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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,

12 vs.

13 Tara Condominiums Association, Inc.,

Case No. CV2025-062973

Consolidated with

CV2025-012980

**PLAINTIFF'S MOTION FOR
CLARIFICATION, CORRECTION,
RECONSIDERATION, AND
ORDER SETTING EVIDENTIARY
HEARING (Expedited Consideration
Requested - Master Insurance Policy
Already Terminated on December 1,
2025)**

Honorable Scott Minder
Or Honorable Adele Ponce

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22 Plaintiff Lisa Marx, pro per, moves this Court pursuant to Ariz. R. Civ. P. 7.1(e) and
23 60(a) for clarification and correction of the Minute Entry dated December 3, 2025,
24 which contains manifest errors of fact and law, for reconsideration of the consolidation

1 order, and for an order setting an evidentiary hearing on the merits of Plaintiff's First
2 Amended Complaint for Declaratory Judgment and Injunctive Relief. This Motion is
3 supported by the attached Memorandum of Points and Authorities, Affidavit of Lisa
4 Marx, and the record in both cases. Plaintiff requests oral argument and an expedited
5 evidentiary hearing under Ariz. R. Civ. P. 65 and 7.1(d), given the urgent and ongoing
6 irreparable harm from the Association's termination of the master insurance policy on
7 December 1, 2025, leaving nine condominium buildings uninsured in violation of
8 A.R.S. § 33-1253.

9 MEMORANDUM OF POINTS AND AUTHORITIES

10 I. FACTUAL BACKGROUND AND URGENCY

- 11 1. The original case (CV 2025-012980) was filed in April 2025. The operative Second
12 Amended Complaint does not plead the Declaration amendments or insurance-
13 shift claim that is the subject of this new action.
- 14 2. The illegal Declaration amendments were proposed in August 2025 and voted
15 upon in October 2025 – constituting the second statutorily defective member
16 vote under this Board.
 - 17 • First: 2024 budget vote (no open meeting, no proper ballots)
 - 18 • Second: October 2025 Declaration/insurance-shift vote (no open
19 meeting, grouped amendments, door-to-door collection)
 - 20 • Third: November 2025 budget vote (again refused open meeting and
21 compliant ballots) This escalating pattern of willful statutory
22 noncompliance is new evidence that exists only in this action. This pattern
23 demonstrates a continuing course of conduct that post-dates the original
24 filing and introduces distinct factual issues not present in the prior case.

- 1 3. On December 1, 2025, the Association terminated the master insurance policy
2 that had provided blanket structural coverage on all nine condominium
3 buildings. The property is now completely uninsured for roofs, exterior walls,
4 and common elements as defined in the statutes and statute definitions.
- 5 4. At the time the original case was filed (April 2025), the Association’s master
6 carrier was American Family. By the time of the illegal October 2025 vote and
7 this new case, the carrier had changed. American Family therefore has no duty to
8 defend or indemnify the Board or provide D&O coverage for claims arising from
9 the new amendments – further distinguishing the two actions.
- 10 5. The Court has never held an evidentiary hearing or reached the merits of the
11 insurance-shift issue. Plaintiff’s repeated attempts to obtain emergency relief –
12 Motion for Expedited Hearing (October 9, 2025), Reply (October 30, 2025),
13 Emergency Motion for Temporary Restraining Order (October 29, 2025, denied
14 November 5, 2025), and Amended Motion to Set Evidentiary Hearing
15 (November 6, 2025) – were all denied without testimony or merits review.
- 16 6. The Arizona Condominium Act mandates that the Association “shall maintain ...
17 property insurance on the common elements ... insuring against all risks of
18 direct physical loss commonly insured against” (A.R.S. § 33-1253(A)(1)).
19 “Common elements” are statutorily defined as “all portions of the condominium
20 other than the units” (A.R.S. § 33-1202(9)) – i.e., the roofs, exterior walls, and
21 structural components of all nine buildings. This is a non-delegable statutory
22 duty. Failure to maintain such insurance exposes the Association and unit
23 owners to severe liability, as the statute imposes a mandatory obligation that
24 cannot be shifted without unanimous consent or statutory compliance.

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7. The illegal Declaration amendments purport to shift this mandatory statutory obligation onto individual unit owners, leaving the structures uninsured by the Association in direct violation of Arizona law. The Association then terminated the master policy on December 1, 2025, making that violation immediate and complete. Nine condominium buildings – fifty families – now face immediate, catastrophic financial exposure. A single fire, windstorm, or plumbing failure could destroy decades of equity overnight. *Tierra Ranchos Homeowners Ass’n v. Kitchukov*, 216 Ariz. 195, 199, 165 P.3d 173, 177 (App. 2007) (holding that enforcement of invalid restrictions causes irreparable harm not compensable by damages, as it undermines property rights and community governance expectations).
 8. On November 21, 2025, Plaintiff filed a new civil action, Case No. CV 2025-062973, titled "Civil Complaint for Declaratory Judgment and Injunctive Relief" (amended on November 25, 2025, to correct a clerical error in the caption, with no substantive changes, becoming the "First Amended Civil Complaint for Declaratory Judgment and Injunctive Relief" or the "New Complaint"). The New Complaint initiates a separate lawsuit challenging the Association's illegal October 2025 Declaration amendments and insurance-shift claim, which post-date the original case (CV 2025-012980) filed in April 2025. The New Complaint was served with a Summons providing notice to Defendant, requiring a response within 20 or 30 days pursuant to Ariz. R. Civ. P. 12(a). The New Complaint is not a motion for temporary restraining order (TRO) but a standalone complaint seeking declaratory judgment under A.R.S. § 12-1831 et seq. and permanent injunctive relief under Ariz. R. Civ. P. 65. It incorporates prior filings from CV

1 2025-012980 for reference only, but the claims arise from new events occurring
2 after the June 23, 2025, preliminary injunction hearing in that case.

3 9. The Court's Minute Entry dated December 3, 2025, erroneously characterizes the
4 New Complaint as an "emergency motion for temporary restraining order
5 without notice" and denies it on that basis. This is a manifest error, as the filing is
6 clearly labeled a complaint, not a motion, and was accompanied by a Summons
7 providing notice. No ex parte relief without notice was sought in the New
8 Complaint. The Court's reference to an "affidavit" concerning individual
9 insurance appears to stem from an exhibit in CV 2025-012980, not the New
10 Complaint, further highlighting the factual confusion. The evidence supporting
11 the New Complaint – relating to the October 15, 2025, illegal vote and
12 subsequent insurance termination – has never been presented or heard in any
13 evidentiary hearing before this or any court.

14 10. The illegal Declaration amendments were proposed in August 2025 and
15 purportedly adopted on October 15, 2025, long after the June 23, 2025,
16 preliminary injunction hearing in CV 2025-012980. These amendments constitute
17 new circumstances and violations not addressed in the prior case, including the
18 Association's termination of the master insurance policy on December 1, 2025,
19 leaving the property uninsured for common elements in violation of A.R.S. § 33-
20 1253 and the definitions of the common area and limited common area provided
21 in the Condominium Act. This post-hearing conduct represents an escalating
22 pattern of statutory noncompliance, distinct from the original case's claims, and
23 warrants independent review. The issues in the New Complaint were not – and
24

1 could not have been – raised or heard at the June 23, 2025, hearing, as they did
2 not yet exist.

3 11. Plaintiff filed a Motion for Reconsideration of the Court's sua sponte
4 consolidation order on December 3, 2025, emphasizing these distinctions and the
5 irreparable harm. However, the Minute Entry's errors require immediate
6 clarification to correct the record and prevent injustice.

7 **II. LEGAL BASIS FOR CLARIFICATION, CORRECTION,**
8 **AND RECONSIDERATION**

- 9 1. ARCP 7.1(e) allows reconsideration of interlocutory orders for good cause,
10 including manifest error of law or fact, or to prevent injustice. Consolidation here
11 is an interlocutory order. See *Corbin v. Arizona Corp. Comm'n*, 143 Ariz. 219,
12 693 P.2d 362 (App. 1984) (good cause includes new circumstances or prejudice).
13 Imminent harm from the deadline constitutes good cause, as in injunction cases
14 requiring prompt review (ARCP 65(a)). Delay would moot the motion and
15 prejudice the Plaintiff by eliminating the opportunity for a fair and timely
16 hearing on the merits of the consolidation request. Delay and consolidation will
17 bury this important Request for declaratory judgement and injunctive relief into
18 an ongoing case that could take many more months to be heard.
- 19 2. The Court retains inherent discretion to reconsider interlocutory orders at any
20 time before final judgment to correct errors or address changed circumstances.
21 See, e.g., *Preston v. Kindred Hospitals W., L.L.C.*, 226 Ariz. 391, 393, 249 P.3d 771,
22 773 (2011) (confirming trial courts' authority to revisit prior rulings).
- 23 3. The amendments violate explicit statutory mandates: A.R.S. § 33-1227 (requiring
24 67% vote for non-unanimous amendments; unanimous for boundary/interest

1 changes), A.R.S. § 33-1250(C) (post-declarant control, no proxies; votes must be
2 in person/absentee tied to a meeting, with ballots complying with subsections 1-
3 7, including separate votes for each action, validity for one meeting, and
4 retention for inspection), A.R.S. § 33-1253 (mandatory association insurance for
5 common elements unless unavailable), A.R.S. § 33-1248(A) (open meetings
6 required; fiduciary duties), and are unforeseeable under *Kalway v. Calabria*
7 *Ranch HOA, LLC*, 252 Ariz. 532, 506 P.3d 18 (2022) (because the original
8 declaration did not provide sufficient notice that such new restrictions could be
9 adopted without unanimous consent) (unforeseeable amendments invalid
10 without unanimous approval, as they lack notice in original declaration). See also
11 *Vales v. Kings Hill Condo. Ass'n*, 207 Ariz. 546, 88 P.3d 591 (App. 2004) (The
12 Condominium Act takes precedence over conflicting documents); *Johnson v.*
13 *Pointe Cmty. Ass'n, Inc.*, 205 Ariz. 485, 73 P.3d 616 (App. 2003) (boards owe
14 duties to individual owners for specific harms); Restatement (Third) of Prop.:
15 Servitudes § 6.13 (fiduciary duties in associations); *Tierra Ranchos Homeowners*
16 *Ass'n v. Kitchukov*, 216 Ariz. 195, 165 P.3d 173 (App. 2007) (Plaintiff will suffer
17 harm that cannot be compensated by monetary damages if the invalid
18 restrictions are enforced) (invalid restrictions cause irreparable harm). Moreover,
19 under ARCP 42(a), consolidation is discretionary and requires common
20 questions of law or fact; here, the new action involves post-filing events and
21 distinct violations, militating against consolidation to avoid prejudice under
22 ARCP 42(b). See *Brumett v. MGA Home Healthcare, L.L.C.*, 240 Ariz. 420, 380
23 P.3d 638 (App. 2016) (courts abuse discretion by consolidating without weighing
24 efficiency against potential prejudice).

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4. Ariz. R. Civ. P. 7.1(e) authorizes reconsideration of interlocutory orders for good cause, including manifest errors of fact or law, new circumstances, or to prevent injustice. See *Corbin v. Arizona Corp. Comm'n*, 143 Ariz. 219, 693 P.2d 362 (App. 1984). Additionally, Ariz. R. Civ. P. 60(a) permits the court to correct clerical mistakes, oversights, or omissions in judgments, orders, or other parts of the record at any time. The Court also has inherent authority to clarify or correct its own orders to ensure accuracy and fairness. See, e.g., *Demoli v. Superior Court*, 10 Ariz. App. 572, 460 P.2d 984 (1969); *Preston v. Kindred Hospitals W., L.L.C.*, 226 Ariz. 391, 249 P.3d 771 (2011) (courts may revisit interlocutory rulings for errors or changed circumstances). Here, the Minute Entry's mischaracterization of the New Complaint as a TRO motion without notice is a clear error of fact, as confirmed by the document's title, contents, and accompanying Summons. This error prejudices Plaintiff by denying the opportunity to proceed on the merits of a properly filed complaint, effectively dismissing the new action without due process.
 5. The New Complaint pleads claims under the Arizona Condominium Act that arose after the prior hearing, including violations of A.R.S. §§ 33-1227, 33-1250(C), 33-1253, and 33-1248. These are unforeseeable amendments under *Kalway v. Calabria Ranch HOA, LLC*, 252 Ariz. 532, 506 P.3d 18 (2022), causing irreparable harm per *Tierra Ranchos Homeowners Ass'n v. Kitchukov*, 216 Ariz. 195, 165 P.3d 173 (App. 2007). The evidence has never been heard; no evidentiary hearing has occurred on these new issues, necessitating one to prevent mootness as the uninsured risk persists. The prior judge in CV 2025-012980 (Randall H. Warner) denied every request for an evidentiary hearing and stated Plaintiff is

1 “not entitled to another preliminary injunction hearing every time the Board ...
2 act[s] in a way Plaintiff believes is illegal.”

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6. Under Ariz. R. Civ. P. 42(a), consolidation is discretionary and requires common questions of law or fact; courts abuse their discretion by consolidating without weighing efficiency against potential prejudice. See *Brumett v. MGA Home Healthcare, L.L.C.*, 240 Ariz. 420, 380 P.3d 638 (App. 2016); *Cach, LLC v. Fallon*, No. 1 CA-CV 14-0823, 2016 WL 1707837 (Ariz. Ct. App. Apr. 28, 2016) (reviewing consolidation orders for abuse of discretion). Here, the consolidation constitutes an abuse of discretion, as the New Complaint involves distinct post-filing events and violations with no overlapping merits review, leading to undue prejudice and delay.

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III. GOOD CAUSE FOR CLARIFICATION, CORRECTION, RECONSIDERATION, AND HEARING

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1. **Manifest Error in Characterizing the Filing:** The Minute Entry incorrectly treats the New Complaint as a TRO motion. It is a complaint initiating a new action with notice via Summons. Correcting this error is essential to preserve Plaintiff's right to a hearing on the merits, as the claims were not – and could not have been – addressed in the June 23, 2025, hearing.
2. **New Circumstances Post-Prior Hearing:** The illegal vote and amendments occurred on October 15, 2025, months after the June 23, 2025, hearing. These are distinct violations not litigated previously, justifying separate treatment to avoid prejudice under Ariz. R. Civ. P. 42(b). The Minute Entry's reference to "similar matters" in the prior case is erroneous, as the prior hearing predates these events and did not address them.

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3. **Irreparable Harm and Need for Hearing:** Without clarification and a hearing, Plaintiff faces ongoing harm from the uninsured property. The evidence, including affidavits and documents detailing the violations, has never been presented; an evidentiary hearing is required to evaluate the merits under Ariz. R. Civ. P. 65(b)(2). Strongly stated, the evidence has never been heard before the court, and Plaintiff begs for an immediate hearing to present this unheard evidence and avert catastrophic loss. Additionally, pursuant to A.R.S. § 33-1227(B), there is a one-year statute of limitations to challenge the validity of the recorded amendments, which began running in late October 2025, making immediate action critical to avoid expiration of this time-sensitive claim.
 4. **Preservation of Judicial Economy and Fairness:** Clarifying and correcting the record prevents confusion in the consolidated case and allows fresh review. Failure to correct perpetuates errors and denies due process on issues never before heard. If the Court does not allow HOA members to seek declaratory relief for new statutory violations, it leaves them without recourse to enforce protections under the Arizona Condominium Act, undermining the purpose of A.R.S. § 12-1831 et seq.
 5. **The Insurance-Shift Claim is Not Pled in the Original Case:** The Second Amended Complaint in CV 2025-012980 contains no count challenging the October 2025 Declaration amendments. Those amendments are unforeseeable under *Kalway* and violate A.R.S. §§ 33-1227(D), 33-1250(C), and 33-1253. The claim is not part of the old case and cannot be adjudicated there. Consolidating distinct claims risks confusion of issues and unfair prejudice, contrary to ARCP 42(a)'s purpose.

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6. **This is the Board’s Third Illegal Vote:** The Board has now conducted three member votes (2024 budget vote, October 2025 Declaration/insurance-shift vote, and November 2025 budget vote) while deliberately refusing to hold an open meeting or use statutorily compliant ballots. This pattern of willful statutory noncompliance is new evidence that exists only in this action. This constitutes newly discovered evidence warranting reconsideration to prevent manifest injustice.
 7. **A.R.S. § 33-1227(B) Creates a One-Year Statute of Limitations:** The one-year period to challenge the validity of the recorded amendments began running only when they were recorded in late October 2025. Consolidating this time-sensitive claim into an eight-month-old case risks expiration of the statutory window.
 8. **Consolidation Will Deprive Plaintiff of a Fresh Review by the Newly Assigned Judge:** This new case has been assigned to a new judge, Scott Minder, providing an opportunity for fresh review of the urgent, time-sensitive issues. The prior judge in CV 2025-012980 (Randall H. Warner) has denied every request for an evidentiary hearing and stated Plaintiff is “not entitled to another preliminary injunction hearing every time the Board ... act[s] in a way Plaintiff believes is illegal.” Consolidating would risk entangling this new action in the original case's history of denials, guaranteeing further delay. Arizona courts favor independent judicial review for distinct actions to ensure impartiality. See, e.g., *Siler v. Superior Court*, 83 Ariz. 49, 316 P.2d 296 (1957) (discussing discretion in consolidation decisions).
 9. **Defendant’s True Motive is to Bury the Emergency:** Defendant’s counsel is attempting to prevent the facts from ever being heard on the merits.

1 Consolidation serves only to run out the clock as the master policy lapses,
2 rendering any future relief meaningless. They are trying to run out the timeclock
3 for reversing the illegal amendment.

4 **10. Rule 42(b) Authorizes Separate Trials to Avoid Prejudice:** Even if common facts
5 exist, Rule 42(b) expressly allows the Court to order separate trials “to avoid
6 prejudice.” The prejudice here is undeniable: nine condominium buildings are
7 completely uninsured according to the statute by the association according to
8 ARS 33-1253(A)(1)(2) and as defined in the definitions of the Condominium Act
9 starting December 1, 2025. The Court's discretion under Rule 42(b) should be
10 exercised to prioritize avoiding prejudice over mere convenience, especially
11 where irreparable harm is imminent.

12 **11. Plaintiff Will Suffer Irreparable Harm Absent Reconsideration:** Plaintiff has
13 suffered and will continue to suffer irreparable harm, including title clouds,
14 resale barriers, no building insurance on her unit according to statute, increased
15 costs (e.g., HO-3 premiums, deductibles and maintenance if damage to building
16 occurs), potential uninsurability for lack of coverage, and breach of her warranty
17 deed's expectations. Monetary damages are insufficient, as harms involve
18 property rights and governance violations per se irreparable in HOA contexts.
19 The harm caused by actions inconsistent with the community's established rules
20 and expectations undermines the fundamental nature of the property rights,
21 which Arizona courts recognize as irreparable. See *Kalway v. Calabria Ranch*
22 *HOA, LLC*, 252 Ariz. 532, 535, 506 P.3d 18, 21 (2022) (holding that property rights
23 in an HOA context are defined by the original, foreseeable covenants, and
24 amendments must be consistent with the "general plan of development" and

1 reasonable expectations of the homeowners). The balance of equities favors
2 Plaintiff, as preserving the status quo imposes no undue burden on Defendant,
3 who can reattempt compliant amendments. Public interest favors enforcing the
4 Condo Act to protect owners from ultra vires acts. This harm is immediate and
5 ongoing, justifying reconsideration to expedite merits review.

6 **12. Plaintiff Refuses to Comply with the Invalid Amendments** Plaintiff refuses to
7 comply with the invalid amendments, risking fines/liens.

8 IV. CONCLUSION

9 For these reasons, the Court should reconsider and reverse consolidation to prevent
10 manifest injustice. Plaintiff respectfully requests an expedited hearing on this motion
11 given the urgent nature of the uninsured property risk.

12 The Court should clarify and correct the Minute Entry to reflect that the filing was a
13 complaint, not a TRO motion; reconsider and reverse consolidation; and set an
14 evidentiary hearing on the merits. Failure to do so perpetuates errors and denies due
15 process on issues never before heard.

16 DATED: December 4, 2025.

17 Respectfully submitted,

18 /s/ Lisa Marx

19 Lisa Marx, Pro Per

20 AFFIDAVIT OF LISA MARX

21 I, Lisa Marx, swear under penalty of perjury pursuant to A.R.S. § 12-2221 that the
22 following is true and correct based on my personal knowledge:
23

24 1. I am the Plaintiff and owner of Unit 5.

1 2. The Board's consents, as detailed in the filed Motion for Preliminary Injunction,
2 violate Arizona laws including A.R.S. §§ 33-1250(C) and 33-1248(A), and the October 15
3 deadline caused harm including title devaluation and increased costs.

4 Expedited hearing is needed to prevent harm from the already adopted amendments,
5 including enforcement and irreversible implementation of the invalid insurance shift.

6 3. The Board stated that on December 1, 2025, that the master insurance policy was to
7 be terminated, leaving the common elements uninsured in violation of A.R.S. § 33-1253
8 as defined in the Condominium Act. This has caused me immediate anxiety and
9 financial uncertainty as my unit will not be covered by the Master policy Blanket
10 insurance.

11 4. I have personally attended or attempted to participate in the Board's meetings and
12 votes, witnessing the lack of open meetings and non-compliant ballot procedures,
13 which further erodes trust in the governance and exposes me to ongoing risks of fines
14 for non-compliance with unlawful directives.

15 5. I am the Plaintiff and owner of Unit 5.

16 6. The filing in CV 2025-062973 was a Civil Complaint (amended to First Amended
17 Complaint), not a TRO motion, and it was served with a Summons providing notice.

18 7. The claims arise from events after June 23, 2025, including the October 15, 2025, vote,
19 and no evidence on these issues has ever been heard in court.

20 8. The Minute Entry's errors misrepresent my filing and reference unrelated exhibits
21 from CV 2025-012980, causing prejudice as the property remains uninsured. Those
22 exhibits were filed in the original case CV 2025-012980, and the previous judge (Randall
23 H. Warner) refused to allow them to be heard, stating that he had already provided a
24 preliminary injunction hearing.

1 I declare under penalty of perjury under the laws of the State of Arizona that the
2 foregoing is true and correct. Executed on December 5, 2025 at Sun City, Arizona.

3 /s/ Lisa Marx

4 Lisa Marx

5 **CERTIFICATE OF SERVICE**

6 **ORIGINAL** of the foregoing e-filed

7 this 5th day of December, 2025

8 Arizona Judicial Branch Statewide eFiling System

9
10 I hereby certify that on December 5th, 2025, I caused a true and correct copy of the
11 foregoing document to be served via email to:

12 Charles H. Oldham, Esq

13 Chuck.Oldham@chdblawn.com

14 Ari Bowhay

15 Ari.Bowhay@chdblawn.com

16 By: /s/ Lisa Marx

17 Lisa Marx