

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2024-005940

02/02/2026

HONORABLE DAVID MCDOWELL

CLERK OF THE COURT
A. Navarro Albor
Deputy

SANDRA RODRIGUEZ

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4375 E BETSY LN
GILBERT AZ 85296

v.

GARDENS GILBERT COMMUNITY
ASSOCIATION, et al.

AUGUSTUS H SHAW IV

JUDGE MCDOWELL

RULING ON MOTION TO AMEND

Pending before the Court is Plaintiff's January 5, 2026 *Motion to Amend Civil Complaint*; Defendant's *Response to Motion to Amend Civil Complaint* filed January 15, 2026; and Plaintiff's *Reply in Support of Motion to Amend Civil Complaint* filed January 20, 2026.

Rule 8, Ariz.R.Civ.Proc. requires a party's pleadings be "simple, concise, and direct". Plaintiff's complaint is none of these. Nonetheless, there are sufficient factual allegations and some of the stated "Counts" are recognized legal theories, so the Court will not reject the Motion to Amend or the proposed amended complaint on those grounds.

The Court is troubled that Ms. Rodriguez did not attach a copy of her exhibits to the filing with the Court or the copy provided to defense counsel. The proposed amended complaint which is required to be attached to the motion to amend must reflect the entire proposed filing. However, even if the Court were to reject Ms. Rodriguez's filing because it was incomplete, she would have the opportunity to cure which would only prolong the matter because under the notice pleading standard she did state sufficient factual allegations and some recognized legal theories.

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

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02/02/2026

While this case has been pending for quite some time, discovery really has not begun in earnest, so the Court cannot find the parties are prejudiced by this amendment coming nearly two years after the case was filed.

Some of Defendants' arguments against the proposed amended complaint go to the weight of Plaintiff's arguments and whether she can recover under some of the theories advanced. Those are not proper arguments against a motion to amend because the Court is required to accept the well-pled facts as true when evaluating whether to permit amendment. Those challenges may be more appropriately brought in a motion for summary judgment when the time is right, but have no sway when the issue before the Court is a motion to amend.

IT IS ORDERED permitting Plaintiff to file an amended complaint with the following restrictions:

1. Only tort claims may be stated against the agents of the Association or the Management company. The Court of Appeals affirmed that contract-based and first amendment claims do not and cannot exist against agents of the Association or the Management Company. See paragraph 11 of the Court of Appeals decision.
2. Plaintiff must file a complete copy of her Amended Complaint within ten days of the date of this Ruling. A complete copy includes all exhibits. See Rule 15(a)(5).
3. Plaintiff must serve a complete copy of the Amended Complaint (including all exhibits) on all named Defendants within ten days of the date of this Ruling. See Rule 15(a)(5).
4. Plaintiff's Amended Complaint shall NOT include Augustus Shaw as a defendant and shall not state any claim against him. Even if the well pled facts stated in the proposed Amended Complaint are assumed to be true, Plaintiff has not demonstrated that Mr. Shaw engaged in any tortious behavior or that he owes any duty to Plaintiff. The Court finds Plaintiff has not stated any cognizable claims against Augustus Shaw.

Rule 7 states that a reply to a motion is limited to 11 pages. Plaintiff's Reply was 21 pages and leave of the Court was not granted to exceed that page limitation. In the future, if any over-length submissions are received, the Court will stop reading at the number of pages permitted by the rules and will disregard anything on subsequent pages.

Further the Reply requests relief that is not in the original motion. A reply is limited to addressing relief raised in the original motion and the response. New requests for relief raised for the first time in a reply will be disregarded.

Several of Plaintiff's stated causes of action are not actually causes of action and do not support claims for relief. For instance, Count VI labeled "Personal Injury" is not a cause of action, it is an item of damages which must be supported by a recognized basis for relief, but since Plaintiff has sought recovery under a theory of negligence, there is at least one grounds for relief, if proven. However, Plaintiff must recognize that several of the paragraphs she has designated as "Counts" are not independent grounds upon which relief can be granted.

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2024-005940

02/02/2026

IT IS ORDERED the stay on discovery/disclosure is **lifted**. This case has been pending for far too long and needs to be resolved expeditiously, the parties will adhere to the following scheduling order.

This case is now assigned to discovery **Tier 3** pursuant to Rule 26.2. While the original complaint stated this as a Tier 1 case, the allegations of the amended complaint and the amount of relief sought indicate this case should be subject to the discovery limits in Tier 3.

1. Initial Disclosure: The parties will exchange initial disclosure statements compliant with Rule 26.1 no later than **March 1, 2026**.
2. Expert witness disclosure: The parties will disclose areas of expert testimony no later than **March 18, 2026**. Plaintiff shall disclose the identity and the opinions of experts by **April 3, 2026**. Defendants shall disclose the identity and opinions of experts by **May 4, 2026**. The parties shall simultaneously disclose their rebuttal expert opinions by **May 27, 2026**.
3. Lay (non-expert) witness disclosure: The parties will disclose all lay witnesses by **March 20, 2026**.
4. Final supplemental disclosure: Each party shall provide final supplemental disclosure by **July 3, 2026**. **This order does not replace the parties' obligation to timely and regularly disclose Rule 26.1 information on an on-going basis and as it becomes available.**

No party shall use any lay witness, expert witness, expert opinion, or exhibit at trial not disclosed in a timely manner, except upon order of the court for good cause shown or upon a written or an on-the-record agreement of the parties.

5. Discovery deadlines: Tier 3 cases are permitted 240 days in which to complete fact discovery – this case has already been pending for nearly two years and the parties were required to conduct their early meeting in 2024. Until January 2025, no Court order staying discovery had been entered, but the Court will permit the parties additional time to complete discovery.

The parties will propound all discovery undertaken pursuant to Rules 33 through 36 by **May 29, 2026**. The parties will complete the depositions of parties by **April 22, 2026**; will complete the depositions of lay witnesses by **May 13, 2026**, and will complete the depositions of expert witnesses by **June 12, 2026**. The parties will complete all discovery, including answering any discovery propounded on May 29, 2026, by **June 30, 2026**. (“Complete discovery” includes conclusion of all depositions and submission of full and final responses to written discovery.)

6. Settlement conference or private mediation: The parties shall participate in a settlement conference using an appointed Judge Pro Tem no later than **July 31, 2026**. To meet this deadline, they must certify this matter as ready for a settlement conference no later than **April 30, 2026**.

All attorneys and their clients, all self-represented parties, and any non-attorney representatives who have full and complete authority to settle this case shall personally appear and participate in good faith in this mediation, even if no settlement is expected. However, if a non-

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2024-005940

02/02/2026

attorney representative requests a telephonic appearance and the mediator grants the request prior to the mediation date, a non-attorney representative may appear telephonically.

7. Dispositive motions and trial: The parties shall file all dispositive motions, including Daubert motions, by **June 17, 2026**.

8. Trial setting conference: This Division will not set a trial setting conference until the parties have completed all discovery/disclosure, attended some form of facilitated settlement discussion, and any dispositive motions are addressed. When the parties have completed those things, they can file a Motion to Set and Certificate of Readiness attesting to each of those three items.

9. Firm dates: No stipulation of the parties that alters a filing deadline or a hearing date contained in this scheduling order will be effective without an order of this court approving the stipulation. Dates set forth in this order that govern court filings or hearings are firm dates, and may be modified only with this court's consent and for good cause. This court ordinarily will not consider a lack of preparation as good cause.

10. A dismissal date is set for **September 9, 2026**. After that date, this matter will be dismissed without further notice to the parties unless prior to that date they (1) submit a Stipulation and proposed order resolving all issues in this action, or (2) file a Motion to Set and Certificate of Readiness indicating all discovery/disclosure is complete, no dispositive motions are pending, and the parties have attended some form of facilitated settlement discussion.