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11
12 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**
13 **IN AND FOR THE COUNTY OF MARICOPA**

14 COLETTE MCNALLY, an individual,)
15) Case No. CV2014-009496
16)
17) **DEFENDANT/APPELLEE’S**
18) **DESIGNATION OF ADDITIONAL**
19) **TRANSCRIPT FOR RECORD ON**
20) **APPEAL**
21)
22) **-AND-**
23)
24) **MOTION FOR ORDER REQUIRING**
25) **PLAINTIFF/APPELLANT TO ORDER**
26) **AND PAY FOR TRANSCRIPT OF**
27) **ENTIRE PROCEEDING**
28)
29) (Assigned to the Honorable
30) James Blomo)
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1 Pursuant to Rule 11(c)(4)(A), Ariz. R. Civ. App. P., Defendant/Appellee Sun Lakes
2 Homeowners Association #1, Inc. hereby designates for the record on appeal all portions of
3 the evidentiary hearing and related proceedings on Plaintiff’s Application for Preliminary
4 Injunction held before this Court on August 12, 2015, beginning at 9:00 a.m. through the
5 conclusion of such proceeding, that Plaintiff/Appellant omitted from her Notice of Transcript
6 Order filed November 9, 2015.

7 Pursuant to Rule 11(c)(4)(C)(iii), Ariz. R. Civ. App. P., Defendant further moves the
8 Court for an Order requiring Plaintiff to order and pay for a transcript of the entire
9 proceeding, consistent with Defendant’s designation above.

1 After attempting without success to obtain relief from the court of appeals by way of
2 special action, Plaintiff has appealed this Court’s denial of Plaintiff’s Application for
3 Preliminary Injunction. Plaintiff has also filed a motion to expedite her appeal. The question
4 for review by the appellate court is whether this Court abused its discretion in denying
5 Plaintiff’s Application for Preliminary Injunction. *See McCarthy v. Western Constructors,*
6 *Inc. v. Phoenix Resort Corp.*, 169 Ariz. 520, 523 (App. 1991). Such review requires the
7 appellate court to determine if this Court 1) applied the incorrect substantive law or
8 preliminary injunction standard, 2) based its decision on a clearly erroneous finding of fact
9 that is material to its decision to deny the injunction, or 3) applied an acceptable preliminary
10 injunction standard in a manner that resulted in an abuse of discretion. *See id.* Where, as
11 here, the parties dispute the facts, this Court was required to, and did, weigh and appraise the
12 evidence offered by both parties in considering whether or not to grant injunctive relief. *See*
13 *id.* at 525 (explaining that trial court is required to weigh and appraise evidence offered by
14 all parties at hearing on preliminary injunction, especially when “the parties seriously dispute
15 the facts.”).

16 Regardless of how Plaintiff/Appellant frames the issues, the court of appeals cannot
17 effectively review this Court’s denial of Plaintiff’s Application for Preliminary Injunction
18 without a complete record of the August 12, 2015 evidentiary hearing. Yet Plaintiff’s Notice
19 of Transcript Order omits key portions of the hearing, including stipulations concerning
20 evidence entered into the record at the beginning of the hearing, the Court’s own examination
21 of Plaintiff, closing arguments, and the Court’s colloquy with counsel during and after
22 closings. Moreover, at the conclusion of the parties’ presentations, the Court spent
23 considerable time on the record articulating its reasons for denying a preliminary injunction.
24 All of this is excluded from Plaintiff’s Notice of Transcript Order, and all of it is relevant to
25 the “judgment, finding or conclusion” that Plaintiff is appealing. Rule 11(c)(1)(B), Ariz. R.
26 Civ. App. P. Plaintiff is therefore required to include the full transcript of the August 12,
27 2015 evidentiary hearing in the record on appeal. *See id.* Plaintiff’s failure to do so, while
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1 at the same time attempting to expedite appellate review (both by the filing of a Petition for
2 Special Action, and now by filing a Motion to Expedite Appeal), places Defendant at a
3 considerable disadvantage in defending against Plaintiff's interlocutory appeal.

4 Defendant respectfully requests that the Court enter an Order requiring Plaintiff to
5 order and pay for a transcript of all portions of the evidentiary hearing and related
6 proceedings on Plaintiff's Application for Preliminary Injunction held before this Court on
7 August 12, 2015, beginning at 9:00 a.m. through the conclusion of such proceedings.

8 RESPECTFULLY SUBMITTED this 11th day of November, 2015.

9 **GRASSO LAW FIRM, P.C.**

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11 By /s/Jenny J. Winkler
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17 COPY mailed this 11th day
18 of November, 2015 to:

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By /s/R. Nelson