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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

REPLY TO MOTION TO STRIKE

(Assigned to the Hon. Margaret Benny)

(Oral Argument Requested)

21
22 Plaintiff Laveen Meadows Homeowners’ Association (“Association”), through
23 undersigned counsel, hereby submits this Reply to its Motion to Strike portions of Defendant
24 Carlos Mejia’s (“Defendant”) Reply to his Motion to Set Aside Default (“Reply”) for
25 improperly citing a memorandum decision of another judge of the Superior Court, and failure
26 to fulfill counsel’s duty of candor to the Court. Defendant has not cured the defects in his
27 pleading, and the offending portions of his Reply to his Motion to Set Aside Default should
28 be stricken. For the reasons discussed below, the Motion to Strike must be granted.

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ARGUMENT

Defendant argues that he simply requested that the Court take judicial notice of the two cases cited, and that “the Court can decide for itself.” Def. Resp. M. Strike, at 1. However, even that request is improper. A superior court judge has no authority to review a previous ruling of another superior court judge. *See Fraternal Order of Police, Lodge 2 v. Superior Court*, 122 Ariz. 563, 565, 596 P.2d 701, 703 (1979) (“The respondent judge, in effect, was acting as a reviewing court of a judge on the same court. He had no jurisdiction to review or change the judgment of a judge with identical jurisdiction.”). Because this Court has no authority to review the opinions of other judges on the same court, those opinions must be stricken.

Defendant’s counsel also attempts to misdirect the Court’s attention from his improper use of those cases by arguing that he was simply pointing out that this scenario has played out in other cases. Where Defendant’s counsel has failed in his duty of candor is by failing to point out that it has played out *differently* in other cases, and the issue is far from reaching the level of a “legislative fact” that can be judicially noticed by the Court. *See Ariz. R. Evid. 201(a)*; *see also Kenyon v. Hammer*, 142 Ariz. 69, 84, 688 P.2d 961, 976 (1984) (“‘legislative facts’ which are defined as ‘established truths, facts or pronouncements that do not change from case to case.’”) (quoting *Boucher v. Sayeed*, 459 A.2d 87, 92 (R.I. 1983)). Instead, Defendant’s counsel improperly cited the cases only favoring his client’s position, knowing full well that there was at least one other case *in which he was involved* where the Court ruled the exact opposite.

Finally, Defendant also wags his finger at Plaintiff’s counsel for “churn[ing] this case to generate fees beyond those necessary to successfully terminate the case.” Def. Resp. M. Strike at 2. This is simply name-calling to draw the Court’s attention from Defendant’s counsel’s unethical conduct. Plaintiff is entitled to protect its right to foreclose on its lien, but Plaintiff must abide by the rules that govern this Court, and Plaintiff’s counsel must also abide by the duties imposed by the Arizona Ethical Rules, just as Defendant and his counsel must do. However, Defendant has failed to do so. This impropriety cannot be condoned by the Court, and the portions of the Reply that improperly cite these other Superior Court cases must be stricken.

