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Attorneys for Plaintiff/Counter-Defendant

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/Counter-claimant,

vs.

LANDARIZONA/JAK LLC, an Arizona
limited liability company,

Defendant/Counterclaimant.

Case No.: S1500CV202400045

**PLAINTIFF/COUNTER-DEFENDANT'S
OMNIBUS CONTROVERTING
SEPARATE STATEMENT OF FACTS
IN SUPPORT OF RESPONSE TO
DEFENDANT/COUNTERCLAIMANT'S
MOTIONS FOR SUMMARY
JUDGMENT AS TO PLAINTIFF'S
FIRST AMENDED COMPLAINT
(COUNTS I - IV) AND AS TO
DEFENDANT'S COUNTERCLAIM
(COUNTS ONE AND THREE ONLY)**

(Assigned to the Honorable
Marcus Kelley)

Pursuant to Rule 56(c)(3), Ariz. R. Civ. Pro., Plaintiff/Counter-Defendant, Rodney Ellwood Schlesener doing business as "HT4" ("HT4"), ("Plaintiff"), by and through undersigned counsel, submits its Omnibus Controverting Separate Statement of Facts ("OCSSOF") in Support of its Response to Defendant/Counterclaimant's ("LandArizona's"), ("Defendant's"), Motions for Summary Judgment As to Plaintiff's First Amended Complaint (Counts One through Four) and As to Defendant's Counterclaim (Counts One and Three Only) as follows:

A. Disputed and Admitted Facts

1. For purposes of this Response, only, HT4 admits these allegations.

1 2. HT4 admits that the parties entered into three (3) separate contracts for
2 the work and that each contract was independent of the other in terms of the scope of
3 the work and the price for that scope. (Declaration of Rodney Elwood Schlesinger
4 attached as Exhibit A, ¶ 9).

5 3. For purposes of this Response, only, HT4 admits these allegations.

6 4. HT4 denies that the payments were “progress payments.” Instead, the
7 payments were specific to each of the contracts performed by HT4. Those contracts
8 were paid in lump sums, not in progress payments. (Exhibit A, ¶¶ 9, 16 and 17).

9 5. HT4 denies that the September 25, 2023 Invoice No. 4 for “WATERLINE”
10 was a demand for final payment, as LandArizona suggests. (Exhibit A, ¶ 18).

11 6. For purposes of this Response, only, HT4 admits these allegations.

12 7. HT4 denies that the October 5, 2023 Conditional Waiver and Release was
13 in exchange for final payment for all contracts with LandArizona. (Exhibit A, ¶ 23).

14 8. For purposes of this Response, only, HT4 admits that Emma Poeling of
15 HT4 supplied the form of Conditional Waiver and Release after she found it on the
16 internet. (Exhibit A, ¶ 32).

17 9. HT4 denies that statements about a “*bona fide* dispute as to the amount of
18 the final payment due under A.R.S. § 33-1008(d)” is a statement of fact.

19 10. HT4 denies that it agreed to LandArizona’s claims of offset. (Exhibit A,
20 ¶¶ 24-27).

21 11. For purposes of this Response, only, HT4 admits these allegations.

22 12. For purposes of this Response, only, HT4 admits these allegations.

23 13. For purposes of this Response, only, HT4 admits these allegations.

24 14. For purposes of this Response, only, HT4 admits these allegations.

25 15. For purposes of this Response, only, HT4 admits these allegations.

26 16. HT4 denies that the statements in this paragraph are statements of fact.

27 17. HT4 denies the “nevertheless” reference but admits that it sent a bill for
28 the Pump House work and the wrongful backcharges on October 16, 2023.

1 18. HT4 denies these allegations. (Exhibit A, ¶ 27).

2 19. HT4 denies these allegations both because the facts are inaccurate and
3 because legal argument is included. (Exhibit A, ¶¶ 11, 14, 15).

4 20. HT4 denies these allegations both because the facts are inaccurate and
5 because legal argument is included. (Exhibit A, ¶¶ 11, 14, 15). HT4 admits that
6 LandArizona did not sign a written change order and alleges that the Pump House
7 work was not a change to the other contracts but, rather, a separate contract.

8 21. HT4 denies these allegations because “Final Bill 1” was just for the
9 Waterline Contract.

10 22. HT4 denies that these allegations are facts. Rather, they are more legal
11 argument.

12 23. HT4 denies that these allegations are facts. Rather, they are more legal
13 argument.

14 24. HT4 denies “nevertheless” but admits that it recorded the Mechanics’
15 Lien” for the Pump House Contract and wrongful backcharges.

16 25. HT4 denies that the Mechanics’ Lien was wrongful and that HT4 knew it
17 was wrongful. (Exhibit A, ¶¶ 26-28).

18 26. For purposes of this Response, only, HT4 admits to receipt of the January
19 30, 2024 letter but denies that anything was clearly explained in that letter or that the
20 analysis was a correct analysis of Arizona law.

21 27. For purposes of this Response, only, HT4 admits these allegations.

22 28. For purposes of this Response, only, HT4 admits these allegations and to
23 the fact that they establish HT4’s belief in the legitimacy of its valid Mechanics’ Lien.

24 29. For purposes of this Response, only, HT4 admits these allegations.

25 30. Relevance. For purposes of this Response, only, HT4 admits that, after
26 subsequent investigation, she determined that HT4 supplied the form of Conditional
27 Waiver and Release after which the Mechanics’ Lien was released.

1 31. Relevance. HT4 also contends that the letter referenced is inadmissible
2 under Rule 408.

3 32. Relevance.

4 33. Relevance.

5 34. Relevance.

6 35. Relevance and hearsay.

7 36. Relevance and hearsay.

8 37. Relevance. The Mechanics' Lien has been released. HT4 admits that the
9 letter referenced was sent by its counsel.

10 38. HT4 denies these allegations. LandArizona has not come forth with any
11 evidence of damage caused by the brief recordation of the now-released Mechanics'
12 Lien. The "false lien" allegation is a conclusion of law.

13 39. Relevance. HT4 disputes that it did not take Mr. Kunisch's allegations to
14 heart and asserts that the investigation leading to the release of the Mechanics' Lien is
15 prima facie evidence to the contrary.

16 40. HT4 admits that it released the Mechanics' Lien.

17 41. HT4 admits that it released the Lis Pendens.

18 42. HT4 denies that these are factual allegations.

19 43. HT4 denies that these are factual allegations.

20 B. Additional and Controverting Facts

21 1. While Mr. Schlesener is an experienced general engineering contractor
22 and holds a General Dual KA Dual Engineering contractor's license, License Number
23 ROC 319426, he is a small company. Emma Poeling lives in Safford and assists him
24 with some of the paperwork but, for the most part, Mr. Schlesener handles most all of
25 the construction work and communications with his customers. (Exhibit A, ¶ 3).

26 2. Mr. Schlesener has known James Kunisch ("Kunisch") for several years.
27 Prior to July of 2023, he learned from Mr. Kunisch that his company, LandArizona/JAK,
28 owned property in Quartzsite (the "Property"). He understood that Mr. Kunisch was

1 developing an RV trailer campground and planned to sell lots within that campground.
2 (Exhibit A, ¶ 4).

3 3. Mr. Kunisch advised HT4 that he needed 350 feet of roadway to the
4 Property, 1500 lineal feet of waterline to the Property line and two (2) site pads where
5 he planned to install two RVs as models for prospective purchasers to view. (Exhibit
6 A, ¶ 5).

7 4. Mr. Kunisch told Mr. Schlesener that he wanted to supply some of the
8 materials himself to save money. The roadway required aggregate base course ("AB")
9 and so did the site pads. Mr. Kunisch told Mr. Schlesener to exclude AB from the scope
10 of HT4's work and promised to have it available when HT4 needed it. (Exhibit A, ¶ 6).

11 5. Mr. Kunisch also agreed to have water available at the Property. From
12 dust control to soil and aggregate compaction, the work required an available source of
13 water. Mr. Kunisch told Mr. Schlesener that he had a pumphouse at the Property that
14 would supply the water that HT4 needed. (Exhibit A, ¶ 7).

15 6. Messrs. Kunisch and Schlesener agreed that Tom Smith, a laborer whom
16 LandArizona was using at the Property, would perform certain work for HT4. Mr.
17 Schlesener agreed to track the hours that Mr. Smith worked and to pay Mr. Smith for
18 the hours that he worked for HT4. They agreed that the cost of Mr. Smith's labor would
19 be deducted from amounts otherwise due HT4. (Exhibit A, ¶ 8).

20 7. The parties agreed to divide the work into three (3) separate contracts and
21 treated each contract as a separate project. HT4 submitted three separate proposals for
22 three separate scopes of work: 1) roadwork to the Property (the "Roadwork Contract");
23 2) two (2) site pads (the "Site Work Contract"); and 3) water line that would supply
24 water to the Property line (the "Waterline Contract"). (Exhibit A, ¶ 9).

25 8. Mr. Kunisch signed all three proposals. They are attached to his
26 Declaration as Exhibits A, B and C. (Exhibit A, ¶ 10).

27 9. When HT4 arrived at the Property to perform the work, HT4 learned that
28 the pump house was not complete and operational because LandArizona did not yet

1 have the pump ready. LandArizona agreed to supply the water from a Quartzsite
2 location where he had an account and HT4 agreed to provide the trucks and trailers to
3 haul the water to the Property. Beginning on July 17, 2023 through July 31, 2023, HT4
4 used its trucks and its trailers to travel to the Quartzsite water source, load water and
5 haul it to the Property. (Exhibit A, ¶ 11).

6 10. For 12 days, Mr. Schlesener had to drive back and forth from Quartzsite
7 to the Property to haul an empty water trailer, pump it full of water and return to the
8 site. (Exhibit A, ¶ 12).

9 11. The absence of available water and the delays caused by the hours spent
10 pumping and hauling water from the Quartzsite water source to the Property slowed
11 HT4's progress, increased its fuel costs and increased its equipment rental costs.
12 (Exhibit A, ¶ 13).

13 12. In addition to asking HT4 to haul water for him, Mr. Kunisch asked HT4
14 to supply a hose for his well site. HT4 purchased one for \$175.00 and left it at the pump
15 house. He also asked HT4 to level the ground around the pump house. It took HT4
16 one (1) hour to do that and required that HT4 haul material from Mr. Kunisch's friend's
17 house. This work is referred to as the "Pump House Contract" work. (Exhibit A, ¶ 14).

18 13. On September 12, HT4's laborer, Alonza Zapata, and Mr. Schlesener met
19 with Mr. Kunisch and his wife. Mr. Schlesener told Mr. Kunisch that he had tracked all
20 of the additional costs that HT4 incurred hauling water for him. Both Mr. Kunisch and
21 his wife confirmed their obligation to pay for HT4's time and costs. (Exhibit A, ¶ 15).

22 14. HT4 performed the roadwork first. Mr. Kunisch inspected its work, was
23 aware of all of the AB used for the road because he purchased it, and paid HT4 in full
24 for the work. His first payment of \$20,000 was made on August 18, 2023. It was an
25 overpayment of the \$18,523.00 owed for the roadwork. (Exhibit A, ¶ 16).

26 15. HT4 performed the site pad work second. Mr. Kunisch inspected its work,
27 was aware of all of the AB used for the site pads because he purchased it, and paid HT4
28 in full for the work. On September 16, 2023, he paid \$23,000 which was \$267.30 less

1 than the price for the site pad work. (Exhibit A, ¶ 17).

2 16. HT4 performed the waterline work last. Before HT4 completed that work,
3 HT4 submitted Invoice #4 which is attached as Exhibit E to Mr. Kunisch's Declaration
4 to notify him of what would be due for the Waterline work after adjusting the
5 overpayment and underpayment and adding taxes. The title of that invoice was
6 "WATERLINE." It was sent just four (4) days after Mr. Kunisch and Mr. Schlesener
7 discussed the charges that he agreed to pay for the work that he asked HT4 to perform
8 and materials that he asked HT4 to supply relating to the pump house and the need to
9 import water. (Exhibit A, ¶ 18).

10 17. In late September, Mr. Kunisch began accusing HT4 of overcharging him
11 and talking about lien waivers that he wanted Mr. Schlesener to sign. Mr. Schlesener
12 became worried that he would not pay for the waterline work that HT4 was performing
13 and asked him to provide the form of "conditional waiver and release" that he wanted
14 Mr. Schlesener to sign after HT4 was paid for the waterline work. That email is attached
15 to Mr. Kunisch's Declaration as Exhibit F. (Exhibit A, ¶ 19).

16 18. In the industry, the project owner generally provides the form of lien
17 waiver that he wants the subcontractors to sign. Mr. Schlesener is not experienced with
18 lien waiver forms, has no training in preparing them and does not have forms to use.
19 Instead, he relies on the project owner to provide the form that he wants Mr. Schlesener
20 to sign. When asked to sign a lien waiver, Mr. Schlesener signed the conditional form
21 before he received the check and signed the unconditional form after the check cleared
22 his bank. (Exhibit A, ¶ 20).

23 19. Mr. Schlesener has always understood that the lien waiver form follows
24 the contract. If HT4 has three (3) contracts with an owner, there will be separate lien
25 waivers for each contract. (Exhibit A, ¶ 21).

26 20. In the industry, a project owner may not decide to backcharge a contractor
27 after paying the subcontractor in full. Any objections to the contractor's work must be
28 made before final payment. (Exhibit A, ¶ 22).

1 21. On October 4, 2023, Mr. Schlesener signed the Conditional Waiver and
2 Release on Final Payment attached to Mr. Kunisch's Declaration as Exhibit G. When
3 Mr. Schlesener signed the form, he believed that Mr. Kunisch had provided the form to
4 Ms. Poeling and understood that the payment was specific to the Site Pad Contract.
5 (Exhibit A, ¶ 23).

6 22. On October 11, 2023, Mr. Kunisch sent the letter attached to his
7 Declaration as Exhibit I. Even though he had approved and paid for the roadwork
8 nearly two (2) months prior, he accused HT4 of somehow increasing his AB costs. He
9 never provided any documentation of those increased costs and Mr. Schlesener never
10 understood how HT4 could have caused him to spend more on AB than necessary. Mr.
11 Kunisch claimed that HT4 owed him a credit of \$2,457.50 for the roadwork and
12 \$1,497.20 for the site pads that he had approved and paid for, in full, the month prior.
13 Mr. Kunisch also claimed that HT4 owed him \$2,025.00. He deducted all of these
14 amounts from what he owed HT4 for the waterline but would pay them only if Mr.
15 Schlesener signed a Conditional Waiver and Release. (Exhibit A, ¶ 24).

16 23. Mr. Schlesener believes that Mr. Kunisch miscalculated the amount of AB
17 that he needed for the work that HT4 was performing. Mr. Kunisch also believed that
18 the equipment supplier, Empire, had recorded a lien against the Property when it had
19 not. Instead, Empire had served the standard 20-Day Preliminary Notice that
20 contractors have to serve in Arizona to preserve their right to lien. The Notice is not a
21 lien. (Exhibit A, ¶ 25).

22 24. Mr. Schlesener did not believe that the Conditional Waiver and Release
23 form released HT4's right to file a lien for: 1) the amount that Mr. Kunisch deducted
24 from the roadwork contract **after** he had already paid HT4 for it; 2) the amount that Mr.
25 Kunisch deducted from the site work contract **after** he had already paid HT4 for it; or
26 3) the additional work that HT4 had not billed for yet. Mr. Schlesener signed the
27 Conditional Waiver and Release believing that HT4 was waiving its lien rights but only
28 to the extent of the payment on the waterline work. (Exhibit A, ¶ 26).

1 25. On October 16, 2023, HT4 sent its bill for the Pump House work that Mr.
2 Kunisch asked HT4 to perform. That bill is attached to Mr. Kunisch's Declaration as
3 Exhibit M and includes HT4's objection to Mr. Kunisch's belated objections to the
4 Roadwork and Site Pad Work along with its billings for the Pump House Work. HT4
5 also objected to the amount that Mr. Kunisch claims that he paid Mr. Smith. HT4's
6 records show that the hours that he worked and they calculated out at \$375.00 less than
7 what Mr. Kunisch paid him. That billing shows what was shown on the meters at the
8 Quartzsite water supply, calculates the truck time spent, the two (2) weeks of extra
9 rental time on the equipment, the cost of the pump hose that HT4 supplied and HT4's
10 additional labor costs. In total and with tax, Mr. Schlesener believes that LandArizona
11 owes HT4 \$20,245.70. Mr. Schlesener offered to sign an Unconditional Lien release
12 when HT4 received payment in that amount. (Exhibit A, ¶ 27).

13 26. Mr. Kunisch refused to pay HT4 so, on November 21, 2023, HT4 recorded
14 a \$20,245.70 Mechanics Lien against the Property. (Exhibit A, ¶ 28).

15 27. Mr. Kunisch objected to the Mechanics' Lien, claiming that HT4 could not
16 record it because of the Conditional Waiver and Release that Mr. Schlesener had signed
17 on October 11, 2025. (Exhibit A, ¶ 29).

18 28. Thereafter, Mr. Schlesener learned that the October 11, 2023 Conditional
19 Waiver and Release form was not the form required by Arizona law. HT4 retained an
20 attorney who wrote the May 2, 2024 letter to Mr. Kunisch that is attached to his
21 Declaration as Exhibit R. Because the form does not meet the requirements of Arizona
22 law and because Mr. Schlesener did not believe it to be a waiver of HT4's right to be
23 paid in full for the Roadwork, Site Pad and Pump Work, he refused to release the
24 Mechanics' Lien. (Exhibit A, ¶ 30).

25 29. Mr. Kunisch insisted that HT4 provided the form of Unconditional
26 Waiver and Release. In October of 2024, Mr. Schlesener reviewed his files and worked
27 with his counsel to make a number of phone calls to find out if the lien service or
28 someone else may have given HT4 a form. Ms. Poeling recalled that she may have

1 found the form on the internet. (Exhibit A, ¶ 31).

2 30. While Mr. Schlesener believes that LandArizona, as the owner, is
3 responsible for obtaining the required statutory waiver and release forms for the work
4 that he and other subcontractors perform on the Property, he believed that releasing
5 the lien was the right thing to do because Ms. Poeling had provided the forms. Mr.
6 Schlesener was also hopeful that, given that the dispute is a small one-\$20,245.70- Mr.
7 Kunisch may agree to negotiate a settlement if the Mechanics' Lien was released.
8 (Exhibit A, ¶ 32).

9 31. Days later, undersigned counsel was instructed to record the Release of
10 Mechanic's and Materialman's Lien attached as Exhibit 2 to LandArizona's Statement
11 of Facts. (Exhibit A, ¶ 33).

12 32. Unfortunately, Mr. Kunisch insists on further litigating this dispute and
13 on holding HT4 responsible for a valid Mechanics' Lien that Mr. Schlesener believed
14 that he had every right to record at the time that he recorded it. (Exhibit A, ¶ 34).

15 RESPECTFULLY SUBMITTED this 5th day of May, 2025.

16 **WHEELER LAW GROUP, PLLC**

17 /s/ Julianne C. Wheeler

18 Julianne C. Wheeler
19 Attorneys for Plaintiff/Counter-Defendant

20 **ORIGINAL** of the foregoing **e-filed**
21 this 5th day of May, 2025,
22 via TurboCourt with:

23 The Clerk of the Court
24 **LA PAZ COUNTY SUPERIOR COURT**
25 1316 Kofa Ave., Suite 607
26 Parker, Arizona 85344

27 **COPY** of the foregoing **e-mailed**
28 this same day, to:

Roger C. Decker
James B. Reed
UDALL SHUMWAY PLC
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Mesa, AZ 85201

1 rcd@udallshumway.com
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3 docket@udallshumway.com
Attorneys for Defendant/Counterclaimant

4 /s/ Skylee L. Chikuni
5 Paralegal

Exhibit A

1 Julianne C. Wheeler (No. 011795)
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3 Chandler, AZ 85286-8600
Telephone: 602-885-7485

4 AZTurboCourt E-service and
5 Court Documents: docket@wheelerlawgroup.law

6 *Attorneys for Plaintiff/Counter-Defendant*

7 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**

8 **IN AND FOR THE COUNTY OF LA PAZ**

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

11 Plaintiff/Counter-defendant,

12 vs.

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

14 Defendant/Counterclaimant.
15

Case No.: S1500CV202400045

**DECLARATION OF RODNEY
ELLWOOD SCHLESENER**

16 I, Rodney Ellwood Schlesener, make the following Declaration and state as
17 follows:

18 1. I am a sole proprietor and operate under the name of "HT4." I live in
19 Safford, Arizona but work all over the state of Arizona.

20 2. I have personal knowledge of all of the facts that are included in this
21 Declaration.

22 3. While I am an experienced general engineering contractor and hold
23 General Dual KA Dual Engineering contractor's license, License Number ROC 319426,
24 I am a small company. Emma Poeling lives in Safford and assists me with some of the
25 paper work but, for the most part, I handle most all of the construction work and
26 communications with my customers.

27 4. I have known James Kunisch ("Kunisch") for several years. Prior to July
28 of 2023, I learned from Mr. Kunisch that his company, LandArizona/JAK LLC

1 ("LandArizona"), owned property in Quartzsite (the "Property"). I understood that
2 Mr. Kunisch was developing an RV trailer campground and planned to sell lots within
3 that campground.

4 5. Mr. Kunisch advised me that he needed 350 feet of roadway to the
5 Property, 1500 lineal feet of waterline to the Property line and two (2) site pads where
6 he planned to install two RVs as models for prospective purchasers to view.

7 6. Mr. Kunisch told me that he wanted to supply some of the materials
8 himself to save money. The roadway required aggregate base course ("AB") and so
9 did the site pads. Mr. Kunisch told me to exclude AB from the scope of my work and
10 promised to have it available when I needed it.

11 7. Mr. Kunisch also agreed to have water available at the Property. From
12 dust control to soil and aggregate compaction, the work required an available source
13 of water. Mr. Kunisch told me that he had a pumphouse at the Property that would
14 supply the water that I needed.

15 8. Mr. Kunisch and I agreed that Tom Smith, a laborer whom he was using
16 at the Property, would perform certain work for me. I agreed to track the hours that
17 Mr. Smith worked and Mr. Kunisch agreed to pay Mr. Smith for the hours that he
18 worked for me. We agreed that the cost of Mr. Smith's labor would be deducted from
19 amounts otherwise due me.

20 9. We agreed to divide the work into three (3) separate contracts and treated
21 each contract as a separate project. I submitted three separate proposals for three
22 separate scopes of work: 1) roadwork to the Property (the "Roadwork Contract"); 2)
23 two (2) site pads (the "Site Work Contract"); and 3) water line that would supply water
24 to the Property line (the "Waterline Contract").

25 10. Mr. Kunisch signed all three proposals. They are attached to his
26 Declaration as Exhibits A, B and C.

27 11. When I arrived at the Property to perform the work, I learned that the
28 pump house was not complete and operational because Mr. Kunisch did not yet have

1 the pump ready. Mr. Kunisch agreed to supply the water from a Quartzsite location
2 where he had an account and I agreed to provide the trucks and trailers to haul the
3 water to the Property. Beginning on July 17, 2023 through July 31, 2023, I used my
4 trucks and my trailers to travel to the Quartzsite water source, load water and haul it
5 to the Property.

6 12. For 12 days, I had to drive back and forth from Quartzsite to the Property
7 to haul an empty water trailer, pump it full of water and return to the site.

8 13. The absence of available water and the delays caused by the hours spent
9 pumping and hauling water from the Quartzsite water source to the Property slowed
10 my progress, increased my fuel costs and increased my equipment rental costs.

11 14. In addition to asking me to haul water for him, Mr. Kunisch asked me to
12 supply a hose for his well site. I purchased one for \$175.00 and left it at the pump
13 house. He also asked me to level the ground around the pump house. It took me one
14 (1) hour to do that and required that I haul material from Mr. Kunisch's friend's house.
15 I refer to this work as the "Pump House Contract" work.

16 15. On September 12, my laborer, Alonza Zapata, and I met with Mr.
17 Kunisch and his wife. I told Mr. Kunisch that I had tracked all of the additional costs
18 that I incurred hauling water for him. Both Mr. Kunisch and his wife confirmed their
19 obligation to pay for my time and my costs.

20 16. I performed the roadwork first. Mr. Kunisch inspected my work, was
21 aware of all of the AB used for the road because he purchased it, and paid me in full
22 for the work. His first payment of \$20,000 was made on August 18, 2023. It was an
23 overpayment of the \$18,523.00 owed for the roadwork.

24 17. I performed the site pad work second. Mr. Kunisch inspected my work,
25 was aware of all of the AB used for the site pads because he purchased it, and paid me
26 in full for the work. On September 16, 2023, he paid \$23,000 which was \$267.30 less
27 than the price for the site pad work.

28 18. I performed the waterline work last. Before I completed that work, I

1 submitted Invoice #4 which is attached as Exhibit E to Mr. Kunisch's Declaration to
2 notify him of what would be due for the Waterline work after adjusting the
3 overpayment and underpayment and adding taxes. The title of that invoice was
4 "WATERLINE." It was sent just four (4) days after Mr. Kunisch and I discussed the
5 charges that he agreed to pay for the work that he asked me to perform and materials
6 that he asked me to supply relating to the pump house and the need to import water.

7 19. In late September, Mr. Kunisch began accusing me of overcharging him
8 and talking about lien waivers that he wanted me to sign. I became worried that he
9 would not pay for the waterline work that I was performing and asked him to provide
10 the form of "conditional waiver and release" that he wanted me to sign. That email is
11 attached to Mr. Kunisch's Declaration as Exhibit F.

12 20. In the industry, the project owner generally provides the form of lien
13 waiver that he wants the subcontractors to sign. I am not experienced with lien waiver
14 forms, have no training in preparing them and do not have forms to use. Instead, I
15 rely on the project owner to provide the form that he wants me to sign. When asked
16 to sign lien waivers, I sign the conditional forms before I receive the checks and sign
17 the unconditional forms after the checks clear my bank.

18 21. I have always understood that the lien waiver form follows the contract.
19 If I have three (3) contracts with an owner, there will be separate lien waivers for each
20 contract.

21 22. In the industry, a project owner may not decide to backcharge a
22 contractor after paying the subcontractor in full. Any objections to the contractor's
23 work must be made before final payment.

24 23. On October 4, 2023, I signed the Conditional Waiver and Release on Final
25 Payment attached to Mr. Kunisch's Declaration as Exhibit G. When I signed the form,
26 I believed that Mr. Kunisch had provided the form to Ms. Poeling and understood that
27 the payment was specific to the Site Pad Contract.

28 24. On October 11, 2023, Mr. Kunisch sent the letter attached to his

1 Declaration as Exhibit I. Even though he had approved and paid for the roadwork
2 nearly two (2) months prior, he accused me of somehow increasing his AB costs. He
3 never provided any documentation of those increased costs and I never understood
4 how I could have caused him to spend more on AB than necessary. Mr. Kunisch
5 claimed that I owed him a credit of \$2,457.50 for the roadwork and \$1,497.20 for the
6 site pads that he had approved and paid for, in full, the month prior. Mr. Kunisch also
7 claimed that I owed him \$2,025.00. He deducted all of these amounts from what he
8 owed me for the waterline but would pay them only if I signed a Conditional Waiver
9 and Release.

10 25. I believe that Mr. Kunisch miscalculated the amount of AB that he needed
11 for the work that I was performing. He also believed that the equipment supplier,
12 Empire, had recorded a lien against the Property when it had not. Instead, Empire had
13 served the standard 20-Day Preliminary Notice that contractors have to serve in
14 Arizona to preserve their right to lien. The Notice is not a lien.

15 26. I believed that the second Conditional Waiver and Release form, like the
16 first, was specific to the Waterline work because it was a separate contract just like the
17 Site Pad Contract was. I did not believe that the Conditional Waiver and Release form
18 released my right to file a lien for: 1) the amount that Mr. Kunisch deducted from the
19 roadwork contract **after** he had already paid me for it; 2) the amount that Mr. Kunisch
20 deducted from the site work contract **after** he had already paid me for it; or 3) the
21 additional work that I had not billed for yet. I signed the Conditional Waiver and
22 Release believing that I was waiving my lien rights but only to the extent of the
23 payment on the waterline work.

24 27. On October 16, 2023, I sent my bill for the Pump House work that Mr.
25 Kunisch asked me to perform. That bill is to Mr. Kunisch's Declaration as Exhibit M
26 and includes my objection to Mr. Kunisch's belated objections to the Roadwork and
27 Site Pad Work along with my billings for the Pump House Work. I also objected to the
28 amount that Mr. Kunisch claims that he paid Mr. Smith. My records show that the

1 hours that he worked and they calculated out at \$375.00 less than what Mr. Kunisch
2 paid him. That billing shows what was shown on the meters at the Quartzsite water
3 supply, calculate the truck time spent, the two (2) weeks of extra rental time on the
4 equipment, the cost of the pump hose that I supplied and my additional labor costs.
5 In total and with tax, I believe that LandArizona owes me \$20,245.70. I offered to sign
6 an Unconditional Lien release when I received payment.

7 28. Mr. Kunisch refused to pay me so, on November 21, 2023, I recorded a
8 \$20,245.70 Mechanics Lien against the Property.

9 29. Mr. Kunisch objected to the Mechanics' Lien, claiming that I could not
10 record it because of the Conditional Waiver and Release that I had signed on October
11 11, 2025.

12 30. Thereafter, I learned that the October 11, 2023 Conditional Waiver and
13 Release form was not the form required by Arizona law. I retained an attorney who
14 wrote the May 2, 2024 letter to Mr. Kunisch that is attached to Mr. Kunisch's
15 Declaration as Exhibit R. Because the form does not meet the requirements of Arizona
16 law and because I did not believe it to be a waiver of my right to be paid in full for the
17 Roadwork, Site Pad and Pump Work, I refused to release the Mechanics' Lien.

18 31. Mr. Kunisch insisted that I provided the form of Unconditional Waiver
19 and Release. In October of 2024, I reviewed my files and worked with my counsel to
20 make a number of phone calls to find out if the lien service or someone else may have
21 given me a form. Ms. Poeling recalled that she may have found the form on the
22 internet.

23 32. While I believe that LandArizona, as the owner, is responsible for
24 obtaining the required statutory waiver and release forms for the work that I and other
25 subcontractors perform on the Property, I believed that releasing the lien was the right
26 thing to do because Ms. Poeling had provided the forms. I was also hopeful that, given
27 that the dispute is a small one-\$20,245.70- Mr. Kunisch may agree to negotiate a
28 settlement if I released the Mechanics' Lien.

33. Days later, I instructed my attorney to record the Release of Mechanic's and Materialman's Lien attached as Exhibit 2 to LandArizona's Statement of Facts.

34. Unfortunately, Mr. Kunisch insists on further litigating this dispute and on holding me responsible for a Mechanics' Lien that I believed that I had every right to record at the time that I recorded it.

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

DATED this 5th day of May, 2025.

/s/ Rodney Ellwood Schlesener
Rodney Ellwood Schlesener