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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

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Mahai Dutciuc,

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No. CV 09-866-PHX-MHM

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Plaintiff,

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ORDER

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vs.

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Meritage Homes of Arizona, Inc., an
Arizona corporation; MTH Mortgage,
LLC, an Arizona limited liability
company,

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Defendants.

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Currently before the Court is a Motion for Attorneys' Fees and Related Non-Taxable Expenses filed by Defendant Meritage Homes of Arizona, Inc. ("Meritage"). (Doc. 74), and Motion for Summary Ruling on Its Motion for Attorney's Fees and Non-Taxable Costs. (Doc. 83).

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I. BACKGROUND

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On September 16, 2010, this Court entered an order dismissing Plaintiff's claims against Meritage with prejudice because it found that Plaintiff's Third Amended Complaint failed to state a claim under Federal Rule of Civil Procedure 12(b)(6). (Doc. 72). Meritage subsequently filed a Motion for Attorneys' Fees on September 30, 2010, (Doc. 74), and a Memorandum of Points and Authorities in support of that motion on November 15, 2010. (Doc. 80). Because Plaintiff has not filed a response, on December

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1 21, 2010, Meritage filed a Motion for Summary Ruling on Its Motion for Attorney's Fees
2 and Non-Taxable Costs, requesting that this Court summarily grant its request for
3 attorney's fees pursuant to LRCiv 7.2(i). (Doc. 83).

4 **II. RULE 7.2(i) CAUTIONARY NOTICE**

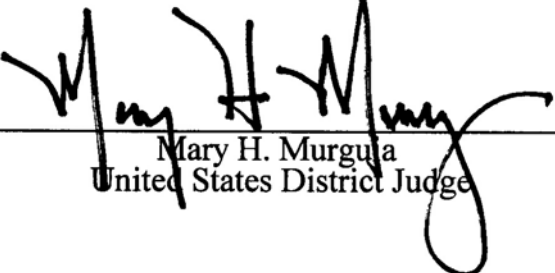
5 As of this date, Plaintiff, who is a represented party, has not filed a response to
6 Meritage's motion. LRCiv 7.2(i) states in relevant part: "[I]f the opposing party does not
7 serve and file the required answering memoranda . . . such non-compliance may be
8 deemed a consent to the denial or granting of the motion and the Court may dispose of the
9 motion summarily." See also Brydges v. Lewis, 18 F.3d 651, 652 (9th Cir. 1994). The
10 Court will give Plaintiff until close of business on Tuesday, February 15, 2011 to show
11 cause why Meritage's motion for attorneys' fees should not be summarily granted and, if
12 he believes good cause exists, to file a responsive memoranda. Should Plaintiff fail to
13 perform either of these tasks, Meritage's motion for attorneys' fees will be summarily
14 granted. See Brydges, 18 F.3d at 652 (affirming the district court's summary granting of a
15 motion for summary judgment under LRCiv 7.2(i) when non-moving party was given
16 express warning of consequences of failing to respond). The Court further notes that it
17 will only consider Plaintiff's response if he is able to show good cause for his failure to
18 file a timely response.

19 **Accordingly,**

20 **IT IS HEREBY ORDERED**, that Plaintiff must both show cause and file a
21 response to Meritage's Motion for Attorneys' Fees and Related Non-Taxable Expenses
22 no later than the close of business on Tuesday, February 15, 2011. Failure to comply
23 with this deadline will result in the summary granting of Defendant's motion pursuant to
24 LRCiv. 7.2(I).

25 DATED this 7th Day of February, 2011.

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Mary H. Murgula
United States District Judge