

1 Lisa Marx
2 13610 N. 111th Ave.
3 Sun City, AZ 85351
4 602-748-7781
5 aimtodogood@gmail.com
6 Representing self

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

9
10 Lisa Marx
11 Plaintiff,

Case No. CV 2025-012980

12 vs.

13 Tara Condominiums Association, Inc.,

**PLAINTIFF'S OPPOSITION TO
DEFENDANT'S MOTION FOR
JUDGMENT ON THE PLEADINGS
(Ariz. R. Civ. P. 12(c))**

Honorable Adele Ponce

16
17 **INTRODUCTION**

18 Plaintiff Lisa Marx opposes Defendant's Motion for Judgment on the Pleadings. The
19 Motion asks the Court to dismiss a large group of claims it labels "Community-Wide
20 Claims," arguing they are derivative under *Iqtunheimr, LLC v. Val Vista Lakes Community*
21 *Ass'n*, No. 1 CA-CV 25-0095, 2026 WL 369439 (Ariz. App. Feb. 10, 2026). Plaintiff does
22 not dispute that *Iqtunheimr* is now a published, binding decision. She disputes what it
23 holds. *Iqtunheimr* decided one question: a homeowner's claim that her association failed
24 to maintain common areas is derivative, because the only injury alleged was to

1 property "belong[ing] to the community as a whole." *Id.* ¶ 10. It did not address open
2 meetings, voting, records, insurance, or the validity of a declaration amendment, and it
3 expressly preserved the rule that a member may sue directly where the wrongdoer
4 owes her a duty apart from her membership status or where she sustained the injury
5 individually. *Id.* ¶ 9.

6 That distinction decides this Motion. The gravamen of the challenged claims is not
7 injury to common property; it is the Board's repeated denial of the procedural and
8 statutory rights the Condominium Act confers on Plaintiff personally – the right to an
9 open meeting, to notice and an agenda, to speak before a vote, to a lawful vote, to
10 inspect ballots and records, and to fair administration. Those injuries were complete the
11 moment the Board acted without the required process, regardless of the subject of the
12 underlying decision. Defendant's own Motion proves the point: it concedes that
13 Plaintiff's records claims under A.R.S. § 33-1258 and her voting claims under A.R.S. §
14 33-1250 are direct and individual. The challenged counts plead the very same process
15 violations. They cannot be direct in one count and derivative in another simply because
16 the topic shifts to insurance, maintenance, or expenditures.

17 To remove any doubt about overbreadth, Plaintiff confirms that she seeks only her own
18 relief: declarations of her individual statutory and contractual rights, prospective
19 compliance, and damages she herself can prove. She does not seek recovery of
20 Association funds, restoration of reserves for all owners, or damages belonging to units
21 she does not own. With that limitation – which simply tracks this Court's June 24, 2025
22 ruling – the derivative concern disappears. The Motion should be denied. To the extent
23 the Court reads any paragraph or prayer as reaching community-wide recovery, the
24 remedy is to narrow that relief or grant leave to amend, not to dismiss direct statutory

1 claims with prejudice.

2 I. RULE 12(c) STANDARD

3 A Rule 12(c) motion is judged by the same standard as a Rule 12(b)(6) motion. The
4 Court assumes the truth of the well-pleaded, material allegations and will grant
5 judgment only if Plaintiff would not be entitled to relief under any facts susceptible of
6 proof. *Cullen v. Auto-Owners Ins. Co.*, 218 Ariz. 417, 419 ¶ 7 (2008); *Jeter v. Mayo Clinic*
7 *Ariz.*, 211 Ariz. 386, 389 ¶ 4 (App. 2005). The Court does not accept legal conclusions,
8 but it must answer the legal question of capacity *from the facts actually pleaded*, not from
9 a party's label for them. *Gemstar Ltd. v. Ernst & Young*, 185 Ariz. 493, 499 (1996);
10 *Iqtunheimr*, 2026 WL 369439, ¶¶ 5, 12. As shown below, the pleaded facts establish
11 direct, owner-facing statutory injuries.

12 II. THE CONTROLLING LINE: IQTUNHEIMR BARS DERIVATIVE 13 MAINTENANCE CLAIMS; THE OPEN-MEETING STATUTE CREATES 14 DIRECTLY ENFORCEABLE OWNER RIGHTS

15 A claim is derivative if its gravamen is "injury to the corporation, or to the whole body
16 of its stock or property without any severance or distribution among individual
17 holders," or if it "seeks to recover assets for the corporation or to prevent the dissipation
18 of its assets." *Iqtunheimr*, 2026 WL 369439, ¶ 6 (quoting *Albers v. Edelson Tech. Partners*
19 *L.P.*, 201 Ariz. 47, 52 ¶ 17 (App. 2001), and *Funk v. Spalding*, 74 Ariz. 219, 223 (1952)).
20 But a member may sue directly where (1) her relationship with the wrongdoer is
21 separate from her membership status, (2) the wrongdoer owes her a duty for some
22 reason other than that status, or (3) she individually sustained the injury rather than the
23 corporation. *Albers*, 201 Ariz. at 52 ¶ 18; *Iqtunheimr*, ¶ 9.

1 In *Iqtunheimr*, the homeowner alleged only that the association breached its declaration
2 by failing to maintain common areas – the clubhouse, fences, walls, fountains, pools,
3 and the like. The court held those claims derivative precisely because "the alleged
4 harms are to the common areas" and therefore "belong to the community as a whole,
5 not to Homeowner as an individual." *Id.* ¶¶ 1, 10. The decision says nothing about
6 A.R.S. § 33-1248 (open meetings), § 33-1250 (voting), § 33-1258 (records), § 33-1253
7 (insurance), or § 33-1227 (amendments). Defendant reads *Iqtunheimr* as a rule that any
8 claim touching common property, Association funds, or the master policy is derivative.
9 That is not its holding, and it is the opposite of its method: the court told litigants to
10 "look past the label to the gravamen of the complaint and the nature of the injury." *Id.*
11 ¶¶ 9-10. Defendant does the reverse, sorting claims by subject matter rather than by the
12 injury alleged.

13 The Court of Appeals confirmed the other side of that line after *Iqtunheimr*. In *A Z N H*
14 *Revocable Trust v. Sunland Springs Village Homeowners Ass'n*, No. 1 CA-CV 25-0424 (Ariz.
15 App. Apr. 28, 2026), a published opinion, an individual property owner brought a
16 declaratory-judgment action *in its own name* to enforce the planned-community open-
17 meeting statute, A.R.S. § 33-1804. No one suggested the owner had to proceed
18 derivatively or assemble other members; the action was litigated on the merits through
19 summary judgment and a full appeal. The court held that an association must take its
20 votes and formal actions in open meetings and may not vote in closed session,
21 affirming on that issue. *Id.* ¶¶ 10-14, 23. It further held that meeting agendas must
22 contain information reasonably necessary to apprise members of the matters to be
23 decided, reversing the contrary ruling below. *Id.* ¶¶ 20-22, 24.

1 The condominium open-meeting statute, A.R.S. § 33-1248, is the materially identical
2 counterpart of § 33-1804. Its policy statement is worded the same: meetings must be
3 "conducted openly," agendas must contain "the information that is reasonably
4 necessary to inform" owners "of the matters to be discussed or decided," members must
5 have "the ability to speak after discussion of agenda items, but before a vote," and any
6 interpreter "shall construe any provision of this section in favor of open meetings."
7 A.R.S. § 33-1248(F); accord § 33-1804(F). The *A Z N H* court grounded its holding in that
8 shared text and in each member's individual right to speak before the board takes
9 formal action. *Id.* ¶¶ 9, 12. Its reasoning applies with full force to § 33-1248. Read
10 together, *Iqtunheimr* and *A Z N H* mark the precise line that governs this Motion: a
11 generalized common-area maintenance claim is derivative, but an owner's open-
12 meeting and governance claim is direct – and is litigated directly, exactly as the owner
13 in *A Z N H* did.

14 **III. THE GRAVAMEN OF THE CHALLENGED CLAIMS IS THE DENIAL OF**
15 **PLAINTIFF'S INDIVIDUAL STATUTORY RIGHTS**

16 The open-meeting statute creates rights held by each member. A.R.S. § 33-1248(A)
17 provides that all meetings of the association and the board are open to *all members*, that
18 members may attend and speak, and that the board "shall permit *a member* or *a*
19 *member's* designated representative to speak before the board takes formal action on an
20 item under discussion." Subsection (F) declares the Legislature's policy: meetings must
21 be "conducted openly," notices and agendas must "contain the information that is
22 reasonably necessary to inform the unit owners of the matters to be discussed or
23 decided," members must have "the ability to speak after discussion of agenda items, but
24 before a vote," and any court "shall construe any provision of this section in favor of

1 open meetings." These are not corporate assets. They are participation rights conferred
2 on Plaintiff as an individual owner, and the injury – being shut out of the process – is
3 hers alone and is complete when the process is denied, whatever the Board was
4 deciding.

5 The Court of Appeals made the same point in *A Z N H*. It reasoned that the member's
6 right to speak "after the board has discussed a specific agenda item but before the
7 board takes formal action on that item" would be nullified if a board could take formal
8 action away from an open meeting, and it construed the statute to forbid that result. *A*
9 *Z N H*, ¶¶ 12, 14. Plaintiff alleges a more complete denial than the association
10 committed in *A Z N H*: not merely a vote relocated to closed session, but Association
11 action taken with no open meeting, no agenda, no discussion, and no vote at all –
12 leaving her no opportunity to speak before the decision was made. If voting in a closed
13 meeting violates the statute, acting with no meeting and no vote violates it *a fortiori*,
14 and the resulting injury to Plaintiff's participation right belongs to her individually.
15 That is why *Iqtunheimr* does not reach these claims. The homeowner there did not
16 allege she was denied notice, an agenda, the right to speak, or a lawful vote; she alleged
17 the common areas were not maintained. Plaintiff alleges something different in kind:
18 that the Board acted "without an open meeting," "without notice," "without discussion,"
19 "without a board vote," and "without any official record in the minutes." *E.g.*, SAC ¶¶
20 26, 29-32, 35-39, 40, 42-48, 53-58, 70, 73-76, 78-91, 99-102, 103-117 and 124. Each such
21 allegation pleads a deprivation of Plaintiff's statutory participation rights under § 33-
22 1248 – a direct injury under *Albers* exceptions (2) and (3). *See* SAC ¶¶ 2, 20(a) (alleging
23 "direct and individualized harm," including "deprivation of statutory governance and
24

1 participation rights under A.R.S. § 33-1248"); ¶ 22 (incorporating those allegations into
2 every count).

3 Defendant's own concession confirms the analysis. The Motion expressly does not seek
4 judgment on Plaintiff's records claims under § 33-1258 or her voting claims under § 33-
5 1250, because those statutes "confer" rights "on each owner individually." Motion §
6 IV.C. But § 33-1248 confers participation rights on each owner in exactly the same way,
7 and the challenged counts plead the same process violations – the same missing notice,
8 the same missing agenda, the same missing open vote, the same missing minutes.

9 Defendant offers no principled reason why a denial of records is a personal injury but a
10 denial of the open meeting at which those records should have been discussed and
11 voted upon is a corporate one. There is none. If §§ 33-1258 and 33-1250 claims are
12 direct – and Defendant agrees they are – then the § 33-1248 claims that allege the
13 identical conduct are direct too.

14 Nor does it matter that enforcing these rights would also benefit other owners.

15 Transparency and lawful procedure protect every member, so an open-meeting
16 remedy almost always has community-wide benefits. That incidental benefit does not
17 convert a personal statutory injury into a corporate one. If it did, the more owners a
18 board excluded, the harder its violation would be to challenge – a result squarely at
19 odds with § 33-1248(F)'s command to construe the statute in favor of open meetings.

20 **IV. APPLICATION TO DEFENDANT'S CHALLENGED GROUPS**

21 **A. The open-meeting counts (Counts I and III and their declaratory counterparts) are**
22 **direct.**

23 Counts I and III, and DJ Counts I and III, plead a single course of conduct: the Board
24 conducted Association business – electing officers, appointing members, transferring

1 funds, retaining counsel, approving expenditures, changing the insurance deductible,
2 handling insurance claims, and amending governance – without the open meetings,
3 notice, agendas, votes, and minutes the statute and the governing documents require.
4 As pleaded, the injury is the denial of Plaintiff's participation rights before each
5 decision was made. That is a direct claim under § 33-1248 and *Albers* ¶ 18, and it is the
6 kind of open-meeting enforcement the court reached on the merits in *A Z N H*. The
7 subject matter of a given decision does not change the gravamen. As Plaintiff's Exhibit
8 D (Organization of Claims) reflects, the overwhelming majority of the paragraphs
9 Defendant challenges are pleaded as open-meeting violations – the same category of
10 process injury Defendant concedes is direct when it appears in the records and voting
11 counts.

12 **B. The amendment-validity claims (Supplemental Pleading)**
13 **are direct under *Kalway* and *Vales*.**

14 An individual owner may bring a direct declaratory action to invalidate amendments
15 to the governing documents. In *Kalway v. Calabria Ranch HOA, LLC*, 252 Ariz. 532
16 (2022), the Arizona Supreme Court allowed a single owner – who held two of six lots –
17 to challenge amendments adopted without his consent, holding that a general
18 amendment power reaches only those restrictions for which the original declaration
19 gave sufficient notice; that is, "amendments must be reasonable and foreseeable," and
20 an amendment may not be "entirely new and different in character." *Id.* ¶¶ 10, 14, 17.
21 The Court required no derivative procedure; it treated the challenge as the owner's
22 own property- and contract-rights dispute and invalidated the offending amendments.
23 *Kalway* rested on a settled line of Arizona authority applying the same notice-and-
24 foreseeability rule. See *Dreamland Villa Cmty. Club, Inc. v. Raimey*, 224 Ariz. 42, ¶ 38

1 (App. 2010); *Shamrock v. Wagon Wheel Park Homeowners Ass'n*, 206 Ariz. 42, ¶ 14 (App.
2 2003); *Wilson v. Playa de Serrano*, 211 Ariz. 511, ¶ 7 (App. 2005). *Wilson* is illustrative: a
3 single townhouse owner directly defeated a bylaw amendment imposing an age
4 restriction because the recorded declaration did not provide for it. *Vales v. Kings Hill*
5 *Condo. Ass'n*, 211 Ariz. 561 (App. 2005), reached a comparable result in the
6 condominium context and confirms that the Condominium Act governs where the
7 declaration or an association's practice conflicts with it. The Uniform Declaratory
8 Judgments Act independently authorizes Plaintiff's suit: "any person interested under a
9 deed" or "whose rights, status or other legal relations are affected by a statute" may
10 obtain a declaration. A.R.S. § 12-1832.

11 Plaintiff's Supplemental Pleading alleges that the 2025 amendments were adopted
12 through an invalid process – bundled "written consent" forms not tied to a meeting, a
13 refused demand for an open meeting, an illegal hybrid vote, and restricted ballot
14 inspection – in violation of A.R.S. §§ 33-1227, 33-1248, 33-1250, and 33-1253. Supp. Pl.
15 ¶¶ 5-18. That process theory is reinforced by *A Z N H*, which holds that an association's
16 formal action must be taken in an open meeting at which members may speak before
17 the vote; approving amendments by written consent gathered outside any open
18 meeting is the opposite of what the statute permits. It also alleges direct consequences
19 to Plaintiff's own unit: a cloud on her title (her deed describes a condominium, not a
20 free-standing home), resale barriers, a shift of the insurance allocation that A.R.S. § 33-
21 1253 places on the Association onto individual owners – requiring Plaintiff to carry
22 owner-level property coverage on her own unit – and exposure to fines or liens if she
23 does not comply. Each owner whose deed and contract expectations are altered has a
24 direct interest in whether the amendments are valid. Defendant's reliance on A.R.S. §

1 33-1227(B) is misplaced: that statute sets a one-year limitations period for challenging
2 an amendment; it does not say that only a derivative representative may bring the
3 challenge.

4 **C. The insurance allegations are direct open-meeting claims; Plaintiff disclaims any**
5 **recovery of Association funds or proceeds.**

6 Defendant treats every insurance allegation as derivative because the master policy
7 covers all fifty units. That overreads *Iqtunheimr* by sorting the claims by subject matter
8 rather than by the injury alleged. The gravamen of Plaintiff's insurance allegations is
9 not the master policy or its proceeds; it is that a single director, acting alone, filed the
10 Newcastle water-damage claim on the master policy, approved the agent to submit
11 it, – Association business – without the board vote Declaration § 9.E requires, without
12 the open meeting, notice, agenda, pre-vote opportunity to be heard, lawful vote, or
13 minutes that A.R.S. § 33-1248 requires, and then withheld the claim and its handling
14 from the membership in violation of the records and transparency requirements of
15 A.R.S. §§ 33-1258 and 10-11601. That process injury is Plaintiff's own, and it was
16 complete when the Board acted without the required process, whatever the subject of
17 the decision. SAC ¶¶ 55-58, 100-102, 104-107 111-117. To the extent the count also
18 invokes A.R.S. § 33-1253, Plaintiff relies on the Board's failure to follow the process that
19 statute prescribes for addressing a loss – not on any recovery of proceeds or the
20 coverage rights of a unit she does not own. The insurance allegations are therefore
21 direct for the same reason the open-meeting counts are direct – and for the same reason
22 Defendant concedes the records and voting claims are direct.

23 To remove any doubt, Plaintiff disclaims the only feature that could render these
24 allegations derivative. She does not own the Newcastle unit, and she does not seek – in

1 this action or otherwise – to recover the policy proceeds paid on that unit, to recover or
2 restore Association funds, or to obtain any relief belonging to the membership as a
3 whole. She seeks only a declaration of her own statutory participation rights,
4 prospective compliance, and any premium or assessment cost she can prove she
5 personally bore. With that disclaimer, nothing in the insurance counts seeks corporate
6 recovery, and *Iqtunheimr* does not bar them.

7 **D. The fiduciary-duty label does not justify dismissal.**

8 Defendant argues that Arizona does not recognize a fiduciary duty owed by an
9 association to its members, citing *Rohde v. Beztak of Arizona, Inc.*, 164 Ariz. 383 (App.
10 1990). *Rohde* does not hold that. The court declined to find a fiduciary duty only
11 because the plaintiffs "failed to cite any authority" for one. *Id.* at 388. That is a failure-of-
12 briefing ruling, not a categorical no-duty rule. In any event, Plaintiff does not need a
13 fiduciary-duty label to survive. The same facts state claims for violation of the
14 Condominium Act, breach of the governing documents as enforceable contracts, *ultra*
15 *vires* action, and failure of fair and reasonable administration under Restatement
16 (Third) of Property: Servitudes § 6.13, which *Tierra Ranchos Homeowners Ass'n v.*
17 *Kitchukov*, 216 Ariz. 195 (App. 2007), adopted and which protects "individual members
18 from improper management and imposition by those in control of the association."
19 Governing documents are enforceable contracts that an owner may enforce directly
20 against the association, with no deference to the board's interpretation. *Johnson v. Pointe*
21 *Cmty. Ass'n, Inc.*, 205 Ariz. 485 (App. 2003); *Prieve v. Flying Diamond Airpark, LLC*, 252
22 Ariz. 195 (App. 2021). If the Court concludes that "fiduciary duty" is an imprecise
23 caption, the remedy is leave to amend the label under Rule 15(a)(2), not dismissal of the
24 underlying statutory and contract claims.

1 **E. The pure common-area maintenance and Association-fund allegations should be**
2 **narrowed, not dismissed wholesale.**

3 Plaintiff acknowledges that *Iqtunheimr* is strongest against a claim that seeks only
4 generalized repair of the common areas or recovery of Association assets. If the Court
5 reads any challenged paragraph that way – for example, a paragraph seeking
6 restoration of transferred funds for the benefit of all owners – Plaintiff does not pursue
7 that relief and asks the Court to narrow it. But Defendant's requested dismissal sweeps
8 too far, because the same paragraphs also plead direct injuries: the denial of Plaintiff's
9 participation rights before the decision was made, her selective exclusion from
10 committee work, the Board's refusal to act on her personal maintenance reports, and
11 her own out-of-pocket costs. The proper course is to limit Plaintiff to direct relief – her
12 own damages, declarations of her rights, and prospective compliance – not to delete
13 entire counts.

14 **V. DEFENDANT OVERSTATES ITS OWN AUTHORITIES**

15 Tierra Ranchos. Defendant argues that § 6.13's reference to injury "to the member
16 individually or to the interests of the common-interest community" is "Arizona's own
17 version of the direct-versus-derivative distinction." It is not. Section 6.13 is a standard-
18 of-review and burden-of-proof rule that governs *how* a court measures whether an
19 association's discretionary decision was reasonable, and which party bears the burden.
20 It is not a rule about *who may sue* or whether a demand is required. *Tierra Ranchos* itself
21 was litigated directly between owners and an association. Defendant conflates what a
22 plaintiff must prove on the merits with the distinct question of capacity.

23 AZ Eufora. Defendant relies on *AZ Eufora Partners I, LLC v. Constantine*, 2015 WL
24 1781582 (Ariz. App. Apr. 16, 2015), for the proposition that the derivative statutes

1 contain "no futility exception" and that the defect "cannot be cured." That unpublished
2 decision is citable only as persuasive authority, and it is contradicted by Defendant's
3 own controlling case: *Iqtunheimr* recites the demand requirement "(unless the demand
4 would be futile)," ¶ 7, and A.R.S. § 33-1632 – correctly, § 10-3632 – itself excuses
5 demand where it is rejected, where the limitations period would expire within ninety
6 days, or where waiting would cause irreparable injury. Defendant cannot crown
7 *Iqtunheimr* as controlling while disregarding the very clause it contains. In all events,
8 the demand statutes apply only to claims that are genuinely derivative; they are
9 irrelevant to Plaintiff's direct claims.

10 The statutory text defeats the "corporate-only" theory. The Condominium Act
11 repeatedly confers rights on "a member," "any member," "a unit owner," and "each unit
12 owner." A.R.S. § 1-214(B) provides that the singular includes the plural, and § 1-211(B)
13 requires statutes to be construed liberally to promote justice. Those rules mean the
14 singular grant of a right to each owner is not diluted because many owners hold the
15 same right. Defendant's theory would invert the statute – making a violation of one
16 owner's rights direct, but a violation of every owner's rights derivative and therefore
17 harder to enforce.

18 **VI. PLAINTIFF'S AMICUS BRIEF IS NOT A JUDICIAL ADMISSION**

19 Defendant argues that statements in Plaintiff's amicus brief in *Iqtunheimr* – that the
20 violations affected "the entire corporation" and were "shared by all shareholders" – bind
21 her here. A judicial admission must be (1) a deliberate, clear, and unequivocal
22 statement (2) of fact, not law, (3) made in the present litigation. The amicus statements
23 satisfy none of these. They were filed in a different appeal, before *Iqtunheimr* was
24 decided, and they advanced a *legal* position about how HOA claims should be

1 characterized – precisely the contested question of law now before this Court. A party's
2 legal argument in another case is not a binding admission of a legal conclusion in this
3 one. At most it is impeachment material, and it is fully consistent with Plaintiff's
4 position: that her claims have community-wide *benefits* while remaining direct in
5 *nature* – the same point *Albers* recognizes. The statement in Plaintiff's March 10, 2026
6 Colby discovery motion, describing the Newcastle claim as a financial matter on a
7 policy all members are named on, was made to establish discovery relevance under
8 Rule 26; it is a characterization of the master-policy context, not a concession of
9 Plaintiff's capacity to sue, and the operative pleadings control.

10 **VII. THE JUNE 24, 2025 RULING AND LAW OF THE CASE SUPPORT DENIAL**

11 On June 24, 2025, this Court (Warner, J.) denied Defendant's earlier partial motion to
12 dismiss the same claims as derivative, holding that Plaintiff's claims "are all brought to
13 assert her rights as a member against the Association under the CC&R's," limiting her
14 to "damages she herself has suffered and can prove," barring recovery "for harm to the
15 others or to the community in general," and adding that injunctive relief to compel the
16 Association to follow the CC&R's or other law "is not a derivative claim." The Court
17 reserved only the joinder question.

18 Law of the case ordinarily holds absent a substantial change in the controlling law or a
19 showing that the prior ruling was manifestly erroneous. *Powell-Cerkoney v. TCR-*
20 *Montana Ranch Joint Venture*, 176 Ariz. 275, 279 (App. 1993). Defendant says *Iqtunheimr*
21 is that change. But *Iqtunheimr* changed the law only as to common-area maintenance
22 claims; it did not disturb the governance, voting, records, insurance, or amendment-
23 validity claims that Judge Warner actually analyzed and found direct. For those claims,
24 the June 24 ruling remains sound and supports denial. Defendant's argument that the

1 ruling addressed a "superseded pleading" cuts the other way: the operative pleadings
2 retain the same direct-harm framing the Court already evaluated, so the same analysis
3 controls.

4 **VIII. THE STATUTORY SCHEME CONTEMPLATES**
5 **INDIVIDUAL ENFORCEMENT**

6 The Legislature built the Condominium Act for individual enforcement. A.R.S. § 32-
7 2199.01 permits a single owner to file an administrative petition against an association
8 for violations of the Act or the community documents, with no requirement that the
9 owner first assemble twenty-five percent of the membership or fifty members. It would
10 be incoherent for the same open-meeting, voting, records, and insurance violations to
11 be individually enforceable before the Department of Real Estate but enforceable in
12 court only through a derivative action. Defendant's theory would transform the Act's
13 owner-protective rights into a corporate charter enforceable only by the entity –
14 contrary to the statute's design and to *A Z N H*, where an individual owner enforced
15 the open-meeting statute directly.

16 **IX. ANY OVERBREADTH IS CURED BY NARROWING**
17 **OR LEAVE TO AMEND, NOT DISMISSAL**

18 Defendant's Motion is a partial motion that does not seek dismissal with prejudice, yet
19 it argues the supposed defect is incurable and that leave to amend "cannot cure" it.
20 Arizona's liberal amendment policy is to the contrary: leave is freely given when justice
21 requires. Ariz. R. Civ. P. 15(a)(2). If the Court concludes that any challenged paragraph
22 or any item in the prayer reaches community-wide recovery, the proportionate
23 response is to narrow the relief to Plaintiff's own damages and declarations – exactly
24 what this Court already ordered on June 24, 2025 – or to grant leave to amend.

1 Dismissing direct statutory claims because a self-represented plaintiff used a broad
2 phrase or an imprecise caption would elevate form over the substance the pleadings
3 plainly allege.

4 X. CONCLUSION

5 Iqtunheimr bars generalized claims for common-area maintenance and recovery of
6 Association assets when the injury belongs only to the community. It does not bar
7 direct, owner-facing statutory claims under the Condominium Act, and the Court of
8 Appeals confirmed in *A Z N H* that open-meeting rights are enforced directly by
9 individual owners. Plaintiff's challenged claims are direct to the extent they enforce her
10 individual rights to open meetings, notice, agendas, pre-vote participation, lawful
11 voting, ballot and records inspection, insurance, amendment validity, and fair
12 administration, and to the extent they seek her own damages and prospective
13 compliance. Plaintiff seeks no Association-wide recovery.

14 For these reasons, Plaintiff respectfully requests that the Court:

- 15 1. Deny Defendant's Motion for Judgment on the Pleadings;
- 16 2. Hold that Plaintiff may proceed on direct claims seeking her own damages,
17 declarations of her individual statutory and contractual rights, and prospective
18 statutory compliance;
- 19 3. Alternatively, if any remedy is deemed derivative or overbroad, narrow the remedy
20 or grant Plaintiff leave to amend rather than dismiss any claim with prejudice;
- 21 4. Deny any request for fees or sanctions; and
- 22 5. Grant such other relief as the Court deems just and proper.

23 DATED this 2nd day of June, 2026.

24 Respectfully submitted,

1 /s/ Lisa Marx
2 Lisa Marx, Plaintiff Pro Se
3 13610 N. 111th Ave.
4 Sun City, AZ 85351
5 602-748-7781
6 aimtodogood@gmail.com
7

8 **CERTIFICATE OF SERVICE**

9 I certify that on this 2nd day of June, 2026, I served a true and correct copy of the
10 foregoing by the Court's electronic filing system and by email on counsel for
11 Defendant:

12 Charles H. Oldham, Chuck.Oldham@chdblawn.com
13 Ari A. Bowhay, Ari.Bowhay@chdblawn.com

14 /s/ Lisa Marx
15 Lisa Marx
16
17

18 Exhibits Included: Exhibit D (Organization of Claims)
19
20
21
22
23
24