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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.

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

**MOTION FOR
RECONSIDERATION OF
OCTOBER 1, 2025 ORDER
GRANTING INDIVIDUAL
DEFENDANTS' APPLICATION
FOR ATTORNEYS' FEES (Pursuant
to ARCP 7.1(e))**

Honorable Randall H. Warner

18
19 **I. INTRODUCTION**

20 Pursuant to Arizona Rule of Civil Procedure (ARCP) 7.1(e), Plaintiff Lisa Marx,
21 appearing pro se, respectfully moves this Court for reconsideration of its October 1,
22 2025 Minute Entry Order granting the individual Defendants' Application for
23 Attorneys' Fees (the "Fee Order"). The Fee Order constitutes a clear procedural error
24 and violates due process principles by awarding fees prematurely, in direct

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contravention of the Court’s own September 15, 2025 Minute Entry Order granting the parties’ stipulation to extend Plaintiff’s response deadline until 10 days after a ruling on Plaintiff’s pending Motion to Vacate the Order on Attorneys’ Fees (filed September 7, 2025; “Motion to Vacate”). This motion is timely filed within a reasonable time under ARCP 7.1(e) and seeks relief based on: (1) the Court’s mistake in issuing the Fee Order without affording Plaintiff the opportunity to respond, as mandated by the stipulation; (2) the resulting denial of due process under ARCP 7.1(a); and (3) prejudice to Plaintiff, a pro se litigant, amid ongoing merits litigation against Defendant Tara Condominiums Association, Inc. (“Association”) and Plaintiff’s pending Motion for Leave to File a Third Amended Complaint, which seeks to reinstate direct claims against individual Defendants Mark Gottmann and Dennis Anderson for personal liability, potentially affecting the basis for the fee award. Reconsideration is warranted to vacate or stay the Fee Order pending resolution of the Motion to Vacate, the Motion for Leave, and Plaintiff’s response to the fee application.

II. STATEMENT OF FACTS

1. On July 31, 2025, the Court issued a Minute Entry, docketed August 5, 2025, dismissing claims against individual Defendants Mark Gottmann and Dennis Anderson and directing the individual Defendants to lodge a form of judgment and file any application for attorneys’ fees or costs within 30 days (by August 30, 2025).
2. On September 7, 2025, Plaintiff filed the Motion to Vacate under ARCP 60(b), challenging the portion of the July 31, 2025 order directing individual Defendants to file for attorneys’ fees, arguing that such an award is premature and unjust given the ongoing merits litigation against the Association. Plaintiff

- 1 filed a Reply to individual Defendants' Response to the Motion to Vacate on
2 September 26, 2025. The Motion to Vacate remains pending without a ruling.
- 3 3. On September 12, 2025 (docketed September 15, 2025), the Court granted the
4 parties' Stipulation to Extend Time to File Response for Attorneys' Fees,
5 explicitly extending Plaintiff's deadline to respond to individual Defendants'
6 Application for Attorneys' Fees "until 10 days after the [Court] ruled on the
7 [Motion to Vacate]." This stipulation was binding on the Court once approved.
- 8 4. On September 15, 2025, Plaintiff filed a Second Amended Complaint in
9 compliance with the Court's order of September 10, 2025 (docketed September
10 12, 2025), asserting claims against the Association for breach of contract and
11 violations of Arizona statutes.
- 12 5. On September 22, 2025, Plaintiff filed a Motion for Leave to File a Third
13 Amended Complaint under ARCP 15(a)(2), seeking to reinstate direct claims
14 against Gottmann and Anderson for personal liability, correcting procedural
15 errors in prior amendments.
- 16 6. On September 22, 2025, Plaintiff filed a redlined Third Amended Complaint as
17 Exhibit A to the Motion for Leave, alleging direct harms caused by Gottmann
18 and Anderson's actions, such as breaches of contract and statutory violations,
19 which, if granted, may undermine the basis for the fee award tied to their
20 dismissal. The Motion for Leave remains pending.
- 21 7. Notwithstanding the stipulation, on October 1, 2025, the Court issued the Fee
22 Order granting individual Defendants' application for attorneys' fees and costs
23 without ruling on the Motion to Vacate or permitting Plaintiff's response. The
24 Fee Order awards attorneys' fees of \$5,957.70 and costs of \$13.40 to individual

1 Defendants under A.R.S. § 12-341.01, A.R.S. § 12-332(A)(6), and Section 12(j) of
2 the Declaration, tied to the dismissal of the individual defendants, with interest
3 accruing at 4.25% per annum pursuant to A.R.S. §44-1201(B) from the date of
4 judgment until paid in full.

- 5 8. The Fee Order prejudices Plaintiff by imposing financial liability without due
6 process, while merits claims against the Association proceed under the Second
7 Amended Complaint and the Motion for Leave to File a Third Amended
8 Complaint remains unresolved. The Fee Order grants the individual Defendants'
9 Application for Attorneys' Fees and Costs filed on September 4, 2025, which is
10 supported by the Affidavit in Support of Attorneys' Fees and the Statement of
11 Costs filed the same day.

12 III. LEGAL ARGUMENT

13 A motion for reconsideration under ARCP 7.1(e) is appropriate when the court has
14 made a decision based on a "manifest error of law or fact, newly discovered evidence,
15 or an intervening change in controlling law." *Tilley v. Delci*, 220 Ariz. 233, 238 ¶ 17, 204
16 P.3d 1082, 1087 (App. 2009). The Arizona Court of Appeals in *Tilley*, a negligence case,
17 affirmed the denial of reconsideration, holding that such motions are reviewed for
18 abuse of discretion and are reserved for correcting significant errors, including
19 procedural violations. This standard applies here, as it governs the review of the
20 challenged Fee Order for procedural errors in this breach of contract dispute. In this
21 case, the Fee Order contains a manifest procedural error because it violates the Court's
22 binding stipulation, denies Plaintiff's right to respond under ARCP 7.1(a), and
23 contravenes due process principles. The procedural violation is particularly evident
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1 given the pending Motion for Leave to File a Third Amended Complaint, which asserts
2 direct claims against Gottmann and Anderson.

3 **A. The Fee Order Violates the Court's Binding September 15, 2025 Stipulation Order,**
4 **Constituting a Mistake Under ARCP 60(b)(1).**

5 Court-approved stipulations are enforceable as court orders and are binding on both
6 the parties and the court. As the Arizona Court of Appeals held in *Canyon Contracting*
7 *Co. v. Tohono O'Odham Hous. Auth.*, 172 Ariz. 389, 393, 837 P.2d 750, 754 (App. 1992), a
8 court's approval of a stipulation makes it enforceable. The Fee Order, by ignoring the
9 binding September 15, 2025 stipulation that conditioned Plaintiff's response deadline
10 on a prior ruling, resulted from a "mistake" or "inadvertence" that is correctable under
11 ARCP 60(b)(1). In *Gonzalez v. Nguyen*, 243 Ariz. 531, 534, 414 P.3d 1163, 1166 (2018), the
12 Arizona Supreme Court affirmed that trial courts have broad discretion to grant relief
13 under Rule 60(b) and that procedural protections should be enforced when fairness
14 demands relief. Here, ignoring a binding, court-approved stipulation is a significant
15 procedural error that a trial court should correct in its discretion.

16 **B. The Premature Fee Award Denies Plaintiff Due Process and the Right to Respond**
17 **Under ARCP 7.1(a).**

18 ARCP 7.1(a) guarantees parties the right to respond to motions, including applications
19 for attorney's fees under ARCP 54(g). Denying this right, particularly when based on a
20 court-approved stipulation, constitutes a violation of procedural due process. In *Gilbert*
21 *v. Bd. of Med. Exam'rs*, 155 Ariz. 169, 176, 745 P.2d 617, 624 (App. 1987), the court
22 emphasized that procedural fairness is a fundamental requirement. Here, the Fee Order
23 improperly bypassed the September 15, 2025 stipulation, which expressly preserved
24 Plaintiff's right to respond, thereby preventing any challenge to the fees'

1 reasonable, amount, or entitlement under A.R.S. § 12-341.01. Awards under A.R.S.
2 § 12-341.01 are discretionary, not automatic. The court must consider factors like the
3 parties' input on reasonableness and the merits of the dispute. In *Marcus v. Fox*, 150
4 *Ariz.* 333, 336, 723 P.2d 682, 685 (1986), the Arizona Supreme Court remanded a fee
5 decision for reconsideration, emphasizing that the trial court must properly exercise its
6 discretion after receiving full input from the parties. The premature award of fees
7 before Plaintiff could respond, in violation of the stipulation, short-circuited this
8 process. As the court reiterated in *Geller v. Lesk*, 230 *Ariz.* 624, 285 P.3d 1110 (*App.* 2012),
9 the burden is on the fee applicant to prove the reasonableness of their request, and
10 erroneous fee awards are subject to vacatur. The due process error created by the
11 violation of the stipulation is a sufficient basis for reconsideration of the Fee Order.
12 While courts must consider a litigant's pro se status, the primary due process violation
13 here is the disregard of the binding stipulation, a procedural error that warrants relief
14 regardless of the litigant's status. For these reasons, the Fee Order, issued without
15 proper procedural safeguards, should be vacated.

16 **C. The Fee Award is Premature and Inequitable Amid Ongoing Merits Litigation**
17 **and the Pending Motion for Leave.**

18 A premature fee award can be reversible error, especially in multi-claim cases where
19 prevailing party status is still in dispute. In *American Power Products, Inc. v. CSK Auto,*
20 *Inc.*, 242 *Ariz.* 364, 370 ¶ 24, 396 P.3d 600, 606 (2017), the Arizona Supreme Court held
21 that a premature fee award is an error if it is made without “full consideration of the
22 prevailing party status,” which is especially relevant where core claims persist. Here,
23 the Fee Order – issued after the dismissal of individual defendants but before the
24 resolution of Plaintiff’s non-derivative claims and a pending Motion for Leave to File a

1 Third Amended Complaint – imposes fees without considering the overall posture of
2 the case. Costs under A.R.S. § 12-332 and attorney fees under A.R.S. § 12-341.01 are
3 discretionary and must be based on a full consideration of the circumstances. A court's
4 discretion, while broad, is abused when exercised on untenable grounds, such as
5 ignoring a court-approved procedural stipulation. The violation of the stipulation is a
6 clear error that should be corrected.

7 **IV. REQUEST FOR RELIEF**

8 Plaintiff respectfully requests that the Court:

- 9 1. Grant this Motion and vacate the October 1, 2025 Fee Order;
- 10 2. Alternatively, stay enforcement of the Fee Order pending a ruling on the Motion
11 to Vacate, the Motion for Leave to File a Third Amended Complaint, and
12 Plaintiff's response to the fee application (to be filed within 10 days after the
13 Motion to Vacate ruling, per the stipulation);
- 14 3. Grant such other relief as the Court deems just, including costs under ARCP
15 54(g).

16 Dated: The 1st day of October, 2025.

17 Respectfully submitted

18 /s/ Lisa Marx

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