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5 *Attorney for Plaintiff*

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

8 Case No: CV2021-052893

9 [REDACTED],
10 Plaintiff,
11 vs.
12 Gregory Gillespie,
13 Defendant.
14

**RESPONSE TO DEFENDANT'S
MOTION FOR LEAVE TO
SUPPLEMENT APPLICATION FOR
COSTS**

15 Plaintiff, through undersigned counsel, hereby files this Response to Defendant's
16 Motion for Leave to Supplement Application for Costs ("Motion"). The Court should
17 deny the Motion because it does not indicate under which Court Rule/Law it is filed and
18 cannot meet the more exacting standard of showing excusable neglect required under a
19 Rule 6 request for extension after the deadline has passed, which is in effect what is being
20 requested.

21 **I. ARGUMENT**

22 Arizona Rules of Civil Procedure Rule 7.1(a)(2) requires that all motions filed with
23 the Court "**must** be accompanied" by a memorandum citing to "specific parts or pages of
24 authorities and evidence." (emphasis added). The Motion cites to no Court Rule, no
25 Statute, and no law as any authority on which the Motion is based. *See generally*, Motion.
26 Because it is mandatory under the Rule, the Court must deny the Motion on that basis





1 alone.

2 However, apart from the above procedural deficiency, the unsworn allegations in
3 the Motion are substantively insufficient to prove there is not only good cause for the
4 proposed untimely submission but that there was excusable neglect in failing to meet the
5 deadline. *See* Ariz. R. Civ. P. 6(b)(1)(B) (“When an act may or must be done within a
6 specified time, the court may, for good cause, extend the time... on motion made after the
7 time has expired if the party failed to act because of excusable neglect.”).

8 In this case, the initial filing deadline for the parties to file applications for
9 attorneys’ fees/costs was November 29, 2023, which the Court orally informed the parties
10 on November 9, 2023 during the hearing on the parties’ motion for summary judgment
11 that the deadline would be 20 days. The parties agreed, and the Court Ordered, the filing
12 date be extended to December 15, 2023. This gave the parties more than a month to gather
13 documentation for their respective applications. The parties filed their respective
14 documents on December 15, 2023 and, without any request for additional extension or
15 notice from Defendant, Defendant simply indicated it would be supplementing its
16 application on an unspecified later date. Application for Costs, at 1, n.1. It is further
17 important to note that the application filed by Defendant was for \$65.33. Now Defendant
18 is trying to supplement his application by requesting an additional \$670.85 (more than ten
19 times the amount requested in the initial filing) set forth in an unsworn exhibit to the
20 Motion. And the filing only appears to indicate that there is good cause for the late
21 submission because Defendant’s prior attorney did not get the documents to Defendant’s
22 current attorney in the five weeks. This should be considered an entirely new submission.

23 Finally, the supplement sought to be made is not in accordance with the Rules.
24 Rule 54(f)(1) requires any request for costs to be verified. The proposed exhibit is not
25 verified and is only two pages of documentation of unknown origin.

26 In conclusion, the Court should deny the Motion and, as Plaintiff argued in its

1 initial filing and response to Defendant's application for costs, determine that there was
2 no successful party and the case be dismissed with no party receiving any judgment of
3 fees or costs.

4
5 RESPECTFULLY SUBMITTED this 11th day of January, 2024.

6 **FORTIFY LEGAL SERVICES**

7 */s/ Kyle O'Dwyer*
8 Kyle O'Dwyer
9 3707 E Southern Avenue
10 Mesa, AZ 85206
11 [REDACTED]
12 *Attorney for Plaintiff*



12 Filed this 11th day of January 2024 with
13 Maricopa County Clerk of Court and
14 served this 11th day of January 2024
15 by TurboCourt on the following:

16 Fabian Zazueta
17 Garret Respondek
18 Zazueta Law Firm, PLLC
19 2633 East Indian School Road, Suite 370
20 Phoenix, Arizona 85016

21 [REDACTED]

22 *By: Kyle O'Dwyer*