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

TURTLE ROCK III HOMEOWNERS
ASSOCIATION, an Arizona non-profit
corporation,

Plaintiff,

vs.

LYNNE A. FISHER, record owner.

Defendant.

Case No.: CV 2015-095897

**REPLY TO DEFENDANT'S
OBJECTION TO PLAINTIFF'S
APPLICATION FOR MONETARY
PENALTIES**

Plaintiff TURTLE ROCK III HOMEOWNERS ASSOCIATION ("Plaintiff"), by and through undersigned counsel, hereby Replies to Defendant's Objection to Plaintiff's Application for Monetary Penalties. Defendant's objections do not raise substantive reasons why judgment for monetary penalties are unwarranted. Specifically:

1. Defendant argues that monetary penalties contained in Plaintiff's Exhibit 3 (the Homeowner Transaction History ("ledger")), totaling \$5,315.25 are not authorized because Defendant was (1) not provided with prior "notice and an opportunity to be heard," and (2) did not comply with the 30-day notice requirements. First, the court has already considered Defendant's arguments related to the fines in the ledger and rejected the notion that the "posting policy regarding find assessments" was improper or did not give the

1 Defendant “an opportunity to cure” and that there “has been no violation of the 30-day
2 notice requirement.” April 15, 2016 Minute Entry Ruling (“Ruling”), Page 2. Defendant
3 offers nothing new in its objection that should cause the court to reconsider its holdings. In
4 any event, the fines memorialized in Exhibit 3 were all based on its preceding violation
5 notices contained in Plaintiff Exhibit 4.

6 2. Defendant argues that monetary penalties of \$25 per day are unwarranted
7 because Plaintiff did not first provide Defendant with an opportunity to be heard. First, this
8 argument was rejected by the court when it ruled that “the Court finds Ms. Curtiss’
9 testimony sufficient under the circumstances to support as a matter of evidence the fine
10 assessment of \$25.00 per day”. *See* Ruling at Page 3. Second, Plaintiff *did* in fact provide
11 Defendant with written notice and an opportunity to be heard *before* imposing the \$25 per
12 day fine. *See* Plaintiff Exhibit 4, September 16, 2015 Attorney Letter at page 2 (“The
13 Association recognizes your right to appeal the violations above. If you wish to appeal the
14 additional fines and violations set forth above, you must provide timely written request of a
15 hearing within 10 calendar days of this letter”).

16 3. Defendant argues the per day fines are *per se* unreasonable. Reasonableness
17 is subjective. The Association exhausted its then fine schedule with no response from
18 Defendant. It was entirely reasonable for the Association to “up the ante” in order to
19 compel compliance. The statute only requires “notice” and “an opportunity to be heard”
20 before issuing “reasonable monetary penalties” and does not require a set fine schedule.
21 Defendant overreaches in arguing a set fine schedule must be followed. Indeed, the statute
22 mentions “reasonable” for a reason—every situation is unique and a board must have the
23 discretion to impose fines based on each situation’s unique factors. Here, the normal fines
24 were not working. Escalated fines compelled some compliance but not nearly enough. The
25 mere fact that Defendant responded once fines were escalated is *prima facie* evidence that
26 the higher fine was indeed reasonable.

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28 ///

1 **CONCLUSION**

2 The Defendant has two problems. First, she does not present anything new than
3 what she argued in trial. Second, she does not point to any provision in the governing
4 documents that would cause the court to reconsider the testimony presented by Ms. Curtiss.
5 Pursuant to this Court’s order, Defendant was provided with the Association’s Enforcement
6 Policy yet she is ironically silent about those provisions when she argues over
7 reasonableness. All the Association seeks is compliance. Even now the Association is
8 willing to waive all but \$3,500 in fines if she simply cures the remaining violations.

9 DATED this 25th day of May, 2016.

10 GOODMAN LAW GROUP, L.L.P.

11 */s/ Clint G. Goodman*

12 _____
13 Clint G. Goodman, Esq.
14 Maura A. Abernethy, Esq.

15 ORIGINAL of the foregoing e-filed this 25th day of May, 2016 with:

16 The Clerk of the Court

17
18 COPY of the foregoing emailed (with permission) this same day to:

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24 */s/ Clint G. Goodman*

25 By: _____