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IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF MARICOPA

Lisa Marx Plaintiff, vs. Tara Condominiums Association, Inc.,	Case No. CV 2025-012980 **PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT AND MEMORANDUM IN SUPPORT** **(Claims 46, 91, 42, 87, 127, 98, 126)** Honorable Adele Ponce

Plaintiff Lisa Marx moves under Ariz. R. Civ. P. 56(a) for partial summary judgment on Claims 46 and 91, Claims 42, 87, and 127, and Claims 98 and 126. The motion is supported by the following Memorandum, Plaintiff's Separate Statement of Facts ("SSOF"), the Declaration of Lisa Marx ("Marx Decl."), and the accompanying exhibits.

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

This motion concerns three undisputed acts, each established by the Association's own records. First, on July 20, 2024 the Board changed the master-policy deductible from $10,000 to $25,000 without the vote of the membership that By-Law § 1.09 requires to change a By-Law obligation. Second, in October and November 2024 the Board adopted the 2025 budget, which included a $50 monthly assessment increase, through a single mail-only ballot, and refused to call the member meeting that A.R.S. §§ 33-1248 and 33-1250 require, even after Plaintiff demanded one in writing. Third, in December 2024 the Association refused Plaintiff a printed ballot and printed communications — while continuing to provide printed materials to other owners — and issued annual-meeting ballots that omitted the time of day A.R.S. § 33-1250(C) requires, making these decisions by email and without the open meeting A.R.S. § 33-1248 requires. Each act violated the governing-document and statutory provisions the operative Second Amended Complaint ("SAC") pleads, and each caused Plaintiff the direct, individualized harm the SAC alleges. Plaintiff seeks declaratory and injunctive relief.

II. STATEMENT OF FACTS

The material facts are set out in Plaintiff's Separate Statement of Facts and are established by the Association's own produced records (Ariz. R. Evid. 801(d)(2), 901, 902) and the Declaration of Lisa Marx (Ariz. R. Civ. P. 56(c)(4)). The Memorandum cites the SSOF by paragraph number.

III. LEGAL STANDARD

Summary judgment is required where "there is no genuine dispute as to any material fact and the moving party is entitled to judgment as a matter of law." Ariz. R. Civ. P.

56(a). It should be granted when the facts offered against the motion have "so little probative value … that reasonable people could not agree" with the opposing conclusion. *Orme Sch. v. Reeves*, 166 Ariz. 301, 309 (1990). A condominium's Declaration and By-Laws form a contract between the association and each owner, and the court construes them as a matter of law. *Johnson v. Pointe Cmty. Ass'n, Inc.*, 205 Ariz. 485, ¶ 23 (App. 2003); *Ahwatukee Custom Estates Mgmt. Ass'n v. Turner*, 196 Ariz. 631, ¶ 5 (App. 2000); *Powell v. Washburn*, 211 Ariz. 553, 125 P.3d 373 (2006). Whether an act exceeded the association's authority is likewise a question of law. *Tovrea Land & Cattle Co. v. Linsenmeyer*, 100 Ariz. 107, 113–14 (1966).

IV. PLAINTIFF'S CLAIMS ARE DIRECT, NOT DERIVATIVE, AND SHE HAS STANDING

Plaintiff is an owner of a unit in, and a member of, the Association. (SSOF ¶ 1.) This Court has already ruled that Plaintiff's claims are not derivative. (Minute Entry, June 24, 2025.) That ruling controls, and the record confirms it. On a challenge to standing the court examines the nature of the pleaded injury, not the defendant's label for it. *Albers v. Edelson Tech. Partners, L.P.*, 201 Ariz. 47 (App. 2001) (a claim is direct where the injury and the right vindicated belong to the individual). A unit owner may sue directly when the association violates the Condominium Act, including A.R.S. §§ 33-1248 and 33-1250. *Johnson*, 205 Ariz. 485; *Ariz. Biltmore Estates Ass'n v. Tezak*, 177 Ariz. 447 (App. 1993). Any member may also bring an action to enjoin an ultra vires act, with no membership-percentage threshold. A.R.S. § 10-3304(B)(2); see *Kalway v. Calabria Ranch HOA, LLC*, 252 Ariz. 532, 506 P.3d 18 (2022) (single owner may directly challenge unauthorized governance action).

The SAC pleads exactly such direct injury: the deprivation of Plaintiff's own governance and participation rights under § 33-1248 (SAC ¶ 20(a)); the loss of her voting rights on matters affecting her property (¶ 20(c)); monetary loss from the increased assessments imposed on her (¶ 20(f)); and "unequal and discriminatory treatment" directed at her (¶ 20(k)). These are individual injuries, not injuries to the community as a whole. *Iqtunheimr, LLC v. Val Vista Lakes Cmty. Ass'n*, 586 P.3d 1081 (App. 2026), is not to the contrary: it held only that claims alleging an association's general "fail[ure] to maintain common areas"—pools, parks, and shared amenities—are derivative, while expressly recognizing that an owner may proceed directly where the association's conduct "specifically damaged the individual homeowner." Plaintiff's claims rest on her own statutory voting and open-meeting rights and on conduct aimed at her individually; they are the direct claims *Iqtunheimr* preserves.

V. ARGUMENT

A. The deductible change was unauthorized and void (Claims 46 and 91).

Claim 46 pleads a violation of By-Law § 1.09; Claim 91 pleads a violation of A.R.S. § 33-1248. By-Law § 1.09 states that a change to the By-Laws and Rules "must be approved by the simple majority (51%) of voters at the next January annual meeting or a special meeting called by the Board of Management." (SSOF ¶ 3.) The deductible obligation the Board altered is fixed by By-Law § 2.05, which required each owner to carry a rider covering the Association's policy deductible. (SSOF ¶ 2.) The master-policy deductible had been $10,000 (SSOF ¶ 5). On July 20, 2024 the Board voted to bind a policy carrying a $25,000 deductible (SSOF ¶¶ 6–7), raising it to that amount (SSOF ¶ 10); its chairperson had directed that choice three days earlier, telling the other Board members "We will want to choose the $25,000 level for both" (SSOF ¶ 16). The Board never put the change to the membership: its minutes contain no motion or vote calling for a membership vote (SSOF ¶ 8), and no special meeting of the membership was ever called or held (SSOF ¶ 9).

A Board vote cannot supply authority the governing documents reserve to the members. In *Prieve*, the court held that a managers' vote "did not authorize anything" where the act required authority the managers did not have, and that the community's later admission the vote was improper did not save the act. *Prieve v. Flying Diamond Airpark, LLC*, 252 Ariz. 195, ¶¶ 6, 8, 500 P.3d 1045 (App. 2021). An act taken without authority is ultra vires and void. *Tovrea*, 100 Ariz. at 113–14; *Sycamore Hills Estates HOA v. Zablotny*, 250 Ariz. 479, ¶ 6, 481 P.3d 700 (App. 2021) (in a Rule 60(b)(4) posture — relief from a stipulated judgment the association lacked authority to enter). Because By-Law § 1.09 reserved the deductible change to a 51% member vote and none occurred, the change was void when made. Independently, A.R.S. § 33-1248 required that association business of this kind be conducted at an open meeting of which members had notice; the membership was never given that meeting or that vote. See *A Z N H Revocable Trust v. Sunland Springs Village Homeowners Ass'n*, No. 1 CA-CV 25-0424 (Ariz. App. Apr. 28, 2026) (construing A.R.S. § 33-1804, the materially identical planned-community counterpart to § 33-1248, and holding that formal association action must occur in open session). Plaintiff's own rider obligation rose from $10,000 to $25,000 as a result. (SSOF ¶ 13; SAC ¶ 20(f).) The Association had notice from its insurer that a renewal change was coming (SSOF ¶ 4), and it then implemented the $25,000 deductible on the owners — through the master-policy certificate, the annual owner notice, the unit-owner letter, and a signature-line notice seeking each owner's acceptance of the higher deductible — without ever obtaining the member vote. (SSOF ¶¶ 11, 12, 14, 15.)

B. The 2025 budget and assessment increase were adopted without the required member meeting (Claims 42, 87, and 127).

Claim 42 pleads a violation of By-Law § 1.09; Claim 87, a violation of A.R.S. § 33-1248; and Claim 127, a violation of A.R.S. § 33-1250. The record shows the Board conducted this business outside any open member meeting and closed it without ever setting one. As early as October 10, 2024 the chairperson and the Budget Committee chair circulated a plan to approve a budget, mail ballots, and deliver new assessments to the accountant, all by early December (SSOF ¶ 17). On October 19, 2024 the chairperson stated on the record that he had reached a consensus with Board members outside the meeting on the $50 increase and a one-time assessment (SSOF ¶ 18); on October 27 the Board approved the budget by its own five-to-zero vote (SSOF ¶ 19); and on October 31 it distributed a ratification ballot returnable solely by mail to a third party, by November 20, 2024 (SSOF ¶¶ 20–21). The ballot specified no time of day for return and offered no in-person voting or meeting (SSOF ¶¶ 21–23). On November 3, 2024 Plaintiff wrote the Board, quoted A.R.S. §§ 33-1250(C), (D) and 33-1243(D), and asked the Board to "call a meeting for the ballots to be returned in person" (SSOF ¶ 24). The Association admitted it received the letter and "determined that no meeting or other action was required" (SSOF ¶¶ 25–26), set no owner-meeting date (SSOF ¶ 27), and let the mail-only process conclude on November 20 (SSOF ¶ 28). At the January 11, 2025 annual meeting, no membership vote ratified the budget (SSOF ¶ 29).

On these undisputed facts each pled provision is satisfied. By-Law § 1.09 reserved to a

51% member vote any change the Board sought to impose by rule; the Board imposed the assessment increase by its own vote and a mail ballot, without that member vote. A.R.S. § 33-1248 required that the business be conducted at an open meeting; the Association refused to hold one and admitted it "determined that no meeting … was required." And A.R.S. § 33-1250 guarantees members the opportunity to vote, including the time and manner the statute prescribes; the ballot omitted the return time and denied any in-person voting opportunity. The Board's own vote could not cure these defects, *Prieve*, 252 Ariz. 195, ¶¶ 6, 8, and the resulting adoption was unauthorized. Plaintiff was deprived of her vote (SAC ¶ 20(c)) and charged the increased assessment (¶ 20(f)).

C. The Association refused Plaintiff a printed ballot and printed communications without authority and without an open meeting (Claims 98 and 126).

Claim 98 pleads a violation of A.R.S. § 33-1248 and Claim 126 a violation of A.R.S. § 33-1250, each together with Restatement (Third) of Property: Servitudes §§ 6.13–6.14, and both arise from the Association's December 16, 2024 refusal to provide Plaintiff a printed ballot, a printed annual-meeting package, and printed communications. That refusal was the culmination of a reactive course of conduct carried out entirely by email. On December 9, 2024 the Association emailed owners the 2025 annual-meeting packet and a Board-member ballot that specified no time of day for return, directed that it be returned by mail to the Sun City COA, and stated "THIS BALLOT IS IRREVOCABLE ONCE SUBMITTED." (SSOF ¶¶ 30–32.) On December 11, 2024 Plaintiff wrote the Board, quoted A.R.S. § 33-1250(C), and asked it to resubmit ballots that were correct. (SSOF ¶ 33.) Rather than convene, the Board answered by email on December 12: it announced that members could bring ballots to the January 11 annual meeting, later revised the meeting agenda to add items for the collection and counting of ballots brought in person (SSOF ¶ 42), and issued a second ballot that still specified no time of day, still declared itself irrevocable, and now bore a return date of "January 9, 2024" — a date already long past. (SSOF ¶¶ 34–35.) It was that second defective ballot that prompted Plaintiff's December 13 request for a printed copy of the annual-meeting package and of all future communications. (SSOF ¶ 36.)

Claim 98's § 33-1248 violation lies in how that refusal was made. The Association's own copy of the December 16 response, produced in discovery, was signed "The Tara Condominiums Association Board" and, as its produced form shows, was distributed to the Board's other members. (SSOF ¶ 37.) It was, on its face, a Board decision — a rule that Plaintiff would receive association materials by email alone. Yet no open Board meeting, agenda, motion, or vote preceded it. (SSOF ¶ 46.) The refusal was improper however it was made. If the Board made the decision, it transacted association business informally and outside any open meeting, contrary to § 33-1248's requirement that such business be conducted at an open, noticed meeting. If the decision was instead issued in the Board's name without the Board, then no Board — let alone an open one — authorized it, and it was made without authority: no individual may bind the Association by private email, and By-Law § 1.09 reserves any new rule to approval by a majority of the members. Either way, a Board-level rule restricting how a member participates was created without the open meeting § 33-1248 requires. That the Association later agreed to accept ballots at the January 11 meeting does not cure the violation, because the violation lies in how the rule was made, not in whether a meeting was later held for another purpose. See *A Z N H Revocable Trust v. Sunland Springs Village*

Homeowners Ass'n, No. 1 CA-CV 25-0424 (Ariz. App. Apr. 28, 2026) (construing A.R.S. § 33-1804, the materially identical planned-community counterpart to § 33-1248, and holding that association action must occur in open, noticed meetings).

Claim 126's § 33-1250 violation appears on the face of the ballots. Section 33-1250(C)(4) requires that an absentee ballot specify the time and date by which it must be delivered to the board of directors in order to be counted. Each of the three Board-member ballots the Association issued — on December 9, 12, and 21, 2024 — stated a return date but specified no time of day. (SSOF ¶¶ 32, 35, 39–40.) The requirement is mandatory, and the omission is undisputed: a ballot that fixes a return date but omits the return time does not comply with § 33-1250(C)(4). The defect persisted through all three successive ballots and was never cured.

The refusal to provide printed materials was, in the words of both claims, a restriction of delivery methods without authority. No provision of the Condominium Act or the governing documents permitted the Association to deny an owner a printed ballot or printed communications, or to dictate the manner in which she received them; to the contrary, By-Law § 1.09 reserves the creation of any new rule to a majority vote of the members, and By-Law § 1.08 charges the Board to administer the regulations impartially. The governing documents were adopted in 1970, when association business was necessarily conducted on paper, and their purpose is to secure each member's ability to participate; their silence as to email cannot be read to authorize withdrawing the printed access those documents were written to guarantee. The Association's own conduct confirms it understood that duty: in prior years it hand-delivered and mailed printed annual-meeting packets to owners, its management company's fee schedule provides for both mailed and emailed delivery of owner statements, it paid Plaintiff herself to print and mail the packets, and its own notice of the January 11 meeting invited members to "contact the Board if you need a hard copy of the packet." (SSOF ¶¶ 41, 43–45.) Having furnished print to the membership and invited hard-copy requests, the Association had no authority to refuse the same to Plaintiff alone, who asked only to receive communications in print "just as others in our community receive them in printed form." (SSOF ¶ 38.) Restatement (Third) of Property: Servitudes §§ 6.13–6.14, which Plaintiff pleads, require the Association to treat its members reasonably, in good faith, and without discrimination — the "unequal and discriminatory treatment" the SAC alleges (¶ 20(k)) — and to exercise any discretion its documents leave in the same manner; a refusal singled out for one member, imposed by email without any open meeting or member vote and delivered amid a series of defective ballots, meets none of those duties. See *Tierra Ranchos Homeowners Ass'n v. Kitchukov*, 216 Ariz. 195, 201 ¶ 25, 165 P.3d 173, 179 (App. 2007).

VI. THE BUSINESS JUDGMENT RULE PROVIDES NO PROTECTION FOR ACTS THAT EXCEED THE BOARD'S AUTHORITY OR VIOLATE THE GOVERNING DOCUMENTS AND STATUTES

The business-judgment rule protects only discretionary decisions a board was authorized to make and made reasonably and in good faith. *Tierra Ranchos Homeowners Ass'n v. Kitchukov*, 216 Ariz. 195, 201 ¶ 25, 165 P.3d 173, 179 (App. 2007). Where a board acts outside that authority — because the governing documents reserve the decision to the members, or because a mandatory statute controls — there is no business judgment for a court to defer to, and the board's good faith cannot supply the authority it lacked.

An act taken without authority is ultra vires and void. *Prieve*, 252 Ariz. 195, ¶¶ 6, 8; *Tovrea*, 100 Ariz. at 113–14.

Each act on this motion falls outside the rule for that reason. The deductible change and the 2025 budget were committed to the members, not the Board; the printed-ballot rule and the ballot defects were governed by the mandatory requirements of A.R.S. §§ 33-1248 and 33-1250. Because each act was reserved to the members or contrary to a mandatory statute, the Association's intent is beside the point: the business-judgment rule does not reach unauthorized or unlawful action, and Plaintiff need not prove bad faith to defeat it.

The record independently forecloses any good-faith defense and shows the violations will recur absent an injunction. The Board was on notice of what the law required: Plaintiff's November 3, 2024 letter quoted A.R.S. §§ 33-1250(C), (D) and 33-1243(D) and asked the Board to "call a meeting for the ballots to be returned in person" (SSOF ¶ 24); the Association responded that it "determined that no meeting or other action was required" (SSOF ¶¶ 25–26). A board told that an open meeting and member vote are required, and that proceeds anyway, is not exercising business judgment — it is disregarding the limits on its authority, and that knowing disregard after notice is why forward-looking relief is needed. Plaintiff reserves all separate remedies arising from the Association's and its counsel's litigation conduct.

VII. CONCLUSION AND RELIEF REQUESTED

Plaintiff respectfully requests that the Court grant partial summary judgment on Claims 46, 91, 42, 87, 127, 98, and 126, and: (1) declare that the July 20, 2024 change to the master-policy deductible was taken without authority, is ultra vires, and is null and void ab initio; (2) declare that the 2025 budget, including the $50 monthly assessment increase, was adopted without the member ratification the governing documents and A.R.S. § 33-1243 require, is null and void and unenforceable, and that no assessment increase premised on it may be levied or collected; (3) declare that the Association's restriction of delivery methods and its refusal to provide Plaintiff a printed ballot and printed communications were without authority and are null and void; (4) permanently enjoin the Association from giving any effect to the void acts, from levying or collecting any assessment increase premised on the unratified 2025 budget, and from restricting Plaintiff's statutory voting, open-meeting, and equal-treatment rights going forward, including by requiring that any future action on these matters be taken at a properly noticed open meeting and, where the governing documents so require, by member vote; (5) award Plaintiff her taxable costs under A.R.S. § 12-341; and (6) grant such further relief as the Court deems just.

RESPECTFULLY SUBMITTED this 11th day of July, 2026.
/s/ Lisa Marx
Lisa Marx, Plaintiff Pro Se

CERTIFICATE OF SERVICE

I certify that on July 11, 2026, a true copy of the foregoing was served via e-file to the Court and Defendant's Counsel and by email on counsel for Defendant:

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/s/ Lisa Marx
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