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17 Attorneys for Plaintiffs

18 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**
19 **IN AND FOR THE COUNTY OF NAVAJO**

20 GORDON GROSS and LILIANA
21 GROSS, husband and wife; 854 PINE
22 CREEK, LLC, an Arizona limited liability
23 company; BALD EAGLE RETREAT,
24 LLC, an Arizona limited liability company;
25 1501 RAINBOW VIEW, LLC, an Arizona
26 limited liability company; LAKESIDE
27 FAMILY INVESTMENTS, LLC, an
28 Arizona limited liability company,
29 STEVEN A. KERNAGIS AND SANDRA
30 K. KERNAGIS, trustees of THE STEVEN
31 AND SANDRA KERNAGIS TRUST
32 DATED MARCH 17, 2014; THOMAS P.
33 ZEHRING AND JEANNETTE ROSE
34 ZEHRING, trustees of THE ZEHRING
35 LIVING TRUST DATED MARCH 1,
36 2001; and JEANNETTE ZEHRING,

37 Plaintiffs,

38 v.

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

42 Defendant.

No.: S0900CV202200042

NOTICE

Re: Proposed Form of Judgment

(Assigned to the Hon. Michala M. Ruechel)

43 Pursuant to the Court's November 10, 2022 Order, Plaintiffs hereby submit this
44 Notice to clarify those issues raised in the Order. Plaintiffs' positions are: (1) due to the

1 Court’s Ruling on Count I, no injunction is necessary because, presumably, Defendant will
2 abide the Court’s Order and will not attempt to enforce any unenforceable items; (2)
3 because Defendant stipulated to the preliminary injunction earlier in the case, Plaintiffs’
4 money damages have been mooted by Defendant’s conduct and, therefore, Plaintiffs will
5 not be seeking any money damages; and (3) Defendant’s proposed language ¹ is
6 unnecessary because Plaintiff’s proposed form of judgment includes Rule 54(c) language
7 that gives the effect of finality. The extra proposed language appears to be an attempt to
8 state res judicata (although its not an entirely accurate statement of res judicata under
9 Arizona law) which, as the Court certainly appreciates, is unnecessary and premature. If
10 claims are ever brought in the future, issues of res judicata are most appropriately addressed
11 at that time. Hence, the objection to the proposed language as set forth in paragraph C of
12 Defendant’s Objection.

13 Thus, to more directly answer the Court’s questions: should the Court adopt and
14 enter Plaintiff’s proposed form of judgment, they would, in fact, be voluntarily dismissing
15 those other claims not addressed in the Motion and Cross-Motion for Summary Judgment.
16 With respect to Defendant’s proposed language at paragraph C of its Objection, Plaintiffs
17 do object to the inclusion of such language for the reasons set forth above.

18 Plaintiffs respectfully maintain that their proposed form of judgment is the most
19 effective way of resolving this dispute. It provides a clean and simple means for
20 invalidating the First Amendment and avoiding any confusion with respect to the public
21 record. It allows for Defendant to prepare and record another amendment in the future that
22 complies with this Court’s Ruling should it wish to do so. Such being the case, Plaintiffs
23 respectfully request that the Court enter the proposed form of judgment submitted by
24 Plaintiffs.

25 DATED this 23rd day of November, 2022.

26 _____

27 ¹ Defendant proposed, in its October 24, 2022 Objection, the following language: “All
28 other claims Plaintiffs alleged or that Plaintiffs could have asserted in this litigation are
dismissed with prejudice.”

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BY /s/ Stockton D. Banfield

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ORIGINAL electronically filed via TurboCourt
This 23rd day of November, 2022.

COPIES emailed and mailed
This 23rd day of November, 2022 to:

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By: /s/ Jineane Rivers