ARIZONA COURT OF APPEALS

DIVISION ONE

CLUB WEST CONSERVANCY, Petitioner, v. SHEA HOMES LIMITED PARTNERSHIP; SHEA HOMES, INC.; and THE EDGE AT CLUB WEST LLC, Respondents.	Court of Appeals Division One No. 1 CA-SA 25-_____ Maricopa County Superior Court No. CV2021-018435

PETITION FOR SPECIAL ACTION

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INTRODUCTION

This Petition presents a pure question of law requiring immediate intervention: whether a party may seek attorneys' fees and costs after missing the unambiguous deadline established by Arizona Rule of Civil Procedure 54(h)(2)(C). The superior court, acting to expand its own jurisdiction, erroneously ruled that it had "discretion" to extend a deadline that is expressly and admittedly non-extendable under these circumstances.

The timeline is straightforward: The court entered a Rule 54(b) judgment that didn't include an award of costs or fees. Respondents Shea Homes Limited Partnership and Shea Homes, Inc. missed the 15-day window to move to alter or amend the judgment to seek costs or fees. Then the court invented a novel theory to give itself discretion to resurrect Respondents' time-barred request.

The superior court's decision rests on two critical errors requiring immediate correction. First, it sidestepped Rule 54(h)(2)(C) and instead conjured a fictional interpretation of Rule 54(b) and (g) based on obsolete caselaw, ignoring that the 2017 amendments deliberately removed language that once treated fees as a separate claim. Second, despite the explicit prohibition on extensions in Rule 59(d) ("This deadline may not be

extended … except as allowed by Rule 6(b)(2)"), the superior court adopted a tortured interpretation giving itself discretion to extend the deadline. The court did so even though Respondents themselves admitted that if they "were required to file a motion under Rule 59(d) … , under Rule 6(b)(2), [the superior court] ***would not be permitted to extend that deadline***." [APP045 (emphasis added).]

This Court can stop this procedural chaos before it proceeds further. The Court should accept jurisdiction because this case simply requires interpreting procedural rules—a topic on which the Court has accepted jurisdiction dozens of times. There are no disputed facts. The undisputed procedural history and the text of the rules are all that is necessary to resolve the case. It is a pure question of law with statewide importance. And resolving the issue now will prevent the superior court from disturbing the judgment, thereby confining that court to its proper jurisdiction and preventing difficult or impossible procedural issues on appeal.

Special action jurisdiction exists precisely for situations like this—where procedural rules have been misapplied and an ordinary appeal provides an inadequate remedy.

The Court should accept jurisdiction and grant relief.

JURISDICTION

Numerous factors support accepting jurisdiction of this Petition.

First, this Petition presents a narrow question about the interpretation of procedural rules. The Arizona Appellate Handbook recognizes that "issues concerning the interpretation of rules and statutes" are "likely to have broad future application and significance are typically reviewed by special action." Arizona Appellate Handbook 2.0, at 4.13 (2020). It collects a non-exhaustive list of twenty examples where the appellate court accepted special-action jurisdiction regarding the interpretation of a rule. *Id.* at 4.58–4.59. This includes Rule 54 in particular. *See, e.g.*, *Sw. Gas Corp. v. Irwin*, 229 Ariz. 198 (App. 2012) (interpreting the pre-amendment Rule 54(b)).

In the five years since that edition of the Handbook was published, the appellate courts have accepted jurisdiction and granted relief in at least twelve more special actions regarding rule interpretation. *See Yauck v. W. Town Bank & Tr.*, ___ Ariz. ___, 2025 WL 868712 (App. Mar. 20, 2025) (interpreting Rules 64 and 69, Ariz. R. Civ. P.); *Kelly v. Blanchard*, 255 Ariz. 197 (App. 2023), *review denied* (Aug. 22, 2023) (interpreting Rule 35(d)(2)(B)); *Clayton by & through Sherman v. Kenworthy*, 250 Ariz. 65 (App. 2020) (interpreting Rule 35(c)(2)(A)); *E&E Pool Constr. v. Mikitish*, 1 CA-SA 20-0176,

2020 WL 6503581 (App. Oct. 29, 2020) (interpreting Rule 77); *Sobrino v. Fisk*, 561 P.3d 849 (App. 2024) (interpreting Rule 6(b), Ariz. R. Family Law P.); *Ross v. Pratte*, 254 Ariz. 91, 94 (App. 2022) (interpreting Rule 6(e)(2), Ariz. R. Family Law P.); *Maricopa Cnty. v. Ainley*, 1 CA-SA 24-0086, 2024 WL 2783782 (App. May 30, 2024), *review denied* (Aug. 2, 2024) (interpreting Rule 4(b), Ariz. R. P. Special Actions); *White v. State*, ___ Ariz. ___, 2025 WL 555077 (App. 2025) (interpreting Rules 1.5(c)(2) and 26.9, Ariz. R. Crim. P.); *State v. Fish*, ___ Ariz. ___, 2024 WL 4887128 (App. 2024) (interpreting Rule 15.1(b)(1), Ariz. R. Crim. P.); *Harnage v. Browning*, 256 Ariz. 441 (App. 2023) (interpreting Rule 10.2(c)(1)(C), Ariz. R. Crim. P.); *Dominguez v. Metcalf*, 255 Ariz. 310 (App. 2023) (interpreting Rule 7.2(c)(1)(A), Ariz. R. Crim. P.); *Bradley v. Yost*, 1 CA-SA 22-0173, 2022 WL 4846071 (App. Oct. 3, 2022) (interpreting Rule 26.3, Ariz. R. Crim. P.).

Second, this Petition presents a question "of first impression." RPSA 12(b)(3). No binding precedent has interpreted Rule 54(h)(2)(C), the civil procedure rule that was adopted in 2017 and is at the heart of this Petition.

Third, the Petition presents a question "of statewide importance." RPSA 12(b)(4). The Rules of Civil Procedure apply throughout the state. Accordingly, the Appellate Handbook correctly recognizes that "when the

issue raised involves the interpretation of a rule or statute, the legal issue is typically one of statewide importance." Arizona Appellate Handbook 2.0, at 4.13 (2020).

Fourth, resolving the question presented "will materially advance the efficient management of the case." RPSA 12(b)(7). As explained below, the superior court's ruling has set this case down a path that will result in that court acting without jurisdiction to disturb a final judgment, and presumably enter a new judgment in violation of the rules. Unscrambling this mess, particularly while the rest of the case proceeds to trial in August, is an inefficient way to manage the case. Moreover, if the Court accepts jurisdiction and grants relief, it will obviate the need for Petitioner expend resources to brief Respondents' application for attorneys' fees and costs at the same time that Petitioner prepares for trial against The Edge.

Fifth, respectfully, this petition "concern[s] a decision that cannot be justified under any rule of law." RPSA 12(b)(8). As detailed below, the superior court's decision misapplies and conflicts with the plain text of Rules 54, 59, and 6 of the Arizona Rules of Civil Procedure.

Sixth, and relatedly, the petition concerns a pure issue of law. *Sw. Gas Corp.*, 229 Ariz. at 201, ¶ 7 (explaining that "when … the special action

presents a pure question of law, it is particularly appropriate for us to accept jurisdiction," and noting that "the interpretation and application of a procedural rule like Rule 54(b)" is "solely a question of law"); *cf.* RPSA 12(c)(1) ("whether the petition asks the court to resolve questions … of fact" militates against accepting jurisdiction).

Seventh, Petitioner filed this petition with exceptional dispatch. *Cf.* RPSA 12(c) ("In deciding whether to accept jurisdiction, the court should also consider … whether the petitioner unreasonably delayed in filing the petition."). The decision of which Petitioner seeks special action review was filed on April 30, 2025. [APP052.] Petitioner is filing this petition the following day, on May 1, 2025.

At bottom, "the remedy by appeal is not equally plain, speedy, and adequate" in this case. RPSA 2(b)(2). The superior court entered a final judgment, the time to take an appeal of that ruling has closed, and the time to file a Rule 59 motion has lapsed. The superior court has no jurisdiction to disturb that judgment. But the court issued a ruling claiming discretion to do just that, and indicating that it intends to do so. This Court may act now to prevent the superior court from acting without jurisdiction and creating a procedural mess that will be difficult, if not impossible, to clean up by

ordinary appeal. Preventing this mess now, via special action, is the far superior path. Preventing this type of judicial overreach falls squarely within the scope of the Court's powers under the old writs, including the writ of prohibition, and therefore there is no equally plain, speedy, and adequate remedy by appeal. *Cf.* RPSA 2(c) (special actions codify the former writs).

The Court should accept jurisdiction.

ISSUES

1. Rule 54(h)(2)(C) provides that "[i]f the court enters a judgment under Rule 54(b) … without first receiving a motion for judgment or a proposed form of judgment, a prevailing party seeking costs and/or fees must file a motion to alter or amend the judgment within the time required by Rule 59(d)." If a trial court enters judgment under Rule 54(b) without first receiving a motion for judgment or a proposed form of judgment, and a prevailing party does not file a motion to alter or amend the judgment within the time required by Rule 59(d), is that party thereafter barred from seeking costs and/or fees?

2. Rule 59(d) provides that its "deadline may not be extended by stipulation or court order, except as allowed by Rule 6(b)(2)." Does Rule 59(d) forbid extensions of its deadline that are not allowed by Rule 6(b)(2)?

In resolving these issues incorrectly, the superior court "proceeded … without … jurisdiction or legal authority" (RPSA 4(b)), and "made a decision that was … an abuse of discretion, which can include a legal error" (RPSA 4(c)).

STATEMENT OF FACTS

I. Background.

Petitioner sued Respondents Shea Homes Limited Partnership and Shea Homes, Inc. (as well as Respondent The Edge at Club West LLC)[1] seeking a declaration that a servitude requires the Foothills Club West Golf Course to be used as a golf course or maintained as open space. [*See* APP002.] Respondents moved for summary judgment and sought dismissal. [APP003.]

II. The superior court enters judgment for Respondents under Rule 54(b), a month later Respondents untimely seek attorneys' fees and costs, and Petitioners object.

In a minute entry filed February 14, 2025, the superior court granted Respondents' motion, dismissed them from the action, and entered a Rule

[1] As shorthand, the Petition refers to Shea Homes Limited Partnership and Shea Homes, Inc. as "Respondents." The Edge remains a defendant below, and Petitioner (plaintiff below) is set to try its case against The Edge on August 4–11.

54(b) judgment in their favor. [APP005.] The minute entry recited that, "[p]ursuant to Rule 54 (b), Ariz. R. Civ. P., the Court finds no just cause for delay and directs entry of this Judgment forthwith." [*Id.*] Judge Pineda signed the minute entry. [*Id.*]

On March 14, 2025—a month after the superior court entered judgment in their favor—Respondents filed a "Notice of Lodging Proposed Form of Final Judgment Pursuant to Ariz. R. Civ. P. 54(b)." Respondents noted that the court's February 14 minute entry "fully resolved all claims against [them]" and "expressly found no just cause for delay exists here." [APP006–007.] But Respondents asked the court to enter a "Proposed Final Judgment … [that] contains Rule 54(b) language and includes space to allow the Court to include an award of costs and reasonable attorneys' fees." [APP007.] The Edge has indemnified Respondents for their fees and costs. [APP040 (quoting Respondents' 3/17/25 Application for Attorneys' Fees & Costs at 5 n.3).]

The next business day, Petitioner filed an Objection to Respondents' Notice of Lodging Proposed Form of Judgment. [APP012.] Petitioner explained that under Rules 54(b) and 58(b), the February 14 minute entry—which was in writing and signed by a judge—is a final judgment. [APP013–

014.] There was no reason to enter judgment when judgment already had been entered. [APP014–15.] And Respondents missed the deadline to request fees and costs. [APP015–16.]

Petitioners explained that, under Rule 54(h)(2)(C), "[i]f the court enters a judgment under Rule 54(b) … without first receiving a motion for judgment or a proposed form of judgment, a prevailing party seeking costs and/or fees must file a motion to alter or amend the judgment within the time required by Rule 59(d)." Ariz. R. Civ. P. 54(h)(2)(C); [APP015]. Rule 59(d), in turn, requires that "[a] motion to alter or amend a judgment must be filed no later than 15 days after the entry of judgment." Ariz. R. Civ. P. 59(d). And Rule 59(d) specifies that "[t]his deadline may not be extended by stipulation or court order, except as allowed by Rule 6(b)(2)." *Id.*

Here, Respondents explained, the superior court entered judgment under Rule 54(b) on February 14 without first receiving a motion for judgment or proposed form of judgment. [APP015.] So, if Respondents (as the prevailing parties) sought costs or fees, they needed to move to alter or amend the judgment within 15 days. [*Id.*] They did not do so. [*Id.*] And Rule 6(b)(2) did not allow an extension of that 15-day deadline, because Respondents could not show—as Rule 6(b)(2) requires—that they "did not

receive notice from the clerk or any party within 21 days" after entry of the February 14 judgment. [APP016 (quoting Ariz. R. Civ. P. 6(b)(2)(B)).] Petitioner therefore requested that the superior court reject Respondents' Notice and Proposed Form of Judgment. [APP016.][2]

On March 28, Respondents filed a "Reply to [Petitioner's] Objection … or, in the Alternative, Rule 6(b)(1) Motion to Enlarge the Time to File Rule 54(h)(2)(C) Motion to Alter/Amend the Judgment." [APP023.] Respondents argued that the superior court's February 14 judgment "did not constitute a final judgment" [APP025–28], and that if it was, the court "should enlarge the time for [Respondents] to file their Rule 54(h)(2)(C) motion pursuant to Rule 6(b)(1) … and deem [Respondents'] Proposed Judgment as the required Rule 54(h)(2)(C) motion." [APP029.] Despite the fact that Rule 54(h)(2)(C) specifically requires a motion to alter or amend the judgment to be filed "within the time required by Rule 59(d)," and even though Rule 59(d) specifies that its 15-day deadline "may not be extended … except as allowed by Rule 6(b)(2)," Respondents argued that "Rule 6(b)(2) expressly states that

[2] On the same day Petitioners filed their Objection, March 17, Respondents filed an application for attorneys' fees and costs. [*See* APP054.]

it does not apply to Rule 59 motions" and asserted that the court should apply Rule 6(b)(1) instead. [APP029 n.5.]

With leave of court, Petitioner filed a Sur-Reply in Support of its Objection on April 14, explaining (again) that the February 14 judgment is a judgment [APP035–36], Respondents missed their deadline to move to amend the judgment [APP037], and the Rules prohibited the court from extending Respondents' deadline [APP037–40].

Respondents then filed a "Reply in Support of Rule 6(b)(1) Motion to Enlarge the Time to File Rule 54(h)(2)(C) Motion to Alter/Amend the Judgment." [APP042.] Respondents abandoned their argument that the February 14 judgment is not a judgment. Instead, changing tacks, they argued that Rule 54(f) and (g) set the deadline for their application for fees and costs [APP045–46], that Rule 54(h) does not apply [APP047–49], and that "even if Rule 54(h) did apply, [the superior court] has discretion to enlarge the time for [Respondents] to alter or amend the judgment under Rules 6(b)(1) and 54(h)(2)(C)" [APP049–50]. And although Respondents disputed whether they "were required to file a motion under Rule 59(d)," they admitted that if they were, then "under Rule 6(b)(2), [the superior court] would not be permitted to extend that deadline." [APP045.]

The superior court heard oral argument on April 28, and that same day entered the ruling that was filed by the clerk on April 30. [APP052.]

III. The superior court extends the non-extendable deadline.

The superior court confirmed that the February 14 judgment was a Rule 54(b) judgment. [APP054.] But, apparently relying on a prior version of the Rule and citing obsolete authority interpreting it, the court determined that "a claim for attorney's fees is treated as a separate claim from the decision on the merits of the case." [*Id.* (citing *Britt v. Steffen*, 220 Ariz. 265, 269, ¶ 19 (App. 2008).] The court did not address Rule 54(h)(2)(C) at all, even though that subsection directly addresses this issue. Instead, the superior court reasoned that "[b]ecause the Court's Rule 54(B) judgment did not apply to the issue of attorneys' fees, the question is whether the proposed form of judgment and subsequent application for attorneys' fees and cost [sic] was timely under Rule 54(g)." [*Id.*] Citing "Rule 54(g)(2)"—which only applies to Rule 54(c) judgments—the court concluded a fees motion is due "within twenty (20) days following the clerk's mailing of the merits decision." [APP055 (citing *Britt*, 220 Ariz. at 270, ¶ 271).] Because Respondents' fee motion was filed more than 20 days after the court's Rule

54(b) judgment, the court concluded that Respondents' fee motion "is untimely." [*Id.*]

Nevertheless, the court concluded that Respondents missed their deadline due to "excusable neglect," and that "[u]nder Rule 6(b)(2), the Court has discretion to grant an extension of time to file a Motion to Amend Judgment." [APP055.] The court did so despite Respondents' admission that the court was "not permitted to extend [the] deadline" under Rule 6(b)(2). [APP045.]

Rule 6(b)(2) provides:

> (2) *Exceptions*. A court may extend the time to act under Rules 50(b), 52(b), 59(b)(1), (c) and (d), and 60(c) as those rules allow, or alternatively, may also extend the time to act under those rules for 10 days after the entry of the order extending the time, if:
>
> > (A) the moving party files the motion within 30 days after the specified time to act expires under these rules or within 7 days after the party received notice of the entry of the judgment or order triggering the time to act under these rules, whichever is earlier;
> >
> > (B) the court finds that the moving party was entitled to notice of the entry of judgment or the order, but did not receive notice from the clerk or any party within 21 days after its entry; ***and***
> >
> > (C) the court finds that no party would be prejudiced by extending the time to act.

Ariz. R. Civ. P. 6(b)(2) (emphasis added).

Despite the Rule's conjunctive "and," the superior court held that a party does not need to meet all three of the Rule's requirements for Rule 6(b)(2) to an allow an extension. The court tried to reason that "this requirement was removed when the rule was rewritten," concluded that the Rule's limitations "do not pertain to [Respondents'] original requests for an extension of time, but to a request to extend that time further," and interpreted the Rule to mean that "[i]f a party fails to meet an extended deadline, the party would have to show that they did not receive the Court's order extending time before they can obtain an additional 10 days to file their motion." [APP056.] No one advanced these arguments, and the court's construction is one the Rule cannot bear. The court concluded that "[b]ecause this is [Respondents'] first request for extension of time, it was no more than by 10 days." [APP056.] The court then:

> ORDERED granting [Respondents'] requests for extension of time to file their Motion to Amend Judgment and treats their Proposed Form of Judgment and Application for Attorneys' Fees and Costs as their Motion to Amend Judgment,

and directed Petitioner to "file their Response within 20 days of the date of this order." [APP056.]

Petitioner then filed this special action.

STANDARD OF REVIEW

The Court reviews de novo the application of procedural rules. *King v. Titsworth*, 221 Ariz. 597, 598, ¶ 8 (App. 2009) ("[T]he interpretation of Rule 54(g)(1) is a question of law and thus is subject to our *de novo* review."); *Adrian E. v. Ariz. Dep't of Economic Sec.*, 215 Ariz. 96, 99, ¶ 9 (App. 2007) ("The interpretation of a court rule presents a question of law that we review de novo.").

ARGUMENT

The Court should accept jurisdiction and grant relief.

I. Under the plain text of the applicable Rules, Respondents missed their deadline to seek fees and costs, and the superior court lost jurisdiction to award them fees or costs.

This case involves the straightforward application of three Rules of Civil Procedure: Rules 54(h)(2)(C), 59(d), and 6(b)(2). The Rules' unambiguous text confirms that Respondents missed their deadline to seek attorneys' fees and costs and, contrary to the decision below, the superior court could not extend that deadline.

A. The February 14 judgment is a judgment.

The superior court's decision confirms that its February 14 judgment is a judgment. [APP054 (referring to "the Court's Rule 54(B) judgment").] That is undoubtedly true. Under Rule 54(b), the court "expressly determine[d] there [wa]s no just reason for delay and recite[d] that the judgment [wa]s entered under Rule 54(b)." [APP005 ("Pursuant to Rule 54(b), Ariz. R. Civ P., the Court finds no just cause for delay and directs entry of this Judgment forthwith.").] Under Rule 58(b)(1), the Judgment was "in writing and signed by a judge." [*Id*.] And under Rule 58(b)(2)(A), the Judgment became effective "when the clerk file[d] it." These facts lead to the unavoidable conclusion that the February 14 judgment is a Rule 54(b) judgment. *See also Brumett v. MGA Home Healthcare, L.L.C.*, 240 Ariz. 420, 426, ¶ 8 (App. 2016) ("The Arizona Rules of Civil Procedure define 'judgment' broadly to include 'an order from which an appeal lies.'" (quoting Ariz. R. Civ. P. 54(a)).

B. Respondents had to timely move to alter or amend the judgment if they wanted to seek costs or fees.

If Respondents wanted to seek fees or costs, Rule 54(h) required them to timely move to alter or amend the court's Rule 54(b) judgment. Generally,

"claims for attorney's fees and costs must be resolved before any judgment may be entered under Rule 54(b)," and "any award of attorney's fees or costs must be included in the judgment." Ariz. R. Civ. P. 54(h)(1)(A)–(B). But "[w]hen a judgment is required to include fees or costs," Rule 54(h)(2)(C) specifies the sole method for requesting fees:

> If the court enters a judgment under Rule 54(b) … without first receiving a motion for judgment or a proposed form of judgment, a prevailing party seeking costs and/or fees must file a motion to alter or amend the judgment within the time required by Rule 59(d).

Ariz. R. Civ. P. 54(h)(2)(C). *Accord* Daniel J. McAuliffe & Shirley J. McAuliffe, Ariz. Civil Rules Handbook at 874 (2025 ed.) ("McAuliffe & McAuliffe") ("If a judgment required to include fees or costs fails to do so, then the remedy is to file a motion to alter or amend the judgment under Ariz. R. Civ. P. 59(d).").

Here, on February 14, the superior court entered judgment without first receiving a proposed form of judgment. [*See* APP005.] So, in order to "seek[] costs and/or fees," Respondents were required to "file a motion to alter or amend the judgment within the time required by Rule 59(d)." Ariz. R. Civ. P. 54(h)(2)(C). Rule 59(d), in turn, requires that "[a] motion to alter or

amend a judgment must be filed no later than 15 days after the entry of judgment."

C. Respondents did not timely move to alter or amend the February 14 judgment.

Under these clear Rules, if Respondents wanted to seek fees or costs, they had only one path to do so: file a motion to amend the judgment within the time required under Rule 59(d) by March 3 (i.e., 15 days after judgment was entered on February 14). They did not do so. Instead, they lodged a proposed form of judgment almost two weeks after that deadline, on March 14. [APP006.] Rules 54(h)(2)(C) and 59(d) gave Respondents a clear deadline. They missed it.

D. The Rules prohibit any extension of the deadline here.

Rules 59(d) and 6(b)(2) prohibit any extension of Respondents' deadline in this case. As just explained, under Rule 54(h)(2)(C), if Respondents wanted to seek costs or fees, they had to "file a motion to alter or amend the judgment within the time required by Rule 59(d)." Rule 59(d), in turn, provides that "a motion to alter or amend a judgment must be filed no later than 15 days after the entry of judgment." And critically, Rule 59(d)

specifies that "[t]his deadline may ***not*** be extended by stipulation or court order, ***except as allowed by Rule 6(b)(2)***." (Emphases added.)

But the exception allowed by Rule 6(b)(2) does not apply here. That rule allows a "court [to] extend the time to act under [Rule 59(d)]" only if three requirements are ***all*** met:

> (A) the moving party files the motion within 30 days after the specified time to act expires under these rules or within 7 days after the party received notice of the entry of the judgment or order triggering the time to act under these rules, whichever is earlier;
>
> (B) the court finds that the moving party was entitled to notice of the entry of judgment or the order, but did not receive notice from the clerk or any party within 21 days after its entry; ***and***
>
> (C) the court finds that no party would be prejudiced by extending the time to act.

Ariz. R. Civ. P. 6(b)(2) (emphasis added). These requirements are "joined with the conjunction 'and,'" which means that they must all be met before the exception can apply. *State v. Brearcliffe*, 254 Ariz. 579, 583, ¶ 13 (2023).

Here, however, there is no dispute that Respondents received notice of the entry of judgment on February 14. This means that Respondents cannot meet the requirement in Rule 6(b)(2)(B). For this reason alone, the superior court could not extend Respondents' deadline to move to alter or amend the

judgment in order to seek fees or costs. Respondents are therefore time-barred from seeking fees or costs.

E. Because Respondents did not timely move to alter or amend the judgment, the superior court lost jurisdiction to award them costs or fees.

Because Respondents did not move to alter or amend the judgment "within the time required by Rule 59(d)," Ariz. R. Civ. P. 54(h)(2)(C), and because the superior court could not extend Respondents' time under Rule 6(b)(2), the court's Rule 54(b) judgment became final and the superior court lost jurisdiction to award Respondents fees or costs. The comments to the 2017 amendments to Rule 54 confirm this: "Absent a timely motion under Rule 59(d), a judgment omitting fees or costs will be final for purposes of appeal." Comment to Ariz. R. Civ. P. 54, 2017 amendments. Rule 54(i) also confirms the absence of jurisdiction to award fees or costs in circumstances like these. That Rule provides that "[i]f a judgment certified under Rule 54(b) ***adjudicates fewer than all of the claims and liabilities of any party***, the court retains jurisdiction" to award costs and fees. Ariz. R. Civ. P. 54(i)(2)(A)–(B) (emphasis added). As already explained, however, since 2017, a claim for fees is not a separate claim for Rule 54(b) purposes. As a result, the superior court's Rule 54(b) judgment here adjudicates all of

Respondents' claims or liabilities, and thus the court ***lacked*** jurisdiction to award fees or costs after Respondents failed to timely move to alter or amend the judgment. *Cf. Aloia v. Gore*, 252 Ariz. 548, 551, ¶¶ 12-13 (App. 2022) (party's failure to timely move under Rules 59 and 6(b)(2) "jurisdictionally barred the court from hearing [party's] argument that the punitive damages exceeded constitutional bounds and from reducing the jury's punitive damages award in this instance").

* * *

In sum, the February 14 judgment is a Rule 54(b) judgment. Because the superior court entered that Rule 54(b) judgment before receiving a motion for judgment or proposed form of judgment, Respondents had to move to alter or amend the judgment within 15 days after judgment was entered if they wanted to seek fees or costs. They did not do so. Under Rules 59(d) and 6(b)(2), Respondents' deadline cannot be extended. So it is too late for Respondents to seek fees or costs, and the superior court lacks jurisdiction to award them.

II. The superior court's contrary decision misinterprets the rules in multiple ways.

The superior court's decision concluding otherwise turns on a series of legal errors. As noted, the decision does not analyze Rule 54(h)(2)(C) at all even though that Rule squarely applies by its plain terms. Instead, based on superseded versions of Rules 54(b) and (g), and similarly obsolete caselaw interpreting them, the court applied the wrong (20-day) deadline to Respondents. The court concluded that Respondents missed even that deadline. But then, based on an interpretation of Rule 6(b)(2) advanced by no party and which the Rule's text refutes, the superior court extended Respondents' missed deadline—allowing them to seek fees and costs despite their being out of time to do so, and despite their admission that the superior court "would not be permitted to extend [the] deadline" under Rule 6(b)(2). [APP045.] The superior court's decision should be reversed.

A. The court improperly relied on caselaw interpreting a prior version of Rule 54(b) to misconstrue the Rule.

For starters, the superior court's decision is premised on a prior version of Rule 54(b) and outdated caselaw interpreting it. Rule 54(b) allows a court to "direct entry of a final judgment as to one or more, but fewer than all, claims or parties only if the court expressly determines there is no just

reason for delay and recites that the judgment is entered under Rule 54(b)," Ariz. R. Civ. P. 54(b), as the superior court did here on February 14 [APP005].

According to the court's decision, however, "[a] Rule 54(b) judgment contemplates … allowing a party to file a fee application after entry of a Rule 54(b) judgment." [APP054.] Citing two decisions of this Court, the superior court reasoned that "a claim for attorney's fees is treated as a separate claim from the decision on the merits of the case." [*Id.* (citing *Britt*, 220 Ariz. at 269, ¶ 19); *see also id.* ("A claim for attorneys' fees may be considered a separate claim from a judgment on the merits …." (citing *Fields v. Oates*, 230 Ariz. 411, 414, ¶ 10 (App. 2012)).] But these premises are wrong—that has not been the rule since 2017.

An earlier version of Rule 54(b) stated that, "'[f]or purposes of this subsection, a claim for attorneys' fees may be considered a separate claim from the related judgment regarding the merits of a cause.'" *Britt*, 220 Ariz. at 269, ¶ 18 (quoting then-Rule 54(b)). That is the version of the Rule that *Britt* interpreted. *Id.* That is also the version of the Rule that *Fields* interpreted. 230 Ariz. at 414, ¶ 10.

In 2017, however, that sentence was ***deleted*** from Rule 54(b).[3] Accordingly, Rule 54(b) no longer treats a claim for attorneys' fees as a separate claim, and decisions like *Britt* and *Fields* are no longer good authority on that point. *See* McAuliffe & McAuliffe at 873 (noting that the 2017 revisions "[a]mended the provisions of abrogated Rule 54(b) to delete the last sentence such that Ariz. R. Civ. P. 54(b) no longer expressly permits a claim for attorney's fees to be considered separate from the related judgment.").

In at least two other places, the current version of Rule 54 confirms that a claim for attorneys' fees is not a separate claim for purposes of Rule 54(b). ***First***, current Rule 54(g)(2) does treat a claim for attorneys' fees as a separate

[3] Rule 54(b) now reads, in its entirety: "(b) Judgment on Multiple Claims or Involving Multiple Parties. If an action presents more than one claim for relief--whether as a claim, counterclaim, crossclaim, or third-party claim--or if multiple parties are involved, the court may direct entry of a final judgment as to one or more, but fewer than all, claims or parties only if the court expressly determines there is no just reason for delay and recites that the judgment is entered under Rule 54(b). If there is no such express determination and recital, any decision, however designated, that adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties does not end the action as to any of the claims or parties and may be revised at any time before the entry of a judgment adjudicating all the claims and all the parties' rights and liabilities."

claim for Rule 54(c) judgments. Under Rule 54(g)(2), "[i]f a decision adjudicates all claims and liabilities of all of the parties, ***except a claim for attorney's fees***, and judgment is to be entered under Rule 54(c), any motion for attorney's fees must be filed within 20 days after the decision is filed, or by such other date as the court may order." (Emphasis added.) In contrast, Rule 54(g)(3)(A), which concerns the time for filing attorneys' fees motions for "[d]ecisions [s]ubject to Rule 54(b)," contains no such exception: "If a decision adjudicates all claims and liabilities of any party …." Ariz. R. Civ. P. 54(g)(3)(A).

Second, Rule 54(g)(3)(B), which also applies to Rule 54(b) decisions, says that "[i]f a decision or judgment adjudicates ***fewer than all claims*** and liabilities of a party, a motion for fees must be filed no later than 20 days after any decision is filed that adjudicates all remaining claims in the action, or 20 days after the action's dismissal, whichever occurs first." (Emphasis added.) Reading that Rule to apply to a decision that adjudicates every claim except an attorneys' fees claim would produce absurd results: it would mean that the fee motion is due 20 days ***after*** a decision that adjudicates the fee claim. That cannot be what the Rule means.

Instead, beginning with the 2017 amendments, a claim for fees is not a separate claim for purposes of Rule 54(b). The superior court erred by applying an earlier version of the Rule based on outdated caselaw.

B. The court applied the wrong deadline to Respondents, again based on an outdated version of Rule 54 and outdated caselaw.

The superior court's faulty premise that its "Rule 54(B) judgment did not apply to the issue of attorneys' fees" led to its next error: asking "whether [Respondents'] proposed form of judgment and subsequent application for attorneys' fees and cost[s] was timely under Rule 54(g)." [APP054.] That was the wrong question. As explained above, under Rule 54(h)(2)(C), the right question was whether Respondents had timely moved to alter or amend the judgment to seek fees or costs, and the right answer was "no."

Moreover, the superior court's analysis of Rule 54(g) has the same defects as its analysis of Rule 54(b): it is based on a prior version of the Rules and correspondingly obsolete caselaw. According to the superior court, "[i]f a decision adjudicates all claims and liabilities of all parties, except a claim for attorney's fees, the motion for attorney's fees must be filed within 20 days after the decision on the merits has been filed." [APP054.] For that proposition, the court cites "Rule 54(g)(3)(A)(1), Ariz. R. Civ. P." [*Id.*] But

there is no Rule 54(g)(3)(A)(1). And to the extent the court was referring to Rule 54(g)(3)(A)(i), that Rule makes no "except[ion for] a claim for attorneys' fees." [APP054.]

The superior court next cites *Britt*, 220 Ariz. at 270, ¶ 21, for the proposition that "Rule 54(g)(2) directs a party to file a motion for attorneys' fees within twenty (20) days following the clerk's mailing of the merits decision." [APP055.] But again, *Britt* was interpreting a ***pre-2017*** version of Rule 54. *See Britt*, 220 Ariz. at 270, ¶ 11 ("Rule 54(b) now treats a claim for attorneys' fees as a separate claim from the decision on the merits of the cause, and Rule 54(g)(2) directs a party to file a motion for attorneys' fees within twenty days following the clerk's mailing of the merits decision"); *see also id.* at 269, ¶ 17 (quoting then-Rule 54(g)(2)). ***Current*** Rule 54(g)(2) does not apply to Rule 54(b) judgments at all; it applies to Rule 54(c) judgments.

Regardless, the court applied a 20-day deadline under Rule 54(g) and concluded that Respondents' fee application—filed 31 days after the Rule 54(b) judgment—was "untimely." [APP055.]

C. The court erroneously concluded it had discretion to extend Respondents' deadline.

Despite its errors up to that point, the superior court correctly turned to Rule 6(b)(2) to determine whether it could extend Respondents' time under Rule 59(d). [APP055.] Respondents had conceded that if "they were required to file a motion under Rule 59(d), … under Rule 6(b)(2), [the superior court] would not be permitted to extend that deadline." [APP045.] But notwithstanding that concession, the court misinterpreted Rule 6(b)(2), and ultimately extended Respondents' deadline after concluding that "[u]nder Rule 6(b)(2), the Court has discretion to grant an extension of time to file a Motion to Amend Judgment," and construing Respondents' proposed form of judgment and fee motion as such. [APP055–56.] This too was error.

To recap, in circumstances like these, Rule 54(h)(2)(C) requires a party seeking fees to move to alter or amend the judgment "within the time required by Rule 59(d)." Rule 59(d) requires such a motion to be filed "no later than 15 days after the entry of judgment," and specifies that "[t]his deadline may not be extended by stipulation or court order, except as allowed by Rule 6(b)(2)." Rule 6(b)(2), in turn, allows an extension only in

very limited circumstances, which require, among other things, a party having not received notice of the judgment:

> (2) *Exceptions*. A court may extend the time to act under Rules 50(b), 52(b), 59(b)(1), (c) and (d), and 60(c) as those rules allow, or alternatively, may also extend the time to act under those rules for 10 days after the entry of the order extending the time, if:
>
> > (A) the moving party files the motion within 30 days after the specified time to act expires under these rules or within 7 days after the party received notice of the entry of the judgment or order triggering the time to act under these rules, whichever is earlier;
> >
> > (B) the court finds that the moving party was entitled to notice of the entry of judgment or the order, but did not receive notice from the clerk or any party within 21 days after its entry; ***and***
> >
> > (C) the court finds that no party would be prejudiced by extending the time to act.

Ariz. R. Civ. P. 6(b)(2) (emphasis added).

The superior court misinterpreted Rule 6(b)(2) in multiple ways. ***First***, contrary to the court's conclusion, nothing in the rule gives the court "discretion to grant an extension of time to file a Motion to Amend Judgment." [APP055.] On the contrary, as explained above and the Rule's plain text confirms, Rule 6(b)(2) allows a court to "extend the time to act under [Rule 59(d)]" only if specific requirements are met.

Second, the superior court denied that Respondents "are required to show that they meet all requirements under Rule 6(b)(2)(A), (B), and (C), to obtain an extension of time," claiming "this requirement was removed when the rule was rewritten." [APP055.] But that is simply incorrect. The plain text of Rule 6(b)(2) confirms that ***all three*** of its requirements must be met, because they are conjoined with an "and." *See* § Argument I.D. Respondents never disputed this below, and never claimed that they could satisfy Rule 6(b)(2). Instead, they claimed it did not apply and urged the superior court to apply Rule 6(b)(1) instead. [*See* APP029 & n.5; APP049–50.]

Third, the superior court misread the first sentence of Rule 6(b)(2) to conclude that its limitations "do not pertain to [Respondents'] original requests for an extension of time, but to a request to extend that time further." [APP056.] This too was error. Rule 6(b)(2) says nothing about, and does not distinguish between, original and subsequent requests.

Again, Rule 6(b)(2) reads:

> A court may extend the time to act under Rules 50(b), 52(b), 59(b)(1), (c) and (d), and 60(c) as those rules allow, or alternatively, may also extend the time to act under those rules for 10 days *after the entry of the order extending the time*, if:
>
> > (A) the moving party files the motion within 30 days after the specified time to act expires under these rules or within

> 7 days after the party received notice of the entry of the judgment or order triggering the time to act under these rules, whichever is earlier;
>
> (B) the court finds that the moving party was entitled to notice of the entry of judgment or the order, but did not receive notice from the clerk or any party within 21 days after its entry; and
>
> (C) the court finds that no party would be prejudiced by extending the time to act.

Ariz. R. Civ. P. 6(b)(2) (emphasis added).

The court read the italicized phrase to mean that the conjunctive requirements in subparagraphs (A)–(C) apply only to *subsequent* extensions of time: "If a party fails to meet an extended deadline, the party would have to show that they did not receive the Court's order extending time before they can obtain an additional 10 days to file their motion." [APP056 (citing Ariz. R. Civ. P. 6(b)(2)(A)–(C).]

But this misreads Rule 6(b)(2). The first sentence carves out two alternative paths: "A court may extend the time to act under [certain] rules" [1] "as those rules allow" by their own terms, ***or*** [2] for a period of 10 days after the court enters its extension order (i.e., a 10-day extension). The applicable Rule here—Rule 59(d)—does not allow any extension by its own

terms; instead, it permits only an extension "allowed by Rule 6(b)(2)."[4] That means that Rule 6(b)(2) allows a court to extend the time to act under Rule 59(d) for 10 days after the court's extension order ***only if*** the remaining conditions in paragraphs (A)–(C) are all met. *See* McAuliffe & McAuliffe at 165–66 (explaining that to extend time, a trial court must find that all three requirements are met, and "[t]he trial court may only extend the period for filing post-trial motions for a period of 10 days from the date of its order granting the extension"). Again, they are not met here, and even Respondents did not claim they are. The superior court erred by deciding it could extend Respondents' time anyway.

Once more, nothing in Rule 6(b)(2) says that its limits do not apply for "original requests for an extension of time" but only subsequent ones, as the court concluded. [APP056.] The court's statement that "[b]ecause this is [Respondents'] first request for extension of time, it was no more than by 10 days," does not make sense on its own terms. [APP056.] And the court's unexplained statement (in a footnote) that Respondents "may have an

[4] In contrast, Rule 59(b)(1), to which Rule 6(b)(2) also applies, by its own terms allows a party to amend its new-trial motion "at any time before the court rules on it." Ariz. R. Civ. P. 59(b)(1).

argument that the 15-day timeline under Rule 59(d) did not begin until March 6, 2025" similarly does not make sense. [APP056 n.2.] What triggers the deadline under Rule 59(d) is "the entry of judgment." Ariz. R. Civ. P. 59(d). The court entered judgment on February 14. [APP005.]

Because it misinterpreted Rule 6(b)(2), the superior court erroneously thought it had discretion to extend a deadline Respondents admitted the court could not extend. It extended Respondents' time to file a motion to amend the judgment and construed their proposed form of judgment and fee application as such, but the superior court had no jurisdiction to do so. [APP056.]

III. None of Respondents' arguments below supports the superior court's decision.

Respondents' arguments below similarly do not support the superior court's decision. Again, as noted, Respondents did not argue that the superior court could extend time under Rule 6(b)(2)—the ultimate basis for the court's decision. Respondents conceded they could not satisfy Rule 6(b)(2) and instead urged the court to apply Rule 6(b)(1) (which, as explained below, the court could not do). Respondents' remaining arguments all fail.

A. Respondents wrongly argued the February 14 judgment was not a judgment.

For starters, Respondents initially claimed the February 14 judgment was not a judgment. [*See* APP025–29.] They abandoned that argument in their reply brief [APP042], and the superior court confirmed its February 14 judgment was a judgment [*see* APP054]. But Respondents' arguments on that score were unpersuasive from the beginning.

First, Respondents argued that the Judgment is not a judgment because it "contains a lengthy citation to [Petitioner's] Complaint as well as multiple references to other filings and earlier proceedings." [APP026.] That is irrelevant. No such references were included in the actual decree of judgment:

> **IT IS FURTHER ORDERED** dismissing Defendants Shea Homes Limited Partnership and Shea Homes Inc. from this action. Pursuant to Rule 54 (b), Ariz. R. Civ P., the Court finds no just cause for delay and directs entry of this Judgment forthwith.

[APP005.] That the judgment also includes the superior court's background summary, reasoning and ruling does not mean that it is not a final Rule 54(b) judgment. *See, e.g.*, *Whiteco Outdoor Advert. v. City of Tucson*, 193 Ariz. 314, 316–17, ¶¶ 6, 8, n.1 (App. 1998) (holding the court entered a final Rule 54(b)

judgment with a single minute entry that included the court's reasoning and a decree of judgment).

The case that Respondents cited [APP025], *Apache East, Inc. v. Means*, 124 Ariz. 11 (App. 1979), is entirely consistent with this conclusion. In *Apache East*, the Court of Appeals held that a trial court could not enter final judgment merely by reciting a past ruling. *Id.* at 13–14. Here, by contrast, the superior court's decree did not merely recite a past ruling or proceeding; rather, it gave its ruling and then "direct[ed] entry of this Judgment forthwith." [APP005.]

Second, Respondents argued that they "reasonably understood that the [Judgment] was not a final judgment" because it "did not address" their request for "dismissal with prejudice." [APP027.] This is also irrelevant. A summary-judgment order does not need to specify whether a claim or party is dismissed with prejudice because "[u]nless the dismissal order states otherwise, … any dismissal not under [Rule 41]—except one for lack of jurisdiction, improper venue, or failure to join a party under Rule 19—operates as an adjudication on the merits"—i.e., with prejudice. Ariz. R. Civ. P. 41(b). And if Respondents wanted the superior court to amend the

judgment to include such language, they needed to file a Rule 59(d) motion. They failed to do so.

Third, Respondents argued that the judgment "is not a final judgment" because it "did not address" their request for attorneys' fees. [APP028.] This, too, is irrelevant to the judgment's finality. Rule 54(h)(2)(C) specifically addresses a situation like this, where a judgment does not address fees:

> If the court enters a judgment under Rule 54(b) or (c) without first receiving a motion for judgment or a proposed form of judgment, a prevailing party seeking costs and/or fees must file a motion to alter or amend the judgment within the time required by Rule 59(d).

Ariz. R. Civ. P. 54(h)(2)(C). As explained above (Argument § I.B–C.), if Respondents wanted to seek costs or fees, they needed to move to alter or amend the judgment within the time required by Rule 59(d), but they failed to do so.

Fourth, Respondents argued that the Judgment "is not a final judgment" because "[t]he Clerk did not enter [it] as a final judgment on the docket." [APP028.] But under Rule 58(b)(2)(A), "[a] judgment, including a judgment in the form of a minute entry, is entered when the clerk files it." Nothing in the Rule suggests that the clerk can transform the Court's judgment into something else depending on how the clerk enters it on the

docket. Moreover, "[a] judgment may be identified as a 'judgment,' or it may be identified as an 'order,' a 'decree,' or by another term." ARCAP 2; *see also Brummet*, 240 Ariz. at 426, ¶ 8 (quoting ARCAP 2).

Respondents wisely abandoned this non-judgment theory, and the superior court correctly did not adopt the abandoned argument.

B. Respondents wrongly argued that Rule 54(g) applies and Rule 54(h) does not.

Respondents also argued that Rules 54(f) and (g) set their deadline to move for costs and fees, so Rule 54(h) does not apply. [APP046–49.] Not so. Respondents said "[t]hey filed their Application well within the 20-day time frame identified in Rules 54(f)(1) and 54(g)(3)(A)(i)," so their "Proposed Judgment and Application are timely." [APP047.] But those Rules do not govern under the circumstances here.

Rule 54(g)(3)(A)(i) applies to a "***decision*** [that] adjudicates all claims and liabilities of any party." (Emphasis added.) But here the superior court entered a Rule 54(b) ***judgment***, and Rule 54 itself distinguishes between decisions and judgments. Ariz. R. Civ. P. 54(a). Rule 54(g)(3)(A)(i) does not

apply.[5] Instead, as already explained, Rule 54(h)(2)(C) applies where, as here, a court enters ***judgment*** under Rule 54(b) without first receiving a motion for judgment or proposed form of judgment.

Respondents nonetheless argued that Rule 54(h) does not apply based on a misreading of the Rule and outmoded caselaw. Regarding the Rule's text, Respondents combined Rules 54(h)(1) and (h)(2) to manufacture (and misapply) a sweeping exception. They read those Rules together to say:

> **Except as otherwise allowed by this rule:** …. (C) if the court enters a judgment under Rule 54(b) or (c) without first receiving a motion for judgment or a proposed form of judgment, a prevailing party seeking costs and/or fees must file a motion to alter or amend the judgment within the time required by Rule 59(d).

[APP047 (emphasis in original).] The bolded phrase is in Rule 54(h)(1); the rest is in Rule 54(h)(2)(C). And Respondents read the bolded phrase as meaning that Rules 54(f) and (g) provide an alternative path for parties to whom Rule 54(h)(2)(C) otherwise applies. [APP047 ("Thus, even Rule 54(h)

[5] Rule 54(f)(1) requires a party seeking fees and costs to file its cost request "on the same day the party files its motion for attorney's fees under Rule 54(g)." Because Rule 54(g) does not apply, Rule 54(f)(1) also does not apply.

recognizes that a party may apply for their attorneys' fees and costs pursuant to other paragraphs within Rule 54, such as Rules 54(f) and (g).").]

Respondents misinterpreted Rule 54(h), as the comments to the 2017 amendments confirm. They explain that "[e]xcept where the rule expressly allows a motion for fees or request for costs to be *deferred*, subdivision (h)(1)(A) requires that claims for attorney's fees and costs must be resolved before judgment is entered." Comment to Ariz. R. Civ. P. 54, 2017 amendments (emphasis added). Only Rule 54(g)(3)(B) expressly allows a fee motion to be deferred. *See* McAuliffe & McAuliffe at 874 (explaining that the exception in Rule 54(h)(1) refers only to Rules 54(g)(3)(B) (fees) and 54(f)(2)(C) (costs)). But Respondents have never claimed that Rule applies here. And they cannot do so, because Rule 54(g)(3)(B) does not apply by its terms. Under that Rule:

> If a decision or judgment adjudicates fewer than all claims and liabilities of a party, a prevailing party seeking costs must file a verified request for costs no later than 20 days after any decision is filed that adjudicates all remaining claims in the action, or 20 days after the action's dismissal, whichever occurs first.

Ariz. R. Civ. P. 54(g)(3)(B). As explained, Argument § II.A., that Rule cannot refer to an instance where a judgment adjudicates all claims *except a claim for attorneys' fees* both because the Rule does not say that and because reading it

that way would produce the absurd result that a fee motion would be due *after* the fee claim is adjudicated. So Rule 54(g)(3)(B) does not apply here, and that is the express exception Rule 54(h) allows. Respondents' interpretation of Rule 54(h) is incorrect.

The caselaw Respondents cited below does not help them. They cited the unpublished memorandum decision in *A. Miner Contracting Inc. v. Safeco Insurance Co. of America*, 2021 WL 4477441, at *9, ¶¶ 44–48 (Ariz. App. Sept. 30, 2021), for the proposition that "Rule 54(h) does not apply to requests for attorneys' fees and costs." [APP047.] But although *A. Miner* was decided after the 2017 amendments to Rule 54, it (like the superior court here) relied on pre-2017 caselaw to misconstrue the amended Rule.

For example, in a passage Respondents emphasized below [APP048], *A. Miner* says "that Rule 54 contemplates the filing of a fee application *after* entry of a Rule 54(b) judgment." 2021 WL 4477441, at *9, ¶ 46. *A. Miner* based that statement on the Court's 2012 decision in *Fields*, which interpreted the pre-amendment Rule to mean that "[a] claim for attorneys' fees may be considered a separate claim from a judgment on the merits." *A Miner*, 2021 WL 4477441, at *9, ¶ 46 (quoting *Fields*, 230 Ariz. at 414, ¶ 10). As explained above, however, that holding in *Fields* has been superseded. After the 2017

amendments, a fee claim is ***not*** a separate claim for Rule 54(b) purposes. The remaining cases Respondents cited likewise are based on the pre-amendment rules and caselaw. [*See* APP048 (citing *Klarkowski v. Define*, 2018 WL 4907577, at *5, ¶ 24 (App. Oct. 9, 2018); *Britt*, 220 Ariz. at 270, ¶ 22).]

Respondents are simply wrong: by its plain terms, Rule 54(h)(2)(C) squarely applies in these circumstances. Under that Rule, Respondents had 15 days to move to alter or amend the judgment to seek fees or costs. Ariz. R. Civ. P. 54(h)(2)(C); 59(d). And that time could be extended only as allowed by Rule 6(b)(2).

C. Respondents wrongly urged the superior court to extend their time under Rule 6(b)(1).

Unable to argue they satisfy Rule 6(b)(2)'s requirements, and admitting the superior court "would not be permitted to extend [Rule 59(d)'s] deadline" under that Rule [APP045], Respondents argued below that the superior court should instead apply Rule 6(b)(1) to extend their time to move to amend the judgment. That argument fails.

But Rule 59(d) itself leaves no room to apply Rule 6(b)(1). Instead, as explained, Rule 59(d) confirms that its 15-day deadline may be extended ***only*** "as allowed by Rule 6(b)(2)." Ariz. R. Civ. P. 59(d). Because Rule

54(h)(2)(C) requires "a prevailing party seeking costs and/or fees [to] file a motion to alter or amend the judgment within the time required by Rule 59(d)," it necessarily incorporates both Rule 59(d)'s 15-day deadline and its express prohibition of any extension not allowed under Rule 6(b)(2). In other words, these limitations are part of "the time required by Rule 59(d)." Ariz. R. Civ. P. 54(h)(2)(C). Read together, then, the Rules mean that a party seeking costs or fees must move to alter or amend the judgment within 15 days unless Rule 6(b)(2) allows an extension. As explained, Rule 6(b)(2) does not allow an extension here. Even Respondents have not claimed it does.

Respondents' attempt to apply Rule 6(b)(1) fails. Initially, Respondents claimed that "Rule 6(b)(2) expressly states that it does not apply to Rule 59 motions." [APP029 n.5.] But that is not true. On the contrary, Rule 6(b)(2) expressly states that it ***does*** apply to Rule 59 motions: It says, "[a] court may extend the time to act under Rules 50(b), 52(b), ***59(b)(1), (c) and (d)*** … if …." Ariz. R. Civ. P. 6(b)(2) (emphasis added).

Respondents also argued that "Rule 54(h)(2)(C) . . . does not direct litigants to file a Rule 59 motion." [APP029 n.5; APP049.] The comments to Rule 54 say otherwise. They confirm that, "***[a]bsent a timely motion under Rule 59(d)***, a judgment omitting fees or costs will be final for purposes of

appeal." Comment to Ariz. R. Civ. P. 54, 2017 amendments (emphasis added).

Regardless, if Respondents were going to "file a motion to alter or amend the judgment" under either Rule, they were required to do so "within the time required by Rule 59(d)." Ariz. R. Civ. P. 54(h)(2)(C). And again, under Rule 59(d) itself, "[t]his deadline ***may not be extended*** … ***except*** as allowed by Rule 6(b)(2)." (Emphases added.) Respondents asked the superior court to ignore this explicit directive and apply Rule 6(b)(1) instead. [APP029 n.5; APP049.] But as Respondents noted below, a court must "give effect to each word, phrase, and clause" in the Rules. [APP029 n.5 (quoting *Ariz. Dep't of Revenue v. Superior Ct.*, 189 Ariz. 49, 52 (App. 1997)).] The Rules could not be clearer: The deadline in Rule 59(d) (which Rule 54(h)(2)(C) incorporates) can be extended ***only*** under Rule 6(b)(2). Here, Rule 6(b)(2)'s requirements undisputedly are not met.

Respondents chalked up missing their deadline to "excusable neglect under Rule 6(b)(1)." [APP031.] And the superior court "[found] excusable neglect." [APP055.] But as explained, Rule 6(b)(1) does not and cannot apply here. And under Rule 6(b)(2)—the only Rule under which Respondents' deadline could possibly be extended—excusable neglect is not a factor.

Respondents also contended that not extending their deadline to seek attorneys' fees "would be highly prejudicial to [them]" and would cause "zero prejudice to [Petitioner]." [APP031.] But prejudice is irrelevant under Rule 6(b)(2) unless the Rule's other requirements are met (which they undisputedly are not). And even if prejudice could be considered, Respondents would not be prejudiced. They want to amend the judgment to seek attorneys' fees and costs, but "The Edge agreed to indemnify [Respondents] for fees and costs [they] incurred in this lawsuit." [APP040 (quoting Respondents' 3/17/25 Application for Attorneys' Fees & Costs at 5 n.3).] Petitioner, however, is prejudiced by Respondents' untimely and improper attempts to alter the finality of the superior court's Rule 54(b) judgment. *See Harold Laz Advert. Co. v. Dumes*, 2 Ariz. App. 236, 237 (1965) (the purpose of Rule 59's strict deadline is to provide the parties with finality).

Respondents cited Alaska, Maine, and federal law. [APP029–30.] But Respondents missed *Arizona's* deadlines to move to amend the judgment. More to the point, none of the authorities Respondents cited from Alaska, Maine, and federal courts address the issue here: whether the court could

extend a deadline for a motion to amend judgment. Arizona's rules confirm it could ***not***.

Finally, Arizona's Rules 6(b)(1) and (b)(2) serve different purposes because a motion to amend judgment warrants stricter deadlines. Regardless of whether Rule 6(b)(1) applies to a fee request made *before* judgment is entered, it does not apply to amending a final judgment. "Finality is a virtue in judicial proceedings." *Harold Laz Advert. Co.*, 2 Ariz. App. at 237. Rule 59's deadline, therefore, "must be strictly followed." *Id.* Respondents missed this strict deadline. They failed to file "a timely motion under Rule 59(d)." *See* Comment to Ariz. R. Civ. P. 54, 2017 amendments. The superior court's judgment "omitting fees or costs [is] final." *See id.*

REQUEST FOR ATTORNEYS' FEES

Pursuant to RPSA 17, Petitioner requests its attorneys' fees under A.R.S. § 12-341.01.

CONCLUSION

The Court should accept jurisdiction and grant relief.

RESPECTFULLY SUBMITTED this 1st day of May, 2025.

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