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9 Attorney for Defendants

10 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**
11 **IN AND FOR THE COUNTY OF MOHAVE**

12 NANCY KNIGHT,

13 Plaintiff,

14 vs.

15 GLEN LUDWIG and PEARL LUDWIG, Trustees
16 of THE LUDWIG FAMILY TRUST; FAIRWAY
17 CONSTRUCTORS, INC.; MEHDI AZARMI;
18 JAMES B. ROBERTS and DONNA M.
19 ROBERTS, husband and wife; JOHN DOES 1-10;
20 JANE DOES 1-10; ABC CORPORATIONS 1-10;
21 and XYZ PARTNERSHIPS 1-10.

22 Defendants.

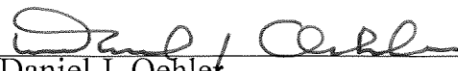
NO.: CV-2018-04003

**RESPONSE TO APPLICATION
FOR ATTORNEY FEES AND
COSTS FILED 10/25/2023 AND
AFFIDAVIT OF DAMAGES AND
ATTORNEY FEES PURSUANT
TO PLAINTIFF'S 05/17/2023
MEMORANDUM OF POINTS
AND AUTHORITIES, RULE 11
AND STATUTE SECTION
12-349 CAPTIONED
PLEADINGS**

23 COME NOW, the Defendants, GLEN LUDWIG and PEARL LUDWIG, Trustees of
24 THE LUDWIG FAMILY TRUST, FAIRWAY CONSTRUCTORS, INC., and MEHDI
25 AZARMI, by and through their attorney, the undersigned, and their attorney, Daniel J.
26 Oehler, and respond to the above-referenced filings collectively and respectfully requests that
27 this Court, pursuant to the provisions of ARCP Rule 12(f), strike from the record the entirety
28 of Plaintiff's above-referenced filings. This Response is supported by the attached
Memorandum of Points and Authorities.

RESPECTFULLY SUBMITTED this 30 day of November, 2023.

LAW OFFICES OF DANIEL J. OEHLER


Daniel J. Oehler,
Attorney for Defendants

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 Plaintiff has filed herein an Application for an award of attorney fees and costs from
3 the Defendants and what Plaintiff alleges is as a penalty against Defendants' counsel.
4 Plaintiff simultaneously caused to be filed a document captioned "Notice of Lodging
5 Proposed Double Damages from Attorney Oehler and Attorney Fees from Defendants
6 Pursuant to Claims Filed on May 17, 2023, and the Court's October 17, 2023 Order Seeking
7 Plaintiff's Affidavit," and finally, an "Affidavit of Damages and Attorney Fees Pursuant to
8 Plaintiff's May 17, 2023 Memorandum of Points and Authorities, Rule 11 and Statute
9 §12-349."

10 The record is void of any decision, directive, minute entry or order of this Court
11 authorizing anyone of the subject pleadings. It appears that Plaintiff simply decided
12 Plaintiff's entitlement to seek an award from the Court not resultant from affirmative action
13 authorized by the Court but simply because Plaintiff desired to do so.

14 Each of the above-referenced filings should be stricken by the Court in accordance
15 with ARCP Rule 12(f), which reads as follows:

16 "(f) Motion to Strike. The court may strike from a pleading an
17 insufficient defense or any redundant, immaterial, impertinent, or
scandalous matter. The court may act:

18 (1) on its own; or

19 (2) on motion made by a party either before responding to the
20 pleading or, if a response is not allowed, within 20 days after the
pleading is served."

21 While the Court may, under Rule 12(f)(1), strike the pleading documents on its own
22 accord, so also in this instance the Defendants and undersigned by Motion request that the
23 documents be stricken. The subject documentation and filings are redundant, immaterial and
24 impertinent. There exists no decision from this Court that under any circumstances allows
25 for such a filing under the provisions of ARCP Rule 54(a). Plaintiff seeks a judgment
26 without question. The flaw in the request is that there has been not a single decision by this
27 Court in favor of the Plaintiff which purport to form the underlying basis for the filing of a
28 proposed form of judgment, all in violation of Rule 54(a). Prior to a judgment or a proposed

1 form of judgment, there necessarily must be a decision as a condition precedent to filing or
2 requesting that a formal judgment be applied for or lodged. As stated in Rule 54(a):

3 “For purposes of this rule, a ‘decision’ is a written order, ruling,
4 or minute entry that adjudicates at least one claim or defense.”

5 No such decision is within any of the orders previously entered by this Court.

6 Let us examine briefly the underlying bases that have been provided by the Plaintiff
7 to substantiate the three pleadings that she has filed and that are the combined simple
8 response to all three documents. First of all, Plaintiff in Plaintiff’s Affidavit sets forth as
9 authority for her unjustified request damages under and pursuant to A.R.S. §12-349(A)
10 quoting the authority for a court in a civil action to assess reasonable attorney fees and
11 expenses and at the court’s discretion double damages of not to exceed \$5,000 against an
12 attorney or a party if the attorney or party does any of the following:

- 13 “1. Brings or defends a claim without substantial
14 justification.
- 15 2. Brings or defends a claim solely or primarily for
16 delay or harassment.
- 17 3. Unreasonably expands or delays the proceeding.
- 18 4. Engages in abuse of discovery.”

19 It is without question that the Plaintiff alleges that the defense of the Defendants
20 herein is unjustified. The problem is that there has been no such finding or decision by the
21 Court that in any manner upholds Plaintiff’s position, let alone there being an existing
22 underlying Court decision to that effect. The material issue before the Court is whether or
23 not a set of Codes, Covenants and Restrictions that have been held by this Court to apply to
24 three separate and distinct subdivisions are enforceable. (Plaintiff’s position.) Or, as a result
25 of 30-plus years of continuing massive violations, are the covenants unenforceable?
26 (Defendants’ position.) No ruling has been provided by this Court that the Covenants are
27 enforceable. This is the fact issue that will ultimately be the potential trial issue before the
28 Court. Indeed, although there have been filed herein principally by the Plaintiff motions,
responses, replies and proposed court orders that currently exceed 280. All of the issues

1 presented herein by Plaintiff have been denied after full briefing and argument where and
2 when it was allowed by the Court and as they are now at least in part set forth on pages 2, 3
3 and 4 of Plaintiff's document titled "Affidavit" (note the document titled as an affidavit does
4 not qualify as an affidavit under Arizona law and has not been sworn to by the affiant) it
5 consists of hollow unsupported self-serving allegations regarding an alleged violation of
6 A.R.S. §33-441 supported by the Plaintiff on the basis that an employee of the Arizona
7 Department of Real Estate told the Plaintiff that a developer's sign is not a for sale sign.
8 Plaintiff has previously pled that the Department's employee's statement is the law, while
9 refusing to accept the contrary opinion of the Mohave County attorney. Plaintiff, therefore,
10 is of the belief that, in accordance with the contested Covenants, a violation has occurred of
11 those Covenants that prohibits a build to suit sign and that the provisions of A.R.S. §33-441
12 do not allow such signage and further, Plaintiff argues that the decision of the jurisdiction
13 having authority over signage in Mohave County unincorporated areas, namely, Mohave
14 County, does not consider a "build to suit" sign is violative of any Mohave County ordinance.
15 Plaintiff merely refuses to accept what Plaintiff hears if it is contrary to Plaintiff's position.
16 The alternate authority is whether the contested CC&Rs' prohibition of such a sign is
17 enforceable, i.e., the overall underlying issue in this case.

18 Plaintiff also has incurred attorney fees for her now discharged attorney who has not
19 represented the Plaintiff since approximately October of 2022 yet, not a single court authored
20 document entered by any Court has been issued authorizing Plaintiff's filing of the
21 documents which are the subject matter of this Motion to Strike.

22 At page 3, Plaintiff attempts to support her position on the basis of what Plaintiff calls
23 "affidavit fraud." This issue has been fully previously briefed (Motion filed September 29,
24 2022, Response filed November 23, 2022 and Reply filed November 25, 2022) and
25 Plaintiff's position has been fully denied to the extent Plaintiff has been sanctioned via a
26 decision of the Court entered February 17, 2023, and it worthy of note that Defendants' April
27 28, 2023, Application for Attorney Fees and Costs is currently pending before this Court, the
28 subject Application having been authorized in the decision of the Court dated February 17,

1 2023, authorizing the subject filing.

2 Plaintiff next alleges an entitlement flowing out of "... the former biased and now
3 recused Court..." This is categorically misleading, untrue and itself represents a violation of
4 ARCP Rule 11 requiring representations to the Court as being truthful and accurate. Plaintiff
5 knows full well that an Order has been entered by the Honorable Rick Lambert on or about
6 March 22, 2023, denying the existence of bias asserted by Plaintiff against Judge Jantzen.
7 Nonetheless, Plaintiff repeatedly alleges and continues to allege in virtually all pleadings
8 Plaintiff has filed with this Court false allegations of bias on the part of the former Judge
9 handling this file knowing that there is a formal Court determination contrary to Plaintiff's
10 allegations.

11 Plaintiff next discusses Plaintiff's dislike for what Plaintiff has dubbed a "gag order"
12 that was issued restricting Plaintiff's communications with the unserved Rule 19 necessary
13 and indispensable parties that Plaintiff has been ordered to bring before this Court. This is
14 despite the fact that two judges have now upheld the original Order restricting the Plaintiff
15 in her communications to these future parties concerning this litigation for a brief period of
16 time. The First Amended Order to Plaintiff for Service entered by the Court on September
17 13, 2023, states:

18 **"IT IS ORDERED** Plaintiff shall have no direct nor indirect
19 personal or written contact with the to-be-joined indispensable or
20 necessary parties during the service periods beyond transmittal of the
service packets and collecting copies of the waivers and/or acceptances,
until further order of this Court."

21 Finally, Plaintiff alleges the application of an alleged violation of ARCP Rule 11.
22 Indeed, ARCP Rule 11(b) may be applicable in this matter, not as a result of any Defendant
23 violation, but rather the conduct of the Plaintiff by Plaintiff's filing of the documents that are
24 the subject matter of this Response which specifically and directly violate Rule 11 knowing
25 that there has been a finding of no bias by the prior Court and there has been briefed, argued
26 and ruled upon that Plaintiff's claim of "affidavit fraud" was not warranted. Plaintiff has
27 also argued fraud but fully failed to substantiate this self-serving allegation to the extent that
28 Plaintiff has been sanctioned for filing Plaintiff's claims of "affidavit fraud" (see, Jantzen

1 decision dated February 17, 2017).

2 In summation, each of the above-referenced documents should be stricken. There is
3 no legitimate basis for their having been filed with the Court, there has been no Court
4 decision of any type that would support or allow such a filing. Indeed, Plaintiff, as a result
5 of multiple prior filings as well as those which are the subject matter of this Response,
6 violate the provisions of A.R.S. §12-349 and Plaintiff should be ordered pursuant to A.R.S.
7 §12-349 to pay a reasonable penalty over and above the attorney fees and costs incurred
8 herein in responding to the three separate documents hereinabove discussed.


9 RESPECTFULLY SUBMITTED this 3rd day of November, 2023.

10 LAW OFFICES OF DANIEL J. OEHLER

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Daniel J. Oehler,
Attorney for Defendants

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COPY of the foregoing emailed
this 3rd day of November, 2023, to:

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Honorable Dale P. Nielson
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Katelin Lerma, Judicial Assistant
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Plaintiff

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By: 
Patricia L. Emond, Legal Assistant