

1 **CHDB Law LLP**

2 1400 East Southern Avenue, Suite 400
3 Tempe, Arizona 85282-5691
4 P. 480-427-2800; F. 480-427-2801
5 minuteentries@CHDBLaw.com
6 (Charles H. Oldham - SBN 021957)
7 Chuck.Oldham@chdblaw.com
8 (Ari A. Bowhay - SBN 036858)
9 Ari.Bowhay@chdblaw.com
10 *Attorneys for Defendant*

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

13 LISA MARX, an individual,

14 Plaintiff,

15 vs.

16 TARA CONDOMINIUM ASSOCIATION,
17 an Arizona non-profit corporation;

18 Defendant.

Case No. CV2025-012980

**DEFENDANT’S MOTION FOR
JUDGMENT ON THE PLEADINGS**

19 Pursuant to Rule 12(c) of the Arizona Rules of Civil Procedure, Defendant Tara
20 Condominium Association, Inc. (the “Association”) moves for partial judgment on the
21 pleadings as to the claims in Plaintiff Lisa Marx’s two operative pleadings whose gravamen is
22 injury to property owned in common, to the Association’s funds, or to the membership as a
23 whole, rather than any injury unique to Plaintiff. Plaintiff proceeds on two pleadings: the
24 Second Amended Complaint, filed September 15, 2025 (the “SAC”), and the Rule 15(d)
25 Supplemental Pleading (the “Supplemental Pleading”), which the Court created by converting
26 Plaintiff’s separately filed Civil Complaint in CV2025-062973. The specific claims and
paragraphs at issue are identified by count below and are referred to collectively as the
“Community-Wide Claims.” Under the Arizona Court of Appeals’ decision in *Iqtunheimr,*
LLC v. Val Vista Lakes Community Ass’n, 2026 WL 369439 (Ariz. App. Feb. 10, 2026), claims
of this character are derivative, and a single member may not pursue them without satisfying
Arizona’s statutory prerequisites for derivative actions. *See* A.R.S. §§ 10-3631, 10-3632; Ariz.

1 R. Civ. P. 23.1. Plaintiff has satisfied none of those prerequisites. The Community-Wide
2 Claims should be dismissed.

3 This Motion is supported by the following Memorandum of Points and Authorities and
4 the entire record in this matter.

5 MEMORANDUM OF POINTS AND AUTHORITIES

6 I. INTRODUCTION

7 On June 24, 2025, this Court (Warner, J.) denied the Association’s partial motion to
8 dismiss certain of Plaintiff’s then-pleaded claims as derivative. (Minute Entry, attached as
9 **Exhibit C.**) The Court held the claims as then pleaded were “brought to assert her rights as a
10 member against the Association under the CC&R’s,” limited Plaintiff’s recovery to “damages
11 she herself has suffered and can prove,” held that she “may not recover damages for harm to
12 the others or to the community in general,” and expressly declined to decide whether any of
13 Plaintiff’s claims would ultimately require joining other members.

14 That ruling addressed a superseded pleading. The operative pleadings now are the SAC
15 and the Supplemental Pleading, both filed after June 24, 2025. And after both pleadings were
16 filed and the Association had responded, the Court of Appeals decided *Iqtunheimr*, which
17 holds that when a member sues an association over the maintenance and insurance of property
18 held in common, or over the handling of association funds, the claim is derivative regardless of
19 the labels the member places on it, and the member must satisfy the statutory prerequisites for
20 a derivative action or the claim fails. Plaintiff has satisfied none of them. The Community-
21 Wide Claims, identified count-by-count below, should be dismissed.

22 II. FACTUAL AND PROCEDURAL BACKGROUND

23 Plaintiff Lisa Marx owns one unit in the Tara Condominiums, a fifty-unit community in
24 Sun City governed by the Association and by a Declaration recorded in 1970. By Plaintiff’s
25 own allegation, her unit carries an undivided one-fiftieth interest in the common elements,
26 shared with every other owner. SAC ¶ 8; Supplemental Pleading ¶ 6. Plaintiff filed her SAC on

1 September 15, 2025, proceeding solely against the Association. The Association answered the
2 SAC. The pleadings as to the SAC are closed.

3 On November 21, 2025, Plaintiff filed a separate Civil Complaint for Declaratory
4 Judgment and Injunctive Relief, assigned case number CV2025-062973, challenging the
5 Association’s 2025 amendments to the Declaration and the related insurance changes. On
6 March 16, 2026, the parties agreed, and the Court ordered, that the CV2025-062973 complaint
7 would be treated as a supplemental pleading under Rule 15(d) in this action. The Court’s
8 March 20, 2026 Minute Entry memorialized that order and directed the Association to respond.
9 The Association filed its Response on March 30, 2026. The pleadings as to the Supplemental
10 Pleading are likewise closed. The Court of Appeals decided *Iqtunheimr* on February 10, 2026,
11 after both pleadings and after the Association’s responses. A Rule 12(c) motion is now
12 properly before the Court.

13 **III. LEGAL STANDARD**

14 A motion for judgment on the pleadings under Rule 12(c) tests whether, accepting the
15 well-pleaded factual allegations as true, the moving party is entitled to judgment as a matter of
16 law under the same standard governing a Rule 12(b)(6) motion to dismiss. The Court assumes
17 the truth of the well-pleaded, material allegations, but it does not accept “allegations consisting
18 of conclusions of law, inferences or deductions that are not necessarily implied by well-
19 pleaded facts, unreasonable inferences or unsupported conclusions from such facts, or legal
20 conclusions alleged as facts.” *Iqtunheimr*, 2026 WL 369439, ¶ 5 (quoting *Jeter v. Mayo Clinic*
21 *Ariz.*, 211 Ariz. 386, 389, ¶ 4, 121 P.3d 1256, 1259 (App. 2005)); *see also Cullen v. Auto-*
22 *Owners Ins. Co.*, 218 Ariz. 417, 419 ¶ 7 (2008). Whether a plaintiff has the capacity to bring
23 the claims she asserts is a question of law for the Court. *Iqtunheimr*, 2026 WL 369439, ¶ 12
24 (citing *Gemstar Ltd. v. Ernst & Young*, 185 Ariz. 493, 499 (1996)).

25 This Motion rests on the allegations in the SAC and the Supplemental Pleading, the
26 Association’s responses to those pleadings, and matters of which the Court may take judicial

1 notice under Ariz. R. Evid. 201, including its own records in this case and published Arizona
2 decisions. The Court may also take judicial notice of Plaintiff's filings in this matter and in the
3 *Iqtunheimr* appeal, copies of which are attached as exhibits.

4 IV. ARGUMENT

5 **A. An Action Is Derivative When Its Gravamen Is Injury to the Corporation or Its** 6 **Members Collectively, Whatever the Plaintiff's Labels.**

7 Arizona distinguishes between direct claims, which a member may bring on her own
8 behalf, and derivative claims, which belong to the corporation and require the statutory
9 derivative-action procedures. An action is derivative "if the gravamen of the complaint is
10 injury to the corporation, or to the whole body of its stock or property without any severance or
11 distribution among individual holders, or if it seeks to recover assets for the corporation or to
12 prevent the dissipation of its assets." *Iqtunheimr*, 2026 WL 369439, ¶ 6 (quoting *Albers v.*
13 *Edelson Tech. Partners L.P.*, 201 Ariz. 47, 52 ¶ 17 (App. 2001), quoting *Funk v. Spalding*, 74
14 Ariz. 219, 223 (1952)). A member may proceed directly only where her relationship with the
15 wrongdoer is separate from her status as a member, where the wrongdoer owes her a duty for
16 some reason other than that status, or where she individually sustained the injury rather than
17 the corporation. *Id.* ¶ 9 (citing *Albers*, 201 Ariz. at 52 ¶ 18);

18 *Iqtunheimr* applied this standard to a homeowner who sued her association for
19 breaching the association's declaration. The court held that because the alleged harms were to
20 the common areas, the claims were derivative and "belong to the community as a whole" rather
21 than to any individual owner. *Id.* ¶ 10. It did not matter that the homeowner "insists it filed a
22 direct action"; the court looked past the label to the gravamen of the complaint and the nature
23 of the injury alleged. *Id.* ¶¶ 9-10. Nor did it matter that the homeowner styled her claims as
24 breach of contract and breach of the implied covenant. *Id.* ¶ 3. The dispositive question was
25 whose injury the complaint described, and the answer was the community's.

1 **B. Each Challenged Claim Is Derivative.**

2 Measured against that standard, each of the Community-Wide Claims is derivative. The
3 claims are identified count by count, with the paragraphs comprising each claim and an
4 explanation of why each is derivative.

5 **1. SAC Count IV and DJ Count IV — A.R.S. § 33-1212 (Unit Boundaries) (¶¶**
6 **103–107, 139–141).**

7 Count IV alleges that the Association improperly assessed half of the cost of a roof
8 repair to a common element to a single unit owner and half to the Association (¶ 103), filed a
9 claim under the Master Policy for plumbing damage inside unit 13601 N. Newcastle that was
10 the owner’s responsibility (¶¶ 104–105), and thereby shifted “the financial burden to other
11 owners” (¶ 106) while misleading members about premium increases (¶ 107). DJ Count IV
12 seeks declarations that “the assessment is invalid” and that “common element costs must be
13 borne by the Association alone” (¶ 141). Plaintiff does not own 13601 N. Newcastle; she owns
14 Unit 5 at 13610 N. 111th Avenue. SAC ¶ 8; Supplemental Pleading ¶ 6. She alleges no injury
15 unique to her from the Newcastle assessment or the Master Policy claim made on that unit’s
16 behalf, and could not, because she has no proprietary interest in that unit, its roof, or the
17 Association’s deductible payment except as one fiftieth of the membership. The injury she
18 alleges is, by her own pleading, an injury to the rest of the membership. She uses the same
19 formulation — that the Association’s conduct “shift[ed] the financial burden to other owners”
20 — not just at ¶ 106 of Count IV but again at ¶ 112 (Count V), ¶ 116 (Count VI), and ¶ 124
21 (Count VII). Across four counts, Plaintiff repeats verbatim that the harm fell on the rest of the
22 membership. Any recovery would adjust burdens that run equally to all fifty units and
23 replenish the Association’s funds. Under *Iqtunheimr*, 2026 WL 369439, ¶¶ 6, 10, that is the
24 definition of a derivative claim.
25
26

1 **2. SAC Count V and DJ Count V — A.R.S. § 33-1247 (Upkeep) (¶¶ 108–113,**
2 **142–143).**

3 Count V alleges that the Association improperly assessed half a common-element roof
4 repair to a unit owner (¶ 108), “allowed the common areas to deteriorate” by ignoring reports
5 of property deterioration (¶ 109), and engaged in the same master-policy claim handling
6 alleged in Count IV (¶¶ 110–113). DJ Count V seeks declarations that the Association “must
7 promptly repair common elements” (¶ 143). This is the precise claim *Iqtunheimr* held was
8 derivative: a failure to maintain the common areas is an injury that “belong[s] to the
9 community as a whole” and not to any individual owner. *Id.* ¶¶ 1, 10. Plaintiff does not own
10 13609 N. Newcastle (the roof-repair address) or 13601 N. Newcastle (the master-policy-claim
11 address pulled in by Count V’s incorporated paragraphs). She owns Unit 5, elsewhere. SAC ¶
12 8; Supplemental Pleading ¶ 6. She alleges no injury unique to her from another owner’s roof or
13 from a master-policy claim made on another owner’s behalf. The relief sought (repair of
14 common elements) would run identically to every unit in the development.

15 **3. SAC Count VI and DJ Count VI — A.R.S. § 33-1253 (Insurance) (¶¶ 114–**
16 **z17, 144–146).**

17 Count VI alleges that the Association filed a Master Policy claim for unit-interior
18 plumbing damage at 13601 N. Newcastle (¶ 114), gave its agent approval to do so (¶ 115),
19 “shift[ed] the financial burden to other owners” (¶ 116), and misled members about premium
20 consequences (¶ 117). DJ Count VI seeks declarations that the Association violated § 33-1253,
21 that “unit-specific claims must use HO-6 policies,” and that “premium increases from
22 violations cannot be assessed to Plaintiff” (¶ 146). The master policy covers the common
23 elements of all fifty units. Plaintiff does not own 13601 N. Newcastle, the unit at which the
24 alleged plumbing damage occurred. She owns Unit 5. SAC ¶ 8; Supplemental Pleading ¶ 6.
25 She alleges no injury unique to her from the Master Policy claim filed on the Newcastle
26 owner’s behalf, and could not — the only interests affected belong to the Association (which

1 paid the deductible) and the membership as a whole (which collectively bears any consequent
2 premium increase).

3 Plaintiff has herself confirmed the community-wide character of this claim in another
4 filing in this case. In her March 10, 2026 Motion to Compel Production of Documents from
5 Non-Party Colby Management, Plaintiff described the 13601 N. Newcastle insurance claim as
6 “a financial matter of the association members as a whole on an insurance policy all members
7 are named on.” Plaintiff’s Motion to Compel Production of Documents from Non-Party Colby
8 Management at 4 (March 10, 2026) (attached as **Exhibit B**); *see also id.* at Subpoena rider
9 (same language). That is the precise legal description of a derivative claim. Plaintiff has
10 admitted, in her own filed papers in this case, that the gravamen of Count VI is a wrong to the
11 membership as a whole. The Court may take judicial notice of the Colby motion as a record in
12 this case. Ariz. R. Evid. 201.

13 **4. SAC Count I (Breach of Declarations) and DJ Count I (Declaratory**
14 **Judgment) — the Common-Element, Insurance, Lien, and Association-**
15 **Funds Subsets (Count I ¶¶ 26, 29–32, 35–39, 42–48, 53–58; DJ Count I ¶¶**
16 **129–132).**

17 Count I (Breach of Declarations) and its declaratory counterpart in DJ Count I cover a
18 wide range of alleged conduct, much of which the Association does not challenge through this
19 Motion (see Section IV.C below). The portions challenged fall into four categories, each
20 derivative on its face:

21 (a) *Common-element maintenance and repair*: ¶¶ 30 (roof repairs at 13609 N.
22 Newcastle), 31 (sprinkler line repairs), 47 (roof repair to common element and improper
23 assessment), 53 (landscaping decisions on common areas), and 54 (failure to maintain common
24 areas in response to deterioration reports). The injury alleged is to property held in common by
25 all owners. *Iqtunheimr*, 2026 WL 369439, ¶¶ 1, 10.

26 (b) *Master-policy insurance handling*: ¶¶ 46 (changing insurance deductible), 55–56
(filing Master Policy claims for 13601 N. Newcastle interior plumbing damage), 57 (“shift[ing]

1 the financial burden to other owners”), and 58 (misleading members about premium increases).
 2 These allegations duplicate Counts IV, V, and VI and are derivative for the same reasons.

3 (c) *Unauthorized expenditure and transfer of Association funds*: ¶¶ 26 (\$5,198.69
 4 transfer between Association accounts), 29 (Bermuda grass plan expenditure), 35 (retention of
 5 legal counsel), 36–37 (\$255 and \$438 law-firm invoices), 38 (retroactive approval of
 6 maintenance and landscaping), 39 (general expenditure of Association funds), 42 (assessment
 7 agreement secured outside open meeting), 43 (lighting expenditures), 44 (landscaping
 8 contract), and 45 (\$500 demand-letter payment). Each alleges that the Association expended,
 9 transferred, or contractually obligated Association funds without authority. Recovery would
 10 restore Association assets. *Iqtunheimr* identifies precisely this kind of claim, one that “seeks to
 11 recover assets for the corporation or to prevent the dissipation of its assets,” as derivative. *Id.* ¶
 12 6 (quoting *Albers*, 201 Ariz. at 52 ¶ 17).

13 (d) *Lien release wrongfully shifting an obligation to all owners*: ¶ 48 alleges that the
 14 Association released a lien against owners James Watkins and Nancy Aldis for property
 15 damage they alone were obligated to pay, in a way that “wrongfully shifted that obligation to
 16 all other unit owners.” By Plaintiff’s own description, the injury falls on the membership
 17 collectively. Any recovery would replenish the Association’s funds and run to all owners.

18 DJ Count I (¶¶ 129–132) seeks declarations on the same alleged breaches; the analysis
 19 is the same, because the declaratory and substantive forms of a claim share a single gravamen.
 20 *Cf. Iqtunheimr*, 2026 WL 369439, ¶¶ 9–10 (looking past the labels to the nature of the injury).

21 **5. SAC Count III (§ 33-1248) and DJ Count III (Declaratory Judgment) — the**
 22 **Common-Element, Insurance, Lien, and Association-Funds Subsets (Count III**
¶¶ 70, 73–76, 78–91, 99–102; DJ Count III ¶¶ 136–138).

23 Count III replays the same factual allegations in Count I as violations of § 33-1248, the
 24 open-meetings statute, and adds two more. The challenged paragraphs are the same Count I
 25 subsets identified in Section IV.B.4, repleaded at SAC ¶¶ 70, 73–76, 78–91, plus ¶ 83
 26 (transferring Association funds to a second bank account) and ¶¶ 99–102 (further allegations

1 regarding the 13601 N. Newcastle master-policy claim). DJ Count III (¶¶ 136–138) seeks
2 declarations on the same conduct. To the extent these counts allege injury to common property,
3 mishandling of common-element insurance, dissipation of Association funds, or shifting of
4 obligations to the membership as a whole, the claims are derivative for the same reasons stated
5 in Sections IV.B.1–B.4. The procedural framing as an open-meeting violation does not change
6 the gravamen: *Iqtunheimr* rejected the same labeling effort. *Id.* ¶¶ 3, 9–10.

7 **6. Supplemental Pleading Counts I–IV — the Declaration Amendments and**
8 **Master-Policy Cancellation (Supplemental Pleading ¶¶ 5–18, Counts I–IV).**

9 Counts I through IV of the Supplemental Pleading all incorporate paragraphs 1–18 of
10 the pleading and rest on the same factual core: that the Association’s 2025 amendments to the
11 Declaration improperly shifted insurance and maintenance burdens from the Association to
12 individual owners (¶¶ 7–10), that the amendment process was procedurally flawed (¶¶ 11–15),
13 and that the master property policy would expire on December 1, 2025, leaving “buildings and
14 common elements uninsured” (¶ 16). Count I (Declaratory Judgment) seeks a declaration that
15 the amendments are “invalid, void, and unenforceable.” Count II (Permanent Injunction) seeks
16 an order “enjoining Defendant from enforcing the amendments, implementing the insurance
17 shift, canceling the master policy, or taking adverse actions against non-complying owners.”
18 Count III (Breach of Fiduciary Duty) targets the Board’s conduct of the amendment vote and
19 the shift of “mandatory responsibilities without unanimous consent.” Count IV (Breach of
20 Contract) alleges that the amendments breached the original Declaration’s requirements that
21 the Association maintain and insure buildings and common elements, and seeks “specific
22 performance (reinstating the master policy).”

23 Each is derivative. The amendments apply on identical terms to all fifty units; the
24 master property policy covers the common elements of all fifty units; and the relief sought,
25 voiding the amendments and reinstating the policy, would run identically to every owner.
26 There is no severance or distribution of the alleged injury among individual holders.

1 *Iqtunheimr*, 2026 WL 369439, ¶ 6. That Plaintiff alleges title clouds, increased personal
2 premiums, and potential uninsurability does not change the analysis. The homeowner in
3 *Iqtunheimr* insisted the same, alleging individualized contractual injury, and the court looked
4 past the label to the gravamen and the nature of the injury. *Id.* ¶¶ 3, 9–10. The gravamen here is
5 the Association’s governance and insurance of property held in common.

6 **7. Plaintiff’s Breach-of-Fiduciary-Duty Framing Misstates the Governing**
7 **Standard, and *Tierra Ranchos* Confirms the Community-Wide Character of**
8 **the Claim.**

9 Plaintiff styles Supplemental Pleading Count III as “Breach of Fiduciary Duty,” and the
10 SAC repeatedly invokes the same framing through its “ultra vires” allegations. The framing
11 misstates Arizona law. Arizona courts have declined to recognize a fiduciary duty owed by a
12 condominium or homeowners association to its members. The first Arizona decision to address
13 the question, *Rohde v. Beztak of Arizona, Inc.*, 164 Ariz. 383 (App. 1990), rejected the claim
14 because the plaintiff had “failed to cite any authority for the proposition that ... the
15 homeowners association ... owes a fiduciary duty to a member of the association.” The Arizona
16 Condominium Act does not impose one either. A.R.S. § 33-1243, which defines the powers of
17 the board of directors, nowhere uses the term “fiduciary duty.”

18 The governing standard is instead the one the Court of Appeals adopted in *Tierra*
19 *Ranchos Homeowners Ass’n v. Kitchukov*, 216 Ariz. 195 (App. 2007), which selected the
20 Restatement (Third) of Property: Servitudes § 6.13 as Arizona’s framework for reviewing
21 discretionary decisions of community associations. The court expressly considered, and
22 rejected, both the corporate business-judgment rule and a pure reasonableness standard,
23 holding instead that the Restatement's blended approach properly protects "the collective
24 decision making processes of common-interest communities from second-guessing by the
25 judiciary" and protects "the community from the expenses of too-ready resort to litigation by
26 disgruntled community members, while at the same time protecting individual members from
improper management and imposition by those in control of the association." *Id.*

1 Under Section 6.13, the association owes members duties of ordinary care in managing
2 community property, fair treatment, reasonable exercise of discretionary powers, and
3 reasonable access to information. Those are not fiduciary duties. They are duties of fairness
4 and reasonableness, allocated to the association as the corporate body.

5 *Tierra Ranchos* goes further. It allocates the burden of proof to the member challenging
6 the association’s action and requires the member to prove “injury to the member individually
7 or to the interests of the common-interest community.” *Id.* That disjunction is Arizona’s own
8 version of the direct-versus-derivative distinction. The first category, injury to the member
9 individually, supports a direct claim. The second category, injury to the interests of the
10 common-interest community, is by definition an injury to the community as a whole, which
11 *Iqtunheimr* requires plaintiffs to pursue derivatively. *See Iqtunheimr*, 2026 WL 369439, ¶¶ 6,
12 10.

13 Plaintiff’s pleadings concede the point. The SAC invokes “Restatement (Third) of
14 Prop.: Servitudes §§ 6.13–6.14” in nearly every substantive paragraph (the citation appears in
15 dozens of paragraphs across Counts I through VIII and the declaratory counterparts). She has
16 adopted the very framework that displaces the fiduciary-duty theory she now asserts in
17 Supplemental Pleading Count III. And on the face of her pleadings, the injury she describes is
18 injury “to the interests of the common-interest community”: the Association’s alleged failure to
19 maintain common elements, its claim handling under the master policy covering common
20 elements, its expenditure of Association funds, and its release of an Association lien shifting an
21 obligation “to all other unit owners” (SAC ¶ 48). Whether her claim is analyzed under the
22 fiduciary-duty framework she invokes (which Arizona does not recognize and which, even in
23 corporate-law contexts, would run to the corporation) or under the Restatement § 6.13 standard
24 she pleads (which treats community-wide injury as a community claim), Count III is
25 derivative.

26

1 **8. Plaintiff Has Already Conceded the Community-Wide Character of Her**
2 **Claims in Her Amicus Curiae Brief in *Iqtunheimr*.**

3 In August 2025, while this case was pending, Plaintiff sought and obtained leave to file
4 an amicus curiae brief in *Iqtunheimr* in support of the appellant homeowner. Brief of Amicus
5 Curiae Lisa Marx, *Iqtunheimr L.L.C. v. Val Vista Lakes Cmty. Ass’n*, No. 1 CA-CV 25-0095
6 (Ariz. Ct. App. filed Aug. 3, 2025) (attached as **Exhibit A**) (“Marx Amicus Br.”). The brief is
7 a public court filing and is properly before this Court under Ariz. R. Evid. 201. It contains a set
8 of admissions that confirm, in Plaintiff’s own words, the community-wide character of the
9 claims she now asserts here.

10 **First**, Plaintiff told the Court of Appeals that her case “raises the same doctrinal
11 question” as *Iqtunheimr*, and that the appellate decision “will directly affect [her] pending
12 litigation.” Marx Amicus Br. 6. She acknowledged that her own allegations “mirror the
13 Appellant’s allegations of HOA mismanagement.” *Id.* at 2. The Court of Appeals held that the
14 *Iqtunheimr* appellant’s claims were derivative. By Plaintiff’s own characterization, hers are the
15 same kind of claims.

16 **Second**, Plaintiff repeatedly described the injuries underlying her claims as injuries to
17 the condominium community, not to her alone. In a footnote, she conceded that the violations
18 of open-meeting, insurance, and financial provisions were “to the entire corporation, of which
19 Marx is a shareholder.” *Id.* at 8 n.3. She wrote that her harms “affect[] the entire community.”
20 *Id.* at 6. And in the section in which she sought to defend her case as direct, she conceded that
21 her injuries are “shared by all shareholders in the association.” *Id.* at 25. An injury to “the
22 entire corporation,” “shared by all shareholders,” and affecting “the entire community” is the
23 textbook description of a derivative injury. *Iqtunheimr*, 2026 WL 369439, ¶¶ 6, 10.

24 **Third**, the structural organization of Plaintiff’s amicus brief makes the point even more
25 explicitly. The brief devotes a multi-page section captioned “Harms and Corresponding
26 Remedies with Community-Wide Benefits” to walking through nine of her claims one by one
and explaining for each how the remedy she seeks “would benefit the entire Tara

1 Condominium community.” Marx Amicus Br. 10–17. The harms she summarized in that
2 section—open-meeting violations, records denials, insurance deductible changes, the budget
3 vote, unequal expense distribution, preferential treatment, master-policy claim handling, false
4 corporate records, common-area maintenance neglect, and Board misconduct—are the same
5 harms that anchor the SAC and the Supplemental Pleading. By Plaintiff’s own analysis, the
6 remedies run to “all 50-unit owners” and benefit “the entire Tara Condominium community.”
7 *Id.* That is, by her own description, community-wide relief.

8 **Fourth**, Plaintiff filed her brief “in support of Appellant Iqtunheimr L.L.C.” *Id.* at 7.
9 The position she urged—that individual homeowners be permitted to enforce CC&R and
10 condominium-statute violations “without the barriers of derivative suit requirements under
11 A.R.S. § 10-3631”—is the position the Court of Appeals rejected. *Compare* Marx Amicus Br.
12 4, *with Iqtunheimr*, 2026 WL 369439, ¶¶ 6–11. The reasoning that defeated her position in
13 *Iqtunheimr* controls her case here. The Court of Appeals considered her argument and decided
14 against it. The result here should be the same.

15 **C. Claims Not Challenged by This Motion.**

16 The Association does not contend that every claim in either pleading is derivative, and
17 this Motion does not reach the following individual claims, which rest on rights the law confers
18 on each owner individually: SAC Count II and DJ Count II (A.R.S. § 33-1258, records
19 inspection) (¶¶ 59–66, 133–135); SAC Count VIII and DJ Count VIII (A.R.S. § 33-1250,
20 voting) (¶¶ 126–127, 149–150); the paragraphs of Counts I and III that allege actions taken
21 against Plaintiff personally (¶¶ 24, 27, 49–50, 52, 98); and Supplemental Pleading Count V to
22 the extent it asserts a personal records-inspection right (¶¶ 1–2 of the Count V section). The
23 Association reserves all defenses to those claims. The Community-Wide Claims addressed by
24 this Motion are only those identified in Sections IV.B.1 through IV.B.8 above.

25 The Association does not, by this Motion, seek judgment on SAC Counts VII or DJ
26 Count VII (§ 10-11601, corporate records) (¶¶ 118–125, 147–148), which present overlapping

1 individual and community-wide aspects whose resolution is unnecessary to grant the relief
 2 requested here.

3 **D. A Single Member May Pursue Derivative Claims Only by Satisfying Arizona’s**
 4 **Statutory Prerequisites.**

5 Because the Community-Wide Claims are derivative, Plaintiff may pursue them only by
 6 meeting the statutory requirements for derivative actions. Those requirements are not
 7 technicalities. They exist, as *Iqtunheimr* explained, because they “stop a flood of duplicative
 8 lawsuits, they ensure that the complainant represents the homeowners and they protect the
 9 association from the drain of endless litigation.” *Id.* ¶ 8; *see Funk*, 74 Ariz. at 225.

10 First, a derivative proceeding may be brought only by, “[i]n the case of a corporation
 11 that has members, any member or members having twenty-five per cent or more of the voting
 12 power or by fifty members, whichever is less.” A.R.S. § 10-3631(A)(1); *Iqtunheimr*, 2026 WL
 13 369439, ¶ 7. **Second**, the complaining member must have been a member at the time of the act
 14 or omission and must fairly and adequately represent the interests of the corporation. A.R.S. §
 15 10-3631(B). **Third**, the member must make a written demand on the Association before suing
 16 and allow the statutory period to run, unless the pleading alleges with particularity that demand
 17 would be futile. A.R.S. § 10-3632; Ariz. R. Civ. P. 23.1; *Iqtunheimr*, 2026 WL 369439, ¶ 7.
 18 **Fourth**, the complaint must be verified, must allege these matters, and the action must be
 19 brought in a representative capacity. Ariz. R. Civ. P. 23.1.

20 **E. Plaintiff Has Not Satisfied Any of the Prerequisites.**

21 Neither operative pleading satisfies any of the requirements. **As to standing**, Plaintiff
 22 owns one of the Association’s fifty units. She does not allege that she holds twenty-five
 23 percent or more of the voting power, and a single owner in a fifty-unit community cannot. Nor
 24 does she allege that any other members join in the claims. The homeowner in *Iqtunheimr* failed
 25 for the same reason. *Id.* ¶ 11.

26 **As to demand**, neither pleading alleges that Plaintiff made a written demand on the
 Association to take the action she now asks the Court to compel, and neither alleges, with

1 particularity or otherwise, that such a demand would have been futile. The *Iqtunheimr* plaintiff
2 failed for the same omission. *Id.* ¶ 11; *see also Rose Goodyear Properties, LLC v. NBA*
3 *Enterprises Ltd. Partnership*, 235 Ariz. 339 (App. 2014) (derivative claims dismissed for
4 failure to make pre-suit demand). Arizona's derivative-suit statutes contain no futility
5 exception, *see AZ Eufora Partners I, LLC v. Constantine*, No. 1 CA-CV 11-0467, 2015 WL
6 1781582, at *3 (Ariz. Ct. App. Apr. 16, 2015), and a post-filing demand cannot cure the
7 deficiency. *Id.* at *4 (holding that the statute "is clear and admits of no exception" and that a
8 demand letter sent after filing the lawsuit does not satisfy the statute's pre-suit demand
9 requirement) (Internal citations omitted). Leave to amend cannot cure the deficiency for the
10 same reason.

11 **As to representation**, neither pleading alleges that Plaintiff fairly and adequately
12 represents the interests of the Association or its membership, and neither is brought in a
13 representative capacity. Both are brought by Plaintiff, for Plaintiff. That is the opposite of a
14 derivative action.

15 Because the Community-Wide Claims are derivative and Plaintiff has satisfied none of
16 the prerequisites, those claims fail as a matter of law.

17 **F. Neither the June 24, 2025 Ruling Nor the Association's Responsive Pleadings**
18 **Bar This Motion; *Iqtunheimr* Is Intervening Controlling Authority.**

19 The June 24, 2025 ruling addressed a superseded pleading, not the SAC or the
20 Supplemental Pleading, and decided only that the claims as then pleaded were not derivative.
21 A ruling on a superseded pleading does not insulate later claims from a Rule 12(c) motion.

22 The Court's June 24, 2025 ruling also held that, "[t]o the extent Plaintiff seeks injunctive
23 relief to compel the Association to take certain actions required by the CC&R's or other law,
24 that is not a derivative claim." *See Ex. C. Iqtunheimr* now holds otherwise. The homeowner in
25 *Iqtunheimr* sought to compel the association to comply with the declaration — specifically, to
26 maintain the common areas the declaration required the association to maintain. The Court of
Appeals held those claims derivative because "the alleged harms are to the common areas,"

1 and therefore "belong to the community as a whole, not to Homeowner as an individual."
2 *Iqtunheimr*, 2026 WL 369439, ¶ 10. A claim that seeks to compel the Association to perform
3 its CC&R obligations regarding property held in common is, under *Iqtunheimr*, the textbook
4 example of a derivative claim. The injunctive-relief framing does not change the gravamen. *Id.*
5 ¶¶ 9-10 (court "looked past the label to the gravamen of the complaint and the nature of the
6 injury alleged"). The Community-Wide Claims here seek precisely that type of relief:
7 declarations and orders compelling the Association to repair common elements, to handle the
8 master policy properly, to refrain from improperly transferring or expending Association
9 funds, and to reverse declaration amendments affecting all fifty units. Those are derivative
10 claims under *Iqtunheimr*, regardless of whether they are styled as requests for injunctive relief
11 or declaratory judgment.

12 That the Association responded to both operative pleadings does not change matters.
13 Rule 12(c) operates after the pleadings close, and Rule 12(h)(2) expressly preserves the
14 defenses of failure to state a claim and failure to join a required party for resolution on a Rule
15 12(c) motion. Whether Plaintiff can maintain a derivative claim without satisfying the statutory
16 prerequisites is precisely such a defense. The *Iqtunheimr* court itself ruled on a Rule 12
17 motion.

18 *Iqtunheimr*, decided February 10, 2026, is intervening controlling authority that
19 clarified the governing standard after the SAC, after the Association's answer, after the
20 Supplemental Pleading, and after the June 24, 2025 ruling. The June 24, 2025 ruling itself
21 points toward this Motion: the Court limited Plaintiff to "damages she herself has suffered and
22 can prove," held that she "may not recover damages for harm to the others or to the community
23 in general," and expressly reserved the joinder question. The Community-Wide Claims seek
24 the community-wide relief the Court said Plaintiff could not obtain, and they squarely present
25 the capacity question the Court left open. As discussed in Section IV.B.8 above, *Iqtunheimr*
26 answers it, and Plaintiff is bound by it: she participated in the appeal.

1
2
3 **V. CONCLUSION**

4 For the reasons stated, the Association respectfully requests that the Court grant
5 judgment on the pleadings in its favor on the Community-Wide Claims identified in Sections
6 IV.B.1 through IV.B.8 and dismiss them. Plaintiff's individual claims, as identified in Section
7 IV.C, would remain for adjudication.

8 RESPECTFULLY SUBMITTED this 27th day of May, 2026.

9
10 **CHDB LAW LLP**

11 By: /s/ Charles H. Oldham, Esq.
12 Charles H. Oldham, Esq.
13 Ari A. Bowhay, Esq.
14 1400 East Southern Avenue, Suite 400
15 Tempe, Arizona 85282-5691
16 *Attorneys for Defendant*

17 **ORIGINAL** of the foregoing e-filed
18 this 27th day of May, 2026.

19 **COPY** of the foregoing mailed/e-mailed
20 this 27th day of May, 2026, to:

21 Lisa Marx
22 13610 N. 111th Ave.
23 Sun City, AZ 85351
24 aimtodogood@gmail.com
25 *Plaintiff Pro Per*

26 By: /s/ Suzanne Hilborn

Exhibit A

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**IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE**

Iqtunheimr L.L.C.,
Plaintiff/Appellant,

v.

Val Vista Lakes Community
Association; Timothy Hedrick,
Defendants/Appellees.

Non-Party of Interest

Lisa Marx Pro Se

Court of Appeals Division One
No. 1 CA-CV 25-0095

Maricopa County Superior Court
No. CV2024-002225

**MOTION FOR LEAVE TO FILE
AMICUS CURIAE BRIEF**

MOTION FOR LEAVE TO FILE AMICUS CURIAE BRIEF

Lisa Marx respectfully moves for leave to file the attached brief as *amicus curiae* under ARCAP 16(b). Marx is a condominium homeowner and *pro se*

1 plaintiff in Marx v. Tara Condominiums Ass'n, Maricopa County Sup. Ct. No.
2 CV2025-012980. In her case the Superior Court denied a motion by the same
3 defense counsel (CHDB Law) to dismiss her claims as "derivative," holding that
4 her lawsuit "assert[s] her rights as a member" and therefore "is not derivative."
5

6
7 **Interest of Amicus Curiae**

8
9 Lisa Marx is a condominium owner in Sun City, Arizona, and a member of the
10 Tara Condominiums Association. She has direct experience with homeowner
11 association (HOA) governance issues similar to those in this appeal. Marx is
12 currently litigating a case in Maricopa County Superior Court (Case No. CV
13 2025-012980) against her condominium board for violations of Arizona's
14 condominium statutes, open meeting laws, and governing documents, including
15 failures to maintain common areas, improper assessments, and denial of records
16 requests. Her case involves claims that mirror the Appellant's allegations of HOA
17 mismanagement and breach of covenants, conditions, and restrictions (CC&Rs).
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21

22
23 Lisa Marx is in compliance with ARCAP 16(b)(2) by filing a motion to submit
24

1 her amicus curiae brief, lodging the brief itself with the motion, identifying her
2 interest as a party to pending related litigation (Maricopa County Superior Court
3 Case No. CV 2025-012980, involving similar HOA governance and enforcement
4 issues, specifically relating to derivative ruling in Marx's favor), and explaining
5 why the court's acceptance of her brief would be desirable (e.g., providing
6 practical insights from her ongoing case on the implications of HOA
7 accountability and direct enforcement rights under Arizona law) and why an
8 adverse ruling would hamper her lawsuit.
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13 Since she has a pending lawsuit that may be affected by the outcome of this
14 appeal (due to overlapping legal questions on direct vs. derivative claims in
15 HOA disputes), she can file the amicus curiae brief pursuant to ARCAP
16 16(b)(1)(C)(ii), which allows the appellate court to grant permission for an
17 amicus filing where the amicus has an interest in another case that the decision
18 may impact. This requires submitting a motion under ARCAP 16(b)(2), as she
19 has done, rather than filing without leave (which is reserved for the State or
20 political subdivisions under ARCAP 16(b)(1)(B)). The court may grant the motion
21
22
23
24

1 if it finds her perspective helpful beyond the parties' arguments.

2
3 Marx has no financial interest in the outcome of this appeal but seeks to
4 provide the Court with insights from her ongoing litigation, which underscores
5 the importance of preserving individual homeowners' rights to enforce CC&Rs
6 and statutory protections directly, without the barriers of derivative suit
7 requirements under A.R.S. § 10-3631 and similar. As a pro se litigant in a similar
8 dispute, Marx believes her perspective as an affected homeowner will assist the
9 Court in understanding the practical implications of HOA accountability and the
10 potential harm to individual owners if direct enforcement rights are curtailed.
11
12
13

14 **Why the Brief is Desirable**

15
16
17 This appeal raises critical questions about whether HOA members must bring
18 derivative suits to enforce CC&Rs and statutory rights against their associations,
19 or whether direct actions are permissible for breaches causing harm. The trial
20 court dismissed the Appellant's claims as derivative, applying corporate law
21 principles under A.R.S. § 10-3631. Marx's brief highlights Arizona's specific
22
23
24

1 statutory framework for condominiums and planned communities (e.g., A.R.S.
2 §§ 33-1201 et seq., 33-1801 et seq.), which provides direct remedies like
3
4 administrative petitions and civil actions without derivative suit prerequisites.
5

6 The brief draws parallels from Marx's case, where individual enforcement has
7 been essential to address issues common to all homeowners, and argues that
8 requiring derivative suits could leave homeowners without recourse in
9 communities where boards are unresponsive or majorities uninterested. This
10 perspective is not fully addressed in the parties' briefs and will aid the Court in
11 balancing corporate protections with homeowner rights under Arizona law.
12
13
14

15 For these reasons, Marx respectfully requests that the Court grant leave to file
16 the attached amicus curiae brief.
17

18 Dated: August 3, 2025
19

20 /s/ Lisa Marx

21 Lisa Marx, Amicus Curiae Pro Se
22 13610 N. 111th Ave.
23 Sun City, AZ 85351
24 Phone: (602) 748-7781
Email: aimtodogood@gmail.com

1 **CERTIFICATE OF SERVICE**

2
3 I hereby certify that on August 3, 2025, I electronically filed the foregoing
4 **MOTION FOR LEAVE TO FILE AMICUS CURIAE BRIEF** with the Clerk of
5 the Court and served copies via email or U.S. Mail to:

- 6 • Nathan Brown, Attorney for Appellant Iqtunheimr LLC
7 (Nathan.Brown@BrownPatentLaw.com)
8 • Attorneys for Appellees Val Vista Lakes Community Association via U.S.
9 Mail.

10 Lydia Peirce Linsmeier
11 CHDB Law
12 1400 E. Southern Ave. Suite 400
13 Tempe, AZ 85282-5691

14 /s/ Lisa Marx

15 Lisa Marx, Amicus Curiae Pro Se
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**IN THE COURT OF APPEALS
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v.
Val Vista Lakes Community
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Defendants/ Appellees.

Non-Party of Interest
Lisa Marx Pro Se

Court of Appeals Division One
No. 1 CA-CV 25-0095
Maricopa County Superior Court
No. CV2024-002225

**AMICUS CURIAE BRIEF OF
LISA MARX**

AMICUS CURIAE BRIEF OF LISA MARX

Submitted in support of Appellant
IqtunheimrL.L.C.
Lisa Marx, Amicus Curiae Pro Se
13610 N. 111th Ave.
Sun City, AZ 85351
Phone: (602) 748-7781
Email: aimtodogood@gmail.com

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INTRODUCTION AND INTEREST OF AMICUS CURIAE

Lisa Marx¹ is a condominium owner and member of the Tara Condominiums Association in Sun City, Arizona. She files this brief in support of Appellant Iqtunheimr L.L.C., urging reversal of the trial court's dismissal of the direct claims against the Val Vista Lakes Community Association for breach of covenants, conditions, and restrictions (CC&Rs).

Marx's interest stems from her ongoing litigation in Maricopa County Superior Court (Case No. CV 2025-012980), where she alleges similar HOA violations: failure to maintain common areas, improper assessments, open meeting law breaches, and denial of records. These issues parallel the Appellant's claims of HOA mismanagement in violation of governing documents thus violating the individual rights of the individual homeowner under their contract rights and causing property devaluation, breach of contract, and thus individual harm.

Marx is the named plaintiff in Marx v. Tara Condominium Association, et al., CV2025-012980 (Maricopa Cty. Super. Ct.), a breach-of-contract action alleging multiple violations of the Arizona Condominium Act, A.R.S.

¹ I will use third person for clarity purposes. I apologize if the Judges prefer pronouns.

1 § 33-1201 et seq., Tara’s Declaration of Restrictions (“Declaration”), and its
2 By-Laws.

3
4 In that case, the Association, represented by CHDB Law, attempted to force
5 her claims into a derivative posture under A.R.S. § 10-3631. Marx opposed, and
6 on June 26, 2025 Judge Randall H. Warner denied the Association’s partial
7 motion to dismiss, holding that “Plaintiff’s claims are not derivative. ... [They]
8 are all brought to assert her rights as a member under the CC&Rs.” The judge in
9 the matter stated in a preliminary hearing when the CHDB attorney was trying
10 to have 11 of the 12 CLAIMS dismissed as being derivative in nature,

11 **“To the extent the action is against the association for doing**
12 **things contrary to law, that is not a derivative claim.”**

13 Because Iqtunheimr raises the same doctrinal question – whether homeowners
14 must meet the derivative prerequisites of § 10-3631 to vindicate contractual and
15 statutory rights – this Court’s decision will directly affect Marx’s pending
16 litigation.

17
18 In her case, Marx asserts direct claims under Arizona's Condominium Act
19 (A.R.S. §§ 33-1201 et seq.), arguing that her board violated multiple provisions of
20 the CC&Rs and state law, causing her concrete, personal harm that affects the
21 entire community (including improperly increased assessments, loss of voting
22 rights on budget votes requiring member approval, changes in the By-Laws
23 without a community vote and diminished property value due to neglected
24 maintenance).

1 Marx contends that Arizona law provides direct remedies for such disputes,
2 and her experiences highlight the importance of allowing individual
3 homeowners to enforce CC&Rs and statutes without derivative suit barriers
4 under A.R.S. § 10-3631. Requiring derivative actions could insulate unresponsive
5 boards, cause one's rights to litigate to become cost prohibitive when requiring
6 legal counsel to represent the members in a derivative case and leave owners
7 without recourse to protect their individual rights that they agreed to when
8 purchasing their homes with binding Declarations. Denying an individual
9 owner's rights to litigate erodes trust in HOA governance when the board has
10 repeatedly ignored all attempts of the plaintiff to remedy problems outside of the
11 court to no avail.

12 **1. Summary of the Harms in the Marx Complaint**

14 The Complaint details 12 claims, spanning governance violations, financial
15 mismanagement, personal targeting, and neglect. The harms fall into categories
16 like financial losses, emotional distress, denial of rights, and property
17 devaluation, often tied to specific actions by Gottmann and Anderson. Here's a
18 breakdown, with page references from the Complaint:
19

- 20 • **Financial Harms:** Marx alleges the board's actions caused Marx (and
21 others) unnecessary expenses, such as increased HOA dues (\$50/month
22 increase due to an illegal 2025 budget vote, totaling \$10,000 accrued
23 association-wide by April 2025; Complaint, Pages 115-116 of 122) and
24 inflated insurance premiums (e.g., a 40% portion of the \$52,385.33 increase

1 attributed to improper claims, equaling \$20,954.13 in damages; Complaint,
2 Page 115 of 122). Marx also claims personal out-of-pocket costs from
3 denied records requests and unaddressed maintenance, plus demands for
4 reimbursement of specific sums (e.g., \$575 wrongly charged to a new
5 homeowner for roof repairs, which Marx argue should be refunded as it
6 violated rights to fair treatment; Complaint, Pages 7-8, 40-41 of 122). Total
7 damages sought as of April 9, 2025: \$299,776.26 (Complaint, Page 116 of
8 122), including punitive damages for Marx's personal distress.

- 9 • **Denial of Participatory and Informational Rights:** Multiple claims
10 highlight how the board (led by Gottmann) violated open meeting laws
11 (A.R.S. § 33-1248), denying Marx and others the right to speak, attend, or
12 provide input (e.g., unilateral decisions on landscaping, insurance changes,
13 and appointments without votes or notices; Complaint, Pages 1-25 of 122).
14 Marx² was personally removed from the Landscaping Committee (which
15 Marx led for three years) without a meeting or vote, and denied records
16 requests 23 times (e.g., financials, contracts, and minutes delayed or
17 withheld, violating A.R.S. § 33-1258; Complaint, Pages 26-33 of 122). This
18 caused Marx frustration³ and prevented her from advocating for her
19 interests and the community interests.
20

21 ² Marx is currently not aware if this was done to every other homeowner similarly situated or not,
22 which further amplifies the need to overturn and remand the Iqtunheimr LLC Motion to Dismiss and
23 the reasoning behind it.

24 ³ While frustration might be specific to Marx, the injury of the violation of opening meeting laws,
insurance, finances etc. were to the entire corporation, of which Marx is a shareholder.

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- **Emotional and Reputational Harms:** Marx describes public shaming, harassment, and bullying by Gottmann, such as a defamatory email blaming her personally (naming her 9 times) for the board's legal costs (Complaint, Pages 17-18, 92-96 of 122). At meetings, Marx was cut off mid-sentence, spoken over, and subjected to disruptive comments (e.g., February 17, 2024 meeting; Complaint, Pages 44-47 of 122). Marx claims preferential treatment toward others excluded her from committees and events, creating "hostility, division, and distrust" (Complaint, Pages 49-55 of 122). Marx seeks \$35,000 in punitive damages for "distress and anguish, public shaming and blaming, harassment" (Complaint, Pages 116, 120 of 122).
 - **Property and Aesthetic Harms:** Neglect of common areas (e.g., weeds, dead plants, improper watering) devalued Marx's unit and the community (Complaint, Pages 97-101 of 122). Improper insurance handling exposed Marx to personal liability (e.g., changing deductible to \$25,000 without a by-law amendment; Complaint, Pages 34-37 of 122), and unequal expense distribution (e.g., releasing a lien on another owner's damages at the HOA's expense; Complaint, Pages 39-42 of 122) increased Marx's share of costs.
 - **Overall Relief Sought:** Beyond monetary damages, Marx requested injunctive relief like correcting minutes, reinstating Marx to committees, removing Gottmann and Anderson from roles, and voiding invalid decisions (Complaint, Pages 117-122 of 122). These harms stem from

1 breaches of fiduciary duties (duty of care, loyalty, and good faith) under
2 A.R.S. §§ 10-11601, 33-1247, etc.

3
4 Marx's Complaint emphasizes third party violations as personal violations:
5 e.g., "The actions of Mark Gottmann are not in the best interests of the
6 Association" but often ties them to her direct experiences (e.g., being "cut off" at
7 meetings, denied records, or shamed publicly).

8 Harms alleged in Marx's complaint against the Tara Condominium
9 Association, Mark Gottmann, and Dennis Anderson, when remedied, would
10 benefit the community as a whole, even though the claims are framed as direct
11 harms to Marx personally. Under Arizona law, a claim can be direct yet still yield
12 broader benefits to the HOA or its members if the relief corrects systemic issues
13 affecting all unit owners. Below, the harms from Marx's complaint that, when
14 addressed, would provide community-wide benefits, referencing specific claims
15 and pages from the complaint document, as well as the related court
16 documents. These remedies would benefit the entire Tara Condominium
17 community, while noting that the claims remain direct under Arizona law (per
18 *Albers v. Edelson Tech. Partners L.P.*, 201 Ariz. 47, 52 (App. 2001), where direct
19 claims involve personal rights violations, even if others benefit indirectly).

20 **Harms and Corresponding Remedies with Community-Wide Benefits**

21
22 The following claims involve harms to Marx (e.g., denial of statutory rights,
23 financial losses, emotional distress) but include remedies that would improve
24

1 governance, financial stability, or property conditions for all 50-unit owners in
2 the Tara Condominium Association.

3
4 **1. Violations of Open Meeting Laws (Claim 1, Pages 1-25)**

- 5
- 6 • **Harm to Marx:** Marx alleges the board, led by Gottmann, violated A.R.S. §
7 33-1248 by making unilateral decisions without open meetings, such as
8 appointing Gottmann as Chairperson (Page 2), removing Marx from the
9 landscaping committee, moving \$5,198.69 to reserves (Page 3), and
10 securing a Workers' Compensation policy (Pages 4-5). Marx was personally
11 denied the right to speak or provide input, causing frustration and
12 exclusion (e.g., cut off at meetings, Page 12).
 - 13 • **Community-Wide Benefit of Remedy:** Marx requests that
14 unauthorized policy decisions be voided (Page 117), that the Landscaping
15 Committee be reinstated (Page 121) and that future actions comply with
16 open meeting laws (Page 121). This would benefit all homeowners by:
 - 17 ○ Ensuring transparent governance, allowing all 50-unit owners to
18 participate in decisions (A.R.S. § 33-1248(A) mandates open meetings
19 with member input).
 - 20 ○ Preventing unauthorized financial expenditures, preserving HOA
21 funds for community priorities (e.g., the spending of thousands of
22 dollars on various expenditures without ever holding a board vote in
23 an open meeting. (Page 114)
- 24

- Nullifying improper policies (e.g., Workers' Compensation), protecting the community from liability risks due to unapproved actions.
- **Why It's Direct:** The harm is to Marx's statutory right to participate (A.R.S. § 33-1248), but the remedy (open meetings) benefits everyone by restoring democratic processes. The court's denial of the Motion to Dismiss (Minute Entry, Page 2) supports this as a direct claim, as it targets individual rights violations, not just corporate harm.

2. Failure to Turn Over Records Timely (Claim 2, Pages 26-33)

- **Harm to Marx:** Marx made 23 records requests (e.g., financials, contracts) that were denied or delayed beyond the 10-day limit under A.R.S. § 33-1258 (Pages 27-33, Exhibits 92-159). This caused Marx personal effort, cost, and inability to monitor board actions, fostering distrust (Page 26).
- **Community-Wide Benefit of Remedy:** Marx demands timely records access (Page 121). This would benefit all homeowners by:
 - Increasing transparency, allowing all members to review financials (e.g., General Ledger, AP Reports, bank statements) and hold the board accountable.
 - Ensuring compliance with A.R.S. § 10-11601, so all owners can verify funds (e.g., correcting inflated reserve statements, Page 89) and avoid mismanagement.

- 1 ○ Empowering the community to challenge improper expenses (e.g.,
2 \$2,376.28 in unauthorized expenses, Page 114), reducing dues
3 burdens for all.
- 4 • **Why It's Direct:** The harm is to Marx's statutory right to records, but access
5 benefits all by enabling oversight. The Motion to Dismiss argued this was
6 derivative (Motion, Page 5), but the court's denial (Minute Entry, Page 2)
7 suggests Marx's personal right makes it direct.

8

9 **3. Changing Insurance Deductible Without Amending By-Laws (Claim 3,**
10 **Pages 34-37)**

- 11 • **Harm to Marx:** The board raised the insurance deductible to \$25,000
12 without a 51% homeowner vote, violating A.R.S. § 33-1250 and By-Law
13 2.05 (Page 34). This increased Marx's personal liability and dues (Page 36).
- 14 • **Community-Wide Benefit of Remedy:** Marx seeks to void the deductible
15 change and revert to the \$5,000 deductible (Page 117). This would benefit
16 all homeowners by:
- 17 ○ Reducing individual liability exposure, as each owner's HO6 policy
18 would cover less (Page 113).
- 19 ○ Lowering premiums, as the improper claims (e.g., \$20,954.13
20 attributed to two claims, Page 115) inflated costs for all.
- 21 ○ Ensuring future by-law changes follow proper voting, enhancing
22 community control.
- 23 • **Why It's Direct:** The harm violates Marx's right to vote on by-law
24 amendments, but the remedy protects all owners' finances. The Motion to

1 Dismiss called this derivative (Motion, Page 5), but the court disagreed
2 (Minute Entry, Page 2).
3

4 **4. Illegal Budget Vote (Claim 4, Pages 37-38)**

- 5 • **Harm to Marx:** The 2025 budget vote denied in-person ballots, violating
6 A.R.S. § 33-1243(D) (Page 37). This resulted in \$50/month dues increase for
7 Marx (Page 38, totaling \$10,000 association-wide by April 2025, Page 115).
- 8 • **Community-Wide Benefit of Remedy:** Marx requests invalidating the
9 budget and requiring a proper vote (Page 117). This would benefit all
10 homeowners by:
 - 11 ○ Lowering dues for everyone (\$2,500 monthly association-wide, Page
12 115), reversing the illegal increase.
 - 13 ○ Restoring fair ratification processes, preventing future arbitrary
14 hikes.
- 15 • **Why It's Direct:** The harm is to Marx's voting rights, but relief reduces
16 costs for all. The Motion to Dismiss deemed it derivative (Motion, Page 6),
17 but the court's denial (Minute Entry, Page 2) affirms it's direct.
18

19 **5. Inequitable Distribution of Common Expenses (Claim 5, Pages 39-42)**

- 20 • **Harm to Marx:** The board unequally distributed repair costs (e.g., charging
21 a new owner \$575 for common roof repairs, Page 40; releasing a lien on
22 damages, Page 42), violating A.R.S. § 33-1247(A). This increased Marx's
23 share of expenses.
24

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- **Community-Wide Benefit of Remedy:** Marx seeks reimbursement (e.g., \$575 to the affected owner) and equitable assessments (Page 117). This would benefit all homeowners by:
 - Ensuring fair cost-sharing for common elements (roofs, etc.), reducing favoritism and dues inequality.
 - Recovering funds (e.g., from released liens), bolstering reserves for community use.
 - **Why It's Direct:** The harm breaches Marx's right to upkeep without favoritism, but equity benefits all. The Motion to Dismiss labeled it derivative (Motion, Page 6), but the court rejected this (Minute Entry, Page 2).

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13 **6. Showing Partiality/Preferential Treatment and Failure to Enforce Violations**

14 **(Claims 6 & 7, Pages 43-70)**

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- **Harm to Marx:** Gottmann showed favoritism (e.g., excluding Marx from committees, Pages 43-55; allowing disruptive behavior at meetings, Pages 57-70), violating A.R.S. § 10-11601 and By-Law 1.08. This caused Marx exclusion and harassment.
 - **Community-Wide Benefit of Remedy:** Marx requests impartial enforcement and committee reinstatement (Page 121). This would benefit all homeowners by:
 - Promoting fair treatment, reducing division and fostering unity (e.g., open projects for all volunteers).

1 o Ensuring violations (e.g., weeds, unapproved repairs) are addressed
2 uniformly, improving property values.

- 3 • **Why It's Direct:** The harm is personal targeting of Marx, but impartiality
4 aids everyone. The Motion to Dismiss called it derivative (Motion, Page 7),
5 but the denial (Minute Entry, Page 2) supports direct status.

6
7 **7. Improper Handling of Insurance Claims and Over-Insuring (Claims 8 & 9,**
8 **Pages 71-82)**

- 9 • **Harm to Marx:** The board filed improper claims on the master policy (e.g.,
10 internal unit damages, Page 72), violating A.R.S. § 33-1253(E), and over-
11 insured with "walls-in" coverage (Page 80), raising Marx's premiums.
- 12 • **Community-Wide Benefit of Remedy:** Marx seeks claim reversals and
13 policy adjustments (Page 118). This would benefit all homeowners by:
- 14 o Lowering premiums (\$20,954.13 increase portion, Page 115) and
15 preventing uninsurability (Page 36).
- 16 o Aligning coverage with declarations, saving funds for all.
- 17 • **Why It's Direct:** The harm violates Marx's right to proper upkeep (A.R.S. §
18 33-1247), but corrections help everyone. The Motion to Dismiss argued
19 derivative (Motion, Page 7), but denied (Minute Entry, Page 2).

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21 **8. False Corporate Records and Neglecting Common Areas (Claims 10 & 12,**
22 **Pages 83-91, 97-101)**

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- **Harm to Marx:** Inflated financials (Page 89) and landscaping neglect (e.g., dead plants, weeds, Page 98) devalued Marx's unit and hid mismanagement.
 - **Community-Wide Benefit of Remedy:** Marx requests corrections, audits (\$2,500 estimated, Page 120), and maintenance (Page 121). This would benefit all homeowners by:
 - Accurate records for informed decisions, preventing underfunding (e.g., reserves inflated by \$37,239.50, Page 89).
 - Restored landscaping (\$7,100 estimated damages, Page 119), boosting property values and aesthetics.
 - **Why It's Direct:** The harm is to Marx's right to accurate records (A.R.S. § 10-11601), but fixes enhance community assets. The Motion to Dismiss called these derivative (Motion, Page 7), but denied (Minute Entry, Page 2).

15 **9. Abuse of Position (Claim 11, Pages 91-96)**

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- **Harm to Marx:** Gottmann abused power (e.g., blaming Marx for legal costs in emails, Page 93), causing shaming.
 - **Community-Wide Benefit of Remedy:** Marx seeks removal of Gottmann/ Anderson (Page 121) and legal fee charges to them (\$3,241.50, Page 118). This would benefit all homeowners by:
 - Reducing unbudgeted costs, reimbursing the HOA.
 - Promoting ethical leadership, rebuilding trust.

- 1 • **Why It's Direct:** The harm is personal harassment, but removal aids
2 governance. The Motion to Dismiss argued derivative (Motion, Page 7), but
3 denied (Minute Entry, Page 2).

4
5 **3. Common Areas Marx Requests Maintained**

6 Marx focuses on the landscaping and related irrigation systems in the common
7 areas of the Tara Condominium property, alleging neglect by the board,
8 particularly Gottmann and Anderson, in violation of A.R.S. § 33-1247(A) (upkeep
9 of the condominium) and Declaration of Restrictions 12.B (board's duty to
10 maintain common elements). The specific common areas and issues she identifies
11 for remediation are:

12
13 **1. Grass Areas with Invasive Weeds (Pages 97-101)**

- 14 ○ **Issue:** Marx alleges an "infestation of invasive weeds in the grass
15 areas," specifically mentioning Stinknet, Yellow Wood Sorrel and
16 Khackiweed, which were not effectively treated by the board's hired
17 contractor, Nelson (Page 100). She notes that a \$650 weed treatment
18 lacked a warranty or pre-emergent, and 3 ½ months past treatment
19 the grass was full of weeds and did not kill the Stinknet or
20 Khackiweed and the infestation of the Yellow Wood Sorrel worsened
21 (Page 101).
- 22 ○ **Requested Fix:** Marx seeks proper weed control, including:
23 ▪ Hiring competent contractors to apply pre- and post-emergent
24 treatments to eliminate weeds in grass areas (Page 100).

- 1 ▪ Addressing the failure to use existing landscaping contracts
- 2 effectively (e.g., during warranty periods, Page 98).
- 3 ▪ Estimated damages of \$7,100 to restore grass areas (Page 119),
- 4 which implies professional landscaping services to remove
- 5 weeds and reseed or replant.
- 6 ○ **Community Impact:** Restoring weed-free grass would enhance
- 7 aesthetic value and property values for all 50-unit owners, as
- 8 neglected common areas reduce the community's appeal (Page 97).

9 **2. Rock and Gravel Areas with Weeds (Page 97)**

- 10 ○ **Issue:** Marx points out untreated weeds in the rock and gravel areas,
- 11 noting that no pre- or post-emergent treatments were contracted for
- 12 these areas, contributing to the overall deterioration (Page 101).
- 13 ○ **Requested Fix:** Marx demands that the board contract for proper
- 14 weed control in rock and gravel areas, including pre- and post-
- 15 emergent treatments to prevent further spread (Page 101). This is part
- 16 of her broader request to enforce landscaping contracts and address
- 17 neglect (Page 121).
- 18 ○ **Community Impact:** Clearing weeds from these areas would
- 19 improve the visual appeal of shared spaces, benefiting all residents
- 20 by maintaining property standards.

21 **3. Plants and Trees (Pages 97-99)**

- 22 ○ **Issue:** Marx describes a "large loss of bushes and other plants" due to
- 23 insufficient watering and improper pruning, in violation of the
- 24

1 landscaping contract (Page 97). She highlights that plants and trees
2 are "not getting sufficient water to thrive and or live" (Page 97).

3 ○ **Requested Fix:** Marx requests:

- 4 ▪ Replacement of dead or dying plants and bushes (Page 99).
- 5 ▪ Proper pruning as per the landscaping contract, ensuring
6 bushes are kept at a maximum height of 3 feet under windows
7 and 4 feet elsewhere, and at least 6 inches from buildings (Page
8 99).
- 9 ▪ Removal of baby century and agave plants from under mature
10 plants to prevent overcrowding (Page 99).

- 11 ○ **Community Impact:** Restoring healthy plants and trees would
12 enhance the common areas' aesthetics, increase property values, and
13 ensure compliance with maintenance obligations for all owners.

14 **4. Irrigation and Sprinkler Systems (Pages 99-100)**

- 15 ○ **Issue:** Marx alleges the board failed to hire competent sprinkler
16 servicemen, resulting in a malfunctioning irrigation system. Specific
17 problems include:

- 18 ▪ Watering areas without plants, wasting water (Page 99).
- 19 ▪ Blocked drip lines due to debris, causing under-watering in
20 some areas (Page 99).
- 21 ▪ Failure to check or replace damaged sprinkler heads. (Page
22 100).

- 23 ○ **Requested Fix:** Marx demands:

- Hiring qualified professionals to repair drip lines and sprinkler heads (Page 99).
- Regular checks post-mowing to ensure irrigation functionality, with written estimates for board approval (Page 100).
- Proper scheduling (e.g., prior Bermuda grass seeding required sprinklers to run six times daily for 2 minutes over two weeks, Page 6, which was not properly managed).

- **Community Impact:** A functional irrigation system would sustain healthy landscaping, reducing water waste and ensuring plants thrive, benefiting all homeowners by maintaining property value and reducing costs.

5. Citrus Tree Maintenance (Page 62)

- **Issue:** Marx notes that the board and volunteers (Gottmann, Anderson, and others) painted citrus tree trunks without proper community input or open meeting approval, violating A.R.S. § 33-1248 (Page 62). She also implies neglect in overall citrus tree care (Page 97).
- **Requested Fix:** Marx seeks professional maintenance of citrus trees under the reinstated Landscaping Committee, with her leadership (Page 121), and proper oversight to ensure contract compliance (Page 99).
- **Community Impact:** Proper care of citrus trees in common areas would enhance aesthetics and ensure fruit-bearing trees remain healthy, a shared benefit for the community.

1 Marx wants the following common areas fixed: grass areas (weed-free,
2 reseeded), rock and gravel areas (weed-treated), plants and trees (replaced,
3 properly pruned, and watered), irrigation systems (repaired, functional), and
4 citrus trees (professionally maintained). These fixes, detailed in Claim 12 (Pages
5 97-101) and reinforced in her demand for relief (Page 121), address neglect that
6 devalues her unit but would also restore aesthetic and financial value for all 50
7 homeowners. The total estimated landscaping damages of \$11,164.99 (Page 115)
8 reflect the scope of work needed, benefiting the entire Tara Condominium
9 community by ensuring compliance with upkeep duties and enhancing shared
10 spaces.

11
12 In summary, while Marx's claims are direct, many remedies (e.g.,
13 transparency, cost recovery) would indirectly benefit the community by fixing
14 systemic issues. The court's ruling (Minute Entry, Page 2) aligns with this,
15 denying dismissal and allowing Marx to proceed on individual grounds.

16 **4. Why These Harms Are Not Derivative Claims Under Arizona Law**

17
18 Under Arizona law, a claim is derivative if it is against a third party and it
19 primarily harms the HOA/corporation itself (e.g., mismanagement reducing
20 overall assets), allowing recovery only for the entity (A.R.S. § 10-3631; *Funk v.*
21 *Spalding*, 74 Ariz. 219, 223 (1952)). Direct claims involve either a contract between
22 two parties, or if against a third party, unique injury to the plaintiff, like breach
23 of individual statutory rights or personal targeting (*Albers*, 201 Ariz. at 52).
24 Marx's harms are direct because they violate her personal rights as a unit owner

1 (e.g., to records, meetings, fair treatment), cause her individualized damages,
2 even if the damages are had by others (e.g., emotional distress or access to
3 common areas), and seek relief not just for the HOA but that benefits Marx
4 personally. The defendants' Motion to Dismiss argued otherwise, but the court
5 denied it, supporting that Marx's claims are properly direct. Here's why, claim-
6 by-claim, with references:

7
8 **Not Derivative Because of Personal Rights Violations:** Claims like open
9 meeting violations (Claim 1; Complaint, Pages 1-25) and records denials (Claim
10 2; Complaint, Pages 26-33) enforce statutory rights under A.R.S. §§ 33-1248 (right
11 to attend/speak) and 33-1258 (right to inspect records). These might be HOA-
12 wide harms but are also direct denials to Marx (e.g., 23 specific requests ignored,
13 causing her personal delay and cost). Arizona courts hold such claims direct if
14 they infringe personal participation rights (*Dobson v. State ex rel. Comm'n on App.*
15 *Prac.*, 233 Ariz. 11, 15 (App. 2013)). The Motion to Dismiss called these derivative
16 as "harm to the Association's governance" (Motion to Dismiss, Pages 5-6), but
17 also ignores Marx's unique exclusion (e.g., removal from committee; Complaint,
18 Page 43). The Minute Entry denied dismissal, noting the motion was improperly
19 filed by the HOA alone, implying individuals like Gottmann must defend
20 personally (Minute Entry, Page 2) – consistent with direct claims against them.

21 **Financial Harms Are Direct Due to Disproportionate Impact:** Insurance
22 changes (Claim 3; Complaint, Pages 34-37) and budget issues (Claim 4;
23 Complaint, Pages 37-38) increased HOA dues and liability personally, without a
24 vote (violating A.R.S. § 33-1250). While affecting all, Marx's harm is direct as a

1 breach of her right to fair assessments (A.R.S. § 33-1247(A)). Unequal expenses
2 (Claim 5; Complaint, Pages 39-42) and lien releases show favoritism harming her
3 specifically (e.g., paid more due to others' relief). Arizona law treats such as
4 direct if tied to individual fiduciary breaches (*Warne Invs., Ltd. v. Higgins*, 219
5 Ariz. 186, 193 (App. 2008)). The Motion to Dismiss labeled these derivative for
6 affecting "financial obligations" (Motion to Dismiss, Pages 5-7), but the court
7 rejected this by denying the motion (Minute Entry, Page 2).

8
9 **Emotional/Reputational Harms Are Inherently Direct:** Preferential treatment
10 (Claim 6; Complaint, Pages 43-55), bullying (Claim 7; Complaint, Pages 57-70),
11 and abuse of power (Claim 11; Complaint, Pages 91-96) caused her personal
12 "distress, anguish, public shaming" (\$35,000 sought). These are direct tort-like
13 claims for fiduciary breach targeting Marx (e.g., defamatory email; Complaint,
14 Page 93). Arizona distinguishes such from derivative mismanagement (*Albers*,
15 201 Ariz. at 52). The Motion to Dismiss called them derivative as "misuse of
16 authority" (Motion to Dismiss, Page 7), but her punitive damages are personal.

17 **Property/Maintenance Harms Are Direct to Marx's Unit Ownership:** Improper
18 claims (Claim 8; Complaint, Pages 71-78), over-insurance (Claim 9; Complaint,
19 Pages 78-82), false records (Claim 10; Complaint, Pages 83-91), and landscaping
20 neglect (Claim 12; Complaint, Pages 97-101) devalued her unit and exposed her
21 to liability (e.g., weeds reducing aesthetics; higher premiums). These violate
22 Marx's direct rights to upkeep (A.R.S. § 33-1247) and accurate records (A.R.S. §
23 10-11601). Not derivative, as harm isn't uniform – her advocacy efforts amplified
24 her injury, even if this injury can be had by every other condo owner. The

1 Motion to Dismiss argued derivative for "common areas" (Motion to Dismiss,
2 Pages 6-7), but the Minute Entry's denial (Page 2) underscores that sanctions
3 against individuals (her relief) require their own motion, treating claims as direct
4 against them.

5
6 In summary, Marx's harms are direct because they stem from breaches of her
7 statutory and contractual rights, causing personal injury even if those injuries are
8 shared by all shareholders in the association. The court's denial of the Motion to
9 Dismiss (Minute Entry, Page 2) reinforces this by requiring individuals to
10 defend, not letting the HOA shield them.

11 If this Court now affirms the trial court below and requires derivative suits for
12 similar homeowner/condominium owner claims, the ruling will undermine
13 Marx's victory and cast doubt on her ability to proceed without first assembling
14 25 percent of her fellow owners, issuing a Rule-23-style notice, and waiting
15 90 days under § 10-3632 – all hurdles the Legislature never intended for CC&R
16 enforcement.

17
18 For these reasons, Marx respectfully requests that the Court rule in
19 Iqtunheimr LLC's favor and Remand this case back to the Superior Court.

20 **ARGUMENT**

21
22 **A. Arizona Law Provides Direct Remedies for HOA/Condo Disputes, Making**
23 **Derivative Suits Inappropriate for Claims Like Appellant's**
24

1 Arizona's framework for condominiums and planned communities
2 emphasizes direct owner enforcement. The Condominium Act and Planned
3 Communities Act allow individual owners to file administrative petitions with
4 the Arizona Department of Real Estate (ADRE) or civil actions for violations of
5 governing documents or statutes. See A.R.S. § 32-2199.01 (permitting individual
6 direct petitions for enforcement); A.R.S. § 33-1248 (open meetings); A.R.S. § 33-
7 1258 (records access). These provisions do not require derivative suits or majority
8 support.

9
10 In *Kalway v. Calabria Ranch HOA*, 252 Ariz. 532 (2022), the Arizona Supreme
11 Court upheld a homeowner's direct challenge to HOA amendments, recognizing
12 individual enforcement rights under CC&Rs. Similarly, in *Marx's* case, direct
13 claims are essential: her board's failures (e.g., unauthorized expenditures, secret
14 meetings) caused harm to the association and her personally, such as increased
15 fees and property devaluation. Applying derivative requirements would bar
16 relief if owners lack 25% support under A.R.S. § 10-3631.

17 Even when deferring to a board's reasonable decisions, the law allows direct
18 challenges if actions are arbitrary or cause individual injury. Other words, even
19 when deferring to a board's reasonable discretionary decisions, the law allows
20 direct suits for breaches harming "the member individually or to the interests of
21 the community." The Arizona Legislature did not design the Condominium Act
22 enforcement mechanisms with the restrictive barriers such as those in A.R.S. §
23 10-3631. All condominiums are required to follow the Condominium Act, but not
24 all condominiums are not for profit corporations and therefore they are not

1 required to comply with A.R.S. § 10-3631. The Condominium Act does not have
2 any stipulation in it stating that it can only be enforced if it is a corporation. In
3 the case State ex rel. Larson v. Farley, 106 Ariz. 119, 122, 471 P.2d 731 (1970) the
4 Arizona Supreme Court stated, "In so far as the provisions of a special statute are
5 inconsistent with those of a general statute on the same subject, the special
6 statute will control, Knappe v. Brown, 86 Ariz. 158, 342 P.2d 195 (1959); Whitfield
7 Trans., Inc. v. Brooks, 81 Ariz. 136, 302 P.2d 526 (1956). The general statute
8 remains applicable, however, to all matters not dealt with in the specific
9 statute,"

10
11 The Condominium Act and Planned Community Act are specific statutes and
12 supersede or control over the Not-for-Profit Act. Therefore, an individual
13 owner's rights to bring a breach of contract claim against their association for
14 violations of the Condominium Act or Planned Community Act as a direct
15 individual claim need to be protected. The Condominium Act allows one owner
16 to file an ADRE petition or civil suit in violation of the statutes which in turn
17 promote accessibility. Requiring derivative suits would transform CC&Rs into
18 something more like a corporate charter enforceable only by the entity. But an
19 HOA is not a separate commercial entity with its own independent interests
20 apart from its members – rather, it exists to serve them.

21 **B. Derivative Suit Requirements Would Undermine Homeowner Protections**
22 **and Public Policy and the Marx Lawsuit**

23 Imposing A.R.S. § 10-3631's thresholds (e.g., 25%-member support) on HOA
24 disputes could leave owners remediless against board misconduct. In Marx's

1 community, board actions like improper insurance changes and neglected
2 maintenance harmed all owners, but without direct suits, an unresponsive
3 majority could block enforcement.

4
5 Section 10-3631 was drafted for shareholder and member litigation brought *on*
6 *behalf of* the corporation. It requires: (1) a 25 percent membership threshold (or
7 50 members, whichever is less); (2) a 90-day written demand; and (3) adequate
8 representation of the entity's interests. The Tara defendants invoked these
9 hurdles unsuccessfully in their **Partial Motion to Dismiss**.

10 This would erode trust and fairness in the community. Arizona's public
11 policy, as reflected in the Planned Communities Act and Condominium Act,
12 favors transparency and accountability. Kalway, *supra*, at 7. Denying direct
13 claims risks "tyranny of the majority," where minority owners suffer without
14 recourse.

15
16 In Marx's litigation, direct enforcement has been crucial to address violations
17 causing personal harm. Facts from her case that underscore the importance of
18 preserving direct homeowner enforcement rights.

19 CONCLUSION

20
21 Arizona law supports direct actions for HOA breaches causing individual
22 harm, without derivative suit barriers. Reversal would align with statutory intent
23 and protect homeowners like Marx and the Appellant. The Court should reverse
24 the dismissal and remand for adjudication on the merits.

1 Dated: August 3, 2025

2
3 /s/ Lisa Marx

4 Lisa Marx, Amicus Curiae Pro Se

5
6
7 **CERTIFICATE OF COMPLIANCE**

8 This brief complies with ARCAP 16. It is proportionally spaced in 14-point font,
9 double-spaced, and contains approximately 5073 words.

10
11 /s/ Lisa Marx

12 Lisa Marx, Amicus Curiae Pro Se

1
2
3
4 **CERTIFICATE OF SERVICE**
5

6 I hereby certify that on August 3, 2025, I electronically filed the foregoing Brief of
7 Amicus Curiae with the Clerk of the Court and served copies via email and U.S.

8 Mail on:

- 9
- 10 • Nathan Brown, Attorney for Appellant Iqtunheimr LLC
(Nathan.Brown@BrownPatentLaw.com)
 - 11 • Attorneys for Appellees Val Vista Lakes Community Association via U.S.
12 Mail.

13 Lydia Peirce Linsmeier
14 CHDB Law
15 1400 E. Southern Ave. Suite 400
16 Tempe, AZ 85282-5691

17
18 /s/ Lisa Marx

19
20 Lisa Marx, Amicus Curiae Pro Se
21
22
23
24

Lydia
1300 N. Southern Ave.
Sun City, AZ 85351



Retail



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Lydia Peirce Linsmeier
CHDB Law
1400 E. Southern Ave. Suite 400
Tempe, AZ 85282-5691



Exhibit B

1 Lisa Marx
2 13610 N. 111th Ave.
3 Sun City, AZ 85351
4 602-748-7781
5 aimtodogood@gmail.com
6 Representing self

7 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**
8 **IN AND FOR THE COUNTY OF MARICOPA**

9
10 Lisa Marx
11 Plaintiff,

Case No. CV 2025-012980

12 vs.

13 Tara Condominiums Association, Inc.,

**PLAINTIFF'S MOTION TO
COMPEL PRODUCTION OF
DOCUMENTS FROM NON-PARTY
COLBY MANAGEMENT AND FOR
SANCTIONS PURSUANT TO ARCP
37(a) AND 45(e)**

Honorable Adele Ponce

17 Plaintiff Lisa Marx, appearing pro se, moves this Court pursuant to Arizona Rules of
18 Civil Procedure 37(a) and 45(e) for an order compelling non-party Colby Management
19 to fully comply with Plaintiff's Subpoena Duces Tecum dated January 22, 2026, and
20 served on January 23, 2026. Plaintiff also seeks sanctions, including reasonable
21 expenses incurred in bringing this motion (e.g., copying/printing costs and mileage to
22 court), contempt of court if non-compliance continues, evidence preclusion (barring
23 Colby or Defendants from using withheld documents), adverse inference (presuming
24

1 missing documents support Plaintiff's claims), and monetary penalties for willful non-
2 compliance. This motion is supported by the attached Memorandum of Points and
3 Authorities, the Declaration of Lisa Marx, and the exhibits thereto.

4 **CERTIFICATION OF GOOD FAITH CONFERRAL**

5 Pursuant to ARCP 37(a)(1) and 45(e), I, Lisa Marx, certify that I attempted to confer in
6 good faith with non-party Colby Management in an effort to obtain the requested
7 discovery without court action. On March 4, 2026, I sent a detailed conferral email
8 outlining deficiencies and offering a telephone conference on March 5 or 6, 2026. I also
9 conferred with opposing counsel on March 6, 2026, who stated Colby has no more
10 information. Colby Management did not respond directly. These efforts were
11 unsuccessful.

12 /s/ Lisa Marx

13 Lisa Marx, Pro Se

14 Dated: March 10, 2026

15 **MEMORANDUM OF POINTS AND AUTHORITIES**

16 **I. FACTUAL BACKGROUND**

17 On January 22, 2026, Plaintiff issued a Subpoena Duces Tecum to non-party Colby
18 Management, requiring production of documents relevant to Plaintiff's claims of open
19 meeting violations, breach of fiduciary duty, and insurance mismanagement in the
20 underlying action. The subpoena was served on January 23, 2026. (See Exhibit A: Copy
21 of Subpoena Duces Tecum, A-1: Affidavit of Service.)

22
23 Colby Management provided a partial, late response on February 13, 2026, via email,
24 which was later referenced in Defendants' Third Amended Supplemental Disclosure

1 Statement served on February 26, 2026, under Bates numbers TARA001034 -
2 TARA001726 (Documents produced in response to Plaintiff's Subpoena to Colby
3 Management). However, the production was incomplete, omitting numerous requested
4 items and lacking required privilege or redaction logs.

5
6 Plaintiff made good-faith efforts to resolve these deficiencies without court
7 intervention, as required by ARCP 37(a)(1) and 45(e). On March 4, 2026, Plaintiff sent a
8 detailed conferral letter to Colby Management outlining the remaining deficiencies,
9 offering availability for a telephone conference on March 5 or 6, 2026, and setting a
10 deadline of March 10, 2026, for supplemental production. (See Exhibit B: March 4, 2026
11 Conferral Email.) Plaintiff also conferred with opposing counsel March 6, 2026, who
12 stated Colby has no more information, but Colby did not respond directly. Colby
13 Management has not responded to the conferral request directly, provided
14 supplemental documents, or produced the required logs as of the date of this motion
15 (March 10, 2026, 7:00 p.m.).

16
17 The outstanding deficiencies include, but are not limited to:

- 18 • Documents explaining why the approved budget was not followed on the
19 insurance line item and who authorized the deviation (January 1, 2024 -
20 December 31, 2024) as Colby would have needed direction from the board to act.
- 21 • All directives to switch insurance recording from cash basis (7-26-24) to accrual
22 basis (7-31-24) as Colby would have needed direction from the board to act.
- 23 • All correspondence regarding the creation of line item 181 "Prepaid Insurance,"
24 including correspondences between Tara Board members and Colby regarding

1 the setting up of the line item, who authorized the change, any Colby policies or
2 internal guidelines on cash vs. accrual reporting or paying on a cash basis and
3 reporting on an accrual basis, issued between January 1, 2024 and December 31,
4 2024.

- 5 • Full accounting of the 13601 N. Newcastle insurance claim and payments,
6 including all communications, directives, checks, and explanation why the claim
7 is not reflected in monthly financials. This includes all correspondences between
8 any insurance adjusters, the insurance company, the Tara Board, any vendors
9 and Colby by paper, email, fax, standard mail or any other format; all directives
10 from the Tara Board as to how the claim is to be handled by Colby; copies of all
11 checks received and paid out and to whom including dates and amounts of each
12 check; any and all other directives from the Tara Board regarding the claim; and
13 any documents reflecting why this insurance claim information is not reflected in
14 the monthly financials issued between January 1, 2024 and December 31, 2024,
15 since it is a financial matter of the association members as a whole on an
16 insurance policy all members are named on. (Redact any privileged
17 communications or sensitive personal information.)

18 These documents are relevant to Plaintiff's claims, as they pertain to insurance
19 handling (e.g., coordination on USAA's February 5, 2024 estimate of \$11,359.04 for
20 dishwasher damages exceeding the deductible), budget and accounting irregularities,
21 that may violate Arizona Condominium Act provisions (e.g., A.R.S. § 33-1248 on open
22 meetings, § 33-1243 on fiduciary duties, §33-1253 on insurance duties, §33-1212 on unit
23 boundaries, and §33-1247 on upkeep of the condominium). Colby is a vendor that
24 handles the association's financials, they follow board directions, and the December

1 2024 financials show the deposit of insurance money and its movement from one line to
2 another. Someone gave them instructions as to how that insurance money was to be
3 handled and why it was deposited into Painting Reserves. There has to be other
4 accounting and directives with documentation on how it was to be handled. (See
5 Exhibit C: Declaration of Lisa Marx; Exhibit D: Sample USAA Correspondence stating a
6 second claim and Estimate showing need for full records.)

7 **II. LEGAL ARGUMENT**

8 ARCP 45 requires non-parties to produce subpoenaed documents unless excused by
9 the court, and ARCP 37(a) authorizes motions to compel when responses are
10 incomplete or evasive. Colby Management's partial production fails to comply, as it
11 omits key items and lacks logs for any withholdings or redactions (ARCP 26(b)(5)).
12 Plaintiff's conferral efforts satisfy the good-faith requirement, and Colby Management's
13 non-response justifies court intervention.

14 The requested documents are proportional and not burdensome, as they are regular
15 business records (e.g., emails and logs) that Colby must maintain. Failure to produce
16 warrants sanctions under ARCP 37(a)(5)(A), including Plaintiff's expenses, as the non-
17 compliance is not substantially justified. If non-compliance persists after an order,
18 Plaintiff reserves the right to seek further sanctions under ARCP 37(b), such as
19 contempt of court, evidence preclusion, adverse inference, and monetary penalties.

20 **III. REQUEST FOR RELIEF**

21 WHEREFORE, Plaintiff respectfully requests that the Court:

- 22 1. Order Colby Management to produce all outstanding documents within 10 days
23 of the order.
- 24 2. Order Colby Management to provide privilege and redaction logs for any

1 withheld or redacted items.

- 2 3. Award Plaintiff reasonable expenses incurred in bringing this motion (e.g.,
3 postage, copying/printing costs and mileage to court), pursuant to ARCP
4 37(a)(5).
- 5 4. Reserve the right to impose further sanctions under ARCP 37(b) if non-
6 compliance continues, including contempt of court, evidence preclusion, adverse
7 inference, and monetary penalties.
- 8 5. Grant such other relief as the Court deems just and proper.

9 Respectfully submitted,

10 /s/ Lisa Marx Lisa Marx, Pro Se

11 13610 N 111th Ave.

12 Sun City, AZ 85351

13 602-748-7781 aimtodogood@gmail.com

14 CERTIFICATE OF SERVICE

15 I hereby certify that on March 10, 2026, a true and correct copy of the foregoing was
16 served via email on:

- 17 • Chuck Oldham, Esq., and Ari Bowhay Counsel for Defendants
18 Chuck.Oldham@chdblawn.com and Ari.Bowhay@chdblawn.com
19 • and by email and certified mail to Colby Management
20 (customerservice@colbymgt.com; LPowell@colbymgt.com)

21 Colby Management

22 17220 N. Boswell Blvd. #140

23 Sun City, AZ 85373

24 /s/ Lisa Marx

1. (Continued from page 2) Any documents reflecting explanation as to why the approved budget was not followed on the insurance line and who gave Colby the approval to not follow the approved budget, including emails, memos, board minutes, or other written directives issued between January 1, 2024 and December 31, 2024.
2. All directives from the Tara Board or Colby Management and by whom to switch the recording of the Insurance payment from a “Cash Basis” form of accounting on 7-26-24 to an “Accrual Basis” form of accounting on 7-31-24.
3. All correspondences back and forth between Tara Board members and Colby regarding the setting up of the line item 181 Prepaid Insurance. Include all documents regarding who authorized this change, and any Colby policies or internal guidelines reflecting paying on a cash basis and reporting on an accrual basis, issued between January 1, 2024 and December 31, 2024.
4. All monthly emails, phone records, written correspondences between Colby and the Tara Board regarding the monthly distribution of the financials from January 2024 to the present. Please include PDF copies of the emails that show the date the financials were sent to the Tara Board. Please include any existing explanations for records not sent out timely.
5. All written records, phone calls, emails and any other documentation regarding the adjustment made to the account of James M. Watkins and Nancy Aldis in May of 2024. Please include the customer statement that shows the breakdown of the charges on the account before the adjustment, who authorized the adjustment, what records were provided to make the adjustment.
6. All customer records for “late payments” in 2024 to the present, including the amount charged for the late payment, why a late payment was cleared from the record, who approved the removal of the late fee including phone calls, emails, written correspondences, etc. Redact any personally identifiable information (PII) of unit owners other than the plaintiff to protect privacy, unless directly relevant to the specified account adjustment in Request 5.
7. A full accounting of the insurance claim and payments for the master insurance claim against American Family regarding 13601 N. Newcastle. Please include all correspondences between any insurance adjusters, the insurance company, the Tara Board, any vendors and Colby by paper, email, Fax, standard mail or any other format. Please include all directives from the Tara Board as to how the claim is to be handled by Colby, copies of all checks received and paid out and to whom including dates and amounts of each check, any and all other directives from the Tara Board regarding the claim. Any documents reflecting why this insurance claim information is not reflected in the monthly financials issued between January 1, 2024 and December 31, 2024, since it is a financial matter of the association members as a whole on an insurance policy all members are named on. Redact any privileged communications (e.g., attorney-client) or sensitive personal information.

Person Filing: Lisa Marx
 Address (if not protected): 13610 N. 111th Ave
 City, State, Zip Code: Sun City, AZ 85351
 Telephone: 602-748-7781
 Email Address: aimtodogood@gmail.com
 Lawyer's Bar Number: _____

For Clerk's Use Only

Representing Self, without a Lawyer or Attorney for Petitioner OR Respondent

SUPERIOR COURT OF ARIZONA IN MARICOPA COUNTY

In the Matter of:

Case No. CV2025- 012980

Lisa Marx
 Plaintiff(s)

CIVIL SUBPOENA (AMENDED)
 Arizona Rules of Civil Procedure, Rules 45,
 84

Tara Condominium Association, Inc.
 Defendant(s)

TO: Name:	Colby Management
Address:	17220 N Boswell Blvd #140
City, State, Zip:	Sun City, AZ 85373

(Place a check mark in one or more of the following box(es) as appropriate.)

1. **For Attendance of Witnesses at Hearing or Trial:**

YOU ARE ORDERED TO APPEAR in the Superior Court of Arizona in Maricopa County, at the date, time, and place specified below to testify at a Hearing Trial in the case named above, before:

Judicial Officer: _____

(at) Address:

Building:

Floor:		Room #:	
Date:		Time:	

2. **For Taking of Depositions:**

YOU ARE ORDERED TO APPEAR at the place, date and time specified below to testify at the taking of a deposition in the above-named case:

Place of Deposition: _____

(at) Address:

Building:			
Floor:		Room #:	
Date:		Time:	

Method of Recording: _____

CIVIL SUBPOENA DUCES TECUM

3. **For Production of Documentary Evidence or Objects or Inspection of Premises:**

YOU ARE ORDERED to produce and permit inspection, copying, testing, or sampling of the following designated documents, electronically stored information or tangible things, or to permit inspection of the premises at the place, date, and time specified below:

LIST Documents, Information or Objects:

- | | |
|--|--|
| 1. All records regarding the payment of the American | emails, phone calls, invoices, GL history, AP |
| Family Master Policy on July 26, 2024 | history, canceled check front and back, account |
| including but not limited all written records, | information, directives from the Tara board, Cont.page 7 |

Additional items listed on attached page(s)

TO BRING WITH YOU to the court proceeding or deposition, **OR to the following place of Production or Inspection:**

Place of Production or Inspection: Please email the requested documents in PDF format to _____

(at) Address:

aimtodogood@gmail.com			
Floor:		Room #:	
Date:	February 6, 2026	Time:	5:00 p.m.

YOUR APPEARANCE IS NOT REQUIRED if the items ordered to be produced are delivered to the requesting party within the time allowed **AND** you are not otherwise ordered to appear.

Issued this date: _____

Clerk of Superior Court

By: _____
Deputy Clerk of Superior Court

Your Duties In Responding To This Civil Subpoena*

*See Arizona Rules of Civil Procedure (A.R.C.P.), Rules 45(b), (c), and (e), and the "Your Right to Object to this Subpoena" section below.

ATTENDANCE AT A TRIAL: If this subpoena commands you to appear at a trial, you must appear at the place, date and time designated in the subpoena unless you file a timely motion with the court and the court quashes or modifies the subpoena. Unless a court orders otherwise, you are required to travel to any part of the state to attend and give testimony at a trial.

ATTENDANCE AT A HEARING OR DEPOSITION: If this subpoena commands you to appear at a hearing or deposition, you must appear at the place, date and time designated in this subpoena unless either:

- (1) you file a timely motion with the court and the court quashes or modifies the subpoena; or
- (2) you are not a party or a party's officer and this subpoena commands you to travel to a place other than:
 - (a) the county where you reside or you transact business in person; or
 - (b) the county in which you were served with the subpoena or within forty (40) miles from the place of service; or
 - (c) such other convenient place fixed by a court order.

PRODUCTION OF DOCUMENTARY EVIDENCE: If this subpoena commands you to produce and permit inspection, copying, testing or sampling of designated documents, electronically stored information, or tangible things, you must make the items available at the place, date and time designated in this subpoena, and in the case of electronically stored information, in the form or forms requested, unless you provide a good faith written objection to the party or attorney who served the subpoena.

You may object to the production of electronically stored information from sources that you identify as not reasonably accessible because of undue burden or expense, including sources that are unduly burdensome or expensive to access because of the past good-faith operation of an electronic information system or good faith or consistent application of a document retention policy. See "*Your Right to Object To This Subpoena*" section below.

If this subpoena does not specify a form for producing electronically stored information, you may produce it in native form or in another reasonably usable form that will enable the receiving party to have the same ability to access, search, and display the information as the responding person, but you need not produce the same electronically stored information in more than one form.

If the subpoena commands you to produce documents, you have the duty to produce the designated documents as they are kept by you in the usual course of business, or you may organize the documents and label them to correspond with the categories set forth in the subpoena.

INSPECTION OF PREMISES: If this subpoena commands you to make certain premises available for inspection, you must make the designated premises available for inspection on the date and time designated in this subpoena unless you provide a good faith written objection to the party or attorney who served the subpoena.

COMBINED SUBPOENA: You should note that a command to produce certain designated materials, or to permit the inspection of premises, may be combined with a command to appear at a trial, hearing or deposition. You do not, however, need to appear in person at the place of production or inspection unless the subpoena also states that you must appear for and give testimony at a hearing, trial, or deposition.

YOUR RIGHT TO OBJECT TO THIS CIVIL SUBPOENA

- I. GENERALLY.** If you have concerns or questions about this subpoena, you should first contact the party or attorney who served the subpoena. The party or attorney serving the subpoena has a duty to take reasonable steps to avoid imposing an undue burden or expense on you. The superior court enforces this duty and may impose sanctions upon the party or attorney serving the subpoena if this duty is breached.

Unless otherwise ordered by the court for good cause, the party seeking discovery from you must pay your reasonable expenses incurred in responding to a subpoena seeking the production of documents, electronically stored information, tangible things, or an inspection of premises.

- If you seek payment of expenses other than routine clerical and per-page costs as allowed by A.R.S. § 12-351, you must object on the grounds of undue burden to producing the materials without the subpoenaing party's payment, and send an advanced estimate of those expenses to the subpoenaing party before the time specified for compliance or within 14 days after the subpoena is served, whichever is earlier.
- You need not comply with those parts of the subpoena that are the subject of the objection, unless the court orders you to do so. The court may enter an order conditioning your response to the subpoena on payment of your additional expenses, including ordering payment of those expenses in advance.

II. PROCEDURE FOR OBJECTING TO A SUBPOENA FOR ATTENDANCE AT A HEARING, TRIAL OR DEPOSITION:

- If you wish to object to a subpoena commanding your appearance at a hearing, trial or deposition, you must file a motion to quash or modify the subpoena with the court to obtain a court order excusing you from complying with this subpoena.*
- The motion must be filed in the superior court of the county in which the case is pending or in the superior court of the county from which the subpoena was issued.*
- The motion must be filed before the time specified for compliance or within 14 days after the subpoena is served, whichever is earlier.*
- You must send a copy of any motion to quash or modify the subpoena to the party or attorney who served the subpoena.

Even if you file such a motion, you must still attend and testify at the date, time, and place specified in the subpoena, unless excused from doing so—by the party or attorney serving the subpoena or by a court order—before the date and time specified for your appearance.

III. COURT MODIFIES or VOIDS (quashes) CIVIL SUBPOENA

A. The court must quash or modify a subpoena *if* . . .

- (1) the subpoena does not provide a reasonable time for compliance;
- (2) unless the subpoena commands your attendance at a trial, if you are not a party or a party's officer and if the subpoena commands you to travel to a place *other than*:
 - a. the county in which you reside or transact business in person;
 - b. the county in which you were served with a subpoena, or within forty (40) miles from the place of service; or
 - c. such other convenient place fixed by a court order; or
- (3) the subpoena requires disclosure of privileged or other protected matter, if no exception or waiver applies; or
- (4) the subpoena subjects you to undue burden.

B. The court may quash or modify a subpoena *if* . . .

- (1) the subpoena requires you to disclose a trade secret or other confidential research, development or commercial information;
- (2) you are an unretained expert and the subpoena requires you to disclose your opinion or information resulting from your study that you have not been requested by any party to give on matters that are specific to the dispute;
- (3) you are not a party or a party's officer and the subpoena would require you to incur substantial travel expense; or
- (4) the court determines that justice requires the subpoena to be quashed or modified.

In these last four circumstances a court may instead of quashing or modifying a subpoena, order your appearance or order the production of material under specified conditions if:

- a. the serving party or attorney shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and
- b. if your travel expenses or the expenses resulting from the production are at issue, the court ensures that you will be reasonably compensated.

IV. PROCEDURE FOR OBJECTING to subpoena for production of documentary evidence:

A. If you wish to object to a subpoena commanding you to produce documents, electronically stored information or tangible items, or to permit the inspection of premises, you may send a good faith written objection to the party or attorney serving the subpoena that objects to:

- (1) producing, inspecting, copying, testing or sampling any or all of the materials designated in the subpoena;
- (2) inspecting the premises; or
- (3) producing electronically stored information in the form or forms requested or from sources that are not reasonably accessible because of undue burden or expense, the good faith routine operation of an electronic information system, or the good faith and consistent application of a document retention policy

B. You may also object on the ground that the subpoena seeks the production of materials that have already been produced in the action or that are available from parties to the action

C. If you seek payment of expenses other than routine clerical and per page copying costs as allowed by A.R.S. § 12-351, you must object on the grounds of undue burden to producing the materials without subpoenaing party's payment, and provide an advance estimate of those additional expenses.

You must send your written objection to the party or attorney who served the subpoena before the time specified for compliance or within 14 days after the subpoena is served, whichever is earlier.

D. If you object because you claim the information requested is privileged, protected, or subject to protection as trial preparation material, you must express the objection clearly, and identify in writing the information, document, or electronically stored information withheld and describe the nature of that information, document, or electronically stored information in a manner that - without revealing information that is itself privileged or protected - will enable the demanding party to assess the claim.

E. You may object to providing the information required by Rule 26(b)(6)(A) if providing the information would impose an undue burden or expense.

- F. If you object to the subpoena in writing, you do not need to comply with the subpoena until a court orders you to do so. It will be up to the party or attorney serving the subpoena to first personally consult with you and engage in good faith efforts to resolve your objection and, if the objection cannot be resolved, to seek an order from the court to compel you to provide the documents or inspection requested, after providing notice to you.
- G. If you are not a party to the litigation, or a party's officer, the court will issue an order to protect you from any significant expense resulting from the inspection and copying commanded. See Rule 45(c)(6)(B) of the Arizona Rules of Civil Procedure.
- H. Instead of sending a written objection to the party or attorney who served the subpoena, you also have the option of raising your objections in a motion to quash or modify the subpoena, or through a protective order. See Rule 45(c)(6)(B) and (e)(2) of the Arizona Rules for Civil Procedure. The procedure and grounds for doing so are described in the section above entitled "Procedure for Objecting to a Subpoena for Attendance at a Hearing, Trial or Deposition."
- I. If the subpoena *a/so* commands your attendance at a hearing, trial or deposition, sending a written objection to the party or attorney who served the subpoena does not suspend or modify your obligation to attend and give testimony at the date, time and place specified in the subpoena. See Rule 45(c)(6)(A)(iii) of the Arizona Rules of Civil Procedure.
 - (1) If you wish to object to the portion of this subpoena requiring your attendance at a hearing, trial or deposition, you must file a motion to quash or modify the subpoena as described in the section above entitled "Procedure for Objecting to a Subpoena for Attendance at a Hearing, Trial or Deposition." See Rule 45(b)(5) and 45(c)(6)(A)(iii) of the Arizona Rules of Civil Procedure.
 - (2) Even if you file such a motion, you must still attend and testify at the date, time, and place specified in the subpoena, unless excused from doing so—by the party or attorney serving the subpoena or by a court order—before the date and time specified for your appearance.

ADA Notification

Requests for reasonable accommodation for persons with disabilities must be made to the division assigned to the case by the party needing accommodation or his/her counsel at least three (3) judicial days in advance of a scheduled proceeding.

Interpreter Notification

Requests for an interpreter for persons with limited English proficiency must be made to the division assigned to the case by the party needing the interpreter and/or translator or his/her counsel at least ten (10) judicial days in advance of a scheduled court proceeding.

SIGNED AND SEALED this date _____
Clerk of Superior Court

By: _____
Deputy Clerk of Superior Court

Certificate of service:

COSTS TO PERSON SENDING THE CIVIL SUBPOENA

WARNING: You are responsible for the other person's reasonable costs of compliance with the subpoena. The amount of reimbursement that person is entitled to for his or her costs is governed by Arizona Revised Statutes (A.R.S.) §12-351 and §12-303 as well as Arizona Rule of Civil Procedure 45(c). The full text of the statutes and rule are available online or at the Court's Law Library Resource Center.

A.R.S. §12-351 describes costs of compliance with a subpoena for production of documents. A.R.S. §12-351 says in part:

1. The witness submits an itemized statement to the requesting party stating the reproduction and clerical costs incurred by the witness.
2. If a subpoena is subsequently withdrawn, quashed, modified or limited other than by the witness, the witness is entitled to reimbursement for all reasonable costs incurred in compliance with the subpoena to the time that the requesting party has notified the witness that the subpoena has been withdrawn, quashed, modified or limited.
3. The requesting party is not required to pay the reasonable costs before the documents are available for delivery as required by the subpoena. **The witness may demand payment of the costs at the time of the actual delivery of the subpoenaed documents.**
4. The requesting party may petition the court in which the case is pending to recover from the witness all or part of the costs paid or to reduce the costs charged by the witness if these costs were excessive.
5. **"Reasonable costs" means** twenty-five cents for each page of standard reproduction of documents and the actual costs for reproduction of documents which require special processing **plus** the reasonable clerical costs incurred in locating and making the documents available billed at the rate of twenty-five dollars per hour per person.

WARNING: A.R.S. §12-303 describes the costs of compliance with a subpoena for witness testimony. Persons subject to subpoenas to appear as witnesses in a civil law suit must be paid **\$12 for each day's attendance as well as mileage at 20 cents per mile** from the witness's residence to the place of trial, hearing, or deposition. The mileage reimbursement is one way only from their home to the place of trial or hearing and does not include reimbursement for travel home.

WARNING: Persons subject to subpoenas are protected. Rule 45(c) and (e) of the Arizona Rules of Civil Procedure protect a person subject to a subpoena from undue burden or expense. Rule 45 says in part:

1. If the requesting party fails to comply with this requirement, sanctions may include lost earnings and a reasonable attorneys' fee. (A.R.C.P 45 (e)(1))
2. A person commanded to produce and permit inspection, copying, testing, or sampling of designated books, papers, documents, electronically stored information or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial. (A.R.C.P. 45 (c)(3))
3. A person receiving a subpoena can object to the subpoena in writing through the Court within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service. If objection is made, the party serving the subpoena shall not be entitled to see the documents or materials except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, file a motion with the Court at any time for an order to compel the production. (A.R.C.P 45 (c)(5))

Person Filing: Lisa Marx
Address (if not protected): 13610 N. 111th Ave
City, State, Zip Code: Sun City, AZ 85351
Telephone: 602-748-7781
Email Address: aimtodogood@gmail.com
Lawyer's Bar Number: _____



Representing Self, without a Lawyer or Attorney for Petitioner OR Respondent

SUPERIOR COURT OF ARIZONA IN MARICOPA COUNTY

In the Matter of:

Case No. CV2025-012980

Lisa Marx
Plaintiff(s)

AFFIDAVIT OF SERVICE of CIVIL SUBPOENA
Arizona Rules of Civil Procedure, Rule 45 (d)

Tara Condominium Association, Inc.,
Defendant(s)

I received the Subpoena addressed to: Colby Management
which was dated: January 22, 2026 I personally served the subpoena as follows:

On this date: 1-23-26 At this time: 10:10 AM

At this location: 17220 N Boswell Blvd #140, Sun City, AZ 85373

To: (Name) Colby Management *Hand served to Louis Peterson*

Manner of Service: at front window
(how served)

I was over the age of 18 at the time the subpoena was served. I am not a party to the case.

UNDER PENALTY OF PERJURY:

By signing below, I state to the Court under penalty of perjury that the contents of this document are true and correct.

Date: 1-23-26 Mildred Edwards
Signature

Printed Name: Mildred Edwards
Street Address: 13604 N. 111th Ave
City, State, Zip Code: Sun City, AZ 85351
Telephone Number(s): 623-231-5046

FEES \$ _____
MILEAGE _____
CHARGES \$ _____
OTHER \$ _____
TOTAL \$ _____



Lisa Marx <aimtodogood@gmail.com>

Good-Faith Conferral Under ARCP 37(a)(1) and 45(e) – Incomplete Response to Subpoena Duces Tecum (Case No. CV2025-012980)

1 message

Lisa Marx <aimtodogood@gmail.com>

Wed, Mar 4, 2026 at 4:29 PM

To: Customer Service <customerservice@colbymgt.com>, LPowell@colbymgt.com, Chuck Oldham <chuck.oldham@chdbl.com>, Lisa Marx <aimtodogood@gmail.com>

Dear Colby Management,

Pursuant to Ariz. R. Civ. P. 37(a)(1) and 45(e), I am writing in a good-faith attempt to resolve the outstanding deficiencies in your response to my Subpoena Duces Tecum without court intervention. The subpoena was dated January 22, 2026, and served on January 23, 2026.

I note that you delivered partial subpoenaed documents on February 13, 2026, via email, and these were later referenced in the Association's Third Supplemental Disclosure Statement ("Third SDS"), served February 26, 2026, under Bates TARA001008-001700. However, many requested items remain unproduced or incomplete, and no privilege logs or redaction logs/explanations have been provided for any withheld or redacted portions (e.g., in "late payments" records or financials for accuracy). These gaps continue to hinder my ability to prepare for depositions and trial, particularly regarding my open-meeting, breach-of-fiduciary-duty, and related claims.

To resolve these without court intervention, I am available for a telephone conference at your earliest convenience this week (e.g., March 5 or 6, 2026). Please reply with several proposed times that work for you. If I do not receive complete supplemental productions addressing the items below by March 10, 2026, I will have no choice but to file a Motion to Compel under ARCP 37(a) and 45(e), seeking sanctions including my reasonable expenses and costs.

The remaining deficiencies include:

1. Documents explaining why the approved budget was not followed on the insurance line item and who authorized the deviation (January 1, 2024 – December 31, 2024).
2. All directives to switch insurance recording from cash basis (7-26-24) to accrual basis (7-31-24).
3. All correspondence regarding the creation of line item 181 "Prepaid Insurance," including correspondences back and forth between Tara Board members and Colby regarding the setting up of the line item, who authorized the change, any Colby policies or internal guidelines on cash

- vs. accrual reporting or paying on a cash basis and reporting on an accrual basis, issued between January 1, 2024 and December 31, 2024.
4. All customer records for "late payments" in 2024 to the present, including the amount charged for the late payment (there is a document, "Delinquency and Prepaid by Fiscal Year Report Tara Condos CA As Of: Wed Feb 04, 2026" that shows late payments, but no reflection of the mandatory \$25 late fee per each late payment), why a late payment was cleared from the record, who approved the removal of the late fee including phone calls, emails, written correspondences, etc. Redact any personally identifiable information (PII) of unit owners other than the plaintiff to protect privacy, unless directly relevant to the specified account adjustment in Request 5.
 5. Full accounting of the 13601 N. Newcastle insurance claim and payments, including all communications, directives, checks, and explanation why the claim is not reflected in monthly financials. Please include all correspondences between any insurance adjusters, the insurance company, the Tara Board, any vendors and Colby by paper, email, Fax, standard mail or any other format. Please include all directives from the Tara Board as to how the claim is to be handled by Colby, copies of all checks received and paid out and to whom including dates and amounts of each check, any and all other directives from the Tara Board regarding the claim. Any documents reflecting why this insurance claim information is not reflected in the monthly financials issued between January 1, 2024 and December 31, 2024, since it is a financial matter of the association members as a whole on an insurance policy all members are named on. Redact any privileged communications (e.g., attorney-client) or sensitive personal information.

Please provide complete supplemental responses and produce the requested documents no later than March 10, 2026. If any items are being withheld on privilege grounds, please provide a proper privilege log. Additionally, if any redactions were made (e.g., for PII), please provide a redaction log or explanation describing each redaction (type of information redacted, reason, and why not producible unredacted under seal).

Thank you for your prompt attention. I look forward to your response and proposed call times.

Sincerely, /s/Lisa Marx Plaintiff, Pro Se 13610 N. 111th Ave. Sun City, AZ 85351 Phone: (602) 748-7781 Email: aimtodogood@gmail.com

Cc: Chuck Oldham <chuck.oldham@chdbl.com>

1 Lisa Marx
2 13610 N. 111th Ave.
3 Sun City, AZ 85351
4 602-748-7781
5 aimtodogood@gmail.com
6 Representing self

7 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**
8 **IN AND FOR THE COUNTY OF MARICOPA**

9
10 Lisa Marx
11 Plaintiff,

Case No. CV 2025-012980

12 vs.

**DECLARATION OF LISA MARX
(EXHIBIT C)**

13 Tara Condominiums Association, Inc.,

Honorable Adele Ponce

14
15 **DECLARATION OF LISA MARX (EXHIBIT C)**

16 I, Lisa Marx, declare under penalty of perjury under the laws of the State of Arizona
17 that the following is true and correct to the best of my knowledge:

- 18
- 19 1. I am the Plaintiff in this action, appearing pro se, and I have personal knowledge
20 of the facts stated herein.
 - 21 2. On January 22, 2026, I issued a Subpoena Duces Tecum to Colby Management,
22 which was served on January 23, 2026.
 - 23 3. Colby Management provided only partial, late documents on February 13, 2026,
24 to me personally and referenced in Defendants' Third Amended Supplemental

1 Disclosure Statement under Bates TARA001034 - TARA001726, but omitted key
2 items such as budget deviation explanations from communication with the
3 board, accounting directives from the board, full insurance claim on master
4 policy accountings. Based on files I received from the insurance adjustor and
5 forwarded to American Family Insurance prior to and after stepping down from
6 the board and not disclosed by Colby or Defendant's, I know additional relevant
7 documents exist that have not been produced as Colby would have handled
8 these claims in the record keeping.

- 9 4. The provided privilege log, prepared by Defendants' counsel (not Colby), is
10 insufficient under ARCP 26(b)(5), as it claims no privileges and provides vague
11 redaction descriptions.
- 12 5. On March 4, 2026, I sent a good-faith conferral email to Colby, offering a
13 conference and setting a March 10 deadline, but received no response from Colby
14 directly.
- 15 6. These deficiencies hinder my case preparation for claims under A.R.S. §§ 33-1243,
16 33-1253, 33-1212, 33-1247 and 33-1248.

17
18 Executed on March 10, 2026, in Sun City, Arizona.

19 /s/ Lisa Marx

20 Lisa Marx

21 13610 N 111th Ave

22 Sun City, AZ 85351

23 602-748-7781

24 aimtodogood@gmail.com

EX 280

USAA
PO BOX 33490
San Antonio, TX 78265
800-531-8722
800-531-8669 Fax
2/5/2024

Insured: THIERRY RILES, LUCINDA
Home: 13601 N NEWCASTLE DR
SUN CITY, AZ 85351
Property: 13601 N Newcastle Dr
Sun City, AZ 85351

Cell: (623) 800-4827
E-mail: mauricemarie01@gmail.com

Claim Rep.: Christopher 86666

Business: (800) 531-8722

Estimator: Christopher 86666

Business: (800) 531-8722

Member Number: 046248501

Policy Number: 046248501/90A

L/R Number: 001

Type of Loss: Water Damage

Cause of Loss: Other

Insurance Company: United Services Automobile Association

Coverage	Deductible	Policy Limit
Dwelling - Building Items	\$1,000.00	\$99,000.00

Date Contacted: 1/2/2024 12:00 AM

Date of Loss: 12/27/2023 12:00 AM

Date Received: 12/29/2023 12:00 AM

Date Inspected: 1/18/2024 1:00 PM

Date Entered: 12/29/2023 3:44 PM

Date Est. Completed: 2/5/2024 3:44 PM

Price List: AZPH8X_DEC23
Restoration/Service/Remodel

Summary for Dwelling - Building Items

Line Item Total	9,093.46
Overhead	909.37
Profit	909.37
Sales Tax Prime Cont	446.84
Replacement Cost Value	\$11,359.04
Less Deductible	(1,000.00)
Net Claim	\$10,359.04

Christopher 86666

“FOR YOUR PROTECTION ARIZONA LAW REQUIRES THE FOLLOWING STATEMENT TO APPEAR ON THIS FORM. ANY PERSON WHO KNOWINGLY PRESENTS A FALSE OR FRAUDULENT CLAIM FOR PAYMENT OF A LOSS IS SUBJECT TO CRIMINAL AND CIVIL PENALTIES.” AZ STAT. §20-466.03

FREQUENTLY ASKED QUESTIONS

The FAQs and answers below will be helpful in the claim process. If there is any conflict between these answers and the policy, your policy controls. Please read your policy.

How is my initial Dwelling payment determined?

Subject to the applicable deductible and policy conditions, Dwelling payments are generally based on the cost to repair or replace the damaged property with similar construction and for the same use on the same premises. When the cost to repair or replace the damaged dwelling exceeds \$10,000, USAA will pay a portion of the claim up front (the actual cash value of the loss), and the balance (recoverable depreciation) when the repairs are complete.

How do I collect the recoverable depreciation?

You can provide evidence of a signed contract or repair/replace the damaged part of the property. Once the signed contract or the invoice for repair/replacement has been received, the recoverable depreciation amount will be reviewed and released. The policy will pay the covered additional amount you incurred to repair or replace the property, but not to exceed the approved replacement cost of your claim. In no case will USAA pay more than the total amount of the actual repairs less your policy deductible. If your replacement cost is less than \$50,000.00, a signed contract will suffice for the release your recoverable depreciation amount.

Why is the mortgage company or another entity included on this payment?

If your check includes the name of your mortgage company it is because we are required to include them on our payment to you, per the mortgage clause on your policy. The check must be presented to them for their endorsement prior to submitting it to our bank for payment. Incomplete endorsements will result in the check being returned without payment. Please contact us if the mortgagee information is incorrect so that we may update that information and issue a correct payment to you. This estimate serves as the **adjuster worksheet/adjuster report** that may be required by your mortgage company.

What if I'm not going to repair or replace my damaged property using the same material?

Please contact us if you choose to repair or replace the damaged building part with a different material or type of construction from what is on our estimate. Replacement or repair differing from the original estimate could affect any replacement cost claim you are otherwise eligible to collect.

What if my contractor's estimate is different from USAA's estimate?

Show the USAA estimate to your contractor. If your contractor's estimate is higher, please contact USAA prior to starting the repairs to your home as the additional charges may not be covered.

THIS ESTIMATE REPRESENTS ITEMS THAT HAVE BEEN REVIEWED AND APPROVED BY USAA OR ITS REPRESENTATIVE.

Please contact our adjuster if you believe a supplement to this estimate is needed. Before we will consider a supplement to this estimate, we must have the opportunity to re-inspect the damages prior to the supplemental work being done.



How to read your homeowners repair estimate



Watch: [How to understand your repair estimate](#)

Your estimate, simplified.

Making sure you're getting paid the right amount for your claim is important to us. Use this guide to help you understand your payment or visit usaa.com/estimateFAQ for more answers.

The following information may not be applicable if you have a flood claim.

Policy coverage - Items covered by your policy, such as dwelling, contents, other structures, loss of use, liability, and sublimits.

Price list - Market prices for labor and materials, based on your claim date and location.

Estimate overview			
Member Number: 00000000	Policy Number: 00000000	L/R Number: 000	
Type of Loss: Wind Damage	Cause of Loss: Other		
Coverage	Deductible	Policy Limit	
Dwelling	\$1,000.00	\$300,000.00	
Contents	\$0.00	\$241,500.00	
Other Structures	\$0.00	\$32,000.00	
Loss of Use			
Date Contacted: 6/10/2021 10:20 PM	Date Received: 6/10/2021 10:16 AM		
Date of Loss: 3/8/2021 12:00 AM	Date Entered: 6/12/2021 1:03 PM		
Date Inspected: 6/11/2021 10:16 AM			
Price List: CALA88_JUN21			
Restoration/Service/Remodel			

Deductible - The amount you chose to pay out of pocket for a claim. We'll automatically subtract this from your claim payout. You only need to pay the repair company.

Policy limit - The max amount your policy may pay for each coverage type.

Line-item total - The total cost of the itemized repairs for the coverage.

Overhead and profit - The amount your contractor charges for repair services.

Net claim - The amount we'll pay up front for covered repairs.

Recoverable depreciation - If you have replacement coverage, you'll be paid back depreciation based on repair costs once you submit the final invoice.

Line-items - A description of the items needed to repair or replace covered damages, with their cost according to the price list.

Estimate summary	
Summary for Dwelling	
Line Item Total	
Overhead	8,498.00
Profit	762.38
Replacement Cost Value	739.62
Less Depreciation	\$10,000.00
	(500.00)
Actual Cash Value	\$9,500.00
Less Deductible	(1,000.00)
Net Claim	\$8,500.00
Total Recoverable Depreciation	500.00
Net Claim if Depreciation is Recovered	\$9,000.00

Replacement cost value or RCV - The estimated cost to repair or replace covered items with new ones.

Less depreciation - Subtract the value your property has lost due to age or condition. If in parentheses, you may request to be paid back up to this amount once repairs are complete, depending on your costs. Simply submit your invoice online.

Actual cash value or ACV - What your property was worth at the time of the damage, after subtracting depreciation. This is the amount insurance will pay up front for repairs, minus your deductible.

Line-item total - The total cost of the itemized repairs for the coverage, using the calculation: RCV minus Depreciation equals ACV.

Itemized details						
Description	Quantity	Unit Price	RCV	Depreciation	ACV	
1. Contents - move out then reset - Extra large room	1					
	1.00 EA	201.53	201.53	(0.00)	201.53	
2. Remove Quarry tile floor	F					
	290.00 SF	7.68	2,227.20	(0.00)	2,227.20	
3. Quarry tile floor	F					
	290.00 SF	14.81	4,294.90	(438.75)	4,126.00	
4. Remove 1/4" Cement board	F					
	290.00 SF	1.26	365.40	(0.00)	385.86	
5. 1/4" Cement board	F					
	290.00 SF	4.04	1,171.60	(61.25)	1,110.35	
6. Final cleaning - construction - Residential	F					
	290.00 SF	0.27	78.30	(0.00)	78.30	
7. Single axle dump truck - per load - including dump fees	1					
	1.00 EA	389.24	389.24	(0.00)	389.24	
Totals: Room			8,728.17	500.00	8,498.00	

How we determine your payment

First payment

We take the cost to replace or repair covered damage, then subtract value lost due to wear and tear, as well as your out-of-pocket policy cost. Use this payment to start repairs.

Additional payments, if applicable

For consideration of additional covered cost, you can submit a supplement for your claim through the Claims Center on our mobile app or usaa.com.

Example of a calculated payment

\$10,000	Replacement cost value
-\$500	Depreciation
-\$1,000	Deductible
\$8,500	First payment

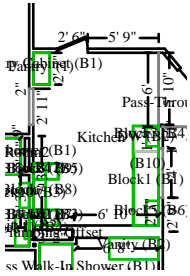
This material is for informational purposes only. For an actual description of all coverages, terms and conditions, refer to the insurance policy.

Recap of Taxes, Overhead and Profit

	Overhead (10%)	Profit (10%)	Sales Tax Prime Cont (4.095%)	Contents Repl. Tax (6.3%)	Local Food Tax (0.7%)
Line Items	909.37	909.37	446.84	0.00	0.00
Total	909.37	909.37	446.84	0.00	0.00

THIERRY_RILES__LUC1

Main Level



Kitchen

Height: 8'

215.31 SF Walls	138.44 SF Ceiling
353.75 SF Walls & Ceiling	121.44 SF Floor
13.49 SY Flooring	22.00 LF Floor Perimeter
48.00 LF Ceil. Perimeter	

Missing Wall - Goes to Floor

2' 11" X 6' 8"

Opens into LIVING_ROOM

Missing Wall - Goes to neither Floor/Ceiling

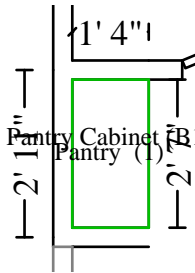
4' X 3' 6"

Opens into ARIZONA_ROOM

Door

2' 6" X 6' 8"

Opens into Exterior



Subroom: Pantry (1)

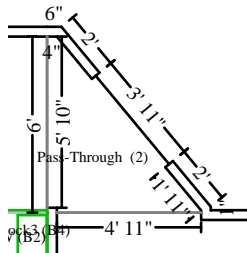
Height: 8'

7.00 SF Walls	3.44 SF Ceiling
10.44 SF Walls & Ceiling	
7.83 LF Ceil. Perimeter	

Missing Wall - Goes to Floor

2' 7" X 6' 8"

Opens into KITCHEN



Subroom: Pass-Through (2)

Height: 7' 4"

61.91 SF Walls	16.88 SF Ceiling
78.79 SF Walls & Ceiling	16.88 SF Floor
1.88 SY Flooring	8.44 LF Floor Perimeter
19.19 LF Ceil. Perimeter	

Missing Wall - Goes to Floor

4' 11" X 7' 4"

Opens into ARIZONA_ROOM

Missing Wall - Goes to Floor

5' 10" X 7' 4"

Opens into KITCHEN

Window

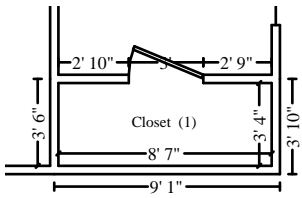
3' 11" X 3' 11"

Opens into Exterior

Description	Quantity	Unit Price	RCV	Depreciation	ACV
1. Contents - move out then reset	1	1.00 EA	78.42	(0.00)	78.42
2. Dishwasher - Detach & reset	1	1.00 EA	281.60	(0.00)	281.60
3. Range - electric - Remove & reset	1	1.00 EA	43.00	(0.00)	43.00
4. Microwave oven - over range or drawer type- Detach & reset	1	1.00 EA	128.86	(0.00)	128.86

CONTINUED - Kitchen

Description	Quantity	Unit Price	RCV	Depreciation	ACV	
5. Refrigerator - Remove & reset	1	1.00 EA	57.31	57.31	(0.00)	57.31
6. Refrig. water line - Disconnect & reconnect - with repairs	1	1.00 EA	108.80	108.80	(0.00)	108.80
Water line runs through cabinets and into wall, over to connection at hall bathroom.						
7. Freezer - Remove & reset	1	1.00 EA	57.31	57.31	(0.00)	57.31
8. Garbage disposal / disposer - Detach & reset	1	1.00 EA	193.03	193.03	(0.00)	193.03
9. R&R Angle stop valve	2	2.00 EA	51.13	102.26	(0.00)	102.26
10. P-trap assembly - Detach & reset	1	1.00 EA	72.00	72.00	(0.00)	72.00
11. R&R 1/2" drywall - hung, taped, ready for texture	8*2+10'2*2	36.33 SF	3.03	110.08	(0.00)	110.08
Lower two feet of east wall behind sink-side cabinets and south/yellow wall shared with Master Bath.						
12. Tape joint for new to existing drywall - per LF	22'2	22.17 LF	10.27	227.69	(0.00)	227.69
13. Texture drywall - machine	19'2*3	57.50 SF	0.76	43.70	(0.00)	43.70
14. Countertop - post formed plastic laminate - Detach & reset	CABCTPFRS_2.	12.25 LF	22.85	279.91	(0.00)	279.91
	LL+CABCTPFR					
	S_1.					
	LL+CABCTPFR					
	S_0.LL					
15. Backsplash - flat laid plastic laminate - Detach & reset	2*2	4.00 LF	4.63	18.52	(0.00)	18.52
Sidesplashes.						
16. R&R Cabinetry - lower (base) units	6+1'3+1'3	8.50 LF	268.46	2,281.92	(0.00)	2,281.92
17. R&R Cabinet panels - side, end, or back	2*3	6.00 SF	19.82	118.92	(0.00)	118.92
Cabinet panel at side of dishwasher.						
18. R&R Filler/scribe board - 1" x 4" - hardwood	3	3.00 LF	7.02	21.06	(0.00)	21.06
19. Regrout tile floor	6'6+10+3'3+5'3	25.00 SF	3.29	82.25	(0.00)	82.25
Re-grout tile floor along new baseboard and cabinet bases.						
20. R&R Cabinetry - upper (wall) units	1'6+2+1'3+2'6+1'	8.50 LF	180.86	1,537.32	(0.00)	1,537.32
	3					
21. Cabinet knobs or pulls - Detach & reset	10	10.00 EA	3.02	30.20	(0.00)	30.20



Subroom: Closet (1)

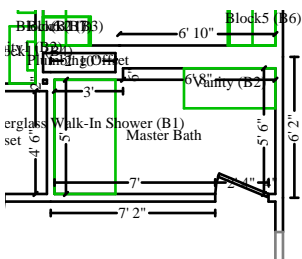
Height: 8'

190.67 SF Walls	28.61 SF Ceiling
219.28 SF Walls & Ceiling	28.61 SF Floor
3.18 SY Flooring	23.83 LF Floor Perimeter
23.83 LF Ceil. Perimeter	

Door **3' X 6' 8"** **Opens into ARIZONA_ROOM**

Description	Quantity	Unit Price	RCV	Depreciation	ACV
30. Contents - move out then reset - Large room	1	117.63	117.63	(0.00)	117.63
31. Baseboard - 2 1/4"	16'4	3.86	63.03	(0.00)	63.03
Baseboard along shared wall with kitchen and master bath.					
32. Mask and prep for paint - tape only (per LF)	PC	85.83 LF	0.68	58.36	58.36
33. Seal (1 coat) & paint (1 coat) baseboard	16'4	1.65	26.94	(0.00)	26.94
34. Paint baseboard - one coat	PF-16'4	61.91 LF	1.05	65.01	65.01
35. Final cleaning - construction - Residential	F	219.39 SF	0.35	76.79	76.79

Totals: Arizona Room **407.76** **0.00** **407.76**



Master Bath

Height: 8'

161.79 SF Walls	51.67 SF Ceiling
213.46 SF Walls & Ceiling	51.67 SF Floor
5.74 SY Flooring	14.25 LF Floor Perimeter
30.33 LF Ceil. Perimeter	

Door **2' 4" X 6' 8"** **Opens into MASTER_BEDRO**

Description	Quantity	Unit Price	RCV	Depreciation	ACV
36. Contents - move out then reset - Small room	1	58.86	58.86	(0.00)	58.86
37. Towel bar - Detach & reset	2	17.50	35.00	(0.00)	35.00
38. Handicap grab bar - Detach & reset	1	34.76	34.76	(0.00)	34.76

CONTINUED - Master Bath

Description	Quantity	Unit Price	RCV	Depreciation	ACV
39. Toilet - Detach & reset					
1	1.00 EA	295.55	295.55	(0.00)	295.55
40. R&R Angle stop valve					
3	3.00 EA	51.13	153.39	(0.00)	153.39
41. P-trap assembly - Detach & reset					
1	1.00 EA	72.00	72.00	(0.00)	72.00
42. Vanity top - Detach & reset					
4	4.00 LF	38.46	153.84	(0.00)	153.84
43. Toilet paper holder - Detach & reset					
1	1.00 EA	18.48	18.48	(0.00)	18.48
44. R&R 1/2" drywall - hung, taped, ready for texture					
6'8*2	13.33 SF	3.03	40.39	(0.00)	40.39
45. Tape joint for new to existing drywall - per LF					
10'8	10.67 LF	10.27	109.58	(0.00)	109.58
46. Texture drywall - machine					
7'8*3	23.00 SF	0.76	17.48	(0.00)	17.48
47. R&R Vanity					
4	4.00 LF	248.10	992.40	(0.00)	992.40
48. R&R Baseboard - 2 1/4"					
2'8	2.67 LF	4.35	11.62	(0.00)	11.62
49. Floor protection - plastic and tape - 10 mil					
F	51.67 SF	0.33	17.05	(0.00)	17.05
50. Mask and prep for paint - tape only (per LF)					
PC	30.33 LF	0.68	20.62	(0.00)	20.62
51. Mask and prep for paint - plastic, paper, tape (per LF)					
5	5.00 LF	1.53	7.65	(0.00)	7.65
Mask and protect shower during painting.					
52. Seal the surface area w/PVA primer - one coat					
23	23.00 SF	0.64	14.72	(0.00)	14.72
53. Paint the walls - two coats					
W	161.79 SF	1.07	173.12	(0.00)	173.12
54. Final cleaning - construction - Residential					
F	51.67 SF	0.35	18.08	(0.00)	18.08
Totals: Master Bath			2,244.59	0.00	2,244.59
Total: Main Level			8,893.48	0.00	8,893.48

Miscellaneous

Description	Quantity	Unit Price	RCV	Depreciation	ACV	
55. Haul debris - per pickup truck load - including dump fees	.25	0.25 EA	157.92	39.48	(0.00)	39.48
Totals: Miscellaneous			39.48	0.00	39.48	

Labor Minimums Applied

Description	Quantity	Unit Price	RCV	Depreciation	ACV	
56. Finish carpentry labor minimum	1	1.00 EA	160.50	160.50	(0.00)	160.50
Totals: Labor Minimums Applied			160.50	0.00	160.50	
Line Item Totals: THIERRY_RILES__LUC1			9,093.46	0.00	9,093.46	

Grand Total Areas:

2,544.53 SF Walls	981.03 SF Ceiling	3,525.56 SF Walls and Ceiling
960.58 SF Floor	106.73 SY Flooring	314.91 LF Floor Perimeter
0.00 SF Long Wall	0.00 SF Short Wall	409.86 LF Ceil. Perimeter
960.58 Floor Area	1,079.48 Total Area	2,544.53 Interior Wall Area
1,319.80 Exterior Wall Area	153.41 Exterior Perimeter of Walls	
0.00 Surface Area	0.00 Number of Squares	0.00 Total Perimeter Length
0.00 Total Ridge Length	0.00 Total Hip Length	

Recap by Room

Estimate: THIERRY_RILES__LUC1

Area: Main Level

Kitchen	6,241.13	68.63%
Arizona Room	407.76	4.48%
Master Bath	2,244.59	24.68%

Area Subtotal: Main Level	8,893.48	97.80%
Miscellaneous	39.48	0.43%
Labor Minimums Applied	160.50	1.77%

Subtotal of Areas	9,093.46	100.00%
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Total	9,093.46	100.00%
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Recap by Category

O&P Items	Total	%
APPLIANCES	869.91	7.66%
CABINETS	5,280.25	46.49%
CLEANING	143.28	1.26%
CONTENT MANIPULATION	254.91	2.24%
GENERAL DEMOLITION	39.48	0.35%
DRYWALL	548.92	4.83%
FLOOR COVERING - CERAMIC TILE	82.25	0.72%
FINISH CARPENTRY / TRIMWORK	263.43	2.32%
FINISH HARDWARE	53.48	0.47%
MARBLE - CULTURED OR NATURAL	153.84	1.35%
PLUMBING	695.20	6.12%
PAINTING	673.75	5.93%
TOILET & BATH ACCESSORIES	34.76	0.31%
O&P Items Subtotal	9,093.46	80.05%
Overhead	909.37	8.01%
Profit	909.37	8.01%
Sales Tax Prime Cont	446.84	3.93%
Total	11,359.04	100.00%

This estimate serves as the adjuster worksheet/adjuster report that may be required by your mortgage company.



Tara COA <suncitytaracoa@gmail.com>

Claim Message from USAA - 13601 N Newcastle Drive - Loss 1 of 2

4 messages

USAA Claims <5ck9lz99778z@claims.usaa.com>
Reply-To: USAA Claims <5ck9lz99778z@claims.usaa.com>
To: suncitytaracoa@gmail.com

Mon, Feb 5, 2024 at 5:25 PM

To ensure delivery to your inbox, please add 5ck9lz99778z@claims.usaa.com to your address book.



USAA # ending in:

Claim Message

Good afternoon Mark,

This correspondence is regarding the following USAA claim:

USAA policyholder: LUCINDA THIERRY RILES
Claim number: 046248501-001

I have been advised that you are the new point of contact for the Tara Condo Association and am reaching out regarding two water damage events which occurred at the residence of Mrs. Lucinda Thierry Riles, located at 13601 N Newcastle Drive in Sun City.

It was determined that the association's master insurance policy is primary on this loss, but the claim was not pursued for two reasons: First, it was found there was more than one water source. Second, it was unknown if either of these losses would exceed the policy deductible.

USAA has completed the inspection and estimates have been written for both exposures.

The first loss was determined to be a leak from the dishwasher in the kitchen. This caused damage to the lower cabinets, drywall and baseboard in the Kitchen, the baseboard in the Arizona Room, and the drywall, vanity, and baseboard in the Master Bathroom. Our evaluation of these damages resulted in an insurance estimate currently calculated with a replacement cost value of \$11,359.04. This estimate does not take into account the additional services of water mitigation, which is likely needed due to the presence of moisture during our inspection, nor the need for asbestos testing and potential asbestos abatement.

Given that this loss exceeds the master policy's \$10,000.00 deductible, I am requesting that the claim initially reported by your predecessor be reopened and the association's adjuster begin the process of evaluating for mitigation and abatement needed.

I have attached a copy of the USAA estimate to this correspondence so that you can share with the insurance carrier claims adjuster.

The email address for this loss is: 5ck9lz99778z@claims.usaa.com

The second loss will be addressed in an additional email. Each of our claims has its own email address assigned, so the details on that loss will originate from that claim.

You may reply to this message. If you need to provide documentation, you can attach documents to your email. We can't guarantee the security of any medical, financial or other personally identifiable information sent by email.

Email Delivery Criteria

To ensure delivery of your email, please make sure it meets the following criteria:

- The size of the message can't exceed 30 MB.
- These attachments are supported: .bmp, .jpe, .jpeg, .jpg, .pdf, .doc, .docx, .xls and .xlsx.
- Individual attachments must not exceed 7 MB.
- Include no more than 10 attachments.
- Attachments can't be password-protected.

Sincerely,



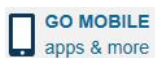
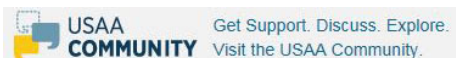
Christopher
Property Claims
United Services Automobile Association

[08571:022:83]



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United Services Automobile Association, 9800 Fredericksburg Road, San Antonio, Texas 78288



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 **REVISED USAA STAFF ESTIMATE -CHRISTOPHER 86666.pdf**
2144K

Tara COA <suncitytaracoa@gmail.com>
To: "Bell, Casey" <cbel3@amfam.com>

Tue, Feb 6, 2024 at 8:07 AM

Hi Casey or Theresa,

This was sent to me in error, but in looking at it I am really wondering what USAA is trying to pull now? They are calling this loss 1 of 2. There were three different leaks according to the original information. This estimate is for the leak in the kitchen area. According to the original information that came in, the kitchen leak was the 3rd claim and was not discovered until January 18th. This paperwork states that the date of loss was 12-27-23 and date contacted 1-2-24. What's next? Thank you, Lisa

[Quoted text hidden]

 **REVISED USAA STAFF ESTIMATE -CHRISTOPHER 86666.pdf**
2144K

Tara COA <suncitytaracoa@gmail.com>
To: mamarice <mamarice@aol.com>

Wed, Feb 14, 2024 at 6:49 PM

----- Forwarded message -----

From: **USAA Claims** <5ck9lz99778z@claims.usaa.com>
Date: Mon, Feb 5, 2024 at 5:25 PM
Subject: Claim Message from USAA - 13601 N Newcastle Drive - Loss 1 of 2
To: <suncitytaracoa@gmail.com>

[Quoted text hidden]

 **REVISED USAA STAFF ESTIMATE -CHRISTOPHER 86666.pdf**
2144K

Tara COA <suncitytaracoa@gmail.com>
To: mamarice <mamarice@aol.com>

Wed, Feb 14, 2024 at 6:49 PM

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 **REVISED USAA STAFF ESTIMATE -CHRISTOPHER 86666.pdf**
2144K

Exhibit C

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2025-012980

06/24/2025

HONORABLE RANDALL H. WARNER

CLERK OF THE COURT
L. Gilbert
Deputy

LISA MARX

LISA MARX
13610 N 111TH AVE
SUN CITY AZ 85351

v.

TARA CONDOMINIUMS ASSOCIATION, et al. CHARLES H OLDHAM

JUDGE WARNER

MINUTE ENTRY

Before the Court and fully briefed is Defendant Tara Condominium Association's May 28, 2025 Partial Motion To Dismiss Plaintiff's Claims That Are Derivative In Nature Pursuant To Rule 12(B)(6). The Motion argues that several of Plaintiff's claims are derivative. Oral argument is not necessary.

Plaintiff's claims against the Association are not derivative. A derivative action is brought in the name of and on behalf of a company against others, typically the company's officers or directors. Plaintiff's claims are all brought to assert her rights as a member against the Association under the CC&R's. To the extent she seeks damages, Plaintiff may only recover damages she herself has suffered and can prove. She may not recover damages for harm to the others or to the community in general.

To the extent Plaintiff seeks injunctive relief to compel the Association to take certain actions required by the CC&R's or other law, that is not a derivative claim. The Court does not decide—because the issue is not before it—whether any of Plaintiff's claims requires joining other members of the Association.

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At page 10 of the Motion, the Association argues that a claim for sanctions against two board members is derivative. The Motion only purports to be filed by the Association. *See* Page 1 (“Defendant, Tara Condominium Association (the ‘Association’) hereby requests. . . .”); Page 11 (“Defendant Tara Condominium Association hereby respectfully requests. . . .”). If those board members wish to seek dismissal, they may file a motion.

IT IS ORDERED denying Defendant Tara Condominium Association’s May 28, 2025 Partial Motion To Dismiss Plaintiff’s Claims That Are Derivative In Nature Pursuant To Rule 12(B)(6).