibit 7, pgs. 4-5]

10 22. The Accounting Transactions ledger shows that Bocchino was properly credited  
11 for all \$55.00 in payments made. [Exhibit 6, pg. 1]

12 23. The Financial Transactions ledger shows that Bocchino was properly credited for  
13 her payments made on June 11, 2015 and August 21, 2015, but the July 31, 2015 payment for  
14 \$25.00 appears to have applied as an additional charge against her HOA Account. [Exhibit 7,  
15 pgs. 4-5]

16 24. After all attorneys' fees charges and Bocchino's payments were applied to  
17 Bocchino's HOA Account, she "owed" the Association \$3,837.28 in remaining attorneys' fees,  
18 per the Accounting Transactions ledger, and \$3,887.28, per the Financial Transactions ledger.  
19 [Exhibit 6; Exhibit 7, pgs. 4-6]

20 25. Bocchino entered into a binding contract for the sale of her condominium on  
21 August 25, 2015 with a close of escrow date of September 24, 2015. [Exhibit 8 (Purchase  
22 Contract), pgs. 1, 9]

23 26. The title company, as part of the sale, requested a payoff balance from the  
24 Association. [Exhibit 9 (Resale Disclosure Statement)]

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1           27.    The Association’s property manager, Planned Development Services, provided a  
2 Resale Disclosure Statement on September 18, 2015 that disclosed that Bocchino owed  
3 \$4,062.28. [Exhibit 9]

4           28.    The Resale Disclosure Statement stated that, “[a]ll fees are due at close of  
5 escrow.” [Exhibit 9]

6           29.    Bocchino sold her unit on September 24, 2015. [Exhibit 8]

7           30.    The sum of \$4,412.28 was transferred to the Association from the title company  
8 on September 18, 2015, \$4,062.28 of which was attributable to “Owners Current Balance.”  
9 [Exhibit 10 (Copy of Pioneer Title Agency, Inc. Check No. 123585)]

10          31.    The “Owners Current Balance” of \$4,062.28 appears to have been derived by  
11 adding Bocchino’s unpaid September 1, 2015 monthly assessment of \$175.00 together with  
12 Bocchino’s remaining unpaid attorneys’ fees assessments of \$3,887.28, per the miscalculations  
13 contained in the Financial Transactions ledger. [Exhibit 7, pg. 6]

14          32.    \$3,917.28 is the amount charged and collected from Bocchino, but the figure  
15 attributes \$75.00 more in legal fees than the Association actually incurred. [Exhibit 4; Exhibit 7,  
16 pgs. 4-6]

17          33.    The Association’s Declaration contains the following provision:

18                   In the event the Association employs an attorney or attorneys to  
19                   enforce the collection of any amounts due pursuant to this  
20                   Declaration or in connection with any lien provided herein, or the  
21                   foreclosure thereof, or to enforce compliance with or specific  
22                   performance of the terms and conditions of this Declaration, the  
23                   Owner, Owners and parties against whom the action is brought shall  
24                   pay all attorneys’ fees, costs and expenses thereby incurred by the  
25                   Association in the event the Association prevails in any such action.

26                   [Exhibit 11 (Declaration)]

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DATED this 19th day of February 2016.

DESSAULES LAW GROUP

By: /s/ Ashley C. Hill  
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Douglas C. Wigley  
Ashley C. Hill  
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COPY of the foregoing mailed/e-mailed  
this 19<sup>th</sup> day of February 2016 to:

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