



1 by the Court of Appeals and this Court. Granting leave would substantially prejudice  
2 Defendants, undermine efficiency, and be futile under Ariz. R. Civ P. Rule 12(b)(6).

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4 Defendants note at the outset that Plaintiff's Motion references extensive exhibits  
5 (identified as Exhibits 1-739), but Plaintiff did not provide those exhibits and refused to  
6 despite Defendants' request.<sup>1</sup> Defendants' ability to evaluate and respond to Plaintiff's  
7 new factual allegations and exhibit-based assertions is materially impaired by Plaintiff's  
8 failure to provide the evidentiary materials she affirmatively relies upon in seeking  
9 amendment. This failure is an additional basis to deny the Motion.<sup>2</sup>

11 **MEMORANDUM OF POINTS AND AUTHORITIES**

12 **I. OVERVIEW OF PLAINTIFF'S REPEATED PRIOR ATTEMPTS TO**  
13 **AMEND AND UNDUE DELAY**

14 Plaintiff's Motion is not a first attempt to amend; it is part of a pattern of repeated  
15 amendment efforts that have already been presented to and rejected by the Court. Plaintiff  
16 previously filed motions to amend on August 26, 2025; September 5, 2025; and November  
17 24, 2025, each of which the Court denied by orders entered September 2, 2025; November  
18 10, 2025; and December 19, 2025, respectively, and now again seeks leave to amend a  
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21 fourth time through the present Motion filed on January 6, 2026.

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24 <sup>1</sup> See Exhibit "A", Plaintiff's January 8, 2026 correspondence refusing to provide Exhibits 1-739.

25 <sup>2</sup> This failure violates Ariz. R. Civ. P. 15(a)(4), which requires that a party moving for leave to amend  
26 attach the proposed amended pleading as an exhibit and clearly "show the respects in which the  
27 proposed pleading differs." Where, as here, the proposed amendment expressly incorporates nearly a  
28 thousand exhibits and factual assertions that differ from the original pleading derived from those  
exhibits, compliance with Ariz. R. Civ. P. Rule 15 necessarily requires production of the referenced  
materials so the opposing party and the Court can assess the substance, scope, and effect of the proposed  
changes. Plaintiff cannot satisfy Ariz. R. Civ. P. Rule 15 by referencing voluminous exhibits while  
withholding them.

1 Plaintiff's current Motion is therefore a renewed effort to relaunch the case through  
2 a substantially revised pleading after the matter has already been shaped by dispositive  
3 rulings, appellate guidance, consolidation, and reassignment.  
4

5 Even under Arizona's liberal amendment standards, leave to amend is not  
6 automatic and may be denied where there is undue delay, repeated failed amendment  
7 attempts, futility, or resulting prejudice.<sup>3</sup> Here, each of those factors are individually  
8 present. Plaintiff had ample opportunity to perfect her pleadings and instead seeks to  
9 restart the litigation after substantial judicial and party resources have been expended.  
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11 Plaintiff's assertion that "[d]iscovery has only recently commenced"<sup>4</sup> does not cure  
12 the prejudice. Analogous to *Bishop*, this consolidated matter has been litigated for nearly  
13 two years, including a partial dismissal, a final judgment, an appeal, remand,  
14 consolidation, and judicial reassignment. Allowing Plaintiff to file the proposed pleading  
15 now would not be a modest refinement; it would function as a reset of the litigation and  
16 impose inefficiency and significant additional expense on Defendants and the Court.  
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19 If the Court grants this amendment, the practical consequence is not simply a new  
20 complaint, but substantial undue prejudice. The case would require re-framing of the  
21 operative claims, renewed pleadings, additional scheduling and status proceedings, new  
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24 <sup>3</sup> See *Bishop v. State, Dep't of Corr.*, 172 Ariz. 472, 474-75, 837 P.2d 1207, 1209-10 (App. 1992) (trial  
25 court has discretion to deny leave to amend for undue delay, repeated failed amendment efforts, undue  
26 prejudice, or futility where Bishop sought to amend complaint more than two years after filing original);  
27 *Owen v. Superior Court*, 133 Ariz. 75, 79, 649 P.2d 278, 282 (1982) "[t]o justify denial of the motion,  
28 there must be 'undue' delay, bad faith, dilatory motive, repeated failure to cure deficiencies by previous  
amendments or undue prejudice to the opposing party" quoting *Spitz v. Bache & Co.*, 122 Ariz. 530, 531,  
596 P.2d 365, 366 (Ariz. 1979).

<sup>4</sup> Mot. to Am. Civil Compl. at p. 3 (Section II).

1 initial disclosure obligations, and renewed dispositive motion practice on issues that have  
2 already been narrowed by the Court of Appeals' decision and the consolidation order,  
3 including issues that are unrelated to the claims properly within the scope of the  
4 consolidated case. That is precisely the type of prejudice, futility, and inefficiency that  
5 warrants denial of leave where, as here, Plaintiff has already attempted amendment  
6 multiple times and still seeks to expand the case far beyond its operative scope.<sup>5</sup>  
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9 **II. PROCEDURAL HISTORY, CONSOLIDATION, AND THE**  
10 **OPERATIVE SCOPE OF THE CURRENT CONSOLIDATED CASE**

11 This is a consolidated matter. That threshold fact is central to the Court's analysis.  
12 Plaintiff filed two related lawsuits in Maricopa County Superior Court: CV2024-005940,  
13 filed March 21, 2024, against the Association, Focus, Harman Cadis, Brooke Sortor, and  
14 Anna Schultz; and CV2024-013806, filed June 3, 2024, against Focus, Harman Cadis, and  
15 Brooke Sortor. Both actions alleged overlapping facts, parties, and theories tied to  
16 Plaintiff's asserted grievances regarding common-area maintenance, records/financial  
17 transparency issues, as well as alleged retaliation arising from her requests for assistance  
18 in addressing community nuisance and cleanliness concerns.  
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21 On April 10, 2024, Defendants Focus, Harman Cadis, Brooke Sortor, and Anna  
22 Schultz filed a motion to dismiss in CV2024-005940. The Superior Court granted that  
23 motion on August 30, 2024, and entered final judgment under Ariz. R. Civ. P. Rule 54(b),  
24 dismissing claims with prejudice and awarding fees and costs. Plaintiff appealed. On  
25  
26  
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28 <sup>5</sup> See *Bishop*, 172 Ariz. at 474-75, 837 P.2d at 1209-10; *Owen*, 133 Ariz. at 79, 649 P.2d at 282.

1 August 12, 2025, the Arizona Court of Appeals issued a Memorandum Decision in  
2 Rodriguez v. Focus HOA Management, LLC, et al., Nos. 1 CA-CV 24-0790 and 1 CA-  
3 CV 25-0040, affirming in part, reversing in part, vacating in part, and remanding. The  
4 Court of Appeals affirmed dismissal of Plaintiff's breach of contract, breach of duty, First  
5 Amendment violations, failure to provide access to financial records, and  
6 discrimination/retaliation claims, clarifying that those dismissals were without prejudice,  
7 and reversed dismissal of Plaintiff's negligence, gross negligence, and intentional tort  
8 claims, vacating the fee award and remanding.  
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11 The Superior Court consolidated the two cases by order dated September 3, 2025,  
12 designating CV2024-005940 as the lead case for all further proceedings and transferring  
13 the consolidated matter to the Honorable David McDowell. The consolidated posture is  
14 essential to this analysis because the operative claims and parties were defined in light of  
15 the appellate ruling and consolidation order. Plaintiff's proposed amended complaint must  
16 be evaluated against the claims that remain in the consolidated case and against the Court  
17 of Appeals' articulation of what survived and what did not.  
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20 In its decision, the appellate court emphasized that the Association's obligations  
21 under A.R.S. § 33-1805 and the community's covenants, conditions, and restrictions  
22 (hereafter, "CC&Rs") include maintaining common areas. It further held that the CC&Rs'  
23 Waiver of Damages Clause does not bar claims for gross negligence or intentional  
24 misconduct, which must be allowed to proceed.  
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1 Consistent with the August 12, 2025 Court of Appeals' ruling, the current  
2 remaining counts are as follows:

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4 As to Defendants Focus, Harman Cadis, Anna Schultz, and Brooke Sortor,  
5 the remaining claims include negligence, gross negligence, and intentional torts,  
6 all arising *solely* from Plaintiff's allegation that the Association failed to address a  
7 community petition requesting cleanup and maintenance of the common area in  
8 accordance with the CC&Rs.

9  
10 As to Defendant Gardens Gilbert Community Association, the remaining  
11 claims include breach of contract, breach of the covenant of good faith and fair  
12 dealing, negligence, gross negligence, and intentional torts, arising from the same  
13 common area maintenance allegations, as well as claims that the Association failed  
14 to respond to member financial records requests pursuant to A.R.S. § 33-1805 and  
15 engaged in retaliatory conduct when Plaintiff sought assistance addressing  
16 common area nuisance and cleanliness issues.

17  
18 That scope is not optional. The consolidated case exists because two lawsuits  
19 arising from the same core nucleus were combined, and the operative claims were  
20 narrowed by appellate review. Plaintiff may not use a post-remand amendment motion to  
21 import a new, materially different case into the consolidated action that changes the nature,  
22 breadth, and legal foundation of the dispute well beyond the allegations that formed the  
23 basis for consolidation and remand.<sup>6</sup>

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25 **III. PLAINTIFF'S PROPOSED AMENDED COMPLAINT AND THE**  
26 **CLAIMS PLAINTIFF NOW PURPORTS TO ASSERT**

27  
28 Plaintiff's proposed amended complaint does not merely supplement the operative  
consolidated claims with additional factual detail. Instead, it attempts to fundamentally  
recast this litigation by asserting seventeen counts and advancing numerous overlapping,

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<sup>6</sup> See *Jordan v. Jordan*, 132 Ariz. 38, 40-41, 643 P.2d 1008, 1010-11 (1982) (holding that after remand, the trial court and parties are bound by the appellate mandate and that further proceedings are limited to the scope of that mandate absent an intervening change in controlling law).

1 expansive, and legally distinct theories that bear little resemblance to the narrow claims  
2 preserved by the Arizona Court of Appeals and incorporated into the consolidated action  
3 by this Court. A full breakdown of these counts are given below in Sections IV(B) and V.  
4

5         These claims are asserted wholesale against all defendants, without meaningful  
6 differentiation among the Association, the individual board member, Anna Schultz,  
7 (hereafter, the “Individual Board Member”), or management defendants, Focus, Harman  
8 Cadis, and Brooke Sortor, (hereafter, collectively the, “Management Defendants”),  
9 notwithstanding the August 12, 2025 Court of Appeals’ express delineation of which  
10 theories may proceed against which parties.  
11

12         Beyond merely multiplying counts, the proposed amended complaint introduces  
13 expansive new narrative frameworks that materially alter the nature of the case. Plaintiff  
14 invokes concepts such as improper lien enforcement, unlawful fines and penalties, due-  
15 process violations, anti-SLAPP and Noerr-Pennington doctrines, law-enforcement  
16 escalation, surveillance and monitoring, health and safety claims, architectural  
17 obstruction, and punitive damages exposure.  
18

19         Many are not causes of action at all. Anti-SLAPP and Noerr-Pennington are  
20 defensive doctrines and immunity frameworks, not affirmative claims. “Surveillance,”  
21 “monitoring,” and “law-enforcement escalation” are factual characterizations that do not  
22 constitute independent torts absent pleading a recognized legal duty and its breach.  
23 “Health and safety claims” and “architectural obstruction” describe alleged conditions,  
24 not standalone claims. And “punitive damages” is a remedy, not a cause of action.  
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1 By presenting these concepts as quasi-claims, Plaintiff transforms factual  
2 allegations, defenses, and remedies into a patchwork of implied legal theories that are  
3 unrelated to statutory elements or recognized tort standards. Whether any of these  
4 concepts can support relief depends entirely on whether they are properly anchored within  
5 a legally sufficient count.  
6

7 While an amended complaint may add factual detail consistent with surviving  
8 claims, it may not be used to introduce new disputes that do not flow from the original  
9 nucleus of operative facts, to revive or repackage claims already rejected, or to impose  
10 new statutory and constitutional regimes unrelated to the operative claims defined by the  
11 Court of Appeals and this Court.<sup>7</sup> Nor may it be used to transform a consolidated action,  
12 already narrowed by appellate review, into an entirely new lawsuit spanning years of  
13 alleged conduct, multiple unrelated legal theories, and expansive damages claims.<sup>8</sup>  
14  
15

16 The proposed amended complaint disregards the boundaries set by the Court of  
17 Appeals entirely. Instead, Plaintiff seeks to restart the litigation with a sweeping amended  
18 pleading that collapses distinct legal doctrines, asserts conclusory statutory violations  
19 without identifying enforceable provisions or elements, and attempts to transform routine  
20 association governance disputes into constitutional, civil-rights, and abuse-of-process  
21 claims unsupported by well-pleaded facts and already rejected by this court on numerous  
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26 <sup>7</sup> See Ariz. R. Civ. P. 15(c)(1) (relation back only when the amended claim “arose out of the conduct,  
27 transaction, or occurrence” set out in the original pleading); *Flynn v. Campbell*, 402 P.3d 434, 439-40 ¶¶  
11-12 (Ariz. 2017) (setting out Ariz. R. Civ. P. Rule 15(c)’s requirements, including same “conduct,  
28 transaction, or occurrence”).

<sup>8</sup> See *Jordan*, 132 Ariz. at 40-41, 643 P.2d at 1010-11.

1 previous attempts. This approach not only exceeds the permissible scope of amendment,  
2 but also highlights the futility of the proposed pleading under Ariz. R. Civ. P. Rule  
3 12(b)(6), as the vast majority of the asserted “claims” fail to state a cognizable cause of  
4 action upon which relief can be granted, as set forth below in Section IV(B).<sup>9</sup>

5  
6 In short, Plaintiff’s proposed amended complaint is not an amendment in any  
7 meaningful sense. It is an effort to relitigate, expand, and reframe a consolidated case that  
8 has already been narrowed by appellate decision and prior court orders. For these reasons,  
9 and as further addressed below, the Motion to Amend should be denied.

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11 **IV. LEGAL STANDARD AND GROUNDS FOR DENIAL OF LEAVE TO**  
12 **AMEND**

13 **A. LEAVE TO AMEND SHOULD BE DENIED DUE TO UNDUE**  
14 **DELAY, REPEATED FAILED AMENDMENT EFFORTS, AND**  
15 **SUBSTANTIAL PREJUDICE IN A CONSOLIDATED POST-**  
16 **APPEAL CASE**

17 Plaintiff’s Motion comes after extensive procedural history, including multiple  
18 amendment attempts that were denied, a fully litigated motion-to-dismiss posture,  
19 appellate review, remand, consolidation, and reassignment. Allowing Plaintiff to file a  
20 comprehensive new pleading now would restart the litigation and impose substantial  
21 prejudice. This is not a minor amendment; it is an attempted relaunch of a nearly two-  
22 year-old case.  
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26 <sup>9</sup> “Leave to amend a pleading is also appropriately denied ‘when the proffered amendment could not  
27 affect the outcome of the litigation, that is, when on its face it is legally insufficient.’” *In re Estate of*  
28 *Torstenson v. Valley Nat’l Bank*, 125 Ariz. 373, 377, 609 P.2d 1073, 1077 (App. 1980); quoting *Home*  
*Insurance Company v. Balfour-Guthrie Insurance Company*, 13 Ariz.App. 327, 328 476 P.2d 533, 534  
(1970).

1 Prejudice is not limited to trial proximity, but rather focuses on prejudice to the  
2 other party especially when new issues are raised.<sup>10</sup> Prejudice also includes the burden of  
3 requiring an opposing party to adjust its defense and litigation posture due to late  
4 amendments,<sup>11</sup> the inefficiency and expense of revisiting issues that could have been  
5 raised earlier and already narrowed by appellate action,<sup>12</sup> and the disruption caused by  
6 attempts to expand or reframe claims after the scope of the case has already been defined  
7 by prior rulings.<sup>13</sup> Plaintiff has been litigating since March 2024 and June 2024, has  
8 already been through dismissal and appeal, and has repeatedly attempted amendment. The  
9 case has been pending for nearly two years. Plaintiff cannot credibly claim surprise about  
10 the issues she wishes to plead; she has had ample time to develop and present those  
11 theories in a timely and orderly manner.

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15 In a consolidated matter, the Court also must consider the case-management effect  
16 of a wholesale rewrite. Consolidation occurred precisely because the actions shared the  
17 same core factual nucleus and overlapping theories. Plaintiff's proposed pleading would  
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21 <sup>10</sup> See *Owen*, 133 Ariz. at 79, 649 P.2d at 282 (recognizing that leave to amend is discretionary and may  
22 be denied where amendment would cause prejudice to the opposing party, and that “[p]rejudice is ‘the  
23 inconvenience and delay suffered when the amendment raises new issues’” quoting *Spitz*, 122 Ariz. at  
24 531, 596 P.2d at 366.).

25 <sup>11</sup> See *Foman v. Davis*, 371 U.S. 178, 182 (1962) (identifying “undue delay, bad faith or dilatory motive  
26 on the part of the movant, repeated failure to cure deficiencies by amendments previously allowed,  
27 undue prejudice to the opposing party by virtue of allowance of the amendment, futility of amendment”  
28 as proper grounds to deny leave to amend); and that “it is not an abuse of discretion to deny leave to  
amend when some or all of the circumstances above exist.” *In re Estate of Torstenson*, 125 Ariz. at 376-  
77, 609 P.2d at 1076-77; See also *Walls v. Ariz. Dep’t of Pub. Safety*, 170 Ariz. 591, 598, 826 P.2d 1217,  
1224 (App. 1991) (affirming denial of leave to amend where the proposed amendment was futile  
because the issue had already been resolved through summary judgment).

<sup>12</sup> *Id.*

<sup>13</sup> See *Jordan*, 132 Ariz. at 40-41, 643 P.2d at 1010-11.

1 effectively decouple the consolidated action from the remand-defined claims and convert  
2 it into a different lawsuit. That result would undermine the efficiency rationale for  
3 consolidation and burden the Court with a sprawling, exhibit-dependent pleading that was  
4 not the basis of the consolidated posture.  
5

6 For these reasons alone, leave to amend should be denied.  
7

8 **B. PLAINTIFF’S MOTION SHOULD BE DENIED BECAUSE IT IS**  
9 **FUTILE UNDER RULE ARIZ. R. CIV. P. 12(b)(6) AND FAILS TO**  
10 **PLEAD COGNIZABLE CLAIMS WITH LEGAL AND**  
11 **PROCEDURAL ACCURACY**

12 Even if the Court were inclined to permit amendment, leave should be denied  
13 where the proposed amendment is futile.<sup>14</sup> The Court need not allow a pleading that  
14 would be subject to dismissal under Ariz R. Civ. P. Rule 12(b)(6). Plaintiff lists  
15 numerous counts, many of which are not cognizable as pleaded, improperly assert  
16 remedies as standalone claims, duplicate other theories, fall outside the scope of remand,  
17 and are presented conclusory without facts supporting the required elements. As a result,  
18 substantial portions of the proposed amended complaint consist of narrative allegations  
19 and legal conclusions untethered to recognized causes of action or enforceable legal  
20 standards, rendering the pleading subject to dismissal for failure to state a claim.  
21

22 Plaintiff’s approach parallels the pleading defect addressed in the recently issued  
23 Arizona Court of Appeals decision in *Toliver v. U.S. Bank National Association*, No. 1  
24 CA-CV 25-0573 (filed Jan. 6, 2026). There, the Court affirmed dismissal where the pro  
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26  
27 <sup>14</sup> “Leave to amend a pleading is also appropriately denied ‘when the proffered amendment could not  
28 affect the outcome of the litigation, that is, when on its face it is legally insufficient.’” *In re Estate of*  
*Torstenson*, 125 Ariz. at 377, 609 P.2d at 1077.

1 se plaintiff cited scattered legal authorities and asserted conclusions without pleading  
2 facts showing entitlement to relief or explaining how cited authorities applied.<sup>15</sup>

3  
4 Plaintiff's proposed amended complaint suffers from the same defect: it recites statutes,  
5 doctrines, and broad allegations without pleading the elements necessary to state a claim  
6 and without tying the factual assertions to legally recognized causes of action.

7  
8 Accordingly, each proposed count must be assessed to determine whether it falls  
9 within the scope of the Court of Appeals' remand and whether it states a legally  
10 cognizable claim under Ariz. R. Civ. P. Rule 12(b)(6):

11  
12 Count I - Breach of Contract - Survives only as to the Association, and only to the  
13 extent Plaintiff alleges that the Association failed to comply with or retaliated against  
14 express duties in the CC&Rs concerning maintenance and sanitation of common areas  
15 and response to the community petition seeking cleanup. It does not survive insofar as it  
16 attempts to transform contractual obligations into claims about litigation conduct,  
17 surveillance, law-enforcement escalation, or generalized governance misconduct  
18 untethered to specific contractual provisions.

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21 Count II - Breach of the Implied Covenant of Good Faith and Fair Dealing -  
22 Survives only as derivative of Count I. It does not survive insofar as it is used to create  
23 new duties, constitutional claims, or tort liability unrelated to the CC&Rs.

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27 <sup>15</sup> See *Toliver*, No. 1 CA-CV 25-0573 at ¶¶ 15-16 (affirming dismissal where, even giving the pro se  
28 plaintiffs "the most charitable reading," the amended complaint "failed to state a claim," alleging  
"nothing about the parties' relationship," alleging no conduct "that would entitle [plaintiff] to any kind  
of relief," and failing "to explain the significance of the legal authorities cited therein").

1           Count III - Statutory Violations – Narrowly survives only as to specific, identified  
2 statutory duties creating enforceable rights, principally A.R.S. § 33-1805 on records  
3 access, and only against the Association. It does not survive as a generalized “violation  
4 of HB 2662” or broad Planned Communities Act theories without pleaded elements.  
5

6           Count IV - Negligence - Survives against all Defendants only to the extent  
7 Plaintiff alleges a duty of reasonable care relating to known health and safety risks in  
8 common-area sanitation and maintenance, breach of that duty, and resulting physical or  
9 property harm. It does not survive insofar as it is premised on litigation conduct,  
10 enforcement communications, or alleged constitutional injuries.  
11

12           Count V - Gross Negligence - Survives only if tied to the same narrow safety-  
13 based conduct as Count IV and only if Plaintiff pleads facts showing conscious disregard  
14 of a substantial risk of harm relating to sanitation or hazardous conditions. It does not  
15 survive where it is based on advocacy, enforcement posture, or governance disputes.  
16  
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18           Count VI - Personal Injury - Survives only as a damages theory flowing from  
19 Counts IV and V and only to the extent Plaintiff alleges physical injury caused by unsafe  
20 or unsanitary conditions attributable to Defendants’ failure to act.  
21

22           Count VII - Intentional and Negligent Infliction of Emotional Distress - Survives,  
23 if at all, only in a highly limited form where Plaintiff alleges extreme and outrageous  
24 conduct directly tied to deliberate obstruction of remediation of known health hazards,  
25 causing severe emotional distress. It does not survive insofar as it rests on enforcement  
26 disputes, litigation strategy, communications through counsel, or regulatory processes.  
27  
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1           Count VIII - Breach of Fiduciary Duty - Survives only against the Association  
2 and only insofar as it is predicated on alleged failures in common-area maintenance,  
3 statutory records access under A.R.S. § 33-1805, or retaliation arising from those  
4 matters. It does not survive as a vehicle for constitutional or litigation-based claims.  
5

6           Count IX & XVI - Abuse of Process - Does not survive. Plaintiff alleges use of  
7 legal and quasi-legal processes for an improper purpose, but the allegations rest  
8 primarily on advocacy, enforcement actions, and litigation positions that do not  
9 constitute misuse of process after issuance in the narrow sense required under Arizona  
10 law and unrelated to the Court of Appeals remand.  
11

12           Count X & "XIII" - Civil Conspiracy - Survive only derivatively and only to the  
13 extent Plaintiff plausibly alleges an agreement to commit the limited underlying torts  
14 preserved by the Court of Appeals, namely negligence, gross negligence, or narrowly  
15 defined intentional misconduct arising from Defendants' alleged failure to address  
16 common-area sanitation and maintenance conditions (and, as to the Association,  
17 statutory records access under A.R.S. § 33-1805 and retaliation related thereto). It does  
18 not survive to the extent they are premised on other statutory "violations," constitutional  
19 theories, litigation conduct, or matters outside the scope of the remanded claims.  
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23           Count XI - Punitive Damages - Does not survive as a standalone count. Punitive  
24 damages are a remedy, not a cause of action, and available only if Plaintiff establishes a  
25 viable underlying tort with the requisite mental state that allows for punitive damages.  
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1           Count XII - Discrimination - Does not survive. Plaintiff does not plead facts  
2 establishing sufficient protected-class status, discriminatory intent, or statutory elements  
3 under the Fair Housing Act or equal-protection frameworks. Plaintiff's allegations sound  
4 in selective enforcement and retaliation, not legally cognizable discrimination.  
5

6           Count XIII - Retaliation - Survives only in a narrow and limited form consistent  
7 with the Court of Appeals' remand. The claim may proceed solely against the  
8 Association to the extent Plaintiff alleges retaliatory conduct arising from her requests  
9 for statutory financial records under A.R.S. § 33-1805 and her efforts to obtain  
10 assistance with common-area sanitation and maintenance issues. It does not survive  
11 insofar as it is based on constitutional theories, discrimination frameworks, or  
12 generalized allegations of punishment for litigation activity, enforcement disputes, or  
13 advocacy conduct, all of which fall outside the remand-defined scope of the case.  
14  
15

16           Count "XV" - First Amendment Violations - Does not survive. Defendants are  
17 not alleged to be state actors, and Plaintiff does not plead facts establishing action under  
18 color of state law. The Association's enforcement and governance are not transformed  
19 into constitutional violations by referencing statutory regulation.  
20  
21

22           Count "VIII" - Judicial Estoppel / Fraud on the Court - Does not survive as an  
23 independent cause of action. Judicial estoppel is a doctrine, not a claim, and fraud on the  
24 court is an extraordinary remedy reserved for direct attacks on judgments, not a basis for  
25 civil liability within this action based on the Court of Appeals remand.  
26

27           ///  
28

1           **V. IF THE COURT IS INCLINED TO PERMIT ANY AMENDMENT,**  
2           **THE COURT SHOULD LIMIT AMENDMENT TO CLAIMS THAT**  
3           **PLAUSIBLY TIE TO THE OPERATIVE CONSOLIDATED**  
4           **NUCLEUS AND THE COURT OF APPEALS' DECISION**

5           Defendants maintain the Motion should be denied. However, if the Court permits  
6 any amendment, it should be narrowly limited to claims that plausibly and directly arise  
7 from the operative nucleus and remand-defined scope.

8           For the Individual Board Member and Management Defendants, any amended  
9 pleading must be limited to negligence, gross negligence, and intentional tort theories  
10 that flow from the alleged failure to maintain common areas and the role/control alleged  
11 as to those duties. The Court of Appeals did not broadly authorize a re-litigation of  
12 dismissed theories under new headings, nor did it authorize expansion into new statutory  
13 and constitutional regimes untethered to the original nucleus.

14           Thus, against the Individual Defendant and Management Defendants, Plaintiff  
15 may proceed on:  
16

- 17           -Count IV (Negligence), limited to alleged failures relating to sanitation
- 18           and common-area maintenance posing health and safety risks;
- 19           -Count V (Gross Negligence), limited to the same conduct;
- 20           -Count VII (IIED/NIED), if at all, only in the narrow circumstance of
- 21           extreme and outrageous conduct tied to deliberate obstruction of
- 22           remediation of known hazards; and
- 23           -Count VI (Personal Injury) solely as a damages theory flowing from
- 24           Counts IV and V.

25           For the Association, any amended pleading must similarly remain tethered to the  
26 remand-defined theories and must plead statutory duties and contract-based duties with  
27 specificity, identifying the statutes allegedly violated and facts satisfying the elements.

28           Thus, against the Association, Plaintiff may proceed on:

1 -Count I (Breach of Contract), limited to alleged failures to comply with  
2 CC&R obligations and retaliation concerning common-area maintenance;  
3 -Count II (Breach of the Implied Covenant of Good Faith and Fair  
4 Dealing), solely as derivative of Count I;  
5 -Count III (Statutory Violations), limited to A.R.S. § 33-1805;  
6 -Count IV (Negligence), limited to common-area health and safety  
7 conditions;  
8 -Count V (Gross Negligence), limited to the same safety-based conduct;  
9 -Count VII (IIED/NIED), only if narrowly tied to extreme conduct  
10 involving deliberate obstruction of remediation of known health hazards;  
11 -Count VIII (Breach of Fiduciary Duty), limited to misuse of association  
12 authority affecting sanitation, maintenance, or statutory records access;  
13 -Count XIII (Retaliation), limited to retaliation arising from statutory  
14 records requests and efforts to obtain remediation of sanitation and  
15 maintenance issues; and  
16 -Count VI (Personal Injury) solely as a damages theory flowing from  
17 Counts IV and V.

#### 18 **VI. CONCLUSION AND REQUEST FOR RELIEF**

19 Plaintiff's Motion should be denied because it is the latest in a series of  
20 amendment attempts and comes after undue delay, in a consolidated post-appeal case  
21 whose operative scope has already been defined. The proposed amended complaint  
22 would restart the entire litigation process, impose substantial prejudice, and is futile  
23 under Ariz. R. Civ. P. Rule 12(b)(6) because it fails to plead coherent, legally cognizable  
24 claims with legal and procedural accuracy. Plaintiff's failure to provide the extensive  
25 exhibits she relies upon further prevents fair evaluation and provides an additional basis  
26 to deny the Motion under Ariz. R. Civ. P. Rule 15(a)(4).

27 WHEREFORE, Defendants respectfully request that the Court deny Plaintiff's  
28 Motion for Leave to File Amended Complaint. In the alternative, Defendants request  
any leave, if granted, be strictly limited to claims that plausibly arise from the operative  
nucleus of the consolidated case and the Court of Appeals' remand-defined scope.

1 DATED this 15<sup>th</sup> day of January 2026.

2 SHAW & LINES, LLC

3 */s/ Dominick D. Detente*  
4 Augustus H. Shaw IV, Esq.  
5 Dominick D. Detente, Esq.  
6 1490 S. Price Rd., Suite 318  
7 Chandler, AZ 85286  
8 Attorneys for Defendant

9 ORIGINAL submitted for filing this  
10 15<sup>th</sup> day of January 2026 to:

11 Clerk of the Court  
12 Maricopa County Superior Court  
13 (Via E-Filing online – Turbo Court)

14 COPY of the foregoing e-mailed and mailed this  
15 15<sup>th</sup> day of January 2026 to:

16 Sandra Rodriguez  
17 4735 E. Besty Lane  
18 Gilbert, Arizona 85296  
19 [sandra.rodriguez0339@gmail.com](mailto:sandra.rodriguez0339@gmail.com)  
20 Plaintiff

21 By: /s/ Diane Fincher

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# Exhibit “A”

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**Re: Rodriguez v. Gardens Gilbert - CV 2024005940 - Motion to Amend Complaint – Missing Exhibits**

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**From** Sandra Rodriguez <sandra.rodriguez0339@gmail.com>

**Date** Thu 1/8/2026 4:32 PM

**To** Dominick Détente <Dominick@shawlines.com>

**Cc** Augustus Shaw <ashaw@shawlines.com>

Dear Mr. Détente,

The Motion to Amend did not include substantive exhibits. As reflected in the filing, the Motion included Exhibit 3 only, consisting of a Master Exhibit List, which was intentionally provided to identify the evidentiary materials supporting the proposed amended pleading.

The underlying exhibits themselves were not attached because discovery is presently stayed. Accordingly, production of exhibits will remain deferred until the Court provides clarification regarding Tier designation and issues clear direction concerning the scope and timing of discovery.

Once the Court resolves those procedural issues and authorizes discovery to proceed, the referenced exhibits will be produced in accordance with the applicable rules and any scheduling order entered by the Court.

Please feel free to be evaluated based on the pleading and the accompanying Master Exhibit List as filed.

Regards,

Sandra Rodriguez

On Wed, Jan 7, 2026 at 4:16 PM Dominick Détente <[Dominick@shawlines.com](mailto:Dominick@shawlines.com)> wrote:  
Good afternoon Ms. Rodriguez,

We are in receipt of your Motion to Amend the Complaint. However, we have not received Exhibits 1-739, which are referenced on pages 254-277 of your motion.

Please provide the referenced exhibits no later than Friday, January 9, as our response is currently due on January 16. Alternatively, if you are unable to provide the exhibits by that date, please confirm your agreement to an extension of time to respond until one week after the exhibits are produced so that we may evaluate the motion in its entirety.

For convenience, you may upload all exhibits using the following Dropbox link:  
[https://www.dropbox.com/scl/fo/uv0y5ryjwrqed4mzggfdx/AF8uY4po\\_P2qAVRrJiVYVjg?rlkey=qgzehfxlk87yzkoceqjf0tr7u&st=taehp4hk&dl=0](https://www.dropbox.com/scl/fo/uv0y5ryjwrqed4mzggfdx/AF8uY4po_P2qAVRrJiVYVjg?rlkey=qgzehfxlk87yzkoceqjf0tr7u&st=taehp4hk&dl=0)

Our paralegal, Diane Fincher will also be giving you a follow-up call regarding this matter now as well.

Thank you for your prompt attention and I hope you have a great afternoon,

Dominick Detente, Esq.

**SHAW & LINES, LLC**

*We've Moved!*

1490 S. Price Rd., Suite 318

Chandler, Arizona 85286

480.456.1500

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