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IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF LA PAZ

RODNEY ELLWOOD SCHLESENER,
an unmarried man and Arizona resident
doing business as HT4,

Plaintiff,

v.

LANDARIZONA/JAK, LLC, an Arizona
limited liability company,

Defendant.

Case No. S1500CV202400045

**DEFENDANT'S ANSWER AND
COUNTERCLAIM**

(Tier 1)

Defendant LandArizona/JAK, LLC ("LandArizona") for its Answer to Rodney Ellwood Schlesener dba HT4's ("HT4" or "the plaintiff") Complaint, admits, denies, and alleges as follows.

THE PARTIES

1. LandArizona is without knowledge and information sufficient to form a belief as to the truth of HT4's allegations in Paragraph 1.

2. LandArizona admits HT4's allegations in Paragraph 2.

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1 9. LandArizona denies HT4's allegation in Paragraph 9, that the plaintiff's
2 twenty-day preliminary notice was physically served upon LandArizona on July 25,
3 2023. LandArizona admits that, per the copy of the preliminary notice, affidavit of
4 service, and U.S. Postal Service certificate of mailing, the plaintiff deposited the
5 preliminary notice in the U.S. mails on July 25, 2023. LandArizona admits the remainder
6 of HT4 allegations in Paragraph 9.
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8 10. LandArizona denies HT4's allegations in Paragraph 10.
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10 11. LandArizona denies HT4's allegations in Paragraph 11.

11 12. With respect to HT4's allegations in Paragraph 12, LandArizona admits
12 that HT4 provided to LandArizona a written request for additional payment, and that such
13 document is contained in the plaintiff's Exhibit D attached to its complaint. LandArizona
14 denies that the plaintiff transmitted that request for payment to LandArizona on October
15 14, 2023, or that the document was entitled "Invoice" or contained content that is
16 customary and normal for an invoice in the Arizona construction contracting industry.
17 LandArizona denies that the work described in the plaintiff's Exhibit D constitutes "extra
18 work". LandArizona affirmatively states that the plaintiff transmitted by email the
19 written request for additional payment in the amount of \$20,245.70 for the first time on
20 October 16, 2023, and that the plaintiff entitled the document "Final Bill 1".
21 LandArizona affirmatively alleges that all work described in the "Final Bill 1" was for
22 work included in the original Proposals and did not constitute "extra work". LandArizona
23 affirmatively alleges that the progress payment invoices that the plaintiff had previously
24 transmitted to LandArizona did not include any reference to extra work or extra charges.
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1 13. LandArizona denies HT4's allegations in Paragraph 13.

2 14. LandArizona admits HT4's allegations in paragraph 14.

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4 **COUNT ONE**
5 **(Breach of Contract)**

6 15. LandArizona incorporates and re-alleges its prior answers set forth above
7 as though fully set forth herein.

8 16. LandArizona admits that it refused to pay HT4's demand for \$20,245.70,
9 which HT4 transmitted to LandArizona on October 16, 2023. LandArizona denies the
10 entirety of the remaining allegations of HT4 in Paragraph 16.

11 17. As to HT4's allegations in Paragraph 17, LandArizona denies that the
12 plaintiff served LandArizona with a "Notice of Intent to File a Bond Claim, Mechanic's
13 Lien or Stop Notice" ("Notice of Intent") on October 30, 2023. The plaintiff's Notice of
14 Intent, attached to its complaint as Exhibit E, states that it was placed in the mail on
15 October 30, 2023. LandArizona affirmatively alleges that a Notice of Intent is not a
16 statutorily-created instrument and does not have service definitions, such as placement in
17 the U.S. mails constituting service upon a recipient, in contrast with the service
18 definitions for Arizona's statutorily-created twenty-day preliminary notices.
19 LandArizona further affirmatively alleges that the Notice of Intent does not have any
20 statutory basis or legal consequence, and that it is no different from a non-statutory
21 demand letter.
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23 18. LandArizona denies HT4's allegations in Paragraph 18 to the extent that
24 HT4 alleges that any additional amounts were due from LandArizona after LandArizona
25 made the October 12, 2023 direct deposit to the plaintiff in the amount of \$25, 010.34,
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1 and after those funds fully transmitted into the plaintiff's bank account, thereby
2 converting HT4's execution of a conditional waiver and release on final payment, into an
3 unconditional waiver and release on final payment. See A.R.S. § 33-1008(D).
4
5 LandArizona admits that, despite the absence of entitlement to any additional payment,
6 the plaintiff nevertheless made multiple demands upon LandArizona for payment of
7 \$20,245.70.

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9 19. LandArizona denies HT4's allegations in Paragraph 19 in full.

10 20. LandArizona denies HT4's allegations in Paragraph 20 in full.

11 21. LandArizona denies HT4's allegations in Paragraph 21 in full.

12 **COUNT TWO**
13 **(Prompt Payment Violation)**

14 22. LandArizona re-alleges its answers to the paragraphs set forth above and
15 incorporates the same herein as though fully set forth at length.

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17 23. LandArizona denies that it received a document entitled "Extra Work
18 Invoice". LandArizona denies that any work or materials described in the document
19 entitled "Final Bill 1" that the plaintiff emailed to LandArizona on October 16 contained
20 descriptions of any labor, equipment use, or materials that were outside the scope of the
21 original three Proposals submitted to LandArizona on July 5 and signed by LandArizona
22 on July 6, 2023, or constituted "extra work". LandArizona admits that it did not respond
23 in writing within fourteen days following receipt of HT4's email on October 16, 2023.
24 LandArizona denies that it had any obligation to respond to the October 16, 2023, email
25 by HT4 because LandArizona's payment obligations under the Proposals were complete,
26 and because there was an accord and satisfaction as to any other payments amounts
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1 alleged by HT4 to be due under the Proposals. LandArizona affirmatively alleges that
2 payment of the three Proposals was complete, and therefore the Arizona Prompt Pay Act
3 was no longer applicable, with no additional amounts due from LandArizona.
4 LandArizona affirmatively alleges that this is due, in part, to LandArizona's October 12,
5 2023 direct deposit into the plaintiff's bank account in the amount of \$25, 010.34,
6 followed by the transmittal of those funds into the plaintiff's bank account, thereby
7 converting HT4's execution of a conditional waiver and release on final payment into an
8 unconditional waiver and release on final payment. *See* A.R.S. § 33-1008(D).
9 Accordingly, LandArizona submits that its payment of \$25,010.34 constituted a final
10 payment under A.R.S. § 32-1182(A), and therefore the plaintiff's "Final Bill 1" was not
11 entitled to the protections of the Arizona Prompt Pay Act.
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15 24. LandArizona admits, as to HT4's allegations in Paragraph 24, that
16 LandArizona has not paid to the plaintiff the \$20,245.70 that the plaintiff has demanded,
17 for the reasons stated in LandArizona's answer. LandArizona denies that it is
18 "withholding" payment from the plaintiff, which falsely suggests that LandArizona owes
19 any further monies to the plaintiff; LandArizona does not.
20

21 25. LandArizona denies HT4's allegations in Paragraph 25 in full.

22 26. LandArizona denies HT4's allegations in Paragraph 26 in full.
23 LandArizona affirmatively alleges that the Arizona Prompt Pay Act has no relevance to
24 this action, for the reason that, after LandArizona made the October 12, 2023 direct
25 deposit to the plaintiff in the amount of \$25,010.34, and after those funds fully
26 transmitted into the plaintiff's bank account, HT4's execution of a conditional waiver
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1 and release on final payment converted into an unconditional waiver and release on final
2 payment. See A.R.S. § 33-1008(D). Accordingly, LandArizona submits that its payment
3 of \$25,010.34 constituted a final payment under A.R.S. § 32-1182(A), and that the
4 plaintiff's "Final Bill 1" was not entitled to the protections of the Arizona Prompt Pay
5 Act. LandArizona also affirmatively states that the plaintiff, by citing to A.R.S. § 32-
6 1129.01(K), is improperly basing its claim upon the old version of the Arizona Prompt
7 Pay Act, instead of the new version found at A.R.S. § 32-1181, *et seq.*

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10 27. LandArizona denies HT4's allegations in Paragraph 27 in full.
11 LandArizona affirmatively states that the only remedy which the Arizona Prompt Pay
12 Act provides is the award of interest of eighteen percent (18%) per annum, and that such
13 award of interest is available only with respect to amounts which LandArizona is
14 adjudged to owe to the plaintiff. LandArizona affirmatively alleges that, since
15 LandArizona owes nothing to the plaintiff, the Arizona Prompt Pay Act does not provide
16 for any assessment of interest and is not relevant to this action.

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18 **COUNT THREE**
19 **(Unjust Enrichment)**

20 28. LandArizona re-alleges the allegations set forth above and incorporates the
21 same herein as though fully set forth at length.

22
23 29. LandArizona denies that it made any request whatsoever of the plaintiff as
24 part of any form of change order, including a written and signed change order, or as part
25 of any deviation from, alteration of, or addition to the work scope in the three Proposals,
26 or that the plaintiff supplied any labor, rental equipment, or materials beyond what was
27 included in the work scope of the Proposals and therefore already required to be
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1 performed and delivered pursuant to the Proposals. LandArizona denies that the labor,
2 rental equipment, materials or other components of the “Final Bill 1” transmitted to
3 LandArizona on October 16, 2023, are entitled to a valuation outside of the total charges
4 of the Proposals, as resolved by LandArizona’s final payment of \$25,010.34 in exchange
5 for HT4’s conditional waiver and release on final payment of that same amount. In the
6 event of a separate valuation of any labor, rental equipment, or materials described in the
7 “Final Bill 1” that were supplied to the project by the plaintiff, LandArizona is without
8 sufficient knowledge and information to form a belief as to the truth of HT4’s allegation
9 of valuation in Paragraph 29, and therefore denies same.

12 30. LandArizona denies HT4’s allegations in Paragraph 30 that LandArizona
13 failed to pay to the plaintiff the “full value of the labor, equipment, materials and
14 supplies”. LandArizona affirmatively alleges that it fully paid for any items described in
15 the “Final Bill 1” that were actually supplied to LandArizona’s construction site, as part
16 of LandArizona’s two progress payments and final payment to HT4 for the three
17 Proposals, with HT4 accepting the \$25,010.34 in exchange for a conditional waiver and
18 release on final payment. LandArizona admits that the items in the “Final Bill 1” that
19 were delivered to the site had some value, but affirmatively alleges that LandArizona
20 paid for that value as part of its payment for the three Proposals. LandArizona
21 affirmatively alleges that, because the items in the “Final Bill 1” were included in the
22 scope of work in the Proposals, the rule of law in Arizona values those items at the
23 agreed-upon contract amount: “[W]hile the contract price between the subcontractor and
24 the contractor is not binding upon the owner, the agreed price nevertheless may be taken
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1 as prima facie the reasonable value of the materials.” *Lenslite Co. v. Zocher*, 95 Ariz.
2 208, 213, 388 P.2d 421 (1964) (citing *Lanier v. Lovett*, 25 Ariz. 54, 213 P. 391 (1923)).

3
4 31. LandArizona denies HT4’s allegations in Paragraph 31 in full.
5 LandArizona affirmatively alleges that the remedy of unjust enrichment is not available
6 to the plaintiff where remedies at law, in this case the parties’ contract, are available:
7 “[a]n unjust enrichment claim requires proof of five elements: [...] (5) the absence of a
8 remedy provided by law.” *Wang Elec., Inc., v. Smoke Tree Resort, LLC*, 230 Ariz. 314,
9 318 (Ct. App. 2012). LandArizona affirmatively alleges that, because it and HT4 entered
10 into three enforceable contracts in the form of the three July 5, 2023 Proposals, which
11 LandArizona signed July 6, 2023, the plaintiff cannot pursue an unjust enrichment claim:
12 “[only] [i]f a party performs work, renders services, or expends money under an
13 agreement which is unenforceable, but not illegal, he may recover in quantum meruit...”
14 *Ruck Corp. v. Woudenberg*, 125 Ariz. 519, 611 P.2d 106, 109 (App. 1990).
15

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17 32. LandArizona denies HT4’s allegations in Paragraph 32 in full.

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19 **COUNT FOUR**
(Mechanic’s Lien Foreclosure and Judgment for Deficiency)

20 33. LandArizona re-alleges its answers to the paragraphs set forth above and
21 incorporates the same herein as though fully set forth at length.

22 34. LandArizona admits HT4’s allegations in Paragraph 34.

23 35. LandArizona admits HT4’s allegations in Paragraph 35.

24
25 36. LandArizona denies HT4’s allegations in Paragraph 36 in full.
26 LandArizona affirmatively alleges that there was no payment due by LandArizona to
27 HT4 that could form the basis of a valid mechanic’s lien under Arizona law.
28

1 LandArizona further affirmatively alleges that, after LandArizona made the October 12,
2 2023 direct deposit to the plaintiff in the amount of \$25,010.34, and after those funds
3 fully transmitted into the plaintiff's bank account, HT4's execution on October 12, 2023,
4 of a conditional waiver and release on final payment converted into an unconditional
5 waiver and release on final payment. See A.R.S. § 33-1008(D). Accordingly,
6 LandArizona affirmatively alleges that its payment of \$25,010.34 constituted both a final
7 payment and an accord and satisfaction under A.R.S. § 33-1008(D). Accordingly, as
8 LandArizona informed counsel for HT4 by correspondence dated May 24, 2024, HT4
9 violated A.R.S. § 33-420 with its mechanic's lien and its notice of *lis pendens*, recorded
10 with the La Paz County Recorder on November 21, 2023, and May 16, 2024,
11 respectively, and has incurred two separate statutory penalties of \$5,000 per the two
12 separate violations of the false claims statute.
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16 **AFFIRMATIVE DEFENSES PRESERVED AS TO ALL COUNTS**

17 LandArizona asserts and thereby preserves the following affirmative defenses to
18 HT4's claims to the extent necessary to defend against any compromise or diminution by
19 HT4 of claims or interests of LandArizona:
20

- 21 a. Ambiguity/Vagueness
- 22 b. Accord and satisfaction
- 23 c. Fraud in the inducement of an accord and satisfaction
- 24 d. Collateral estoppel;
- 25 e. Equitable estoppel;
- 26 f. Consent;
- 27 g. Ratification;
- 28 h. Novation;
- i. Statutory compliance and limitation on liability;
- j. Statute of Frauds;
- k. Waiver;
- l. Failure to mitigate damages;

- 1 m. Election of remedies;
2 n. Intervening/Superseding cause;
3 o. Lack of duty;
4 p. Laches;
5 q. Unclean hands;
6 r. Spoliation of evidence;
7 s. Prevention and frustration of performance;
8 t. Punitive damages for fraud in the inducement of an accord and
9 satisfaction
10 u. Without waiving objections, any additional affirmative defenses which
11 become apparent during the course of discovery in this matter.
12

13 **PRAYER FOR RELIEF**
14

15 WHEREFORE, the Defendant LandArizona/JAK, LLC, respectfully requests that
16 this Court enter relief in favor of LandArizona and against Rodney Ellwood Schlesener,
17 dba HT4, as follows:
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- 19 A. Denying all relief requested by the plaintiff in their Complaint against
20 LandArizona, and ordering that the plaintiff take nothing thereby;
21 B. Awarding to LandArizona its cost and attorney fees for a successful defense
22 against the claims of the plaintiff, pursuant to any available contractual
23 provision, A.R.S. §§ 12-341, 341.01(A), 349-350, and A.R.S. §§ 33-995(E)
24 and 998(B), along with statutory interest thereon;
25 C. For an order entering such other and further relief in favor of LandArizona, as
26 this Court deems just and appropriate.
27

28 **COUNTERCLAIM**

As and for their Counterclaim, Defendant alleges as follows:

1 **PARTIES**

2 1. At all times relevant hereto, Counterclaimant LandArizona/JAK LLC
3 (“LandArizona”) was an Arizona limited liability company and conducted business in La
4 Paz County, Arizona.
5

6 2. At all times relevant hereto, based on information and belief formed by
7 Paragraph 1 of the complaint filed herein, Counterdefendant Rodney Ellwood
8 Schlesener, dba HT4 (“HT4”), was an Arizona limited liability company with his
9 principal place of business in Graham County, Arizona, and who conducted business in
10 La Paz County, Arizona.
11

12 **JURISDICTION AND VENUE**

13 3. The events in this matter occurred in La Paz County, Arizona.
14

15 4. Counterdefendant HT4 committed acts, omissions, or caused events to
16 occur within La Paz County.

17 5. This Court has jurisdiction over the subject matter of this controversy
18 pursuant to A.R.S. § 12-123 and Article VI § 14 of the Arizona Constitution.
19

20 6. Under Rule 26.2(c)(3) of the Arizona Rules of Civil Procedure, damages
21 and the number of documents are such as to qualify for Tier 1 assignment.

22 7. Venue is proper in this Court pursuant to A.R.S. § 12-401.
23

24 **GENERAL ALLEGATIONS**

25 8. On or about July 5, 2023, HT4 submitted to LandArizona three proposals
26 for construction work in the total amount of \$73,990.05 (“Proposals”). Exhibit A hereto.
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1 9. On August 18 and September 14, 2023, LandArizona made two progress
2 payments in the amount of \$20,000 and \$23,000, respectively, totaling \$43,000.00.

3
4 10. On October 12, 2023, HT4 presented to LandArizona a document entitled
5 “Conditional Waiver and Release on Final Payment” for payment of the amount of
6 \$25,010.34 (“Conditional Final”). See Exhibit B hereto.

7 11. The Conditional Final stated, in all bold and capitalized letters:

8
9 **NOTICE: THIS DOCUMENT WAIVES THE**
10 **CLAIMANT’S LIEN, STOP PAYMENT NOTICE, AND**
11 **PAYMENT BOND RIGHTS EFFECTIVE UPON**
12 **RECEIPT OF PAYMENT. A PERSON SHOULD NOT**
13 **RELY ON THIS DOCUMENT UNLESS SATISFIED**
14 **THAT THE CLAIMANT HAS RECEIVED THE**
15 **PAYMENT.**

16 *See Ex. B.*

17 12. The Conditional Final further states:

18 **Conditional Waiver and Release**

19 This document waives and releases lien, stop payment notice,
20 and payment bond rights the claimant has for labor and service
21 provided, and equipment and material provided, to the
22 customer on this job. Rights based on labor or service
23 provided, and equipment and material delivered, to the
24 customer on this job. Rights based upon labor or service
25 provided, or equipment or material delivered, pursuant to a
26 written change order that has been fully executed by the parties
27 prior to the date that this document is signed by the claimant,
28 are waived and released by this document, unless listed as an
exception below. This document is effective only upon the
claimant’s receipt of payment from the financial institution on
which the following check is drawn:

 Maker of Check: LandArizona/JAKLLC
 Amount of Check: \$25,010.34
 Check payable to: HT4

See Ex. B.

13. The Conditional Final further states:

Exceptions:

This document does not affect any of the following:

Disputed claims for extras in the amount of \$ _____
[left blank]

See Ex. B.

14. The Conditional Final was signed as follows:

Signature

Claimant's Signature: [Rodney E. Schlesener]

Claimant's Title: Owner [with owner written in also]

Date of Signature: 10/11/2023

See Ex. B.

15. HT4 drafted and supplied to LandArizona the Conditional Final.

16. Also on October 12, 2023, after receiving the conditional release, LandArizona paid to HT4 the amount of \$25,010.34, by way of a direct deposit that LandArizona made directly to HT4's bank. See Exhibit C hereto.

17. HT4 thereafter received the funds into its account by successful bank transfer.

18. Upon the successful transfer of LandArizona's funds into the account of HT4, the conditional release on final payment, by its language and by the operation of A.R.S. § 33-1008(D)(3), converted into an unconditional waiver and release on final payment.

19. The total of the three payments in the amount of \$68,010.54 constituted LandArizona's full performance under the contract.

20. Prior to HT4's provision of the conditional waiver and release on final

1 payment, HT4, on or about September 25, 2023, demanded payment from LandArizona
2 in the amount of \$30,990.04 for labor and materials supplied to the project, referring to
3 the amount as the “Grand Total Due”.
4

5 21. On or about October 1, 2023, HT4 emailed to LandArizona: “I need to
6 know if my *final payment per contract and invoice* is \$30,990.04.” (emphasis added).
7

8 22. On or about October 5, 2023, HT4 transmitted to LandArizona a
9 conditional waiver and release on final payment of \$30,990.04, using the same form that
10 HT4 later prepared and transmitted to LandArizona for the \$25,010.34 payment.

11 23. On or about October 11, 2023, LandArizona transmitted a two-page letter
12 to HT4, stating that LandArizona had offsets in the amount of \$5,979.70 incurred for
13 purchasing road material due to a shortfall under the contract by HT4, and to pay HT4’s
14 waterline worker.
15

16 24. HT4’s demand for \$30,990.04 and LandArizona’s demand for an offset of
17 \$5,979.70 constituted a bona fide dispute as to the amount of the final payment under
18 A.R.S. § 33-1008(D).
19

20 25. HT4 thereupon agreed to LandArizona’s claim of offset and deducted the
21 amount of \$5,979.70 from HT4’s demand for \$30,990.04 as final payment and
22 transmitted to LandArizona the Conditional Final for payment of \$25,010.35.
23

24 26. The final payment by LandArizona \$25,010.34 in exchange for a
25 conditional release on final payment for the same amount of \$25,010.34 constituted an
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1 accord and satisfaction between LandArizona and HT4.

2 27. Pursuant to A.R.S. § 33-1008(C), any failure of a conditional waiver and
3 release on final payment to substantially follow the form set forth at A.R.S. § 33-
4 1008(D)(3) “does not affect the enforceability of ... an accord and satisfaction regarding
5 a bona fide dispute...”
6

7 28. Pursuant to A.R.S. § 33-1008(D), the conditional waiver and release
8 which HT4 drafted and provided to LandArizona follows substantially the form and
9 circumstances found at A.R.S. § 33-1008(D)(3).
10

11 29. As a result of HT4 presenting the Conditional Final to LandArizona,
12 followed by LandArizona signing the Conditional Final and making payment as required
13 by its language, followed by HT4 receiving the funds, HT4 lost all rights to claim any
14 form of mechanic’s lien on the project.
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16 30. HT4 also lost such rights because LandArizona paid the contract between
17 the parties in full per the terms and language of the Conditional Final.
18

19 31. HT4 also lost such rights because LandArizona’s payment of \$25,010.34
20 and HT4’s acceptance of that payment after agreeing to LandArizona’s demand for a
21 reduction of HT4’s demand for \$30,990.04 by the offset amount of \$5,979.70
22 constituted an accord and satisfaction.
23

24 32. Nevertheless, on or about October 14, 2023, HT4 demanded payment of
25 an additional \$20,245.70 with a document it called “Final Bill 1”.

26 33. The October 14 “Final Bill 1” is a catch-all of amounts that HT4 claimed
27 to be due after the parties, on October 12, 2023, resolved the amounts due on the project.
28

1 34. The items appearing on the “Final Bill 1” were included in the work scope
2 of the original three Proposals.

3 35. The three signed Proposals each stated: “Any alteration or deviation from
4 above specifications involving extra costs will be executed only upon written order and
5 will become an extra charge over and above the estimate.” Exhibit A hereto.

6 36. LandArizona did not agree to or pre-approve any alteration or deviation
7 from the Proposals, whether orally or in writing.

8 37. For an alteration or deviation from the Proposals to occur, the Proposals
9 required that LandArizona sign and date its acceptance of a written alteration of the
10 Proposals.

11 38. There were no written change orders or other form of written alteration or
12 addition to the Proposals.

13 39. LandArizona did not sign any written change orders or other form of
14 written alteration or addition to the Proposals.

15 40. Accordingly, the entire amount of \$20,245.70 which HT4 claims in its
16 mechanic’s lien claim and in this action, even if not barred by the conversion of the
17 conditional waiver and release on final payment into an unconditional waiver and release
18 on final payment, would be unrecoverable as a result of not following the contractual
19 pre-approval requirements for any labor or materials supplied pursuant to the “Final Bill
20 1” dated October 14, 2023.
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COUNTERCLAIM COUNT I
(Declaratory Judgment)

41. LandArizona re-alleges the allegations set forth above and incorporates the same herein as though fully set forth at length.

42. This Court has jurisdiction to enter declaratory judgment relief pursuant to A.R.S. § 12-1831 (“Courts of record within their respective jurisdictions shall have power to declare rights, status, and other legal relations whether or not further relief is or could be claimed.”).

43. Based on the facts alleged in the General Allegations of LandArizona’s Counterclaim, HT4’s “Conditional Waiver and Release on Final Payment” for payment of the amount of \$25,010.34 converted into an unconditional final waiver and release.

44. Due to that conversion of HT4’s conditional waiver and release on final payment into an unconditional waiver and release on final payment, HT4 relinquished all mechanic’s lien rights against LandArizona’s real property.

45. Because HT4 relinquished those mechanic’s lien rights against LandArizona’s property, HT4, on November 21, 2023, recorded an invalid mechanic’s lien.

46. Based on the General Allegations of LandArizona’s Counterclaim, LandArizona and HT4 entered into an accord and satisfaction as to all remaining claims by HT4 for work, equipment, and materials supplied to LandArizona’s construction project based on the three Proposals.

47. As a result of the accord and satisfaction, HT4 relinquished all mechanic’s lien rights against LandArizona’s real property.

1 48. As a result of such relinquishment of mechanic's lien rights, HT4, on
2 November 21, 2023, recorded an invalid mechanic's lien with the La Paz County
3 Recorder.
4

5 49. As a result of HT4's mechanic's lien being invalid, HT4's mechanic's lien
6 foreclosure lawsuit filed May 16, 2024, is groundless.

7 50. As a result of filing a groundless mechanic's lien foreclosure lawsuit,
8 HT4's notice of *lis pendens* recorded with the La Paz County Recorder on May 16, 2024,
9 is groundless and null and void.
10

11 51. Because of LandArizona's three payments to HT4 in the amount of
12 \$68,010.54, and in light of the parties' accord and satisfaction, LandArizona fully
13 performed under the three Proposals which HT4 submitted on July 5, 2023, and which
14 LandArizona signed on July 6, 2023, and therefore no further contract obligations
15 remain for LandArizona to perform.
16

17 WHEREFORE, the counterclaimant LandArizona/JAK, LLC, respectfully
18 requests that this Court enter relief in favor of LandArizona and against the
19 counterdefendant Rodney Ellwood Schlesener, dba HT4, in the form of a declaratory
20 judgment that rules as follows:
21

22 A. LandArizona and HT4 entered into an accord and satisfaction on October 12,
23 2023, as to all disputes between them;
24

25 B. HT4, on November 21, 2023, recorded with the La Paz County Recorder an
26 invalid Notice and Claims of Mechanic's Lien;
27
28

1 C. HT4, on May 16, 2024, filed with the La Paz County Superior Court a
2 groundless mechanic's lien foreclosure action against the real property of
3 LandArizona;
4

5 D. HT4, on May 16, 2024, recorded with the La Paz County Recorder a
6 groundless notice of *lis pendens*;
7

8 E. HT4, by recording its Notice and Claim of Mechanic's Lien and its Notice of
9 *Lis Pendens*, violated A.R.S. § 33-420 and is liable for the penalties set forth
10 therein;
11

12 F. Awarding to LandArizona its costs and attorney fees as a prevailing party
13 pursuant to A.R.S. §§ 33-420(A) and (C), A.R.S. §§ 12-341, 341.01(A), 349-
14 350, and A.R.S. §§ 33-995(E) and 998(B), along with statutory interest
15 thereon; and
16

17 G. For an order entering such other and further relief in favor of LandArizona and
18 against HT4 as this Court deems just and appropriate.
19

20 **COUNT II**
21 **(Fraud – in the alternative to Counterclaim Count I)**
22

23 52. LandArizona re-alleges the allegations set forth above and incorporates
24 the same herein as though fully set forth at length.
25

26 53. HT4 made representations to LandArizona that HT4 was of the belief and
27 in agreement that LandArizona's payment of \$25,010.34 would be the final payment by
28 LandArizona to HT4 with respect to the construction labor, equipment, and materials
that HT4 supplied to LandArizona's construction site.

1 54. HT4 made such representations in the form of oral statements, issuing and
2 signed the Conditional Final, drafting and delivering to HT4 the conditional release on
3 final payment of \$25,010.34, and accepting LandArizona's final check for \$25,010.34.
4

5 55. HT4's representations were false, in that HT4 withheld its intention to
6 demand payment from LandArizona for additional sums after delivering the signed
7 Conditional Final to LandArizona and accepting LandArizona's final check.
8

9 56. HT4 had knowledge of the falsity of its statements because it knew that it
10 did not intend to stand by its representations that LandArizona's payment of \$25,010.34
11 constituted the final payment to HT4 for HT4's labor, equipment, and materials supplied
12 to the project.
13

14 57. HT4's misrepresentations were material to LandArizona's decision to
15 enter into the accord and satisfaction agreement to exchange a final payment of
16 \$25,010.34 for HT4's signed Conditional Final, because LandArizona would not have
17 paid \$25,010.34 to HT4 if LandArizona knew that HT4 thereafter intended to demand
18 an additional \$20,245.70 from LandArizona or else record a mechanic's lien for that
19 amount against LandArizona's property.
20

21 58. HT4 intended that LandArizona would act upon its representations by
22 paying the \$25,010.34 to HT4, which in turn constituted an action by LandArizona in
23 reliance upon HT4's representations, with LandArizona's reliance reasonably
24 contemplated and intended by HT4.
25
26
27
28

1 59. LandArizona was ignorant of the falsity of HT4's representations, i.e., that
2 HT4 considered LandArizona's payment to HT4 of \$25,010.34 to constitute
3 LandArizona's final payment to HT4.
4

5 60. LandArizona relied upon the truth of HT4's representations by paying to
6 HT4 the amount of \$25,010.34.

7 61. LandArizona had a right to rely upon those representations by HT4, as
8 they were not the result of any unconscionable or improper coercion or any unlawful
9 circumstances or other form of excuse for HT4 not to be truthful and accurate in its
10 representations to LandArizona.
11

12 62. LandArizona was consequently and proximately injured by HT4's deceit,
13 in the form of HT4's recording of an invalid mechanic's lien, along with HT4's
14 recording a groundless notice of *lis pendens*, and HT4's filing this groundless lawsuit.
15

16 63. HT4's actions were improper and malicious and were undertaken with an
17 intention to cause harm to LandArizona, as part of an effort to improperly extract
18 payment from LandArizona to which HT4 was not entitled.
19

20 64. HT4's malice is established by HT4's knowledge that it has taken the
21 foregoing improper actions despite having generated and provided the Conditional Final,
22 and thereafter accepted the \$25,010.34 payment from LandArizona, and thereby
23 converted the Conditional Final into and unconditional waiver and release on final
24 payment.
25

26 65. HT4's malice is further established by the fact that, despite providing the
27 form of Conditional Final in exchange for the \$25,010.34 payment, HT4 attempted to
28

1 claim that the Conditional Final failed to meet Arizona statutory requirements. Exhibit
2 D hereto.

3
4 66. HT4's malice is further established by HT4's counsel, after LandArizona
5 presented to her a copy of HT4's October 12, 2023, Conditional Final, sent multiple
6 emails and correspondence threatening to foreclose HT4's lien claim unless
7 LandArizona paid \$20,245.70 to HT4, which HT4's counsel eventually reduced to a
8 \$15,000 demand before foreclosing HT4's lien against LandArizona's real property.
9
10 Exhibit E hereto.

11 67. In that correspondence, HT4's counsel repeatedly made the false claim
12 that LandArizona had drafted and provided the Conditional Final to HT4 to sign:

- 13
- 14 • "The form that you presented to HT4 for signature does not come close to
15 following Arizona's statutory form."
 - 16 • "LandAZ paid only \$25,010.34; the amount recited in the form of lien
17 waiver you presented to HT4."
 - 18 • "In an apparent belief that the form of lien waiver you presented to HT4,
19 once signed, would act to provide LandAZ with a discount, you refused to
20 pay more."

21 *See* Ex. D, pp. 1-2.

22 68. HT4's malice is further established by the fact that it not only knowingly
23 recorded a mechanic's lien that it knew was improper, due to HT4's issuance and
24 signature of the Conditional Final and its acceptance of LandArizona's final payment of
25 \$25,010.34, but HT4, in the face of repeated requests to release the lien, instead
26 foreclosed it and recorded a notice of *lis pendens*.

WHEREFORE, the counterclaimant LandArizona/JAK, LLC, respectfully requests that this Court enter relief in favor of LandArizona and against the counterdefendant Rodney Ellwood Schlesener, dba HT4, as follows:

A. For damages to be established at trial for the injury to LandArizona as a result of HT4's fraud and its recording of its mechanic's lien, recording its notice of *lis pendens*, and filing the present lawsuit;

B. Finding that HT4 engaged in reprehensible and malicious conduct, with an evil mind, and thereby assessing punitive damages against HT4 and in favor of LandArizona, in an amount to be established at trial;

C. Awarding to LandArizona its costs and attorney fees as a prevailing party pursuant to A.R.S. §§ 12-341, 341.01(A), 349-350, and A.R.S. §§ 33-995(E) and 998(B), along with statutory interest thereon;

D. For an order entering such other and further relief in favor of LandArizona as this Court deems just and appropriate.

COUNT III
(Violation of A.R.S. § 33-420)

69. LandArizona re-alleges the allegations set forth above and incorporates the same herein as though fully set forth at length.

70. HT4, on November 21, 2023, recorded a “Notice and Claim of Mechanic’s and Materialman’s Lien” against real property owned by Counterclaimant LandArizona/JAK LLC (“Lien Claim”).

1 71. Pursuant to the standards of liability in A.R.S. § 33-420(A), HT4 knew at
2 the time of recording the Lien Claim that it was groundless, due to LandArizona having
3 paid the \$25,010.34 set forth in the Conditional Final.
4

5 72. HT4 further knew the Lien Claims was ground due to its containing a
6 material misstatement that LandArizona owed \$20,245.70 to HT4.

7 73. HT4 further knew that the Lien Claim was a false claim due to all of the
8 preceding facts and was therefore invalid.
9

10 74. Further pursuant to the standards of liability in A.R.S. § 33-420(A), HT4,
11 on May 16, 2023, HT4 filed a foreclosure action upon its Mechanic's Lien and recorded
12 a notice of *lis pendens* against the real property of LandArizona.
13

14 75. HT4 knew at the time of foreclosing the Lien Claim and recording the
15 notice of *lis pendens* that the lien foreclosure and the notice of *lis pendens* were
16 groundless, due to LandArizona having paid the \$25,010.34 set forth in the Conditional
17 Final.
18

19 76. HT4 also knew that its Lien Claim foreclosure and notice of *lis pendens*
20 were groundless at the time of their filing and recording, because the Lien Claim
21 contained a material misstatement that LandArizona owed \$20,245.70 to HT4 and was
22 a false claim due to the preceding facts and was therefore invalid.
23

24 77. Accordingly, pursuant to A.R.S. § 33-420(A), HT4, due to its conduct
25 described throughout LandArizona's Answer and Counterclaim, incurred liability to
26 LandArizona for the sum of not less than ten thousand dollars for two offenses to be
27 penalized for five thousand dollars each, i.e., recording the Lien Claim and the notice of
28

1 *lis pendens*, or for treble the actual damages to LandArizona, whichever is greater, and
2 reasonable attorney fees and costs of this action.

3
4 78. Further, pursuant to A.R.S. § 33-420(C), HT4 will be liable to
5 LandArizona for the total sum of \$2,000, for two instances of conduct penalized at
6 \$1,000 each, or treble actual damages, whichever is greater, along with an award of
7 reasonable attorney fees and costs of this litigation, if HT4 does not release its
8 Mechanic's Lien and notice of *lis pendens* within twenty (20) days of LandArizona's
9 email transmittal of a written demand to HT4's counsel on May 24, 2024, for HT4 to
10 release both the Mechanic's Lien and the notice of *lis pendens*.

11
12 WHEREFORE, the counterclaimant LandArizona/JAK, LLC, respectfully
13 requests that this Court enter relief in favor of LandArizona and against the
14 counterdefendant Rodney Ellwood Schlesener, dba HT4, as follows:
15

- 16 A. For a finding that HT4 violated A.R.S. § 33-420 by recording of its
17 Mechanic's Lien and its notice of *lis pendens*;
18
19 B. For an award of damages against HT4 and in favor of LandArizona in the
20 amount of \$5,000 each for HT4 recording its Mechanic's Lien and its notice
21 of *lis pendens*, in the total amount of \$10,000, or for treble LandArizona's
22 actual damages to be established at trial, whichever is greater;
23
24 C. In the event that HT4 refuses to release its Mechanic's Lien and notice of
25 *lis pendens* by not later than June 13, 2024, then for an award of damages
26 against HT4 and in favor of LandArizona in the amount of \$1,000 each for
27 HT4 recording its Mechanic's Lien and its notice of *lis pendens*, in the total
28

1 amount of \$2,000, or for treble LandArizona's actual damages to be
2 established at trial, whichever is greater;

3
4 D. Awarding to LandArizona its costs and attorney fees as a prevailing party
5 pursuant to A.R.S. §§ 33-420(A) and (C), A.R.S. §§ 12-341, 341.01(A),
6 349-350, and A.R.S. §§ 33-995(E) and 998(B), along with statutory interest
7 thereon;

8
9 E. For an order entering such other and further relief in favor of LandArizona,
10 as this Court deems just and appropriate.

11 RESPECTFULLY SUBMITTED this 6th day of June, 2024.

12 UDALL SHUMWAY PLC

13
14 /s/James B. Reed
15 Roger C. Decker
16 James B. Reed
17 1138 North Alma School Road, Suite
101
Mesa, AZ 85201
Attorneys for Defendant

18 **ORIGINAL** filed via TurboCourt this
19 6th day of June, 2024.

20 **COPY** emailed this same date to:

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26
27
28