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10 *Attorneys for Plaintiff*

11 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**  
12 **IN AND FOR THE COUNTY OF MARICOPA**

13 LAVEEN MEADOWS HOMEOWNERS'  
14 ASSOCIATION, an Arizona nonprofit  
15 corporation,

16 Plaintiff,

17 vs.

18 CARLOS MEJIA, a married man, as his  
19 sole and separate property, *et. al.*,

20 Defendants.

No. CV2016-094391

**MOTION TO STRIKE**

(Assigned to the Hon. Margaret Benny)

(Oral Argument Requested)

21 Plaintiff Laveen Meadows Homeowners' Association ("Association"), through  
22 undersigned counsel, hereby submits this Motion to Strike portions of Defendant Carlos  
23 Mejia's ("Defendant") Reply to his Motion to Set Aside Default ("Reply") for improperly  
24 citing a memorandum decision of another judge of the Superior Court, and failure to fulfill  
25 counsel's duty of candor to the Court. For the reasons discussed below, the Motion to Strike  
26 must be granted.

**ARGUMENT**

27 **I. RELEVANT BACKGROUND**

28 In his Reply, Defendant cites to two cases as supportive of his position and requests  
the Court take judicial notice of these cases. Neither the Association, nor Defendant were

1 parties to that action. Defendant did not provide copies of the rulings he cites, nor does he  
2 disclose relevant contrary authority to his position. Because the citations to these other cases  
3 are irrelevant and Defendant failed to disclose contrary rulings, as well, this portion of  
4 Defendant's Reply must be stricken and disregarded by the Court.  
5

## 6 **II. IMPROPER CITATIONS MUST BE STRICKEN**

7 ARCP 7.1(f)(1) states, "Unless made at trial or an evidentiary hearing, a motion to  
8 strike may only be filed . . . if it seeks to strike any part of a filing or submission on the  
9 ground that it is prohibited, or not authorized, by a specific statute, rule, or court order." Rule  
10 111(c), Sup. Ct. R. Ariz., states:

11 (1) Memorandum decisions of Arizona state courts are not precedential and  
12 such a decision may be cited only (A) to establish claim preclusion, issue  
13 preclusion, or law of the case . . . (C) for persuasive value, but only if it was  
14 issued on or after January 1, 2015; no opinion adequately addresses the issue  
before the court; and the citation is not to a depublished opinion or a  
depublished portion of an opinion.

15 (2) A citation must indicate if a decision is a memorandum decision.

16 (3) A party citing a memorandum decision must provide either a copy of the  
17 decision or a hyperlink to the decision where it may be obtained without  
18 charge.  
19

20 A superior court judge has no authority to review a previous ruling of another superior court  
21 judge. *See Fraternal Order of Police, Lodge 2 v. Superior Court*, 122 Ariz. 563, 565, 596  
22 P.2d 701, 703 (1979).

23 In this case, Defendant's request for the Court to take judicial notice of these cases is  
24 improper. Defendant does not use the minute entry to establish res judicata, collateral  
25 estoppel, or the law of the case, nor does he establish that there are no other opinions that  
26 adequately address the issue before the Court, or even at a minimum provide copies of the  
27 relevant orders for the Court and Plaintiff to review. In effect, Defendant has presented these  
28 cases without any background or even copies of the orders, and asked that this Court review  
and adopt the ruling. This Court is not authorized to review these rulings. That task belongs to

1 an appellate court. As a result, the Court must strike any mention or citation to the minute  
2 entry in Holdings' submission, and not consider the minute entry for any purpose in this case.


3 Furthermore, in a direct violation of Defendant's counsel's duty of candor to the  
4 tribunal, Defendant has failed to disclose adverse authority known by counsel to be directly  
5 adverse to Defendant's position. Ethical Rule 3.3(a) states, "A lawyer shall not knowingly . . .  
6 fail to disclose to the tribunal legal authority in the controlling jurisdiction known to the  
7 lawyer to be directly adverse to the position of the client and not disclosed by opposing  
8 counsel . . ." In a prior case, Defendant's counsel represented a client and used the identical  
9 tactic used in this matter, and the Superior Court ruled against him. **Exhibit A**, *Val Vista*  
10 *Greens Inc v. Trish O Coury, et al.*, Minute Entry, CV2014-054274 (Maricopa County  
11 Superior Court, Jul. 6, 2015). Defendant's counsel has failed to disclose this contrary  
12 authority, and thus seeks to improperly influence the Court. As a result, Defendant's use of  
13 prior Superior Court cases must be stricken and disregarded by this Court.

#### 14 CONCLUSION

15 For the foregoing reasons, portions of Defendant's reply relying on prior Superior  
16 Court cases must be stricken and disregarded.

17 DATED this 19<sup>th</sup> day of May, 2017.

18 MAXWELL & MORGAN, P.C.

19  
20 By 

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26  
27  
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1 **ORIGINAL** of the foregoing submitted  
for efilng this 19<sup>th</sup> day of March, 2017, to:

2 Clerk of the Superior Court  
3 Maricopa County Superior Court  
4 201 West Jefferson Street  
5 Phoenix, Arizona 85003

6 **COPY** of the foregoing  
mailed this 19<sup>th</sup> day of May, 2017 to:

7 Jonathan A. Dessauls  
8 5353 N. 16<sup>th</sup> St., Suite 110  
9 Phoenix, Arizona 85016  
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11 By: Caitlin Stewart

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