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

9
10 SANDRA RODRIGUEZ,
11 **Plaintiff,**

12 vs.

13 GARDENS GILBERT COMMUNITY
14 ASSOCIATION an Arizona non profit
15 corporation; FOCUS HOA
16 MANAGEMENT, LLC, and Arizona
17 limited liability company; HARMIN
18 CADIS, BROOKE SORTOR, ANNA
19 SCHULTZ

Defendants,

**MARICOPA COUNTY
SUPERIOR COURT**
Case No.: CV2024-005940
Judge David McDowell,

**PLAINTIFF'S REPLY IN SUPPORT
OF MOTION TO AMEND CIVIL
COMPLAINT**

20 **TO THE HONORABLE JUDGE MCDOWELL:**

21
22 Plaintiff submits this Reply in support of her Motion to Amend the Complaint, filed
23 January 5, 2026. The request is made in good faith pursuant to Arizona Rules of Civil Procedure
24 15(a)(2) and 15(d), which direct that leave to amend be freely granted when justice so requires.
25 The proposed amendment does not introduce a new dispute; rather, it conforms the pleadings to
26 claims expressly reinstated by the Arizona Court of Appeals and incorporates post-complaint
27 conduct—including retaliation, obstruction, and litigation abuse by Defendants and their
28 counsel—that escalated the same controversy already before this Court.

1 Plaintiff initiated this action in April 2024 and has repeatedly attempted to resolve the
2 matter without judicial escalation. Over the course of the litigation, Plaintiff transmitted no fewer
3 than four written settlement offers seeking resolution through communication and compromise.
4 Defendants declined to engage meaningfully and instead intensified their conduct—both
5 substantively and procedurally—by increasing retaliatory acts, discriminatory enforcement, and
6 adversarial litigation tactics.

7 As the record reflects, Defendants’ conduct compelled Plaintiff to seek extraordinary
8 judicial intervention. Rather than address the merits of Plaintiff’s claims, Defendants have
9 consistently attempted to prolong this litigation by reframing it as a narrow dispute over
10 “common-area maintenance” and invoking purported immunity under the Arizona Nonprofit
11 Corporation Act as a blanket shield. In their Response to Plaintiff’s Motion to Amend, Defendants
12 again assert that all allegations stem solely from negligence in the upkeep of community grounds
13 and contend that Plaintiff improperly seeks to expand the case beyond that scope. That
14 characterization is inaccurate and materially misleading.

15 While sanitation failures were the origin of the dispute, Plaintiff’s proposed amended
16 complaint—consistent with the Court of Appeals’ ruling—demonstrates that Defendants’
17 misconduct did not end there. Instead of remediating known hazards, Defendants and their agents
18 escalated the situation through retaliation, obstruction of statutory records access, selective
19 enforcement, misuse of governance processes, and litigation-era intimidation. Defendants’
20 continued reliance on statutory “immunity” to excuse individual misconduct, retaliatory
21 enforcement, and post-complaint statutory violations ignores both the appellate court’s rejection
22 of that premise as to tort claims and the settled distinction between negligent maintenance and
23 affirmative wrongful acts. By collapsing all allegations into “maintenance negligence,”
24 Defendants seek to evade scrutiny of conduct the Court of Appeals expressly allowed to proceed
25 and conduct arising after filing that Rule 15(d) permits Plaintiff to plead. This framing misstates
26 the scope of the case and is inconsistent with both the factual record and the governing appellate
27 mandate.

28 This strategy misstates Arizona law, which expressly preserves personal liability for
directors, officers, and agents for their own tortious acts, negligence, statutory violations, and bad
faith, notwithstanding nonprofit status. See A.R.S. §§ 10-3202, 10-3840; *Dube v. Likins*, 216

1 Ariz. (App. 2007). Defendants' filings conspicuously avoid Plaintiff's personal-injury, tort,
2 negligence, and retaliation claims and further omit the role of their counsel, Augustus H. Shaw
3 IV, who acted as the HOA's agent and active participant in the pre-litigation escalation that gave
4 rise to this dispute. Shaw's coordinated conduct with Defendants—including immunity-based
5 motions, claim-splitting, and fee escalation exceeding \$20,000—supports an inference of
6 concerted action sufficient to establish civil conspiracy under Arizona law. See *Wells Fargo Bank*
7 *v. Arizona Laborers, Teamsters & Cement Masons Local No. 395 Pension Tr. Fund*, 201 Ariz.
8 (2002).

9 This same pattern constitutes abuse of process, as Defendants employed procedural
10 mechanisms primarily to burden Plaintiff and foreclose merits adjudication rather than to obtain
11 legitimate judicial relief. See *Nienstedt v. Wetzel*, 133 Ariz. (App. 1982). By insisting on
12 immunity-based dismissal, refusing to narrow issues, and declining good-faith resolution,
13 Defendants—not Plaintiff—caused the prolonged duration of this case. Such conduct contravenes
14 Ariz. R. Civ. P. 1, elevates form over substance, and deprived Plaintiff of a meaningful
15 opportunity to be heard, necessitating appellate review and corrective relief. See *Union*
16 *Interchange, Inc. v. Van Aalsburg*, 102 Ariz. (1967); *Wells Fargo Credit Corp. v. Smith*, Ariz.
17 (App. 1990).

18 The proposed amendment properly incorporates post-filing developments and ensures the
19 pleadings reflect the full course of Defendants' conduct as it unfolded. Rather than address those
20 substantive allegations, Defendants rely on technical objections divorced from the merits. That
21 approach is improper. The United States Supreme Court has made clear that cases should be
22 decided on their merits and that leave to amend should be freely granted absent undue prejudice
23 or bad faith. *Foman v. Davis*, 371 U.S. (1962). Arizona law follows the same principle, requiring
24 courts to prioritize substance over form and to avoid denying relief based on technical pleading
25 objections. *Shea v. Maricopa County*, CV-22-0187-PR (Ariz. 2023). Supplementation to plead
26 post-filing conduct arising from the same controversy is especially favored to avoid piecemeal
27 litigation. *Keith v. Volpe*, 858 F.2d 467, 473 (9th Cir. 1988). Because the amendment is sought in
28 good faith, causes no prejudice, and conforms to Rule 15(a)(2) and 15(d), leave to amend should
be granted.

1 Moreover, because Plaintiff is self-represented, the Court must apply the required measure
2 of procedural flexibility to safeguard constitutional due-process rights and meaningful access to
3 the courts. The United States Supreme Court has made clear that pro se pleadings are to be
4 liberally construed and not defeated by hyper-technical challenges. *Haines v. Kerner*, 404 U.S.
5 519 (1972); *Erickson v. Pardus*, 551 U.S. 89 (2007). Arizona courts likewise prohibit penalizing
6 self-represented litigants where no prejudice results and require a fair opportunity to be heard.
7 See *Coppola v. Superior Court*, 211 Ariz. 265 (App. 2005); *Kelly v. NationsBanc*, 199 Ariz. 284
8 (App. 2000); *Hammoudeh v. Jada*, 222 Ariz. 570 (App. 2009). Defendants' effort to frame
9 Plaintiff's claims as inadequately "*adjudicated*" through technical maneuvering ignores these
10 protections and risks elevating form over substance in violation of due-process principles

11 Plaintiff respectfully requests leave to amend so the operative complaint includes all
12 claims preserved on remand and arising from Defendants' continuing conduct, including: breach
13 of contract and duty; negligence; gross negligence; intentional torts; discrimination; retaliation;
14 First Amendment violations; Fourteenth Amendment violations; abuse of process; and civil
15 conspiracy. Amendment is necessary to prevent Defendants from improperly narrowing the case
16 through technical objections and to ensure the pleadings reflect the full scope of misconduct
17 already at issue. Plaintiff also respectfully requests clarification whether, upon approval, the
18 amended complaint may be served by mail on defense counsel or must be formally served under
19 the Rules.

20 **I. RULE 15 LEGAL STANDARD AND ITS APPLICION TO THIS MOTION**

21 Rule 15(a)(2) states that the court "*should freely give leave [to amend] when justice so*
22 *requires.*" This principle is deeply embedded in Arizona law. Courts have consistently held that
23 leave to amend must be granted absent undue delay, bad faith, prejudice, or futility. See *Carranza*
24 *v. Madrigal*, 237 Ariz. 512 (App. 2015); *Wells Fargo Credit Corp. v. Smith*, 166 Ariz. 489 (App.
25 1990); *MacCollum v. Perkinson*, 185 Ariz. 179 (App. 1996). Moreover, Rule 15(d) permits a
26 party to supplement pleadings "*setting out any transaction, occurrence, or event that happened*
27 *after the date of the pleading to be supplemented,*" so long as those events are part of the same
28 controversy. That standard is not only met—it is exceeded here.

1 **II. AMENDMENT IS BASED ON ESCALATION OF THE SAME DISPUTE**

2 Rodriguez’s proposed amended complaint does not introduce unrelated or novel claims,
3 nor does it alter the fundamental nature of this litigation. Both the June 2024 civil complaint and
4 the January 5, 2026 proposed amended complaint assert the same core legal theories arising from
5 the same nucleus of operative facts: failure to maintain common areas resulting in sanitation and
6 health hazards, discriminatory and selective enforcement of community standards, retaliation for
7 protected activity, and statutory violations of A.R.S. § 33-1805 governing records access and
8 homeowner rights. The proposed amendment does not present a different lawsuit; it expands,
9 refines, and supplements those same theories with additional factual detail, defendant-specific
10 conduct, and post-filing events reflecting escalation of the same misconduct already alleged.

11 The original complaint asserted negligence, gross negligence, intentional torts, violations
12 of Arizona’s Planned Communities Act (A.R.S. §§ 33-1803 and 33-1805), discrimination,
13 retaliation, obstruction of records access, failure to uniformly enforce the CC&Rs, and civil
14 conspiracy. These claims were supported by detailed allegations of unresolved sanitation hazards,
15 discriminatory enforcement, and interference with Plaintiff’s governance rights. In its August
16 2025 Memorandum Decision, the Arizona Court of Appeals reversed dismissal of Plaintiff’s
17 negligence, gross-negligence, and intentional-tort claims, holding they were sufficiently pleaded
18 and could proceed against both the Association and individual defendants in their personal
19 capacities. The Court further clarified that the remaining claims were dismissed without
20 prejudice, expressly permitting Plaintiff to pursue them on remand.

21 The proposed amended complaint falls squarely within the scope of the reinstated and
22 preserved claims. It retains the same legal theories and supplements them with post-filing facts
23 demonstrating escalation by Defendants and their counsel, Augustus H. Shaw IV. Rather than
24 remediate known hazards or restore statutory compliance, Defendants intensified their
25 misconduct through legal threats, misrepresentations, harassment, selective enforcement, and
26 obstruction of Plaintiff’s participation and statutory records access. These acts include cease-and-
27 desist demands falsely asserting hazard remediation, continued exclusion from board notices and
28 elections, and coordinated efforts to suppress Plaintiff’s communications and governance
participation.

1 Contrary to Defendants’ assertion, the amended complaint does not assert claims
2 “*wholesale against all defendants*” without differentiation. It pleads party-specific conduct,
3 duties, and tort liability consistent with the Court of Appeals’ August 12, 2025 decision and
4 Arizona tort law. Claims against the Association (GGCA) and its third-party property
5 management company (Focus HOA Management, LLC) arise from its statutory and contractual
6 obligations under the CC&Rs, A.R.S. § 33-1805, and HB 2662, including its nondelegable duty
7 to maintain common areas and prevent known health and safety hazards. Claims against the
8 individual board member, Anna Schultz, are based on her personal participation and decision-
9 making, including direct involvement in enforcement actions, communications, and retaliatory
10 conduct taken outside the scope of protected discretionary functions. Claims against the
11 Management Defendants—Focus HOA Management, Harman Cadis, and Brooke Sortor—are
12 grounded in their direct operational control, enforcement activities, communications, and
13 affirmative acts that caused personal injury, emotional distress, financial loss, and ongoing harm.
14 This differentiation mirrors both the Court of Appeals’ delineation of which claims may proceed
15 against which parties and the structure of Plaintiff’s original civil complaint, which separately
16 identified each defendant’s role and conduct.

16 The amendment further alleges post-filing surveillance and intimidation—monitoring
17 Plaintiff’s property and online activity, photographing her home, escalating enforcement actions,
18 and selectively applying rules not enforced against similarly situated residents. These allegations
19 are not new claims but escalated manifestations of the same retaliation, discrimination, and
20 personal injury originally pleaded, supporting the reinstated negligence, gross-negligence, and
21 intentional-tort claims based on each defendant’s respective conduct.

22 Defendants mischaracterize the amended pleading as introducing “*expansive new*
23 *narrative frameworks*.” The conduct they identify—including improper fines, enforcement
24 actions, obstruction of access, misrepresentations regarding remediation, and continued exposure
25 to sanitation and health hazards—does not constitute new disputes. The Arizona Court of Appeals
26 expressly recognized that these factual allegations fall within the Association’s maintenance and
27 enforcement functions and are sufficient, at the pleading stage, to support negligence, gross-
28 negligence, and intentional-tort claims against Anna Schultz, Harman Cadis, and Brooke Sortor
in their individual capacities, as well as against Focus HOA Management. The Court held that
agents are not insulated from personal liability for tortious conduct merely because they acted on

1 behalf of the Association and that contractual waivers do not bar claims for gross negligence or
2 intentional torts. Accordingly, the amended allegations track—and do not exceed—the scope of
3 the appellate mandate, which reinstated these torts claims based on the same operative facts
4 alleged from the outset of the litigation

5 Defendants' contention that Plaintiff improperly asserts anti-SLAPP and Noerr-
6 Pennington doctrines as causes of action is incorrect. The amended complaint does not plead
7 those doctrines as standalone claims. They are consistent with Arizona's notice-pleading
8 standard, to provide legal context and evidence of retaliatory intent, misuse of enforcement
9 mechanisms, and abuse of process—particularly where Defendants invoked litigation threats,
10 governmental complaints, or enforcement actions as tools of retaliation. References to
11 "*surveillance*," "*monitoring*," and "*law-enforcement escalation*" likewise describe factual
12 conduct and mechanisms of harm supporting recognized tort and retaliation claims; they are not
13 pleaded as independent torts divorced from legal duty.

14 Similarly, Defendants' argument that "*health and safety claims*" and "*architectural*
15 *obstruction*" are merely conditions rather than claims misconstrues the pleading. These
16 allegations describe the hazardous conditions, noncompliant maintenance, and obstructive
17 conduct through which Defendants breached duties already recognized by the Court of Appeals,
18 including the duty to maintain common areas and to administer architectural and enforcement
19 processes in good faith and without retaliation. They are pleaded as factual bases supporting
20 reinstated tort and statutory claims, not as free-standing causes of action.

21 Finally, Defendants' criticism of Plaintiff's request for punitive damages is misplaced.
22 Punitive damages are not pleaded as a cause of action, but as a remedy available under Arizona
23 law where Defendants' conduct is shown to be willful, malicious, or in reckless disregard of
24 Plaintiff's rights—precisely the conduct alleged in connection with the intentional-tort and gross-
25 negligence claims reinstated by the Court of Appeals.

26 Accordingly, the proposed Amended Complaint reflects an escalation of the same dispute
27 already before the Court, not a departure from it. As detailed above, the amendment conforms the
28 pleadings to the appellate mandate, pleads defendant-specific conduct consistent with Arizona

1 tort and statutory law, and supplements the record with post-filing events arising from the same
2 nucleus of operative facts.

3 Because the amendment neither introduces a new lawsuit nor alters the nature of the
4 claims, but instead refines and completes the factual record in light of continued misconduct, it
5 falls squarely within the scope of Ariz. R. Civ. P. 15. Rule 15 expressly favors amendment and
6 supplementation where, as here, the claims arise from the same conduct or occurrence, no
7 cognizable prejudice is shown, and amendment permits resolution on the merits rather than on
8 procedural technicalities.

9 10 11 **III. APPELLATE HOLDING AND DEFENDANTS' MISCHARACTERIZATION**

12 Rodriguez's proposed amended complaint does not introduce unrelated or novel claims,
13 nor does it alter the fundamental nature of this litigation. It builds directly on the same core
14 controversy pleaded in June 2024 and reinstated by the Arizona Court of Appeals: persistent
15 sanitation and health hazards in common areas, discriminatory non-enforcement of community
16 standards, retaliation for protected activity, and statutory violations of A.R.S. § 33-1805
17 governing records access and homeowner rights. The amendment incorporates post-filing factual
18 developments that intensified the same harms already alleged.

19 The original complaint asserted negligence, gross negligence, intentional torts, violations
20 of Arizona's Planned Communities Act (A.R.S. §§ 33-1803 and 33-1805), retaliation, obstruction
21 of records access, failure to uniformly enforce CC&Rs, and civil conspiracy, supported by
22 detailed allegations of unresolved sanitation hazards, selective enforcement, and interference with
23 Plaintiff's governance rights. In its August 2025 Memorandum Decision, the Arizona Court of
24 Appeals reversed dismissal of Plaintiff's negligence, gross-negligence, and intentional-tort
25 claims, holding they were sufficiently pleaded and could proceed against both the Association
26 and individual defendants in their personal capacities. The court further clarified that the
27 remaining claims were dismissed without prejudice, expressly preserving Plaintiff's ability to
28 pursue them on remand.

1 Consistent with that mandate, the proposed amended complaint retains the same legal
2 theories and supplements them with post-filing conduct arising from the same controversy. Rather
3 than remediate known hazards or restore statutory compliance, Defendants—through counsel
4 Augustus H. Shaw IV—escalated their conduct by issuing legal threats, misrepresenting hazard
5 remediation, selectively enforcing rules, obstructing records access, excluding Plaintiff from
6 governance processes, and engaging in targeted surveillance and intimidation. These allegations
7 do not create a new dispute; they describe continuation and escalation of the same retaliation and
8 discriminatory enforcement pleaded from the outset.

9 Defendants' assertion that the amendment introduces "*new claims*" ignores this legal and
10 factual continuity. Allegations concerning improper fines, lien threats, selective enforcement,
11 surveillance, and due-process violations are not detached theories; they are mechanisms through
12 which Defendants carried out the same discriminatory and retaliatory conduct already at issue.
13 Many were raised in prior motions and declarations and are already part of the record.

14 Defendants' reliance on the appellate decision to bar amendment is therefore misplaced.
15 A dismissal without prejudice is not an adjudication on the merits and does not preclude
16 repleading when properly alleged. *Ostrovsky v. Golder*, 176 Ariz. (App. 1993); *Union*
17 *Interchange, Inc. v. Van Aalsburg*, 102 Ariz. (1967). The Court of Appeals imposed no factual
18 cutoff, no temporal bar, and no restriction on Rule 15 supplementation. To the contrary, remand
19 for further proceedings necessarily contemplates amendment to conform pleadings to the
20 appellate ruling and to address continuing conduct. See *Jordan v. Jordan*, 132 Ariz. (1982)
21 (mandate rule limits re-litigation of decided issues but does not bar proceedings consistent with
22 remand).

23 Defendants attempt to portray the procedural posture as "*undue delay*," "*repeated failed*
24 *amendments*," and "*substantial prejudice*," but that narrative is unsupported by the record and
25 inconsistent with Arizona law. Plaintiff did not engage in serial or defective amendments. Rather,
26 the Court requested a redlined amended complaint, which Plaintiff diligently prepared while
27 compiling hundreds of exhibits and organizing nearly two years of related events. Plaintiff
28 advised the Court that additional time was necessary to comply with that directive, apologized
for any confusion, and ultimately filed the redlined amendment in accordance with the Court's
order.

1 Amendment following reversal and remand is neither delay nor bad faith; it is the ordinary
2 and expected procedural course. *Foman v. Davis*, 371 U.S. 178, 182 (1962); *Owen v. Superior*
3 *Court*, 133 Ariz. 75, 79 (1982). Defendants were on notice—well before the filing—that an
4 amended complaint would be submitted, and Arizona law recognizes that amended pleadings are
5 routine where claims arise from the same conduct and give fair notice of the underlying dispute.
6 *Marshall v. Superior Court*, 131 Ariz. 379, 383 (1982). Because the proposed amendment arises
7 from the same factual nucleus, relation-back principles further defeat any claim of prejudice. See
8 *Tyman v. Hintz Concrete, Inc.*, 214 Ariz. 73, 76–77 (2006).

9 Defendants' opposition reflects not prejudice, but an effort to prevent Plaintiff from
10 pleading claims after Defendants and their counsel became implicated in adverse post-filing
11 conduct. Arizona law does not permit amendment to be denied on that basis, particularly where
12 Defendants had ample notice, no trial date was disrupted, and no concrete prejudice is identified.

13 Nor have Defendants demonstrated legally cognizable prejudice. Under Arizona law,
14 prejudice requires concrete harm such as loss of witnesses, destruction or unavailability of
15 evidence, expired limitations periods, or imminent trial disruption—not inconvenience, additional
16 expense, or the need to defend against properly pleaded claims. *Spitz v. Bache & Co.*, 122 Ariz.
17 530, 531 (1979); *Owen*, 133 Ariz. at 79. Defendants identify none. As a matter of law, additional
18 litigation effort or the need to adjust litigation strategy does not constitute prejudice.

19 Defendants further err by importing Rule 12(b)(6) and summary-judgment standards into
20 a Rule 15 analysis. At the amendment stage, the Court does not weigh evidence, resolve factual
21 disputes, or demand proof. Arizona remains a notice-pleading jurisdiction. *Cullen v. Auto-Owners*
22 *Ins. Co.*, 218 Ariz. 417, 419 (2008). Disagreement with allegations does not establish futility.
23 Defendants' reliance on *Toliver v. U.S. Bank Nat'l Ass'n* is misplaced; unlike *Toliver*, Plaintiff
24 pleads defendant-specific conduct, identifies legal duties, and ties facts to recognized causes of
25 action.

26 Defendants' arguments also implicate constitutional concerns. Courts must ensure
27 meaningful access to justice for indigent and self-represented litigants and may not impose
28 heightened procedural burdens absent actual prejudice. *Haines v. Kerner*, 404 U.S. 519 (1972);
Erickson v. Pardus, 551 U.S. 89 (2007); *Kelly v. NationsBanc Mortg. Corp.*, 199 Ariz. 284, 287

1 (App. 2000). Conditioning amendment on financial resources or professional representation
2 violates the Fourteenth Amendment's guarantees of due process and equal protection, as well as
3 Article 2, Sections 4 and 13 of the Arizona Constitution. *Boddie v. Connecticut*, 401 U.S. (1971).

4 In short, the proposed amendment does not expand this case—it completes the factual
5 record in a manner consistent with the appellate mandate, Rule 15, and Arizona's liberal
6 amendment policy. Defendants have shown no undue delay, no cognizable prejudice, and no
7 futility—only continued resistance to adjudication on the merits. Leave to amend should therefore
8 be granted.

9
10
11 **IV. DEFENDANTS' ESCALATION DURING LITIGATION SUPPORTS**
12 **AMENDMENT UNDER RULE 15(D)**

13 It is Defendants—not Plaintiff—who expanded the controversy after the original
14 complaint. Their counsel, Mr. Shaw, issued cease-and-desist letters, misrepresented the status of
15 repairs, and interfered with Plaintiff's ability to enforce her rights. These actions were undertaken
16 outside the litigation process and are directly related to the issues in the initial complaint. Arizona
17 courts have repeatedly made clear that Rule 15(d) allows for supplementation based on such post-
18 filing misconduct. Indeed, *Keith v. Volpe* supports exactly this type of amendment. Defendants'
19 own escalation justifies supplementation.

20
21 **V. LITIGATION PRIVILEGE DOES NOT APPLY TO COUNSEL'S**
22 **EXTRAJUDICIAL MISCONDUCT**

23 Defendants contend, expressly or by implication, that all conduct by their counsel,
24 Augustus H. Shaw IV, is protected by the litigation privilege. That contention misstates Arizona
25 law. Litigation privilege is narrow and applies only to statements made in connection with judicial
26 proceedings, or communications preliminary to litigation, when undertaken in furtherance of
27 legitimate advocacy. It does not shield extrajudicial conduct, factual misrepresentations, or an
28 attorney's personal participation in retaliatory or obstructive acts outside the courtroom. Arizona
courts have repeatedly held that attorneys are not immune from civil liability for independent

1 tortious conduct merely because they act on behalf of a client. *Chalpin v. Snyder*, 220 Ariz. (App.
2 2008); *Linder v. Brown & Herrick*, 189 Ariz. (App. 1997).

3 Plaintiff's amended complaint does not challenge Mr. Shaw's litigation filings or in-court
4 advocacy. Instead, it pleads specific *extrajudicial actions* undertaken outside any judicial
5 proceeding that escalated Defendants' retaliation after Plaintiff exercised protected statutory
6 rights. These include:

- 7 1) sending an email to HOA representative Ms. Sortor threatening litigation
8 immediately after Plaintiff requested financial records and election materials
9 pursuant to A.R.S. § 33-1805;
- 10 2) issuing cease-and-desist demands falsely asserting that sanitation and pet-waste
11 hazards had been "*resolved*," despite the continued existence of dangerous
12 conditions;
- 13 3) coordinating obstruction of Plaintiff's access to HOA records, communications,
14 and election processes; and
- 15 4) escalating intimidation through legal threats, monitoring, and targeted
16 enforcement rather than remediation of known hazards.

17 The amended complaint further alleges that Defendants, through counsel, obstructed
18 Plaintiff's access to required architectural and modification approval forms while she was actively
19 reporting a black mold health and safety condition affecting her home and children. This
20 obstruction prevented Plaintiff from timely completing remediation work and directly resulted in
21 the loss of an available remediation grant, prolonging exposure to hazardous mold conditions and
22 placing Plaintiff at risk of foreclosure. These acts were not advocacy; they were affirmative
23 interference with Plaintiff's ability to protect her property, health, and statutory rights. Such
24 conduct supports claims for negligence, intentional torts, retaliation, civil conspiracy, and
25 personal liability arising from participation in wrongful acts.

26 None of this conduct occurred in pleadings, motions, hearings, or other judicial
27 communications, nor was it necessary to advocate a legal position before the Court. As *Chalpin*
28 makes clear, litigation privilege "*does not bar claims based on an attorney's independent tortious*
conduct," and an attorney has "*no special privilege against civil liability*" when personally

1 participating in wrongful acts. 220 Ariz. at 421–22. *Linder* likewise confirms that when counsel
2 steps outside the role of advocate and becomes an actor in the underlying events, the privilege
3 does not apply. 189 Ariz. at 403. These cases are controlling and sufficient to defeat Defendants’
4 privilege argument at the pleading stage.

5 Defendants’ reliance on cases recognizing privilege for certain pre-litigation
6 communications—such as *Goldman v. Sahl*, 1 CA-CV 18-0687 (Ariz. App. Mar. 5, 2020)—is
7 misplaced. *Goldman* addressed the scope of defamation privilege for communications connected
8 to contemplated litigation; it did not immunize attorneys from liability for retaliation, obstruction,
9 abuse of process, or coordinated intimidation undertaken outside judicial proceedings. To the
10 contrary, *Goldman* recognized that litigation privilege has limits and does not foreclose claims
11 based on misuse of legal process or independent wrongful conduct.

12 Plaintiff does not challenge protected petitioning or litigation advocacy, but rather
13 extrajudicial retaliation, obstruction, and intimidation, which fall outside any anti-SLAPP or
14 Noerr-Pennington protection. The challenged acts target conduct, not speech, and were
15 undertaken to suppress statutory rights and reporting activity—not to petition a court or advance
16 a legal claim.

17 The additional authorities cited by Plaintiff are not offered as independent bases for civil
18 liability, but solely to reinforce settled principles already recognized in Arizona law: attorneys
19 are not categorically immune when they personally participate in misconduct; legally cognizable
20 conflicts arise when counsel becomes a factual actor; and courts sharply distinguish protected
21 advocacy from misuse of legal threats or intimidation. Plaintiff does not seek discipline or
22 disqualification here—only the ability to plead and prove facts showing retaliation, obstruction,
23 abuse of process, negligence, and civil conspiracy.

24 Accordingly, Defendants cannot invoke litigation privilege to shield counsel’s
25 extrajudicial threats, misrepresentations, or coordinated obstruction. The amended complaint
26 permissibly pleads these facts so the Court may evaluate the full course of retaliatory conduct—
27 and resulting harm—underlying Plaintiff’s preserved claims.
28

1 **VI. COUNSEL’S CONFLICT OF INTEREST IS PLEADABLE AND RELEVANT**

2 Mr. Shaw is both an advocate and a fact witness. This creates a conflict of interest that
3 Arizona law recognizes as relevant to case development. In *Security Gen. Life Ins. Co. v. Superior*
4 *Court*, 149 Ariz. 332 (1986), the Arizona Supreme Court explained that when an attorney
5 becomes a material witness, it can affect representation and case management. Plaintiff is not
6 moving to disqualify counsel at this time, but it is proper to plead the conflict as part of the
7 Amended Complaint. Omitting it would distort the factual record and impair discovery.

8
9
10 **VII. DEFENDANTS CANNOT SHIELD COUNSEL’S MISCONDUCT**

11 Defendants rely on communications from their counsel, Augustus H. Shaw IV, to argue
12 that Plaintiff was allegedly “*notified*” that conditions were resolved and that her continued
13 reporting, records requests, and participation in governance were improper. At the same time,
14 Defendants contend that those same communications are privileged and therefore insulated from
15 pleading or factual examination. Arizona law does not permit such selective use of counsel’s
16 conduct.

17 As specifically pleaded in the proposed amended complaint and documented in Plaintiff’s
18 Master Exhibit Index, Defendants repeatedly ignored Plaintiff’s written reports of ongoing
19 sanitation and health hazards, failed to provide agendas and statutory records, restricted Plaintiff’s
20 access to HOA communication portals, and excluded her from meetings and election-related
21 processes. (See, e.g., *Exhibit Master List. Demonstrating resident complaints, unanswered*
22 *communications, records requests, and governance exclusion*). Rather than remedy these
23 conditions, Defendants escalated through counsel by issuing cease-and-desist correspondence and
24 litigation threats asserting that conditions were “*resolved,*” while contemporaneous photographs,
25 videos, municipal communications, and follow-up reports show that the hazards persisted and
26 enforcement did not occur. (See *Exhibit Master List. condition evidence, municipal responses,*
27 *and post-letter conditions*).

28 The exhibits further reflect that Defendants invoked litigation posture and court orders to
justify withholding records, limiting communications, and omitting Plaintiff from governance

1 processes—despite the absence of any court order authorizing such conduct and notwithstanding
2 Defendants’ continuing statutory duties under A.R.S. §§ 33-1804 and 33-1805. *See Master*
3 *Exhibit List filed with Motion to Amend Civil Complaint (records obstruction, election materials,*
4 *and counsel correspondence).*

5 Defendants cannot affirmatively rely on counsel’s communications to establish notice,
6 justification, or alleged resolution, while simultaneously asserting that those same
7 communications are beyond scrutiny. Arizona courts favor resolution on the merits and reject
8 procedural maneuvering that distorts the factual record. *Foman v. Davis*, 371 U.S. 178, 182
9 (1962). Allowing amendment ensures the Court may evaluate the complete course of conduct—
10 including Defendants’ reliance on counsel’s communications, their selective enforcement, and
11 their obstruction of Plaintiff’s statutory rights—based on a full and accurate evidentiary record.

12 The amended complaint does not speculate or exaggerate. It pleads specific facts
13 supported by documentary evidence already identified in the Master Exhibit Index, demonstrating
14 that Defendants ignored Plaintiff, misrepresented remediation, and used litigation posture as a
15 mechanism to omit, conceal, and obstruct rather than comply with their statutory and fiduciary
16 obligations. Defendants’ attempt to exclude those same facts while relying on them for defensive
17 purposes is precisely the type of impermissible “*sword and shield*” use of counsel conduct that
18 Arizona law does not allow.

19
20 **VIII. DEFENDANTS NO PREJUDICE AND WAIVED ARGUMENTS**

21 Defendants identify no cognizable prejudice from Plaintiff’s proposed amendment. They
22 do not allege lost witnesses, unavailable evidence, expired limitations periods, or trial disruption.
23 Instead, Defendants assert that amendment would be “*sprawling*,” inefficient, and futile, and
24 contend that Plaintiff has “*no evidence*” because exhibits were not produced. These assertions
25 misstate both the governing legal standard and the procedural posture of this case. Under Rule
26 15(a)(2), “[*t*]he court should freely give leave [*to amend*] when justice so requires,” and
27 generalized claims of litigation burden, inefficiency, or evidentiary sufficiency do not constitute
28 prejudice. Nor may Defendants defeat amendment by importing Rule 12(b)(6) or summary-

1 judgment standards into a Rule 15 analysis, under which the Court does not weigh evidence or
2 resolve factual disputes.

3 Defendants' opposition further relies on a distorted account of the appellate mandate and
4 impermissibly resurrects procedural history that was reversed, vacated, or remanded in Plaintiff's
5 favor. Defendants repeatedly assert that the proposed Amended Complaint is "*untethered to the*
6 *operative claims defined by the Court of Appeals,*" implying that the appellate court fixed a rigid
7 and immutable scope for this case. That framing is legally incorrect. The Court of Appeals
8 affirmed in part, reversed in part, vacated in part, and remanded for further proceedings, expressly
9 reinstating Plaintiff's negligence, gross negligence, and intentional tort claims and clarifying that
10 several other dismissals—including discrimination/retaliation and records-access claims—were
11 without prejudice, thereby preserving Plaintiff's ability to replead those claims if properly
12 supported. Nothing in the appellate decision prohibits amendment to conform the pleadings to the
13 remand, supplementation based on post-filing conduct, or repleading of claims dismissed without
14 prejudice. To the contrary, the decision reaffirmed Arizona's notice-pleading standard and the
15 sufficiency of factual allegations at the pleading stage.

16 Defendants improperly convert dismissals without prejudice into a purported permanent
17 narrowing of the case and treat the appellate ruling as a bar to amendment or supplementation,
18 which it is not. The Court of Appeals expressly corrected the improper conversion of "*without*
19 *prejudice*" dismissals into "*with prejudice*" judgments and vacated fee awards premised on those
20 errors. A dismissal without prejudice does not define or freeze the ultimate scope of permissible
21 amendment, and Defendants' attempt to use reversed rulings and vacated judgments to restrict
22 Plaintiff's pleadings misstates both black-letter Arizona law and the appellate mandate.

23 Defendants' claim that the proposed Amended Complaint is "*materially different*" or
24 constitutes a litigation "*reset*" is likewise contradicted by the record. The amendment conforms
25 the pleadings to the claims expressly reinstated on appeal and incorporates post-filing conduct
26 that escalated the same dispute, including continued retaliation, obstruction of records access, and
27 enforcement misconduct. Such allegations do not restart the case; they supplement it, as expressly
28 authorized by Rule 15(d). The Court of Appeals addressed only the pleadings as they existed at
the time of dismissal and did not—and could not—adjudicate later-occurring conduct.

1 Defendants' disagreement with the merits of those allegations does not establish futility at the
2 amendment stage.

3 Defendants' assertion that Plaintiff has pursued "*multiple failed amendments*" is
4 inaccurate and misleading. Plaintiff's prior amended complaints were not rejected for substantive
5 deficiency; they were necessitated by continuing and escalating events occurring during the
6 pendency of this litigation, including new retaliatory acts, obstruction, and enforcement actions
7 that post-dated earlier pleadings. Arizona procedure expressly permits amendment and
8 supplementation to account for such developments, and updating pleadings in response to
9 ongoing misconduct reflects compliance with the Rules and promotes judicial efficiency by
10 resolving related claims in a single action rather than through piecemeal litigation.

11 Defendants' prejudice argument further misrepresents the procedural posture of this case.
12 By court order entered following the January 5, 2026 status hearing, discovery and disclosure
13 obligations were stayed, and the Court expressly directed that a new discovery timeline would be
14 set after resolution of the injunction-against-harassment proceedings and briefing on the amended
15 complaint (January 5, 2026 Minute Entry and Order). Under Rule 26.1(a), disclosures are required
16 only "*at the times set by the court.*" Because deadlines were stayed, Plaintiff was not required to
17 produce discovery or evidentiary exhibits, and Defendants' demand for exhibits at the amendment
18 stage has no basis in the Rules.

19 Even so, Plaintiff submitted a highly detailed proposed Amended Complaint and an
20 extensive exhibit list, identifying the categories and nature of documentary, testimonial, and
21 electronic evidence supporting each claim. Arizona is a notice-pleading jurisdiction, requiring
22 only "*a short and plain statement of the claim showing that the pleader is entitled to relief.*" Ariz.
23 R. Civ. P. 8(a)(2). The Rules do not require a plaintiff to attach or produce evidence at the pleading
24 or amendment stage. Plaintiff's voluntary identification of extensive evidentiary material in
25 Master Exhibit Lis; therefore, exceeds Rule 8 requirements, and Defendants' assertion that "*no
evidence exists*" is directly contradicted by the record.

26 Moreover, Defendants—who exclusively control the HOA's books, records, enforcement
27 files, and communications—have refused to provide the very materials they now claim are
28 necessary to evaluate Plaintiff's allegations. As addressed at the January 5, 2026 hearing,

1 Defendants claimed confusion regarding Plaintiff's requests and disputed tier designation, yet
2 produced virtually nothing. To date, the only material Defendants have produced is the GGCA
3 HOA insurance policy, further undermining any claim of prejudice.

4 Defendants also fail to address several independent legal bases supporting amendment,
5 including Rule 15(d) supplementation, the binding appellate mandate, and Defendants' post-filing
6 escalation of misconduct. Arizona courts treat failure to respond to such arguments as waiver. See
7 *Shea v. Maricopa County*, CV-22-0187-PR (Ariz. 2023).

8 The record thus reflects the opposite of prejudice. Plaintiff has articulated detailed factual
9 allegations and identified supporting evidence despite no obligation to do so, while Defendants
10 rely on reversed rulings and vacated procedural history to confuse the record and restrict
11 amendment. Denying leave to amend under these circumstances would elevate form over
12 substance and contravene Rule 15's directive that claims be resolved on their merits.

13 **IX. PLAINTIFF'S COUNTS ARE PROPERLY PLAD, PRESERVED, AND**
14 **WITHIN SCOPE OF DEMAND**

15 Plaintiff's proposed amended complaint properly pleads and preserves the following
16 counts, all of which arise from the same nucleus of operative facts and are procedurally proper
17 under Arizona law:

- 18 • **Breach of Contract and Breach of Duty**
- 19 • **Negligence**
- 20 • **Gross Negligence**
- 21 • **Intentional Torts**
- 22 • **Discrimination**
- 23 • **Retaliation**
- 24 • **First Amendment Violations**
- 25 • **Fourteenth Amendment Violations**
- 26
- 27
- 28

- 1 • **Abuse of Process**
- 2
- 3 • **Civil Conspiracy**

4 These claims fall into three permissible categories recognized by the Arizona Court of
5 Appeals and Arizona Rules of Civil Procedure:

- 6 (1) claims **expressly reinstated** on appeal (negligence, gross negligence, and intentional torts);
- 7 (2) claims **dismissed without prejudice**, which remain eligible for repleading if properly
8 alleged; and
- 9 (3) **supplemental or derivative claims** based on post-filing escalation and newly developed
10 facts, which Rule 15(d), Ariz. R. Civ. P., expressly authorizes.

11 The Court of Appeals held that Plaintiff sufficiently pleaded negligence, gross
12 negligence, and intentional torts against the individual defendants and reversed their dismissal,
13 expressly permitting those claims to proceed.

14 Appeals Court (Division One)_De...

15 . The Court further clarified—repeatedly and unequivocally—that the remaining claims
16 were dismissed **without prejudice**, not on the merits.

17 Appeals Court (Division One)_De...

18 . Under settled Arizona law, a dismissal without prejudice “is not an adjudication on the
19 merits and does not bar repleading.” *Ostrovsky v. Golder*, 176 Ariz. 599, 602 (App. 1993);
20 *Union Interchange, Inc. v. Van Aalsburg*, 102 Ariz. 461, 464 (1967).
21

22 Importantly, several of the challenged counts—including discrimination, retaliation,
23 abuse of process, civil conspiracy, and constitutional claims—are now supported by **new**
24 **factual developments and documentary evidence** that did not exist, and could not have been
25 considered, at the time of the appeal. The proposed amendment details post-filing conduct by
26 Defendants and their counsel, including retaliatory enforcement actions, obstruction of statutory
27 rights, litigation-era intimidation, and coordinated misuse of governance and legal processes.
28 Rule 15(d) exists precisely to allow courts to consider such post-pleading developments arising

1 from the same controversy, so that claims may be adjudicated on a complete and accurate
2 record.

3 Defendants' response does not demonstrate that any of Plaintiff's counts are legally
4 barred. Instead, Defendants attempt to:

- 5 a) convert dismissals "*without prejudice*" into substantive adjudications;
- 6 b) impose scope limitations not ordered by the Court of Appeals; and
- 7 c) recharacterize factual allegations and derivative causes of action as
8 impermissible "*new claims.*"

9
10 Arizona law does not support any of those positions.

11 Because Plaintiff's amended claims are either reinstated, expressly preserved, or
12 properly supplemented with new facts arising from the same dispute, they should remain as
13 pled. The proposed amendment does not expand the case beyond the remand—it conforms the
14 pleadings to the appellate mandate and Rule 15, and it allows the Court to evaluate the full
15 course of Defendants' conduct on the merits, consistent with Arizona's strong policy favoring
16 resolution over procedural exclusion.

17 **X. CONCLUSION AND REQUESTED RELIEF**

18 For all of these reasons, Plaintiff has satisfied Ariz. R. Civ. P. 15(a)(2) and 15(d). The
19 proposed Amended Complaint does not initiate a new action, restart proceedings, or prejudice
20 Defendants; it clarifies and completes the pleadings so the case may proceed as intended—
21 *through discovery and adjudication on the merits. Defendants' opposition rests almost entirely on*
22 *technical objections to pleading form and scope, rather than any substantive showing that*
23 *Plaintiff's claims are legally barred. Arizona procedure does not permit amendment to be denied*
24 *based on disagreement with the merits, alleged inconvenience, or speculative litigation burden.*
25 *To the contrary, once amendment is allowed, the Rules require the parties to test their respective*
26 *positions through disclosure, discovery, and proof—not motion practice designed to foreclose*
27 *review.*

28 Defendants also fail to demonstrate how Plaintiff's allegations implicating their counsel are
improper or irrelevant, instead seeking to block amendment altogether while declining to address

1 the conflicts and personal-liability issues those allegations raise. Denial of amendment under
2 these circumstances would improperly shield conduct from scrutiny, restrict claims expressly
3 preserved on remand, and prevent full adjudication of the issues as required by Ariz. R. Civ. P. 1,
4 15, and 26. The proposed amendment advances clarity, fairness, and judicial efficiency by
5 allowing the Court to resolve all related claims in a single proceeding. Justice therefore requires
6 that leave to amend be granted so the parties may proceed in accordance with Arizona law and
7 the appellate mandate.

8 **WHEREFORE**, Plaintiff respectfully requests that the Court:

- 9 1. **Grant Plaintiff leave to file her Amended Civil Complaint** pursuant to Ariz. R.
10 Civ. P. 15(a)(2) and 15(d);
- 11 2. **Deem the proposed Amended Complaint filed** upon entry of the Court's order;
- 12 3. **Maintain the existing stay of discovery and disclosure** until the amended
13 pleadings are operative and a revised scheduling order is entered; and
- 14 4. **Grant such other and further relief as the Court deems just and proper** to
15 ensure resolution of this matter on the merits.
16

17
18
19 Respectfully submitted this 20th day of January 2026.

20 

21
22 Sandra Rodriguez
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1 **X. CERTIFICATE OF SERVICE**

2
3 I served copies of this ***PLAINTIFF'S REPLY IN SUPPORT OF MOTION TO***
4 ***AMEND CIVIL COMPLAINT*** for on all parties of record via U.S. Mail.

5 **OPPOSING PARTY INFORMATION**

6 **DEFENDANTS:**

- 7 o Gardens Gilbert Community Association
8 o Focus HOA Management, LLC
9 o Harmin Cadis
10 o Brooke Sortor
11 o Anna Schultz
12 • **Address:** 4135 E. Power Road, Suite 133, Mesa, Arizona 85212

13 **DEFENDANT'S LEGAL COUNSEL:**

- 14 • **Name:** Augustus H. Shaw IV
15 • **Firm:** Shaw & Lines, LLC
16 • **Address:** 1490 S. Price Road, Suite 318 Chandler, Arizona 85286

17
18 Respectfully submitted this 20th day of January 2026.

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20 Sandra Rodriguez
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