

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION.**

3 Plaintiff seeks to vacate the Judgment entered by this Court on August 30, 2024
4 (hereafter, the “Judgment”), pursuant to Rule 60(b), Ariz. R. Civ. “due to Superior Court
5 procedural errors, improper service by Defendants’ counsel, new evidence submitted on
6 November 4, 2024, and substantial prejudice caused to Plaintiff.”

7 As will be discussed below, Plaintiff’s arguments do not rise to the level of
8 requiring relief from the Judgment and therefore, the Plaintiff’s Motion should be denied.
9 Also, the Defendants should be awarded their attorney’s fees and court costs in having to
10 respond to the Motion.

11 **II. RELIEF FROM THE JUDGMENT SHOULD NOT BE GRANTED**
12 **BASED ON SUPERIOR COURT PROCEDURAL ERROR OR**
13 **IMPROPER SERVICE BY DEFENDANTS’ COUNSEL**

14 Plaintiff, in her Motion, is requesting that the Court relieve her from the Judgment,
15 pursuant to Rule 60(b), Ariz. R. Civ. P., due to the fact that the Judgment “was improperly
16 served;” specifically, because the Judgment was served by the Court via TurboCourt.
17 Plaintiff, on page 2 of her Motion, states “[T]he Superior Court judgment and minute
18 entry on August 30, 2024 were improperly served **solely via TurboCourt.**” (Emphasis
19 Added)

20 When providing notice of a Judgment, the Court Clerk must abide by the
21 provisions of Rule 58(c)(1)(A), Ariz. R. Civ. P., which states “immediately upon the entry
22 of a judgment, or the entry of a minute entry constituting a judgment, the clerk must: (i)
23 distribute notice, in the form required by Rule 58(c)(2), **either** electronically, by U.S.
24 mail, or attorney drop box, to every party not in default for failing to appear; and (ii)
25 make a record of the distribution.” (Emphasis Added)

26 The requirements of Rule 58(c)(1)(A), Ariz. R. Civ. P. were discussed in Chung
27 v. Choulet, 459 P.3d 498, 248 Ariz. 236 (Ariz. App. 2020), a case that contains arguments
28 similar to the arguments asserted by the Plaintiff. The Court in Chung held:

29 In addressing such a request (for Rule 60(b), Ariz. R. Civ. P. relief), the
30 court should consider the following factors: (1) whether the clerk
distributed notice of judgment under Rule 58(c); (2) whether the

1 respondent would be prejudiced by relief; (3) whether the
2 moving party sought relief promptly; (4) due diligence, or reason for lack
3 thereof, by counsel in attempting to be informed of the date of the decision;
4 and (5) extraordinary, compelling, or unique circumstances.

5 In the instant case, Plaintiff, on page 2 of her Motion, states “[T]he Superior Court
6 judgment and minute entry on August 30, 2024 were improperly **served solely via**
7 **TurboCourt.**” (Emphasis Added) This is an acknowledgement by the Plaintiff that the
8 Clerk of the Court served the Judgment via TurboCourt, which is a fully available and
9 authorized option pursuant to Rule 58(c)(1)(A), Ariz. R. Civ. P.

10 Plaintiff also fails the fourth prong of the test by not engaging in “due diligence”
11 regarding notice of the Judgment.

12 In Chung, the Court held:

13 The Geyler court stated that due diligence is of "paramount importance ...
14 under the delayed appeal analysis" and that a court cannot grant relief
15 without "more than counsel's mere failure to learn of the entry of judgment
16 or failure of the clerk to comply with the requirement of giving
17 Rule [58(c)] notice." *Id.* at 332–33, 697 P.2d at 1082–83.

18 The Chung Court also defined what “due diligence” constitutes. The Court held:

19 ¶13 Here, the Chungs offered no evidence to show they exercised due
20 diligence in trying to stay informed on the status of the judgment. The
21 Chungs knew or should have known the judgment was forthcoming,
22 given the court's entry of partial summary judgment, the Choulets' timely
23 submission of a proposed form of judgment and attorney fee application,
24 followed closely by the Chungs' opposition. *See* Ariz. R. Civ. P.
25 5.3(b) ("Each attorney of record is responsible for keeping advised of the
26 status of ... pending actions in which that attorney has appeared"); Roll v.
27 Janca, 22 Ariz. App. 335, 337, 527 P.2d 294 (1974) ("A party has a duty
28 to take legal steps to protect his own interests.").

29 In the instant case, Plaintiff filed the following pleadings prior to the entry of the
30 Judgment:

1. Response to Defendant's Motion for Award of Attorney's Fees filed on June 11, 2024;
2. Plaintiff's Response to Defendant's Reply In Support of Defendant's Motion and Application for Award of Attorney's Fees filed on June 20, 2024.

1 It is clear that the Plaintiff could reasonably anticipate that the Court would enter
2 the Judgment. The Plaintiff was obligated to exercise diligence in monitoring the issuance
3 of the Judgment.

4 Finally, Rule 58(c)(1)(B), Ariz. R. Civ. P. states that notice of a Judgment by
5 another party is in addition to the Clerk's notice. Rule 58(c)(1)(B), Ariz. R. Civ. P. states
6 "[I]n addition to the clerk's notice under Rule 58(c)(1)(A), any party may serve notice of
7 entry of judgment in the manner provided in Rule 5(c). Therefore, the Defendants were
8 under no obligation to serve a copy of the Judgment to the Plaintiff (although the Plaintiff
9 admits that the Defendants sent her a copy of the Judgment, see Page 2 of the Motion).

10 Therefore, Plaintiff does not meet the requirements of Rule 60(b), Ariz. R. Civ. P.
11 and her Motion should be denied.

12 **III. PLAINTIFF DOES PROVIDE ANY NEW EVIDENCE ALLOWING**
13 **FOR RELIEF FROM THE JUDGMENT.**

14 Plaintiff's alleged new evidence consists of allegations raised in several previous
15 and pending motions before the Court regarding the Court's discretionary award of
16 attorney's fees and court costs in the Judgment. The Plaintiff has been provided ample
17 opportunity to litigate the attorney's fees and court costs issues with the Court. Plaintiff's
18 "pleadings" are not "new evidence" that would require relief from the Judgment.

19 Plaintiff also alleges as new evidence her above "improper service" argument
20 along with a vague reference to "attempts to obscure critical information" without
21 providing a shred of evidence to sustain her assertions.

22 The Plaintiff has not and cannot provide new evidence that would warrant relief
23 from the Judgment.

24 **IV. PLAINTIFF DOES NOT PROVIDE ANY EVIDENCE OF**
25 **SUBSTANTIAL PREJUDICE.**

26 Plaintiff does not provide any concrete evidence of how she has been prejudiced
27 by the Judgment. Plaintiff levels a number of scurrilous accusations but fails to
28 substantiate them. In essence, the Plaintiff continues her baseless attacks and morphs
29 them to argue she is being prejudiced.
30

1 For the sake of completeness, the Plaintiff does state that the attorney's fees and
2 costs imposed by the Judgment are a "financial hardship." This rationale, however, does
3 not rise to the level of prejudice.

4 **V. CONCLUSION.**

5 The Plaintiff's Motion continues her clear pattern of filing repetitive and frivolous
6 motions before the Court. The Defendants respectfully and strenuously request that the
7 Court deny the Plaintiff's Motion. The Defendants also request an award of their
8 attorney's fees and costs incurred in responding to this Motion.

9 DATED this 26th day of November, 2024.

10 **SHAW & LINES, LLC**

11 /s/ Augustus H. Shaw, IV
12 Augustus H. Shaw IV, Esq., CCAL
13 4523 E. Broadway Road
14 Phoenix, Arizona 85040
15 *Counsel for Defendants*

16 ORIGINAL submitted for electronic filing
17 This 26th day of November 2024 with:

18 Clerk of the Court
19 Maricopa County Superior Court

20 COPY electronically mailed
21 This 26th day of November 2024 to:

22 Sandra Rodriguez
23 4735 E Besty Lane
24 Gilbert, AZ 85296

By: /s/ [Signature]