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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, and Arizona Limited Liability
Company,

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Defendants.

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Currently before the Court are Defendant Meritage Homes of Arizona, Inc.’s (“Meritage”) Motion for Attorneys’ Fees and Related Non-Taxable Expenses,(Doc. 74); Motion for Summary Ruling on Its Motion for Attorney’s Fees and Non-Taxable Costs, (Doc. 83), and Motion to Strike Opposition to Defendant Meritage’s Motion for Attorney’s Fees and Costs. (Doc. 87).

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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,

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1 (Doc. 74), and a Memorandum of Points and Authorities in support of that motion on
2 November 15, 2010. (Doc. 80). Because Plaintiff had not filed a response, on December
3 21, 2010, Meritage filed a Motion for Summary Ruling on Its Motion for Attorney's Fees
4 and Non-Taxable Costs, requesting that this Court summarily grant its request for
5 attorney's fees pursuant to LRCiv 7.2(i). (Doc. 83).

6 On February 7, 2010, this Court issued an Order informing Plaintiff, who is
7 represented by counsel, that he had "until close of business on Tuesday, February 15,
8 2011 to show cause why Meritage's motion for attorneys' fees should not be summarily
9 granted and, if he believes good cause exists, to file a responsive memoranda." (Doc. 85,
10 p.2). The Court also warned Plaintiff that should he "fail to perform either of these tasks,
11 Meritage's motion for attorneys' fees w[ould] be summarily granted," pursuant to LRCiv
12 7.2(i). (Id., (citing Brydges v. Lewis, 18 F.3d 651, 652 (9th Cir. 1994) (affirming the
13 district court's summary granting of a motion for summary judgment under LRCiv 7.2(i)
14 when non-moving party was given express warning of consequences of failing to
15 respond)). On February 16, 2011, Plaintiff filed a response to Meritage's fees motion.
16 (Doc. 86). On February 18, 2010, Meritage filed its Motion to Strike Opposition to
17 Defendant Meritage's Motion for Attorney's Fees and Costs. (Doc. 87).

18 **II. DISCUSSION**

19 The Court could not have been any clearer in its February 7 Order. It very
20 specifically ordered Plaintiff to: (1) show cause for his failure to timely respond to
21 Meritage's motion for attorney's fees, which was filed over four months earlier, on
22 September 30, 2010; and (2) if Plaintiff believed good cause existed to also file a
23 response to that motion. Furthermore, the Court ordered that these tasks needed to be
24 accomplished no later than close of business on February 15, 2011. Plaintiff's response
25 was filed on February 16, 2010, one day after the deadline imposed by the Court.
26 Additionally, in that response, Plaintiff never once explains his failure to file a timely
27 response.

28 Because Plaintiff utterly failed to comply with the Court's July 30 Order, the Court

1 will grant Defendant's instant motion to strike. See LRCiv 7.2(m)(1) (authorizing the
2 filing of a motion to strike where the subject submission is "prohibited (or not authorized)
3 by statute, rule, *or court order*." (emphasis added)). Having so done, the Court will treat
4 Meritage's motion for fees as unopposed and grant the relief requested therein.
5 Notwithstanding Plaintiff's failure to object, the Court has independently reviewed the
6 documentation filed by Meritage in support of its fee request and finds that the request is
7 reasonable. Accordingly, the Court awards \$11,695.50 in attorney's fees to Meritage,
8 which represents \$8,835.00 for fees incurred in defending against Plaintiff's claims and
9 \$2,857.50 incurred in connection with preparing its motion for attorney's fees and
10 supporting documents.

11 **Accordingly**

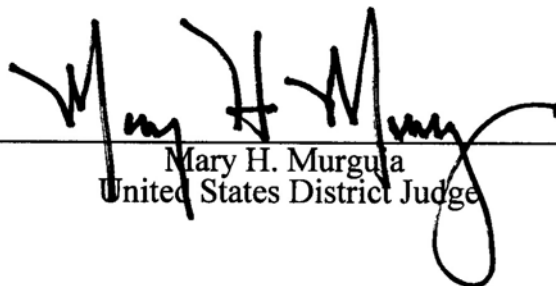
12 **IT IS HEREBY ORDERED** granting Meritage's Motion to Strike Opposition to
13 Defendant Meritage's Motion for Attorney's Fees and Costs. (Doc. 87).

14 **IT IS HEREBY ORDERED** granting Meritage's Motion for Summary Ruling on
15 Its Motion for Attorney's Fees and Non-Taxable Costs. (Doc. 83).

16 **IT IS FURTHER ORDERED** granting Meritage's Motion for Attorneys' Fees
17 and Related Non-Taxable Expenses filed by Defendant Meritage Homes of Arizona, Inc.
18 ("Meritage"). (Doc. 74). The Court awards Meritage \$11,695.50 in attorney's fees.

19 DATED this 1st day of March, 2011.

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Mary H. Murgula
United States District Judge