



SCHERN RICHARDSON FINTER

1 Michael A. Schern #022996
2 Aaron M. Finter #022437
3 Aaron R. Clouse #033230
4 1640 S. Stapley Drive, Suite 132
5 Mesa, Arizona 85204
6 Email: courtdocs@srflawfirm.com
7 Tel: (480) 632-1929

Attorneys for Defendants

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF MARICOPA

JIE CAO; HAINING XIA; STONE XIA,

Plaintiffs,

v.

LORNE POLGER; MATT QUINN;
MICHAEL A. SCHERN,

Defendants.

No. CV2019-055353

ANSWER

15 Defendants Lorne Polger, Matt Quinn, and Michael A. Schern (“Defendants”) previously
16 responded to Plaintiffs’ Complaint by filing a Motion for More Definite Statement. Inasmuch as
17 Plaintiffs have filed an Application for Default against one or more of the Defendants, Defendants
18 submit this Answer to Plaintiffs’ Complaint only out of an abundance of caution and to controvert
19 any claim by Plaintiffs that Defendants failed to plead or otherwise defend. By filing this Answer,
20 Defendants do not withdraw their pending Motion for More Definite Statement and Defendants
21 will file an amended answer following, and in accordance with, the Court’s ruling on the pending
22 Motion for More Definite Statement. Each and every allegation contained in Plaintiffs’ Complaint
23 and each and every claim for relief therein which is not expressly admitted in this Answer is
24 denied. Defendants further admit, deny and affirmatively allege as follows:
25

1 2. As and for a separate defense, and in the alternative, Answering Defendants
2 affirmatively allege lack of personal jurisdiction over the parties.

3 3. As and for a separate defense, and in the alternative, Answering Defendants
4 affirmatively allege lack of service.

5 4. As and for a separate defense, and in the alternative, Answering Defendants
6 affirmatively allege that Plaintiffs have failed to plead with particularity as and where required.

7 5. As and for a separate defense, and in the alternative, Answering Defendants
8 affirmatively allege that Plaintiffs have failed to join one or more indispensable parties.

9 6. As and for a separate affirmative defense, all members of the Association have the
10 same rights and obligations and are owed an equal duty of fairness.

11 7. As and for a separate affirmative defense, one or more of the Defendants was
12 entitled to rely on information, opinions, reports, or statements prepared by officers of the
13 corporation or legal counsel in discharging their duties to the Association.

14 8. As and for a separate affirmative defense, Defendants acted reasonably in the
15 exercise of his discretionary powers.

16 9. As and for a separate affirmative defense, Arizona law does not support Plaintiffs'
17 claim for breach of a fiduciary duty. *Rohde v. Beztak of Ariz., Inc.*, 164 Ariz. 383, 388, 793 P.2d
18 140, 145 (App. 1990) (no Arizona cases establishing that Board Members are fiduciaries or owe
19 a fiduciary duty).

20 10. As and for a separate affirmative defense, Plaintiffs are barred by the economic loss
21 rule from asserting tort claims for any alleged wrongdoing that arises out of contract.

22 11. As and for a separate defense, and in the alternative, this Answering Defendants
23 allege Plaintiffs have failed to mitigate their damages, thus barring or reducing the recovery
24 against Answering Defendants.

25 12. As and for an affirmative defense, Answering Defendants affirmatively allege all of
26 their actions were taken in good faith, with the care an ordinarily prudent person in a like position

1 would exercise under similar circumstances, and in a manner to be in the best interest of the
2 Association.

3 13. As and for a separate defense, and in the alternative, Answering Defendants allege
4 Plaintiffs assumed the risk of their damages and acted intentionally and knowingly, which bars
5 recovery or reduces recovery to the Plaintiffs herein from Answering Defendants.

6 14. Defendants further assert the following defenses: accord and satisfaction, estoppel,
7 set-off, license, payment, release, res judicata, waiver, and every other affirmative defense or
8 avoidance constituting a defense as provided under Rules 8 and 12 of the Arizona Rules of Civil
9 Procedure, Arizona law, and the common law which discovery may reveal. By pleading these
10 general and affirmative defenses, Defendants do not assume the burden of proving any fact, issue,
11 or element of a claim for relief where such burden properly belongs to the Plaintiffs.

12 15. Defendants affirmatively allege that this action arises out of contract.

13 WHEREFORE, having fully answered Plaintiffs' Complaint, Defendants pray that
14 Plaintiffs take nothing, the Complaint be dismissed with prejudice, Defendants be awarded their
15 costs pursuant to A.R.S. § 12-341 and their attorney's fees pursuant to A.R.S. § 12-341.01, or as
16 may otherwise be recovered in accordance with applicable statute or rule, and for such other relief
17 as the Court deems just.

18 DATED this 20th day of December 2019.

19 SCHERN RICHARDSON FINTER, PLC

20
21 By 

22 Michael A. Schern
23 Aaron M. Finter
24 Aaron R. Clouse
25 1640 S. Stapley Dr., Ste. 132
26 Mesa, AZ 85204
Attorneys for Defendants

1 ORIGINAL of the foregoing electronically filed
2 this 20th day of December 2019.

3 COPY of the foregoing mailed/e-mailed
4 this 20th day of December 2019, to:

5 Jie Cao, Haining Xia, Stone Xia
6 15742 E. Eagle Crest Road
7 Fountain Hills, AZ 85268
8 Plaintiffs

9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
Ann Bernzen