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PHXTWHS.0049.ALJ

6 Attorneys for Plaintiff

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8 **SUPERIOR COURT OF ARIZONA**  
9 **MARICOPA COUNTY**

10  
11 **PHOENIX TOWNHOUSE**  
**HOMEOWNERS ASSOCIATION, an**  
12 **Arizona nonprofit corporation,**

13 **Plaintiff,**

14 **vs.**

15  
16 **ARIZONA OFFICE OF**  
**ADMINISTRATIVE HEARINGS;**  
17 **ARIZONA DEPARTMENT OF FIRE,**  
18 **BUILDING AND LIFE SAFETY; and**  
19 **HONORABLE BRIAN TULLY,**  
**ADMINISTRATIVE LAW JUDGE;**

20 **Defendants,**

21 **and**

22  
23 **RON MERITT AND JOHN**  
24 **HERNANDEZ,**

25 **Real Parties in Interest.**

Case No. LC2008-000740-001 DT

**PLAINTIFF'S MOTION FOR  
SUMMARY DISPOSITION**

**(Assigned to the Honorable  
Paul J. McMurdie)**

26  
27 Plaintiff, Phoenix Townhouse Homeowners Association, an Arizona nonprofit  
28 corporation ("Plaintiff" or the "Association"), by and through undersigned counsel,

1 hereby moves the Court pursuant to Rule 7.1(b), Ariz.R.Civ.P., for summary disposition  
2 of the Association's claims for declaratory and injunctive relief. The Plaintiff filed the  
3 complaint in this case seeking a declaration pursuant to A.R.S. § 12-1831 *et seq.* that  
4 A.R.S. § 41-2198.01 is unconstitutional and also seeking a permanent injunction against  
5 the Department of Fire, Building & Life Safety ("DFBLS") and the Office of  
6 Administrative Hearings ("OAH") from accepting petitions and hearing adjudications  
7 pursuant to that statute.

8 The Plaintiff has properly served the State of Arizona as required by A.R.S. § 12-  
9 1841(A) and this Court's minute entry dated November 21, 2008. However, the Attorney  
10 General, having been served with the Notice of Unconstitutionality and the Complaint in  
11 this matter, filed a notice with this Court that is will not file a brief defending the  
12 constitutionality of the statute at issue. Furthermore, undersigned counsel has spoken  
13 directly with Paula Bickett, Chief Counsel for Civil Appeals at the Attorney General's  
14 Office on December 30, 2008, and Ms. Bickett confirmed that the Attorney General's  
15 Office similarly declines to participate in oral argument on the issues presented.

16 The OAH, Judge Tully and DFBLS are also represented by the Attorney General's  
17 Office, but their respective counsels appeared and requested to be given nominal party  
18 status. The Real Parties in Interest have been served but have failed to appear or  
19 otherwise defend in this matter.

20 Ariz.R.Civ.P. 7.1(b) provides, in relevant part:

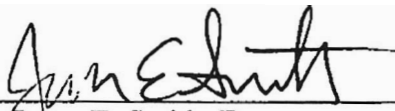
21 [I]f the opposing party does not serve and file the required answering  
22 memorandum . . . such non-compliance may be deemed a consent to  
23 the denial or granting of the motion, and the court may dispose of  
24 the motion summarily.

25 Based upon this rule and the Attorney General's notice refusing to file a brief or to  
26 participate in oral argument, the Court should find that the State has consented to the  
27 entry of the judgment requested by the Plaintiff. The issues before the Court are purely  
28 legal and need no factual investigation or proof.

1 Plaintiff therefore requests that the Court enter an order declaring A.R.S. § 41-  
2 2198.01 *et seq.* violates the separation of powers provision of the Arizona constitution;  
3 enjoining the OAH and DFBS from taking any further actions under the statute in the  
4 Plaintiff's case or any other pending case or from accepting any new petitions; and award  
5 Plaintiff its attorneys' fees pursuant to A.R.S. § 12-348(A)(4).  
6

7 Respectfully submitted this 31th day of December, 2008.

8 **CARPENTER, HAZLEWOOD, DELGADO & WOOD, PLC**

9  
10 By:   
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1 CERTIFICATE OF SERVICE

2 Original of the Foregoing filed  
3 this 31<sup>st</sup> day of December, 2008 with:

4 Clerk of the Superior Court

5 Copy of the foregoing hand delivered  
6 this 31<sup>st</sup> day of December, 2008 to:

7 The Honorable Judge Paul J. McMurdie

8  
9 Copies of the foregoing mailed  
10 this 31<sup>st</sup> day of December, 2008 to:

11 Paula S. Bickett, Esq.  
12 Chief Counsel, Civil Appeals  
13 Office of the Attorney General  
14 1275 W. Washington  
15 Phoenix, Arizona 85007-2926

16 Camila Alarcon, Esq.  
17 Assistant Attorney General  
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19 1275 W. Washington  
20 Phoenix, Arizona 85007  
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22 Hunter Perlmutter, Esq.  
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Real Parties in Interest *pro per*

