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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

**DEFENDANTS' REPLY TO
PLAINTIFF'S RESPONSE TO MOTION
TO DISMISS DEFENDANTS MARK
GOTTMANN AND DENNIS ANDERSON**

I. INTRODUCTION

Defendants Mark Gottmann and Dennis Anderson, through their undersigned counsel, respectfully submit this Reply in support of their Motion to Dismiss all claims against them in Plaintiff Lisa Marx's Complaint. Plaintiff's Response fails to overcome the legal deficiencies identified in the Motion to Dismiss. The claims against the individual board members are derivative in nature, lack a legal basis for personal liability, and are unsupported by Arizona law. Therefore, the motion to dismiss should be granted.

II. LEGAL ARGUMENT

a. Plaintiff's Claims are Derivative and Must Be Brought on Behalf of the Association.

Plaintiff's request for personal monetary sanctions against the individual Defendants is unsupported by Arizona law and reflects a fundamental misunderstanding of the statutory

1 framework governing nonprofit corporate governance. Under Arizona law, including A.R.S. §
2 10-3830, volunteer directors are afforded qualified immunity from personal liability for actions
3 taken in the course and scope of their duties, absent specific and well-pled allegations of
4 willful misconduct, intentional torts, or knowing violations of law. Plaintiff has not made such
5 allegations, nor has she supported her claims with sufficient factual detail to meet that
6 standard.

7 Furthermore, the proper party to seek indemnification or contribution from an individual
8 director, should it ever be appropriate, is the Association itself. Plaintiff lacks standing to
9 pursue claims or impose financial penalties on individual directors for actions taken on behalf
10 of the Association. Arizona courts have consistently held that plaintiffs must demonstrate a
11 direct, personal injury, distinct from any harm suffered by the corporation or association to
12 maintain claims against individual board members. When the alleged wrongdoing results in
13 harm to the entity itself, such claims must be brought derivatively. See *Gemstar v. Ernst &*
14 *Young*, 185 Ariz. 493, 498 (1996) (“A shareholder may not bring a direct action for damages
15 arising from an injury to the corporation. Such claims must be brought as a derivative action on
16 behalf of the corporation.”). This principle applies equally in the context of nonprofit
17 corporations and homeowners associations. Absent a particularized injury unique to the
18 plaintiff, standing to sue individual directors is lacking.

19 Simply put, Plaintiff cannot unilaterally assert the Association’s rights or punish its
20 Directors under the guise of personal liability. Her attempt to do so, without legal authority or
21 factual support, not only fails as a matter of law but also risks undermining the statutory
22 protections afforded to volunteer directors serving in good faith.

23 **b. No Legal or Factual Basis Exists for Imposing Personal Liability**

24 Plaintiff’s response fails to cite any legal authority supporting the imposition of personal
25 liability on the individual directors. Under A.R.S. § 10-3830, director liability is limited to
26 willful misconduct, intentional torts, or knowing violations of law.

1 Furthermore, Plaintiff's response fails to cite any factual support for her allegations. She
2 loosely alleges that Gottmann and Anderson acted in bad faith, but she offers no concrete
3 evidence to support this claim. Plaintiff does offer vague assertions about Defendants' prior
4 experience as board members and disputes Defendants' characterization of themselves as new
5 and inexperienced. However, even if the Court were to credit Plaintiff's description, her
6 response still fails to allege any facts showing that either Defendant engaged in willful
7 misconduct, intentional torts, or knowing violations of law as required under A.R.S. § 10-3830.
8 Plaintiff's allegations remain conclusory and unsupported by any specific conduct or intent that
9 would overcome the statutory protections afforded to volunteer directors. Simply challenging
10 Defendants' experience does not transform ordinary board decisions into actionable
11 misconduct.

12 Simply restating the Declaration, quoting state law, or repeating factual allegations
13 already pled does nothing to advance Plaintiff's position. Repetition without additional factual
14 development or legal analysis does not transform bare allegations into actionable claims, nor
15 does it satisfy her burden to demonstrate a viable cause of action against the individual
16 Defendants.

17 **c. The Business Judgment Rule Protects Defendants**

18 Plaintiff's argument that the Business Judgment Rule does not protect Defendants is
19 unfounded. The Business Judgment Rule presumes that directors act on an informed basis, in
20 good faith, and with the honest belief that their actions are in the best interests of the
21 corporation. Plaintiff has not provided evidence to rebut this presumption or to demonstrate
22 that Defendants acted outside the scope of their authority.

23 The case of *Tierra Ranchos Homeowners Ass'n v. Kitchukov* provides a clear example
24 of how the Business Judgment Rule is applied to HOA governance. The court noted that the
25 Restatement approach blends elements of the Business Judgment Rule and the reasonableness
26 rule, aiming to protect the collective decision-making processes of community associations

1 from judicial second-guessing while also safeguarding individual members from improper
2 management. The court emphasized that the burden is on the member challenging the HOA's
3 actions to establish that the actions were unreasonable, rather than requiring the HOA to prove
4 the reasonableness of its decisions. This approach provides the advantages of the Business
5 Judgment Rule while balancing the interests of individual members. (*Tierra Ranchos*
6 *Homeowners Ass'n v. Kitchukov*, 216 Ariz. 195 (2007)).

7 Here, Plaintiff offers no factual evidence or legal authority to support her assertion that
8 Defendants acted unreasonably. Her disagreement with the outcome of certain decisions does
9 not overcome the legal presumption afforded to directors under the Business Judgment Rule.

10 **III. Conclusion**

11 For the foregoing reasons, Defendants Mark Gottmann and Dennis Anderson
12 respectfully request that the Court dismiss all claims against them with prejudice. The
13 Complaint fails to state any claim for which relief may be granted against these individual
14 directors. Defendants further request an award of their reasonable attorneys' fees and costs
15 pursuant to A.R.S. § 12-341.01, and for such other and further relief as the Court deems just
16 and proper.

17
18 RESPECTFULLY SUBMITTED this 29th day of July, 2025.

19 **CHDB LAW LLP**

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1 **ORIGINAL** of the foregoing e-filed
this 29th day of July, 2025.

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3 **COPY** of the foregoing mailed/e-mailed
this 29th day of July, 2025, to:

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7 By: /s/ Suzanne Hilborn

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