Clerk of the Superior Court
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SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2024-005545 02/20/2026

HONORABLE DAVID MCDOWELL

CLERK OF THE COURT
K. Johanson
Deputy

SHEILA JANISCH FRANK M FOX

v.

SCOTTSDALE MOUNTAIN COMMUNITY ASSOCIATION CHARLES H OLDHAM

JUDGE MCDOWELL

ORDER GRANTING MOTION TO AMEND
ORDER DENYING MOTION TO STRIKE

Pending before the Court is the January 21, 2026 *Plaintiff's Motion for Leave to File Second Amended Complaint* (and three Notice of Errata filed January 22, 23, and 24); Defendant's February 10, 2026 *Response in Opposition to Plaintiff's Motion for Leave to File Second Amended Complaint;* and the February 12, 2026 *Plaintiff's Reply in Support of Motion for Leave to File Second Amended Complaint.*

Ariz.R.Civ.Proc. provides that, "[l]eave to amend must be freely given when justice requires." However, the Court may deny amendment if the amendment was motivated by undue delay or bad faith, if undue prejudice would result, or the amendment would be futile. *Bishop v. State Dept. of Corr*., 172 Ariz. 472, 474-475 (App. 1992). The Court found no demonstration that the amendment was motivated by undue delay or bad faith. While this case has been pending for quite some time, the Court does not find undue prejudice would result from the amendment, particularly because some of the allegations prompting the amendment only recently arose. Defendant's argument about the futility of the proposed amendment would require the Court to evaluate the evidence and credibility of the parties and witnesses to determine whether a claim asserted would be likely to prevail. That is not the type of analysis properly conducted when determining whether an amendment is permitted. The Court finds it would be futile to deny the amendment, because to do

so would take everyone back to this point by a more circuitous route. If amendment were not permitted, Plaintiff could simply file a second action against the identified individuals which would then end up being consolidated into this matter and we would all be in this same place with more time wasted.

IT IS ORDERED granting *Plaintiff's Motion for Leave to File Second Amended Complaint.*

IT IS ORDERED Plaintiff shall file the Second Amended Complaint and serve it within the period provided in Rule 15. Defendant shall respond as provided in Rule 15.

The Court is also in receipt of the February 15, 2026 *Plaintiff's Motion to Strike Defendants' Untimely Response In Opposition to Motion for Leave to File Second Amended Complaint.* In this Motion, Plaintiff asserts the Response was untimely because it was not filed on January 31, 2026 (ten calendar days after the Motion was filed on January 21, 2026).

It is unclear why Plaintiff has ignored Rule 6, Ariz.R.Civ.Proc. which not only dictates how days are counted, but also provides for the exclusion of legal holidays and weekends if the time period is less than eleven days, specifies what occurs if a due date falls on a weekend or holiday, and provides for additional time for responding if the motion is served by mail, email, or electronically.

After applying Rule 6, Ariz.R.Civ.Proc. to the filing date of the Motion to Amend, the Court finds Defendants' response was timely.

IT IS ORDERED denying Plaintiff's Motion to Strike.

Due to the recent citation of cases that do not exist and Plaintiff's counsel's failure to consider Rule 6 before filing the motion to strike, the Court wonders whether a non-lawyer is assisting Plaintiff's counsel and Plaintiff's counsel is not reading the filings carefully. The State Bar has not given lawyers any latitude when filings are signed by the lawyer even if the mistakes were made by non-lawyers. The Court urges caution.