

1 Lisa Marx  
2 13610 N. 111<sup>th</sup> 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, an individual  
11 Plaintiff.

Case No. CV 2025-012980

12 vs.

**RESPONSE TO MOTION TO  
13 STRIKE PORTIONS OF AMENDED  
14 COMPLAINT**

15 TARA CONDOMINIUM  
16 ASSOCIATION, an Arizona non-  
17 profit corporation; MARK  
18 GOTTMANN, an individual; DENNIS  
19 ANDERSON, an individual,  
20 Defendants.

Honorable Randall H. Warner

21 **I. INTRODUCTION**

22 Plaintiff Lisa Marx respectfully opposes Defendant Tara Condominium Association's  
23 (the "Association") Motion to Strike Portions of the Amended Complaint. The Court's  
24 prior dismissal of Defendants Mark Gottmann and Dennis Anderson (the "Directors")  
from the original Complaint was without prejudice because the claims against them  
were derivative in nature. In compliance with the Court's order to file an Amended

1 Complaint, Plaintiff has cured this defect by asserting direct, non-derivative claims  
2 against the Directors for harms suffered personally and uniquely by Plaintiff, rather  
3 than harms to the Association as an entity.

4  
5 Notably, the Association's Motion does not argue that the new claims in the Amended  
6 Complaint are derivative or otherwise fail to state a claim under Arizona law. By  
7 failing to challenge the substance of the Amended Complaint on these grounds, the  
8 Association implicitly concedes that the claims are now direct in nature and not subject  
9 to the prior basis for dismissal. See A.R.S. § 10-3830 (governing standards for nonprofit  
10 directors but providing no absolute immunity for direct claims involving knowing  
11 violations, fraud, or improper personal benefit); see also *Direct and Derivative Claims*  
12 *in the Business Divorce, Tiffany & Bosco, P.A.* (Mar. 16, 2017) (distinguishing direct  
13 claims for individual harm from derivative claims for entity harm).

14  
15 Instead, the Association seeks to strike the allegations under Rule 12(f), Ariz. R. Civ. P.,  
16 claiming they are immaterial and improper. However, Rule 12(f) is a disfavored  
17 remedy intended to excise redundant or scandalous matter from pleadings, not to  
18 dismiss parties or claims on the merits. See "Disfavored Motions": *The Legal Telephone*  
19 *Game, Arizona Attorney Magazine* (Oct. 1, 2024) (noting Arizona courts describe  
20 motions to strike as disfavored and caution against their use for substantive rulings).  
21 Because the dismissal was without prejudice and the Amended Complaint cures the  
22 prior defects, the allegations against the Directors are material and proper. If the  
23 Association believes the claims still fail, the appropriate vehicle is a motion to dismiss  
24 under Rule 12(b)(6), not a motion to strike. The Motion should be denied, and no fees

1 or costs awarded.  
2

## 3 **II. PROCEDURAL BACKGROUND** 4

5 The Court ordered Plaintiff to amend her original Complaint to comply with the  
6 Arizona Rules of Civil Procedure. Subsequently, the Court granted the Directors'  
7 Motion to Dismiss without prejudice, finding the original claims against them were  
8 derivative. Plaintiff's motion for reconsideration was denied. In response to the Court's  
9 order, Plaintiff filed an Amended Complaint that reasserts claims against the Directors  
10 but modifies them to allege direct harms to Plaintiff, not derivative harms to the  
11 Association. The Association now moves to strike all references to the Directors,  
12 arguing the prior dismissal precludes their inclusion absent leave of court or a new  
13 basis to revisit the ruling. However, the dismissal without prejudice expressly  
14 contemplates the possibility of curing defects through amendment. See Rule 41(b),  
15 Ariz. R. Civ. P. (unless otherwise stated, involuntary dismissals are without prejudice);  
16 *Wigglesworth v. Mauldin*, 195 Ariz. 432, 439, ¶ 26, 990 P.2d 26, 33 (App. 1999)  
17 (dismissal with prejudice is warranted only if amendment would be futile and unable  
18 to cure defects; without prejudice allows for refiling or amendment).  
19

## 20 **III. ARGUMENT**

### 21 **A. The Prior Dismissal Without Prejudice Permits Reassertion of Claims Against the** 22 **Directors in the Amended Complaint** 23

24 A dismissal without prejudice has no preclusive effect and allows a plaintiff to refile or

1 amend to cure the deficiencies identified by the court. See Rule 41(b), Ariz. R. Civ. P.  
2 (providing that dismissals are without prejudice unless specified otherwise, preserving  
3 the right to refile); *Airfreight Express Ltd. v. Evergreen Air Ctr., Inc.*, 215 Ariz. 103, 108,  
4 ¶ 13, 158 P.3d 232, 237 (App. 2007) (dismissal without prejudice "does not bar a  
5 subsequent action on the same claim"). Here, the Court dismissed the Directors without  
6 prejudice precisely because the original claims were derivative, implying that non-  
7 derivative claims could be properly asserted. See A.R.S. § 10-3631 (authorizing  
8 derivative proceedings by members of nonprofits only under specific conditions, such  
9 as demand on the board); cf. A.R.S. § 10-3830(D) (limiting director liability in charitable  
10 organizations but excepting knowing violations, fraud, or improper benefits, which  
11 may form the basis of direct claims).

12  
13 The Court separately ordered Plaintiff to file an Amended Complaint, which Plaintiff  
14 did in compliance with that directive. The Amended Complaint asserts direct claims  
15 against the Directors for personal harms to Plaintiff, such as selective targeting, denial  
16 of records, interruptions during meetings, removal from a volunteer committee  
17 position, public blaming, verbal attacks, exclusion from events, loss of voting and  
18 participation rights, and reputational damage. This cures the derivative nature of the  
19 original pleadings. Arizona law encourages liberal amendment to promote resolution  
20 on the merits. See Rule 15(a), Ariz. R. Civ. P. (leave to amend shall be freely given when  
21 justice requires); *Douglas v. Governing Bd. of Window Rock Consol. Sch. Dist. No. 8*,  
22 221 Ariz. 104, 108, ¶ 8, 210 P.3d 1275, 1279 (App. 2009) (amendments should be  
23 permitted unless futile or prejudicial).

1 Contrary to the Association's assertion, no separate leave of court was required to  
2 include the Directors in the Amended Complaint, as the Court's order to amend  
3 encompassed curing all defects in the pleadings. See Complaints, Actions & Finality  
4 After Dismissals Without Prejudice, Final Decisions Blog (Feb. 11, 2021) (dismissal  
5 without prejudice is not final and allows amendment under Rule 15). Even if leave  
6 were needed, denying the Motion and treating the inclusion as properly amended  
7 serves judicial economy. See Third Circuit Affirms District Court's Decision Granting  
8 Plaintiffs Leave to File Amended Complaint Reasserting Previously Dismissed Claims,  
9 Shearman & Sterling LLP (undated, referencing federal analog where reassertion  
10 permitted if cured).

11  
12 **B. By Not Arguing the New Claims Are Derivative, the Association Concedes They**  
13 **Are Direct and Properly Pled**

14  
15 The Association's Motion is silent on whether the Amended Complaint's claims against  
16 the Directors remain derivative. This omission is telling: the sole basis for the prior  
17 dismissal was the derivative nature of the claims, which implicated director immunity  
18 under Arizona's Nonprofit Corporation Act. See A.R.S. § 10-3830(D) (providing  
19 immunity for fiduciary breaches in charitable organizations unless involving knowing  
20 violations, fraud, or improper benefits); Liability of Nonprofit Directors and Officers,  
21 Charity Lawyer Blog (Dec. 13, 2009) (noting broad immunity for actions as directors  
22 but exceptions for direct liability). Derivative claims belong to the Association and  
23 must be brought on its behalf after demand, while direct claims address harms unique  
24 to the plaintiff. See Bringing a Shareholder Derivative Suit in Arizona, AZ Bus. Law

1 (Dec. 18, 2024) (distinguishing derivative suits for corporate harm from direct suits for  
2 individual injury).

3  
4 By failing to contend that the amended claims are still derivative – or that they fail  
5 under A.R.S. § 10-3830 or otherwise – the Association effectively concedes that the  
6 claims are now direct and not barred by the prior ruling. Granting the Motion would  
7 ignore this concession and prematurely foreclose Plaintiff's cured claims without  
8 substantive review. If the claims are deficient, the Association should file a motion to  
9 dismiss, allowing full briefing on the merits. See Motion to Dismiss: When an  
10 Amended Complaint Might Not Moot What You Think, Finnegan (Feb. 29, 2024)  
11 (amended complaints supersede originals and require new motions if defects persist).

12  
13 **C. Rule 12(f) Does Not Authorize Striking Material Allegations or Parties; It Applies**  
14 **to Redundant or Improper Matter, Not Substantive Claims**

15  
16 Rule 12(f) permits striking "any redundant, immaterial, impertinent, or scandalous  
17 matter" from a pleading, but it is not a tool for dismissing parties or resolving merits  
18 issues. See Rule 12(f), Ariz. R. Civ. P.; CIVIL PROCEDURE: Creative Use of Rule 12(f)  
19 Backfires, National Legal Research Group (Jan. 10, 2011) (Rule 12(f) for cleaning  
20 pleadings, not substantive dismissals; misuse can backfire). Arizona courts view  
21 motions to strike as disfavored and grant them sparingly, only where the matter clearly  
22 has no bearing on the litigation. See "Disfavored Motions," supra (Arizona cases  
23 emphasize textual limits on Rule 12(f) to avoid piecemeal rulings); Ogundele v. Girl  
24 Scouts-Arizona Cactus Pine Council, Inc., No. CV-19-02982-PHX-MTL, 2020 WL

1 5577885, at \*1 (D. Ariz. Sept. 17, 2020) (federal analog; striking only inadmissible or  
2 immaterial matter, not viable claims).

3  
4 The rule's text focuses on "matter" within pleadings – such as duplicative paragraphs or  
5 scandalous accusations – not entire parties or claims. See MOTIONS TO STRIKE  
6 CLASS ALLEGATIONS, Shook, Hardy & Bacon LLP (undated) (purpose is to avoid  
7 time on immaterial issues, not to strike parties). Here, the allegations against the  
8 Directors are neither redundant (they differ from the original by being direct) nor  
9 immaterial (they form the basis of viable claims post-cure). Striking them would  
10 effectively dismiss the Directors with prejudice, contravening the prior without-  
11 prejudice order and usurping Rule 12(b)(6). See *Ingalls v. Neidlinger*, 70 Ariz. 40, 45,  
12 216 P.2d 387, 390 (1950) (affirming denial of motion to dismiss and granting motion to  
13 strike only specific improper defenses, not parties). The caption should not be altered,  
14 as the Directors are proper parties under the cured Amended Complaint.

#### 15 16 **D. No Basis for Attorneys' Fees or Costs**

17  
18 The Association's request for fees and costs lacks merit, as Plaintiff has not needlessly  
19 increased costs but complied with the Court's amendment order. Fees are unwarranted  
20 under A.R.S. § 12-349 (for groundless actions) or the Court's inherent authority, as the  
21 Amended Complaint advances good-faith, cured claims.  
22  
23  
24

1 **IV. CONCLUSION**

2

3 For the foregoing reasons, Plaintiff respectfully requests that the Court deny the  
4 Association's Motion to Strike in its entirety, decline to award fees or costs, and allow  
5 the case to proceed on the Amended Complaint against all named Defendants.

6

7 RESPECTFULLY SUBMITTED this 26th day of August 2025.

8

9 /s/ Lisa Marx

10

11 Lisa Marx, Pro Per  
12 13610 N. 111th Ave.  
13 Sun City, AZ 85351  
14 602-748-7781  
aimtodogood@gmail.com

15 Copies sent to:  
16 ORIGINAL of the foregoing e-filed  
17 this 26th day of August, 2025  
Arizona Judicial Branch Statewide eFiling System

18 COPY of the foregoing mailed/emailed  
19 This 26th day of August, 2025, to:  
20 Charles H. Oldham, Esq.  
21 1400 E. Southern Avenue, Suite 400  
22 Tempe, AZ 85282-5691  
Chuck.Oldham@chdblawn.com

23 By: /s/Lisa Marx

24