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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,

12 vs.

13 Tara Condominiums Association, Inc.,

Case No. CV 2025-012980

Consolidated with CV2025-062973

**PLAINTIFF'S RESPONSE IN
OPPOSITION TO DEFENDANT'S
MOTION TO DISMISS FIRST
AMENDED CIVIL COMPLAINT
FOR DECLARATORY JUDGMENT
AND INJUNCTIVE RELIEF
(Expedited Consideration Requested
- Master Insurance Policy Already
Terminated on December 1, 2025)**

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20 Plaintiff Lisa Marx, pro per, respectfully submits this Response in Opposition to
21 Defendant Tara Condominium Association's ("Association") Motion to Dismiss the
22 First Amended Complaint filed on January 2, 2026. This Motion is supported by the
23 Memorandum of Points and Authorities below, the attached Affidavit of Lisa Marx,
24 and the record in both consolidated cases. For the reasons set forth herein, the Court

1 should deny the Motion in its entirety.

2
3 **MEMORANDUM OF POINTS AND AUTHORITIES**

4 **I. INTRODUCTION**

5 The Association's Motion seeks dismissal under Arizona's abatement doctrine and
6 prohibition against claim splitting, alleging this action (the "Second Action") duplicates
7 the earlier-filed CV2025-012980 (the "First Action"). This characterization is inaccurate
8 and ignores key factual and procedural distinctions. The Second Action addresses new,
9 post-filing events in the First Action, including illegal Declaration amendments
10 proposed in August 2025, a defective member vote in October 2025, and the
11 Association's termination of the master insurance policy on December 1, 2025 – leaving
12 all nine condominium buildings uninsured for roofs, exterior walls, and common
13 elements as described in the Condominium Act, A.R.S. 33-1201. These events
14 constitute a distinct "transaction or occurrence" under Ariz. R. Civ. P. 13(a) and Arizona
15 case law, not mere repackaging of prior claims.

16
17 Moreover, the court in the First Action denied preliminary injunctive relief (Minute
18 Entry dated June 25, 2025), noting that enjoining insurance changes was premature
19 since the Board had only voted to "begin the process" of preparing amendments. Those
20 changes have since been implemented through defective processes that violate Arizona
21 statutory laws in multiple ways – including invalid voting without an open meeting or
22 compliant ballots (A.R.S. §§ 33-1248 and 33-1250(C)), shifting mandatory association
23 insurance to owners without unanimous consent or proof of unavailability (A.R.S. §§
24 33-1227(D) and 33-1253), breaching fiduciary duties (A.R.S. § 33-1243), and restricting

1 records access (A.R.S. §§ 33-1258 and 33-1250(C)(7)) – causing immediate harm. The
2 operative Second Amended Complaint in the First Action does not plead these new
3 facts, and the court denied all post-filing requests to address the insurance issue,
4 erroneously stating that they were resolved in the initial preliminary injunction hearing
5 and denying Plaintiff the opportunity to present updated facts. Consequently, Plaintiff
6 filed this Second Action separately to address the escalating violations. Dismissal
7 would leave Plaintiff without remedy for ongoing harms, contrary to judicial economy
8 and equity.

9
10 The Association's baseless attempt to portray Plaintiff as engaged in "prolonged
11 litigation" is a disingenuous effort to label her as litigious and prejudice the Court; in
12 truth, these filings are compelled by the Association's persistent and escalating
13 violations of Arizona statutes and governing documents, as detailed herein, which
14 have created immediate and irreparable harm to owners, including leaving the
15 property uninsured according to state statute A.R.S.33-1253(A)(1-2), and have not been
16 adequately addressed in prior proceedings.

17
18 In addition, the Association's Motion is untimely under Ariz. R. Civ. P. 12(a), 15(a)(3),
19 and 6(c), having been filed well after the applicable deadline. This procedural defect
20 provides an independent basis for denial.

21
22 Pending Motions in the First Action: The Court has not yet ruled on Plaintiff's
23 Amended Motion to Set Evidentiary Hearing on Motion for Preliminary Injunction
24 (filed November 6, 2025, telephonic or video hearing requested); Plaintiff's Motion for

1 Reconsideration of November 17, 2025 Minute Entry Denying Leave to File Third
2 Amended Complaint (filed December 1, 2025); Defendants' Objection to Plaintiff's
3 Notice of Change of Judge for Cause (filed December 5, 2025). These pending matters
4 directly affect this case and demonstrate ongoing, unresolved issues distinct from the
5 Second Action.

6 Pending Motions Related to Consolidated Cases: Plaintiff's Motion for Clarification,
7 Correction, Reconsideration, and Order Setting Evidentiary Hearing (filed December 5,
8 2025). These filings further highlight the distinct and escalating issues in the Second
9 Action that remain unresolved.

10 **II. FACTUAL AND PROCEDURAL BACKGROUND**

11 Plaintiff incorporates by reference the factual recitations in her Motion for
12 Reconsideration of the Court's Sua Sponte Consolidation Order (filed December 2025)
13 and Affidavit attached hereto.

14 The First Action, filed April 11, 2025, alleged breaches of contract arising from the
15 Association's governance, including improper actions outside open meetings, records
16 production delays, financial reporting issues, and a premature proposal to shift
17 insurance from "walls-in" (HO6) to homeowner (HO3) plans. Plaintiff sought
18 temporary restraining orders and injunctive relief to halt these actions (see Amended
19 Emergency Orders filed April 16, 2025). The Court denied preliminary injunctive relief
20 after an evidentiary hearing (Minute Entry June 25, 2025), finding, inter alia:

- 21 • On insurance: "To date, all the Association Board has done is vote to hire a
22 lawyer to 'begin the process to prepare amended CC&R's...' It is therefore
23 premature for the Court to intervene... The Court has no way of deciding
24 whether an amendment is lawful without knowing what the amendment says."

- 1 • On open meetings: Certain actions (e.g., appointing a Board member, hiring
2 counsel) required votes but could potentially be ratified; no present irreparable
3 harm.
- 4 • On records and financials: Delays occurred, but no irreparable harm; Board
5 relied on professionals.
- 6 • On criticism of Plaintiff: No unlawful statements.

7 The First Action proceeded against the Association alone after dismissal of claims
8 against individual directors Mark Gottmann and Dennis Anderson. The operative
9 Second Amended Complaint focuses on pre-April 2025 conduct and the initial
10 insurance proposal.

11
12 Post-filing in the First Action, the Association escalated violations:

- 13 • August 2025: Proposed illegal Declaration amendments shifting insurance
14 burdens to owners, violating A.R.S. §§ 33-1253(A)-(C) (requiring association-
15 maintained property insurance on common elements as described in the
16 statutes).
- 17 • October 2025: Conducted a defective member vote – no open meeting, grouped
18 amendments, door-to-door ballot collection – in violation of A.R.S. § 33-1248
19 (open meetings) and condominium documents, as well as A.R.S. § 33-1250(C)
20 (requiring votes to be in person or by absentee ballot tied to a meeting, with
21 compliant ballots and transparency requirements under A.R.S. § 33-1250(C)(7),
22 such as allowing members to view ballots).
- 23 • November 2025: Another defective budget vote (third in pattern: 2024 budget,
24 October amendments, November budget).

- December 1, 2025: Terminated the master policy, leaving the property uninsured – a direct realization of the "premature" harm the First Action's injunction sought to prevent.

These new facts form the core of the Second Action's First Amended Complaint, seeking **Declaratory Judgment** (invalidating amendments and vote) and **Injunctive Relief** (restoring insurance, compliance with statutes). This is not duplication but a response to continuing, distinct harms unaddressed in the First Action.

The original Complaint in this Second Action was served on the Association on November 22, 2025, via personal service on its statutory agent, Mark Gottmann (see Affidavit of Service dated November 23, 2025). The First Amended Complaint, which corrected only a clerical error in the caption with no substantive changes, was filed and served via email on November 25, 2025, as required. The Association filed its Motion to Dismiss on January 2, 2026 – well after the deadline under the Arizona Rules of Civil Procedure.

III. LEGAL ARGUMENT

A. The Motion Is Untimely and Should Be Denied on Procedural Grounds

As a threshold matter, the Association's Motion to Dismiss is untimely and should be denied. Under Ariz. R. Civ. P. 12(a)(1)(A), a defendant must serve a responsive pleading within 20 days after service of the summons and complaint. For an amended pleading, Rule 15(a)(3) requires a response "within the time remaining to respond to the original pleading or within 10 days after service of the amended pleading, whichever is later." Because service of the First Amended Complaint was made electronically under Rule 5(c)(2)(E), Rule 6(c) adds 5 calendar days to the response period.

1 The original Complaint was served on November 22, 2025, making the initial response
2 due by December 12, 2025 (excluding the service day and counting 20 days, landing on
3 a Friday). The First Amended Complaint was served on November 25, 2025. The time
4 remaining to respond to the original was 17 days from November 25, which extended
5 to December 12, 2025 – later than the 10-day period from the amended service (ending
6 December 5, 2025). Adding 5 calendar days under Rule 6(c) extends the deadline to
7 December 17, 2025 (a Wednesday and business day, with no intervening holidays).
8 The Association filed its Motion on January 2, 2026 – 16 days after the December 17,
9 2025, deadline. Because the deadline has expired, the Association may only obtain an
10 extension upon a formal motion and a showing of excusable neglect under ARCP
11 6(b)(1)(B). No such motion has been filed, nor has the Association demonstrated that its
12 failure to act was the result of anything other than a lack of diligence. Furthermore, the
13 intervening holidays do not justify the delay, as the deadline passed well before
14 December 25. By failing to timely assert its defenses in a pre-answer motion or
15 responsive pleading, the Association has waived its right to challenge personal
16 jurisdiction, venue, and service of process under ARCP 12(h)(1). Arizona courts
17 emphasize that procedural rules must be followed to ensure the orderly administration
18 of justice; therefore, this untimely Motion should be denied.

19 Additionally, the Certificate of Service on the Motion falsely claims it was emailed to
20 Plaintiff; no email was received, making service improper under Ariz. R. Civ. P. 5.

21 **B. The Abatement Doctrine Does Not Apply Because the Actions Are Not**
22 **Substantially Identical**

23 Abatement only applies when the "same rights are asserted and the same relief is
24 prayed for" based on the same facts. New, independent wrongful acts (like the

1 insurance cancellation) typically allow for a second, separate filing. Abatement
2 prevents parallel lawsuits only where there is "substantial identity" of parties, subject
3 matter, issues, and relief, arising from the "same underlying transaction or nucleus of
4 operative facts." *Allen v. Superior Court*, 86 Ariz. 205, 207-08 (1959); *Reed v. Frey*, 10 Ariz.
5 App. 292, 295 (1969). Exact duplication is not required, but the later action must be
6 dismissible if the first resolves it. *Mosher v. Lount*, 33 Ariz. 272, 276 (1928).

7 Here, no such identity exists:

- 8 • Different Transactions: The First Action challenged preliminary steps (e.g., hiring
9 counsel to "begin the process" of amendments). The Court denied relief as
10 premature. The Second Action challenges completed acts: actual amendments, a
11 flawed vote, and policy termination. These post-date the First Action's filing and
12 operative pleading. See *Howell v. Hodap*, 221 Ariz. 543, 546 ¶ 17 (App. 2009)
13 (claims from "single transaction" must be joined, but separate occurrences allow
14 separate suits).
- 15 • New Issues and Relief: The Second Action introduces distinct violations (e.g.,
16 grouped amendments violating A.R.S. § 33-1250(C)(1), invalid voting without an
17 open meeting or compliant ballots (A.R.S. §§ 33-1248 and 33-1250(C)), shifting
18 mandatory association insurance to owners without unanimous consent or proof
19 of unavailability (A.R.S. §§ 33-1227(D) and 33-1253), breaching fiduciary duties
20 (A.R.S. § 33-1243), and restricting records access (A.R.S. §§ 33-1258 and 33-
21 1250(C)(7)) – causing immediate harm, and seeks relief for realized harms (e.g.,
22 enjoining uninsured status), not speculative ones. Resolution of the First Action
23 would not bar or resolve these, as the Court's June 2025 Minute Entry confirms
24 the insurance issue was unripe then. The Declaration amendment shifting

1 insurance responsibilities also violates *Kalway v. Calabria Ranch HOA, LLC*, 248
2 Ariz. 587, 462 P.3d 1041 (App. 2020), *aff'd*, 251 Ariz. 532, 495 P.3d 338 (2021),

3 **which requires unanimous consent for amendments that create new**
4 **affirmative obligations not foreseeable from the original declaration.**

- 5 • Policy Considerations: Abatement avoids harassment and waste, but dismissal
6 here would waste resources by ignoring urgent harms. The Court's consolidation
7 recognizes relatedness but not identity – abatement is inappropriate for
8 consolidated cases addressing sequential events. See *Demoli v. Superior Court*, 10
9 Ariz. App. 572, 460 P.2d 984 (1969) (courts may reconsider interlocutory orders
10 like consolidation to prevent injustice).

11 **C. There Is No Impermissible Claim Splitting**

12 Claim splitting prohibits fragmenting claims from a "single transaction or occurrence"
13 into multiple suits. *Howell*, 221 Ariz. at 546 ¶ 17; *Williams v. Williams*, 32 Ariz. 164
14 (1927). Claims are "the same" if based on the same "transactional nucleus of facts."
15 Restatement (Second) of Judgments § 24.

16 The Association misapplies this:

- 17 • Separate Occurrences: The Second Action arises from distinct, post-filing
18 escalations (August–October 2025 amendments and December 2025 termination)
19 that did not exist when the First Action was filed. Claim preclusion does not
20 apply to 'rights that did not exist at the time of the previous judgment.' *Pettit v.*
21 *Pettit*, 218 Ariz. 528, 531 ¶ 10 (App. 2008). Because these are new, independent
22 wrongful acts, they form a separate transactional nucleus. See *Howell v. Hodap*,
23 221 Ariz. 543, 547 ¶ 22 (App. 2009) (noting that new facts can create new grounds
24 for relief).

- 1
- Full and Fair Opportunity: Filing anew was the only recourse, not an "end-run."
2 The Association's uninsured defense costs in the Second Action stem from its
3 own actions terminating coverage – not Plaintiff's filing.
 - No Public Policy Violation: Allowing this action promotes efficiency by
4 addressing new harms promptly, avoiding inconsistent rulings (e.g., First
5 Action's prematurity ruling vs. now-realized harms). Prejudice to the Association
6 is self-inflicted; equity favors Plaintiff and owners facing uninsured risks.
7

8 **D. Dismissal Would Cause Irreparable Harm and Contravene Public Policy**

9 As detailed in Plaintiff's prior filings (e.g., Amended Emergency Orders, Reply to
10 Response), the Association's actions violate fiduciary duties (A.R.S. § 33-1243) and
11 create irreparable harm: decreased property values, uninsurable risks, and convoluted
12 responsibilities. Public policy favors enforcing condominium statutes (A.R.S. §§ 33-1201
13 et seq.) to protect owners. See *Johnson v. Pointe Cmty. Ass'n*, 205 Ariz. 485, 73 P.3d 616
14 (App. 2003) (boards must comply with declarations; courts provide neutral
15 enforcement).

16 **IV. CONCLUSION**

17 The Association's Motion is untimely and procedurally defective, warranting denial on
18 that ground alone. Even on the merits, the Second Action is not duplicative or split
19 claims but addresses new, distinct violations unripe or nonexistent in the First Action.
20 Dismissal would deny relief for urgent harms, including an uninsured condominium
21 complex according to state statutes. Plaintiff requests the Court deny the Motion,
22 award costs if appropriate, and grant such further relief as just.

23 Respectfully submitted this 4th day of January, 2026.

24 /s/ Lisa Marx

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5 **CERTIFICATE OF SERVICE**

6 I certify that on January 4, 2026, I served a copy of the foregoing on counsel for
7 Defendant via email:

8 Charles H. Oldham CHDB Law LLP
9 Chuck.Oldham@chdbl.com

10 Ari A. Bowhay
11 Ari.Bowhay@chdbl.com

12 /s/ Lisa Marx

13 **AFFIDAVIT OF LISA MARX**

14 I, Lisa Marx, declare under penalty of perjury:

- 15 1. I am the Plaintiff in this action and have personal knowledge of the facts herein.
- 16 2. The facts in the above Response are true and correct.
- 17 3. The Second Action arises from events after the First Action's filing, including the
18 August 2025 proposal, October 2025 defective vote, and December 1, 2025
19 insurance termination.
- 20 4. These caused immediate harm: the property is uninsured, violating statutes and
21 increasing risks/costs for owners.

22 Executed this 4th day of January, 2026.

23 /s/ Lisa Marx
24