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IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF NAVAJO

GORDON GROSS and LILIANA
GROSS, husband and wife *et al.*,

Plaintiffs,

v.

THE SHORES AT RAINBOW LAKE
COMMUNITY ASSOCIATION, an
Arizona domestic nonprofit corporation,

Defendant.

No.: S0900CV202200042

**REPLY TO OBJECTION TO FORM
OF JUDGMENT**

Re: Defendant's Objection to Form of
Judgment

In the Court's September 14, 2022 Order, the Court directed Defendant to file a form of judgment within 20 days. Defendant, for reasons unbeknownst to Plaintiff, ignored the Court's Order and failed to submit anything within the 20-day deadline. Seeking to continue moving this dispute toward final resolution in spite of Defendant's flouting of the Order, Plaintiffs filed a proposed form of judgment to finally resolve this case.

Defendant's Objection to Form of Judgment is, essentially, a continuation of its Objection to Application for Attorney Fees. Besides the award of fees, Defendant does not appear to have articulated any other substantive basis to object to the proposed form of judgment.

1 Furthermore, and most importantly here, the Court should not consider Defendant’s
2 very late submission at all. While it may be common practice for a party objecting to a
3 form of judgment to lodge its own alternative form of judgment, Defendant should be
4 estopped from doing so here because Defendant simply ignored the Court’s order.
5 Defendant was ordered to submit a proposed form of judgment by a clear and unambiguous
6 deadline. Defendant elected not to do so. Defendant’s submission, which seeks to lodge a
7 form of judgment now, is nothing more than an attempt to correct its own recalcitrance and
8 the Court should not allow such an attempt.

9 Given Defendant’s failure to articulate any actual objections to the Plaintiffs’
10 proposed form of judgment beyond its objection to the award of attorney fees and
11 Defendant’s flouting of the Court’s clear and unambiguous orders, Plaintiffs respectfully
12 request that the Court enter the form of judgment submitted by Plaintiffs on October 10,
13 2022.

14 **Memorandum of Points of Authorities**

15 **I. Introduction**

16 As noted above, Defendant’s Objection is devoid of substantive objections to the
17 form of the proposed judgment. Rather, Defendant primarily objects to the proposed form
18 of judgment on the basis of the fee award. Such discussion is not appropriate in this context
19 given the pending Motion for Attorney Fees and Defendant’s filed Objection thereto. As
20 the Court is aware, Plaintiffs’ proposed form of judgment left the amount of fees to be
21 awarded blank so that the Court may determine what amount it wishes to award Plaintiffs.
22 If the Court were to agree with Defendant’s fee analysis, then it can award \$0 in the
23 Plaintiffs’ proposed form or strike that line altogether. There simply is no reason for
24 discussing the actual fee application and the issues arising therefrom in Defendant’s
25 Objection.

26 The only appropriate and ascertainable potential objection is Defendant’s desire to
27 include specific and express language to give res judicata effect to a final judgment.
28 Arguably, this “objection” is better characterized as a proposal. This Court need not

1 consider any attempts by Defendant to correct its recalcitrance. Moreover, the impact of
2 the 54(c)-language coupled with the principle of res judicata accomplishes the specific
3 language Defendant seeks to include.

4 Because the issue of whether to award attorney fees has already been thoroughly
5 briefed and is inappropriate to discuss here, Plaintiffs will not burden the Court with
6 duplicative analysis. Instead, Plaintiffs simply urge this Court to award their attorneys' fees
7 for the reasons set forth in that separate briefing. Defendant, had it actually complied with
8 the Court's orders, could have submitted a proposed form of judgment of its choosing. It
9 should not be forgotten that, because of Defendant's conduct, the parties have now been
10 forced to engage in extensive briefing on the form of judgment despite Plaintiffs' attempt
11 to circumvent such a waste of the Court's time.

12 **II. Legal Analysis**

13
14 **A. The Court should not allow Defendant to avoid the consequences of its
15 recalcitrance.**

16 As the Court need not be reminded, Defendant was directed to file a form of
17 judgment within 20 days of the date of the Court's Ruling. Plaintiffs actually reached out
18 to Defendant in an attempt to discuss how the parties might bring this matter to an end
19 without forcing Defendant to incur further costs in the preparation and submission of a
20 form of judgment. *See* Plaintiff's Notice of Lodging Re: Proposed Final Judgment at
21 Exhibit B. Defendant noted in its response to Plaintiffs that it may require an extension on
22 that deadline for filing but never responded to Plaintiffs after they asked Defendant how
23 long it might need.

24 Not only did Defendant shun the olive branch extended by Plaintiffs or respond to
25 Plaintiffs' question about how much time Defendant might require for its filing, Defendant
26 completely ignored this Court's directive and elected to just not file anything. Now, the
27 parties have been forced to unnecessarily incur further costs briefing a form of judgment
28 and litigating objections. All because Defendant failed to file as directed.

B. Defendant's proposal is, effectively, the same as Plaintiffs' proposal.

1 While Plaintiffs maintain that the Court should not consider Defendant’s proposed
2 alternative form of judgment for the reasons set forth above, should the Court find that
3 Defendant’s failure to abide the Court’s directive excusable, there is still no reason to adopt
4 Defendant’s proposed form of judgment. Plaintiffs’ proposed form of judgment allows for
5 Defendant to record a new instrument that complies with the Court’s September 14, 2022
6 Ruling. Defendant is asking this Court to adopt its redlines despite the Court never
7 redlining anything. The correct way to address this is to strike the First Amendment in its
8 entirety and allow Defendant to record something consistent with the Court’s Ruling. In
9 other words, the net effect of Defendant’s proposed form of judgment is the same: a new
10 version of the First Amendment may be recorded by Defendant so long as it complies with
11 the September 14, 2022 Ruling.

12 **III. Conclusion**

13 The Court directed Defendant to file a proposed form of judgment. The directive
14 was clear and the deadline for doing so unambiguous. Instead, Defendant elected not to file
15 anything. Plaintiffs, despite their efforts to resolve this dispute without having to incur the
16 cost of preparing and briefing a form of judgment, filed a proposed form of judgment in an
17 effort to finally resolve this dispute. Defendant, now attempting to correct its recalcitrance
18 in blowing off the Court’s directive, has objected on inappropriate and irrelevant grounds.
19 Additionally, Defendant has filed an alternative form of judgment which fails to distinguish
20 itself in any meaningful way from the form of judgment filed by Plaintiffs. Plaintiffs
21 respectfully request that the Court decline to consider Defendant’s proposed alternative
22 form of judgment and enter judgment in the form filed by Plaintiffs on October 10, 2022.

23
24 DATED this ___th day of November, 2022.

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26 DYER BREGMAN & FERRIS, PLLC.

27 BY /s/ Stockton D. Banfield
28 Stockton D. Banfield
Charles M. Dyer

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