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IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF MARICOPA

LISA MARX, an individual,

Plaintiff,

vs.

TARA CONDOMINIUMS
ASSOCIATION, an Arizona non-profit
corporation; MARK GOTTMANN, an
individual; DENNIS ANDERSON, an
individual

Defendant.

Case No. CV2025-012980

**ASSOCIATION’S PARTIAL MOTION
TO DISMISS PLAINTIFF’S CLAIMS
THAT ARE DERIVATIVE IN NATURE
PURSUANT TO RULE 12(B)(6)**

Defendant, Tara Condominium Association (the “Association”) hereby requests that this Court dismiss claims one, three, four, five, six, seven, eight, nine, ten, eleven, and twelve set forth in Lisa Marx’s (“Plaintiff”) Complaint pursuant to Rule 12(b)(6), Ariz.R.Civ.P. Lisa Marx is a member of the Tara Condominium Association. Lisa Marx is not Tara Condominium Association and does not represent the interests of Tara Condominium Association as a matter of Arizona law. Under no interpretation of the facts pled is Plaintiff entitled to the relief sought against the Association that constitutes a derivative action. This Motion is supported by the following Memorandum of Points and Authorities and all of the

1 pleadings and matters of record filed with the Court, all of which are incorporated herein by
2 reference.

3 **MEMORANDUM OF POINTS AND AUTHORITIES**

4 **I. BACKGROUND**

5 The Association is an Arizona homeowner’s association doing business in Maricopa
6 County, Arizona. The Association is governed by the Declaration of Restrictions,
7 Establishment of Board of Management and Line Rights recorded on February 19, 1970 with
8 the Maricopa County Recorder’s Office at Instrument No. 19700029777, Docket No. 8008,
9 Page 724 (“Declaration”). The Association is a condominium community with 50 members.
10 Plaintiff Lisa Marx is one member of the Association. See Complaint at ¶ 7. Defendants Mark
11 Gottmann (“Mr. Gottmann”) and Dennis Anderson (“Mr. Anderson”) (Defendants the
12 Association, Mr. Gottmann and Mr. Anderson are collectively referenced herein as
13 “Defendants”) are Association members and duly elected members of the Board of
14 Management (“Managers”).

15 Plaintiff served her Complaint on Defendants on or about May 5, 2025. Plaintiff alleges
16 numerous claims in her 122 page Complaint, but a majority of Plaintiff’s claims are derivative
17 in nature in that the claims seek redress for alleged damages to the Association and its
18 members as a whole rather than damages to Ms. Marx herself. Defendants are entitled to
19 dismissal of all claims as a matter of Arizona law that seek redress on behalf of the Association
20 and are not particular to Marx herself, and that constitutes most of the claims in the 122 page
21 Complaint.

22 **II. LEGAL ARGUMENT**

23 **A. Standard of Review**

24 Under Rule 12(b)(6), a claim may be dismissed if it does not state a claim upon which relief
25 may be granted. The Arizona Supreme Court, in *State v. Superior Court of Maricopa Cty.*, 123
26

1 Ariz. 324, 599 P.2d 777 (1979) (overruled on other grounds), articulated the standard trial
2 courts must use in ruling upon Rule 12(b)(6) motions. The court stated:

3 To support the granting of a motion to dismiss for failure to state a claim
4 upon which relief can be granted, it must be clear that the plaintiffs are not
5 entitled to relief under any interpretation of the facts, which is susceptible of
6 proof. Such a motion admits the truth of the facts alleged, for purposes of
7 the motion and merely contends that the plaintiffs are not entitled to relief
8 under any legal theory.

9 *Id.* at 123 Ariz. 329, 599 P.2d 782. The standard was refined and restated by the Arizona Court
10 of Appeals in *Aldabbagh v. Ariz. Dept. of Liquor Licenses and Ctrl.*, 162 Ariz. 415, 783 P.2d
11 1207 (Ct. App. 1989). The *Aldabbagh* court stated:

12 When testing a motion to dismiss for failure to state a claim, well-pleaded
13 material allegations of the complaint are taken as admitted, but conclusions
14 of law or unwarranted deductions of fact are not. The court must determine
15 whether the complaint, construed in light most favorable to the plaintiff,
16 sufficiently sets forth a valid claim.

17 *Id.*, 162 Ariz. at 417, 783 P.2d at 1209. Moreover, the Arizona Supreme Court has noted,
18 “[r]ule 8 does ‘not permit a trial or appellate court to speculate about hypothetical facts that
19 might entitle the plaintiff to relief.’” *Cullen v. Auto-Owners Ins. Co.*, 218 Ariz. 417, 420, ¶14,
20 189 P.3d 344, 347 (2008), citing *Cullen v. Koty-Leavitt Ins. Agency, Inc.*, 216 Ariz. 509, 515,
21 ¶12, 168 P.3d 917, 923 (Ariz. Ct. App. 2007). Finally, the Court may not, “accept as true
22 allegations consisting of conclusions of law, inferences or deductions that are not necessarily
23 implied by well-pleaded facts, unreasonable inferences or unsupported conclusions from such
24 facts, or legal conclusions alleged as facts.” *Jeter v. Mayo Clinic Arizona*, 211 Ariz. 386, 389, ¶
25 4, 121 P.3d 1256, 1259 (App. 2005).

26 **B. A Majority Of Plaintiff’s Claims Are Derivative**

The claims presented by Lisa Marx in her complaint are fundamentally derivative in
nature. A derivative claim is one brought by a shareholder on behalf of a corporation to redress

1 harm done to the corporation itself, rather than to the individual shareholder. *See Albers v.*
2 *Edelson Tech. Partners L.P.*, 201 Ariz. 47, 52, 31 P.3d 821, 826 (App. 2001), quoting *Funk v.*
3 *Spalding*, 74 Ariz. 219, 223, 246 P.2d 184, 186 (1952). The Arizona Nonprofit Corporation
4 Act (the “Act”), at A.R.S. § 10-3630 et seq., provides a vehicle for members of a nonprofit
5 corporation to step into the shoes of the non-profit corporation and maintain a derivative
6 proceeding. Under Arizona law, an action is derivative rather than direct, “if the gravamen of
7 the complaint is injury to the corporation, or to the whole body of its stock or property without
8 any severance or distribution among individual holders.” In this case, the alleged harms, such
9 as the improper handling of association funds, violations of open meeting laws, and
10 mismanagement of the condominium's common areas, are harms to the Tara Condominium
11 Association as a whole, not to Lisa Marx individually.

12 A derivative lawsuit may only be brought if a member meets certain standing
13 requirements and follows a statutorily defined demand process. See A.R.S. §§ 10–3631, 10–
14 3632. For a corporation with members like Tara Condominium Association, the lesser of
15 twenty-five percent (25%) or more of the voting power, or fifty (50) members, must commence
16 the action. (Since the Association has 50 members, Marx will need to join at least 12 other
17 members to meet the statutory requirements.) A.R.S. § 10-3631(A)(1). Further, the
18 complainant must have been a member or a director of the corporation at the time of the
19 alleged act and must “[f]airly and adequately represent the interests of the corporation in
20 enforcing the right of the corporation.” A.R.S. § 10-3631(B). Finally, a derivative action may
21 only be commenced after a written demand has been made on the corporation and ninety (90)
22 days have passed after the demand was made. A.R.S. § 10-3632.¹

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24
25 ¹ The Association reserves the right to supplement its argument with respect to whether
26 Plaintiff properly served a proper demand on the Association in accordance with this
requirement.

1 Here, Marx’s complaint does not establish that she “fairly and adequately represents the
2 interests of the corporation in enforcing the right of the corporation.” Nor does her Complaint
3 establish that she made written demand upon the corporation 90 or more days before filing the
4 lawsuit.

5 Below is a list of some, but not all, of Plaintiff’s claims for relief that establish that the
6 claims are derivative:

7 Claim 1. Violation of Open Meeting Laws: Allegations against the Tara Board of
8 Managers and Mark Gottmann for violating fiduciary duties by not adhering to
9 open meeting laws involves harm to the Association’s governance and affects all
10 members equally. Specifically, Marx alleged harm to an unnamed homeowner
11 because of Gottmann’s actions, and she alleged Gottmann took Board actions
12 without providing the community an opportunity to give input. Further, Marx
13 alleged that Gottmann took board actions without holding a vote of the members.
14 These alleged violations are relevant to the whole community, and not individual
15 to Marx. (Complaint, Marx v. Tara Condominiums et al., CV2025-012980
16 (Super. Ct. Maricopa Cty., Ariz.) at Pages 1-25 of 122).

17 Claim 3. Changing the Insurance Deductible Without Amending the By-Laws:
18 Allegations of unauthorized changes to insurance policies without member
19 approval is derivative as it involves unauthorized actions affecting the
20 association's financial obligations and governance affecting all members.
21 (Complaint, Marx v. Tara Condominiums et al., CV2025-012980 (Super. Ct.
22 Maricopa Cty., Ariz.) at Pages 34-37 of 122).

23 Claim 4. Denial of Right to Vote in Person on Budget Vote: Allegations of
24 preventing members of the Association to cast votes properly is not an issue
25 specific to Marx. The language from the complaint confirms that this matter is
26 not individual to her; she alleged this failure resulted in financial harm to all of
the homeowners and therefore, the claim is derivative in nature. (Complaint,
Marx v. Tara Condominiums et al., CV2025-012980 (Super. Ct. Maricopa Cty.,
Ariz.) at Pages 37-38 of 122).

Claim 5. Inequitable and Illegal Distribution of Common Expenses: Allegations
of improper financial charges to individual homeowners for common area
expenses are derivative in that they are not specifically related to Marx’s claims
but other members of the Association. For example, Marx alleged Defendants’
improperly charged an unnamed homeowner for damages to a common element;

1 and asserts that the Association should reimburse the unnamed homeowner.
2 Marx does not allege that she suffered this harm. Common Elements are those
3 that are available to all members of the community, and therefore, the interest in
4 the common elements is one of all unit owners and not just Marx.(Complaint,
Marx v. Tara Condominiums et al., CV2025-012980 (Super. Ct. Maricopa Cty.,
Ariz.) at Pages 39-42 of 122).

5
6 Claim 6. Showing Partiality/Preferential Treatment: Allegations of favoritism
7 and unequal treatment by the board are derivative because, again, the claim does
8 not allege a particularize damage to Marx but damage to the Association as a
9 whole. The language included in Plaintiff's complaint indicates the derivative
10 nature of claims. Specifically, in Claim 6 of the Complaint, Marx repeatedly
11 alleges the Defendants have failed "...to treat *all members* of the community
12 equally..." Moreover, Marx does not simply allege that the Board failed to
13 provide her an opportunity to address the Board's decision to eliminate the
14 landscaping committee but specifically alleges that the Board failed to provide
15 any homeowner an opportunity to address the decision to eliminate the
landscaping committee or volunteer for landscaping projects. Moreover, Marx
regularly alleges that the Board's actions are contrary to the community's best
interests and creates division among the community. These are not allegations
unique to Ms. Marx but rather, the community as a whole. (Complaint, Marx v.
Tara Condominiums et al., CV2025-012980 (Super. Ct. Maricopa Cty., Ariz.) at
Pages 43-57 of 122).

16 Claim 7. Failure to Enforce Violations: Allegations of the board's failure to
17 enforce community rules and regulations is derivative because it pertains to the
18 enforcement of violations against other members, not Marx and affects the
19 Association members as a whole. (Complaint, Marx v. Tara Condominiums et
al., CV2025-012980 (Super. Ct. AZ Maricopa Cty., Ariz.) at Pages 57-71 of
122).

20 Claim 8. Insurance Claims on 13601 N. Newcastle: Allegations of improper
21 handling of insurance claims affecting the association's insurance policy is
22 derivative in that it affects all of the Association members and not particularized
23 toward Marx. (Complaint, Marx v. Tara Condominiums et al., CV2025-012980
(Super. Ct. Maricopa Cty., Ariz.) at Pages 71-78 of 122).

24 Claim 9. Insurance Type of Coverage: Allegations of failing to address the
25 Master Insurance Policy are derivative in nature because the master insurance
26 policy does not pertain specifically to Marx's unit, but the policy applies to all of

1 the units, as well as the Association’s common areas. Again, Marx alleges that
2 the Board’s actions are not in “the best interest of the association” and asserts
3 that the Board is failing to uphold fiscal responsibility to the members of the
4 association. (Complaint, Marx v. Tara Condominiums et al., CV2025-012980
(Super. Ct. Maricopa Cty., Ariz.) at Pages 78-82 of 122).

5 Claim 10. False Corporate Records: Allegations of inaccuracies in corporate
6 records maintained by the board again impact the entire Association and any
7 alleged damages are not particularized to Marx. In this claim, Marx alleged
8 Defendants failed to act in the best interest of the association and alleged the
9 Association is “grossly underfunded and ill prepared to handle insurance needs
10 going forward.” This allegation affects the financial wellbeing of the Association
11 and is not unique to Marx. (Complaint, Marx v. Tara Condominiums et al.,
12 CV2025-012980 (Super. Ct. Maricopa Cty., Ariz.) at Pages 83-91 of 122).

13 Claim 11. Abuse of Position, Power and Authority of Chairperson: Allegations
14 of misuse of authority by the board chairperson are derivative because Marx
15 alleges damages to the Association members as a whole. Again, Marx alleged
16 that Gottmann’s actions were not in the best interest of the Association and
17 requested that Gottmann be held personally responsible for the legal debts
18 incurred by the Association.(Complaint, Marx v. Tara Condominiums et al.,
19 CV2025-012980 (Super. Ct. Maricopa Cty., Ariz.) at Pages 91-96 of 122).

20 Claim 12. Neglecting the Common Area Landscaping: Allegations of failure to
21 maintain common areas, affecting the community's aesthetic and financial value
22 are derivative in nature in that the damage is not particularized to Marx but
23 affects the entire Association membership. Specifically, Marx alleged infestation
24 of weeds in the common areas and the loss of common area plants due to
25 inadequate watering. The common areas are not the individual property of Marx.
26 Moreover, Marx alleged that these actions by Defendants resulted in financial
harm to the association as a whole, and not to herself individually. (Complaint,
Marx v. Tara Condominiums et al., CV2025-012980 (Super. Ct. Maricopa Cty.,
Ariz.) at Pages 97-101 of 122).

The derivative claims outlined above fail to allege any particularized harm to Marx,
exclusive of the other members of the Association, but simply alleges that the membership is
generally harmed by the Association’s alleged litany of failures. For example, Plaintiff seeks
recoupment of funds from Mr. Gottmann and Mr. Anderson in order to redress the alleged
harms suffered by the membership, which makes the claims derivative by the very nature of

1 the relief requested. If Plaintiff were not stepping into the place of the Association for the
2 purpose of the instant case, the requested assessments would flow to Lisa Marx.

3 Because the claims are derivative, they must be brought by plaintiffs that, “fairly and
4 adequately represent the interests of the corporation” A.R.S. § 10-3631(B). There are 49
5 members of the Association, and a single member of the Association could not possibly
6 adequately represent the interests of the entire membership of the Association. Accordingly,
7 all of the claims alleging that the Association has harmed the Association members must be
8 dismissed because Plaintiff does not have the necessary standing to represent the general
9 interests of the members. The Association is entitled to a dismissal of Plaintiff’s claims.

10 **C. The Complaint must also be dismissed for failure to comply with Ariz. R.
11 Civ. P. 23.1**

12 Given Plaintiff’s claims are derivative, the Complaint must be dismissed for failure to
13 comply with the requirements of Ariz. R. Civ. P. 23.1. Pursuant to Rule 23.1, when a
14 shareholder in a corporation brings a derivative action to enforce a right that the corporation
15 may properly assert, but has failed to enforce, the complaint must:

16 (1) be verified;

17 (2) allege facts sufficient to show that the plaintiff has standing to maintain the
18 derivative action; and

19 (3) allege facts sufficient to show that the plaintiff satisfies all statutory and other
20 requirements under the law for maintaining the derivative action.

21 Plaintiff’s Complaint fails to identify any facts which establish Plaintiff has the right to pursue
22 derivative claims and it meets the requirements under Arizona law for maintaining the
23 derivative action; therefore, Plaintiff’s Complaint should also be dismissed for failure to
24 comply with Ariz. R. Civ. P. 23.1. The Association is entitled to dismissal of those derivative
25 claims as a matter of Arizona law.

1 **D. The Declaration provides the Board discretion regarding multiple claims**
2 **asserted by Plaintiff.**

3 Plaintiff's claims also overlook the terms of the Declaration, which delegates decisions
4 on insurance; common area maintenance; promulgation of reasonable rules; and appointment
5 of officers and agents to carry out the business of the Board.

6 Specifically, Declaration of Restrictions, Establishment of Board of Management and
7 Lien Rights at No. 12:

8 [T]he Board of Management shall have the following rights and powers:

9 B. To use and expend the assessments collected to maintain, care for and
10 preserve the common elements, buildings, grounds, and improvements (other
11 than interior of the buildings).

12 D. To pay for water, insurance, sewerage and other utilities and expenses
13 as shall be designated by the Board.

14 F. To repair and replace facilities, machinery and equipment as is
15 necessary and convenient, in the discretion of the Board.

16 H. To insure, and keep insured, all buildings and improvements on the
17 property, and the owners thereof, against loss from fire or other casualty, and to
18 purchase same and such insurance as the Board may deem advisable. Such
19 insurance may, at the discretion of the Board, be taken in the name of the Board
20 for the benefit of all unit owners, or in such other manner as the Board may deem
21 advisable. In the event any of such insurance proceeds are insufficient to repair
22 or replace loss or damage, to levy an additional assessment in proportionate
23 amounts as to each unit to cover such deficiency.

24 J. To protect and defend the property from loss and damage by suit, or
25 otherwise.

26 K. To employ and dismiss workmen, maids, janitors, gardeners, lawyers,

1 accountants and any others necessary to carry out the rights and powers herein
2 granted and to purchase supplies and equipment, to enter into contracts and
3 generally to have the powers of an apartment house manager in connection with
4 the matters hereinbefore set forth, except that the Board, nor any officer elected
5 thereby, may not encumber or dispose of the interest of any owner except in
6 order to satisfy a judgment against such owner for violation of the owner's
7 covenants imposed by these restrictions.

8 The Board of Managers derive their decision-making authority by virtue of the members
9 of the Association voting them to serve as the decision makers for the non-profit corporation. If
10 any member is displeased with how the affairs of the Association are conducted, that member
11 may run for a position on the Board of Managers, vote for individuals they believe will best
12 represent their interests and/or present their opinions on issues in the community during an
13 open meeting. *See* A.R.S. § 33-1804 (“all members or designated representatives so desiring
14 shall be permitted to attend and speak at an appropriate time during the deliberations and
15 proceedings.”). Plaintiff's attempt to circumvent the will of the membership serves to side-step
16 the will of the members who elected the Board of Directors to make such decisions essentially
17 telling the membership their elected representatives' decisions do not matter, all based on the
18 claims of a single member of the Association. Simply because Plaintiff is displeased with the
19 decisions made by the Board does not entitle Plaintiff to file a Complaint challenging the
20 decisions made by the Board of Directors when such authority is explicitly granted to them
21 under the terms of the Declaration.

22 **E. Plaintiff is not entitled to relief in the form of sanctions against two of the**
23 **Association's four current Managers.**

24 Plaintiff asks the Court to assess sanctions against Mr. Gottmann and Mr. Anderson for
25 acts that they have taken as two of the Association's Board members. Again, this is a request
26 for the benefit of the Association members, not Marx, herself. Indeed, it would be highly

1 inequitable to pay Marx the sanctions she requests as the claim may only be for the benefit of
2 the Association. The Association’s governing documents contain no provision that provides
3 any basis for entitlement to Plaintiff recouping funds from the Association Managers,
4 especially when all of the Plaintiff’s claims are derivative and she lacks the standing to bring
5 such claims. The Association, Mr. Gottmann and Mr. Anderson are entitled to dismissal of
6 these claims.

7 **III. CONCLUSION**

8 Defendant Tara Condominium Association hereby respectfully requests this Court to
9 dismiss those claims in the Complaint that are derivative in nature for failure to state a claim
10 upon which relief can be granted. The Association further requests an award of its attorneys’
11 fees and costs expended in drafting and filing the instant Motion to Dismiss.

12 RESPECTFULLY SUBMITTED this 28th day of May, 2025.

13
14 **CHDB LAW LLP**

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18 **ORIGINAL** of the foregoing e-filed
19 this 28th day of May, 2025.

20 AZ TurboCourt

21 **COPY** of the foregoing mailed/e-mailed
22 this 28th day of May, 2025, to:

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26 By: /s/ Suzanne Hilborn