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8 Daniel J. Oehler, Arizona State Bar No.: 002739
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

**DEFENDANTS' RESPONSE
TO PLAINTIFF'S MOTION
FOR DECLARATORY
JUDGMENT ON
GROUNDS FOR PLAINTIFF
SUING INDISPENSABLE
PARTIES**

23 Come now, the Defendants, GLEN LUDWIG and PEARL LUDWIG, Trustees of
24 THE LUDWIG FAMILY TRUST; FAIRWAY CONSTRUCTORS, INC.; and MEHDI
25 AZARMI (hereinafter referred to collectively as the "Defendants"), by and through their
26 attorney, the undersigned, and respectfully move this Court to deny Plaintiff's November 21,
27 2023, Motion for Declaratory Judgment on Grounds for Plaintiff Suing Indispensable Parties.

28 Plaintiff's request for declaratory judgment is simply relitigating/arguing Plaintiff's
failed Motion for Correction filed October 5, 2023, and thereafter responded to and ruled on
by this Court denying Plaintiff's Motion on this same issue on November 11, 2023.

The adoption of the Uniform Declaratory Judgments Act (A.R.S. §§12-1831 to 12-
1846) is not intended to be used within litigation already before the Court. This specific
point is clearly and succinctly stated in Merritt-Chapman & Scott Corp. v. Frazier, 375 P.2d

1 18, 92 Ariz. 136 (Ariz. 1962), wherein the Arizona Supreme Court provided the following:

2 “Plaintiff contends that a cause of action for declaratory relief under the
3 Uniform Declaratory Judgments Act (A.R.S. §§ 12-1831 to 12-1846)
was stated in the complaint and amended complaint.

4 It was never intended that the relief to be obtained under the
5 Declaratory Judgment Act should be exercised for the purpose of trying
6 issues involved in cases already pending. *Staley Elevator Co., Inc. v.*
7 *Otis Elevator Co.*, 35 F.Supp. 778 (D.C.N.J.1940). See also Borchard,
8 *Declaratory Judgments*, 2d Ed., pp. 302, 350, 351. Generally,
declaratory relief will be denied when the issue presented by the action
is already pending in another forum. *Burton v. Lester*, 227 La. 347, 79
So.2d 333 (1955).

9 The complaint was properly dismissed as to the defendants
10 Bernice M. Frazier, Robert C. Frazier, Jr., Linda Joy Frazier, Kent M.
11 Frazier, and Cleveland J. Frazier inasmuch as the complaint itself
12 disclosed that a case was then pending between these defendants and
the plaintiff which involved the same issues as those raised in this
action. The Declaratory Judgment Act could not be invoked under such
circumstances and the court properly declined to declare the rights of
the parties.” *Id.* at pp. 19-20.


13 See also:

14 “‘The Act’ was not intended to constitute a fountain of legal advice for
15 the court.” *Ariz. Biltmore Hotel Villas Condos. Ass’n, Inc. v. Ariz.*
16 *Biltmore Hotel Master Ass’n, Corp.*, No. 1 CA-CV 13-0703 (Ariz.
App. Jul 30, 2015), p. 6.

17 Plaintiff’s Motion should be denied and attorney fees and costs awarded to
18 Defendants.

19 RESPECTFULLY SUBMITTED this 8 day of December, 2023.

20 LAW OFFICES OF DANIEL J. OEHLER

21 
22 Daniel J. Oehler,
23 Attorney for Defendants

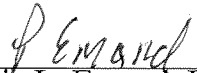
1 **COPY** of the foregoing emailed
2 this 8th day of December, 2023, to:

3 Honorable Dale P. Nielson
4 Navajo County Superior Court
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6 Holbrook, Arizona 86025
7 (928) 524-4220
8 Katelin Lerma, Judicial Assistant
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10 Plaintiff

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16 By:



17 _____
18 Patricia L. Emond, Legal Assistant
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