State of Arizona

COMMISSION ON JUDICIAL CONDUCT

Disposition of Complaint 21-332

Judge: Erica Cornejo

Complainant: Theodore E. Meckler

ORDER

The Complainant alleged that a justice of the peace violated the law and denied him an opportunity to be heard.

The Complainant appeared before Judge Cornejo in two civil matters (CV20-022057 and CV21-003490-RC). In CV20-022057, the Complainant had requested entry of a default judgment. Judge Cornejo denied the request, and further dismissed the proceeding without giving the Complainant an opportunity to be heard as required by Rules 101(b) and 140(e), Arizona Justice Court Rules of Civil Procedure. In CV21-003490-RC, Judge Cornejo again *sua sponte* dismissed the complaint in contravention of Rule 144(d), Arizona Justice Court Rules of Civil Procedure, which states, "Except as provided in sections (b), (d), and (e), a lawsuit shall only be dismissed upon motion and by court order, and only on terms and conditions that the court determines are fair and proper."

The Commission noted the particular provisions of the Arizona Justice Court Rules of Civil Procedure at issue and requested Judge Cornejo address her conduct in light of those rules as well as Rules 1.1, 1.2, and 2.6(A) of the Code. Judge Cornejo submitted an extremely brief reply in which she stated she did not believe the Complainant had demonstrated a prima facie case entitling him to judgment. Her response failed to address her conduct as related to any of the cited Justice Court Rules or provisions of the Code. The only other substantive portion of her response related to her erroneous belief that she was required to recuse herself from the Complainant's case after he filed a motion for change of judge.

In CJC Case No. 20-248, the Commission had previously dismissed a complaint with an advisory to Judge Cornejo related to delayed rulings. Based on her lack of a thorough response in that case, the advisory comment letter stated, "The Commission also notes for future reference, the lack of a thorough response to a Commission inquiry can be perceived as insufficient candor to the Commission."

By *sua sponte* dismissing the two lawsuits in violation of the law and failing to submit a thorough response to the Commission, the Commission found that Judge Cornejo's conduct violated the following provisions of the Code:

- Rule 1.2 (Promoting Confidence in the Judiciary) which states, "A judge shall act at all times in a manner that promotes public confidence in the independence, integrity, and impartiality of the judiciary, and shall avoid impropriety and the appearance of impropriety."
- Rule 2.2 (Impartiality and Fairness) which states, "A judge shall uphold and apply the law, and shall perform all duties of judicial office fairly and impartially."
- Rule 2.5(A) (Competence, Diligence, and Cooperation) which states, "A judge shall perform judicial and administrative duties competently, diligently, and promptly."
- Rule 2.6(A) (Ensuring the Right to Be Heard) which states, "A judge shall accord to every person who has a legal interest in a proceeding, or that person's lawyer, the right to be heard according to law."
- Rule 2.16(A) (Cooperation with Disciplinary Authorities) which states, "A judge shall cooperate and be candid and honest with judicial and lawyer disciplinary agencies."

Accordingly, Justice of the Peace Erica Cornejo is hereby publicly reprimanded for the conduct described above and pursuant to Commission Rule 17(a). The record in this case, consisting of the complaint, the judicial officer's response, and this order shall be made public as required by Commission Rule 9(a).

Commission member Denise K. Aguilar did not participate in the consideration of this matter.

Dated: May 24, 2022

FOR THE COMMISSION

/s/ Louis Frank Dominguez
Hon. Louis Frank Dominguez
Commission Chair

Copies of this order were distributed to all
appropriate persons on May 24, 2022.

CONFIDENTIAL
Arizona Commission on Judicial Conduct
1501 W. Washington Street, Suite 229
Phoenix, Arizona 85007

FOR OFFICE USE ONLY

2021-332

COMPLAINT AGAINST A JUDGE

Name: Theodore E. Meckler **Judge's Name:** Justice of the Peace Erica Cornejo

Instructions: Use this form or plain paper of the same size to file a complaint. Describe in your own words what you believe the judge did that constitutes judicial misconduct. Be specific and list all of the names, dates, times, and places that will help the commission understand your concerns. Additional pages may be attached along with copies (not originals) of relevant court documents. Please complete one side of the paper only, and keep a copy of the complaint for your records.

See attached sheets.

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See attached sheets.

Attached sheets (there are nine such numbered sheets.)

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I. BACKGROUND OF THE COMPLAINT

Complainant was involved in a consumer transaction gone bad with RHaus Enterprises Corp., ("RHaus") and its President/CEO Randy Hauschild, ("Hauschild"), which dated to July 14, 2020. RHaus was supposed to fabricate and install a security door and window guard for Complainant. Hauschild verbally indicated that the installation should be completed by the end of September, 2020. Having not heard back from RHaus as of October 7, 2020 Complainant tried to determine from phone calls with RHaus when the installation would actually take place. RHaus provided incomplete and conflicting information. Complainant became convinced that RHaus was nowhere near ready to start the job and could not be trusted. Complainant then advised RHaus that he no longer wanted RHaus to do the job and demanded the refund of his $2,000.00 deposit. RHaus did absolutely no work and expended no funds on this potential job. RHaus refused to refund the deposit, claiming the deposit was non-refundable. Complainant's position from the outset has been that the deposit was refundable. The key question in this dispute was whether or not the deposit was refundable.

II. THE JP's IMPROPER CONDUCT

The reasons for imposing discipline on Judges include willful misconduct in office, conduct prejudicial to the administration of justice that brings the judicial office into disrepute, and violations of the of the Judicial Code of Conduct. Arizona Rules of the Commission on Judicial Conduct ("Commission Rules"), Rule 6. Unfortunately, all of these reasons are implicated in this case.

A. Complainant Filed a Small Claims Case Against RHaus (case no. CV20-022057-SC).

Given the conflicting positions between Complainant and RHaus, Complainant filed a Small Claims complaint in the Pima County Consolidated Justice Court against RHaus October 27, 2020. (Exhibit 1.) The small claims case was assigned case no. CV20-022057-SC. Justice of the Peace ("JP") Erica Cornejo was named the JP on the case. RHaus was served with process. (Exhibit 2.)

1. The JP Determined the Key Merits Issue in the Case Without Providing Notice to Complainant Nor Any Opportunity to Be Heard.

After RHaus failed to file a timely answer or other responsive pleading, Complainant filed a Request for Entry of Default (Rule 7 of the Rules of Small Claims Procedure and Rule 140 (e) and (g) of the Justice Court Rules of Civil Procedure) on December 28, 2020. (Exhibit 3.) This Request placed *only* four questions before the JP:

1) Whether RHaus was served with a summons and complaint. The record in the case demonstrated that RHaus was, in fact, served with the summons and complaint on November 23, 2020. (Exhibit 2.)

2) Whether Complainant file a proper Application for Entry of Default and served RHaus with a copy. (The record also demonstrated that Complainant initially sought to file such an Application by sending same to the Clerk via regular U.S. mail on November 27, 2020. (Exhibit 4.) A copy was sent to RHaus via regular U.S. mail on November 27, 2020. (Exhibit 5.) The Clerk initially rejected Complainant's Application in that Complainant did not realize that a $28.00 filing fee was necessary to file it. Complainant then successfully filed that same Application by sending it to the Clerk via regular U.S. Mail on December 3, 2020, this time accompanied by a $28.00 check. (Exhibit 6.) A copy was resent to RHaus at that time (Exhibit 7.)

3) Whether, when Complainant filed his Request for Entry of Default Judgment, more than ten days had passed since the Application for Entry of Default had been filed and served on RHaus. The record clearly demonstrated that the Application was sent to RHaus twice, once on November 27, 2020 (Exhibit 5.) and again on December 3rd (Exhibit 7), and successfully filed with the Court on December 7, 2020. (Exhibit 8.) The Request for Entry of Default Judgment was not sent to RHaus until December 22, 2020 (Exhibit 9.) and was not filed for record until December 28, 2020 (Exhibit 8, the docket in the small claims case), both dates being more than ten days after December 7th when the Application was filed.

4) Whether RHaus filed an answer or other responsive pleading. The record established that RHaus filed no answer, responsive pleading, or any other document in the small claims case. (Exhibit 8.)

Instead of limiting her ruling to the issues before the Court, the JP made a determination on the key merits issue of the case, whether the contract provided for a non-refundable deposit. Given the state of the record that issue was not before the JP. Nonetheless, the JP issued a minute entry on January 16, 2021, stating: "The Court finds that the contract provided by the Plaintiff shows that the deposit is non-refundable. They (sic) are therefore not entitled to recover the deposit. Therefore the request for default judgment is denied, (sic)" (Exhibit 10.)

As noted above, this was the key issue to be decided at trial, had Complainant ever been provided with an opportunity to have a trial before a fair and impartial fact-finder. This was a mixed question of fact and law. For some unknown reason, JP Cornejo made up her mind on this key issue, without benefit of evidence or argument or any input whatsoever from Complainant, nor even any publicly acknowledged input from RHaus. Complainant was not even sent a copy of this minute entry. He only learned of the nature of the entry by tracking the docket on line. The content of the entry cannot be ascertained from the digital docket. So Complainant called the clerk and had one of the deputy clerks read it to him. The minute entry was not sent to Complainant

as a matter of course. He only received a copy of it by making a formal Public Records Request. (Exhibit 11.)

2. The JP *Sua Sponte* Dismissed the Case for the First Time Without Providing Any Notice to Complainant, Nor Any Opportunity to Be Heard.

On January 26, 2021 the Court *sua sponte* dismissed the small claims case and according to the docket issued an Order of Dismissal for an alleged and demonstrably incorrect "Lack of Prosecution." (Exhibit 8.) Once again, the Order was not served on Complainant. The JP's determination was also completely contradicted by the record, since Complainant jumped through every procedural hoop set forth in the applicable rules in order to obtain a default judgment and fully prosecuted his case. (See above referenced exhibits.) On the other hand, RHaus ignored the case entirely, not even bothering to make an appearance in the case. (Exhibit 8.) Yet, somehow the JP found that Complainant dropped the ball on the case.

The record clearly entitled Complainant to a default judgment, or at least prior notice and opportunity to be heard on the issue. Instead, it earned him a *sua sponte* dismissal. Unfortunately, the JP took such action without the benefit of any input from Complainant (or even RHaus). All of the JP's orders in the small claims case were issued without providing Complainant with any prior notice or any opportunity to be heard, and without even serving Complainant with the Court's orders when issued. In so doing, the JP clearly acted improperly, without legitimate legal authority, and in direct contravention of due process of law. In fact, had she been RHaus' defense attorney she could not have done more for RHaus.

B. Complainant Filed a Justice Court Case Against RHaus (case no. CV21-002490-RC).

The small claims case was not dismissed with prejudice. So, on February 4, 2021 Complainant filed a second complaint addressing the same dispute. (Exhibit 12.) This time Complainant filed the complaint in the regular Justice Court, rather than the Small Claims Court. This case was assigned case no. CV21-002490-RC. JP Cornejo was again assigned to this new case. This time, on March 2, 2021, RHaus filed an answer. (Exhibit 18.)

On March 15th Complainant sent Requests for Admissions and Requests for Production of Documents to RHaus, via certified mail. (Exhibit 13.) RHaus failed to pick up these materials from the post office. So, on March 29, 2021 Complainant resent them to RHaus via regular mail. (Exhibit 15.) On April 13, 2021, Complainant filed a Notice of Service of Disclosure Statement in compliance with the Justice Court Rules. (Exhibit 14.) On May 5, 2021 Complainant sent a second notice re: the Requests for Admission to RHaus. (Exhibit 16.) On May 5, 2021 Plaintiff also wrote to RHaus asking it to comply with its obligation to provide the required disclosures and produce the documents sought in the Requests for Production of Documents. Plaintiff also encouraged Defendant to begin a good faith attempt to personally consult with Plaintiff to resolve all of these disclosure and discovery matters expeditiously. (Exhibit 17.) Plaintiff also asked Defendant to contact him and/or provide the required disclosure and discovery by May 13, 2021. (Exhibit 17.) RHaus provided never provided any disclosures or discovery responses. Nor did RHaus take

Complainant up on his offer to discuss these matters. The only activity RHaus engaged in this case was filing its answer. On May 18, 2021 Complainant filed a Motion to Compel Discovery. (Exhibit 18, the docket in the regular Justice Court case.) The JP never ruled on that motion. (Exhibit 18.)

1. Complainant Sought To Have the JP Replaced as a Matter of Right.

Since it was obvious to Complainant that the JP had already pre-judged the key issue in the case, he filed a Notice of Change of Judge as a Matter of Right on March 21, 2021, pursuant to Justice Court Rule 133(d). (Exhibit 19.) The Notice was forwarded to Presiding Superior Court Judge Bryson, who designated Judge *Pro Tempore* Charles V. Harrington to rule on the Notice. On April 20, 2021 the *Pro Temp* Judge issued a ruling, denying the Notice because the Arizona Supreme Court, unbeknownst to Complainant, had suspended the rules relating to a change of judge as a matter of right, due to the Covid pandemic. (Supreme Court Administrative Orders no. 2020-197 and 2021-52.) (Exhibit 20.)

2. Complainant Sought to Have the JP replaced for Cause and/or to Have Her Disqualify Herself.

On May 5, 2021 Complainant filed an Affidavit of Bias and Prejudice and a Brief in Support, seeking to have JP Cornejo removed for cause. (Exhibit 21.) *Pro Temp* Judge Harrington was again designated by Presiding Superior Court Judge Bryson to rule on the Affidavit. On May 11, 2021 the *Pro Temp* Judge denied the Affidavit of Prejudice without a hearing. (Exhibit 22.) On May 12, 2024 Complainant filed a Motion to Transfer the case pursuant to A.R.S. § 12-409. (Exhibit 23.) On May 24, 2021 Complainant filed a Motion to Reconsider (the denial of the affidavit of bias and prejudice) and/or for the Justice of the Peace to Disqualify Herself in Compliance with the Code of Judicial Conduct. (Exhibit 24.)

3. The JP *Sua Sponte* Dismissed the Case for the Second Time Without Providing Any Notice to Complainant, Nor Any Opportunity to Be Heard.

On June 15, 2021 JP Cornejo signed a minute entry denying the Motion to Transfer. (Exhibit 25.) On June 21, 2021 JP Cornejo signed a minute entry denying the Motion to Reconsider. (Exhibit 26.) In the same minute entry, the JP *sua sponte* dismissed the case, stating "Court dismisses the action as there is no basis on which the court could rule in Plaintiff's favor. Plaintiff may appeal within timelines provided." The issue of dismissal was not pending before the JP at the time. While the JP did not use those exact words, she dismissed the case for an alleged failure to state a claim, albeit erroneously.

C. The JP Violated the Law and the Code of Judicial Conduct in Multiple Ways.

1. The JP Violated the Clear Commands of Justice Court Rule 144d.

Justice Court Rule 144d. provides in pertinent part that "a lawsuit or a claim *shall be dismissed only upon motion and by court order, and only upon terms that the court determines are fair and proper*. (emphasis added.) Obviously, as a judicial officer presiding over cases pending in the Pima County Justice Court, the JP was or certainly should have been well aware of the clear

commands of this rule. Under this rule for the court to issue a dismissal there must be both a motion (to dismiss) and a court order. Nonetheless, the JP dismissed complainant's complaint without any motion addressing a dismissal or, in fact, any motion at all filed by the Defendant in the pending case. Further, the court may only issue a dismissal upon terms that the court determines are fair and proper. The dismissal in this case, as is clear from this brief was anything but fair and proper. More importantly, the JP made absolutely no determination as to the fairness or propriety of dismissing the case as she did. Thus, the JP clearly violated the governing law.

2. The JP Violated the *Acker* Rule, as well as the Due Process Protections Afforded Litigants Under the Arizona and U.S. Constitutions.

Acker v. CSO Cheveira, 188 Ariz 252, 934 P.2d 816 (App 1997) is the principal case on *sua sponte* dismissals for failure to state a claim. The *Acker* Court noted that no Arizona statute authorizes the issuance of a *sua sponte* dismissal for failure to state a claim. *Acker*, at 253. The Court also pointed out that Arizona law clearly discourages *sua sponte* dismissals. *Id.*, at *255.* While *Acker* does not prohibit *sua sponte* dismissals altogether, it mandates that before taking such drastic action the court must first provide the Plaintiff with all the proper procedural protections. *Acker,* at 256, citing *Franklin v. Oregon State Welfare Division,* 662 F.2d 1337, 1340–41 (9th Cir.1981), *Wong v. Bell,* 642 F.2d 359, 361–62 (9th Cir.1981), and *Jackson v. Arizona,* 885 F.2d 639, 640 (9th Cir.1989). These procedural protections include: 1) notifying Complainant of the proposed action; 2) affording Complainant an opportunity to submit written argument in opposition to such action; 3) providing a statement of the reasons for the dismissal; and 4) offering Complainant the opportunity to amend the complaint, unless the complaint is clearly deficient, which is not the case herein. *Acker,* at 256. Complainant did not receive the benefit of any of these procedural protections before the JP issued this, her second *sua sponte* dismissal.

3. The JP Violated the Arizona Code of Judicial Conduct By Repeatedly and Completely Failing to Afford Complainant Many Key Protections Mandated by Law.

The Arizona Code of Judicial Conduct requires a judge to comply with the law, including the Code of Judicial Conduct. (See Rule 1.1Ariz. Co. Jud. Cond., hereinafter "the Code".) In her conduct with respect to both the Small Claims case and the Justice Court case, JP Cornejo failed to comply with the law in many different respects, all of which amount to a violation of this provision of the Code.

The "right to a fair trial is the 'foundation stone upon which our present judicial system rests,'" and "there is an indispensable right to trial presided over by a judge who is 'impartial and free of bias or prejudice.'" *Brown v. State*, 124 Ariz. 97, 99 (Ariz. 1979) 602 P.2d 478, 480, citing *State v. Neil,* 102 Ariz. 110, 112, 425 P.2d 842, 844 (1967), see also *State v. Emanuel,* 159 Ariz. 464, 467 (Ariz. App. Div. 1 1989) 768 P.2d 196, 199. It is the intent of Arizona's "rules and statutes in the administration of justice that cases be tried by judges who are not biased or prejudiced." *Brown, supra* at 99, citing *State v. Puckett,* 92 Ariz. 407, 377 P.2d 779 (1963).

While the cited cases are criminal cases, the same rule applies to civil cases. *State v. Emanuel, supra,* 159 Ariz. at 468, 768 P.2d at 200. The right to a trial before an unbiased and

unprincipled court is a substantive right, which was codified by the Arizona Legislature when it enacted A.R.S. § 12-409. *Hordyk v. Farley*, 94 Ariz. 189, fn 2 (Sup Ct 1963) 382 P.2d 668; citing *Marsin v. Udall*, 78 Arizona 309, (Sup Ct 1955) 279 P.2d 721. These principles apply to civil cases as well as criminal cases. *State v. Emanuel, supra,* 159 Ariz. at 200, 768 P.2d at 468. All of JP Cornejo's violations of law and the Code are of an extremely serious nature, interfering with fundamental rights that are supposed to be protected, rather than abused, by the judiciary.

1. JP Cornejo violated the law and the Code when she denied Complainant's request for a default judgment in the small claims case, although Complainant had fully established each and every element necessary for a default judgment to be granted under the applicable rules.

2. JP Cornejo further violated the law and the Code by prejudging the key issue in the case, i.e. whether Complainant's $2,000.00 deposit was refundable or not, without any evidence having been presented, any argument allowed, or even any notice to Complainant that she was considering the issue, JP Cornejo. The JP's conduct violated the due process protections afforded to Complainant by the U.S. and Arizona Constitutions, as well as Arizona statutes and case law. Her conduct went to the very heart of the "indispensable right to trial presided over by a judge who is 'impartial and free of bias or prejudice." *Brown v. State, supra.*

3. The JP further violated the law and the Code when she *sua sponte* dismissed the small claims complaint for an alleged lack of prosecution, although the record before her clearly showed that Complainant prosecuted the small claims case to the fullest extent possible and the Defendant in that case did nothing. There was no basis whatsoever to find a lack of prosecution by Complainant. In so doing she also violated the due process protections mandated by the Arizona and U.S. Constitutions.

4. The JP further violated the law and the Code when she pre-judged the key issue in the case for a second time and *sua sponte* dismissed Complainant's complaint for a second time, this time for an alleged failure to state a claim, without affording Complainant any of the procedural protections mandated by *Acker, supra,* or the due process protections mandated by the U.S. and Arizona Constitutions, as well as Arizona statutes and case law. These are the most basic of protections that are to be afforded litigants by the judicial system. Yet the JP totally ignored them.

5. The JP further violated the law and the Code when she failed to disqualify herself, though that disqualification was warranted by the Code and even though Complainant placed the issue squarely before her in his Motion to Reconsider and/or for the Justice of the Peace to Disqualify Herself in Compliance with the Judicial Code of Conduct.

4. The JP violated the Judicial Code By Failing to Accord Complainant the Right to be Heard According to Law.

Under the Judicial Code a judge is obligated to accord every person who has a legal interest in a proceeding the right to be heard according to law. (Ariz. Co. Jud. Cond. Rule 2.6) The right

to be heard is an essential component of a fair and impartial system of justice. Substantive rights of litigants can be protected only if procedures protecting the right to be heard are observed. (Ariz. Co. Jud. Cond. Rule 2.6, comment 1) Obviously, notice and an opportunity to be heard are the also the essence of due process, guaranteed by both the U.S. and Arizona Constitutions. In her repeated conduct with respect to both the Small Claims case and the Justice Court case, JP Cornejo failed to comply with these requirements, amounting to yet another violation of the Code. Actual improprieties include violations of law, court rules, and/or the provisions of the Code. (Ariz. Co. Jud. Cond. Rule 1.2, comment 5.) JP Cornejo violated all three of these mandates.

5. The JP's Repeated Wrongful Conduct Also Constituted the Appearance of Impropriety.

Not only are actual improprieties forbidden, but even the appearance of impropriety is prohibited. "A judge should avoid even the appearance of partiality." *State v. Brown*, 124 Ariz. 97,100, 602 P.2d 478,481(Sup Ct 1979); citing *Taylor v. Hayes,* 418 U.S. 488, 94 S.Ct. 2697. 41 L.Ed.2d 897 (1974). "[J]ustice must not only be done fairly but must be perceived as having been fairly done.... Anything else tends to undermine public confidence in the judicial system...." *State v. Emanuel, supra* at 468, citing *McElhanon v. Hing,* 151 Ariz. 403, 412 728 P.2d 273, 282 (1986).

"Even where there is no actual bias, justice must appear fair." *State v. Salazar,* 182 Ariz. 604, 608 (App Div 1, 1995) 898 P.2d 982, 986; citing *McElhanon v. Hing,* 151 Ariz. 403, 411, 728 P.2d 273, 281 (1986), *cert. denied* 481 U.S. 1030, 107 S.Ct. 1956, 95 L.Ed.2d 529 (1987). In *Salazar*, two provisions of the Code of Judicial Conduct, in effect at the time of Salazar's trial, cast light on the issue: former Canon 3(C), which addressed a judge's disqualification from a proceeding in which his impartiality might reasonably be questioned, and former Canon 2, which obligated a judge to avoid the appearance of impropriety and conduct him/herself in a manner that promotes public confidence in the integrity and impartiality of the judiciary.

The *Salazar* Court went on to favorably quote from an informal American Bar Association ethics opinion addressing an analogous issue under parallel provisions of the Model Code of Judicial Conduct:

> *Any circumstances that objectively lead to the conclusion that the judge's impartiality might reasonably be questioned calls for disqualification.* This objective standard extends beyond the judge's personal belief that his impartiality is not impaired.... *Salazar, supra*, 182 Ariz. at 608; 898 P.2d at 986; citing ABA Committee on Ethics and Professional Responsibility, Informal Op. 1477 (1981) (emphasis added).

Likewise, in *State ex. rel Corbin v. Superior Court*, 155 Ariz. 560, 562 (Sup Ct 1987) 748 P.2d 1184, 1186, the Court was not faced with "actual impropriety", but with whether the judge's "impartiality might reasonably be questioned...." The Court decided that the proper interpretation of the rules required disqualification despite the lack of actual impropriety. This was because "[o]ur system of justice depends for its survival on the support and confidence of the public. It is important, therefore, that justice not only be impartially dispensed but also that any question of

unfairness or partiality be avoided." *Id.*, 155 Ariz. at 562; 748 P.2d at 1186. The JP in this matter engaged in conduct which was actually improper. In addition, her conduct clearly met the appearance of impropriety standard.

The test for an appearance of impropriety is whether the conduct would create a perception in reasonable minds that the judge violated the code or engaged in other conduct that reflects adversely on the judge's honesty, impartiality, temperament, or fitness to serve as a judge. (Ariz. Co. Jud. Cond. Rule 1.2, comment 5.) Stated another way, given JP Cornejo's previous showings of favoritism, her pre-judgment of the key issue in the case, her ignoring the record to dismiss the case, and her clear failure to afford Complainant any prior notice or any opportunity to be heard on these matters, would a reasonable person think it likely that Complainant would obtain a fair trial from JP Cornejo?

In this context, whether Complainant could actually get a fair trial is not the question. Instead, the question is, would a reasonable person think it likely that Complainant would obtain a fair trial from J.P. Cornejo. Perhaps an even better way of thinking about this issue is this. The commission members should imagine that each is simply a practicing lawyer a representing client. Imagine further that Complainant is that member's client, with all the same circumstances outlined above. Imagine further that the commission members know nothing about JP Cornejo's reputation for honesty, integrity and/or judicial temperament, whatever that may be. Given the conduct outlined above could the commission members, in good conscience advise their client that he was likely to receive a fair trial from JP Cornejo? Complainant believes the only reasonable answer to that question is no. Thus, disqualification was mandated by the Judicial Code. Therefore, JP Cornejo was obligated to disqualify herself as the Code mandates. (Ariz. Co. Jud. Cond. Rule 2.11.) She was even offered multiple opportunities to do so yet chose not to accept any such offer. Her failure to withdraw constituted yet another violation of the Judicial Code.

III. THE APPRORIATE DISCIPLINE TO BE IMPOSED

As the Commission members are well aware, the judicial disciplinary system is meant to "protect the public and to maintain high standards for the judiciary and the administration of justice." Further, "[a]ny disciplinary remedy or sanction imposed shall be sufficient to restore and maintain the dignity and honor of the position and to protect the public by assuring that the judge will refrain from similar acts of misconduct in the future." Arizona Rules of the Commission on Judicial Conduct ("Commission Rules"), Rule 5.

Several aggravating factors are present in this matter, including the fact that the JP's conduct occurred while she was acting in her official capacity, the fact that her conduct seriously injured Complainant in his attempt to obtain a measure of justice, and the fact that her conduct tarnished the reputation of what is supposed to be an impartial judiciary and generally is. In addition, the JP exploited her official position for improper purposes. Commission Rules, Rule 19.

Another aggravating factor that is not specifically mentioned in the Commission Rules is also pertinent, i.e. the repetitive nature of the JP's misconduct. She did not only pre-judge the key issue in this dispute without evidence and without allowing Complainant an opportunity to be heard, on one occasion. She acted did so at least twice. Moreover, when given the honorable option

on more than one occasion of recognizing the error of her ways and disqualifying herself from further involvement in the case, she chose to reject that option. This sort of repetitive misconduct without any apparent recognition of her errors is cause for sanctions. It goes directly to one of the key purposes of this Commission's role, i.e. protecting the public by assuring that the judge will refrain from similar acts of misconduct in the future. Commission Rules, Rule 5.

Complainant recognizes that it is up to the Commission to decide whether to impose discipline and the form that discipline should take. From Complainant's perspective appropriate informal discipline to be meted out includes reprimanding the JP for conduct that is unacceptable, as well as some much needed judicial education. Commission Rules, Rule 17. In addition, the formal sanction of recommending censure to the Supreme Court is also warranted by virtue of the JP's conduct. Commission Rules, Rule 18. Whatever discipline the Commission imposes "shall be sufficient to restore and maintain the dignity and honor of the position and to protect the public by assuring that the judge will refrain from similar acts of misconduct in the future." Additional members of the public should not have to be treated by this JP in the same way that Complainant has been treated.

IV. CONCLUSION

For the foregoing reasons this Commission should take significant disciplinary action against JP Cornejo as authorized by the Commission Rules, particularly so as to protect the rights of future litigants who may come before this JP. The JP's obvious misconduct should not go unchecked and should not be allowed to be repeated with future litigants.

Theodore E. Meckler
Complainant

TABLE OF CONTENTS TO EXHIBITS IN SUPPORT OF JUDICIAL COMPLAINT

Pima County Justice Courts, Arizona

Pima County Consolidated Justice Court
240 N. Stone Ave., Tucson, AZ 85701 (520) 724-3171

CASE NUMBER: CV20022057

THEODORE E. MECKLER

Plaintiff(s) Name / Address / Email / Phone

RHaus Enterprise Corp.
Defendant Name

Defendant Name

Defendant Name

Defendant Name

SMALL CLAIMS COMPLAINT

THERE ARE NO APPEALS IN SMALL CLAIMS CASES.

WARNING: You do not have the right to appeal the decision of the hearing officer or the justice of the peace in a small claims court. If you wish to preserve your right to appeal, you may have your case transferred to the justice court pursuant to § 22-504, subsection A, Arizona Revised Statutes, if you request such transfer at least ten (10) days prior to the day of the scheduled hearing.

PLAINTIFF'S CLAIM

$2,000.00 is the total amount owed me by defendant because:

I. The Parties

1. Plaintiff, Theodore E. Meckler, ("Plaintiff") is a natural person who resides in the State of Arizona, City of Tucson, County of Pima. At all relevant times, Plaintiff was a consumer and person within the meaning of A.R.S. §44-1521 et seq.

2. Defendant, RHaus Enterprise Corp., ("Defendant") is an Arizona for profit corporation which does business as and/or uses the trade name of Appleby's Ornamental Iron.

3. Defendant conducts its business, operates, and is located in the State of Arizona, City of Tucson, and the County of Pima.

4. Defendant's business is the fabrication and installation of security doors, window guards, and the like, which it sells to and installs for consumers, like Plaintiff.

II. Statement of Facts

5. Defendant operates a website (www.applebysornamentaliron.com) on which it advertises its products

(For the remainder of this complaint see attached sheets.)

Date: 10/22/2020 THEODORE E. MECKLER
Plaintiff (Print name) Plaintiff (Signature)

NOTICE: If you are representing a corporation, partnership, association, or other organization, you must attach a notice of authorization.

Interpreter: ☐ Yes, I need interpreter services. Language: _____

CVSC2 Rev. 1/1/2020

EXHIBIT 1

Attached sheets for complaint:

Additional information regarding Plaintiff:
Phone:

Service Address for Defendant:
RHaus Enterprise Corp.
DBA Appleby's Ornamental Iron

Additional paragraphs of the complaint:
5. (continued) and services to the general public. A printed copy of the website pages are attached hereto and marked as Exhibit 1.)

6. On July 14, 2020, Randy Hauschild, Defendant's President/CEO, ("Hauschild") came to Plaintiff's residence to provide Plaintiff and his wife with what was supposed to be a free estimate for the fabrication and installation of a security door and window guard.

7. Hauschild prepared a detailed written estimate on Defendant's pre-printed form, specifying in detail the materials needed for the job in hand written notations on the pre-printed form and calling for a total payment of $4,250.00 for materials and labor. (A copy of the written estimate is attached hereto and marked as Exhibit 2.)

8. Hauschild also indicated that before beginning the fabrication and installation of the security door and window guard, Defendant would send one or more of its employees to Plaintiff's residence to re-measure everything, just to be sure.

9. Exhibit 2 indicates that the security door and window guard would be installed within twelve weeks of July 14, 2020, or by October 5, 2020.

10. Notwithstanding that October 5th date, Hauschild verbally indicated that the security door and window guard would be installed by the end of September, 2020.

11. Plaintiff then agreed to hire Defendant to do the work indicated in the time frame indicated. Toward that end, Plaintiff provided check no. 1002 from Plaintiff's (and

his wife's) checking account in the amount of $2,000 as a deposit. Plaintiff and Hauschild signed Exhibit 2 which became the written contract between the parties.

12. Exhibit 2 calls for a deposit of $2,000.00 which is the amount that Plaintiff paid as a deposit.

13. Hauschild mentioned nothing about the deposit allegedly being nonrefundable.

14. Plaintiff had no part in drafting the language contained on the pre-printed part of Exhibit 2.

15. Other than affixing his signature to the document, Plaintiff had no part in placing any of the information on the hand written portion of Exhibit 2. It was all added by Hauschild.

16. The pre-printed form, in smaller, lighter print than most of the rest of the contract, states that "Calendar begins after receipt of a 50%, non-refundable deposit. _____...". The blank space following "non-refundable deposit" was never filled in on Exhibit 2. The deposit Hauschild requested and Plaintiff paid was not 50% of the total price. This non-refundable language was not applicable to the deposit paid by Plaintiff.

17. Later, the pre-printed part of Exhibit 2 states, "Deposit information: Check No. _____Amount $_____Date __/__/__." Haushchild filled in those blanks indicating that the check no. was 1002, the amount was $2,000.00, and the date was 7/14/20.

18. On its face, Exhibit 2 does not specify that the deposit that was paid was non-refundable.

19. Nonetheless, Defendant now contends that the deposit was non-refundable. There was never any meeting of the minds to the effect that the deposit of $2,000.00 was non-refundable.

20. The date for installation of the security door and window guard (i.e. Ocober 5, 2020) passed without Defendant providing any further information about the prospective job to Plaintiff.

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21. On October 7, 2020, having not heard from Defendant, Plaintiff called Defendant's office and spoke to a female employee of Defendant. Plaintiff asked her when the door and window guard would be installed, since it was now overdue.

22. Defendant's employee indicated that she had no idea. She would have to check with the foreman. She promised to do so and call Plaintiff back, either later that day or the next day.

22. On October 9, 2020, having not heard back from Defendant as promised, Plaintiff again called Defendant's office and spoke with the same employee. She said she had not yet had a chance to speak with the foreman because he unavailable, due to being very busy. At that point, Plaintiff told her he wished to cancel the job.

23. In response, Defendant's employee immediately stated that she had "just found" what she described as the foreman's order form for the materials needed to do the job. She also indicated this meant the foreman would soon be ordering the materials for the job.

24. Plaintiff then instructed her that Defendant should not order the materials because Plaintiff wanted to cancel the job. Plaintiff also indicated he wanted a full refund of the $2,000.00 deposit. Defendant's employee then said she would have to talk with "Randy, the owner", i.e. Hauschild.

25. About five or ten minutes later, Hauschild called Plaintiff. By then Plaintiff was in a car. Plaintiff told Hauschild that he wanted to cancel the job and receive a full refund.

26. Contrary to what his employee told Plaintiff just five minutes earlier, Hauschild said that the foremen had already ordered the materials. When Plaintiff indicated that assertion was at odds with what he had just been told, Hauschild claimed to ask the foreman if he had ordered the materials. This is the same foreman who heretofore was unavailable and could not be reached because he was too busy. According to Hauschild, he miraculously appeared at just that moment. Hauschild then indicated that the foreman had ordered the materials.

27. Given the above sequence of events, Plaintiff questioned the veracity of Hauschild's claims.

28. Plaintiff repeated his desire to cancel the job and receive a full refund. Hauschild then claimed for the first time that according to "his contract" the deposit was not refundable. Plaintiff questioned Hauschild's assertion.

29. Hauschild then claimed he had "a lot of time into the job already," but he would agree to refund 50% of the deposit or $1,000. Plaintiff indicated that was not acceptable.

30. Plaintiff then asked Hauschild to provide him with an itemized list of the time Defendant had allegedly spent on the job. Hauschild refused. Hauschild stated further that his contract says the deposit is not refundable so he would not provide any itemized list.

31. Next, Hauschild claimed that Defendant already spent nine unspecified hours on the job. He further claimed that Defendant's hourly rate was $100. During this entire transaction no previous mention was made of any hourly rate. Hauschild refused to specify what work Defendant had allegedly done during this nine hours. Hauschild then reiterated that he would only refund $1,000 to Plaintiff.

32. Plaintiff advised Hauschild that Plaintiff wanted and deserved a full refund. Hauschild reiterated his position said that his contract made the deposit non-refundable.

33. Plaintiff advised Hauschild that he did not have Exhibit 2 in front of him but he did not recall any language in the document which would be a basis for Hauschild's assertion that the $2,000.00 deposit Plaintiff paid was non-refundable.

34. Plaintiff pointed out that he had 40 plus years of experience as a lawyer (now retired) and did not agree with Hauschild's claim that the deposit was non-refundable.

35. Hauschild responded that had he known that Plaintiff was a lawyer he would have never dealt with him.

36. Hauschild again offered to refund $1,000. Plaintiff told him that was unacceptable and the conversation ended.

37. Defendant is a licensed contractor, licensed pursuant to A.R.S. §32-1154 *et seq.* and said statute is incorporated by reference into Exhibit 2.

38. The fabrication and installation of the door and window guard which were the subject of the transaction in question amount to "merchandise" within the meaning of A.R.S. §44-1521.

39. Defendant's website is an "advertisement" within the meaning of A.R.S. §44-1521.

40. With respect to Defendant, the name of the licensee on file with the Arizona Corporation Commission is RHaus Enterprise Corp.

41. Under A.A.C. §4-9-109A.1.a. Defendant's "official name of record" is RHaus Enterprise Corp.

42. Under A.A.C. §4-9-109A.2. the trade name or DBA of Defendant is Appleby's Ornamental Iron.

43. Under A.A.C. §4-9-109B.4. any time Defendant conducts business in Arizona as a contractor it is obligated to use its official name, i.e. RHaus Enterprise Corp., or its DBA, i.e. Appleby's Ornamental Iron.

44. Contrary to that legal requirement Defendant repeatedly used the name "Appleby's Ornamental Iron Inc." in advertising on its website.

45. "Appleby's Ornamental Iron Inc." was an Arizona corporation which was dissolved on December 11, 2013. Said corporation's license as a contractor was also voluntarily cancelled effective August 12, 2014. (See Exhibits 3 and 4.)

46. Defendant's use of the name "Appleby's Ornamental Iron Inc." on its website constituted acting in the capacity of a contractor in a name other than that which was set forth on Defendant's license, in violation of A.R.S. §32-1154A.14.

47. Defendant's use of the name "Appleby's Ornamental Iron Inc." on its website constituted false, misleading, and/or deceptive advertising thereby misleading and injuring the public in violation of A.R.S. §32-1154A.15.

48. Defendant's use of the name "Appleby's Ornamental Iron Inc." on its website constitutes grounds for temporary suspension or permanent revocation of its contractor license under A.R.S. §32-1154B.3.

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III. First Claim for Relief - Breach of Contract

49. Plaintiff incorporates by reference all previous allegations.

50. To the extent there is an enforceable contract between Defendant and Plaintiff, Defendant breached said contract by not installing the security door and window guard on a timely basis.

51. Plaintiff has been damaged by the loss of his $2,000.00 deposit which should be fully refunded.

IV. Second Claim for Relief - Rescission of Contract

52. Plaintiff incorporates by reference all previous allegations.

53. Plaintiff's actions in response to Defendant's failure to comply with its obligations with respect to the transaction in question amount to rescission at law of any contract that may have existed.

54. If a rescission at law is not found to exist by the Court, then the Court should rescind the contract as a matter of law and equity.

55. Plaintiff requires the Court's assistance in effectuating said rescission and in requiring Defendant to fully refund Plaintiff's $2,000.00 deposit.

V. Third Claim for Relief – Unconscionability

56. Plaintiff incorporates by reference all previous allegations.

57. To the extent there is an otherwise enforceable contract between Defendant and Plaintiff, and to the further extent that the Court concludes that said contract provides that the $2,000.00 deposit paid by Plaintiff was non-refundable, then said contract is unconscionable, pursuant to A.R.S. §47-2302 and the applicable case law.

58. As such, any alleged non-refundable deposit provision deemed applicable to the deposit paid by Plaintiff is not enforceable.

59. Plaintiff is entitled to a full refund of his $2,000.00 deposit.

VI. Fourth Claim for Relief - Unjust Enrichment

60. Plaintiff incorporates by reference all previous allegations.

61. Defendant has been unjustly enriched by retaining Plaintiff's $2,000.00 deposit without having done anything for Plaintiff's benefit, other than completing a free estimate.

62. Plaintiff has suffered an impoverishment by virtue of the loss of said deposit.

63. There is a clear connection between the enrichment and the impoverishment.

64. There is no justification for the enrichment and impoverishment.

65. Plaintiff is without an adequate remedy at law.

66. Plaintiff is entitled to a full refund of his $2,000.00 deposit.

VII. **Fifth Claim for Relief -Violation of the Consumer Fraud Act**

67. Plaintiff incorporates by reference all previous allegations.

68. Defendant made several false promises and/or representations regarding the sale of merchandise on which Plaintiff proximately relied and as a result has been damaged in the amount of $2,000.00.

69. These false promises and/or representations include but are not limited to the following:

a. Repeatedly using the name Appleby's Ornamental Iron Inc. on its website.

b. Claiming its estimates are free and then seeking to assess charges against Plaintiff for the work done in estimating the job.

c. Claiming verbally that the work would be completed by the end of September.

d. Claiming on Exhibit 2 that the work would be completed by October 5th.

e. Claiming that Plaintiff's $2,000.00 deposit was nonrefundable.

f. Claiming that the foreman miraculously appeared and had already ordered the materials for the job after stating the contrary moments earlier.

70. Plaintiff was damaged by Defendant's false promises and representations.

71. Plaintiff is entitled to a full refund of his $2,000.00 deposit.

Prayer for Relief

Wherefore, Plaintiff, demand that Defendant, pay Plaintiff, the sum of $2000.00, plus interest, court costs, and any other damages or amounts that this Honorable Court may legally and/or equitably award to Plaintiff, and for which judgement is hereby sought, forthwith.

Respectfully submitted,

Theodore E. Meckler, Plaintiff

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Select Page

Security Doors

We custom make security doors in all shapes, sizes & designs

View

EXHIBIT 1

10

We have been securing Tucson homes since 1972

Our craftsmen have many years of experience building beautiful, metal security features and this is reflected in quality workmanship and customer satisfaction. We will custom design for you or with you.

Iron Works

Over the past forty years, we have installed thousands of doors in addition to gates, fences, pool and patio enclosures and more. We are now also making window guards without pickets, using tamper-proof screen instead. **As always, estimates are free and cheerfully given.**

SERVING
TUCSON
SINCE

1972

Licensed, Bonded and
Insured ROC#294105-CR24

Select Page

About

Appleby's Ornamental Iron

Over the past forty years, we have installed thousands of security doors in addition to gates, fences, pool and patio enclosures and more. In 1980 we added spiral as well as straight stairs to our product lines and have helped many satisfied customers

climb to the top, so to speak. We are now also making window guards without pickets, using tamper-proof screen instead.

Our craftsmen have more than 50 years of combined experience.

Our Products

- Security Doors
- Rails
- Gates
- Fences
- Pool & Patio Enclosures
- Fireplace Screens
- Window Guards
- Specialty Items

Quick Facts

- Appleby's Ornamental Irons has been doing business since 1972
- We fabricated the first TFD approved quick release window guards
- All work is fabricated locally in Tucson, AZ
- We have successfully built Appleby's using little to no advertising; the majority of our work comes from word of mouth

4

Select Page

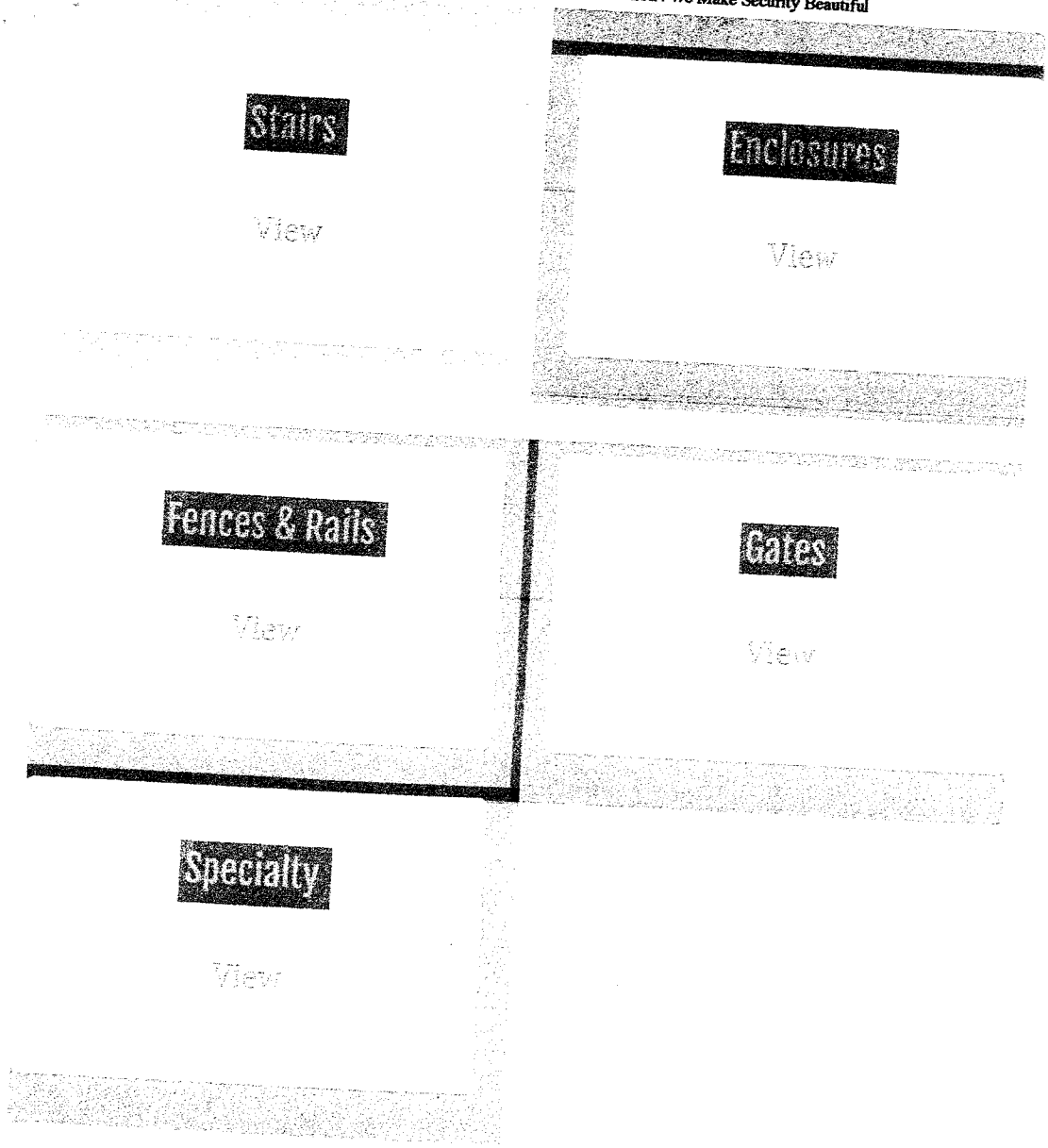
Products

Security Doors

Window Guards

5

14



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18918

APPLEBY'S ORNAMENTAL IRON

11030 East Tanque Verde Road, Tucson, Arizona 85749
Web: http://www.ApplebysOrnamentalIron.com
E-Mail: ApplebysOrnamental@GMail.com
Phone: (520) 749-5200

Lic. # ROC 294105

Customer: Ted Meckler
Billing Address:
Job Location:
Date: 14 July 20
Customer Phone:
E-Mail Address:

Items: Security Door $2,550.00
Opening 37"Wide x 81½" High Door Hardware @ 38"
1" x 1½" Tube Frame Tabs For Mounting
2" Jamb Plate
1¼" Square Tube Door
Design Concept Photo 64
3¼" Square Tube Design
Painted Blue RAL 5007
Kwikset Keyway, Antique Brass, Single Cylinder Deadbolt
Passage Handle
12 Mesh Woven Wire Screen

Window Guard $1,700.00
Open on Left Side
Single Cylinder Kwikset Antique Brass
1" x 1¼" Frame & Door
¾" Square Tube Design
12 Mesh Screen
Painted Blue RAL 5007

Fabrication, Finishing & Installation Included

Calendar begins after receipt of 50%, non-refundable deposit. _____ Full payment is due upon completion. This proposal may be withdrawn by us if not accepted.

All material is guaranteed to be as specified and the above work to be performed in a workmanlike manner.
Estimated shop lead time is 12 weeks after receipt of deposit.

The property owner has a right to file a written complaint with the Registrar of Contractors for an alleged violation of A.R.S 32-1154A. AZ R.O.C. (602) 542-1525

Deposit Information: Check No. 1042 Amount $2,000.00 Date 7/14/20

Total Installed $ 4,250.00
Tax $ _____
Total $ 4,250.00

4% convenience fee for credit or debit card use.

EXHIBIT 2

Respectfully Submitted: Date: 14 July 2020

The prices, specifications and conditions are satisfactory and are hereby accepted. You are authorized to do the work as specified. Payments will be made as outlined above.

Contract Acceptance: Date: 7/14/2020

AZ Corp. Commission
04515479

AZ CORPORATION COMMISSION
FILED

JAN 2 2 2014

FILE NO. 0507591-4

DO NOT WRITE ABOVE THIS LINE; RESERVED FOR ACC USE ONLY.

ARTICLES OF DISSOLUTION

Read the Instructions C022i

1. **ENTITY NAME** – give the exact name of the corporation as currently shown in A.C.C. records:
APPLEBY'S ORNAMENTAL IRON, INC.

2. **A.C.C. FILE NUMBER:** 0507591-4
Find the A.C.C. file number on the upper corner of filed documents OR on our website at: http://www.azcc.gov/Divisions/Corporations

3. **DATE OF INCORPORATION:** May 28, 1982

4. **DATE ON WHICH DISSOLUTION WAS AUTHORIZED:** 12/4/2013

5. **TAX CLEARANCE CERTIFICATE (Certificate of Compliance) – check only one box** (see Instructions C022i for more information):

5.1 ☒ This dissolution WILL require a Certificate of Compliance from the Arizona Department of Revenue because either the for-profit corporation has commenced business or issued shares, or the nonprofit corporation has commenced activities, has members, or has members entitled to vote on dissolution. *(Note - signature must be by officer or Chairman of the Board.)* If you check 5.1, continue with number 6 or number 7.

5.2 ☐ This dissolution WILL NOT require a Certificate of Compliance from the Arizona Department of Revenue because either the for-profit corporation has not commenced business or has not issued shares, or the nonprofit corporation has not commenced activities, does not have members, or does not have members entitled to vote on dissolution. *(Note - signature must be by initial director, nonprofit director, or incorporator.)* If you check 5.2, skip numbers 6 and 7 and go to number 8 or number 9.

6. **FOR-PROFIT CORPORATIONS THAT CHECKED NUMBER 5.1 –** check the appropriate box concerning approval of the dissolution and follow instructions (see the Instructions C022i for information about voting groups):

☐ Approved by incorporators or board of directors without shareholder action, and shareholder approval was not required or no shares have been issued– go to Signature section.

☐ Approved by shareholders but not voting groups – complete number 6.1, then go to Signature section.

☑ Approved by shareholders *and* voting groups – complete numbers 6.1 and 6.2, then go to Signature section.

☐ Approved by voting group(s) only – complete number 6.2 then go to Signature section.

6.1 Shareholder approval (all blanks must be filled in):

Total votes entitled to be cast	Votes in favor that were sufficient for approval of dissolution	Votes against dissolution
10,000	10,000	0

EXHIBIT 3

6.2 **Voting Groups** – complete each blank below *for each voting group.* Review the Instructions C022i for information about voting groups. If more space is needed, check this box ☐ and complete and attach the Voting Attachment form C089.

Voting Group (class / series)	Total votes in voting group	Indisputable votes at meeting	Votes in favor that were sufficient for approval of dissolution	Votes against dissolution
Common	10,000	10,000	10,000	0

7. NONPROFIT CORPORATIONS THAT CHECKED NUMBER 5.1:

The nonprofit corporation certifies under penalty of perjury by the signature appearing below that the dissolution was duly authorized by an act of the members or an act of the board of directors, and, if applicable, with the written approval of any other person required by the Articles of Incorporation.

NUMBERS 8 through 9 APPLY ONLY TO CORPORATIONS THAT CHECKED NUMBER 5.2 ABOVE.

8. The FOR-PROFIT or PROFESSIONAL corporation certifies under penalty of perjury by the signature appearing below that the following statements are true:

8.1 No debt of the corporation remains unpaid.

8.2 The net assets of the corporation remaining after winding up have been distributed to the shareholders, if shares were issued.

8.3 A majority of its original incorporators or initial directors authorized the dissolution.

9. The NONPROFIT corporation certifies under penalty of perjury by the signature appearing below that the dissolution was duly authorized by act of the board of directors or a majority of the original incorporators or initial directors and, if applicable, by written consent of any other person required by its Articles of Incorporation.

SIGNATURE: By checking the box marked "I accept" below, I acknowledge *under penalty of perjury* that this document together with any attachments is submitted in compliance with Arizona law.

☑ I ACCEPT

X

ENGELBERT E. HOCHEDER — Printed Name

12/11/13 — Date

REQUIRED – check only one:

☑ I am either a duly-authorized **Officer** or the **Chairman of the Board of Directors** of the corporation (see number 5.1).	☐ I am a either an **initial Director**, a **Director of a nonprofit**, or an **initial incorporator** (see number 5.2 and Instructions C022i).	☐ I am a duly authorized **bankruptcy trustee**, receiver, or other court-appointed fiduciary for the corporation filing this document.

Filing Fee: $25.00 (regular processing) Expedited processing – add $35.00 to filing fee. All fees are nonrefundable - see Instructions.	Mail: Arizona Corporation Commission - Corporate Filings Section 1300 W. Washington St., Phoenix, Arizona 85007 Fax: 602-542-4100

Please be advised that A.C.C. forms reflect only the **minimum** provisions required by statute. You should seek private legal counsel for those matters that may pertain to the individual needs of your business.
All documents filed with the Arizona Corporation Commission are **public record** and are open for public inspection.
If you have questions after reading the Instructions, please call 602-542-3026 or (within Arizona only) 800-345-5819.

DISCLAIMER

The data supplied below is based on your specific request(s) and is correct to the best of our knowledge as of the date and time it was extracted from our data files. The information is provided without personal research or analysis. The data is subject to change on a daily basis. You may obtain additional public records related to any licensee, including dismissed complaints and nondisciplinary actions and orders, by contacting the ROC directly. If this information is required for legal purposes, you may request an affidavit or certified copies for a fee as specified in A.R.S. 32-1104A3 (https://www.azleg.gov/viewdocument/?docName=http://www.azleg.gov/ars/32/01104.htm). Please read our Standard Terms of Use at roc.az.gov/terms (/terms)

Please note: The company or individuals listed on this license may hold other Arizona contracting licenses. To view information, status and complaint history for the past two years on other licenses held, go to the License Inquiry page and do a "Company Name and Personnel" search by entering the name of the company or individuals listed on the license.

DETAILS FOR
APPLEBY'S ORNAMENTAL IRON INC
LICENSE NUMBER ROC 061121

WEDNESDAY OCTOBER 14, 2020 02:10:33 PM

THIS CONTRACTOR IS NOT ABLE TO CONTRACT WITH THIS LICENSE AT THIS TIME. THIS CONTRACTOR MAY BE OPERATING WITH OTHER CURRENT LICENSES.

If you are the contractor listed, feel free to contact our Licensing Department at (602) 542-1525 for more information.

CONTRACTOR

NAME / ADDRESS / PHONE

Appleby's Ornamental Iron Inc
11030 E Tanque Verde Rd
Tucson, AZ 85749-9748
Phone: (520) 749-5200

STATUS / ACTION

Voluntary Cancellation

Status Last Changed On: 2014-08-12

LICENSE

CLASS & DESCRIPTION

Specialty Dual CR-24 Ornamental Metals

ENTITY TYPE

Corporation

ISSUED / RENEWAL

First Issued: 1984-09-17
Renewed Through: 2014-08-31

This license is QP Exempt.

QUALIFYING PARTY & PERSONNEL

The Qualifying Party listed below is associated with this license. All other persons named, if any, are associated with the company. They are not all necessarily associated with this license.

Name: Engelbert Edward Hocheder
Position: FORMER Qualifying Party
Other Positions: OFFICER

Name: Ingeborg Anna Hocheder
Position: Officer

Name: Appleby S Ornamental Iron Inc
Position: Related Entity,

EXHIBIT 4

PIMA COUNTY

Pima County Justice Courts, Arizona

Pima County Consolidated Justice Court
240 N. Stone Ave., Tucson, AZ 85701 (520) 724-3171

CASE NUMBER: CV20022057

THEODORE E. MECKLER

Plaintiff(s) Name / Address / Email / Phone

RHaus Enterprise Corp.
dba Appleby's Ornamental Iron

Defendant(s) Name / Address / Email / Phone

SMALL CLAIMS PROOF OF SERVICE BY REGISTERED OR CERTIFIED MAIL

A copy of the summons, complaint, and Notice to the Plaintiff and Defendant in this action was served by registered or certified mail to the above-named defendant.

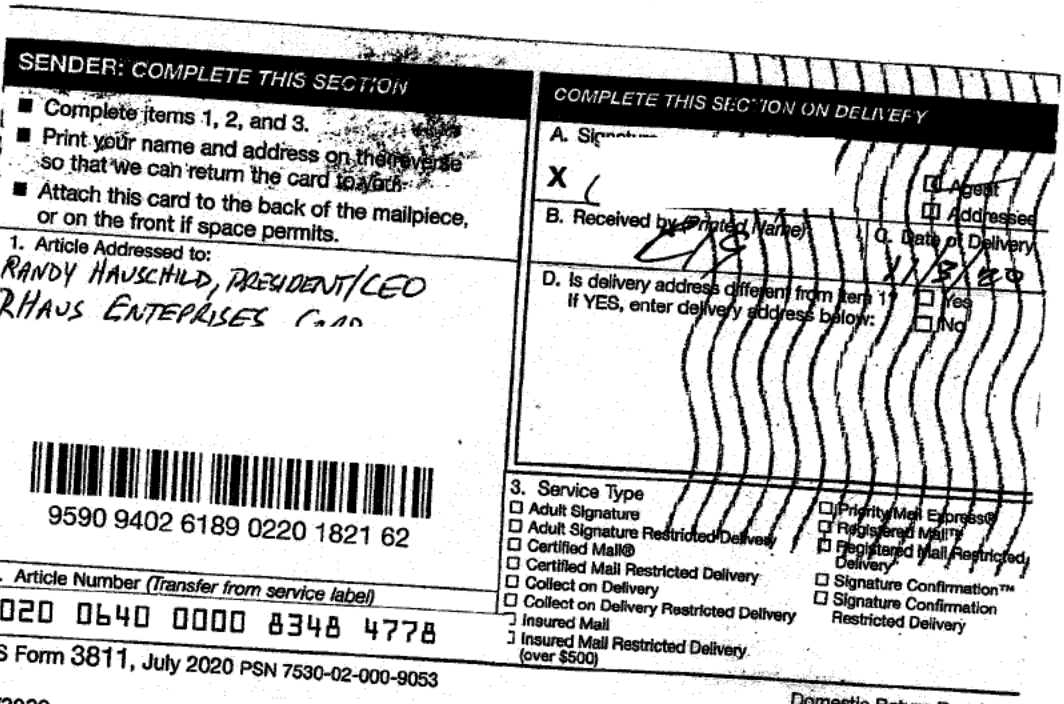
☑ The return receipt is attached (green card or return receipt printed from the postal or delivery service website).

The date of service is:

☑ The date of delivery, as shown on the attached return receipt.

☐ The date the return receipt is filed with the court because the date of delivery was not entered or the date is illegible.

PCJC 11/09/20 RM0218



SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:
RANDY HAUSCHILD, PRESIDENT/CEO
RHAUS ENTERPRISES CORP

9590 9402 6189 0220 1821 62

2. Article Number (Transfer from service label)
7020 0640 0000 8348 4778

PS Form 3811, July 2020 PSN 7530-02-000-9053

COMPLETE THIS SECTION ON DELIVERY

A. Signature
X

☐ Agent
☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery
11/3/20

D. Is delivery address different from item 1?
If YES, enter delivery address below:
☐ Yes
☐ No

3. Service Type
☐ Adult Signature
☐ Adult Signature Restricted Delivery
☐ Certified Mail®
☐ Certified Mail Restricted Delivery
☐ Collect on Delivery
☐ Collect on Delivery Restricted Delivery
☐ Insured Mail
☐ Insured Mail Restricted Delivery (over $500)
☐ Priority Mail Express®
☐ Registered Mail™
☐ Registered Mail Restricted Delivery
☐ Signature Confirmation™
☐ Signature Confirmation Restricted Delivery

Domestic Return Receipt

CVSC4 Rev. 1/1/2020

EXHIBIT 2

Pima County Justice Courts. Arizona

Pima County Consolidated Justice Court
240 N. Stone Ave., Tucson, AZ 85701 (520) 724-3171
Small Claims Division

Theodore E. Meckler,	)	**Case Number: CV20-022057-SC**
	)	
Plaintiff	)	
	)	
	)	
vs.	)	
	)	**Plaintiff's Request for Entry**
RHaus Enterprise Corp.,	)	**of Default Judgement Against**
	)	**Defendant Without Hearing**
Defendant	)	

Pursuant to Rule 7 of the Rules of Small Claims Procedure ("AZ ST SM CL") and Rule 140 (e) and (g) of the Justice Rules of Civil Procedure ("J CT RCP"), Plaintiff, Theodore E. Meckler ("Plaintiff") respectfully requests this Honorable Court to enter default judgment against Defendant, RHaus Enterprise Corp., DBA Appleby's Ornamental Iron ("Defendant"), and to do so without a hearing. There is only one Defendant in this case. Plaintiff seeks default judgment in the amount of $2,000.00, plus court costs of $111.00, pre-judgment totaling $177.08 to the date of this filing, plus post judgment interest at the statutory rate of 4.25%. A proposed default judgment is being submitted along with this Request, titled simply "Default Judgement". In addition, Plaintiff also submits a stamped envelope addressed to Defendant, in order for the Court to mail a copy of the default judgment to Defendant after the Court has signed it. The reasons for this Request are made clear in the attached Memorandum.

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EXHIBIT 3

Respectfully submitted,

_____

Theodore E. Meckler, Plaintiff

MEMORANDUM

Plaintiff seeks default judgment because Defendant has failed to file an answer. The record reflects that Defendant was served with a summons and complaint on November 3, 2020, making an answer was due on November 23, 2020. The record also reflects that to date no answer has been filed. The record also reflects that on December 7, 2020 Plaintiff filed an Application for Entry of Default. Said Application included the mandatory language set forth in Rule 140 (b) of J CT RCP and that language was set forth in a bold font as mandated. Said Application was served upon Defendant by mail in accordance with the applicable rules. More than ten days have passed since Plaintiff filed this Application for Entry of Default. Nonetheless, the record reflects the fact that Defendant has not filed an answer. Per Rule 140 (b) of J CT RCP the entry of default that was sought becomes effective.

Plaintiff's claim against Defendant is for a specific liquidated amount, i.e. $2,000.00. This was the amount of the deposit Plaintiff provided to Defendant on July 14, 2020. A supporting declaration, under penalty of perjury, concerning the claimed amount is attached hereto and marked as Exhibit 1. Said declaration also includes two attachments proving the amount of the claim. The first attachment is a copy of the written estimate provided to Plaintiff by Defendant on July 14, 2020 which specifies the amount of the deposit as $2,000.00. A copy of said estimate is

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attached hereto and marked as Exhibit 1-A. The second attachment is a copy of Plaintiff's check to Defendant covering said deposit. It is attached hereto and marked as Exhibit 1-B. All exhibits that are attached hereto are incorporated by reference, herein.

Plaintiff also seeks payment of his court costs totaling $111.00 to date. Said costs are a matter of record. To date Plaintiff has incurred the following costs: 1) the filing fee for the small claims complaint in the amount of $55.00, 2) the filing fee for Application for Entry of Default - in the amount of $28.00, and 3) the filing fee for this Request for Default Judgment in the amount of $28.00. The total of the costs Plaintiff has incurred thus far is $111.00.

Plaintiff also seeks pre-judgment interest. When the amount of the claim is liquidated, as it is here, Plaintiff is entitled to pre-judgment interest as a matter of right. *Alta Vista Plaza, Ltd. v. Insulation Specialists Company, Inc.,* 186 Ariz. 81, 82, 919 P.2d 176, 177 (App. 1995) (Rev. Den. 1996). The pre-judgment interest should begin to run on October 9, 2020. That was the date on which Plaintiff first sought a refund of the $2,000.00. (See Exhibit 1.) Pre-judgment interest generally runs from the date of demand. *Id.*, at 83 and 178.

The interest rate is set by A.R.S. § 44-1201B. It is the lesser of ten per cent per annum or the rate per annum that is equal to one per cent plus the prime rate as published by the Board of Governors of the Federal Reserve System. *Id.* The current prime rate as set by the Federal Reserve is 3.25%, making 4.25% per annum the appropriate rate of interest to be assessed in this case. Using that rate, pro-rated from October 9, 2020, Plaintiff should be awarded pre-judgement interest of $177.08 to the date of the filing of this Request.[1] This is calculated at 4.25% per annum on $2,000.00, pro-rated for 2.5 months. Of course, Plaintiff is also entitled to post judgment interest also calculated at the statutory rate of 4.25% per annum. Since the amount of the claim is clear and

[1] Obviously, this amount could increase depending upon when a judgment is actually issued.

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indisputable, as are the amount of the costs incurred and interest accrued, there is no need for any hearing.

CONCLUSION

Wherefore, Plaintiff respectfully requests that this Court enter default judgement against Defendant, RHaus Enterprise Corp., DBA Appleby's Ornamental Iron as specified above and in the proposed Default Judgement which is being submitted with this Request.

Respectfully submitted,

_____
Theodore E. Meckler, Plaintiff

SERVICE

On this ___ day of December, 2020, a copy of this Application was sent by regular U.S. Mail to Randy Hauschild, President/CEO of Defendant, RHaus Enterprises Corp. at

_____
Theodore E. Meckler, Plaintiff

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EXHIBIT 1

Pima County Justice Courts. Arizona

Pima County Consolidated Justice Court
240 N. Stone Ave., Tucson, AZ 85701 (520) 724-3171
Small Claims Division

Theodore E. Meckler,	)	**Case Number: CV20-022057-SC**
	)	
Plaintiff	)	
	)	
	)	
vs.	)	
	)	**Plaintiff's Declaration Under**
RHaus Enterprise Corp.,	)	**Penalty of Perjury**
	)	
Defendant	)	

1. Theodore E. Meckler makes the following declaration of facts of which he has first hand knowledge.

2. I am the Plaintiff in this case.

3. My claim against Defendant is for the specific liquidated amount of $2,000.00.

4. $2,000.00 was the amount of the deposit I provided to Defendant on July 14, 2020.

5. Attached hereto is a copy of the written estimate Defendant provided to me on July 14, 2020. It is marked as Exhibit 1-A.

6. This estimate specifies the amount of the deposit I paid as $2,000.00.

7. Also attached hereto is a copy of the check I provided to Defendant on July 14, 2020, covering said deposit. It is attached hereto and marked as Exhibit 1-B.

8. On October 9, 2020, I first sought a refund from Defendant of the $2,000.00 deposit I had paid to it on July 14, 2020.

9. The court costs I have incurred thus far in this case are a matter of record.

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10. I paid $55.00 as the filing fee for the Small Claims Complaint I filed.

11. I paid $28.00 as the filing fee for the Application for Entry of Default I filed.

12. I paid $28.00 as the filing fee for the Request for Default Judgment I am currently filing.

13. The total amount of costs I have incurred, thus far, is $111.00.

I declare under penalty of perjury that the foregoing is true and correct. Signed on the ____ day of December, 2020.

_____

Theodore E. Meckler

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APPLEBY'S ORNAMENTAL IRON

EXHIBIT 14

11030 East Tanque Verde Road, Tucson, Arizona 85749
Web: http://www.ApplebysOrnamentalIron.com
E-Mail: ApplebysOrnamental@GMail.com
Phone: (520) 749-5200

ROC 294105

Customer: Ted Meckler Date: 14 July 20

Billing Address: Customer Phone:

Job Location: E-Mail Address:

Items: Security Door $2,550.00

Opening 37" Wide x 81½" High Door Hardware @ 38"
1" x 1½" Tube Frame Tabs For Mounting
2" Seal Plate
1½" Square Tube Door
Design Crescent Photo 64
⅝" Square Tube Design
Painted Blue RAL 5007
Kwikset keyway, Antique Brass, Single Cylinder Deadbolt
Passage Handle
12 Mesh Woven Wire Screen

Window Guard $1,700.00

Open on Left Side
1" Single Cylinder Kwikset Antique Brass
1" x 1½" Frame & Door
¾" Square Tube Design
12 Mesh Screen
Painted Blue RAL 5007

Fabrication Finishing & Installation Included

Calendar begins after receipt of 50%, non-refundable deposit. _____ Full payment is due upon completion. This proposal may be withdrawn by us if not accepted.

All material is guaranteed to be as specified and the above work to be performed in a workmanlike manner.

Estimated shop lead time is 12 weeks after receipt of deposit.

The property owner has a right to file a written complaint with the Registrar of Contractors for an alleged violation of A.R.S 32-1154A. AZ R.O.C. (602) 542-1525

Deposit Information: Check No. 1042 Amount $2,000.00 Date 7/14/20

Total Installed $ 4,250.00

~~Tax $~~ _____

Total $ 4,250.00

4% convenience fee for credit or debit card use.

Respectfully Submitted Date: 14 July 2020

The prices, specifications and conditions are satisfactory and are hereby accepted. You are authorized to do the work as specified. Payments will be made as outlined above.

Find Past Check or Deposit Slip Images

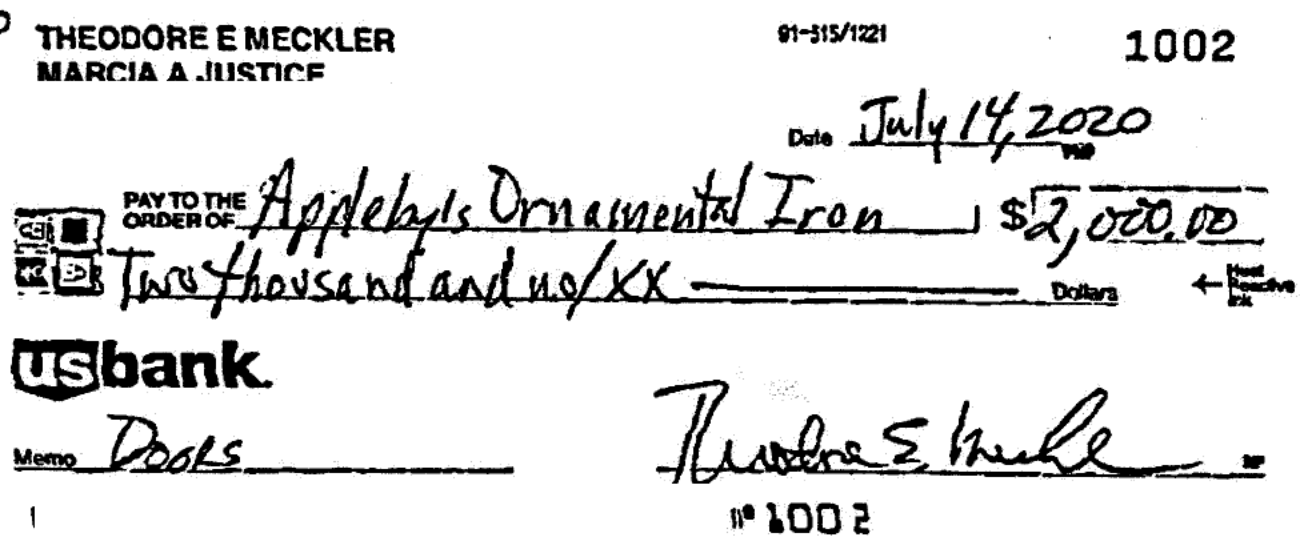
View Image

EXHIBIT 1-B

Account Trust Checking -
Check Number 1002
Date Processed 7/14/2020
Amount $2,000.00

Review Back

| Print | Save


THEODORE E MECKLER
MARCIA A JUSTICE

91-315/1221

1002

Date July 14, 2020

PAY TO THE ORDER OF Applebys Ornamental Iron $2,000.00

Two thousand and no/XX Dollars

usbank.

Memo Books

Theodore E Meckler

⑈1002⑈

Done

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P.1

THEODORE E. MECKLER

November 27, 2020

Pima County Consolidated Justice Court
Small Claims Clerk
240 N. Stone Ave.
Tucson, AZ 85701

Re: *Theodore E. Meckler vs. RHaus Enterprise Corp.,* case no. CV20022057

To whom it may concern:

Enclosed for filing is the original and one copy of Plaintiff's Application for the Court to Enter a Default Against Defendant. Please return a time-stamped copy of the Application to me in the enclosed self-addressed stamped envelope. If you have any problems or concerns with this request please give me a call. My number is listed on the letterhead. Thank you for your courtesy, cooperation, and hard work.

Very truly yours,

TEM/tm
Encl.

Theodore E. Meckler

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EXHIBIT 4

THEODORE E. MECKLER

November 27, 2020

Randy Hauschild
President/CEO
RHaus Enterprises Corp.

Re: *Meckler v. RHaus Enterprise Corp.*, Pima County Consolidated Justice Court, case no. CV 20022057

Dear Mr. Hauschild:

Enclosed you will find a copy of Plaintiff's Application for the Court to Enter a Default Against Defendant.

Sincerely,

TEM/tm
Encl.

Theodore E. Meckler

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EXHIBIT 5

THEODORE E. MECKLER

December 3, 2020

Pima County Consolidated Justice Court
Small Claims Clerk
240 N. Stone Ave.
Tucson, AZ 85701

Re: *Theodore E. Meckler vs. RHaus Enterprise Corp.*, case no. CV20022057

To whom it may concern:

Enclosed for filing is the original and one copy of Plaintiff's Application for the Court to Enter a Default Against Defendant. Please return a time-stamped copy of the Application to me in the enclosed self-addressed stamped envelope. I have also enclosed my check in the amount of $28.00 to cover the apparent filing fee for this application. If you have any problems or concerns with this request please give me a call. My number is listed on the letterhead. Thank you for your courtesy, cooperation, and hard work.

Very truly yours,

TEM/tm
Encl.

Theodore E. Meckler

EXHIBIT 6

THEODORE E. MECKLER

December 3, 2020

Randy Hauschild
President/CEO
RHaus Enterprises Corp

Re: *Meckler v. RHaus Enterprise Corp.*, Pima County Consolidated Justice Court, case no. CV 20022057

Dear Mr. Hauschild:

Enclosed you will find a copy of Plaintiff's Application for Court to Enter Default Against Defendant.

Sincerely,

TEM/tm
Encl.

Theodore E. Meckler

EXHIBIT 7

PIMA COUNTY JUSTICE COURT

Pima County Consolidated Justice Court

240 North Stone Avenue ♦ Tucson, Arizona 85701 ♦ (520) 724-3171 ♦ Contact The Court

Pima County Consolidated Justice Court Record Display

Important COVID-19 Updates: We have new safety measures and options to access the court. Learn more | Updates from PCC Justice Court

Case Number: CV20-022057-SC Filed: 10/27/2020 Case Status: Closed

Next Court Date: None Found

Parties:

	Name	Attorney	Service Date	Extension Service Date	Answer Date	Judgment For	Judgment Type	Judgment Date
Plaintiff	MECKLER, THEODORE E							
Defendant	RHAUS ENTERPRISE CORP		11/3/2020				Dismissed without prejudice	1/26/2021

Case Events:

Date	Time	Matter Type	Event	Result
1/26/2021		Terminator Program	Order of Dismissal - Lack of Prosecution	Completed
1/21/2021		Customer Service	Incoming Phone Call	Completed
12/28/2020		Judgment	Default Judgment	Denied
12/7/2020		Application	Application For Entry of Default	Entered
11/11/2020		Terminator Program	Notice of Pending Dismissal of Lawsuit	Completed

Documents: (Available at Court House)

Document Type	Document SubType	Document Caption	File Date
Civil Documents	CIV - ORDER	JP126D-Order Of Dismissal (Lack Of Prosecution)	1/26/2021
Civil Documents	CIV - MINUTE ENTRY	CIV - MINUTE ENTRY	1/16/2021
Civil Documents	CIV - NOTICE	CIV - RETURN CHECK	12/29/2020
Civil Documents	CIV - JUDGMENT	CIV - DEFAULT JUDGMENT	12/28/2020
Civil Documents	CIV - PAYMENT RECEIPT	Payment	12/7/2020
Civil Documents	CIV - DEFAULT APPLICATION	CIV - DEFAULT APPLICATION	12/7/2020
Civil Documents	CIV - NOTICE	JP126C-Notice Of Pending Dismissal (Lack Of Prosecution)	11/11/2020
Civil Documents	CIV - SERVICE	CIV - SERVICE	11/9/2020
Civil Documents	CIV - COMPLAINT	CIV - COMPLAINT	10/27/2020
Civil Documents	CIV - SUMMONS	CIV - SUMMONS	10/27/2020

1 2

EXHIBIT 8

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THEODORE E. MECKLER

December 22, 2020

Randy Hauschild
President/CEO
RHaus Enterprises Corp.

Re: *Meckler v. RHaus Enterprise Corp.*, Pima County Consolidated Justice Court, case no. CV 20022057

Dear Mr. Hauschild:

Enclosed you will find a copy of Plaintiff's Request for Entry of Default Judgment Against Defendant Without Hearing.

Sincerely,

TEM/tm
Encl.

Theodore E. Meckler

EXHIBIT 9

PIMA COUNTY CONSOLIDATED JUSTICE COURT
240 N STONE AVENUE TUCSON, AZ 85701-1130 (520)724-3171

PLAINTIFF(S): MECKLER, THEODORE E VS DEFENDANT(S): RHAUS ENTERPRISE CORP	**CIVIL MINUTE ENTRY** PLAINTIFF'S ATTORNEY: DEFENDANT'S ATTORNEY:	CASE NO. CV20-022057-SC Defendant's Address: RHAUS ENTERPRISE CORP

COURT DATE: 01/16/2021 TIME: 11:06 AM HEARING TYPE: Unknown

PLAINTIFF:	☐ Present	☑ Not Present	☐ By Counsel
DEFENDANT:	☐ Present	☑ Not Present	☐ By Counsel

The Court finds that the contract provided by the Plaintiff shows that the deposit is non-refundable. They are therefore not entitled to recover the deposit. Therefore the request for default judgment is denied,

Seal of the Justices of the Peace PIMA COUNTY #124 CORNEJO

DATED: 01/16/2021

JUSTICE OF THE PEACE ☐HEARING OFFICER ☐PRO TEM

ALL PARTIES IN ANY CIVIL CASE HAVE THE RIGHT TO APPEAL BY FILING A NOTICE OF APPEAL WITH THE TRIAL COURT WITHIN (14) CALENDAR DAYS AFTER THE ENTRY OF THE ORDER, RULING, OR JUDGMENT APPEALED FROM, EXCEPT IN AN EVICTION CASE THE TIME LIMIT SHALL BE (5) CALENDAR DAYS. THERE ARE NO APPEALS FROM A SMALL CLAIMS JUDGMENT. PURSUANT TO RECORDS RETENTION AND DESTRUCTION SCHEDULE, YOUR EXHIBIT(S) WILL BE DESTROYED UPON DISMISSAL, DISPOSITION, OR FINAL APPELLATE RULING WHICHEVER COMES LATER.

Copy mailed to [ ] Plaintiff [ ] Defendant [ ] Garnishee EXHIBIT 10

DATE: 1-25-21 BY: 35

* Interest rate shall be at the lesser of ten cent per annum or at a rate per annum that is equal to one per cent plus the prime rate as published by the Board of Governors of the Federal Reserve System.

Pima County Consolidated Justice Court
240 N. Stone Avenue Tucson, Arizona 85701

Public Records Request

Arizona Code of Judicial Administration, Section 1-605(D)(2)(b) states, requestor will not use or sell data for the purpose of commercial solicitation of any individual named in the data. Pursuant to ARS § 38-421(B), alteration or removal of documents from the court file or removal of the file from the courthouse is a Class 6 felony punishable by fine, imprisonment or both.

Pursuant to Rule 29, Rules of the Supreme Court and Records Retention and Disposition schedule for use by Limited Jurisdiction Courts, Arizona Code of Judicial Administration 4-302, A.R.S. § 12-771 and § 12-772, some records may not be available due to destruction.

Requestor/Your Information:

Theodore E. Meckler
Name

Address

City, State, Zip Code

Contact Telephone Number(s)

Relationship to Inquiry

Party Information/Who you are inquiring about:

Theodore E. Meckler
Name ☒ Same as Requestor

Date of Birth

Driver's License Number

Case Number(s)/Citation Numbers(s)/Complaint Number(s)

☐ Citation ☐ Summons/Complaint ☐ Motion: 1/16/2021

☒ Judgment ☐ Sentencing Minute Entry ☐ Plea ☐ Minute Entry

What document(s) are you requesting?

☐ Commercial/Solicitation Purpose (For Profit)
☐ Non Commercial

☐ Certified Copy ($28.00 fee)
☐ Government, what agency/entity? _____

For what commercial purpose will you use this information?

I am the Plaintiff in the case and would like to actually see the court's decision which was granted sua sponte without any notice or opportunity to be heard.

Under provisions of A.R.S. §39-121, Public Records Law, I am requesting that the Pima County Consolidated Justice Court release the requested public records to me, as authorized by law.

Theodore E Meckler
Requestor Signature ☒ Authorized electronic signature

01-21-2021
Date

For a listing of all applicable fees, refer to Records Unit Customer Service Fee Schedule JP90C

All requests for public records will be processed as soon as possible but no later than five business days. Per Rule 123 of the Arizona Supreme Court all confidential documents will be removed prior to viewing a case file. If copies are requested, the clerk will redact any confidential information prior to release.

****

For Court Staff Only

☐ Located file(s) Processed by:_____ Date:_____

☐ Unable to locate file Notified Requestor: ☐ Telephone call (date/time) _____ ☐ In person

☐ Request Denied pursuant to ACJA, Section 1-605 and Arizona Supreme Court Rule 123. You are entitled to an administrative review of this court's denial. The administrative review must be filed with the court in writing within 10 business days from the date denied. The presiding judge will make a decision and you will be notified within 10 business days from the date of request.

Processed by:_____ Date:_____

Applicable Fees: $_____

JP 77 Created 10-28-05 (Rev 09/01/17) jc/mt/ls

EXHIBIT 11

Pima County Justice Courts, Arizona

Pima County Consolidated Justice Court
240 N. Stone Ave., Tucson, AZ 85701 (520) 724-3171

CASE NUMBER: CV 21002490

Theodore E. Meckler

Plaintiff(s) / Attorney Name / Address / Email / Phone

RHaus Enterprise Corp.
DBA Appleby's Ornamental Iron

'21 FEB 5 PM 1:33 PCCJC

COMPLAINT
☐ **Amended Complaint**

Plaintiff alleges that this Court has jurisdiction over this matter.

I am suing the defendant because:

PARTIES

1. Plaintiff, Theodore E. Meckler ("Plaintiff") is a natural person who resides in the State of Arizona, County of Pima, City of Tucson. At all relevant times Plaintiff was a consumer and person within the meaning of A.R.S. §44-1521 et seq.

2. Defendant, RHaus Enterprise Corp., ("Defendant") is an Arizona for profit corporation which does business as and/or uses the trade name of Appleby's Ornamental Iron.

3. Defendant conducts its business, operates, and is located in the State of Arizona, County of Pima, City of Tucson.

4. Defendant's business is the fabrication and installation of security doors, windows guards, and the like, which it sells to and installs for consumers like Plaintiff.

STATEMENTOF FACTS

5. Defendant operates a website (www.applebysornamentaliron.com) on which it advertises its products and services to

(See attached sheets for the remainder of this complaint.)

I am asking the court to award me judgment against the defendant(s) in the sum of $ 2,000.00 (state claimed damages), **with interest until paid, plus all costs of this suit.**

I state under penalty of perjury that the foregoing is true and correct.

Date January 5th, 2021 **Plaintiff(s) Signature**

You are required to keep the court advised of your current address and telephone number. The clerk can provide you with a Notice of Change of Address form.

Interpreter: ☐ Yes, I need interpreter services. Language: _____

EXHIBIT 12

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the general public.

6. On July 14, 2020, Randy Hauschild, Defendant's President/CEO, ("Hauschild") came to Plaintiff's residence to provide Plaintiff with what was supposed to be a free estimate for the fabrication and installation of a security door and window guard.

7. Hauschild prepared a detailed written estimate on Defendant's pre-printed standardized contract form, specifying the materials needed for the job on the pre-printed form and calling for a total payment of $4,250.00 for materials and labor. (A copy of Defendant's pre-printed standardized contract form with all hand written notations is attached hereto and marked as Exhibit 1.)

8. Hauschild indicated that before beginning the work, Defendant would send one or more of its employees to Plaintiff's residence to re-measure everything.

9. According to the contract the work was to be performed about twelve weeks after "receipt of a deposit", i.e., by about October 5, 2020. The number of weeks was left as a blank on the pre-printed form, but filled in by hand by Defendant. While this clause of the contract mentions the deposit, it did not say that it was non-refundable. (Exhibit 1.) As such, it was refundable. This clause was an operative part of the contract, having been triggered when the blank was filled in by Defendant.

10. Notwithstanding the clause described in paragraph 9, Hauschild verbally indicated that the security door and window guard should be installed even sooner, by the end of September, 2020.

11. The written contract between the parties consisted of a standardized pre-printed form with certain hand written additions. (See Exhibit 1.)

12. Said contract was offered by Defendant to Plaintiff on a take it or leave it basis.

13. Plaintiff agreed to hire Defendant to do the work indicated in the contract.

14. Plaintiff then provided his check no. 1002 in the amount of $2,000 as the deposit demanded by Defendant. Plaintiff and Hauschild then signed Exhibit 1. Plantiff never would have done so had he believed the contract intended for the deposit to be non-refundable as Defendant now contends.

15. Plaintiff was not afforded any realistic opportunity to bargain with Defendant over the terms of said contract.

16. Plaintiff had to acquiesce to the terms of said contract if he wanted to obtain Defendant's products and services.

17. Plaintiff had no part in drafting the language contained on the pre-printed portion of said contract. The pre-printed form came solely from Defendant.

18. Plaintiff played no role in placing any of the hand written words on said pre-printed form, other than affixing his signature to it. All the hand written words were placed on the pre-printed form by Defendant, without any input from Plaintiff.

19. Besides the twelve week clause mentioned above, the pre-printed form contract included two clauses potentially relating to a deposit. Both such clauses also contained blank spaces on the pre-printed form.

20. The blank spaces were meant to be filled in, if the clause in question was to become operative.

21. One clause potentially relating to a deposit stated: "Deposit information: Check No. _____Amount $_____Date __/__/__."

22. Defendant filled in all the blank spaces in this clause, indicating that the check no. was "1002" the amount of the deposit was "$2,000.00", and the date of the check was "7/14/20". (Exhibit 1.)

23. This deposit clause described in paragraphs 21 and 22 was an operative part of the contract, triggered by having been filled in by Defendant.

24. This deposit clause described in paragraphs 21 and 22 did not say that the deposit was "non-refundable". As such it was refundable.

25. Hauschild demanded and Plaintiff paid a deposit of $2,000.00, as noted in this deposit clause, which is described in paragraphs 21 and 22.

26. The other clause that potentially related to a deposit stated: "Calendar begins after receipt of a 50%, non-refundable deposit. _____...".

27. The blank space following "non-refundable deposit" was never filled in.

28. This clause was superfluous in that the twelve week clause referenced above specified that "the calendar" would be about twelve weeks in length, and would begin to run "after receipt of the deposit", which was neither a "50% deposit", nor a "non-refundable deposit."

29. This deposit clause described in paragraphs 26 and 27 never became operative. It was never triggered by having the blank space filled in.

30. The deposit of $2,000.00, which Hauschild demanded and Plaintiff paid, was not 50% of the total price of $4,250.00, as would have been mandated by the deposit clause described in paragraphs 26 and 27, had it become operative. To have been a 50% deposit Plaintiff would have had to have paid $2,125.00.

31. The non-refundable deposit language described in paragraphs 26 and 27 was not applicable to the $2,000.00 deposit paid by Plaintiff.

32. On the face of the contract the $2,000.00 deposit Plaintiff paid was clearly not meant to be a non-refundable deposit and was therefore refundable.

33. There was never any meeting of the minds to the effect that the $2,000.00 deposit was to be non-refundable. Nor was there any reasonable expectation that the deposit was non-refundable.

34. In the event the Court does not find that on the face of the contract the $2,000.00 deposit Plaintiff paid was clearly not a non-refundable deposit, then the contract is at most ambiguous, as to whether said deposit was non-refundable.

35. Because Defendant was the drafter of the contract the clauses which potentially related to the deposit must be construed most strongly against Defendant, necessitating a conclusion that the deposit was not non-refundable and was therefore refundable.

36. As of October 7, 2020 Defendant had not contacted Plaintiff about the installation that was supposed to have started on about October 5, 2020, nor the re-measuring visit that was to precede installation.

37. Over the next several days Plaintiff tried to determine from phone calls with Defendant when the installation would actually take place.

38. Defendant provided incomplete and conflicting information to Plaintiff about when the job would actually start, convincing Plaintiff both that Defendant was nowhere near ready to start the job and that Defendant was not trustworthy.

39. As a consequence, Plaintiff advised Defendant that he no longer wanted Defendant to do the job and demanded that his $2,000.00 deposit be refunded in full.

40. Defendant refused and has continued to refuse to provide Plaintiff with a full refund.

41. Defendant never put any work into the job, other than providing a free estimate.

42. Defendant is a licensed contractor, licensed pursuant to A.R.S. §32-1154 *et seq.*

43. The fabrication and installation of the door and window guard which were the subject of the transaction in question amount to "merchandise" within the meaning of A.R.S. §44-1521.

44. Defendant's website is an "advertisement" within the meaning of A.R.S. §44-1521.

45. The name Defendant used as the licensee on file with the Arizona Corporation Commission was RHaus Enterprise Corp.

46. Under A.A.C. §4-9-109A.1.a. Defendant's "official name of record" is RHaus Enterprise Corp.

47. Under A.A.C. §4-9-109A.2. the "trade name or DBA" of Defendant is Appleby's Ornamental Iron.

48. Under A.A.C. §4-9-109B.4. any time Defendant conducts business in Arizona as a contractor it is obligated to use its official name, i.e. RHaus Enterprise Corp., or its DBA, i.e. Appleby's Ornamental Iron.

49. Contrary to that legal requirement Defendant repeatedly used the name "Appleby's Ornamental Iron Inc." in its website advertising.

50. "Appleby's Ornamental Iron Inc." was an Arizona corporation which was dissolved on December 11, 2013. Said corporation's license as a contractor was also voluntarily cancelled effective August 12, 2014.

51. Defendant's use of the name "Appleby's Ornamental Iron Inc." on its website constituted acting in the capacity of a contractor in a name other than that which was set forth on Defendant's license, in violation of A.R.S. §32-1154A.14.

52. Defendant's use of the name "Appleby's Ornamental Iron Inc." on its website constituted false, misleading, and/or deceptive advertising thereby misleading and injuring the public in violation of A.R.S. §32-1154A.15.

53. Defendant's use of the name "Appleby's Ornamental Iron Inc." on its website constitutes grounds for temporary suspension or permanent revocation of its contractor license under A.R.S. §32-1154B.3.

III. First Claim for Relief - Breach of Contract

54. Plaintiff incorporates by reference all previous allegations.

55. To the extent there is an enforceable contract between Defendant and Plaintiff, Defendant breached said contract by not even beginning the job of installing the security door and window guard on a timely basis and refusing to fully refund Plaintiff's deposit.

56. Plaintiff has been damaged by the loss of his $2,000.00 deposit.

IV. Second Claim for Relief - Rescission of Contract

57. Plaintiff incorporates by reference all previous allegations.

58. Plaintiff's actions in response to Defendant's failure to comply with its obligations with respect to the transaction in question amount to rescission at law of any contract that may have existed.

59. If a rescission at law is not found to exist by the Court, then the Court should rescind the contract as a matter of law and equity.

60. Plaintiff requires the Court's assistance in effectuating said rescission and requiring Defendant to fully refund Plaintiff's $2,000.00 deposit.

V. Third Claim for Relief – Unconscionability

61. Plaintiff incorporates by reference all previous allegations.

62. To the extent there is an otherwise enforceable contract between Defendant and Plaintiff, and to the further extent that the Court were to conclude that said contract provided that the $2,000.00 deposit was non-refundable, then said contract is unconscionable pursuant to A.R.S. §47-2302 and the applicable case law.

63. Any alleged non-refundable deposit clause deemed applicable to the deposit paid by Plaintiff is not enforceable.

64. Plaintiff is entitled to a full refund of his $2,000.00 deposit.

VI. Fourth Claim for Relief - Unjust Enrichment

65. Plaintiff incorporates by reference all previous allegations.

66. Defendant has been unjustly enriched by retaining all of Plaintiff's $2,000.00 deposit since July 14, 2020 without having done anything for Plaintiff's benefit, other than completing what was represented as a free estimate.

67. Plaintiff has suffered an impoverishment by virtue of the loss of said deposit.

68. There is a clear connection between the enrichment and the impoverishment.

69. There is no justification for the enrichment and impoverishment.

70. Plaintiff is without an adequate remedy at law.

71. Plaintiff is entitled to a full refund of his $2,000.00 deposit.

VII. **Fifth Claim for Relief -Violation of the Consumer Fraud Act**

72. Plaintiff incorporates by reference all previous allegations.

73. Defendant made several false promises and/or representations regarding the sale of merchandise on which Plaintiff proximately relied and as a result has been damaged in the amount of $2,000.00.

74. These false promises and/or representations include but are not limited to the following:

a. Repeatedly using the name Appleby's Ornamental Iron Inc. on its website.

b. Claiming its estimates were free and later seeking to assess charges against Plaintiff for estimating the job.

c. Claiming verbally that the work would be completed by the end of September.

d. Claiming on Exhibit 2 that the work would be completed on about October 5th.

e. Never stating that Plaintiff's $2,000.00 deposit was nonrefundable until Plaintiff sought a refund.

f. Claiming that Defendant's foreman was unavailable and had not yet ordered any supplies and then almost immediately thereafter claiming the foreman was present and had already ordered the supplies for the job.

75. Plaintiff was damaged by Defendant's false promises and representations.

76. Plaintiff is entitled to a full refund of his $2,000.00 deposit.

Prayer for Relief

Wherefore, Plaintiff, demands that Defendant, pay him the sum of $2000.00, plus interest, court costs from this case and those incurred the prior small claims case between the parties, and any other damages or the like that this Honorable Court may legally and/or equitably award to Plaintiff, and for which judgement is hereby sought, forthwith.

Respectfully submitted,

Theodore E. Meckler,
Plaintiff *Pro Se*

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APPLEBY'S ORNAMENTAL IRON

11030 East Tanque Verde Road, Tucson, Arizona 85749
Web: http://www.ApplebysOrnamentalIron.com
E-Mail: ApplebysOrnamental@GMail.com
Phone: (520) 749-5200

Lic. # ROC 294105

Customer: Ted Riechler Date: 14 July 20

Billing Address: Customer Phone:

Job Location: E-Mail Address:

Items: Security Door $2,5[illegible]

Opening 37"Wide x 81½" High Door Hardware @ 38"

1" x 1½" Tube Frame Tabs For Mounting

2" Tear Gate

1½" Square Tube Door

- Design Similar Photo 6"

3/4" Square Tube Design

Painted Blue RAL 5007

Kwikset Keyway, Antique Brass, Single Cylinder Deadbolt
Passage Handle

12 Mesh Woven Wire Screen

Window Guard $1,7[illegible]

Open on Left Side

Single Cylinder Kwikset [illegible] Antique Brass

1" x 1" Frame & Door

3/4" Square Tube Design

12 Mesh Screen

Painted Blue RAL 5007

Fabrication, Finishing & Installation Included.

Calendar begins after receipt of 50%, non-refundable deposit. _____ Full payment is due upon completion. This proposal may be withdrawn by us if not accepted.

All material is guaranteed to be as specified and the above work to be performed in a workmanlike manner.

Estimated shop lead time is 12 weeks after receipt of deposit.

The property owner has a right to file a written complaint with the Registrar of Contractors for an alleged violation of A.R.S 32-1154A. AZ R.O.C. (602) 542-1525

Deposit Information: Check No. 1042 Amount $2,000.00 Date 7/14/20

Total Installed $ 4,25[illegible]

Tax $ ~~_____~~

Total $ 4,25[illegible]

4% convenience fee for credit or debit card use.

Respectfully Submitted: Date: 14 July 2020

The prices, specifications and conditions are satisfactory and are hereby accepted. You are authorized to do the work as specified. Payments will be made as outlined above.

EXHIBIT 1

THEODORE E. MECKLER

March 15, 2021

Randy Hauschild
President/CEO
RHaus Enterprises Corp.

Re: *Meckler v. RHaus Enterprise Corp.*, Pima County Consolidated Justice Court, case no. CV 21-002490-RC

Dear Mr. Hauschild:

Enclosed you will find an original and one copy of Plaintiff's Requests for Admissions from Defendant and an original and one copy of Plaintiff's Requests for Production of Documents from Defendant.

Sincerely,

TEM/tm
Encl.

Theodore E. Meckler

To be redelivered 3/25/2021 per phone call
Conf.# USR2098222 93

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EXHIBIT 13

PIMA COUNTY CONSOLIDATED JUSTICE COURT
240 N. Stone Avenue, Tucson, AZ 85701 (520) 724-3171

PLAINTIFF	**CASE NO.**	**DEFENDANT**
MECKLER, THEODORE E 7673 E PALACE PARK LOOP Tucson AZ 85710 (Name/Address/Telephone):	CV21-002490-RC **NOTICE OF SERVICE OF DISCLOSURE STATEMENT**	RHAUS ENTERPRISE CORP 8969 N UPPER BLUFFS DR TUCSON AZ 85742 (Name/Address/Telephone):

The undersigned party gives notice that on April 9, 2021, I served the Disclosure Statement required by Rule 121, JCRCP on the other parties to this case as indicated below:

☒ Mail ☐ Hand delivery

I certify that the original of this document was filed with the Pima County Consolidated Justice Court and that a copy was mailed to each of the other parties.

'21 APR 13 PM 1:29 PCCJC

Date: April 9, 2021 Signature _____

☒ Plaintiff ☐ Defendant

CERTIFICATE OF MAILING

I CERTIFY that I mailed / delivered a copy of this DISCLOSURE STATEMENT to:

☐ Plaintiff ☒ Defendant ☒ Original with the Pima County Consolidated Justice Court

Date: April 9, 2021 Signature _____

☒ Plaintiff ☐ Defendant

EXHIBIT 14

JP54 (Rev 10-09-13) Original-Court Canary-Plaintiff Pink-Defendant

THEODORE E. MECKLER

March 29, 2021

Randy Hauschild
President/CEO
RHaus Enterprises Corp.

Re: *Meckler v. RHaus Enterprise Corp.*, Pima County Consolidated Justice Court, case no. CV 21-002490-RC

Dear Mr. Hauschild:

Enclosed you will find an original and one copy of Plaintiff's Requests for Admissions from Defendant and an original and one copy of Plaintiff's Requests for Production of Documents from Defendant. These same discovery requests were previously sent to you on March 15th via certified mail. Apparently you have chosen to ignore the post office's notices and failed to pick up the material from the post office.

Sincerely,

TEM/tm
Encl.

Theodore E. Meckler

EXHIBIT 15

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Pima County Justice Courts. Arizona
Pima County Consolidated Justice Court
240 N. Stone Ave., Tucson, AZ 85701 (520) 724-3171

Theodore E. Meckler,	)	**Case Number: CV21-002490-RC**
Plaintiff	)	**Judge Erica Cornejo**
vs.	)	**Second Notice Re: Requests for Admissions**
RHaus Enterprise Corp.,	)	
Defendant	)	

To:

RHaus Enterprises Corp.
c/o Randy Hauschild
President/CEO
RHaus Enterprises Corp.

Do not ignore this notice.

You were served with Requests for Admissions on March 17, 2021. The rules of procedure required you to respond to these requests no later than forty days thereafter, or April 26, 2021. You have failed to respond to all of the requests.

The rules will still allow you to respond to the Requests for Admissions by May 20, 2021, that is fifteen (15) days after the date of this notice. Each request that you do not respond to by that date will be admitted and taken as true in this lawsuit.

Signed by:

Theodore E. Meckler, Plaintiff *pro se*

5/5/2021
Date

EXHIBIT 16

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SERVICE

On this 5th day of May, 2021, this Second Notice Re: Requests for Admissions was sent by U.S. Mail to RHaus Enterprises Corp. c/oRandy Hauschild, President/CEO of Defendant, RHaus Enterprises Corp. at [redacted]

Theodore E. Meckler, Plaintiff *pro se*

[redacted]

THEODORE E. MECKLER

May 5, 2021

Randy Hauschild
President/CEO
RHaus Enterprises Corp.

Re: *Meckler v. RHaus Enterprise Corp.*, Pima County Consolidated Justice Court, case no. CV 21-002490-RC

Dear Mr. Hauschild:

Disclosures from you were due to be sent to me within 40 days after your answer was filed. Your answer was filed on March 2, 2021, according to the Court's docket. So that time has expired. I sent you my disclosures on a timely basis. Please quickly, albeit tardily, comply with your obligation to provide disclosure to me.

I also sent you Requests for Production of Documents on March 15, 2021. You had forty (40) days to respond to them. That time has passed. Please quickly, albeit tardily comply with your obligation to provide all requested documents to me.

I also sent you Requests for Admissions on March 15, 2021. You had forty (40) days to respond to them. That time has passed. I am enclosing a copy of my second notice to you regarding those Requests for Admissions. Please review it carefully and quickly comply with your obligation to respond to those Requests for Admissions.

I am sending this letter to begin a good faith attempt to personally consult with you to resolve all of the above matters expeditiously. Toward that end please either quickly comply with your disclosure and discovery obligations, as noted above, or give me a call to discuss this matter more thoroughly. If I do not hear from you by May 13, 2021 I will have to presume you are not really interested in engaging in such a good faith attempt to consult with me in order to try to resolve these disclosure and discovery matters. If the latter is the case, I will have no choice but to file a Motion to Compel with the Court. I hope that will not be necessary and that you will engage in a good faith attempt to resolve these matters with me as I am willing to do. Toward that end I look forward to hearing from you forthwith.

EXHIBIT 17
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Sincerely,

TEM/tm
Encl.

Theodore E. Meckler

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Pima County Consolidated Justice Court

240 North Stone Avenue ♦ Tucson, Arizona 85701 ♦ (520) 724-3171 ♦ Contact The Court

Pima County Consolidated Justice Court Record Display

Important COVID-19 Updates: **We have new safety measures and options to access the court.** Learn more | Updates from PCC Justice Court

Case Number: CV21-002490-RC
Assigned Judge: HON. ERICA CORNEJO

Filed: 02/04/2021

Case Status: Open

Next Court Date: None Found

Parties:

	Name	Attorney	Service Date	Extension Service Date	Answer Date	Judgment For	Judgment Type	Judgment Date
Plaintiff	MECKLER, THEODORE E							
Defendant	RHAUS ENTERPRISE CORP		2/8/2021		3/2/2021			

Case Events:

Date	Time	Matter Type	Event	Result
6/7/2021		Due Date	Response/Reply to Pleading	Pleading Sent For Ruling
5/24/2021		Motion	Motion Filed	Denied
5/18/2021		Motion	Motion Filed	
5/12/2021		Motion	Motion to Transfer/Change of Venue	Denied
4/13/2021		Notice	Service of Disclosure Statement	Filed
3/15/2021		Notice	Change of Judge	Filed
3/4/2021		Notice	Scheduling Notice	Issued
3/2/2021		Answer	Answer	Filed

Documents: (Available at Court House)

Document Type	Document SubType	Document Caption	File Date
Civil Documents	CIV - PAYMENT RECEIPT	Payment	5/25/2021
Civil Documents	CIV - MOTION	CIV -RECONSIDER	5/24/2021
Civil Documents	CIV - PAYMENT RECEIPT	Payment	5/18/2021
Civil Documents	CIV - MOTION	CIV -TO COMPEL	5/18/2021
Civil Documents	CIV - MOTION	CIV -TRANSFER	5/12/2021
Civil Documents	CIV - PAYMENT RECEIPT	Payment	5/12/2021
Civil Documents	CIV - ORDER	CIV - RULING	5/11/2021
Civil Documents	CIV - MISCELLANEOUS	CIV -AFFIDAVIT OF BIAS AND PREJUDICE	5/5/2021
Civil Documents	CIV - MINUTE ENTRY	CIV - MINUTE ENTRY	4/20/2021
Civil Documents	CIV - NOTICE	CIV - NOTICE	4/13/2021

1 2

EXHIBIT 18

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Pima County Justice Courts. Arizona
Pima County Consolidated Justice Court
240 N. Stone Ave., Tucson, AZ 85701 (520) 724-3171

Theodore E. Meckler,	)	**Case Number: CV21-002490-RC**
	)	
Plaintiff	)	
	)	**Judge Erica Cornejo**
	)	
vs.	)	
	)	**Plaintiff's Notice of Change of**
RHaus Enterprise Corp.,	)	**Judge as a Matter of Right**
	)	
Defendant	)	

Now comes Plaintiff, and provides this notice to the Court and the Defendant, requesting a change of judge as a matter of right, pursuant to Rule 133d. of the Justice Court Rules of Civil Procedure. Plaintiff has not previously requested a change of judge in this lawsuit.[1] Plaintiff has not waived his right to a change of judge. This notice is timely. Wherefore, Plaintiff respectfully requests that this court transfer this lawsuit to a new judge within the county for further proceedings.

Respectfully submitted,

Theodore E. Meckler, Plaintiff *pro se*

EXHIBIT 19

[1] Plaintiff previously sought to request a change of judge in this lawsuit. However, the clerk rejected that notice because it erroneously listed the case number as CV21-0022490-RC, rather than CV21-002490-RC, the correct case number. As such, Plaintiff has not previously requested a change of judge in this lawsuit.

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SERVICE

On this 12th day of March, 2021, in compliance with Rule 120 b. (4) of the Justice Court Rules of Civil Procedure, a copy of this Notice was sent by regular U.S. Mail to Randy Hauschild President/CEO of Defendant, RHaus Enterprises Corp. at [illegible]

Theodore E. Meckler, Plaintiff *pro se*

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PIMA COUNTY CONSOLIDATED JUSTICE COURT

JUDGE Pro Tempore: Charles V. Harrington CASE NO. CV21-002490

DATE: April 20, 2021

Theodore E. Meckler,

Plaintiff,

vs.

RHaus Enterprise Corp.,

Defendant.

RULING

IN CHAMBERS RULING RE: PLAINTIFF'S NOTICE OF CHANGE OF JUDGE AS A MATTER OF RIGHT:

On March 15, 2021 Plaintiff Theodore E. Meckler (hereinafter referred to as "Plaintiff"), *in propria persona*, filed Plaintiff's Notice of Change of Judge as a Matter of Right (hereinafter referred to as the "Notice") in the above-captioned case with the Honorable Erica Cornejo. Judge Cornejo, as is appropriate, forwarded the Notice to Presiding Judge Bryson for Ruling. Judge Bryson has designated Judge Harrington to Rule on the Notice. The Court has reviewed Plaintiff's request to reassign his case from Judge Cornejo and has considered all applicable law in reaching a decision.

The Arizona Supreme Court has suspended the rules relating to change of judge as a matter of right in all Courts in Arizona.

> Rule 10.2, Rules of Criminal Procedure; Rule 42.1, Rules of Civil Procedure; Rule 2(B), Rules of Procedure for Juvenile Court; Rule 6, Rules of Family Law Procedure; ***Rule 133(d) Justice Court Rules of Civil Procedure;*** Rule 9(c), Rules of Procedure for Eviction Actions; and any local rule that provides litigants with a change of judge as a matter of right ***are suspended until further order*** to reduce the risk of virus exposure inherent in out-of-county judges' travel, and to ensure adequate judicial resources for backlog reduction.

Paragraph I (4.), Supreme Court Administrative Orders No. 2020-197 and 2021-52. (Emphasis added.)

EXHIBIT 20

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For the aforementioned reasons,

IT IS HEREBY ORDERED that Plaintiff's Notice of Change of Judge as a Matter of Right is **DENIED.**

IT IS FUTHER ORDERDED that this case shall be returned to Judge Cornejo for all further proceedings.

HON. CHARLES V. HARRINGTON

cc: Plaintiff
Defendant
Hon. Erica Cornejo

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Entered On
✓ Commercial Copies Sent To
Conciliation Copies Sent To
✓ Via ✓ Mail ☐ Runner
✓ Via ✓ Mail ☐ Runner
☐ Via ☐ Mail

Date: APR 21 2021 Clerk: AE

Pima County Justice Courts. Arizona
Pima County Consolidated Justice Court
240 N. Stone Ave., Tucson, AZ 85701 (520) 724-3171

Theodore E. Meckler,	)	**Case Number: CV21-0022490-RC**
Plaintiff	)	
	)	**Judge Erica Cornejo**
vs.	)	
RHaus Enterprise Corp.,	)	**Plaintiff's Affidavit of Bias and Prejudice**
Defendant	)	

State of Arizona	)		
	)	**SS**	**AFFIDAVIT OF BIAS AND PREJUDICE**
County of Pima	)		

Theodore E. Meckler, after first being duly sworn upon oath, does hereby depose and say the following:

1. This affidavit is made from my own personal knowledge and I am competent to testify to all matters contained herein.

2. I am the Plaintiff in the instant matter.

3. I have cause to believe and I do believe that on account of the bias, the prejudice, and/or the interest of Justice of the Peace, Erica Cornejo I cannot obtain a fair and impartial trial in this case, if she continues to preside over it.

4. Additional information concerning the bias, the prejudice, and/or the interest of Justice of the Peace, Erica Cornejo is provided in the attached Brief in Support, which is incorporated by reference herein and the Exhibits attached thereto.

I certify, under penalty of perjury under the laws of the State of Arizona that the content of the

EXHIBIT 21

foregoing affidavit is true and correct.

5/4/2021
DATE

Theodore E. Meckler

The above-named Theodore E. Meckler appeared before me on the 4th day of May, 2021 and on that day, and swore to the truth of this affidavit and then affixed his signature above before me and in my presence.

KASIE JO RIVAS
Notary Public - Arizona
Pima County
Commission # 597945
My Comm. Expires Jan 22, 2025

Notary Public

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Pima County Justice Courts. Arizona
Pima County Consolidated Justice Court
240 N. Stone Ave., Tucson, AZ 85701 (520) 724-3171

Theodore E. Meckler,	)	**Case Number: CV21-0022490-RC**
Plaintiff	)	
	)	**Judge Erica Cornejo**
vs.	)	
	)	**Brief in Support of Affidavit of Bias and Prejudice**
RHaus Enterprise Corp.,	)	
Defendant	)	

I. STATEMENT OF FACTS AND PROCEDURE

A. The Consumer Transaction.

This case arises from a consumer transaction gone bad. On July 14, 2020, Randy Hauschild, Defendant's President/CEO, ("Hauschild") came to Plaintiff's residence to provide him with what was supposed to be a free estimate for the fabrication and installation of a security door and window guard. Hauschild prepared a detailed written estimate on Defendant's pre-printed standardized contract form, specifying the materials needed for the job and calling for a total payment of $4,250.00 for materials and labor. Hauschild indicated that before beginning the work, he would send one or more of its employees to Plaintiff's residence to re-measure everything.

The written contract between the parties consisted of a standardized pre-printed form with certain hand written additions. It was offered by Defendant to Plaintiff on a take it or leave it basis. Plaintiff signed the contract and agreed to hire Defendant to do the work indicated in the contract. Plaintiff also provided Defendant with a check in the amount of $2,000, the deposit verbally demanded by Defendant. Plantiff never would have agreed to the contract or paid the deposit had

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he believed the contract intended the deposit to be non-refundable, as Defendant now contends.

Plaintiff was not afforded any realistic opportunity to bargain with Defendant over the terms of said contract. He had to acquiesce to the terms of said contract if he wanted to obtain Defendant's products and services. Plaintiff had no part in drafting the language contained on the pre-printed portion of said contract. The pre-printed form came solely from Defendant. Plaintiff also played no role in placing any of the hand written words on the pre-printed form, other than affixing his signature to it. All the hand written words were placed on the pre-printed form by Defendant, without any input from Plaintiff.

According to the written contract the work was to be performed about twelve weeks after "receipt of a deposit", i.e. by about October 5, 2020. Hauschild also verbally indicated that the security door and window guard should be installed by the end of September, 2020. The number of weeks was originally a blank on the pre-printed form, but that blank was filled in by hand by Hauschild. This same clause of the contract mentions the deposit, but it does not say that it was non-refundable. This clause became an operative part of the contract, having been triggered when the blank was filled in by Defendant.

Besides the twelve-week clause mentioned above, the pre-printed form contract included two clauses potentially relating to a deposit. Both such clauses also contained blank spaces on the pre-printed form. The blank spaces were meant to be filled in, if the clause in question was to become operative. One clause potentially relating to a deposit stated: "Deposit information: Check No. _____Amount $_____Date __/__/__." Defendant filled in all the blank spaces in this clause, indicating that the check no. was "1002" the amount of the deposit was "$2,000.00", and the date of the check was "7/14/20". Thus, this deposit clause became operative, triggered by

Defendant filling it in. This deposit clause did not say that the deposit was "non-refundable". Hauschild demanded and Plaintiff paid a deposit of $2,000.00, as noted in this deposit clause.

The other clause that could have related to a deposit stated: "Calendar begins after receipt of a 50%, non-refundable deposit. _____...". The blank space following "non-refundable deposit" was never filled in. This clause was superfluous in that the twelve-week clause referenced *supra*, specified that "the calendar" would be about twelve weeks in length, and would begin to run "after receipt of the deposit", which was neither a "50% deposit", nor a "non-refundable deposit."

This latter deposit clause was not filled and never became operative. Defendant never triggered it by filling in the blank space. The deposit of $2,000.00, which Hauschild demanded and Plaintiff paid, was obviously not 50% of the total price of $4,250.00, as would have been mandated by the inoperative deposit clause, had it been filled in. A 50% deposit would have required Plaintiff to have paid $2,125.00. This, he never did. The non-refundable deposit language described above in this particular clause, that was never filled in, was simply not applicable to the $2,000.00 deposit paid by Plaintiff.

On the face of the contract the $2,000.00 deposit Plaintiff paid was clearly not intended to be a non-refundable deposit and was therefore refundable. There was never any meeting of the minds to the effect that the $2,000.00 deposit was to be non-refundable. Nor was there any reasonable expectation that the $2,000.00 deposit was non-refundable. In the event the factfinder does not find that on the face of the contract the $2,000.00 deposit Plaintiff paid was clearly not non-refundable, then the contract is at most ambiguous, on the question of whether the deposit was non-refundable. Because Defendant was the drafter of the contract its terms must be construed

most strongly against Defendant, necessitating the conclusion that the deposit was not non-refundable and, was instead refundable.

As of October 7, 2020 Defendant had not contacted Plaintiff about the installation that was supposed to have started on about October 5, 2020, nor about the re-measuring visit that was to precede installation. Over the next several days Plaintiff tried to determine from phone calls with Defendant when the installation would actually take place. Defendant provided incomplete and conflicting information about when the job would actually start. It also became clear to Plaintiff that no materials had been ordered for the job. Plaintiff became convinced from his conversations with Defendant that Defendant was nowhere near ready to start the job and that Defendant could no longer be trusted. As a consequence, Plaintiff advised Defendant that he no longer wanted Defendant to do the job and demanded that his $2,000.00 deposit be refunded in full. Defendant refused and continues to refuse to provide Plaintiff with a full refund of the $2,000.00, on a potential job for which Defendant did no work and expended no funds. This is the gist of the underlying dispute.

B. The Earlier Small Claims Case.

On October 27, 2020 Plaintiff filed a Small Claims complaint in the Pima County Consolidated Justice Court against the current Defendant, alleging essentially the same underlying facts and claims that are alleged in the current case. That small claims case was given case no. CV20-022057-SC and assigned to the Honorable Justice of the Peace ("JP") Erica Cornejo. After Defendant failed to file a timely answer or other responsive pleading, Plaintiff filed a Request for Entry of Default Judgment pursuant to Rule 7 of the Rules of Small Claims Procedure and Rule 140 (e) and (g) of the Justice Court Rules of Civil Procedure on December 28, 2020. This Request placed only four questions before the JP. The first question was whether Defendant was served

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with a summons and complaint. The record clearly demonstrates that Defendant was served with the summons and complaint on November 23, 2020. (See proof of service attached hereto and marked as Plaintiff's Exhibit no. 1.)

The second question was whether Plaintiff file a proper Application for Entry of Default and served Defendant with a copy of same. The record clearly demonstrates that Plaintiff initially sought to file such an Application by sending same to the Clerk via regular U.S. Mail on November 27, 2020. (See Plaintiff's November 27th cover letter enclosing the Application which is attached hereto and marked as Plaintiff's Exhibit no. 2 and the Application for Entry of Default itself which is also attached hereto and marked as Plaintiff's Exhibit no. 3.) A copy of that same Application was also sent to Defendant via regular U.S. mail along with a cover letter, on November 27, 2020. (See Plaintiff's November 27th cover letter to the Defendant, enclosing said Application, attached hereto and marked as Plaintiff's Exhibit no. 4.) Plaintiff did not realize that a $28.00 filing fee was necessary to file said Application. Thus, the Clerk initially rejected Plaintiff's Application. (See Clerk's civil return notice dated November 30, 2020, attached hereto and marked as Plaintiff's Exhibit no. 5.) Plaintiff then successfully filed that same Application by sending it to the Clerk via regular U.S. Mail on December 3, 2020, this time accompanied by a $28.00 check. (See Plaintiff's December 3rd cover letter to the court, enclosing said Application for the second time and including a $28.00 check, which letter is attached hereto and marked as Plaintiff's Exhibit no. 6, and see the Court's digital docket which is attached hereto and marked as Plaintiff's Exhibit no. 7, showing the Application was filed on December 7, 2020, and see Plaintiff's December 3rd cover letter to Defendant, enclosing said Application, which letter attached hereto and marked as Plaintiff's Exhibit no. 8.)

The third question before the JP was whether, when Plaintiff filed his Request for Entry of Default Judgment had more than ten days passed since the Application for Entry of Default was filed and served on Defendant. The above documents clearly show the Application was sent Defendant twice, once on November 27, 2020 and again on December 3, and successfully filed with the Court on December 7, 2020. These documents also show that the Request for Entry of Default Judgment was not sent to Defendant until December 22, 2020 and was not filed for record until December 28, 2020, both dates being more than ten days after December 7th. (See Plaintiff's Request for Entry of Default attached hereto and marked as Plaintiff's Exhibit no. 9, and see Plaintiff's December 22nd cover letter to the Court with said Request, attached hereto and marked as Plaintiff's Exhibit no. 10, and see Plaintiff's December 22nd cover letter to Defendant, attached hereto and marked as Plaintiff's Exhibit no. 11, as well as the Court's digital docket, i.e. Plaintiff's Exhibit no. 7.)

The fourth question before the JP was whether Defendant filed an answer or other responsive pleading. The record clearly establishes that Defendant filed no answer, responsive pleading, or any other document in the small claims case. (See the Court's digital docket, Plaintiff's Exhibit no. 7.) Instead of limiting its ruling to the issues before it, the JP went well beyond its authority on the Request for a Default Judgment, making a determination as the merits of the case on an issue that was not even before the Court and an incorrect ruling at that, when it issued its January 16, 2021 minute entry. (See the minute entry, attached hereto and marked as Plaintiff's Exhibit no. 12.) In that entry the JP stated the following: "The Court finds that the contract provided by the Plaintiff shows that the deposit is non-refundable. They (sic) are therefore not entitled to recover the deposit.[1] Therefore the request for default judgment is denied." Plaintiff

[1] Whether the contract provided for a non-refundable deposit is expected to be the key factual question to be decided at the trial in this case, if Plaintiff is ever given an opportunity to have a trial before a fair and impartial fact-finder.

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only learned of the nature of the entry by tracking the docket on line, then calling the clerk to read him the minute entry. The content of the entry cannot be ascertained from the digital docket. The minute entry was not sent to Plaintiff as a matter of course. He only received a copy of it by making a formal Public Records Request. (See the request and the email response from the Clerk dated January 21, 2021, which are both attached hereto and marked as Plaintiff's Exhibit nos. 13 and 14, respectively.)

Finally, on January 26, 2021 the Court *sua sponte* dismissed the small claims case and according to the docket issued an Order of Dismissal for an alleged and demonstrably incorrect "Lack of Prosecution."[2] (See references to the Court's January 26th action on the Court's digital docket, Plaintiff's Exhibit no. 7.) No such Order was served on Plaintiff. It was also completely contradicted by the record, since Plaintiff followed all of the Rules of the Small Claims Court,

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For some unknown reason, JP Cornejo made up her mind on this key issue, without benefit of evidence or argument or any input whatsoever from Plaintiff or even Defendant. Were JP Cornejo permitted to continue to hear this case, Plaintiff will clearly be prejudiced and deprived of a fair and impartial trial. He will be injured from the JP's judgment in disregard of his legal rights, especially in that she obviously holds a preconceived opinion adverse to Plaintiff's position without just grounds and/or formed before the JP even gained any knowledge of the issues from the parties to the case. JP Cornejo's is also demonstrably biased against Plaintiff's position in that her outlook reveals an unreasoned pre-judgment, as well as prejudice.

[2] While the JP's orders in the small claims case do not characterize the *sua sponte* dismissal as one based on a failure to state a claim, in essence that is precisely the effect of the JP's orders. She decided that the deposit was not refundable and Plaintiff was not entitled to the relief he sought, i.e. return of the deposit. In essence, this is a finding, however erroneous, that Plaintiff failed to state a claim, even though the JP did not use that language and did not at that point dismiss the case. She then went on to dismiss the case on a demonstrably inaccurate and incorrect basis, i.e. "lack of prosecution". The combined effect of the JP's actions was to dismiss the case for failure to state a claim. *Acker v. CSO Cheveira*, 188 Ariz 252, 934 P.2d 816 (App 1997) is the principal case on the question of *sua sponte* dismissals for failure to state a claim. The *Acker* Court noted that no Arizona statute authorizes the issuance of a *sua sponte* dismissal for failure to state a claim. *Acker*, at 253. The Court also pointed out that Arizona law clearly discourages *sua sponte* dismissals. *Id.*, at *255*. But *Acker* does not prohibit *sua sponte* dismissals, altogether. Instead, it mandates that before taking such drastic action the court must first provide the Plaintiff with the proper procedural protections. *Acker*, at 256, citing *Franklin v. Oregon State Welfare Division*, 662 F.2d 1337, 1340–41 (9th Cir.1981), *Wong v. Bell*, 642 F.2d 359, 361–62 (9th Cir.1981), and *Jackson v. Arizona*, 885 F.2d 639, 640 (9th Cir.1989). These procedural protections include: 1) notifying Plaintiff of the proposed action; 2) affording Plaintiff an opportunity to submit written argument in opposition to such action; 3) providing a statement of the reasons for the dismissal; and 4) offering Plaintiff the opportunity to amend the complaint, unless the complaint is clearly deficient, which is not the case herein. *Acker*, at 256. Plaintiff did not receive the benefit of any of these procedural protections before the JP issued her *sua sponte* dismissal.

jumping through every procedural hoop in order to obtain a default judgment, while Defendant simply ignored the matter entirely. The record clearly entitled Plaintiff to a default judgment, or at least prior notice and opportunity to be heard on the issue. Instead, it earned him a *sua sponte* dismissal. Unfortunately, the JP took such action without the benefit of any input from Plaintiff (or even Defendant). All of the JP's orders were issued without providing Plaintiff with any prior notice or any opportunity to be heard, and without even serving Plaintiff with the Court's orders once they were issued. In so doing, the JP clearly acted improperly and extrajudicially, i.e. her actions were not a valid part of regular legal proceedings, she acted without legitimate without legal authority, and she acted in direct contravention of due process of law.

LAW AND ARGUMENT

A. There is No Rule of Civil Procedure Governing a Change of Judge for Cause Before the Justice Courts of the State of Arizona.

Rule 42.2 of the Arizona Rules of Civil Procedure for Superior Courts ("Superior Court Rules") generally covers the changing of a judge for cause in the Superior Courts of Arizona. (Ariz. R. Civ. P. 42.2.) However, the Superior Court Rules have been replaced by the Justice Rules of Civil Procedure ("Justice Court Rules") for all cases pending before Arizona's Justice Courts. (Just. Ct. R. Civ. proc. 101d.) The Justice Court Rules apply to all civil lawsuits in the Justice Courts in Arizona. (Just. Ct. R. Civ. proc. 101b.) Thus, to the extent there is a civil procedure rule governing the changing of a judge for cause in Arizona's Justice Courts it must be contained in the Justice Court Rules.

Justice Court Rule 133c is titled "change of precinct ('change of venue')". Justice Court Rule 133d is titled "change of judge". Most of Rule 133d deals with change of judge as a matter

of right.[3] Yet, the last sentence of Rule 133d states that "(i)f a party believes that the party will not have a fair and impartial trial before a Justice of the Peace, then the party must proceed as provided in Arizona Revised Statutes § 22-204(A)." This sentence suggests that this rule also governs the change of a judge for cause. However, A.R.S. § 22-204 covers a change of venue, not a change of judge for cause.[4]

On the other hand, A.R.S. § 12-409 is the statutory provision governing the situation present in this case where one party believes he will not be able to have a fair and impartial trial before a particular JP. If the last sentence of Rule 133d is meant to cover a change of judge for cause, the statutory reference included therein is incorrect. More importantly, Rule 133d clearly does not even mention, let alone incorporate Rule 42.2 of the Superior Court Rules. No other Justice Court Rule addresses a change of Judge for cause. So, either Rule 133d addresses a change of Judge for cause, along with A.R.S. § 12-409, or no Justice Court Rule governs such a situation and A.R.S. § 12-409 is the sole provision which governs. If Rule 133d also covers a change of judge for cause, it puts no procedural impediments on the removal process created by A.R.S. § 12-409.

Like this case, in *Anonymous, v. Superior Court for the County of Pima*, 14 Ariz.App. 502, 484 P 2d. 655 (Ct. App. Div 2, 1971) there were no rules which dealt with a change of judge for cause contained in the procedural rules governing the particular trial court, which in that case was the Juvenile Court. The *Anonymous* Court addressed that issue head on, finding:

... the fact that the affidavit *(of bias and prejudice)*[5] is not provided for in the

[3] Plaintiff sought a change of the JP as a matter of right, but it was denied due to an order issued by the Supreme Court of Arizona, suspending such procedures due to the COVID pandemic, an order with which Plaintiff was unfamiliar until his request for a change of JP as a matter of right was denied.

[4] A.R.S. § 22-205 is the statutory provision spelling out the procedure to be employed when a JP is disqualified.

[5] The italicized phrase is not in the original, although it is clear from context that the Court was talking about just such an affidavit.

> Juvenile Rules of Procedure promulgated by the Supreme Court does not by inference indicate that there is no such affidavit available. One can equally infer that the reason it was not included in the rules is because it was clear that under A.R.S. § 12-409 the affidavit was available. *Id.*, at 505.

A similar analysis and result should be applied herein. A.R.S. § 12-409 should govern the removal process related to Plaintiff's Affidavit of Bias and Prejudice.

B. The Right to a Judge Who is Impartial and Free of Bias or Prejudice Is Foundational to Our System of Justice of Justice.

The "right to a fair trial is the 'foundation stone upon which our present judicial system rests,'" and "there is an indispensable right to trial presided over by a judge who is 'impartial and free of bias or prejudice.'" *Brown v. State*, 124 Ariz. 97, 99 (Ariz. 1979) 602 P.2d 478, 480, citing *State v. Neil*, 102 Ariz. 110, 112, 425 P.2d 842, 844 (1967), see also *State v. Emanuel*, 159 Ariz. 464, 467 (Ariz. App. Div. 1 1989) 768 P.2d 196, 199. It is the intent of Arizona's "rules and statutes in the administration of justice that cases be tried by judges who are not biased or prejudiced." *Brown, supra* at 99, citing *State v. Puckett*, 92 Ariz. 407, 377 P.2d 779 (1963).

While the cited cases are criminal cases, the same rule applies to civil cases. *State v. Emanuel, supra*, 159 Ariz. at 468, 768 P.2d at 200. The right to a trial before an unbiased and unprincipled court is a substantive right, which was codified by the Arizona Legislature when it enacted A.R.S. § 12-409. *Hordyk v. Farley*, 94 Ariz. 189, fn 2 (Sup Ct 1963) 382 P.2d 668; citing *Marsin v. Udall*, 78 Arizona 309, (Sup Ct 1955) 279 P.2d 721. These principles apply to civil cases as well as criminal cases. *State v. Emanuel, supra*, 159 Ariz. at 200, 768 P.2d at 468.

C. The Affidavit of Bias and Prejudice in this Case is Being Timely Filed.

Unlike Ariz. R. Civ. P. 42.2(d), [6] A.R.S. § 12-409 does not specify a time by which the affidavit of bias and prejudice must be filed. Speaking of A.R.S. § 12-409 the Division 2 Court of Appeals found: "[t]he language of the foregoing statute is clearly imperative and imposes no time limitation." *Itasca State Bank v. the Superior Court of Arizona,* 8 Ariz.App. 279, 281, 445 P.2d 555,557 (Div 2 1968), See also *Hordyk v. Farley*, 94 Ariz. 189, 192, 382 P. 2d 668, 671 (Sup Ct, *In Banc* 1963), citing *Stephens v. Stephens,* 17 Ariz. 306, 312, 152 P. 164, 166 (1915), see also *Higuera v. Lee,* 241 Ariz. 76, 79, 383 P.3d 1150, 1153 (2016). Justice Court Rule 133 does not contain any time limitation. Nor does any other Justice Court Rule contain any time limit for filing an Affidavit of Bias and Prejudice.

The courts have determined that under A.R.S. § 12-409 such an affidavit is timely, if when the affidavit is filed the judge has not yet received evidence in the case which will be weighed and used in deciding the ultimate issues. *Truck Equipment Company of Arizona v Vanlandingham,* 103 Ariz. 402, 442 P.2d 849 (Sup Ct *En Banc* 1968); citing *Marsin v. Udall,* 78 Ariz. 309, 279 P.2d 721(Sup Ct 1955). This case is still in its preliminary stages. The JP has yet to receive any such evidence. In the small claims case, the JP's decision was issued when she decided a default judgement motion. A "default judgment hearing could not, by any stretch of the imagination", be such an evidentiary proceeding where evidence is used and weighed. *Itasca, supra,* at 279, referencing the *Marsin* rule; see also *Higuera v. Lee*, supra at 81. This affidavit is being filed before the JP has received any evidence in the case which might be weighed and used in deciding the ultimate issues. As such, the affidavit is being timely filed.

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[6] Ariz. R. Civ. P. 42.2(d) requires a party to file an affidavit seeking a change of judge for cause within 20 days after discovering that grounds exist for a change of judge. But, of course, this provision and its time period are not applicable to this case as is noted, *supra*.

D. Under A.R.S. § 12-409, Filing the Affidavit Automatically Triggers the Transfer of the Case to Another JP.

The language in A.R.S. § 12-409 A. is clear "(i)f either party to a civil action in a superior court files an affidavit alleging any of the grounds specified in subsection B, *the judge shall at once transfer the action to another division of the court if there is more than one division*, or shall request a judge of the superior court of another county to preside at the trial of the action." (emphasis added.) The mere filing of the affidavit operates *ipso facto* to bar the trial judge from proceeding in the matter. Even if the judge might feel the affidavit is being filed to harass the court, the assigned judge can perform no other function but to transfer the case to another judge. *Itasca, supra* at 279, citing *Murray v. Thomas*, 80 Ariz 378, 298 P.2d 795, (1956), and *Itule* v. *Farley*, 94 Ariz 242, 383 P.2d 127 (1963).

In fact, the trial judge "has no discretion whatsoever provided the affidavit is filed in time." *Hordyk v. Farley, supra,* at 192, citing *Stephens v. Stephens*, 17 Ariz. 306, 310 152 P. 164, 165 (1915) From the moment of filing the judge can perform no other function but to order trial before another judge. *Gant v. Helm*, 25 Ariz. App. 583, 584, 545 P.2d 431, 432 (Ct App, Div 2, 1976) citing, *Truck Equipment Co. v. Vanlandingham*, 103 Ariz. 402, 442 P2d. 849 (1968). The judge cannot require proof of the contents of the affidavit since it is the affidavit which disqualifies him and not its contents. *Truck Equipment Co. v. Vanlandingham*, 103 Ariz. 402, 403, 442 P2d. 849 850 (1968), citing *Conkling v. Crosby* , 29 Ariz. 60, 239 P. 506 (1925). Under A.R.S. § 12-409 the trial judge has no right to pass upon the truth or falsity of the facts alleged in the affidavit or adjudicate the question of his disqualification, if the affidavit has been timely filed and is legally sufficient. *Liston v. Butler*, 4 Ariz. App. 460, 463, 421 P.2d 542, 545 (1967) The instant affidavit is being timely filed and is legally sufficient. Thus, removal of JP Cornejo is mandated.

E. Superior Court Rule 42.2 Does Not Apply to This Case Pending in the Justice Court.

The creation of Rule 42.2 of the Arizona Rules of Civil Procedure for Superior Courts and its predecessors served to modify A.R.S. § 12-409 for proceedings in Superior Courts. In *Mervyn's v. Superior Court*, 179 Ariz 359, 361 (Div 1 1994) 879 P.2d 367, 369 the Court explained how Rule 42(f)(2)(D) of the Rules, which is now renumbered as part of Rule 42.2, modified A.R.S. § 12-409. Citing the State Bar Committee Notes the Court explained that "it is no longer appropriate for the affidavit itself to accomplish disqualification. When a change of judge as a matter of right is no longer available to a litigant, actual disqualification must be asserted and proved." *Mervyn's, supra* 179 Ariz at 361, 879 P.2d at 369.

However, as noted at the outset of this discussion, Rule 101 of the Justice Courts Rules makes it clear that the Rules of Civil Procedure for Superior Courts no longer govern proceedings in this Court. (Just. Ct. R. Civ. proc. 101d.) All civil proceedings in this Court are now governed by the Justice Court Rules. The Justice Court Rules contain no Rule similar to Superior Court Rule 42.2 modifying A.R.S. § 12-409. Thus, the case law interpreting A.R.S. § 12-409, before it was modified by the Superior Court Rules, should govern all changes of judges for cause in this Court, including the instant one. The filing of this Affidavit of Bias and Prejudice, in and of itself, automatically mandates that JP Erica Cornejo transfer this case to another JP.

F. Plaintiff Has Cause to Believe and Does Believe that he Cannot Obtain a Fair and Impartial Trial an Account of the Bias and/or Prejudice of JP Cornejo.

Given the intervention of the Justice Court Rules it is clear to Plaintiff that A.R.S. § 12-409 is not modified by Superior Court Rule 42.2 in cases pending in the Justice Courts. As such, Plaintiff's filing an Affidavit of Bias and Prejudice automatically triggers the transfer of this case to a different JP. *Itasca*, supra at 281, *Truck Equipment Co., supra* at 403. However, in the exercise

of caution and in the event the Court were to disagree, Plaintiff will discuss the demonstrated bias and prejudice in this case which justifies a change of the JP, even if automatic disqualification under A.R.S. § 12-409 is not deemed to be warranted. That discussion will make it clear that there is far more than a preponderance of evidence establishing the requisite bias and prejudice, thus justifying removal.

1. The Meaning of Bias and Prejudice

In applying a statute, Arizona's courts have long held that the words of the statute are to be given their ordinary meaning, unless the legislature has offered its own definition of the words or it appears from context that a special meaning was intended. *Mid Kansas Federal Sav. And Loan Ass'n of Wichita v Dynamic Development Corp.*, 167 Ariz. 122, 128, 804 P.2d 1310, 1316 (Sup Ct *In Banc* 1991), citing *State Tax Comm'n v. Peck*, 106 Ariz. 394, 395, 476 P.2d 849, 850 (1970), see also *Davis v. Zlatos*, 211 Ariz. 519, 525, 123 P.3d 1156, 1162 (Ct App Div 1 2005)
To determine the ordinary meaning of a word courts may refer to established and widely used dictionaries. *Special Fund Div. v. Industrial Com'n of Arizona*, 232 Ariz. 110, 113, 302 P.3d 635, 638 (App.2013), *State v. Wise*, 137 Ariz. 468, 470 n. 3, 671 P.2d 909, 911 n. 3 (1983).

A.R.S. § 12-409 does not define "bias" or "prejudice". Nor does it appear from context that a special meaning was intended for either word. According to the widely used Merriam-Webster on line dictionary "prejudice" means an "injury or damage resulting from some judgment or action of another in disregard of one's rights, especially - detriment to one's legal rights or claims; preconceived judgment or opinion; or an adverse opinion or leaning formed without just grounds or before sufficient knowledge..." (See https://www.merriam-webster.com/dictionary/prejudice) "Bias" means "an inclination of temperament or outlook

especially - a personal and sometimes unreasoned judgment or prejudice; an instance of such prejudice..." (See https://www.merriam-webster.com/dictionary/bias)

Plaintiff was injured by the JP's action in disregard of his legal rights. The JP has shown that she has a preconceived, albeit faulty, opinion of the key issue in the case, whether the deposit is refundable. The JP formed her opinion without just grounds and before gaining sufficient knowledge on the subject. If the JP is allowed to continue on this case Plaintiff's injuries will also continue. The JP's actions fit squarely into all the above ordinary definitions of prejudice. Likewise, as to bias, by her actions the JP has shown an inclination or outlook, especially an unreasoned judgment or prejudice. The JP's actions also fit squarely within the ordinary definition of bias.

2. The Supposed Extrajudicial Source Doctrine Is No Bar to Removal.

Generally, the bias and prejudice needed to disqualify a judge should derive from an extrajudicial source and not from what the judge has done in her participation in the case. *In Re Aubuchon*, 233 Ariz. 62, 66, 309 P.3d 886, 890 (Sup Ct 2013), relying on *Liteky v. United States*, 510 U.S. 540, 114 S.Ct. 1147, (1994). The term "extrajudicial" means 1) not forming a valid part of regular legal proceedings, 2) delivered without legal authority, or 3) done in contravention of due process of law. (See https://www.merriam-webster.com/dictionary/extrajudicial) Unfortunately, JP Cornejo's actions fit well within all three of these categories. Her challenged conduct was extrajudicial in nature, although it occurred while she was acting as a JP in the small claims case.

Liteky is the oft-cited case for the supposed extrajudicial source doctrine. *Aubuchon* relied on *Liteky* for the proposition that "a judge is not biased or prejudiced if the judge forms opinions as a result of knowledge obtained in earlier proceedings." *In Re Aubuchon*, *supra*, at 66. *Liteky*

actually offers a far more nuanced view of what it referred to as the "supposed" extrajudicial source doctrine."[7] *Liteky, supra* at 545. The challenged conduct by JP Cornejo did not emanate from the knowledge she obtained in the earlier proceedings, but from a lack of such knowledge, because of her failure to allow for evidence to be presented or even for Plaintiff to be heard at all.

Liteky actually questioned whether the extrajudicial source doctrine is a doctrine at all, pointing out that "[e]ven in cases in which the "source" of the bias or prejudice was clearly the proceedings themselves .... the supposed doctrine would not necessarily be applied." *Liteky, supra* at 545. This is a case where this "supposed" doctrine should not be applied. The *Liteky* Court found it "obvious" that the affidavit "must be based upon facts antedating the trial, not those occurring during the trial..." *Liteky, supra* at 548 (citations omitted). This too is clearly the case, herein.

Liteky also noted that key to understanding the extrajudicial source doctrine and what it called its "flexible scope" was "the pejorative connotation of the words 'bias or prejudice.'" ... "The words connote a favorable or unfavorable disposition or opinion that is somehow *wrongful* or *inappropriate,* either because it is undeserved, or because it rests upon knowledge that the subject ought not to possess ...or because it is excessive in degree ... The "extrajudicial source" doctrine is one application of this pejorativeness requirement to the terms "bias" and "prejudice" ...with specific reference to the work of judges. *Liteky*, at 550.

The *Liteky* Court cautioned, it "is wrong to suggest ... that 'extrajudicial source' is the *only* basis for establishing disqualifying bias or prejudice. It is the only *common* basis, but not the exclusive one, since it is not the *exclusive* reason a predisposition can be wrongful or inappropriate. A favorable or unfavorable predisposition can also deserve to be characterized as "bias" or "prejudice" because, even though it springs from the facts adduced or the events occurring at trial,

[7] The *Liteky* Court later noted that "there is not much doctrine to the doctrine." *Liteky, supra* 554.

if is so extreme as to display clear inability to render fair judgment. *Liteky*, at 551. (citations omitted).

In this case the JP's unfavorable predisposition toward Plaintiff's position was wrongful, and inappropriate, and amounts to the sort of bias and prejudice necessitating removal, whether or not it springs from "facts" adduced in the default judgment proceedings in the small claims case (or the lack of such facts). Plaintiff is entitled to a fair trial before an impartial jurist and that simply is not possible with the current JP who has already prejudged the merits of the case, despite there being no evidentiary process or any opportunity for Plaintiff to be heard before arriving at that prejudgment.

Aubuchon also relied on *Smith v. Smith*, 115 Ariz. 299, 303, 564 P2d 1266,1270 (Div 1 1977) for the proposition that "generally, 'the bias and prejudice necessary to disqualify a judge must arise from an extra-judicial source and not from what the judge has done in his participation in the case'". *Aubuchon, supra,* at 66. *Smith* rejected the affidavit of bias and prejudice that had been filed. The first reason offered for this rejection, and the only one relevant to this case, was the supposed extrajudicial source rule. *Smith,* 115 Ariz. at 303, 564 P2d at 1270 relied on *United States v. Grinnell Corp.*, 384 U.S. 563, 86 S.Ct. 1698 (1966). The *Liteky* Supreme Court was critical of *Grinnell*, finding it "provides little justification for its announcement of the extrajudicial source rule." *Liteky, supra* at 559. Since *Liteky*, *Smith's* and *Aubuchon*'s reliance on *Grinnel* is no longer viable. The extrajudicial source doctrine, whether it is a doctrine at all, is no bar to the current affidavit. There is clear bias and prejudice evident in this case, necessitating removal of JP Cornejo.

G. The Arizona Code of Judicial Conduct Mandates Disqualification of JP Cornejo.

The Arizona Code of Judicial Conduct requires a judge to comply with the law, including the Code of Judicial Conduct. (Ariz. Co. Jud. Cond. Rule 1.1) It is clear that JP Cornejo failed to comply with the law when she denied Plaintiff's request for a default judgment based upon her erroneous finding, resolving the key factual issue in the case, even though no evidence or arguments had been presented to her. She further failed to comply with the law when she dismissed the small claims complaint for an alleged lack of prosecution, although the record clearly shows that Plaintiff prosecuted the case to the fullest extent possible.

Actual improprieties include violations of law, court rules, or provisions of the Judicial Code. (Ariz. Co. Jud. Cond. Rule 1.2, comment 5) JP Cornejo violated all three of these directives. Not only are actual improprieties forbidden, but even the appearance of impropriety is prohibited. "A judge should avoid even the appearance of partiality." *State v. Brown*, 124 Ariz. 97,100, 602 P.2d 478,481(Sup Ct 1979); citing *Taylor v. Hayes*, 418 U.S. 488, 94 S.Ct. 2697. 41 L.Ed.2d 897 (1974). "[J]ustice must not only be done fairly but must be perceived as having been fairly done.... Anything else tends to undermine public confidence in the judicial system...." *State v. Emanuel*, *supra* at 468, citing *McElhanon v. Hing*, 151 Ariz. 403, 412 728 P.2d 273, 282 (1986).

The test for an appearance of impropriety is whether the conduct would create a perception in reasonable minds that the judge violated the code or engaged in other conduct that reflects adversely on the judge's honesty, impartiality, temperament, or fitness to serve as a judge. (Ariz. Co. Jud. Cond. Rule 1.2, comment 5.) If JP Cornejo were to continue to preside over this case, the key factual issue which she has already prejudged, without benefit of evidence or hearing from either litigant, will undoubtedly already have been decided. This would certainly deprive Plaintiff

of a trial before a fair and impartial jurist. The JP's conduct fits well within the type of conduct prohibited by the Judicial Code.

In addition, a Judge is also obligated to uphold and apply the law, and perform all duties of judicial office fairly and impartially. (Ariz. Co. Jud. Cond. Rule 2.2) To ensure such impartiality and fairness to all parties, a judge must be objective and open-minded. (Ariz. Co. Jud. Cond. Rule 2.2, comment 1) JP Cornejo has already revealed a failure to uphold and apply the law fairly and impartially. Given her track record on this issue, it is reasonable to surmise that she will not be objective and open-minded in this case, were she to continue to preside over it.

In addition, a judge is obligated to accord to every person who has a legal interest in a proceeding, the right to be heard according to law. (Ariz. Co. Jud. Cond. Rule 2.6) The right to be heard is an essential component of a fair and impartial system of justice. Substantive rights of litigants can be protected only if procedures protecting the right to be heard are observed. (Ariz. Co. Jud. Cond. Rule 2.6, comment 1) Obviously, notice and an opportunity to be heard are the also the essence of due process, guaranteed by both the U.S. and Arizona Constitutions. In the small claims case the JP failed to provide Plaintiff with notice or the right to be heard at all, in effect acting on behalf of the Defendant, although he did not even bother to appear himself.

It is clear from the above referenced discussion that at the very least, it is reasonable to question the current JP's impartiality in this proceeding. As such, she is obligated disqualify herself. (Ariz. Co. Jud. Cond. Rule 2.11) For all of the above reasons, if JP Cornejo will not voluntarily disqualify herself, the Presiding Judge should mandate her removal, in compliance with the Ariz. Co. Jud. Cond. and A.R.S. § 12-409, Plaintiff's foundational right to a fair and impartial trial, and the Constitutional guarantee of due process of law.

CONCLUSION

For the foregoing reasons and those contained in the Affidavit of Bias and Prejudice, Plaintiff respectfully urges that JP Cornejo disqualify herself from any further involvement in this case, or if she refuses to do so, that she be removed from presiding over this case any further and that she be replaced with another JP, forthwith.

Respectfully submitted,

Theodore E. Meckler, Plaintiff *pro se*

CERTIFICATE OF S E R V I C E

The undersigns certifies that a copy of this Affidavit of Bias and Prejudice, this Brief in Support of same, and the Exhibits referenced in said Brief, will be sent by regular U.S. Mail on this 5th day of May, 2021 to Randy Hauschild, President/CEO of Defendant, RHaus Enterprises Corp. at and that on that same day copies of the Affidavit, the Brief, and the Exhibits will also be served on the Honorable Judge Kyle Bryson, Presiding Judge of the Pima County Superior Court, by leaving them with a clerk or other person in charge of the Pima County Superior Court Clerk's office; and on Teresa D. Underwood, Pima County Consolidated Justice Court Administrator, by leaving them with a clerk or other person in charge of the Pima County Consolidated Justice Court Clerk's office; and on the Honorable Justice of the Peace Erica Cornejo, by filing them with a clerk or other person in charge of the Pima County Consolidated Justice Court Clerk's office.

Theodore E. Meckler, Plaintiff *pro se*

CONCLUSION

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/
Theodore E. Meckler, Plaintiff *pro se*

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Theodore E. Meckler, Plaintiff *pro se*

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Theodore E. Meckler, Plaintiff *pro se*

PIMA COUNTY CONSOLIDATED JUSTICE COURT

JUDGE Pro Tempore: Charles V. Harrington CASE NO. CV21-0022490

DATE: May 11, 2021

Theodore E. Meckler
Plaintiff,

vs.

Rhaus Enterprise Corp.
Plaintiff.

RULING

IN CHAMBERS RULING RE: PLAINTIFF'S AFFIDAVIT OF BIAS AND PREJUDICE:

On May 5, 2021 Plaintiff Theodore E. Meckler (hereinafter referred to as "Plaintiff"), *in propria persona*, filed "Plaintiff's Affidavit of Bias and Prejudice." The Affidavit of Bias and Prejudice "urges that JP Cornejo disqualify herself" or, alternatively, "that she be removed from presiding over this case...." As a practical matter, this is a motion for change of judge for cause and will be hereinafter referred to as "Motion." The Motion was filed in the above-captioned case with the Honorable Erica Cornejo and Judge Kyle Bryson, Presiding Judge of the Pima County Superior Court. Judge Cornejo, as is appropriate, forwarded the Motion to be ruled on by Presiding Judge Bryson. Judge Bryson has designated Judge Harrington to Rule on the Motion. The Court has read the Affidavit of Bias and Prejudice and Plaintiff's Brief in support of it and has considered all applicable law in reaching a decision.

On April 20, 2021 this Court issued its Ruling in this case denying Plaintiff's Notice of Change of Judge as a Matter of Right.

In Arizona, a party challenging a judge's impartiality must overcome a strong presumption that trial judges are "free of bias and prejudice." *State v. Medina*, 193 Ariz. 504, 510, 975 P.2d 94, 100 (1999) (quoting *State v. Rossi*, 154 Ariz. 245, 247, 741 P.2d 1223, 1225 (1987)). Overcoming this presumption means proving "a hostile feeling or spirit of ill-will, or undue antagonism or favoritism toward one of the litigants." *In re Guardianship of Styer*, 24 Ariz. App. 148, 151, 536 P.2d 717 (App. 1975). The moving party must prove by a preponderance of the evidence that there is sufficient cause to believe that the judge is biased. *See Medina*, 193 Ariz. at 510, 975 P.2d at 100. And finally, a judge's capacity for fairness and impartiality shall not be questioned for "mere speculation, suspicion, apprehension, or imagination." *Medina*, 193 Ariz. at 510, 975, 975 P.2d at 100.

EXHIBIT 22

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The grounds for a change of judge for cause are set forth in A.R.S. § 22-204(A) as referenced in Justice Court Rule of Procedure 133(d). Plaintiff in his Motion alleges bias and prejudice under both A.R.S. § 22-204(A)and A.R.S. § 12-409(B)(5). In Arizona, bias and prejudice can be found where a judge fails to maintain impartiality, but such impartiality must go well beyond a mere opinion about the merits of the case:

> Bias and prejudice means a hostile feeling or spirit of ill-will, or undue friendship or favoritism, towards one of the litigants. The fact that a judge may have an opinion as to the merits of the cause or a strong feeling about the type of litigation involved, does not make the judge biased or prejudiced.

In re Guardianship of Styer, 24 Ariz. App. 148, 151, 536 P.2d 717, 720 (App. 1975). Additionally, "[i]t is generally conceded that the bias and prejudice necessary to disqualify a judge must arise from an extra-judicial source and not from what the judge has done in his participation in the case." *Smith v. Smith*, 115 Ariz. 299, 303, 564 P.2d 1266, 1270 (App. 1977); *see also Liteky v. United States*, 510 U.S. 540, 555 (1994). Thus, in the case at hand this Court may only consider whether Judge Cornejo exhibited actual bias or prejudice towards the Plaintiff and cannot review the merits of any legal claims or decisions that arose in the context of the underlying litigation. *Simon v. Maricopa Medical Center*, 225 Ariz. 55, 63, 234 P.3d 623, 631 (App. 2010).

Plaintiff has not provided grounds which rise to the level of bias or impartiality such that there is cause for a change of judge. While the outcome and final order in a previous case involving Plaintiff here (CV20-022057-SC) was administratively dismissed and certain rulings therein were adverse to Mr. Meckler in that case, this in and of itself does not give rise to a finding of bias or prejudice. Indeed, Plaintiff makes no allegation of bias or prejudice arising from an extra-judicial source, but rather relies wholly on substantive actions connected with the litigation itself. *See Smith*, 115 Ariz. at 303, 564 P.2d at 1270. The merits of Plaintiff's procedural and other legal challenges may be properly reviewed on appeal, rather than in the present ruling.

Plaintiff argues that A.R.S. § 12-409 mandates a change of judge for cause by simply filing his Affidavit of Bias and Prejudice. First, this statute does not apply here. But even if it did, it would amount to a change of judge as a matter of right which is not available here as explained in this Court's April 20,2021 Ruling in this matter.

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The presiding judge or his designee "may decide the issues based on any affidavits and memoranda filed by the parties." Where a motion alleges no facts, "which, taken as true, would entitle the Plaintiff relief," no hearing is required. *State v. Eastlack*, 180 Ariz. 243, 255, 883 P.2d 999, 1011 (1994); *see also Mervyns v. Superior Court in and For County of Maricopa*, 179 Ariz. 359, 361, 879 P.2d 367, 369 (App. 1994). Therefore, Plaintiff is not entitled to a hearing on his Rule 133(d) Motion.

For the aforementioned reasons,

IT IS HEREBY ORDERED that Plaintiff's Affidavit of Bias and Prejudice [Motion for Change of Judge for Cause] of Judge Cornejo is **DENIED**. This case shall be returned to Judge Cornejo for all further proceedings.

HON. CHARLES V. HARRINGTON

cc: Plaintiff
Defendant
Hon. Erica Cornejo

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Pima County Justice Courts. Arizona
Pima County Consolidated Justice Court
240 N. Stone Ave., Tucson, AZ 85701 (520) 724-3171

Theodore E. Meckler,	)	**Case Number: CV21-002490-RC**
	)	
Plaintiff	)	
	)	**Judge Erica Cornejo**
	)	
vs.	)	
	)	**Plaintiff's Motion to Transfer**
RHaus Enterprise Corp.,	)	**Case Pursuant to A.R.S. § 12-409**
	)	
Defendant	)	

Notice to Defendant: You have a right to file a written response to this motion within ten (10) days from the date this motion was served. Your response must be filed with the court, and copies of your response must be served on the other parties as provided by Rule 120 of the Justice Court Rules of Civil Procedure. The court may treat your failure to respond to a motion as your consent that the motion be granted.

Now comes Plaintiff *pro se*, and moves this Honorable Court, pursuant to Rules 128 and 133d of the Justice Court Rules of Civil Procedure, to transfer this case to another division of this Court, or to another Justice of the Peace of this county, or to a Justice of the Peace of another county, and to do so at once, as mandated by A.R.S. § 12-409 A. The reasons for this motion are made more clear in the attached Memorandum, as well as the Affidavit of Bias and Prejudice, the

Theodore E. Meckler, Plaintiff *pro se*

EXHIBIT 23
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Brief in Support of same, and the exhibits attached to said Brief, all of which were recently filed by Plaintiff, and are incorporated by reference, herein.

Respectfully submitted,

_____

Theodore E. Meckler, Plaintiff *pro se*

MEMORANDUM

The language in A.R.S. § 12-409 A. is clear "(i)f either party to a civil action in a superior court files an affidavit alleging any of the grounds specified in subsection B, *the judge shall at once transfer the action to another division of the court if there is more than one division, or shall request a judge of the superior court of another county to preside at the trial of the action."* (emphasis added.) The mere filing of the affidavit operates *ipso facto* to bar the trial judge from proceeding further in the matter. Even if the judge might feel the affidavit is being filed to harass the court, the assigned judge can perform no other function but to transfer the case to another judge. *Itasca State Bank v. the Superior Court of Arizona,* 8 Ariz.App. 279, 279, 445 P.2d 555,555 (Div 2 1968), at 279, citing *Murray v. Thomas*, 80 Ariz 378, 298 P.2d 795, (1956), and *Itule* v. *Farley*, 94 Ariz 242, 383 P.2d 127 (1963).

Therefore, in light of the statutory language and the above cited case law, Plaintiff respectfully urges this Honorable Court to transfer this case to another division of this Court, or to another Justice of the Peace of this county, or to a Justice of the Peace of another county, and to do so at once. Further support for Plaintiff's position is found in the Affidavit of Bias and

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Prejudice, the Brief in Support of same, and the exhibits attached to said Brief, all of which were recently filed by Plaintiff, and which are incorporated by reference herein.

SERVICE

On this ___ day of May, 2021, in compliance with Rule 120 b. (4) of the Justice Court Rules of Civil Procedure, a copy of this Notice was sent by regular U.S. Mail to Randy Hauschild, President/CEO of Defendant, RHaus Enterprises Corp. at

_____

Theodore E. Meckler, Plaintiff *pro se*

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Pima County Justice Courts. Arizona
Pima County Consolidated Justice Court
240 N. Stone Ave., Tucson, AZ 85701 (520) 724-3171

Theodore E. Meckler,	)	**Case Number: CV21-002490-RC**
	)	
Plaintiff	)	
	)	**Judge Erica Cornejo**
	)	
vs.	)	
	)	**Motion to Reconsider and/or**
RHaus Enterprise Corp.,	)	**For the Justice of the Peace**
	)	**to Disqualify Herself in**
Defendant	)	**Compliance with Code**
		of Judicial Conduct

Now comes *Pro Se* Plaintiff, Theodore E. Meckler ("Plaintiff"), and moves this Honorable Court, i.e. the Presiding Judge or his designate, to Reconsider its prior ruling, denying what Judge *Pro Tempore* Charles V. Harrington characterized as Plaintiff's Motion for a Change of Judge for Cause. In the alternative, Plaintiff moves the Honorable Justice of the Peace Erica Cornejo, to disqualify herself from hearing this case any further, in compliance with her obligations under the Arizona Code of Judicial Conduct. (Ariz. Co. Jud. Cond. Rule 2.11.) The reasons for this Motion are made clear in the attached Memorandum, as well as Plaintiff's Brief in Support of the Affidavit of Bias and Prejudice, and Plaintiff's Affidavit of Bias of Prejudice, all of which are incorporated by reference herein.

Respectfully submitted,

Theodore E. Meckler
Plaintiff *pro se*

EXHIBIT 24
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MEMORANDUM IN SUPPORT

A. The Supposed Extrajudicial Source Doctrine Does Not Bar Plaintiff's Claim of Bias or Prejudice.

With all due respect Judge *Pro Tempore* Harrington's reliance on the supposed extra-judicial source doctrine amounted to prejudicial error for several reasons. First, Judge *Pro Tempore* Harrington incorrectly found that "Plaintiff makes no allegation of bias or prejudice arising from an extra-judicial source, but relies on substantive actions connected with the litigation itself." (See page 2 of the slip opinion.) In fact, Plaintiff asserted several times that JP Cornejo bias and prejudice was extrajudicial. (See e.g. p. 8 of Plaintiff's Brief in Support of the Affidavit of Bias and Prejudice, hereinafter "Plaintiff's Brief".) Plaintiff also pointed out that the term "*extrajudicial*" means 1) not forming a valid part of regular legal proceedings, 2) delivered without legal authority, or 3) done in contravention of due process of law. (See https://www.merriam-webster.com/dictionary/extrajudicial.) Plaintiff noted that JP Cornejo's actions fit well within all three of these categories. (See p. 15 of "Plaintiff's Brief".)

The JP made a decision on the merits of Plaintiff's small claims case, when the only matter before her was Plaintiff's Request for a Default Judgment. No arguments had been presented on the merits of the case. No evidence had been presented on the merits. Defendant had not even made an appearance. The JP's actions were not a valid part of any regular legal proceedings. She delivered her decision without legal authority. Plaintiff received no notice of any hearing or any opportunity to be heard, before the JP rendered a decision that would be fatal to the merits of Plaintiff's claim. The JP did so, while the Defendant did not even bother to file an answer or otherwise appear in the case. So she surely did so in contravention of Plaintiff's right to due process of law.

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The JP then went on to dismiss the small claims case for a lack of prosecution.[1] Nothing in the case was before her at that time. The record in the case, had it been consulted, clearly and overwhelmingly demonstrated that Plaintiff fully and thoroughly prosecuted the small claims case, despite Defendant's utter disregard of the Court's process. No arguments were presented. No evidence was presented. No appearance was made by Defendant. Plaintiff received no notice of any hearing or any opportunity to be heard, before the JP rendered the decision dismissing his case. The JP's dismissal of the small claims case was not a valid part of any regular legal proceedings. It was delivered without legal authority. And it was surely done in contravention of Plaintiff's right to due process of law. As such, it was extrajudicial in nature.

Second, with all due respect to Judge *Pro Tempore* Harrington, the bias and prejudice need not necessarily arise from an extrajudicial source in order for it to be the basis for a finding of bias or prejudice. As the U.S. Supreme Court stated in *Liteky v. United States*, 510 U.S. 540, 114 S.Ct. 1147, (1994), it "is wrong to suggest ... that 'extrajudicial source' is the *only* basis for establishing disqualifying bias or prejudice. It is the only *common* basis, but not the exclusive one, since it is not the *exclusive* reason a predisposition can be wrongful or inappropriate. A favorable or unfavorable predisposition can also deserve to be characterized as "bias" or "prejudice" because, even though it springs from the facts adduced or the events occurring at trial, if it is so extreme as to display clear inability to render fair judgment. *Liteky*, at 551. (citations omitted.) When a judicial factfinder renders two decisions like JP Cornejo did in the small claims case, finding against Plaintiff on an uncontested factual matter, thereby deciding the merits of the case *sua*

[1] Nor did the JP's decisions spring from facts adduced in proceedings before her in the small claims case as would ordinarily be the case where the supposed extrajudicial source doctrine is relied upon to find a lack of actionable bias or prejudice. There was absolutely no opportunity in the small claims case for Plaintiff to present any facts before the JP acted *sua sponte*. And surely Defendant, who never even filed in answer, did not officially present any facts in the small claims case.

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sponte, and soon thereafter dismissed the case, without ever noticing Plaintiff or offering him an opportunity to be heard, her unfavorable predisposition was so extreme as to display a clear inability to render a fair judgment in this case.

The JP's unfavorable predisposition toward Plaintiff's position was wrongful, and inappropriate, and amounts to the sort of bias and prejudice necessitating removal, whether or not it sprang from "facts adduced" in the default judgment proceedings in the small claims case. Plaintiff is entitled to a fair trial before an impartial jurist in this case. That simply is not possible with the current JP, who has clearly already made up her mind as to the merits of this case, despite the fact that no evidence was introduced, nor was Plaintiff afforded any opportunity to be heard before the JP prejudged the merits of the case.

Third, it is true that generally "judicial rulings alone may not support a finding of bias or partiality without a showing of an extrajudicial source of bias *or a deep seated favoritism.*" *Stagecoach Trails MHC, L.L.C. v. City of Benson*, 232 Ariz. 562, 568; 307 P. 3D 989, 995 (App Div 2, 2013) (emphasis added); citing *State v. Schackart,* 190 Ariz. 238, 257, 947 P.2d 315, 334 (1997); *Simon v. Maricopa Med. Ctr.*, 225 Ariz. 55, 59; 234 P.3d 623, 631 (App.2010); *Smith v. Smith,* 115 Ariz. 299, 303, 564 P.2d 1266, 1270 (App.1977). The deep seated favoritism part of the equation fits into an exception to the supposed extrajudicial source doctrine, known as the *pervasive bias exception*. "Opinions formed by the judge on the basis of facts introduced or events occurring in the course of the current proceedings, or of prior proceedings, do not constitute a basis for a bias or partiality motion *unless they display a deep-seated favoritism or antagonism that would make fair judgment impossible.*" *Liteky,* 510 U.S. at 555 (emphasis added). According to Moore's Federal Practice:

> This the pervasive bias exception to the extrajudicial source factor arises when a judge's favorable or unfavorable disposition toward a party, although stemming

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> solely from the facts adduced or the events occurring at trial, nonetheless becomes so extreme as to indicate the judge's clear inability to render fair judgment... 12 Moore's Fed. Prac. Civ. § 63.21[5] (Matthew Bender, 3d ed.2007)

The Arizona Supreme Court characterized bias and prejudice as "a hostile feeling or spirit of ill-will, or undue friendship *or favoritism*, towards one of the litigants." *State v. Myers,* 117 Ariz. 79, 86; 570 P.2d 1252, 1259 (Sup Ct 1977) (emphasis added). Twenty years later the Supreme Court noted that "opinions formed by the judge on the basis of facts introduced or events occurring in the course of the current proceedings, or of prior proceedings, do not constitute a basis for a bias or partiality motion *unless they display a deep-seated favoritism or antagonism that would make fair judgment impossible.*" *State v. Henry,* 189 Ariz. 542, 546; 944 P.2d 57, 61 (Sup Ct 1997) *En Banc* (emphasis added); citing *Liteky, supra* at 555-556 and *State v. Perkins,* 141 Ariz. 278, 286, 686 P.2d 1248, 1256 (1984), overruled on other grounds by *State v. Noble,* 152 Ariz. 284, 731 P.2d 1228 (1987) These decisions reveal that the Arizona Supreme Court also recognizes this exception to the supposed extrajudicial source doctrine.

Judge *Pro Tempore* Harrington's slip opinion completely ignores this pervasive bias exception and the favoritism part of the bias and prejudice equation. The Cambridge English Dictionary defines favoritism as "unfair support shown to one person or group, especially by someone in authority."[2] The JP's actions in the small claims case reveal unfair support towards Defendant, by the JP, who certainly fits the description of "someone in authority". Plaintiff made more than a sufficient showing of a "deep seated favoritism" toward Defendant to justify the JP's removal. At the very least that showing was sufficient to have entitled Plaintiff to a hearing on Plaintiff's Affidavit of Bias and Prejudice.

[2] See https://dictionary.cambridge.org/us/dictionary/english/favortism.

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Finally, the supposed extrajudicial source doctrine relates to *the source of the bias or prejudice*. While the two rulings the JP made in the small claims case evidence bias, prejudice, and/or favoritism on her part, they are not the source of that bias, prejudice, and/or favoritism. Instead, they are a simply a manifestation of that bias, prejudice, and/or favoritism. That bias, prejudice, and/or favoritism spring from some source, admittedly unknown to Plaintiff at this juncture. Having never actually been before the JP in person, by phone, or by zoom, Plaintiff has not had any opportunity to inquire of the JP as to the source of her bias, prejudice, and/or favoritism. Nor for Plaintiff's current purposes is he obligated to do so. He is only obligated to show the existence of such bias, prejudice, and/or favoritism or the appearance of same. This, he has clearly shown. It was prejudicial error for Judge *Pro Tempore* Harrington to deny Plaintiff's Motion on the basis of the supposed extrajudicial source doctrine.

B. A.R.S. §12-409 is Applicable to This Case.

Judge *Pro Tempore* Harrington, also determined that A.R.S. §12-409 is not applicable to this case.[3] With all due respect, Judge *Pro Tempore* Harrington erred in reaching this conclusion. Rule 42.2 of the Arizona Rules of Civil Procedure for Superior Courts ("Superior Court Rules") generally covers the procedure for changing a judge for cause in the Superior Courts of Arizona in conjunction with A.R.S. §12-409. However, the Superior Court Rules have been replaced by the Justice Rules of Civil Procedure ("Justice Court Rules") for all cases, like this one, that are pending before Arizona's Justice Courts. (Just. Ct. R. Civ. Proc., Rule 101d.) The Justice Court Rules apply to all civil lawsuits in the Justice Courts in Arizona. (Just. Ct. R. Civ. proc., Rule

[3] The Judge *Pro Tempore's* did not specify what statutory provision, procedural rule, or case law governed Plaintiff's right to change a judge for cause.

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101b.) Thus, to the extent there is a procedural rule governing the changing of a judge for cause in Arizona's Justice Courts, it must be contained in the Justice Court Rules.

Justice Court Rule 133c is titled "change of precinct ('change of venue')". Justice Court Rule 133d is titled "change of judge". Most of Rule 133d deals with changing a judge as a matter of right. It is currently suspended by the Supreme Court due to the Covid pandemic. Yet, the last sentence of Rule 133d states: "(i)f a party believes that the party will not have a fair and impartial trial before a Justice of the Peace, then the party must proceed as provided in Arizona Revised Statutes § 22-204(A)." This sentence suggests that A.R.S. § 22-204(A) also governs the changing of a judge for cause in the Justice Courts. However, A.R.S. § 22-204(A) offers no basis for changing a JP for cause. Instead, it covers a change of venue, not a change of judge for cause.[4] All portions of A.R.S. § 22-204, except part D, address only a change of venue. Part D, which is not referenced by Rule 133d, does allow for a change of a JP, but only if both parties and the JP consent to the change in writing. A.R.S. § 22-204 has been the law of Arizona in its current form since December 31, 2013. An earlier version of A.R.S. § 22-204 did address a change of judge for cause. However, that former statutory provision is not applicable to this case which was filed in 2021. The courts presume that by amending a statute, the legislature intends to change the existing law.

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[4] A.R.S. § 22-204 is titled "Change of venue; grounds." It provides as follows:
A. If either party in an action pending in a justice court, after the answer has been filed, files an affidavit in the action alleging any of the grounds specified in subsection B of this section and gives five days' notice to the opposite party, the venue may be changed as provided by law.
B. Grounds that may be alleged for change of venue are:
1. There exists in the precinct where the action is pending so great a prejudice against the party requesting a change of venue that the party cannot obtain a fair and impartial trial.
2. The convenience of witnesses and the ends of justice would be promoted by the change.
3. The court determines that there is other good and sufficient cause.
C. The court shall determine the truth and sufficiency of the grounds, but a decision refusing the change of venue is appealable as part of an appeal from a final judgment.
D. A justice of the peace may transfer the action for trial to another justice court precinct on written consent of the parties and the justice of the peace receiving the action.

McCleod v. Chilton, 132 Ariz. 9, 16, 643 P.2d 712, 719 (App.1981). Thus, the pre December, 2013 version of A.R.S. § 22-204 is not applicable to this case.

In the state of Arizona, the "right to a fair trial is the 'foundation stone upon which our present judicial system rests,'" and "there is an indispensable right to trial presided over by a judge who is 'impartial and free of bias or prejudice.'" *Brown v. State*, 124 Ariz. 97, 99 (Ariz. 1979) 602 P.2d 478, 480; citing *State v. Neil,* 102 Ariz. 110, 112, 425 P.2d 842, 844 (1967); see also *State v. Emanuel,* 159 Ariz. 464, 467 (Ariz. App. Div. 1 1989) 768 P.2d 196, 199. That right would be rendered meaningless, were it to be wholly dependent upon both the JP's and the litigant's opponent agreeing in writing to change the JP for cause.

Rule 133d fails to effectuate the "indispensable right to trial presided over by a judge who is impartial and free of bias or prejudice." *Brown, supra.* No other Justice Court Rule provides such relief. As noted in Plaintiff's Brief, Justice Court Rule 101d makes it clear that the Superior Court Rules of Procedure do not apply in Justice Court. This cannot mean that Justice Court litigants in the state of Arizona are not entitled to have such a basic right protected. If that were the case, the irony of calling these courts "Justice Courts" would be cruel indeed. To Plaintiff's knowledge the only available statutory basis to allow a Justice Court litigant to exercise his/her right to trial before an impartial judge, free of bias or prejudice, is A.R.S. § 12-409.

Like this case, in *Anonymous v. Superior Court for the County of Pima,* 14 Ariz.App. 502, 484 P 2d. 655 (Ct. App. Div 2, 1971) the Court faced a lack of any procedural rule (in the Juvenile Court) governing a change of judge for cause. The Court then looked to the affidavit of bias and prejudice provided for in A.R.S. § 12-409, holding:

> ... the fact that the affidavit is not provided for in the Juvenile Rules of Procedure promulgated by the Supreme Court does not by inference indicate that there is no such affidavit available. One can equally infer that the reason it was not included in the rules is because it was clear that under A.R.S. § 12-409 the affidavit was

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available. *Id.*, at 505.

Both the language of A.R.S. § 12-409 itself, and the case law interpreting it, are clear. The mere filing of the affidavit operates *ipso facto* to bar the trial judge from proceeding in the matter. Even if the judge might feel the affidavit is being filed to harass the court, the assigned judge can perform no other function but to transfer the case to another judge. *Itasca State Bank v. the Superior Court of Arizona,* 8 Ariz.App. 279; 445 P.2d 555 (Div 2 1968); citing *Murray v. Thomas*, 80 Ariz 378, 298 P.2d 795, (1956), and *Itule* v. *Farley*, 94 Ariz 242, 383 P.2d 127 (1963). (See more detailed discussion of this issue in Plaintiff's Brief.)

As we have seen, there is no Justice Court Rule which provides a mechanism to allow a litigant to change a judge for cause. The only available mechanism that the undersigned has located that allows a Plaintiff to effectuate his right to a trial before an impartial judge, free of bias or prejudice, is A.R.S. § 12-409. So like the *Anonymous* Court, this Court should apply A.R.S. § 12-409 to Plaintiff's effort to effectuate his rights to a fair and impartial judge.

Judge *Pro Tempore* Harrington, also determined that the Court could not apply A.R.S. §12-409 to this case because it would amount to a change of judge as a matter of right due to the Arizona Supreme Court's Administrative Orders nos. 2020-197 and 2021-52, which temporarily suspended all rules allowing for a change of judge as a matter of right, including that portion of Justice Court Rule 133d. The Court suspended these rules due to public health concerns related to the Covid 19 Pandemic. Given the increasingly improving situation in this state *vis a vis* the pandemic, it stands to reason that the Supreme Court's suspension of that rule is not likely to stay in place much longer.

It is also clear that the purposes behind a change of judge as a matter of right and a

change of judge for cause are very different. In *Bergeron v. O'Neil,* 205 Ariz. 640, 648; 740 P.2d 952, 960 (App Div 2, 2003) the Court referenced the Supreme Court's comments to the 2001 amendments to the Rules of Criminal Procedure, wherein the Supreme Court observed: "Rule 10.2[5] is intended to ensure a party's right to have a matter heard before a fair and impartial judge *without the necessity of divulging details that could cause needless embarrassment and antagonism* or showing actual bias which may be difficult to prove." (Emphasis added.) The Appellate Court also noted that the Supreme Court "cited with approval" its opinion in *Anonymous. Bergeron, supra,* 205 Ariz. at 648; 740 P.2d at 960. In *Anonymous,* the Court of Appeals observed:

> While other states require that the affidavit of bias and prejudice set forth the facts upon which the allegation of bias and prejudice is based ..., Arizona has the salutary rule making disqualification automatic. Thus, in this state it is not necessary to embarrass the judge by setting forth in detail the facts of bias, prejudice or interests which may disqualify him nor is it necessary for judge, litigant and attorney to involve themselves in an imbroglio which might result in everlasting bitterness on the part of the judge and the lawyer. Anonymous, *supra,* 14 Ariz. App. at 503; 484 P.2d at 656; citing *Bergeron, supra,* 205 Ariz. at 648; 740 P.2d at 960.

The purposes underlying a change of judge for cause under A.R.S. §12-409 and a change of judge as a matter of right are quite different. Thus, with all due respect Judge *Pro Tempore* Harrington's finding that application of A.R.S. §12-409 to this case would amount to a change of judge as a matter of right, which is currently under suspension because of the pandemic, was off base.

As noted, the "right to a fair trial is the 'foundation stone upon which our present judicial system rests,'" and "there is an indispensable right to trial presided over by a judge who is

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[5] In *Bergeron,* the change of judge as a matter of right was based on Criminal Rule 10.2. But the difference between the underlying purpose between a change of judge as a matter of right and a change of judge for cause is identical in this case.

'impartial and free of bias or prejudice.'" *Brown v. State*, *supra*, 124 Ariz. at 99, 602 P.2d at 480 (citations omitted). It is inconceivable that Arizona could intend for litigants in Justice Court not to enjoy these essential guarantees. Plaintiff is unaware of any other statutory provision or applicable procedural rule that would offer them such protection, other than A.R.S. §12-409. That statute has been deemed applicable in other analogous situations to which it did not technically apply. *Anonymous, supra.* Thus, A.R.S. §12-409 should be applicable to the instant case. It amounted to prejudicial error for Judge *Pro Tempore* Harrington to decide otherwise.

C. The Arizona Code of Judicial Conduct Mandates Disqualification of JP Cornejo.

The Arizona Code of Judicial Conduct requires a judge to comply with the law, including the Code of Judicial Conduct. (Ariz. Co. Jud. Cond. Rule 1.1.) Plaintiff raised the issue of JP Cornejo's failure to comply with the Code of Judicial Conduct in Plaintiff's Brief. However, Judge *Pro Tempore* Harrington ignored that issue.

JP Cornejo failed to comply with the law when she denied Plaintiff's request for a default judgment, by prejudging the key factual issue in the case, i.e. whether Plaintiff's $2,000.00 deposit was refundable. She did so even though no evidence had been presented in the case. Nor was Plaintiff even offered an opportunity to present any argument. The JP further failed to comply with the law when she dismissed the small claims complaint for an alleged lack of prosecution, although the record before her clearly showed that Plaintiff prosecuted the small claims case to the fullest extent possible. Actual improprieties include violations of law, court rules, and/or the provisions of the Judicial Code. (Ariz. Co. Jud. Cond. Rule 1.2, comment 5.) JP Cornejo violated all three of these mandates.

In addition, a judge is obligated to accord to every person who has a legal interest in a proceeding the right to be heard according to law. (Ariz. Co. Jud. Cond. Rule 2.6) The right to be

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heard is an essential component of a fair and impartial system of justice. Substantive rights of litigants can be protected only if procedures protecting the right to be heard are observed. (Ariz. Co. Jud. Cond. Rule 2.6, comment 1) Obviously, notice and an opportunity to be heard are the also the essence of due process, guaranteed by both the U.S. and Arizona Constitutions. In the small claims case, the JP failed to provide Plaintiff with notice or the right to be heard at all, in effect acting on behalf of the Defendant, although it did not even bother to appear in the case.

Not only are actual improprieties forbidden, but even the appearance of impropriety is prohibited. "A judge should avoid even the appearance of partiality." *State v. Brown*, 124 Ariz. 97,100, 602 P.2d 478,481(Sup Ct 1979); citing *Taylor v. Hayes*, 418 U.S. 488, 94 S.Ct. 2697. 41 L.Ed.2d 897 (1974). "[J]ustice must not only be done fairly but must be perceived as having been fairly done.... Anything else tends to undermine public confidence in the judicial system...." *State v. Emanuel, supra* at 468, citing *McElhanon v. Hing*, 151 Ariz. 403, 412 728 P.2d 273, 282 (1986).

"Even where there is no actual bias, justice must appear fair." *State v. Salazar*, 182 Ariz. 604, 608 (App Div 1, 1995) 898 P.2d 982, 986; citing *McElhanon v. Hing*, 151 Ariz. 403, 411, 728 P.2d 273, 281 (1986), *cert. denied* 481 U.S. 1030, 107 S.Ct. 1956, 95 L.Ed.2d 529 (1987). In *Salazar*, two provisions of the Code of Judicial Conduct, in effect at the time of Salazar's trial, cast light on the issue: former Canon 3(C), which addressed a judge's disqualification from a proceeding in which his impartiality might reasonably be questioned, and former Canon 2, which obligated a judge to avoid the appearance of impropriety and conduct him/herself in a manner that promotes public confidence in the integrity and impartiality of the judiciary.

The *Salazar* Court went on to favorably quote from an informal American Bar Association ethics opinion addressing an analogous issue under parallel provisions of the Model Code of Judicial Conduct:

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> Canon 3C(1) of the Model Code sets forth instances in which a judge should disqualify himself. These are but examples, and the general standard is not limited to them. *Any circumstances that objectively lead to the conclusion that the judge's impartiality might reasonably be questioned calls for disqualification.* This objective standard extends beyond the judge's personal belief that his impartiality is not impaired.... *Salazar, supra*, 182 Ariz. at 608; 898 P.2d at 986; citing ABA Committee on Ethics and Professional Responsibility, Informal Op. 1477 (1981) (emphasis added).

Likewise, in *State ex. rel Corbin v. Superior Court*, 155 Ariz. 560, 562 (Sup Ct 1987) 748 P.2d 1184, 1186 the Court was not faced with "actual impropriety", but with whether the judge's "impartiality might reasonably be questioned...." The Court decided that the proper interpretation of the rules required disqualification despite the lack of actual impropriety. This was because "[o]ur system of justice depends for its survival on the support and confidence of the public. It is important, therefore, that justice not only be impartially dispensed but also that any question of unfairness or partiality be avoided." *Id.*, 155 Ariz. at 562; 748 P.2d at 1186.

The test for an appearance of impropriety is whether the conduct would create a perception in reasonable minds that the judge violated the code or engaged in other conduct that reflects adversely on the judge's honesty, impartiality, temperament, or fitness to serve as a judge. (Ariz. Co. Jud. Cond. Rule 1.2, comment 5.) Stated another way, given JP Cornejo's previous showings of favoritism, her pre-judgment of the key factual issue in the case, her ignoring the record to dismiss the case, and her clear failure to afford Plaintiff prior notice or an opportunity to be heard on either of these matters, would a reasonable person think it likely that Plaintiff would obtain a fair trial from JP Cornejo?

Whether or not Plaintiff would get a fair trial is not the question, in this context. Instead, the question is, would a reasonable person think it likely that Plaintiff would obtain a fair trial from J.P. Cornejo. The answer to that question is undoubtedly, no. Thus, disqualification is mandated

by the Judicial Code. Therefore, the Presiding Judge or his designate should reconsider the denial of Plaintiff's Affidavit of Bias and Prejudice. That failing, JP Cornejo should disqualify herself as the Code mandates. (Ariz. Co. Jud. Cond. Rule 2.11.)

Perhaps an even better way of thinking about this issue is this. The potential decision makers in this case (i.e. the Presiding Judge, his designate, and/or JP Cornejo) should imagine that instead of acting in a judicial capacity, each is a practicing lawyer representing clients. Imagine further that Plaintiff is the decision maker's client, with all the same circumstances outlined above. Imagine further that the decision maker knows nothing about JP Cornejo's reputation for honesty, integrity and/or judicial temperament, whatever that may be. Could each decision maker, in good conscience advise Plaintiff that he is likely to receive a fair trial from JP Cornejo? Plaintiff believes the only reasonable answer to that question is no.

Therefore, the Presiding Judge or his designate should reconsider the denial of Plaintiff's affidavit of bias and prejudice and grant same, ordering JP Cornejo to be removed and reassigning this case to another JP. That failing, JP Cornejo should disqualify herself, as the above cited portions of the Code of Judicial Conduct mandate.

CONCLUSION

For the foregoing reasons and those contained in the Affidavit of Bias and Prejudice and the Brief in Support of Same, Plaintiff respectfully urges that, that JP Cornejo be removed from presiding over this case any further and that she be replaced with another JP, or in the alternative that JP Cornejo comply with her obligations under the Code of Judicial Conduct and disqualify herself from any further involvement in this case.

Respectfully submitted,

100

Theodore E. Meckler
Plaintiff *pro se*

CERTIFICATE OF S E R V I C E

The undersigned certifies that a copy of this Motion and Memorandum in Support, will be sent by regular U.S. Mail on this ____ day of May, 2021 to Randy Hauschild, President/CEO of Defendant, RHaus Enterprises Corp. at :

Theodore E. Meckler
Plaintiff *pro se*

101

PIMA COUNTY CONSOLIDATED JUSTICE COURT
240 N STONE AVENUE TUCSON, AZ 85701-1130 (520)724-3171

PLAINTIFF(S): MECKLER, THEODORE E VS. DEFENDANT(S): RHAUS ENTERPRISE CORP	**CIVIL MINUTE ENTRY** PLAINTIFF'S ATTORNEY: DEFENDANT'S ATTORNEY:	CASE NO. CV21-002490-RC

COURT DATE: TIME: HEARING TYPE:

PLAINTIFF: ☐ Present ☐ Not Present ☐ By Counsel
DEFENDANT: ☐ Present ☐ Not Present ☐ By Counsel

The Court, being fully advised in the premises, finds Plaintiff _____ entitled to recover by _____ complaint.

Accordingly, IT IS ORDERED THAT

☐ A Writ of Restitution (Order of Eviction) may be issued on _____ and is effective immediately upon being served.

NOTICE TO DEFENDANT

Pursuant to §12-1178(E), as amended, provides that a defendant who is lawfully served with a writ of restitution and who remains in or returns to the dwelling unit or remaining on or returns to the mobile home space or the recreational vehicle space without the express permission of the owner of the property or the person with lawful control of the property commits criminal trespass in the third degree pursuant to section §13-1502.

☐ Judgment in the sum of $_____, late fee $_____, Court costs $_____,

Attorney fees of $_____, and an * interest rate of _____% to be entered for _____ and against_____, plus $ _____ per day from _____ until premises are vacated.

☐ Default
☐ Confession
☐ Dismissal ☐ with prejudice ☐ without prejudice be entered as to _____
☐ Bond on Appeal $ _____
☐ Continuance

PLAINTIFFS MOTION TO TRANSFER IS Denied.

DATED: 6/15/2021

Seal of the Justice of the Peace PIMA COUNTY #124 CORNEJO

_____
JUSTICE OF THE PEACE ☐ HEARING OFFICER ☐ PRO TEM

ALL PARTIES IN ANY CIVIL CASE HAVE THE RIGHT TO APPEAL BY FILING A NOTICE OF APPEAL WITH THE TRIAL COURT WITHIN (14) CALENDAR DAYS AFTER THE ENTRY OF THE ORDER, RULING, OR JUDGMENT APPEALED FROM, EXCEPT IN AN EVICTION CASE THE TIME LIMIT SHALL BE (5) CALENDAR DAYS. THERE NO APPEALS FROM A SMALL CLAIMS JUDGMENT.

Copy mailed to ☒ Plaintiff ☒ Defendant ☐ Garnishee

DATE: 6/21/21 BY: _____

* Interest rate shall be at the lesser of ten cent per annum or at a rate per annum that is equal to one per cent plus the prime rate as published by the Board of Governors of the Federal Reserve System.

EXHIBIT 25

102

PIMA COUNTY CONSOLIDATED JUSTICE COURT
240 N STONE AVENUE TUCSON, AZ 85701-1130 (520)724-3171

	CIVIL MINUTE ENTRY	CASE NO.
PLAINTIFF(S): THEODORE E MECKLER VS. DEFENDANT(S): RHAUS ENTERPRISE CORP	PLAINTIFF'S ATTORNEY: DEFENDANT'S ATTORNEY:	CV21-002490

COURT DATE: TIME: HEARING TYPE:

PLAINTIFF: [ ] Present [ ] Not Present [ ] By Counsel
DEFENDANT: [ ] Present [ ] Not Present [ ] By Counsel

The Court, being fully advised in the premises, finds Plaintiff _____ entitled to recover by _____ complaint.

Accordingly, IT IS ORDERED THAT

[ ] A Writ of Restitution (Order of Eviction) may be issued on _____ and is effective immediately upon being served.

NOTICE TO DEFENDANT

Pursuant to §12-1178(E), as amended, provides that a defendant who is lawfully served with a writ of restitution and who remains in or returns to the dwelling unit or remaining on or returns to the mobile home space or the recreational vehicle space without the express permission of the owner of the property or the person with lawful control of the property commits criminal trespass in the third degree pursuant to section §13-1502.

[ ] Judgment in the sum of $_____, late fee $_____, Court costs $_____.

Attorney fees of $_____, and an * interest rate of _____% to be entered for _____ and against _____, plus $ _____ per day from _____ until premises are vacated.

[ ] Default
[ ] Confession
[ ] Dismissal [ ] with prejudice [ ] without prejudice be entered as to _____
[ ] Bond on Appeal $ _____
[ ] Continuance

Plaintiff's Motion to Reconsider and/or for the Justice of the Peace to Disqualify is: Denied. Court dismisses the action as there is no basis on which the Court could rule in Plaintiff's favor. Plaintiff may appeal within timelines provided.

DATED: 6/15/2021 JUSTICE OF THE PEACE HEARING OFFICER PRO TEM

ALL PARTIES IN ANY CIVIL CASE HAVE THE RIGHT TO APPEAL BY FILING A NOTICE OF APPEAL WITH THE TRIAL COURT WITHIN (14) CALENDAR DAYS AFTER THE ENTRY OF THE ORDER, RULING, OR JUDGMENT APPEALED FROM. EXCEPT IN AN EVICTION CASE THE TIME LIMIT SHALL BE (5) CALENDAR DAYS. THERE ARE NO APPEALS FROM A SMALL CLAIMS JUDGMENT.

Copy mailed to [X] Plaintiff [ ] Defendant [ ] Garnishee

DATE: 6/21/21 BY: _____

Justice of the Peace PIMA COUNTY #124 CORNEJO

* Interest rate shall be at the lesser of ten cent per annum or at a rate per annum that is equal to one per cent plus the prime rate as published by the Board of Governors of the Federal Reserve System.

EXHIBIT 26

From: Erica Cornejo
Sent: Friday, March 25, 2022 12:53 PM
To: Elliott, April
Subject: RE: CJC Case No. 21-332

Good afternoon, thank you for the opportunity to respond to Mr. Meckler's complaint. I did not believe that Mr. Meckler demonstrated a prima facie case in which he was entitled judgment and therefore denied his requests for default judgment.

However, in reviewing the record, I believe I did make an error. When he requested a new Judge be assigned to his case I should have recused myself and allowed him to be reassigned. Furthermore, if he had appealed the case to Superior Court and they believed he was entitled to a hearing; I would have granted him one pursuant to that order in front of a new Judge. I did not deny him out of any sort of prejudice but rather was simply affirming the orders from the Presiding Judge. I should have looked at the matter for myself instead of relying on the previous orders.

Thank you, Erica Cornejo

Judge MR
21-332
6/2/22

From: Erica Cornejo
Sent: Thursday, June 2, 2022 4:12 PM
To: Elliott, April
Subject: Motion for Reconsideration re: 21-332

Good afternoon,

I would first like to apologize for the tardiness of this response. I currently work remotely and was not informed of the Commission on Judicial Conduct's letter until June 1, 2022. Therefore, I also apologize if the format of this response is incorrect. I wanted to respond in the swiftest manner possible due to the tardy nature.

At the time of my initial response to the Commission, I was carrying a full case load while my child had a major medical emergency lasting multiple weeks and therefore I apologize for the briefness of my earlier response. I am her sole caregiver. Unfortunately, I could not give my previous response the time it merited. CV21-003490-RC was under review by Pima County Superior Court pending an Appeal. The appeal has since been returned and the manner in which I handled the case has been reversed. As I stated in my previous reply, I believed I had not violated Rule 144(d) due to the case not having merit to proceed. In this I was apparently incorrect. A civil case may proceed to judgment regardless of merit if after service the Defendant fails to respond. I previously believed it was my duty to review the case for sufficiency of evidence regardless of any other factor. Particularly as so many of our cases arise from pro-per litigants. For example, if a pro-per plaintiff were to sue the City of Tucson without them responding but clearly the case lacked merit. I have since learned I should simply grant the judgment. This understanding came through the appeal process.

Now the Commission on Judicial Conduct finds that I have violated Rules 1.2, 2.2, 2.5(A), 2.6(A) and 2.16 (A). With regards to Rules 1.2 (Promoting Confidence in the Judiciary) and 2.2 (Impartiality and Fairness); the record shows that I treated Mr. Meckler with respect and did not target him for any improper reason. I did not engage in racist or sexist behavior. I did not degrade him or mock him. I simply disagreed with his assessment of the case. I would respectfully argue that judicial error of law absent other bad behavior should be addressed by the Appeal Court to that Judicial Officer unless a pattern of disrespecting previous rulings by the Appeal Court emerges. This is not the case here as this is my first time being reversed. Rule 2.5(A) states "A judge shall preform judicial and administrative duties competently, diligently, and promptly." Does that mean that every time a Judicial Officer has been found to have an error of law then they have violated the code of conduct? I bring my best efforts to each of my duties. I believe as this is my first time being overturned on

appeal I have been competent overall in my duties. I would also argue that Rule 2.6 (A) (Ensuring the Right to be Heard) was not violated. In my opinion this case proceeded as it should. Mr. Meckler made a claim, his claim was heard through motions and when he did not prevail Mr. Meckler was granted the opportunity to appeal. He was successful on appeal and now has been given the opportunity to be further heard by a different judicial officer as was his wish. In reviewing the record, Mr. Meckler requested a hearing after being denied his Motion for Default Judgment; if I could engage in revisionist behavior, I would grant that request. It is my belief that all the errors I made in this case were properly addressed by the appeal process. I complied with the higher court orders and have gained a greater understanding of my role.

I am not requesting a formal hearing. However, if the Commission on Judicial Conduct believe one is required I would participate. Thank you to the Commission on Judicial Conduct for allowing me the opportunity to respond and reviewing this Motion for Reconsideration.

Hon. Erica Cornejo
Precinct 2
Pima County Justice Court

Arizona Commission on Judicial Conduct
1501 West Washington Street, Suite 229
Phoenix, Arizona 85007
Telephone: (602) 452-3200

STATE OF ARIZONA

COMMISSION ON JUDICIAL CONDUCT

Inquiry concerning **Judge Erica Cornejo** Pima County Consolidated Justice Court Precinct 2 State of Arizona, Respondent.	Case No.: 21-332 **ORDER DIRECTING THE FILING OF A RESPONSE**

Respondent Judge Erica Cornejo filed a Motion for Reconsideration of the public reprimand issued on May 24, 2022.

IT IS ORDERED that Disciplinary Counsel for the Commission shall prepare and file a response to Respondent's motion by June 17, 2022. Disciplinary Counsel shall provide a copy of her Response to Respondent on or before June 17, 2022. Absent a request from the Commission, Respondent may not submit a written reply brief or any additional materials.

Dated this 10th day of June, 2022.

FOR THE COMMISSION

/s/ Louis Frank Dominguez
Hon. Louis Frank Dominguez
Commission Chair

Copies of this pleading were delivered on June 10, 2022, via electronic mail, to:

Hon. Erica Cornejo
Pima County Consolidated Justice Court

Respondent

April P. Elliott

Disciplinary Counsel

By: /s/ Kim Welch
Kim Welch, Commission Clerk

April P. Elliott (Bar # 016701)
Executive Director
Arizona Commission on Judicial Conduct
1501 West Washington Street, Suite 229
Phoenix, AZ 85007
Telephone: (602) 452-3200
Email: c

STATE OF ARIZONA

COMMISSION ON JUDICIAL CONDUCT

Inquiry concerning **Judge Erica Cornejo** Pima County Consolidated Justice Court Precinct 2 State of Arizona, Respondent.	Case No.: 21-332 **RESPONSE TO JUDGE'S MOTION FOR RECONSIDERATION**

On May 24, 2022, the Commission on Judicial Conduct (Commission) publicly reprimanded Justice of the Peace Erica Cornejo (Respondent) for violations of the Arizona Code of Judicial Conduct (Code). Respondent timely filed a Motion for Reconsideration on June 2, 2022. Undersigned submits this response pursuant to Commission Rule 23(b), respectfully requesting that the Commission deny the motion.

GOOD CAUSE EXISTS FOR THE IMPOSITION OF THE PUBLIC REPRIMAND

Respondent requests that the Commission reconsider the reprimand, appearing to argue this was a good faith error of law that should not rise to the level of a Code violation. Respondent also argues that her initial response during the investigation should not be considered as lacking sufficient candor to the Commission.

Respondent Has Not Provided Good Cause to Excuse the Lack of Thoroughness in Her Response

While the undersigned is not unsympathetic to the demands of working full-time and being the sole caregiver for a child, Respondent stated she "could not give [her] previous response the time it merited." The Commission's initial letter to Respondent seeking a response in this matter concluded by stating, "Please call me if you have any questions or need more time to respond." When Respondent did not respond by the initial deadline of March 17, 2022, undersigned emailed her on March 22, 2022, inquiring about the status of her response. Respondent stated, "I am not sure what happened. I will have the response by the end of the week." She did not seek an extension of time, citing personal issues.[1] As noted in the Reprimand Order, Respondent's cursory response failed to address her conduct in light of the applicable Arizona Justice Court Rules of Civil Procedure, and Rules 1.1, 1.2, and 2.6(A) of the Code, and Respondent had previously been advised that "the lack of a thorough response to a Commission inquiry can be perceived as insufficient candor to the Commission." Therefore, the violation of Rule 2.16(A) should stand.

Mr. Meckler Was Not Afforded An Opportunity To Be Heard As Required by Law and Respondent Failed to Demonstrate a Good Faith Error of Law

Both Respondent's initial response to the Commission and her motion for reconsideration indicate that she failed to grasp that Mr. Meckler was not afforded an opportunity to be heard as required by law. She also appeared not to grasp the substance of the appellate court ruling.

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[1] In a prior matter in which the Commission had sought a response from Respondent, she had requested an extension of time, and thus, she is aware this is an option.

Respondent argues that a violation of Rule 2.6(A) did not occur as Mr. Meckler was heard "through motions" and "was granted the opportunity to appeal." Her arguments demonstrate a fundamental misunderstanding that she could not *sua sponte* dismiss Mr. Meckler's claims. Rule 144(d), Arizona Justice Court Rules of Civil Procedure only permits the court to dismiss a lawsuit "upon motion and by court order." When Mr. Meckler appealed Respondent's ruling in CV-21-002490-RC, the appellate court noted this requirement of the rule and stated, "The Court did not have the authority to summarily dismiss the Complaint without notice to the parties and without a motion seeking dismissal." (*See* Pima County Superior Court Case No. C20220248 "Ruling Re: Appeal from Pima County Justice Court" dated April 6, 2022, attached hereto as Exhibit A.) Similarly, Mr. Meckler was denied the opportunity to be heard on the denial of his request for default judgment when Respondent *sua sponte* dismissed his earlier case – CV20-022057, also in contravention of Arizona Justice Court Rules of Civil Procedure, specifically Rules 101(b) and 140(e).

Respondent's initial cursory response failed to address this issue. In her motion for reconsideration, Respondent again stated that she thought she could dismiss a matter simply if it lacked merit. In the motion for reconsideration, Respondent stated, "A civil case may proceed to judgment regardless of merit if after service the Defendant fails to respond. . . . I have since learned I should simply grant the judgment. This understanding came through the appellate process." Undersigned is unsure that Respondent understands these rules even after the appeal in the underlying matter. In Mr. Meckler's first case – CV20-022057, Rules 101(b) and 140(e), Respondent could decline to grant the request for a default judgment, but she had to set a hearing and

allow the requesting party an opportunity to be heard. Instead, she *sua sponte* dismissed the complaint without a hearing. When Mr. Meckler filed his second complaint, Respondent again *sua sponte* dismissed the complaint when Rule 144(d) only allowed a dismissal on motion of a party.

Comment 3 to Rule 2.2 of the Code of Judicial Conduct states, "A good faith error of fact or law does not violate this rule. However, a pattern of legal error or an intentional disregard of the law may constitute misconduct." In her initial response, Respondent did not argue that she read the requirements of the rules cited above and had a different interpretation which might support a good faith error of law. Her motion for reconsideration also lacks a similar argument. She appears to have a fundamental misunderstanding about Mr. Meckler's right to be heard under the applicable rules, and even after reviewing the appellate order, Respondent appears not to understand why her *sua sponte* dismissals were erroneous. Respondent's argument appears to be that even if she lacked this fundamental understanding of what the law required, that is a good faith error that should not rise to the level of a Code violation. While such an argument could be construed as a defense to the Rule 2.6(A) (Right to be Heard) violation, it could be said the same argument is clear and convincing evidence of a competency issue under Rule 2.5(A). Therefore, the violations of Rules 1.2, 2.2, 2.5(A), and 2.6(A) should also stand.

The Commission Should Uphold its Reprimand

The Commission does not impose public discipline lightly. The Commission considered all relevant information and found that Respondent had violated the Code for the conduct set forth in the reprimand order.

Factors Supporting a Sanction

The Scope section of the Code sets forth several factors for the Commission to consider in determining whether a sanction is appropriate in a particular case. These factors are the seriousness of the transgressions, the facts and circumstances existing at the time of the transgression, the extent of any pattern of improper activity or previous violations, and the effect of the improper activity upon the judicial system or others. On balance, these factors support the issuance of the reprimand.

The reprimand addresses Respondent's *sua sponte* dismissal of two lawsuits in clear contravention of the law, which denied a litigant the right to be heard as required by law. The public must trust that their judges are competent in their duties and are ensuring that parties receive their right to be heard. While the appellate process worked as it should, it was only through Mr. Meckler's focused persistence, expenditure of additional time, and expenditure of additional costs that he was finally able to have his lawsuit reinstated. Thus, the transgressions are serious.

In CJC Case No. 20-248, Respondent received an advisory regarding timely rulings under Rule 2.5(A). The Commission was concerned in that matter by Respondent's less than thorough response that they chose to note to Respondent, for future reference, that the lack of a thorough response to a Commission inquiry can be perceived as insufficient candor to the Commission. Despite this reminder, Respondent again submitted a cursory response that did not address what she was requested to address. This potentially shows a pattern of improper activity by Respondent in this regard, and Respondent's conduct in this matter raises a question about the level of thoroughness and competency that she applies to all judicial duties.

Finally, the imposition of the public reprimand comports with the principles of Commission Rule 5 (Purpose of Judicial Discipline). That rule states:

> The purpose of the judicial discipline and incapacity system is to protect the public and to maintain high standards for the judiciary and the administration of justice. Any disciplinary remedy or sanction imposed shall be sufficient to restore and maintain the dignity and honor of the position and to protect the public by assuring that the judge will refrain from similar acts of misconduct in the future.

There was direct harm caused to Mr. Meckler by the improper dismissal of his two lawsuits, and there was additional harm to the public's perception of the judiciary and trust in the institution. Issuing public discipline in response to underlying public misconduct helps restore dignity and honor to the judiciary. Further, the public nature of the reprimand allows other members of the judiciary to learn from the misconduct that warranted the reprimand. This opportunity, which helps protect the public generally, is lost if the Commission's resolution is confidential. The purpose of the reprimand is not to punish Respondent, but to restore and maintain the dignity and honor of the position and to protect the public. The reprimand is the best way to achieve those ends.

Aggravating and Mitigating Factors

Rule 19 of the Commission Rules sets forth ten aggravating and mitigating factors for the Commission to also consider.

Nature, Extent and Frequency of the Misconduct: While the Commission is only aware of Respondent's conduct in the two underlying matters involving Mr. Meckler, Respondent's conduct in improperly dismissing the two lawsuits on her own accord caused harm to Mr. Meckler and necessitated him having to pursue the time and

expense of an appeal. This gives slightly more weight to this being an aggravating factor.

Judge's Experience and Length of Service on the Bench: Respondent is law trained and has served as a justice of the peace for over five years. She should be well-versed on the law and the Code. Undersigned deems this an aggravating factor.

Whether the Conduct Occurred in the Judge's Official Capacity or Private Life: The conduct occurred in Respondent's official capacity, however, undersigned does not deem this factor applicable to this case.

Nature and Extent to Which the Acts of Misconduct Injured Other Persons or Respect for the Judiciary: The conduct affected Mr. Meckler's rights to due process. This is an aggravating factor.

Whether and to What Extent the Judge Exploited his or her Position for Improper Purposes: Undersigned does not deem this factor applicable to this case.

Whether the Judge has Recognized and Acknowledged the Wrongful Nature of the Conduct and Manifested an Effort to Change or Reform the Conduct: Respondent states that she has learned from the appellate process in Mr. Meckler's case, however, the contents of her response and motion for reconsideration indicate that she lacks an understanding of what the applicable rules require and why her decision was reversed on appeal. This is an aggravating factor.

Whether There Has Been Prior Disciplinary Action Concerning the Judge, and if so, its Remoteness and Relevance to the Present Proceeding: As noted, with respect to the Rule 2.16(A) violation, in Case No. 20-248, the Commission advised Respondent that the lack of a thorough response to a Commission inquiry can be perceived as

insufficient candor to the Commission. Undersigned believes this gives slightly more weight to be an aggravating factor.

Whether the Judge Complied with Prior Discipline or Requested and Complied with a Formal Ethics Advisory Opinion: Undersigned does not deem this factor as applicable.

Whether the Judge Cooperated Fully and Honestly with the Commission in the Proceeding: The Commission has already found that Respondent's lack of thoroughness in her response was deemed insufficient candor to the Commission. This is an aggravating factor.

Whether the Judge was Suffering from Personal or Emotional Problems, or from Physical or Mental Disability or Impairment at the Time of the Misconduct: In the motion for reconsideration, Respondent, for the first time, indicated that her child was experiencing medical issues which caused her not to give her response the time it merited. She does not allege that she was suffering from any personal issues or any disability or impairment at the time she improperly dismissed Mr. Meckler's underlying cases. If the Commission accepts Respondent's explanation for the cursory response, this would be a mitigating factor as to Rule 2.16(A) only.

While the aggravating factors outweigh the mitigating factors numerically, the Commission is free to assign whatever weight it chooses to the factors. Given the nature of the conduct, Respondent's experience, and the injury to the complainant and the public perception of the judiciary, undersigned argues that the overall balance is in favor of upholding the sanction.

CONCLUSION

Based on the foregoing, undersigned recommends that the Commission deny Respondent's Motion for Reconsideration and affirm the imposition of the public reprimand issued on May 24, 2022.

Dated this 16th day of June, 2022.

COMMISSION ON JUDICIAL CONDUCT

April P. Elliott
Executive Director

A copy of this pleading was served electronically on June 16th, 2022, to Respondent, at:

Hon. Erica Cornejo

EXHIBIT A

ARIZONA SUPERIOR COURT, PIMA COUNTY

HON. CASEY F MCGINLEY

CASE NO. C20220248

DATE: April 06, 2022

THEODORE E MECKLER
Appellant

VS.

RANDY HAUSCHILD
Appellee

RULING

RE: APPEAL FROM PIMA COUNTY JUSTICE COURT

IN CHAMBERS:

Pending before the Court is an appeal seeking review of the dismissal of a complaint in Pima County Consolidated Justice Court, as well as other decisions made in the case. This Court has jurisdiction pursuant to the Arizona Constitution Article VI, Section 16, and A.R.S. Section 12-124(A). The Court has considered and reviewed the record[1], and Appellant's Memorandum.[2] For the reasons set forth below, the Court reverses the trial court's dismissal of Appellant's Complaint and remands the matter for further proceedings.

BACKGROUND

Appellant Theodore Meckler sought to hire Randy Hauschild and his company, Appellee RHaus Enterprise Corp., to fabricate and install a security door at Appellant's residence. After a

[1] On February 18, 2022, Appellant filed a Motion to Correct the Record, asking that specific documents be certified and transmitted to this court and that they be considered as part of the Record on Appeal. The Court has reviewed the entire record, and all documents listed in the Motion are contained therein. To the extent such a ruling is necessary, the Court denies Plaintiff's February 18, 2022 Motion as moot.

Jonathan Churchill
Law Clerk

brief discussion of the work sought, the parties entered into an agreement in the form of a standardized pre-printed form contract on July 14, 2020. The contract called for the installation of the door to be finished in about 12 weeks, and, from conversation with Mr. Hauschild, Appellant was of the belief that it would be completed no later than the end of September 2020.

The total price for the project was $4,250. In order to secure his services, Appellee charged Appellant a $2,000 deposit to cover the materials required for the fabrication and installation. Appellant paid this security deposit by writing a check to Appellee for $2,000. Months after this deposit was paid, appellant began to believe that Appellee would not fulfill its obligations under the contract. Appellant demanded a refund of the deposit, but Appellee refused, stating that the deposit was nonrefundable.

On October 27, 2020 Appellant filed a complaint in Pima County Justice Court. Captioned as cause number CV-20-022057, Appellant sought various claims against Appellee, including breach of contract, unjust enrichment, and violation of the Arizona Consumer Fraud Act. Appellant sought a refund of the deposit and included a copy of the contract he made with Appellee as part of the Complaint. Appellant properly served Appellee with the Complaint, and, when Appellee did not file an answer, Appellant sought default judgment. On January 16, 2021, the trial court denied default judgment, finding that the contract stated that the deposit at issue was non-refundable, and that Appellant was therefore not entitled to default judgment. The Court thereafter dismissed the matter without prejudice on January 26, 2021, apparently for a failure to prosecute.

On February 4, 2021, Appellant filed a second complaint against Appellee. Captioned as cause number CV21-002490-RC, the allegations were essentially the same as Appellant's prior lawsuit. Appellee was served with a copy of the Complaint on February 8, 2021 and filed an answer on March 4, 2021. In said answer, Appellee denied most of Appellant's claims, and attached a copy of the contract at issue, as well as a copy of the trial court's January 16, 2021, ruling that the deposit at issue was non-refundable. The case was assigned to the same Justice of the Peace that heard the prior litigation, and who had entered the January 16 ruling.

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[2] Appellee did not file a responsive memorandum. The Court deems the matter submitted on the record but does not consider the lack of responsive memorandum to be a confession of error. *See* AZ.St.Super.Ct. RAP CIV Rule 8(a)(1).

Jonathan Churchill
Law Clerk

On March 12, 2021, Appellant filed a "Notice of Change of Judge as a Matter of Right," seeking to have the case reassigned to a different judicial officer pursuant to Rule 133 of the Rules of Civil Procedure for Justice Court. The assigned Justice of the Peace forwarded said motion to the Presiding Judge of the Superior Court, who designated a Judge Pro Tempore to consider the matter. At the time, the rules pertaining to changes of judge as of right were suspended in all matters, including matters pending before the Justice Court. Accordingly, the Judge Pro Tempore denied Appellant's Motion in a Ruling dated April 20, 2021.

On May 4, 2021, Appellant filed both an "Affidavit of Bias and Prejudice" and a "Brief in Support of Affidavit of Bias and Prejudice" seeking to have the assigned Justice of the Peace removed from his case for cause. Appellant contended that the Justice of the Peace had already developed an opinion on the facts of his case, and therefore the matter should be reassigned. The matter was submitted to the same Judge Pro Tempore who considered Appellant's Notice of Change of Judge, and that Judge denied Appellant's Motion in a Ruling dated May 11, 2021. The case was thereafter returned to the originally assigned Justice of the Peace.

Appellant filed pleadings while his Motion for Change of Judge was pending and immediately thereafter. On May 10, 2021, Appellant filed a Motion to Transfer, seeking to have the matter heard by a different Justice of the Peace. On May 14, 2021, Appellant filed a Motion to Compel Disclosure and Discovery, seeking various items of discovery from Appellee. On May 21, 2021, Appellant field a "Motion to Reconsider and/or [f]or the Justice of the peace to Disqualify Herself in Compliance with Code of Judicial Conduct," again arguing that the assigned Judicial Officer had already developed an unfavorable opinion towards his case.

From a review of the record, it does not appear that Appellee ever filed a response to any of the motions filed by Appellant. Regardless, the trial court denied each of Appellant's Motions without hearing. On June 15, 2021, the trial court denied Appellant's Motion to Transfer, simply writing "Plaintiff's Motion is denied." On June 21, 2021, the trial court denied Appellant's Motion to Reconsider and/or Disqualify, and dismissed his complaint *sua sponte*, stating "Plaintiff's Motion to Reconsider and/or for the Justice of the Peace to Disqualify is denied. Court dismisses the action as there is no basis on which the court could rule in Plaintiff's favor. Plaintiff may appeal within timelines provided."

Jonathan Churchill
Law Clerk

On July 25, 2021, Appellant filed a Motion to "Alter, Amend, and/or Make Additional Findings," requesting that the trial court clarify whether its June 21, 2021 Ruling dismissed the matter with or without prejudice, and requesting the Court provide additional findings to support or explain its dismissal of the Appellant's Complaint. Appellee did not respond to the motion. The Motion was summarily denied without a hearing in a minute entry dated September 27, 2021. Defendant thereafter timely appealed.

LEGAL DISCUSSION

Appellant raises his six issues on appeal:

1. Whether the trial court properly dismissed appellant's complaint under AZ ST J CT RCP Rule 144(d);

2. Whether the trial court could properly enter a *sua sponte* order dismissing Appellant's Complaint;

3. Whether the trial court afforded Appellant due process in dismissing his complaint;

4. Whether the trial court erred in finding that his Complaint failed to state a claim upon which relief could be granted;

5. Whether the contract at issue was one of adhesion; and

6. Whether the trial court committed reversible error in refusing to disqualify herself from hearing Appellant's Complaint.

Issues 1, 2, and 4 are different iterations of the same argument: that the Court's order of dismissal of Appellant's Complaint was improper. The Court considers those allegations together, as they touch upon the issues.

No motion to dismiss was filed in the trial court. Nonetheless the trial court dismissed the Complaint, finding that there was "no basis on which the court could rule in plaintiff's favor." Although the Court did not cite to any statute or rule in dismissing the complaint, the language used by the trial court is somewhat similar to JCRCP 116(a)(2)(iv), which permits a civil defendant to move to dismiss a claim because the "complaint does not state a valid claim, even if

the facts alleged in the complaint are assumed to be true." That rule is a companion rule to Ariz.R.Civ.P. 12(b), which governs the dismissal of complaints in Superior Court. Indeed, Ariz.R.Civ.P. 12(b)(6), which permits a dismissal of a complaint for failure to state a claim upon which relief can be granted. Dismissal of a complaint under Rule 12(b)(6) is reviewed *de novo. See Coleman v. City of Mesa,* 230 Ariz. 352, 355, 284 P.3d 863, 866 (2012). Accordingly, the Court believes that *de novo* review is appropriate here.

By Rule, a defendant named in a complaint in justice court may respond by filing (1) an answer; (2) a motion to dismiss for lack of jurisdiction, for lack of improper venue, for improper service, or for failure to state a valid claim; (3) a motion for a more definite statement; or (4) a motion to strike the complaint. JCRCP 116(a). In the instant case, Appellee chose to file an Answer to Appellant's Complaint. That Answer included admissions to select allegations in the Complaint and denials of the remaining allegations. As permitted by rule, Appellee attached documents to that Answer, namely a copy of the contract at issue and a copy of the trial court's ruling dismissing the previous lawsuit.

That Appellee chose to file an Answer to the Complaint rather than seeking the Complaint's dismissal is legally significant. Because Appellee did not immediately seek dismissal, any subsequent dismissal of the matter was governed by Rule 144 of the Justice Court Rules of Civil Procedure. Under that Rule, a complaint could only be dismissed (1) if voluntarily dismissed before a response has been filed; (2) if voluntarily dismissed by agreement of the parties; or may(3) if dismissed for a failure to timely conclude the litigation. *See* JCRCP 144(b), (c), and (e). Absent the existence of those conditions, however, the Rule directs that "a lawsuit or claim shall be dismissed only upon **motion** and by court order, and only on terms and conditions that the court determines fair and proper." JCRCP 144(d) (emphasis added).

The instant case was not dismissed voluntarily by Appellant before a response could be filed. Nor was it dismissed voluntarily by result of some agreement with Appellee. Nor was it dismissed for failure to timely conclude. As such, the only way that it could be dismissed was by proper motion and court order. Regardless, the trial court acted *sua sponte* in dismissing the complaint, and did so without a motion seeking such relief. The Court did not have the authority to summarily dismiss the Complaint without notice to the parties and without a motion seeking

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dismissal. Accordingly, the Court erred in dismissing the Complaint, and the dismissal must be reversed.

Because the Court finds that the trial court erred in its decision to dismiss the complaint, the Court need not address other aspects of this appeal, namely Appellant's due process argument or his argument that the contract was one of adhesion. Nonetheless, the Court does believe it appropriate to consider Appellant's request that this Court order that the matter be assigned to another Justice of the Peace upon remand to the Justice Court.

Appellant sought to have his case reassigned on three separate occasions. First, he sought to change the assigned judge by filing a notice. Such was denied because the Rule permitting such changes was suspended due to the Covid pandemic. Thereafter, he sought a change of judge for cause, which was denied by a Judge Pro Tempore in a minute entry dated May 11, 2021. Days later, Appellant filed a Motion to Reconsider, asking the trial judge to consider recusal, or to otherwise grant him an appearance before a new Justice of the Peace. That Motion was summarily denied. At issue in this appeal are the latter two decisions. This Court reviews these decisions for an abuse of discretion. *See In re Aubuchon,* 233 Ariz. 62, 65-66, 309 P.3d 886, 889-890 (2013), *citing State v. Shckhart,* 190 Ariz. 238, 257, 947 P.2d 315, 334 (1997).

A review of the Judge Pro Tempore's May 11, 2021 Ruling denying the Motion for Change of Judge for Cause establishes that the Court applied the correct legal standard, applied the facts of the case as known to that standard, and rendered its decision. The Court cannot find, on the record before it, that the Judge Pro Tempore in any way abused his discretion in finding that Appellant failed to meet the standard required to change a judge for cause.

Appellant's Motion to Reconsider, filed only a few days later, largely reiterated the same arguments and bases to seek the Justice of the Peace's recusal. When considering a motion to recuse, the Court presumes that a judge is impartial and "the party seeking recusal must prove bias or prejudice by a preponderance of the evidence." *State v. Carver,* 160, Ariz. 167, 172, 771 P.2d 1382, 1387 (1989). Bias and prejudice are evidence by a "hostile feeling or spirit of ill-will, or undue friendship or favoritism, towards one of the litigants." *State v. Myers,* 117 79, 86, 570 P.2d 1252, 1259 (1977). A review of the record establishes that Appellant's Motion, as well as his appeal, fail to meet these standards.

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To the extent that Appellant contends that transfer of this case is required pursuant to A.R.S. 12-409, the Court rejects this argument in full. A.R.S. § 12-409 does not apply to Appellant's case. The clear and unambiguous language of that statute requires the matter at issue to be pending in Superior Court. *See* A.R.S. § 12-409(A). Appellant's complaint was litigated in Justice Court, rendering the statute inapplicable.

The Court cannot find that the lower court erred in denying Appellant's Motion for Change of Judge for Cause. Further, the Court cannot find that the lower court erred in denying his Motion to Reconsider. Accordingly, the lower court's rulings on those issues are affirmed.

Based on the foregoing,

IT IS ORDERED that the lower court rulings at issue are affirmed in part and reversed in part.

IT IS FURTHER ORDERED affirming the denial of Appellant's requests for change of judge, either for cause or by recusal.

IT IS FURTHER ORDERED that the lower court's June 21, 2021 Order dismissing Appellant's Complaint is reversed.

IT IS FURTHER ORDERED remanding the case to the Justice Court for further proceedings.

HON. CASEY F. MCGINLEY
(ID: 4b60cac1-9038-466d-bcb7-194729897101)

cc: Hon. Erica A Cornejo
Randy Hauschild
Theodore E Meckler
Case Management Services - Civil
Clerk of Court - Appeals Unit
Clerk of Court - Civil Unit
Clerk of Court - Exhibits (Remand Desk)
Pima County Consolidated Justice Courts-Appeals (Case/Docket#CV21-002490)

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State of Arizona

COMMISSION ON JUDICIAL CONDUCT

Disposition of Complaint 21-332

Judge: Erica Cornejo

Complainant: Theodore E. Meckler

ORDER DENYING RESPONDENT JUDGE'S MOTION FOR RECONSIDERATION

The respondent judicial officer filed a Motion for Reconsideration of the Commission's reprimand decision as set forth in its previous order. Pursuant to Commission Policy 23, disciplinary counsel was requested to file a response to the motion, and did so.

On August 5, 2022, the Commission denied the Motion for Reconsideration. As provided in Commission Policy 23, the respondent judicial officer's Motion for Reconsideration, disciplinary counsel's response, and this Order denying the Motion for Reconsideration shall be made a part of the record that is posted to the Commission's website with the other public documents (the Complaint, the judicial officer's response and the Reprimand Order).

Commission members Denise K. Aguilar and Joseph C. Kreamer did not participate in the consideration of this matter.

Dated: August 12, 2022

FOR THE COMMISSION

/s/ Louis Frank Dominguez
Hon. Louis Frank Dominguez
Commission Chair

Copies of this order were distributed to all appropriate persons on August 12, 2022.