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13 Attorneys for Attorneys for Defendant PFP Dorsey Investments, LLC

14 IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

15 IN AND FOR THE COUNTY OF MARICOPA

16 JIE CAO and HAINING “FRAZER” XIA,
17 a married couple; STONE XIA, an
18 individual,

19 Plaintiffs,

20 v.

21 PFP DORSEY INVESTMENTS, LLC, a
22 Delaware limited liability company;
23 DORSEY PLACE CONDOMINIUM
24 ASSOCIATION, an Arizona nonprofit
25 corporation;

26 Defendants.

No. CV2019-055353

**DEFENDANT PFP DORSEY
INVESTMENTS, LLC’S APPLICATION
FOR ATTORNEYS’ FEES AND COSTS**

(Assigned to the Honorable Daniel Martin)

27 Based upon the Court’s Minute Entry Order, dated December 15, 2020, in granting
28 Defendant PFP Dorsey Investments, LLC’s Motion to Dismiss, with prejudice, and as the
prevailing party, Defendant PFP Dorsey Investments, LLC (“PFP”), by and through counsel
undersigned, hereby respectfully requests that it be awarded its reasonable attorneys’ fees
and costs. The attorneys’ fees incurred by PFP in defending Plaintiffs’ allegations are

1 reasonable given the work involved and the results obtained by counsel, as demonstrated in
2 the granting of PFP's Motion to Dismiss, with prejudice. Accordingly, PFP respectfully
3 requests an award of attorneys' fees in the amount of \$20,542.00 and costs in the amount of
4 \$265.75. This Motion is supported by the following Memorandum of Points and
5 Authorities, the Verified Request for an Award of Costs, Affidavit of Stephanie K. Gintert,
6 and the pleadings and records in this case.
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9 **MEMORANDUM OF POINTS AND AUTHORITIES**

10 **1. PFP Is Entitled to Attorneys' Fees Pursuant to A.R.S. § 12-341.01.**

11 Pursuant to A.R.S. §12-341.01, PFP is entitled to an award of attorneys' fees in the
12 amount of \$20,542.00 because (1) Plaintiffs' allegations arise out of the Association's
13 Bylaws and Declarations, which are contracts; and (2) PFP was the prevailing party in terms
14 of Plaintiffs' claims. *See* A.R.S. §12-341.01 (permitting the court to award attorney fees to
15 the successful party in an action arising out of a contract); *see* Affidavit of Stephanie K.
16 Gintert, attached as Exhibit 1.¹ PFP hereby incorporates the factual information and legal
17 arguments provided in its Motion to Dismiss to support its position that the claims brought
18 by Plaintiffs arise out of contract, i.e., the Bylaw and Declarations to which Plaintiffs and
19 PFP were parties and in which Plaintiffs cite and refer to numerous times in their Second
20 Amended Complaint. Further, one of Plaintiffs' main issues in their Second Amended
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26 ¹ Concurrently with this Application for Attorneys' Fees and Costs, PFP has filed a Motion for Authorization to File
27 Documents related to PFP Dorsey Investments, LLC's Application for Attorneys' Fees and Taxable Costs Under Seal,
28 seeking permission to file documents regarding its itemized billing records under seal due to the confidential and
proprietary nature of the documents. Should the Court grant PFP's Motion for Authorization to File under Seal, PFP
will supplement the Affidavit with the itemized billing records under seal. Counsel for PFP is coordinating with counsel
for Plaintiffs to provide these records for review to respond to PFP's Application for Attorneys' Fees and Costs and PFP
will agree to extend any reasonable additional time to respond to the Application based upon the additional time required
to coordinate disclosure of these confidential records.

1 Complaint is whether the Condominium Termination Agreement is valid. Thus, this lawsuit
2 arises out of a contract and fees are awardable under A.R.S. § 12-341.01.

3 In determining whether attorneys' fees should be granted under A.R.S. §12-341.01,
4 the Court considers several factors including:
5

- 6 1. The merits of the claim or defense presented by the unsuccessful party;
- 7 2. Whether the litigation could have been avoided or settled and whether
8 the successful party's efforts were completely superfluous in achieving the
9 result;
- 10 3. Whether assessing fees against the unsuccessful party would cause an
11 extreme hardship; and
- 12 4. Whether the successful party prevailed with respect to all of the relief
13 sought.
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16 *Associated Indem. Corp. v. Warner*, 143 Ariz. 567, 570, 694 P.2d 1181, 1184 (1985).

17 In this case, all four factors favor an award of attorneys' fees for PFP. As to the
18 merits of the claim, PFP was successful on its Motion to Dismiss based upon Plaintiffs'
19 pleadings that they failed to state a claim upon which relief could be granted as Plaintiffs'
20 allegations showed PFP complied with the requirements of the parties' Bylaws and
21 Declarations, as well as A.R.S. § 33-1228. With regard to whether the litigation could have
22 been avoided, no action by PFP would have likely been able to prevent the litigation as PFP
23 complied with the parties' Bylaws and Declaration and A.R.S. § 33-1228 in properly
24 terminating and selling the condominium; yet, Plaintiffs still attempted to thwart PFP's
25 efforts by bringing this lawsuit. Prior to filing the Motion to Dismiss, PFP made a good faith
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1 offer to try and resolve the issues; however, Plaintiffs rejected it and did not provide a
2 counteroffer. Further, prior to filing the Motion to Dismiss, and in compliance with Arizona
3 Rules of Civil Procedure 8.1(e)(4), counsel for PFP discussed with Plaintiffs' counsel the
4 arguments it intended to raise in its Motion to Dismiss, including providing a draft copy of
5 its Motion. However, Plaintiffs did not agree with PFP's position and the parties were
6 unable to satisfactorily resolve the dispute, which led to PFP to file its Motion to Dismiss.
7 As to the third factor, Plaintiffs will likely argue that an award of attorneys' fees would
8 cause a hardship upon them; however, Plaintiffs initiated this lawsuit knowing that PFP
9 complied with the contract requirements and A.R.S. § 33-1228 in the termination and sale of
10 the condominium. PFP provided its arguments to Plaintiffs prior to filing of the Motion to
11 Dismiss in an attempt to allow Plaintiffs to voluntarily dismiss their Complaint or discuss
12 potential resolution to no avail. Lastly, PFP was the successful party with respect to all
13 relief sought, leading to a dismissal of Plaintiffs' Second Amended Complaint in its entirety,
14 with prejudice. Therefore, the factors weigh heavily in favor of granting PFP's request for
15 reasonable attorneys' fees.
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20 **2. PFP's Attorneys' Fees Are Reasonable.**

21 There are several different factors that the Court may consider when determining
22 whether an amount of attorneys' fees is reasonable. A.R.S. §12-341.01(B) specifically
23 provides that: "the award of reasonable attorney fees pursuant to this section should be made
24 to mitigate the burden of the expense of litigation to establish a just claim or a just defense. It
25 need not equal or relate to the attorney fees actually paid or contracted, but the award may
26 not exceed the amount paid or agreed to be paid." A.R.S. §12-341.01(B). PFP has incurred
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1 \$20,542.00 in attorneys' fees, which is further supported as required by Arizona Rules of
2 Civil Procedure, Rule 54(g)(4), by the Affidavit of Stephanie K. Gintert, filed concurrently
3 herewith. The Arizona Supreme Court described the elements that a court may consider
4 when determining a reasonable amount of attorneys' fees in *Schwartz v. Schwerin*, 85 Ariz.
5 242, 336 P.2d 144 (1959). In *Schwartz*, the Court identified the following factors to be
6 considered:
7

8 *The qualities of the advocate:* his ability, his training, education, experience,
9 professional standing and skill; (2) *the character of the work to be done:* its
10 difficulty, its intricacy, its importance, time and skill required, the
11 responsibility imposed and the prominence and character of the parties where
12 they affect the importance of the litigation; (3) *the work actually performed by*
13 *the lawyer:* the skill, time and attention given to the work; (4) *the*
14 *result:* whether the attorney was successful and what benefits were derived.
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17 *Schwartz v. Schwerin*, 85 Ariz. 242, 245–46, 336 P.2d 144, 146 (1959). Each of these
18 factors support a finding that the attorneys' fees incurred in the defense of this matter was
19 appropriate and reasonable.
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21 **a. The Quality Of The Advocate.**
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23 Counsel for PFP are experienced and skilled. Shawna Murphy Woner is a partner at
24 Garrey, Woner, Hoffmaster & Peshek. She was admitted to the Arizona Bar in 1989. For
25 nearly 30 years Ms. Woner has handled complex matters including, insurance defense,
26 insurance bad-faith, insurance coverage, and other litigation matters. Ms. Woner has
27 practiced before both the Arizona State Appellate Court and the Arizona Supreme Court.
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1 Stephanie K. Gintert became a partner at Garrey, Woner, Hoffmaster & Peshek in May,
2 2020, during the pendency of this case. She first began practicing in Florida in 2009 and was
3 admitted to the Arizona Bar in 2012. Ms. Gintert's practice focuses on insurance defense
4 litigation. As established in the attached Affidavit by Ms. Gintert filed concurrently
5 herewith, Ms. Woner and Ms. Gintert's hourly billing rates for this case were actually well
6 below the market standard. Ms. Woner initially handled the matter as the primary partner at
7 the inception of the case with Ms. Gintert as the associate and when Ms. Gintert became
8 partner, she took the primary lead on the case, including the work involved with PFP's
9 Motion to Dismiss.
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12 **b. The Character Of The Work To Be Done And The Work Actually Performed**
13 **By The Lawyers.**
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15 PFP's request for attorneys' fees is reasonable because PFP was required to retain
16 counsel to defend against Plaintiffs' allegations. A large portion of PFP's fees were
17 expended in engaging in extensive motion practice, which ultimately defeated Plaintiffs'
18 claims in their entirety. Time was also devoted in coordination among the Defendants as
19 well as initial discovery to evaluate the issues and potential defenses.
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21 **c. The Result.**
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23 As demonstrated, PFP is the prevailing party in terms of Plaintiffs' allegations, and
24 therefore the time and effort that PFP's counsel spent in defending Plaintiffs' claim was
25 effective.
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3. PFP Is Entitled to Recover Its Taxable Costs.

Pursuant to A.R.S. §12-341, “the successful party to a civil action shall recover from his adversary all costs expended or incurred therein unless otherwise provided by law.” As the prevailing party, PFP requests its taxable costs pursuant to A.R.S. §12-341 in the amount of \$265.75. *See* Verified Request for an Award of Taxable Costs, attached as Exhibit 2.

4. Conclusion

As the prevailing party in this action, PFP respectfully seeks \$20,542.00 in attorneys’ fees pursuant to A.R.S. §12-341.01 and \$265.75 in taxable costs pursuant to A.R.S. § 12-341 from Plaintiffs.

RESPECTFULLY submitted this 7th day of January, 2021.

GARREY, WONER, HOFFMASTER & PESHEK, P.C.

By /s/ Stephanie K. Gintert
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ORIGINAL of the foregoing
e-filed this 7th day of
January 2021, with the
Clerk of Maricopa County
Superior Court.

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3 January, 2021, to:

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