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

LISA MARX, an individual,
Plaintiff,

vs.

TARA CONDOMINIUM ASSOCIATION,
an Arizona non-profit corporation; MARK
GOTTMANN, an individual; DENNIS
ANDERSON, an individual
Defendant.

Case No. CV2025-012980

**RESPONSE TO MOTION TO VACATE
ORDER ON ATTORNEYS' FEES**

Defendant Tara Condominium Association respectfully submits this Response in Opposition to Plaintiff's Motion to Vacate Order on Attorneys' Fees. Plaintiff's motion should be denied because it rests on a fundamental misapplication of Arizona law and seeks relief that is not available under Rule 60. This Response is supported by the record as a whole, which is incorporated herein by reference.

I. INTRODUCTION

Plaintiff asks the Court to vacate its July 31, 2025 Order dismissing Defendants Gottmann and Anderson and authorizing them to seek fees. Plaintiff contends that the order allowing for the recovery of fees became "functus officio" once she filed an amended complaint. That theory is contrary to Arizona law and directly contradicts the Arizona Rules of

1 Civil Procedure, which specifically allow for the filing of an application for attorneys’ fees
2 after the Court enters its orders on a motion to dismiss or a motion for summary judgment. The
3 court’s rulings in those regards are obviously unaffected by a party’s motion to amend its
4 complaint after dismissal pursuant to Rule 12 or Rule 56, Ariz.R.Civ.P.

5 The dismissal of Gottmann and Anderson was a final adjudication as to them. Rule
6 41(b), Ariz. R. Civ. P., provides that unless otherwise specified, dismissal operates as an
7 adjudication on the merits. The July 31 order did not say “without prejudice,” so it is
8 presumptively with prejudice. Even if it were without prejudice, Arizona law confirms that
9 such dismissals are still final judgments for purposes of attorney fee awards.

10 **II. FACTUAL BACKGROUND**

- 11 • April 11, 2025 – Plaintiff filed original Complaint.
- 12 • July 15, 2025 – Gottmann and Anderson moved to dismiss.
- 13 • July 31, 2025 – Court granted Motion to Dismiss, dismissing all claims against
14 Gottmann and Anderson, and directed them to seek fees.
- 15 • August 14, 2025 – Court denied Plaintiff’s Motion for Reconsideration.
- 16 • August 15, 2025 – Plaintiff filed First Amended Complaint.
- 17 • September 4, 2025 – Gottmann and Anderson filed Application for Attorney Fees
18 and Costs.

19 At that point, dismissal of Gottmann and Anderson was final and their entitlement to
20 fees vested.

21 **III. LEGAL ARGUMENT**

22 **A. The July 31 Dismissal Was a Final Judgment, Presumptively With Prejudice.**

23 Rule 41(b), Ariz. R. Civ. P., provides that an involuntary dismissal “operates as an
24 adjudication on the merits” unless the court specifies otherwise. Because the July 31 order did
25 not specify “without prejudice,” it is treated as with prejudice and final.

1 Even where a dismissal is expressly “without prejudice,” Arizona law recognizes it as a
2 final judgment sufficient to support an attorney fee award. *Callanan v. Sun Lakes HOA No. 1,*
3 *Inc.*, 134 Ariz. 332, 334–36, 656 P.2d 621 (App. 1982) (dismissal without prejudice still a final
4 judgment authorizing fees; plaintiff cannot avoid fee exposure by characterizing dismissal as
5 non-final).

6 **B. Gottmann and Anderson Are Prevailing Parties.**

7 Once dismissed, Gottmann and Anderson became prevailing parties under A.R.S. § 12-
8 341.01. Arizona courts consistently hold that prevailing defendants may recover fees following
9 dismissal. *Schwartz v. Farmers Ins. Co. of Ariz.*, 166 Ariz. 33, 38, 800 P.2d 20 (App. 1990).

10 Plaintiff’s theory would allow any litigant to avoid fee liability simply by amending
11 after dismissal, a result squarely rejected in *Callanan* (fee entitlement vests at dismissal and is
12 not undone by plaintiff’s later decision to amend or refile).

13 **C. Functus Officio Does Not Nullify Court Orders.**

14 The “supersession” doctrine applies to pleadings, not judgments. *Mohave Concrete &*
15 *Materials, Inc. v. Scaramuzzo*, 154 Ariz. 28 (App. 1987), and *Campbell v. Deddens*, 21 Ariz.
16 App. 295 (1974), address amended pleadings, not final orders.

17 Court rulings remain operative until reversed or vacated. Simply filing an amended
18 complaint will not obviate prior court orders such as an award of attorneys’ fees. Thus, the July
19 31 dismissal and fee directive remain binding despite Plaintiff’s amended pleading.

20 **D. Rule 60(b) Does Not Apply.**

21 Plaintiff already sought reconsideration of the July 31 dismissal order and lost. Rule
22 60(b) is not a second appeal or a way to recycle arguments the Court has already rejected.

23 Arizona courts consistently hold that Rule 60(b) relief is limited and cannot be used to
24 challenge the correctness of a judgment or to relitigate the merits. *Hirsch v. Nat’l Van Lines,*
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1 *Inc.*, 136 Ariz. 304, 311, 666 P.2d 49 (1983) (Rule 60(b) is not a substitute for appeal; scope
2 restricted to specific grounds, not merits).

3 • Not void: The July 31 dismissal was entered by a court with jurisdiction and
4 following proper motion practice. Even if Plaintiff believes the Court erred, *Hirsch* makes
5 clear that judgments are not void merely because of alleged error; at most they are subject to
6 direct appeal.

7 • No mistake or excusable neglect: Rule 60(b)(1) is reserved for genuine mistake
8 or excusable neglect. Plaintiff does not assert excusable neglect here but rather seeks to
9 collaterally attack the basis of the Court's ruling, which is not a proper subject of a Rule 60
10 motion.

11 • No extraordinary circumstances: Rule 60(b)(6) is reserved for truly extraordinary
12 situations, not to give a losing party a second chance. That subsection cannot be used to evade
13 the strict limits of other provisions.

14 Because Plaintiff already tested these arguments in her reconsideration motion and Rule
15 60(b) cannot be used as a second bite at the apple, her request for relief must be denied.

16 **IV. CONCLUSION**

17 The July 31 dismissal of Gottmann and Anderson was final, presumptively with
18 prejudice under Rule 41(b). Even a dismissal without prejudice supports a fee award.
19 Plaintiff's *functus officio* argument misapplies the law, and she does not satisfy any basis for
20 relief under Rule 60.

21 Defendants respectfully request that the Court deny Plaintiff's Motion to Vacate Order
22 on Attorney Fees, and grant Defendants' pending Application for Attorney Fees and Costs
23 incurred in responding to this meritless motion.

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RESPECTFULLY SUBMITTED this 24th day of September, 2025.

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ORIGINAL of the foregoing e-filed
this 24th day of September, 2025.

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