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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.,
14 Defendant.

**PLAINTIFF'S REPLY TO
DEFENDANT'S RESPONSE AND
OBJECTION TO 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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19 Plaintiff Lisa Marx respectfully submits this Reply to Defendant Tara Condominium
20 Association, Inc.'s ("Defendant") Response and Objection to Plaintiff's Motion for Leave
21 to File Third Amended Complaint ("TAC"), filed October 13, 2025. This Reply is filed
22 concurrently with Plaintiff's Motion for Leave to File Reply Out of Time, supported by
23 Affidavit. Pursuant to ARCP 15(a)(2), leave to amend should be "freely given when
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1 justice so requires." As detailed below, Defendant's objections lack merit, and granting
2 leave serves justice without prejudice.

3 **I. THE TAC COMPLIES WITH RULE 8 AND THE COURT'S PRIOR ORDERS**

4 Defendant argues the TAC violates ARCP 8(a)(2) by not being a "short and plain
5 statement of the claim" and disregards the Court's July 25, 2025, order granting a more
6 definite statement. This is incorrect. The TAC (redlined from the Second Amended
7 Complaint ("SAC"), filed September 15, 2025, in compliance with the September 10,
8 2025, order) refines longstanding claims from the original Complaint (filed April 11,
9 2025) without substantive expansion beyond post-filing violations (expressly noted
10 under subtitles) and direct claims against Gottmann and Anderson. It is concise relative
11 to the complexity of condominium governance issues, incorporating multiple statutory
12 violations (A.R.S. §§ 33-1201 et seq.) and governing documents. See *Anserv Ins. Servs.,
13 Inc. v. Superior Court*, 192 Ariz. 48, 49 (App. 1998) (Rule 8 requires notice pleading, not
14 brevity at the expense of clarity). The TAC's structure (e.g., numbered paragraphs,
15 subtitles for clarity) aids comprehension, unlike the "lengthy" complaint in *Anserv*. It
16 complies with the July 25 order by providing a definite statement, and the September
17 10 order by seeking leave for additions.

18 **II. THE CLAIMS AGAINST GOTTMANN AND ANDERSON** 19 **ARE DIRECT, NOT DERIVATIVE**

20 Defendant reasserts that claims against Gottmann and Anderson are derivative, citing
21 the Court's August 5, 2025, order dismissing them. However, the TAC clarifies these as
22 direct claims for individualized harm to Plaintiff (e.g., loss of participation rights,
23 monetary losses, property diminution, emotional distress; TAC ¶ 23), supported by
24 *Johnson v. Pointe Cmty. Ass'n, Inc.*, 205 Ariz. 485, ¶ 23, 73 P.3d 616 (App. 2003) (boards

1 owe duties to individual owners; direct claims viable for specific harms). These arise
2 from ultra vires acts (exceeding A.R.S. § 33-1243) and bad-faith misconduct (A.R.S. §
3 10-3855(D)), barring indemnification (A.R.S. §§ 10-3852(C), 10-3855(B), 10-
4 3856(A)(2)(b)(ii); *Prieve v. Flying Diamond Airpark, LLC*, 252 Ariz. 195, ¶ 13 (App.
5 2021); *Albers v. Edelson Tech. Partners L.P.*, 201 Ariz. 47 (App. 2001)). Unlike
6 derivative claims (Association-wide recovery), these seek redress for harms unique to
7 Plaintiff (e.g., targeted exclusions, harassment). The August 5 order addressed the
8 original pleading; the TAC's refinements warrant reconsideration under Rule 15. The
9 court should also consider the persuasive reasoning of *Hilton Casitas Homeowners Ass'n*
10 *v. Whitmer*, No. 1 CA-CV 23-0670, 2025 WL 3640280, at *8, ¶ 20 (Ariz. Ct. App. Sept. 4,
11 2025) (mem. dec.). In that case, the Arizona Court of Appeals invalidated HOA actions
12 that caused direct harm to an individual owner, finding that such acts fell outside the
13 scope of protected association conduct. The *Hilton Casitas* decision is particularly
14 relevant here because, as in that case, the Association's actions caused specific,
15 individualized harm to the plaintiff through ultra vires and bad-faith acts for which
16 published opinions do not provide sufficiently analogous guidance.

17 **III. THE TAC DOES NOT IMPROPERLY ADD NEW ALLEGATIONS OR** 18 **THEORIES WITHOUT LEAVE**

19 Defendant claims the TAC adds new factual content, theories, and demands beyond
20 the SAC's scope. Not so—the additions are limited to post-filing violations (e.g.,
21 unauthorized maintenance, harassment in 2025; TAC ¶¶ 64, 67-77) as specified,
22 necessary to update the record under ARCP 15(d) (supplemental pleadings for post-
23 filing events). These relate to ongoing patterns from the original Complaint, not new
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1 claims. No undue expansion; the TAC streamlines by focusing on direct harms.
2 Granting leave avoids serial filings and promotes efficiency.

3 **IV. NO UNDUE PREJUDICE OR DELAY TO DEFENDANT**

4 Defendant alleges prejudice from prolonged litigation and costs. However, discovery
5 began September 4, 2025, trial date is set October 14, 2026 with granted extension
6 October 24, 2025, and the TAC's additions are narrow, allowing seamless integration
7 without restarting discovery. Amendments are favored absent prejudice (ARCP
8 15(a)(2); Carranza v. Madrigal, 237 Ariz. 512, 514 ¶ 13 (App. 2015)). Defendant's prior
9 motions (e.g., to strike) have extended proceedings; Plaintiff's good-faith compliance
10 (SAC filed timely on September 15, 2025) shows no bad intent. Justice requires
11 adjudication on merits, including post-filing acts to prevent mootness.

12 **V. NO REPEATED DISREGARD OF COURT ORDERS**

13 Defendant accuses Plaintiff of disregarding orders. This mischaracterizes the record:
14 The FAC (August 15, 2025) refined claims per the July 25 order; the SAC complied with
15 the September 10 order by excluding individuals; this motion seeks required leave.
16 Any prior procedural errors (acknowledged in TAC introduction) were due to pro per
17 status, not willful disregard. See Rohde v. Beztak of Ariz., Inc., 164 Ariz. 383, 388 (App.
18 1990) (no fiduciary duty to individuals absent direct harm; but here, direct harms exist).
19 For these reasons, the Court should grant leave to file the TAC.

20 DATED: November 13, 2025.

21 Respectfully submitted,

22 /s/ Lisa Marx

23 Lisa Marx, Pro Per

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4 Copies sent to:

5 ORIGINAL of the foregoing e-filed

6 this 13th day of November, 2025

7 Arizona Judicial Branch Statewide e-Filing System

8 **COPY of the foregoing e-mailed**

9 **This 13th day of November, 2025, to:**

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14 By: Lisa Marx

15 /s/ Lisa Marx

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