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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.

**REPLY TO RESPONSE TO
REQUEST FOR TEMPORARY
RESTRAINING ORDER AND
TEMPORARY INJUNCTIVE RELIEF**

13 Tara Condominiums Association, Inc.,
14 Mark Gottmann and Dennis Anderson
15 Defendant.

Honorable Randall H. Warner

16
17 Plaintiff, Lisa Marx, replies to a *Response to Request for Temporary Restraining*
18 *Orders and Temporary Injunctive Relief* filed by Defendants on June 4, 2025.

19 **MEMORANDUM OF POINTS AND AUTHORITIES**

20 **I. BACKGROUND**

21 The original "Emergency Orders Sought" in the form of a Temporary Restraining
22 Order and Temporary Injunctive Relief were filed with the court on April 11, 2025
23 along with the CIVIL COMPLAINT for Breach of Contract. The case was being served
24

1 through the Sheriff and had not been served on the Defendants by the Sheriff until
2 April 26, 2025 with Proof of Service filed with the court. The court denied the motion
3 on April 14, 2025 and set a return hearing date of May 15, 2025. That hearing was
4 completed and the court set a Preliminary Injunction Hearing on June 23, 2025 at 9:00
5 a.m.

6 On April 16, 2025, Petitioner filed "**AMENDED EMERGENCY ORDERS:**
7 **Temporary Restraining Order and Temporary Injunctive Relief**" with the court. Copies
8 were mailed to the Judge, and all Defendants as stated and signed by Plaintiff on page
9 of said document with the original filed with the clerk of the Superior Court.

10 On April 18, 2025, Plaintiff served a copy of the Minute Entry dated 4-14-25
11 regarding the original **Request for Temporary Restraining Orders and Acceptance of**
12 **Service** documents on the statutory agent for the Tara Condominium Association; Mark
13 Gottmann, and Dennis Anderson and Mark Gottmann personally. The statutory agent,
14 Mark Gottmann failed to fulfill his obligation on behalf of the association as Statutory
15 Agent and fill out the Acceptance of Service so it could be filed with the court.

16 On April 22, 2025 after Plaintiff discovered the original civil complaint was not
17 served yet by the Sheriff, Plaintiff served copies of the original complaint and
18 **Acceptance of Service** documents on the statutory agent for the Tara Condominium
19 Association; Mark Gottmann, and Dennis Anderson and Mark Gottmann personally.
20 The statutory agent, Mark Gottmann failed to fulfill his obligation on behalf of the
21 association as statutory agent and fill out the **Acceptance of Service** so it could be filed.
22 This is in violation of ARS 10-504(A).

23 "A. The statutory agent appointed by a corporation is
24 An agent of the corporation on whom process, notice or

1 demand that is required or permitted by law to be served
2 on the corporation may be served and that, when so served,
3 is lawful personal service on the corporation.”

4 ARS 10-504 mandates that the statutory agent be the point of contact for legal
5 process directed at the corporation. Plaintiff believes that Mark Gottmann’s refusal to
6 cooperate on behalf of the association as statutory agent is being done as a tactic to
7 delay civil proceedings.

8 On June 4, 2025, Defendants filed a ***RESPONSE TO REQUEST FOR***
9 ***TEMPORARY RESTRAINING ORDER AND TEMPORARY INJUNCTIVE RELIEF***
10 filed on April 16, 2025.

11 On April 16, 2025, Petitioner filed “***AMENDED EMERGENCY ORDERS:***
12 ***Temporary Restraining Order and Temporary Injunctive Relief***” with the court.

13 Defendant’s motion is in regards to the wrong documents filed. Additionally,
14 the Defendant’s motion is untimely according to ARCP 7.1(a)(3), and would have been
15 due by April 28, 2025 at the latest.

16 ARCP 7.1(a)(3) “*Responsive and Reply Memoranda.*

17 Unless a specific rule states otherwise, an opposing party must
18 file any responsive memorandum within 10 days after the motion
19 and supporting memorandum are served; and, within 5 days after
20 a responsive memorandum is served, the moving party may file a
21 reply memorandum, which may address only those matters raised
22 in the responsive memorandum. Unless the court orders otherwise,
23 a responsive memorandum may not exceed 17 pages, exclusive of
24 attachments and any required statement of facts, and a reply
25 memorandum may not exceed 11 pages, exclusive of attachments.”

26 This response is 37 days late, therefore the Petitioner objects to the response to
27 the motion from being considered and asks the court to disregard it.

28 **II. LEGAL ARGUMENT**

1 **a. Standard of Review**

2 **(1) Substantial likelihood of success on the merits:** Plaintiff’s claims for the
3 preliminary injunctive relief are based on the Defendants’ breach of Contract and
4 violations of state law. Board members have a fiduciary duty to act in good faith and
5 within the scope of authority of the state statutes and Declaration as stated in the
6 following cases

7 In JOHNSON v. POINTE COMMUNITY ASSOCIATION INC (2003), 205 Ariz. 485, 73
8 P.3d 616 (App. 2003), Court of Appeals of Arizona, Division 1, Department E in
9 paragraph 23 - 25 the court stated,

10 ¶ 23. “In Arizona, a recorded declaration that contains restrictive
11 Covenants common to all properties in a development forms
12 a contract between “the [development's] property owners as
13 a whole and the individual lot owners.” Ariz. Biltmore Estates
14 Ass'n v. Tezak, 177 Ariz. 447, 448, 868 P.2d 1030, 1031 (App.1993)
(citing Divizio v. Kewin Enters.,.,.,., Inc., 136 Ariz. 476, 481, 666
P.2d 1085, 1090 (App.1983)).”

15 ¶ 24. “Even when a declaration authorizes the exercise of discretion
16 In complying with its provisions, the association still must
17 comply with the declaration's requirements, and association
18 members are entitled to judicial recourse to ensure such
19 compliance. Gfeller v. Scottsdale Vista N. Townhomes Ass'n,
20 193 Ariz. 52, 54, ¶ 11, 969 P.2d 658, 660 (“[W]hichever means
[of enforcement] it chooses, the Association may not forsake
its express duty to enforce the CC & R's.”).”

21 ¶ 25. “Because of its considerable power in managing and
22 regulating a common interest development, the governing
23 board of an owner’s association must guard against the
24 potential for the abuse of that power.” Nahrstedt v. Lakeside
Village Condo. Ass'n, 8 Cal.4th 361, 33 Cal.Rptr.2d 63, 878

1 P.2d 1275, 1281-82 (1994). In the absence of declaration
2 provisions providing alternative means of resolving disputes
3 arising from the enforcement of restrictive covenants, both
4 homeowners and their associations are entitled to bring
5 their case before the courts without either party's position
6 receiving deference. The civil courts afford a neutral
7 interpretation of the development's declaration and "significant
8 protection against overreaching" by either homeowners or their
9 association. See Lamden, 87 Cal.Rptr.2d 237, 980 P.2d at 952."

8 **b. Irreparable Harm**

9 On April 13, 2025 in a board meeting, the Defendants approved the following:

10 "Motion to engage the Travis Law Firm to begin the process
11 of amending our C,C, & Rs to change our building insurance
12 from walls in to H03 homeowner plans for \$1,080."

12 This change to the Declaration violates state statutes that require the Association to
13 insure the common areas according to ARS 33-1253(A)(B)(C).

14 The immediate harm to the Plaintiff in allowing a change to the Declaration that
15 is illegal is that it has stripped me of my original contractual rights under the
16 Declaration in place when the unit was purchased and puts into place a restriction that
17 was not foreseeable and is not enforceable under the law according to ARS 33-440. This
18 creates a domino affect of harm in that it complicates the clear breakdown of what is
19 the unit owner's responsibility to maintain and insure vs. the association's
20 responsibility to maintain and insure in the event of an unforeseeable damage claim. It
21 also convolutes who has the authority to make decisions about the common areas in
22 the event of damage. This type of change is contrary to the deed unit owners have on
23 record with the Maricopa County Recorder, affect loans, the ability to get a loan, and
24 they defy the very definition of a condominium. Plaintiff as a homeowner or potential

1 buyer would not be agreeable to pay for an HO3 owner occupied, single-family free-
2 standing home insurance policy with costs that are unpredictable at this time, but way
3 more expensive than an HO6 condo policy and not have any control over the decision
4 making of the common area that the Association is responsible to repair and maintain.
5 Damages to the common areas of a condo are divided by the unit owners equally.
6 Damage under an HO3 policy would fall disproportionately on the individual unit
7 owner who was unfortunate enough to have direct damage to their particular portion
8 of a building and cause them to have to pay a deductible individually which then
9 affects their personal insurance claim history, raising their insurance premium, on
10 something that they do not even own. Additionally, the changes to the Declaration will
11 affect the ability of a unit owner to sell their unit not only because of the illegality of the
12 change, but for the additional responsibility, burden and expense that it puts onto a
13 condo owner outside of the law. This change has the potential to decrease home values
14 and make our units less desirable for selling purposes. Other damages include the
15 time, knowledge, and expense needed to litigate the changes all the while paying
16 increased costs individually. All of this is irreparable harm to the Plaintiff and each
17 and every unit owner.

18 **c. The Balance of Hardship**

19 The balance of hardship falls upon the Plaintiff and each unit owner. An
20 individual board member, Mark Gottmann, operating outside of his scope of authority,
21 in bad faith, arbitrarily and capriciously, in violation of the Declaration, state statutes
22 and the open meeting laws, approved claims to be sent to the master insurance policy
23 that should have been the responsibility on the individual unit owner from damages
24 caused by plumbing leaks that were the responsibility of the unit owner to maintain

1 and repair. Mark Gottmann, personally, has withheld this information from all
2 homeowners and instead blamed the difficulty of getting insurance on the industry
3 stating it is the age of the buildings and aluminum wiring that is making it difficult to
4 get new quotes all the while concealing the fact that multiple claims in a short period of
5 time created a huge risk on any insurance company to insure us and the reason why
6 getting quotes is so difficult. The ongoing damages are irreparable, immeasurable,
7 monetarily and inequitably falling on the Plaintiff and unit owners for the individual
8 board member's failure to care, failure to act in good faith, failure of loyalty, and
9 violations of his fiduciary duty while acting unilaterally, arbitrarily and capriciously as
10 a board member.

11 No duties assigned to the board members by law are being compromised in any
12 fashion by requesting a Temporary Injunctive Relief and Temporary Restraining
13 Orders to maintain the status quo of the Declaration, to protect insurance requirements
14 and Declaration rights of the Plaintiff, ordering the Defendants to comply with the
15 open meeting laws for conducting business and only taking actions with a majority
16 vote of the managers.

17 Denying the Temporary Injunctive Relief and Temporary Restraining would be
18 turning a blind eye to the Defendants' actions and encouragement for them to continue
19 in their current practices which is what forced the hand of the Plaintiff to file suit with
20 12 claims of Breach of Contract in the first place.

21 **d. Public Policy**

22 The public interest is not served by denying the Plaintiff's request for a
23 temporary restraining order and preliminary injunction. The Defendants' actions are an
24 intentional and reckless, violation of the governing documents of the Tara

1 Condominium Association and applicable state laws that demonstrates their bad faith
2 and unrestrained, self-serving interests of doing what they want, when they want
3 without any regard for the Plaintiff's rights or the rights of the public. The affairs of the
4 association would operate properly if Declaration rights and state statutes were being
5 followed in the confines of the open meeting laws that allow members the right to
6 address the board before the board votes and that a majority vote of the board of
7 managers clearly signifies the actions the board can take and that is documented in
8 accurate records of the board.

9 **e. Injunctive Relief is An Appropriate Remedy**

10 Injunctive relief is an appropriate remedy to bring accountability to a board and
11 specific board members for their violations of the State Statutes, open meeting laws and
12 Declaration to protect the status quo of the Declaration and Plaintiff's rights under the
13 law and prevent further harm as monetary damages are insufficient to right all of the
14 wrongs already done.

15 **f. Injunction is Enforceable as Plaintiff is NOT Required to Post a Bond**

16 An injunction is enforceable as Plaintiff is NOT required to post a bond
17 according to ARCP 65(a)(1).

18 **(a) Preliminary Injunction or Temporary Restraining Order.**

19 (1) *Notice.* Except as provided in Rule 65(b), the court may issue
20 a preliminary injunction or a temporary restraining order only
with notice to the adverse party.

21 An exhibit in the form of a PDF and printed copy of the AMENDED EMERGENCY
22 ORDERS: Temporary Restraining Order and Temporary Injunctive Relief is included as
23 evidence.
24

1 **III. CONCLUSION**

2 For the reasons stated above, the Plaintiff respectfully request
3 that the Court grant the Plaintiff's request for a Temporary Restraining Order and
4 Preliminary Injunction. The Plaintiff has met the burden of proof required in the
5 requested relief, and the balance of equities and public interest weigh in favor of
6 granting the requested orders. The Plaintiff further requests that the court denies
7 any award of attorneys' fees and costs on behalf of the Defendants or Mark Gottmann
8 and Dennis Anderson personally expended in drafting and filing the instant response
9 to the incorrect motion requesting a temporary restraining order and temporary
10 preliminary injunctive relief.

11
12 Respectfully Submitted this 6th day of June, 2025.

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19 **ORIGINAL** of the foregoing e-filed
20 this 6th day of June, 2025
21 Arizona Judicial Branch Statewide eFiling System

22 **COPY** of the foregoing emailed
23 This 6th day of June, 2025, to:
24 CVJ18@JBAZMC.Maricopa.gov

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COPY of the foregoing mailed/mailed
This 6th day of June, 2025, to:
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By:  _____
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