

1. EXHIBIT T PL MOTION FOR LEAVE

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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.,
14
15 Defendant.

**PLAINTIFF'S MOTION FOR LEAVE
TO FILE THIRD AMENDED
COMPLAINT PURSUANT TO
ARIZONA RULE OF CIVIL
PROCEDURE 15(a)(2)**

Honorable Randall H. Warner

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18 **INTRODUCTION**

19 Pursuant to Arizona Rule of Civil Procedure ("ARCP") 15(a)(2), Plaintiff, Lisa Marx,
20 respectfully moves this Court for leave to file a Third Amended Complaint ("TAC").
21 The Court's September 10, 2025, Minute Entry granted Defendants' Motion to Strike
22 Portions of the First Amended Complaint ("FAC," filed August 15, 2025), ruling that the
23 prior order granting a Motion for More Definite Statement "was not permission to
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1 assert new claims against dismissed parties" and requiring Plaintiff to "file an amended
2 complaint that does not include the dismissed individual parties" (Defendants Mark
3 Gottmann and Dennis Anderson) within 15 days (by September 25, 2025). Plaintiff e-
4 filed and served a Second Amended Complaint ("SAC") on September 15, 2025,
5 complying with the September 10 order by excluding dismissed parties, and now seeks
6 leave to file the TAC to reinstate direct claims against Gottmann and Anderson. The
7 Entry further states that "[i]f Plaintiff wishes to add new claims she must file a motion
8 to amend under Rule 15."

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10 This motion seeks that required leave to include claims against Gottmann and
11 Anderson in the TAC. Plaintiff maintains these are not "new claims" but longstanding
12 direct claims originating in the original Complaint (filed April 11, 2025) and refined
13 (without substantive addition) in the FAC to comply with ARCP 8(a) and the Court's
14 July 15, 2025, order granting a more definite statement. The TAC further seeks to
15 include violations of the statutes and governing documents (CC&Rs) that have
16 occurred since the case was filed on April 11, 2025. These updates are only post-filing
17 violations as specified under each subtitle and the addition of the direct claim subtitles
18 and points against Directors Gottmann and Anderson individually, arising from their
19 individual ultra vires actions as board members (exceeding authority under A.R.S. § 33-
20 1243) and willful misconduct (A.R.S. § 10-3855(D)), causing Plaintiff personalized harm
21 (e.g., improper voting exclusions and record denials specific to her unit). They are not
22 derivative (Association-wide recovery) as characterized in the July 31, 2025, Minute
23 Entry.

24 As detailed in TAC ¶¶ 18-23, these direct claims are supported by Johnson v. Pointe

1 Cmt'y. Ass'n, Inc., 205 Ariz. 485, ¶ 23, 73 P.3d 616, 620 (App. 2003), holding that boards
2 owe fiduciary duties to enforce governing documents "for the benefit of all owners as a
3 whole and the individual lot owners," supporting direct claims against directors
4 Gottmann and Anderson for breaches causing specific harms to Plaintiff, such as loss of
5 participation rights (TAC ¶ 23(a)), monetary losses (TAC ¶ 23(f)), diminution in
6 property value (TAC ¶ 23(g)), and reputational/emotional distress (TAC ¶ 23(m)), and
7 overriding the business judgment rule (A.R.S. § 10-3831) where board actions are
8 arbitrary or in bad faith. Further, A.R.S. §§ 10-3852(C), 10-3855(B), and 10-
9 3856(A)(2)(b)(ii) (for Gottmann as officer, TAC ¶ 10) and A.R.S. §§ 10-3852(C) and 10-
10 3855(B) (for Anderson as director, TAC ¶ 11) bar indemnification for their bad-faith
11 ultra vires acts, as established in TAC ¶ 26 (Prieve v. Flying Diamond Airpark, LLC,
12 252 Ariz. 195, ¶ 13 (App. 2021); Albers v. Edelson Tech. Partners L.P., 201 Ariz. 47
13 (App. 2001)). Granting leave serves justice by allowing merits adjudication without
14 prejudice to Defendants (discovery ongoing since September 4, 2025, no trial set).

15 Plaintiff did not confer with opposing counsel due to futility (see Certificate of
16 Conferral). The proposed TAC, redlined from the SAC to show only post-filing
17 violations as specified under each subtitle and the addition of the direct claim subtitles
18 and points against Directors Gottmann and Anderson individually, is attached as
19 Exhibit A. A proposed form of order is included.

20 21 **STATEMENT OF FACTS**

22 This action commenced on April 11, 2025, with the original Complaint asserting direct
23 claims against Tara Condominiums Association, Inc., Mark Gottmann, and Dennis
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1 Anderson for breaches of the Tara Condominiums Association's Declaration of
2 Restrictions ("CC&Rs") and violations of A.R.S. § 33-1201 et seq. (e.g., §§ 33-1248 [open
3 meetings], 33-1250 [voting], 33-1258 [record availability], 33-1212 [unit boundaries], 33-
4 1247 [upkeep], 33-1253 [insurance]) and § 10-11601 (corporate records). See Original
5 Complaint (filed Apr. 11, 2025), (alleging ultra vires acts like unauthorized voting
6 exclusions and record denials causing Plaintiff's individualized financial and property
7 damages, e.g., \$450 since filing and increasing monthly from the improper budget
8 vote). These were pled as direct claims for personal liability, not derivative suits on
9 behalf of the Association. See Responsive Memorandum to Association's Partial Motion
10 to Dismiss (June 4, 2025, at p. 1: "Plaintiff requests that the court deny the Defendant's
11 request to dismiss any of the twelve claims in the "Breach of Contract" complaint.
12 Defendant's attorney's attempt to transform the case into a derivative suit is a tactic to
13 avoid accountability..."); Response Memorandum to Motion to Dismiss Mark Gottmann
14 and Dennis Anderson (July 20, 2025, at p. 1: "The case is not a derivative case. It is a
15 breach of contract case brought by the petitioner for numerous breaches of the
16 Declaration and violations of the state laws that govern condominiums in Arizona. The
17 evidence will show that a majority of the violations regarding the breach of contract
18 were committed by Mark Gottmann while he was NOT operating in good faith, was
19 NOT following the Declaration of the Tara Condominium Association and was
20 violating state laws that govern condominiums which puts him in a position of
21 operating outside of his scope of authority as many of the violations were committed
22 while Mark Gottmann acted unilaterally in violation of the open meeting laws. Dennis
23 Anderson is named personally for the particular violations where he was NOT
24 operating in good faith, was NOT following the Declaration of the Tara Condominium

1 Association and was violating state laws that govern condominiums which puts him in
2 a position of operating outside of his scope of authority.”) The TAC refines these direct
3 claims, incorporating Johnson ¶ 23 to emphasize individual accountability for harms to
4 Plaintiff like loss of participation rights (TAC ¶ 23(a)), monetary losses (TAC ¶ 23(f)),
5 diminution in property value (TAC ¶ 23(g)), and reputational/emotional distress (TAC
6 ¶ 23(m)) by both Gottmann and Anderson, countering the July 31, 2025, Minute Entry's
7 derivative characterization with direct liability for post-filing violations (e.g.,
8 surveillance, TAC ¶ 197), and indemnification bars under A.R.S. §§ 10-3852(C), 10-
9 3855(B), and 10-3856(A)(2)(b)(ii) for Gottmann’s officer acts (TAC ¶ 10) and A.R.S. §§
10 10-3852(C) and 10-3855(B) for Anderson’s director acts (TAC ¶ 11), as detailed in TAC
11 ¶ 26, without adding new theories or parties beyond reinstatement.

12
13 The Declaration explicitly requires a majority vote of the Managers for the Board to
14 carry out actions on behalf of unit owners (Declaration § 9.E.), and the By-Laws
15 reinforce this governance structure, mandating one vote per unit for ballots and a
16 detailed budget process requiring owner ratification (By-Laws §§ 1.06, 2.03). The
17 Board's powers, including levying assessments and maintaining common elements, are
18 subject to these procedural safeguards (Declaration § 12), ensuring compliance with
19 A.R.S. § 33-1243(D) for budget approvals.

20 On July 15, 2025, Defendants filed a Motion to Dismiss arguing the claims against
21 Gottmann and Anderson were derivative and impermissible against individuals, and a
22 Motion for More Definite Statement claiming the original Complaint was vague,
23 disorganized, and noncompliant with ARCP 8. See Motion to Dismiss (filed July 15,
24 2025, at pp. 1-2: claims are derivative, lack personal liability basis under nonprofit

1 statutes); Motion for More Definite Statement (filed July 15, 2025, at pp. 1-2: Complaint
2 is "excessively long, internally disorganized, and so vague and ambiguous"). The July
3 25, 2025, Minute Entry granted the Motion for More Definite Statement, ruling that the
4 original Complaint did not comply with Rule 8's requirement for a "short and plain
5 statement of the claim" and ordering Plaintiff to file an amended complaint by August
6 15, 2025, that complies with Rule 8. See Minute Entry (filed July 23, 2025). The July 31,
7 2025, Minute Entry granted the Motion to Dismiss as to Gottmann and Anderson
8 without prejudice, ruling that CC&R violations are against the Association (not
9 individuals) and ultra vires allegations are derivative, requiring suit on behalf of the
10 Association. See Minute Entry (filed Aug. 5, 2025). Plaintiff filed a Motion for
11 Reconsideration of the dismissal, arguing the claims were direct breaches under Title
12 33 and portions of § 10-3101, but it was denied. See Motion to Strike Portions of
13 Amended Complaint (filed Aug. 25, 2025, at p. 1).

14
15 In compliance with the July 25, 2025, order, Plaintiff filed the First Amended Complaint
16 ("FAC") on August 15, 2025, reasserting the claims with Counts 1-8 as direct claims
17 against the Association ((1) Breach of Contract, (2) Violation of A.R.S. § 33-1248, (3)
18 Violations of A.R.S. § 33-1250, (4) Violations of A.R.S. § 33-1258, (5) Violations of A.R.S.
19 § 33-1212, (6) Violations of A.R.S. § 33-1247, (7) Violations of A.R.S. § 33-1253, (8)
20 Violations of A.R.S. § 10-11601) and Counts 9-10 as direct claims against Gottmann and
21 Anderson ((9) Declaratory Judgment under A.R.S. §§ 12-1831 et seq., (10) ultra vires
22 acts like exclusion from decisions and unilateral removal from the landscaping
23 committee, violating § 33-1243 guardrails and Declaration § 9.E.: "A majority vote of the
24 Managers shall entitle said Board to carry out action on behalf of the owners of the

1 units"). See FAC pp. 1-2. No new theories, parties, or facts were added; revisions
2 refined phrasing to emphasize direct, personalized harm and addressed vagueness
3 under Rule 8.

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5 Defendants' Motion to Strike Portions of Amended Complaint (filed Aug. 25, 2025)
6 claimed the FAC's references to dismissed parties were immaterial post-dismissal. See
7 Motion to Strike (pp. 1-2: reasserted claims against dismissed Directors are immaterial;
8 seeks to strike and conform caption). The September 10, 2025, Minute Entry granted the
9 Motion to Strike, ordering an amended complaint within 15 days excluding "dismissed
10 individual parties" and noting the July 25 order was not permission to assert new
11 claims against them – any new claims require a motion to amend under Rule 15. See
12 Minute Entry (filed Sept. 10, 2025). In compliance, Plaintiff filed the Second Amended
13 Complaint ("SAC") on September 15, 2025, excluding the dismissed parties. The
14 dismissal was without prejudice stating the claims were derivative in nature, allowing
15 reframing as direct claims. See Response to Motion to Strike (p. 1).

16 Since filing on April 11, 2025, additional violations of the statutes and CC&Rs have
17 occurred (e.g., continued ultra vires open meeting violations under § 33-1248 [over
18 \$4,000 spent on Travis Law, \$380 Lopez] and record unavailability under § 33-1258
19 harming Plaintiff's right to participate, upkeep rights under § 33-1247, and corporate
20 record issues under § 10-11601). The proposed Third Amended Complaint ("TAC")
21 incorporates these as post-filing violations under each count, with added subtitles
22 explicitly identifying direct claims against Gottmann and Anderson individually,
23 without expanding liability.
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LEGAL ARGUMENT

ARCP 15(a)(2) requires courts to "freely give leave [to amend] when justice so requires." *Spittler v. Nicola*, 121 Ariz. 198, 200, 589 P.2d 916, 918 (1979). Amendments clarifying direct claims, including post-filing violations, are liberally permitted early in litigation, absent undue delay, bad faith, or prejudice. *Armer v. Maricopa Cnty.*, 161 Ariz. 25, 27, 775 P.2d 1299, 1301 (App. 1989). All factors favor leave here, rebutting the July 31 and September 10 characterizations:

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1. No Undue Delay or Bad Faith: Less than five months post-filing (April 11, 2025), the TAC aligns with the Original Complaint and FAC's authorized clarifications, incorporating post-filing violations as timely updates under Rule 15. No new claims exist; revisions resolve drafting ambiguity suggesting derivative nature, amending as direct claims as consistently argued (e.g., Response to Dismiss, p. 1; Reconsideration Motion, p. 1). Plaintiff acted promptly post-strike.
 2. No Prejudice to Defendants: Gottmann and Anderson received notice via the original Complaint and participated in motions/discovery (e.g., initial disclosures on ultra vires issues since September 4, 2025). The TAC imposes no added burden, merely adds direct claim subtitles, points against Gottmann and Anderson individually, and post-filing violations. *Norton v. Superior Court*, 151 Ariz. 558, 560, 729 P.2d 156, 158 (App. 1986) (no prejudice where amendment consistent with original notice). Denying leave prejudices Plaintiff by dismissing meritorious direct claims on procedure.
 3. Justice Requires Amendment: The claims are direct, not derivative: While board members owe duties to the Association, Arizona law permits personal suits for

1 ultra vires acts (A.R.S. § 33-1243(A): limits authority, voiding exceedances) and
2 bad faith causing personalized harm (A.R.S. § 10-3830(A): requiring good faith,
3 prudent care, and conduct in the corporation’s best interests, breached by willful
4 misconduct, rebuttable by clear and convincing evidence under subsection D),
5 distinct from Association-wide injury warranting derivative actions. The
6 Declaration, a binding contract between the Association and Plaintiff, imposes
7 servitudes requiring a majority vote of Managers for board actions (Declaration §
8 9.E.), and ultra vires acts violating these servitudes breach duties under
9 Restatement (Third) of Property: Servitudes §§ 6.13–6.14 (2000) (mandating
10 associations and members act reasonably, in good faith, and within authority).
11 A.R.S. § 10-851(A) (good faith, reasonable belief that official conduct serves the
12 corporation’s best interests or is not opposed to them, and no knowledge of
13 unlawfulness) defines the standard of conduct individual directors must meet,
14 and A.R.S. § 10-3852 reinforces their personal liability by limiting
15 indemnification to good-faith conduct meeting this standard, requiring
16 authorization by disinterested directors, special counsel, or members per A.R.S. §
17 10-3855(A)–(D), exposing Gottmann and Anderson to individual liability for
18 violations. The Declaration § 12 grants the Board powers to levy assessments and
19 maintain common elements, but these are expressly subject to the majority vote
20 requirement of § 9.E. and the owner ratification process under By-Laws §§ 1.06
21 and 2.03, ensuring compliance with A.R.S. § 33-1243(D) for budget approvals.
22 *Arizona Tile, L.L.C. v. Berger*, 223 Ariz. 491, 494 ¶ 10, 224 P.3d 988, 991 (App. 2010)
23 (directors personally liable for participatory fiduciary breaches, even without
24 gain); see also, “Can I Sue a Condo Board Member Personally?”, Francis J. Slavin,

1 P.C. (Jan. 30, 2024) (condo board members liable for bad faith harming owners).
2 For example, Gottmann’s unilateral refusal, without a majority board vote as
3 required by Declaration § 9.E., to hold an open meeting for a budget vote ballot
4 return, violating A.R.S. §§ 33-1243(D) (mandating a ratification meeting 14–30
5 days after budget summary), 33-1250(C) (requiring in-person/absentee voting
6 with a time stated ballot deadline), and 33-1248 (mandating open meetings),
7 breached the Declaration’s contractual servitudes and caused an invalid vote
8 imposing a \$50 per month dues increase, resulting in Plaintiff’s direct \$600
9 annual loss, harming her unit’s value and causing financial strain and stress;
10 these actions breach § 10-851(A) and Restatement §§ 6.13–6.14 (2000) by lacking
11 good faith and exceeding authority, exposing directors to liability without
12 indemnification under § 10-3852(B)–(C), **as affirmed in *Hilton Casitas***
13 ***Homeowners Ass’n v. Whitmer*, No. 1 CA-CV 23-0670 (Ariz. Ct. App. Sept. 4,**
14 **2025) (mem. decision) (persuasive authority under Ariz. Sup. Ct. R. 111(c)(3)),**
15 **where the court invalidated an HOA budget for failing to comply with**
16 **Declaration and statutory ratification requirements under A.R.S. § 33-1243(D),**
17 **affirming that unilateral board actions without proper owner involvement are**
18 **void and cause direct harm to individual owners.** (See Exhibit B: Copy of
19 Memorandum Decision.) Other violations (e.g., voting manipulations under § 33-
20 1250, record unavailability under § 33-1258, unit boundary issues under § 33-
21 1212, upkeep failures under § 33-1247, and corporate record issues under § 10-
22 11601) cause further individualized damages (*Albers v. Edelson Tech. Partners L.P.*,
23 201 Ariz. 47, 52 ¶ 19, 31 P.3d 821, 826 (App. 2001) (direct claims for personal
24 harm)); see also, “JUDGING DIRECTORS”, Berding & Weil LLP (judicial review

1 for ultra vires or bad faith). The July 31 Entry characterized the claims as
2 derivative, but Plaintiff submits they are direct under A.R.S. §§ 10-3830(A), 10-
3 851(A), 33-1243(A), and 10-3855(A), as clarified in the TAC's subtitles. The TAC's
4 direct claim subtitles, points, and post-filing violations, as continuations of
5 statutory and Declaration breaches since April 11, 2025, ensure merits review,
6 per *Tierra Ranchos Homeowners Ass'n v. Kitchukov*, 216 Ariz. 195, ¶ 20, 165 P.3d
7 173, 177 (App. 2007) (boards must act reasonably; ultra vires exposes liability).

8 9 **CERTIFICATE OF CONFERRAL**

10 Pursuant to Maricopa County Local Rule of Practice 3.3(a), Plaintiff certifies that she
11 did not confer with opposing counsel regarding this motion. Such conferral would be
12 futile, as Defendants' August 25, 2025, Motion to Strike and prior filings demonstrate
13 unequivocal opposition to including or reinstating direct claims against Gottmann and
14 Anderson. Any discussion would yield categorical denial, inconsistent with the rule's
15 efficiency goals. Plaintiff remains available for telephonic conference at opposing
16 counsel's request.

17 18 **CONCLUSION**

19 For the foregoing reasons, Plaintiff respectfully requests that the Court grant leave to
20 file the TAC within 10 days of the order pursuant to ARCP 15(a)(5).

21 DATED this 22nd day of September, 2025.

22
23 **Respectfully submitted,**
24

1 /s/ Lisa Marx

2 Lisa Marx

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7 Plaintiff, Pro Per

8
9 ORIGINAL of the foregoing e-filed

10 With Clerk of the Court

11
12 This 22nd day of September, 2025

13
14
15 COPY of the foregoing e-mailed

16 this 22nd day of September, 2025, to:

17
18 Charles H. Oldham, Esq.

19 1400 East Southern Avenue, Suite 400

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23
24 By: /s/Lisa Marx