

1 **Carpenter, Hazlewood, Delgado & Bolen, PLC**
Attorneys at Law
2 1400 E. Southern Avenue, Suite 400
Tempe, Arizona 85282
3 t 480.427.2800 | f 480.427.2801
minuteentries@carpenterhazlewood.com
4 Chad Miesen 024910
Charlene Cruz 026692
LIU.FOUNTSHAD.0025.1

5 *Attorneys for Defendant*

6 IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
7 IN AND FOR THE COUNTY OF MARICOPA

8 PATRICIA BOCCHINO,
9
10 Plaintiff,
11 v.
12 FOUNTAIN SHADOWS
HOMEOWNERS ASSOCIATION,
13 Defendant.

Case No.: CV2015-012434

**DEFENDANT’S RESPONSE TO
PLAINTIFF’S SEPARATE
STATEMENT OF FACTS
AND
DEFENDANT’S
CONTROVERTING STATEMENT
OF FACTS**

*(Assigned to the Honorable
Douglas Gerlach)*

16 Defendant Fountain Shadows Homeowners Association (the “**Association**”), by and
17 through undersigned counsel, hereby submits its Response to Plaintiff’s Separate Statement
18 of Facts and the Association’s Controverting Statement of Facts.

19 **Response to Plaintiff’s Separate Statement of Facts**

- 20 1. Disputed. *See* Defendant’s Controverting Statement of Facts (“CSOF”) below at ¶
21 8.
22

- 1 2. Undisputed.
- 2 3. Undisputed.
- 3 4. Undisputed.
- 4 5. The Association asserts that the “Transaction Listing Report” speaks for itself.
- 5 6. The Association asserts that the invoices to the Association speak for themselves.
- 6 7. The Association asserts that Invoice 135871 speaks for itself.
- 7 8. The Association asserts that Invoice 138684 speaks for itself.
- 8 9. The Association asserts that Invoice 142153 speaks for itself.
- 9 10. The Association asserts that Invoice 143657 speaks for itself.
- 10 11. The Association asserts that Invoice 144998 speaks for itself.
- 11 12. The Association asserts that Invoice 146534 speaks for itself.
- 12 13. Disputed. *See* “CSOF” below at ¶ 11
- 13 14. Undisputed.
- 14 15. The Association asserts that the ledgers speak for themselves and are accurate. *See*
15 Exhibit D (Declaration of Vern Carillo at ¶ 7).
- 16 16. The Association asserts that the ledgers speak for themselves. *Id.*
- 17 17. The Association asserts that the ledgers speak for themselves. *Id.*
- 18 18. The Association asserts that the ledgers speak for themselves. *Id.*
- 19 19. The Association asserts that the ledgers speak for themselves. *Id.*
- 20 20. The Association asserts that the ledgers speak for themselves. *Id.*
- 21 21. Disputed. *See* “CSOF” below at ¶ 11
- 22 22. The Association asserts that the Accounting Transaction ledger speaks for itself. *Id.*

1 23. The Association asserts that the Financial Transaction ledger speaks for itself. *Id.*

2 24. The Association asserts that the ledgers speak for themselves. *Id.*

3 25. Undisputed.

4 26. Undisputed.

5 27. Undisputed.

6 28. Undisputed

7 29. Undisputed.

8 30. Undisputed.

9 31. Undisputed.

10 32. Disputed. *See* “CSOF” below at ¶ 11

11 33. Undisputed.

12 **Association’s Controverting Statement of Facts**

13 1. The Association is a planned community association and nonprofit corporation
14 located in Glendale, Arizona, whose members are owners of lots within the planned
15 community. *See* A.R.S. § 33-1802.

16 2. The Association and its members are governed by the *Declaration of Covenants,*
17 *Conditions and Restrictions for Fountain Shadows* (the “**Declaration**”), recorded in
18 the Office of the Maricopa County Recorder at No. 1983-146154. *See* Exhibit A
19 (Declaration at 1).

20 3. The Association and its members are also subject to the Articles of Incorporation,
21 Bylaws, and other Rules and Regulations adopted by the Association (referenced
22 collectively herein as the “**Governing Documents**”). *See generally* Chapters 24

1 through 40 of Title 10 of the Arizona Revised Statutes; see also Exhibit A
2 (Declaration at 20 [Art. XIII, Sec. 12]).

3 4. Plaintiff, Patricia Bocchino (the “**Plaintiff**”), was an owner of a lot located within
4 the Fountain Shadows community until the sale of her lot on or about September 24,
5 2015. *See* Plaintiff’s Complaint at ¶ 5; *see also* Plaintiff’s Statement of Facts at ¶
6 29.

7 5. Incident to her ownership of property within Fountain Shadows, she was, until the
8 sale of her lot, a member of the Association. *See* Exhibit A (Declaration at 3 [Art.
9 III, Sec. 1]).

10 6. Plaintiff violated the Declaration and other Governing Documents by acting in a
11 harassing manner constituting offensive behavior. *See* Exhibit B (Injunction against
12 Workplace Harassment); *see also* Exhibit A (Declaration at 19 [Art. XIII, Sec. 10]).

13 7. The Declaration prohibits members or residents in the community from carrying on
14 any offensive activity:

15 No noxious or offensive activity shall be carried on upon any Lot or
16 any part of the Properties, nor shall anything be done thereupon which
17 may be, or may become, an annoyance or nuisance to the
neighborhood, or which shall in any way interfere with the quiet
enjoyment of each of the Owners of his respective Townhouse, or
18 which shall in any way increase the rate of insurance.

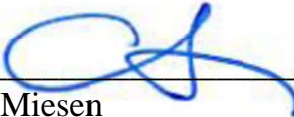
19 *See* Exhibit A (Declaration at 19 [Art. XIII, Sec. 10]).

20 8. As a result, the Association sought and obtained an *Injunction against Workplace*
21 *Harassment* on March 5, 2015 from the Manistee Justice Court. *See* Exhibit B
22 (Injunction against Workplace Harassment).

- 1 9. As a result of Plaintiff's actions, the Association incurred attorneys' fees, costs and
2 expenses to enforce Plaintiff's compliance with the terms and conditions of the
3 contractual Declaration, including but limited to filing and obtaining an Injunction
4 Against Workplace Harassment. *See* Exhibit D (Declaration of Vern Carrillo at ¶ 7).
- 5 10. In or around September of 2015, Defendant was contacted by a title/escrow
6 company to provide a payoff of amounts due to the Association. *See* Plaintiff's
7 Statement of Facts at ¶ 26.
- 8 11. Pursuant to the Declaration, including Article IV, Section 1 and Article XVII,
9 Section 1, the Association included in its payoff disclosure all attorneys' fees and
10 costs incurred as a result of Plaintiff's violations of the Governing Documents. *See*
11 Exhibit A (Declaration at 5 and 24 [Art. IV, Sec. 1, and Art. XVII, Sec. 1]).
- 12 12. In connection with the sale of her lot, the Plaintiff paid what the Association had
13 disclosed as due in its payoff disclosure to the title/escrow company. *See* Exhibit C
14 (Account Ledger for Bocchino's Lot at 2).
- 15 13. Plaintiff did not contest or challenge the payoff disclosure prior to payment. *See*
16 Exhibit D (Declaration of Vern Carrillo at ¶ 10)

17 RESPECTFULLY SUBMITTED this 28th day of March, 2016.

18 **Carpenter, Hazlewood, Delgado & Bolen, PLC**

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20 _____
21 Chad P. Miesen
22 Charlene Cruz
1400 East Southern Avenue, Suite 400
Tempe, Arizona 85282
Attorneys for the Association

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ORIGINAL of the foregoing filed
this 28th day of March, 2016 with:

Clerk of the Court
Maricopa County Superior Court
www.AZTurboCourt.gov

Copy of the foregoing emailed and mailed
this 28th day of March, 2016, to:

Jonathan A. Dessauls
Dessaules Law Group
5353 North 16th Street, Suite 110
Phoenix, Arizona 85016



Vicki Gaslin