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2 **THOMAS M. BAKER PLC**  
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5 Phoenix, Arizona 85021  
6 [REDACTED]

7 Attorney for Defendants

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

10 LAURA OWENS; ELIZABETH NAYLOR,

11 Plaintiffs,

12 vs.

13 SHAWN ROANHORSE; LONE CACTUS  
14 CONSTRUCTION, LLC,

15 Defendants.

Case No.: CV2021-053242

**DEFENDANTS' RESPONSE TO  
PLAINTIFFS' MOTION FOR  
SUMMARY JUDGMENT**

**TIER 2**

(Assigned to the Honorable Sara J. Agne)

17 Comes now the Defendants, by and through their attorney undersigned, and hereby  
18 respond to Plaintiffs' Motion for Summary Judgment, as more fully set forth in the  
19 accompanying Memorandum of Points and Authorities.  
20

21 **MEMORANDUM OF POINTS AND AUTHORITIES**

22 Rule 56, Ariz.Civ.P. states in relevant part:

23 **(a) Motion for Summary Judgment or Partial Summary**  
24 **Judgment.** A party may move for summary judgment, identifying each  
25 claim or defense--or the part of each claim or defense--on which summary  
26 judgment is sought. The court shall grant summary judgment if the  
27 moving party shows that there is no genuine dispute as to any material fact  
and the moving party is entitled to judgment as a matter of law. The court  
should state on the record the reasons for granting or denying the motion.

28 . . .

**(c) Procedures.**

1 (3) *Supporting and Opposing Statements of Fact.*

2 (A) Moving Party's Statement. The moving party must set forth, in a  
3 statement separate from the supporting memorandum, the specific facts  
4 relied on in support of the motion. The facts must be stated in concise,  
5 numbered paragraphs. The statement must cite the specific part of the  
6 record where support for each fact may be found.

7 Plaintiffs' Motion for Summary Judgment fails to sufficiently identify each claim or  
8 defense--or the part of each claim or defense--on which summary judgment is sought.

9 Plaintiffs' Motion fails to state the specific cause of action they seek summary judgment on;  
10 fails to set forth the specific facts relied upon in support of each specific cause of action they  
11 seek summary judgment on; and Plaintiffs' Motion fails to set for the elements of each cause of  
12 action or provide legal analysis, including case law.

13 In addition to Plaintiffs' failure to properly format a Motion for Summary Judgment,  
14 Plaintiffs' Motion should be denied for the following additional reasons:

- 15 1. Multiple triable issues of fact exist in this matter;
- 16 2. No foundation was provided for any of Plaintiffs' voluminous exhibits;
- 17 3. No Affidavit(s) were provided to lay the foundation and verify any of the 121  
18 exhibits.

19 A clear example of a triable issue of fact is demonstrated by the Plaintiffs themselves. In  
20 their most recent pleading, their Motion to Compel & For Sanction filed Friday February 4,  
21 2022. Within the Plaintiffs' pleading they argue ad nauseam that the invoice attached to  
22 Defendants' First Supplemental Disclosure Statement dated and emailed to Plaintiffs on  
23 Thursday February 3, 2022, that: "**that Defendant has altered (ARS 13-2002(A)(1)) and**  
24 **presented (ARS 13-2002(A)(2)) and plans to use as evidence**". This dispute over the invoice  
25 goes directly to the core of Plaintiffs' case and creates a triable issue of fact as to the authenticity  
26 of the invoice.  
27  
28

1 Plaintiffs attached 121 exhibits to their Motion for Summary Judgment consisting mainly  
2 of purported emails between the parties and others, as well as a number of photographs taken by  
3 an unknown person on an unknown date. Evidence submitted in support of a Motion for  
4 Summary Judgment needs to be admissible evidence and not hearsay. Without an affidavit(s)  
5 accompany the Motion for Summary Judgment, all 121 exhibits lack foundation and are hearsay.  
6

7 It is impossible to tell what counts Plaintiffs are moving for summary judgment or partial  
8 summary judgment.

9 Defendant Lone Cactus Construction, LLC is an Arizona State licensed and bonded  
10 contractor, [REDACTED]. Lone Cactus Construction, LLC is an active contractor with  
11 zero (0) open cases, discipline cases, or resolved/settled cases. Lone Cactus Construction,  
12 LLC holds a Specialty Dual CR-14 Fencing license. Lone Cactus Construction, LLC is  
13 bonded through Western Surety Company with bond number [REDACTED]  
14

15 On or about December 2020, Plaintiffs requested bids for steel fencing on their  
16 residential property located in Scottsdale, Arizona. The steel fencing was for horse corrals.  
17 Plaintiff (“Owens”) **did not** accept any bid from Lone Cactus Construction in writing on  
18 December 16, 2020. Defendant Shawn Roanhorse did not meet with the Plaintiffs until  
19 February 16, 2021, at approximately 8 a.m. The Plaintiffs did not arrive at the property until  
20 Monday February 15<sup>th</sup> as Plaintiff stated in text messages. Defendant Shawn Roanhorse  
21 walked the property with the Plaintiffs on February 16, 2021, and then sent the Plaintiffs an  
22 estimate on February 20, 2021. Work commenced on or about Tuesday March 16, 2021.  
23  
24

25 On or about March 16, 2021, a City of Scottsdale zoning inspector arrived at the property  
26 at approximately 8:30 a.m. and then left the residence. Defendant Shawn Roanhorse called the  
27 city inspector and he returned to the property stating that neighbors had concerns about a  
28

1 construction project. The Plaintiffs informed Mr. Roanhorse that they had posted project  
2 details on a social media site and figured that's how neighbors found out.

3 Defendant Shawn Roanhorse then told the inspector that they were building fencing  
4 and stalls and asked what the non-permit criteria would be so that Plaintiffs could have  
5 shading for their horses. The inspector then said 200 sq ft or less and that shade structures  
6 have to be 4ft 6" apart from each other.  
7

8 After meeting with inspector all plans had changed. At 12:24 pm on March 16, 2021,  
9 the same day Defendant Shawn Roanhorse submitted a new invoice to Plaintiffs, who agreed  
10 to changes, and at 2:39 pm Plaintiffs texted Defendant Shawn Roanhorse that the deposit  
11 check was ready.  
12

13 Total price with changes totaled [REDACTED]

14 On or about May 31, 2021, Plaintiffs texted Defendant Shawn Roanhorse saying to  
15 hold off on coming tomorrow to work as we have questions about invoices.  
16

17 On or about June 21, 2021, Defendant Shawn Roanhorse exchanged text messages  
18 with the Plaintiffs discussing settlement negotiations with the Plaintiffs as Defendant Shawn  
19 Roanhorse had been dealing with some unrelated personal issues. Plaintiffs initially agreed to  
20 a settlement; however, within a few minutes Plaintiffs changed their mind.  
21

22 On or about June 28, 2021, Plaintiffs changed the terms of their settlement offer by  
23 increasing the amount to [REDACTED] plus dollars and demanded payment or else.  
24

25 Defendant Shawn Roanhorse then contacted Wes Ellington with Arizona Registrar of  
26 Contractors and informed him Defendant Shawn Roanhorse was being extorted and needed  
27 advice.  
28

1 On June 30, 2021, Owens demanded Defendant Shawn Roanhorse "pay [REDACTED]  
2 dollars tomorrow or she will file harassment charges and two other felony crimes."

3 Defendant Shawn Roanhorse then sent an email to Wes Ellington, the Arizona  
4 Registrar of Contractors investigator asking for advice.

5  
6 Defendant Shawn Roanhorse then had communication with client on July 7, 2021, and  
7 Owens stated she wanted [REDACTED] dollars in two payments and Defendant responded in text  
8 message "we can find resolution after ROC investigation."

9  
10 On Friday August 13, 2021, the day of the Registrar of Contactor's inspection,  
11 Plaintiffs sent Defendant Shawn Roanhorse a text message stating "hello, there was an  
12 incident here in the middle of the night and we are suspicious of Lone Cactus LLC's  
13 involvement in it. We are looking into filing a police report this morning." "Again you never  
14 responded to my message from yesterday to acknowledge your receipt. which is yet another  
15 indication in your role in last night's events. But you and your crew are not welcome on or  
16 near our property at any point in time. The police will be standing by to arrest you should you  
17 choose to. Please let me know if you plan to have a courier deliver a check or do a bank  
18 transfer in the amount of [REDACTED] which must be received by the end of day on Monday. If  
19 I do not here back from you by 10 a.m. today, a lawsuit will be filed today."

20  
21 On Friday August 13, 2021, [REDACTED] an Arizona Registrar of Contractors investigator called  
22 Defendant Shawn Roanhorse and said inspection is called off and case is closed due to the  
23 Plaintiffs not allowing access.

24  
25 All of the work performed at the Plaintiffs' residence was performed in a workmanlike  
26 manner and met any existing building codes. The work was up to industry standards; yet  
27 Plaintiffs continue to harass the Defendants and their workers. Plaintiffs told Defendant Shawn  
28

1 Roanhorse not to return to the property; would not give an ROC inspector access to the property;  
2 and even tried to prevent the Defendants from removing their machinery from the property.

3 WHEREFORE, Plaintiffs' Motion for Summary Judgment should be denied.

4 Respectfully submitted this 7th of February 2022.

6 **THOMAS M. BAKER PLC**

7  
8 /s/ Thomas M. Baker

9 Thomas M. Baker

Attorney for Defendants

10 **ORIGINAL** of the foregoing e-filed via  
11 **Turbo Court** this 7th day of February 2022 with:

12 Clerk of the Superior Court

13 **COPY** of the foregoing emailed via **Turbo Court**  
14 this 7th day of February 2022 to:

15 Laura Owens and Elizabeth Naylor at:

16 

17 Plaintiffs Pro Per

18 /s/ Thomas M. Baker