

1 MEMORANDUM OF POINTS AND AUTHORITIES

2 I. PLAINTIFF'S FIRST REQUESTS FOR RELIEF - REQUEST FOR
3 INJUNCTIVE RELIEF - IS IMPROPER PURSUANT TO A.R.S. §12-1809
4 AND SHOULD BE DENIED.

5 Plaintiff requests injunctive relief pursuant to A.R.S. §12-1809; however, the
6 Plaintiff's request does not comply with A.R.S. §12-1809(B), which states:

7 An injunction against harassment shall not be granted:.. 1. Unless the party
8 who requests the injunction files a written verified petition for injunction...
and 3. Against more than one defendant.

9 Plaintiff seeks an injunction against harassment against multiple Defendants in
10 direct violation of A.R.S. §12-1809(B)(3). As such, the request should be denied.

11 Moreover, pursuant to Rule 65 Ariz. R. Civ. P. and A.R.S. §12-1809(B)(1),
12 requests for preliminary injunctive relief must be supported by an affidavit or verified
13 complaint (verified petition for injunction). Plaintiff has not filed either of those, which
14 precludes the Court from granting her any injunctive relief.

15 Even if the Court were to evaluate the Plaintiff's request for injunctive relief, it is
16 clear that the Plaintiff has not demonstrated a strong likelihood of success on the merits
17 nor has she demonstrated the possibility of irreparable injury. Therefore, the Plaintiff's
18 requests for injunctive relief should not be granted.

19 A party seeking a preliminary injunction must establish (1) a strong likelihood of
20 success on the merits, (2) the possibility of irreparable injury if the requested relief is not
21 granted, (3) a balance of hardships favoring that party, and (4) public policy favoring a
22 grant of the injunction. Shoen v. Shoen, 167 Ariz. 58, 63 (App. 1990). "The scale is not
23 absolute, but sliding." Smith v. Ariz. Citizens Clean Elections Comm'n, 212 Ariz. 407,
24 410 (2006). The moving party may establish either (a) probable success on the merits and
25 the possibility of irreparable harm, or (b) the presence of serious questions and that the
26 balance of hardships tips sharply in the party's favor. *Id.* at 411; see also Ariz. Ass'n of
27 Providers for Persons with Disabilities v. State, 223 Ariz. 6, 12 (App. 2009). These
28 principles generally do not allow the court to grant a preliminary injunction without some
29 showing of a possibility of irreparable injury. Irreparable injury means "harm not
30 remediable by damages if the requested relief is not granted." Shoen v. Shoen, 167 Ariz.

1 58, 63 (App. 1990). “However, even if some damages may be proved and recovered,
2 injunctive relief may be appropriate if those damages are inadequate to address the full
3 harm suffered.” IB Prop. Holdings, LLC v. Rancho Del Mar Apartments Ltd. P’ship, 228
4 Ariz. 61, 73 (App. 2011).

5 The Plaintiff’s Motion does not demonstrate a strong likelihood of success on the
6 merits nor demonstrates the possibility of irreparable injury. Therefore, the Plaintiff’s
7 requests for injunctive relief should be denied.

8 **II. PLAINTIFF’S SECOND REQUEST FOR RELIEF – REQUEST FOR AN**
9 **ORDER OF PROTECTION UNDER A.R.S. §13-3602 SHOULD BE**
10 **DENIED.**

11 A.R.S. §13-3602(A) states:

12 A person may file a verified petition, as in civil actions, with a
13 magistrate, justice of the peace or superior court judge for an order
14 of protection for the purpose of restraining a person from committing
an act included in domestic violence.

15 The Plaintiff has not alleged “an act included in domestic violence.” As such, this
16 allegation should be summarily denied.

17 **III. PLAINTIFF’S THIRD REQUEST FOR RELIEF – REQUEST TO**
18 **QUASH IMPROPER LIEN UNDER A.R.S. §33-1807 SHOULD BE**
19 **DENIED.**

20 As a starting point, the Plaintiff does not provide any legal justification or analysis
21 as to why the alleged lien should be quashed. Plaintiff simply references provisions of
22 A.R.S. §33-1807, a statute that governs Defendant Gardens Gilbert and the Plaintiff.

23 A.R.S. §33-1807(A) states the Association (Defendant Gardens Gilbert) “has a
24 common expense lien on a property for any assessment levied against that property from
25 the time the assessment becomes due.”

26 Nowhere in the Motion does the Plaintiff deny owing assessments to Defendant
27 Gardens Gilbert and Exhibit 2 of the Plaintiff’s Motion contains an account ledger
28 regarding the Plaintiff’s property which clearly shows that the Plaintiff has not paid
29 assessments to Defendant Gardens Gilbert.

1 Therefore, pursuant to A.R.S. §33-1807(A), Defendant Gardens Gilbert has a
2 common expense lien on the Plaintiff's property for assessment owed. The only legal
3 mechanism to quash the A.R.S. §33-1807(A) lien would be for the Plaintiff to provide
4 proof she is not delinquent in the payment of her assessments to Defendant Gardens
5 Gilbert. Therefore, the A.R.S. §33-1807(A) lien should not be quashed.

6 The above being said, the relief sought regarding the quashing of a lien pursuant to
7 A.R.S. §33-1807 is completely outside of the confines of the original Complaint filed in
8 this action. The Complaint in this action did not contain an allegation regarding
9 assessment liens pursuant to A.R.S. §33-1807.

10 Therefore, the request to quash an alleged improper lien would be an attempt to
11 amend the Plaintiff's Complaint. The Plaintiff does not properly plead her request to
12 amend her Complaint nor does she provide a potential Amended Complaint for review.
13 Plaintiff fails to comply with Rule 15 Ariz. R. Civ. P. and as such, any request to amend
14 her Complaint should be denied along with her request to quash the alleged improper lien.

15 **IV. PLAINTIFF'S FOURTH REQUEST FOR RELIEF – REQUEST TO**
16 **STAY ALL COLLECTIONS EFFORTS AND ACTION PENDING**
17 **LITIGATION RESOLUTION – SHOULD BE DENIED.**

18 The Plaintiff does not provide any applicable caselaw or statutory law to
19 substantiate her arguments as to why a stay of collections should be granted. Moreover,
20 the Plaintiff does not address which collection activity she desires to be stayed.

21 The rights of the Defendants to engage in legal collection activity pursuant to
22 A.R.S. §33-1807 or A.R.S. §33-961 or any other valid Arizona Statute.

23 **V. PLAINTIFF'S FIFTH REQUEST FOR RELIEF – REQUEST TO**
24 **ADDRESS PLAINTIFF'S OUTSTANDING MOTIONS.**

25 Defendants concur with the Plaintiff's request that the Court, as appropriate, rule
26 on the various motions pending before the Court.

27 **VI. PLAINTIFF'S REMAINING REQUESTS RELIEF – AWARD OF**
28 **COMPENSATORY AND PUNITIVE DAMAGES, RECOGNIZE**
29 **PERSONAL INJURY CLAIMS AND PROVIDE ANY OTHER RELIEF**
30 **– SHOULD BE DENIED.**

1 The Plaintiff's remaining requests for relief are unsubstantiated, unproven, and
2 improperly pled and should be denied.

3 **VII. CONCLUSION.**

4 As such, the Defendant requests that the Court deny the Plaintiff's Motion in its
5 entirety and impose sanctions against the Plaintiff pursuant to the Court's Minute Entry
6 dated August 27, 2024 and Rule 11, Arizona Rules of Civil Procedure to include the
7 attorney's fees and costs incurred by the Plaintiff to respond to the original request and
8 this Motion. The Defendants also request that the Defendants be awarded their reasonable
9 attorney's fees and court costs pursuant to the Declaration of Covenants, Conditions,
10 Restrictions and Easement recorded at recording number 2002-0039460, records of
11 Maricopa County, AZ, A.R.S. §§ 12-341, 12-341.01, 12-349 and 33-1807.
12
13

14 DATED this 27th day of November, 2024.

15 **SHAW & LINES, LLC**

16
17 /s/ Augustus H. Shaw, IV
18 Augustus H. Shaw IV, Esq., CCAL
19 4523 E. Broadway Road
20 Phoenix, Arizona 85040
21 *Counsel for Defendant*

22 ORIGINAL submitted for electronic filing

23 This 27th day of November, 2024 with:

24 Clerk of the Court
25 Maricopa County Superior Court

26 COPY of the foregoing mailed

27 This 27th day of November, 2024 to:

28 Sandra Rodriguez
29 4735 E Besty Lane
30 Gilbert, AZ 85296

By: /s/ Diane Fincher