Clerk of the Superior Court
*** Electronically Filed ***
11/07/2025 8:00 AM

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2024-005545 11/06/2025

HONORABLE FRANK W. MOSKOWITZ

CLERK OF THE COURT
S. Motzer
Deputy

SHEILA JANISCH

FRANK M FOX

v.

SCOTTSDALE MOUNTAIN COMMUNITY ASSOCIATION

CHARLES H OLDHAM

EDEN COHEN
JUDGE MOSKOWITZ

MINUTE ENTRY

East Court Building – Courtroom 914

9:41 a.m. This is the time set for a virtual Hearing on the Motion to Lift Stay filed September 7, 2025 and the related Response and Reply thereto. Plaintiff is represented by counsel, Frank M. Fox. Defendant is represented by counsel, Charles H. Oldham and Eden Cohen. A Defendant Representative is also present.

A record of the proceedings is made digitally in lieu of a court reporter.

The Court addresses counsel regarding the status of the State Bar of Arizona's investigation of Mr. Fox.

Based on the completion and outcome of the investigation,

IT IS ORDERED lifting the Stay and allowing this case to move forward.

Discussion is held regarding the following pending Motions:

- Defendant's Motion to Quash Subpoenas Duces Tecum filed February 18, 2025
- Plaintiff's Motion for Leave to Amend the Complaint filed May 14, 2025
- Defendant's Expedited Motion to Disqualify Counsel and Preclude Evidence and Strike Complaint filed May 14, 2025
- Plaintiff's Motion Requesting the Appointment of a Discovery Master filed May 14, 2025
- Defendant's Motion to Strike Exhibits from the Record and Docket filed May 23, 2025

It is determined that the Court issued its Ruling on the Motion to Quash on April 24, 2025.

For the reasons stated on the record,

IT IS ORDERED holding the fully briefed Motion to Amend, the partially briefed Motion Requesting the Appointment of a Discovery Master, and the partially briefed Motion to Strike Exhibits in abeyance pending the Court's ruling on the Expedited Motion to Disqualify Counsel ("the Expedited Motion").

9:59 a.m. Matter concludes.

Later:

Pursuant to Defense counsel's request in the Expedited Motion,

IT IS ORDERED setting an *in-person* Oral Argument on the Expedited Motion for **December 4, 2025 at 10:00 a.m. (40 minutes allotted).**

Honorable Frank W. Moskowitz
East Court Building, Courtroom 914
101 West Jefferson Street
Phoenix, AZ 85003

NOTE: Counsel shall be prepared to address, among other matters already briefed, the following issues as set forth in *Burch & Cracchiolo, P.A. v. Myers*, 237 Ariz. 369, 379 (App. 2015):

> To summarize, when faced with a motion to disqualify premised upon the abuse of privileged information disclosed inadvertently, the trial court must: (1) determine whether the documents at issue are in fact privileged; (2) determine whether the

receiving party exercised an unfair advantage over the documents, such as reviewing, copying, or distributing them in violation of Rule 26.1(f)(2) and ER 4.4(b); and (3) review the privileged information objectively, in light of the context of the case, to determine whether the receiving party possibly gained an unfair tactical advantage over the moving party. In reviewing the information, the court may consider certain mitigating factors, such as whether the privileged information might have already been known by the receiving party, *see United States v. Chong*, 58 F.Supp.2d 1153, 1160 (D.Haw.1999) (declining to order disqualification based upon inadvertent disclosure of privileged information where the receiving party was already in possession of the information prior to its disclosure), or whether the information may be insignificant to the issues before the court, *United States v. Skeddle*, 989 F.Supp. 890, 899 (N.D.Ohio 1997) (finding disqualification unwarranted where review of allegedly privileged documents did not provide the receiving party with insight into "the strategies, theories, and tactics of the lawyers representing the [party claiming privilege]"). And because disqualification motions are disfavored, *State v. Serna*, 163 Ariz. 260, 268, 787 P.2d 1056 (1990) (citations omitted), the trial court should always consider alternative solutions that will adequately address the purported harm, *Alexander*, 141 Ariz. at 165, 685 P.2d 1309.

NOTE: All court proceedings are recorded by audio and video method and not by a court reporter. Pursuant to Local Rule 2.22, if a party desires a court reporter for any proceeding in which a court reporter is not mandated by Arizona Supreme Court Rule 30, the party must submit a written request to the assigned judicial officer at least ten (10) judicial days in advance of the hearing, and must pay the authorized fee to the Clerk of the Court at least two (2) judicial days before the proceeding. The fee is $140 for a half-day and $280 for a full day.