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4 Kyle O'Dwyer ([REDACTED]); [REDACTED]
5 *Attorney for Plaintiff*

6 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**
7 **IN AND FOR THE COUNTY OF MARICOPA**

8 Case No: CV2021-052893

9 [REDACTED],

10 Plaintiff,

11 vs.

12 Gregory Gillespie,

13 Defendant.
14

**RESPONSE TO DEFENDANT'S
APPLICATION FOR COSTS**

15 Plaintiff, through undersigned counsel, hereby files this Response to Defendant's
16 application for costs. The Court should deny the application because it should find that
17 neither party was a successful party. Further, my client objects to any additional
18 supplementation of the application with additional costs as being untimely.

19 **I. ARGUMENT**

20 The successful party to a civil suit is entitled to its costs. A.R.S. § 12-341.
21 However, not every case has a successful party and courts have discretion to decide
22 whether either party was a successful party. *Watson Construction Co. v. Amfac Mortgage*
23 *Corp.*, 124 Ariz. 570, 585 (Ct. App. 1979) (affirming the trial court's determination that
24 there was no successful party in a case involving multiple parties and multiple claims,
25 even when one party obtained a monetary judgment against the other). Further,
26 Defendant's argument that he should be considered successful because Plaintiff's "lack of





1 legal and factual support for her claims, which unnecessarily increased the costs” can be
2 just as easily applied to his own claims that he entirely failed to support, or even attempt
3 to support. Additionally, the abortion coercion claim only failed due to constitutional
4 issues, not Plaintiff’s conduct. Further, at the oral argument, Defendant’s counsel argued
5 that Defendant wants to be done with Plaintiff. A \$63.55 judgment will do nothing more
6 than maintain a reason for these parties to have additional contact even when the award is
7 of hardly any benefit, especially considering Defendant probably paid his attorney more
8 to draft the request than the award is actually worth.

9 Further, a request for costs is due within 20 days of the date of the decision. Ariz.
10 R. Civ. P. 54(f)(2)(A). The Court orally informed the parties during the hearing on
11 November 9, 2023 that it was requiring the parties to file any request for costs or attorneys’
12 fees within 20 days, which was November 29, 2023, as set out in the Court’s Minute-Entry
13 Order. The parties agreed to an extension of the date, approved by the Court, such that
14 requests were due on December 15, 2023. Defendant filed his request and did not request
15 an additional extension but indicated that he reserves the right to supplement his request.
16 There is nothing in the Rules that allows such a reservation of rights. Plaintiff objects to
17 any supplementation as being untimely.

18 In conclusion, the Court should determine that there was not a successful party to
19 the case and deny Defendant’s request for costs so that these parties can go their separate
20 ways.

21
22 RESPECTFULLY SUBMITTED this 19th day of December, 2023.

23 **FORTIFY LEGAL SERVICES**

24 /s/ Kyle O’Dwyer
25 Kyle O’Dwyer
26 3707 E Southern Avenue
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[REDACTED]

Attorney for Plaintiff

Filed this 19th day of December 2023
with Maricopa County Clerk of Court and
served this 19th day of December 2023
by TurboCourt on the following:

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By: Kyle O'Dwyer

