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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.

**PLAINTIFF'S RESPONSE TO
INDIVIDUAL DEFENDANTS'
APPLICATION FOR ATTORNEYS'
FEES AND COSTS (Pursuant to
ARCP 54(g) and September 15, 2025
Stipulation Order)**

Honorable Randall H. Warner

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18 **I. INTRODUCTION**

19 Pursuant to Arizona Rule of Civil Procedure (ARCP) 54(g) and the Court's September
20 15, 2025 Minute Entry Order granting the parties' stipulation – which explicitly
21 extended Plaintiff's response deadline to the individual Defendants' Application for
22 Attorneys' Fees and Costs "until 10 days following the Court's ruling on [Plaintiff's
23 Motion to Vacate]" – Plaintiff Lisa Marx, appearing pro se, respectfully responds to the
24

1 Fee Application (filed September 4, 2025). This response is timely filed within 10 days
2 following notice of the Court's ruling on the Motion to Vacate (Minute Entry dated
3 September 30, 2025, denying the motion without explanation and docketed October 2,
4 2025 at 8:00 A.M.). As detailed in Plaintiff's pending Motion for Reconsideration of the
5 October 1, 2025 Order Granting Defendants' Application for Attorneys' Fees (filed
6 October 1, 2025; "Reconsideration Motion"), the Fee Order constitutes a manifest
7 procedural error by granting fees prematurely, in violation of the stipulation which is
8 binding under Rule 80(a) and due process under ARCP 7.1(a) and Mathews v.
9 Eldridge, 424 U.S. 319 (1976), before Plaintiff received notice of the September 30 ruling
10 or could respond. This denial of an opportunity to be heard violates procedural due
11 process as articulated in Mathews v. Eldridge, 424 U.S. 319, 335 (1976), which
12 establishes a balancing test weighing the private interest affected (here, Plaintiff's high
13 stake in avoiding an erroneous fee award that could cause financial ruin), the risk of
14 erroneous deprivation through the procedures used (significant, as no response was
15 allowed despite the stipulation), and the government's interest (minimal, as permitting
16 a response imposes little fiscal or administrative burden on the court). The Fee Order
17 awards \$5,957.70 in fees and \$13.40 in costs under A.R.S. §§ 12-341.01 and 12-332(A)(6),
18 and the Tara Condominiums Declaration § 12(j), with 4.25% interest under A.R.S. § 44-
19 1201(B) – findings the Court deemed "reasonable" and "properly taxable" despite no
20 merits input. Plaintiff objects on the merits: (1) the individual Defendants are not
21 entitled to fees as "successful parties" under A.R.S. § 12-341.01 amid ongoing non-
22 derivative claims against the Association (per June 26, 2025 Minute Entry) and pending
23 Motion for Leave to File a Third Amended Complaint (filed September 22, 2025); (2) the
24 requested fees are unreasonable, inadequately supported, and unallocated given

1 overlapping representation by the same firm (CHDB Law LLP); and (3) the costs are
2 minimal but unentitled. Considering Plaintiff's financial hardship as a low-income,
3 disabled pro se litigant (SNAP/AHCCCS recipient with fee waivers), the Court should
4 deny the application in full or stay it pending merits resolution.

5 6 **II. FACTUAL BACKGROUND**

7 On June 26, 2025, the Court ruled Plaintiff's claims against the Association are non-
8 derivative, confirming they assert "her rights as a member against the Association
9 under the CC&Rs" for personal damages and injunctive relief, with no requirement to
10 join other members (Minute Entry). The Court denied the Association's partial motion
11 to dismiss derivative claims, noting it was filed solely by the Association and
12 suggesting that 'if those board members wish to seek dismissal, they may file a motion.'
13 On July 15, 2025, CHDB Law LLP – representing both the Association and
14 individuals – filed a separate Motion to Dismiss on behalf of Gottmann and Anderson
15 only, arguing derivative nature, statutory impermissibility, and failure to state a claim
16 against them. The Court granted dismissal on July 31, 2025 (Minute Entry, docketed
17 August 5, 2025). On September 4, 2025, the individual Defendants filed the Fee
18 Application, supported by Ari B. Bowhay's Affidavit (attesting to 22.6 hours by Charles
19 H. Oldham at \$225/hour, 3.7 hours by Bowhay at \$200/hour, and 1.4 hours by Hilborn
20 at \$95/hour totaling a claimed \$5,957.70 for vague tasks like "research" and "draft
21 motion to dismiss," Exhibits A-B) and a Statement of Costs (\$13.40 e-filing fee). The
22 Application seeks fees under ARCP 54(d)(g), A.R.S. § 12-341.01, and Declaration § 12(j),
23 claiming entitlement for "completing and succeeding on a motion to dismiss individual
24

1 Board Members." The Court denied the Motion to Vacate on September 30, 2025
2 (Minute Entry, noting that 'Plaintiff's filing of an amended complaint which included
3 already-dismissed parties did not revive claims against those dismissed parties' and
4 granting Defendants' Application for Attorneys' Fees and Costs as 'reasonable' and
5 'properly taxable' by virtue of the CC&R's), without further explanation or service until
6 October 2, 2025. The Fee Order issued October 1, 2025 – pre-notice – granting the
7 application as "reasonable" despite the stipulation. Plaintiff's Motion for Leave remains
8 pending, seeking reinstatement for personal liability. The first two amended
9 complaints were court ordered. Plaintiff is pro se due to financial inability, qualifies for
10 waivers as low-income/disabled (SNAP/AHCCCS), and payment risks benefit
11 loss/medical care. This case is far from over. The defendants have not even turned in
12 their Rule 26.1 Disclosure statement. I have requested leave to file the 3 amended
13 complaint.

14 III. LEGAL ARGUMENT

15 A. The Individual Defendants Are Not Entitled to Fees as "Successful Parties" Under 16 A.R.S. § 12-341.01. 17

18 Awards under A.R.S. § 12-341.01(A) are discretionary and require the applicant to be
19 the "successful party" after "full consideration of the circumstances." Here, the
20 individual Defendants' "success" is partial: The July 31 dismissal followed the Court's
21 June 26 ruling that claims are non-derivative and personal – directly undermining the
22 July 15 motion's core argument (rearguing derivative nature as "legally
23 impermissible"). Core claims against the Association persist (Second Amended
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1 Complaint), and reinstatement via Motion for Leave could negate prevailing status.
2 Premature partial awards in multi-claim cases are reversible if denying merits review
3 (Am. Power Prods., Inc. v. CSK Auto, Inc., 242 Ariz. 364, ¶ 24 (2017)). The Fee
4 Application ignores this, tying entitlement solely to dismissal without proportionality,
5 especially given the motion's overlap with rejected defenses. Denial is warranted. The
6 individual Defendants claim entitlement to fees under 'Section 12(j) of the Declaration,'
7 asserting it 'allows or implies' recovery for defending the property 'by suit or
8 otherwise.' However, Section 12(j) is a general authorization for the Board to protect
9 property – it lacks explicit fee-shifting language like 'the prevailing party shall recover
10 reasonable attorney's fees.' (See Exhibit B Declaration) Arizona courts strictly interpret
11 CC&Rs and require an express provision for an HOA to recover attorneys' fees; broad
12 or implied powers are generally insufficient. However, even where an express
13 provision exists, the trial court retains the discretion to determine the reasonableness of
14 the fee award. For instance, in McDowell Mountain Ranch Cmty. Ass'n v. Simons, 216
15 Ariz. 266, 269 ¶ 14 (App. 2007), – fees only if declaration 'expressly provides'. The
16 Court's October 1, 2025 Minute Entry and the subsequently lodged order, which
17 granted the Defendants' application for fees, appear to have done so on the mistaken
18 belief that the Declaration provides for such an award. However, as no such explicit
19 provision exists, the court's award was erroneous. To the extent the award was based
20 on A.R.S. § 12-341.01, the award would be an abuse of discretion given Plaintiff's
21 hardship, and ongoing claims, including but not limited to the following direct claims
22 against Defendants Gottmann and Anderson for their ultra vires and unilateral actions
23 as board members: Gottmann unilaterally denying records requests (¶ 189),
24 unilaterally imposing speaking limits, interrupting Plaintiff in meetings (¶ 191),

1 unauthorized maintenance, privacy invasion (§ 193), facilitating events, gifts excluding
2 Plaintiff in discriminatory bad faith and showing preferential treatment to others (§
3 194) being dismissive towards plaintiff. Anderson verbally attacking Plaintiff in
4 meetings in disregard of loyalty duties (§ 197), facilitating events, gifts excluding
5 Plaintiff in discriminatory bad faith (§ 198), unauthorized surveillance of Plaintiff's
6 property (§ 199), unauthorized maintenance, privacy invasion (§ 200), privacy invasion
7 by peering over walls without notice or vote. These ongoing ultra vires acts, many
8 post-filing in 2025, demonstrate unresolved breaches of fiduciary duties and statutory
9 violations, causing Plaintiff continued direct harm such as privacy invasions, emotional
10 distress, exclusion, and loss of governance rights, rendering any fee award premature
11 and inequitable under A.R.S. § 12-341.01. A court may deny or reduce a discretionary
12 award of attorneys' fees under A.R.S. § 12-341.01 if it determines that payment of the
13 fees would cause an "extreme hardship" for the unsuccessful party (Assoc. Indem.
14 Corp. v. Warner, 143 Ariz. 356, 359 (1985). (deny if 'unduly burdensome' on a low-
15 income party).

16
17 **B. The Requested Fees Are Unreasonable, Inadequately Supported, and Unallocated.**

18 Fees must be "reasonable" under A.R.S. § 12-341.01(A), assessed via time, rates,
19 necessity, and allocation – burden on applicant (Geller v. Lesk, 230 Ariz. 624, 627 (App.
20 2012) (vacating for failure to prove; vague entries insufficient)). The Affidavit and
21 billing fail:

- 22
- 23 • Vague Descriptions: Entries like "review complaint" (4.3 hours, Oldham) or
24 "draft motion to dismiss" (8.2 hours, Oldham) lack specificity (e.g., what

1 reviewed post-June 26 ruling? Which sections addressed derivative claims
2 rejected July 31?) – no tie to the July 15 motion's routine 12(b)(6) arguments.

- 3 • Excessive/Disproportionate: \$5,957.70 for ~27.7 hours on a reactive, non-novel
4 motion is inflated; courts reduce for overstaffing/ duplication in dismissals
5 (Rainbow Constr. Co. v. VF Dev. Corp., 181 Ariz. 486, 489 (App. 1995)). Rates
6 (\$225-\$200-\$95/hr) may be standard, but hours (e.g., 4.3 "review complaint")
7 exceed need for a public filing.
- 8 • No Allocation for Overlap: CHDB represents Association and individuals, but
9 billing doesn't apportion (e.g., pre-July 15 "review complaint" likely dual-use for
10 derivative defense, denied June 26). Law requires separation to avoid double-
11 charging; failure warrants reduction (Rainbow Constr. Co., 181 Ariz. at 489).

12
13 As pro se, Plaintiff receives accommodations under Arizona law (Elliott v. State, 172
14 Ariz. 383 (App. 1992) – pro se pleadings liberally construed), yet was denied input –
15 compounding unreasonableness.

16 **C. The Costs Are Unentitled and Minimal.**

17 Costs under A.R.S. § 12-332(A)(6) (\$13.40 e-filing) require taxable items post-success
18 (Fischer v. City of Phoenix, 223 Ariz. 228, ¶ 16 (App. 2010)); like fees, they hinge on
19 prevailing status and proportionality, and entitlement fails above.

20 **D. Plaintiff's Financial Hardship Warrants Denial in Discretion.**

21 A.R.S. § 12-341.01 vests broad discretion, requiring "full consideration" of
22 circumstances like ability to pay – especially for low-income/ disabled pro se parties
23 (Associated Indem. Corp. v. Warner, 143 Ariz. 567, 570-71 (1985) – considering
24

1 hardship as a factor in denying fees). Plaintiff relies on SNAP/ AHCCCS; fees would
2 deplete her limited resources, risking essentials like medical care (Tucson Estates Prop.
3 Owners Ass'n v. McGovern, 239 Ariz. 52, ¶ 7 (App. 2016) – balance to avoid
4 discouraging claims). Requiring Plaintiff to pay \$5,957.70 would represent over five
5 months of her income ($\$1,136 \times 5 \approx \$5,680$), forcing her to forgo essentials basic needs
6 and the ability to pay basic bills potentially leading to debt, or judgment enforcement,
7 constituting an "extreme hardship" under Warner, 143 Ariz. at 570-71, where fees were
8 denied if unduly burdensome on low-income parties. This justifies denial.

9 10 **V. REQUEST FOR RELIEF**

11 Plaintiff respectfully requests that the Court:

- 12 1. Grant this Response and deny the Fee Application in full;
- 13 2. Alternatively, stay enforcement of the Fee Order pending a ruling on the Motion
14 for Reconsideration, the Motion for Leave to File a Third Amended Complaint,
15 and merits proceedings;
- 16 3. Grant such other relief as the Court deems just.
17

18 Respectfully submitted

19 Dated: October 3, 2025
20 /s/ Lisa Marx

21
22 Lisa Marx Pro Se

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5 Copies emailed to:

6 ORIGINAL of the foregoing e-filed

7
8 this 3rd day of October, 2025

9
10 Arizona Judicial Branch Statewide e-Filing System

11 **COPY of the foregoing e-mailed**

12
13 This 3rd day of October, 2025, to:

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21 By: /s/ Lisa Marx