

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 MOTION FOR
RECONSIDERATION OF
NOVEMBER 17, 2025 MINUTE
ENTRY DENYING LEAVE TO FILE
THIRD AMENDED COMPLAINT
PURSUANT TO ARIZONA RULE
OF CIVIL PROCEDURE 7.1(e)**

Honorable Adele Ponce

18
19 **INTRODUCTION**

20 Pursuant to Arizona Rule of Civil Procedure ("ARCP") 7.1(e), Plaintiff, Lisa Marx,
21 respectfully moves this Court for reconsideration of its November 17, 2025 Minute
22 Entry (docketed November 18, 2025), which denied Plaintiff's September 22, 2025
23 Motion for Leave to File Third Amended Complaint ("TAC") Pursuant to ARCP
24 15(a)(2). The Minute Entry states: "Good cause is not shown to reassert claims against

1 individual defendants." This motion does not request oral argument.
2 Plaintiff submits that the Court misapplied points of law and fact in concluding that
3 good cause was not shown. Specifically, the Court overlooked that the proposed claims
4 against individual Defendants Mark Gottmann and Dennis Anderson are not
5 "reasserted" derivative claims but longstanding direct claims for personalized harm,
6 originating in the original Complaint (filed April 11, 2025) and refined in the TAC
7 without substantive addition of new theories. The TAC adds only additional violations
8 of state law and governing documents (CC&Rs) by the individual board members since
9 the April 11, 2025 filing, pointing out many additional ultra vires acts under the same
10 statutes and declaration violations (e.g., post-filing surveillance, TAC ¶ 197; improper
11 voting exclusions and record denials). These direct claims are supported by Arizona
12 law, including *Johnson v. Pointe Cmty. Ass'n, Inc.*, 205 Ariz. 485, ¶ 23, 73 P.3d 616, 620
13 (App. 2003), which holds that condominium boards owe fiduciary duties to individual
14 owners, permitting direct actions for breaches causing specific harms. Granting leave
15 aligns with ARCP 15(a)(2)'s mandate that amendments be "freely given when justice so
16 requires," particularly where discovery is ongoing (since September 4, 2025), the case
17 has been reassigned to this division with a Trial Setting Conference set for August 6,
18 2026 (per November 25, 2025 Minute Entry), and no prejudice to Defendants would
19 result.

20 **STANDARD FOR RECONSIDERATION**

21 Under ARCP 7.1(e), this motion identifies the points of law or fact the Court
22 overlooked or misapprehended, such as the direct nature of the claims and the liberal
23 standard for amendments under Rule 15(a)(2). As a pro se litigant, Plaintiff is entitled
24 to lenient construction of filings. See *Elliott v. Videan*, 164 Ariz. 113, 116, 791 P.2d 639,

1 642 (App. 1989) (citing Haines v. Kerner, 404 U.S. 519 (1972)). The denial here
2 constitutes an abuse of discretion under ARCP 15(a)(2)'s liberal standard, warranting
3 reconsideration to promote justice and judicial economy.

4 **STATEMENT OF FACTS**

- 5 1. This action commenced on April 11, 2025, with the original Complaint asserting
6 direct claims against the Association, Gottmann, and Anderson for breaches of
7 the Declaration of Covenants, Conditions, and Restrictions ("CC&Rs") and
8 violations of A.R.S. §§ 33-1201 et seq. (e.g., improper voting exclusions and
9 record denials causing Plaintiff's individualized harms, such as \$450 in monetary
10 losses since filing, increasing monthly). These were pled as direct claims for
11 personal liability, not derivative suits. See Original Complaint; Responsive
12 Memorandum to Association's Partial Motion to Dismiss (June 4, 2025, at p. 1:
13 "Defendant's attorney's attempt to transform the case into a derivative suit is a
14 tactic to avoid accountability..."); Response to Motion to Dismiss Gottmann and
15 Anderson (July 20, 2025, at p. 1: emphasizing individual ultra vires acts outside
16 good faith and scope of authority).
- 17 2. On July 31, 2025, the Court dismissed Gottmann and Anderson in a Minute Entry
18 characterizing the claims as derivative, despite Plaintiff's arguments and citations
19 establishing direct liability.
- 20 3. The Court's July 15, 2025 order granted Defendants' Motion for More Definite
21 Statement, requiring Plaintiff to amend for clarity under ARCP 8(a). Plaintiff
22 filed the First Amended Complaint ("FAC") on August 15, 2025, refining the
23 direct claims without adding new theories.
24

- 1 4. On September 10, 2025, the Court struck portions of the FAC including the
2 dismissed individuals, ordering Plaintiff to file an amended complaint excluding
3 them by September 25, 2025, and noting that new claims required a motion to
4 amend under ARCP 15. Plaintiff complied by filing the Second Amended
5 Complaint ("SAC") on September 15, 2025, excluding the individuals.
- 6 5. On September 22, 2025, Plaintiff filed the Motion for Leave to File TAC, seeking
7 to reinstate the direct claims against Gottmann and Anderson. The proposed
8 TAC, redlined from the SAC (attached as Exhibit A to the original motion), adds
9 only post-filing violations of state law and governing documents as specified
10 under each subtitle (e.g., additional ultra vires acts like surveillance and
11 continued voting/record denials under the same statutes such as A.R.S. §§ 33-
12 1243, 33-1248, 33-1250, 33-1258) and direct claim subtitles/ points against
13 Gottmann and Anderson for their individual ultra vires actions (exceeding
14 authority under A.R.S. § 33-1243) and willful misconduct (A.R.S. § 10-3855(D)),
15 causing Plaintiff specific harms (e.g., loss of participation rights, TAC ¶ 23(a);
16 monetary losses, TAC ¶ 23(f); property value diminution, TAC ¶ 23(g);
17 reputational/emotional distress, TAC ¶ 23(m)). It incorporates Johnson ¶ 23 to
18 emphasize direct fiduciary duties to individual owners, overriding the business
19 judgment rule (A.R.S. § 10-3831) for arbitrary/bad-faith acts. Indemnification is
20 barred under A.R.S. §§ 10-3852(C), 10-3855(B), and 10-3856(A)(2)(b)(ii) (for
21 Gottmann as officer) and A.R.S. §§ 10-3852(C) and 10-3855(B) (for Anderson as
22 director), as detailed in TAC ¶ 26 (citing *Prieve v. Flying Diamond Airpark, LLC*,
23 252 Ariz. 195, ¶ 13 (App. 2021); *Albers v. Edelson Tech. Partners L.P.*, 201 Ariz.
24 47 (App. 2001)).

- 1 6. The November 17, 2025 Minute Entry denied leave, stating good cause was not
2 shown to "reassert" claims against individuals, without addressing the direct
3 nature of the claims, the post-filing additions, or ARCP 15's liberal standard.
4 7. On November 25, 2025, the Court issued a Minute Entry reassigning the matter
5 to this division and setting a Trial Setting Conference for August 6, 2026, at 9:15
6 a.m., confirming the case remains in early stages with no trial date set.

7 ARGUMENT

8 The Court should reconsider its denial because it misapplied key points of law and fact,
9 as follows:

- 10 1. **Misapplication of Fact: The Claims Are Not "Reasserted" or New, But**
11 **Longstanding Direct Claims with Post-Filing Updates.** The Minute Entry
12 overlooks that the TAC does not seek to "reassert" dismissed derivative claims
13 but to reinstate and refine direct claims present since the original Complaint,
14 now updated with additional post-filing violations of the same statutes and
15 governing documents (e.g., additional ultra vires acts by Gottmann and
16 Anderson, such as surveillance and continued denials). These claims allege
17 individualized harms to Plaintiff from Gottmann's and Anderson's ultra vires
18 acts (e.g., unilateral voting exclusions and record denials specific to her unit), not
19 Association-wide recovery. See TAC ¶¶ 18-23, 26; Original Complaint. The July
20 31, 2025 characterization as derivative was erroneous, as Arizona law
21 distinguishes direct claims for personal harms from derivative ones. Johnson, 205
22 Ariz. at ¶ 23 (boards owe duties to "individual lot owners," supporting direct
23 actions); Restatement (Third) of Prop.: Servitudes §§ 6.13-6.14 (requiring non-
24 discriminatory enforcement). The TAC merely clarifies this with post-filing

1 violations and citations, complying with the September 10, 2025 order's
2 invitation to move under ARCP 15 for such additions. The Court overlooked
3 A.R.S. § 33-1243, which limits board authority and imposes fiduciary duties,
4 supporting direct liability for ultra vires acts causing individual harm, as in
5 Plaintiff's loss of rights and monetary damages.

6 **2. Misapplication of Law: ARCP 15(a)(2) Requires Leave Be Freely Given Absent**
7 **Prejudice.** The Court misapplied ARCP 15(a)(2), which mandates amendments
8 be "freely given when justice so requires." *Owen v. Superior Court*, 133 Ariz. 75,
9 79, 649 P.2d 278, 282 (1981) (leave should be granted liberally unless futile,
10 unduly prejudicial, or in bad faith; affirming that courts favor trials on the merits
11 and that amendments should be allowed absent undue delay, bad faith, dilatory
12 motive, or undue prejudice). In *Owen*, the Arizona Supreme Court reversed a
13 denial of leave to amend a complaint during discovery to add punitive damages
14 claims based on emerging evidence of gross negligence – paralleling this case,
15 where post-filing violations (e.g., surveillance and continued ultra vires acts)
16 emerged, supporting refinement of direct claims without new theories. The
17 *Owen* court emphasized that "mere delay" (e.g., a late filing) is insufficient for
18 denial and that prejudice requires substantial additional discovery or
19 preparation disadvantaging the opposing party, not minor inconveniences like
20 preparing financial evidence. *Id.* at 79-81. Here, the TAC is not futile, as the
21 direct claims are viable under *Johnson* and cited statutes barring indemnification
22 for bad-faith acts (A.R.S. §§ 10-3852(C), 10-3855(B), 10-3856(A)(2)(b)(ii)). No
23 prejudice exists: discovery began September 4, 2025, the November 25, 2025
24 Minute Entry sets a Trial Setting Conference for August 6, 2026 (indicating ample

1 time), and Defendants have long known of these claims and the post-filing
2 violations. Denying leave contravenes justice by preventing merits adjudication
3 of Plaintiff's personalized harms (e.g., ongoing monetary losses). *Prieve*, 252
4 Ariz. at ¶ 13 (bad-faith breaches preclude protections). Moreover, allowing
5 amendment promotes judicial economy by incorporating ongoing post-filing
6 violations, avoiding a separate lawsuit. See *Carranza v. Madrigal*, 237 Ariz. 512,
7 515, 354 P.3d 413, 416 (2015) (amendments favored to resolve all related claims
8 efficiently).

- 9 **3. Misapplication of Law: Indemnification Bars Support Individual Liability.** The
10 Court overlooked statutes implying directors can be named individually for ultra
11 vires/bad-faith acts causing individual harm, as their failure to meet A.R.S. § 10-
12 851(A)'s good-faith standard bars indemnification. A.R.S. §§ 10-3852(C), 10-
13 3855(B) (directors); § 10-3856(A)(2)(b)(ii) (officers). This aligns with Johnson's
14 fiduciary framework, countering any assumption of derivative-only liability. See,
15 e.g., *Tierra Ranchos Homeowners Ass'n v. Kitchukov*, 216 Ariz. 195, ¶ 22, 165
16 P.3d 248, 252 (App. 2007) (citing Johnson for boards' duty to act reasonably in
17 enforcing CC&Rs); *Tucson Estates Prop. Owners Ass'n v. McGovern*, 239 Ariz.
18 52, ¶ 13, 366 P.3d 111, 115 (App. 2016) (applying business judgment rule to HOA
19 decisions but recognizing underlying fiduciary obligations). Under A.R.S. § 33-
20 1243, board members face personal liability for breaches like willful misconduct
21 or ultra vires acts, as alleged here.

22 Respectfully submitted

23 Dated this **30th** day of November, 2025.

24 /s/ Lisa Marx

1 Lisa Marx Plaintiff Pro Se

2
3 **CERTIFICATE OF SERVICE**

4 **ORIGINAL** of the foregoing e-filed
5 this 30th day of November, 2025
6 Arizona Judicial Branch Statewide eFiling System

7 I hereby certify that on November 30, 2025, I caused a true and correct copy of the
8 foregoing document to be emailed to:

9 Charles H. Oldham
10 Attorney for Defendant Tara Condominiums Association,
11 Chuck.Oldham@chdblawn.com

12 Ari A. Bowhay
13 Ari.Bowhay@chdblawn.com

14
15 By /s/ Lisa Marx
16 Lisa Marx, Plaintiff Pro Se