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VALERIE TINNELL
SUPERIOR COURT CLERK

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6 Plaintiff Pro Per

7 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**

8 **IN AND FOR THE COUNTY OF MOHAVE**

9 NANCY KNIGHT

10 Plaintiff,

11 and

12 GLEN LUDWIG and PEARL LUDWIG,
13 Trustees of THE LUDWIG FAMILY TRUST;
14 FAIRWAY CONSTRUCTORS, INC.;
15 MEHDI AZARMI; JAMES B. ROBERTS and
16 DONNA M. ROBERTS, husband and wife;
17 JOHN DOES 1-10; JANE DOES 1-10; ABC
18 CORPORATIONS 1-10; and XYZ
19 PARTNERSHIPS 1-10.

20 Defendants.

Case No.: **CV 2018 04003**

**MOTION FOR LEAVE TO
AMEND COMPLAINT**

Honorable Judge Eric Gordon

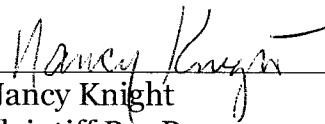
21 Pursuant to Rule 15(a), Arizona Rules of Civil Procedure, Plaintiff Pro Per
22 Nancy Knight (hereinafter "Plaintiff") moves for leave to amend Complaint and
23 moves for an Order authorizing the filing of an Amended Complaint in this matter.
24 The proposed Amended Complaint, in the form required by Rule 15(a)(2), is
25 attached hereto for the Court's review.

26 This Motion is not intended to create undue delay, nor filed in bad faith.
27 Plaintiff has no dilatory motive. It is the Plaintiff's right to prosecution of Count
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1 One that has been prejudiced by repeated denials of the Court. A Stay of
2 Execution of a written Court Order after the Summary Judgment was orally
3 presented by the Hon. Derik Carlisle on April 2, 2018, whereby the Plaintiff had
4 located two properties in Tract 4076-A for potential purchase that would have
5 restored her rights to full prosecution of the Complaint as written, was denied. The
6 words “with prejudice” was not cited by the Court in oral arguments and was an
7 additional prejudicing of the Plaintiff’s rights. All of the evidence of One
8 Subdivision known as Desert Lakes Golf Course and Estates Tract 4076 existed in
9 evidence prior to oral arguments as aka references and was finally proven with
10 documentation and clarification by Christine Ballard of Planning and Zoning.
11 Clearly a golf course, sewer treatment plant, and estate lots make this Subdivision
12 a master planned community and as such every property owner expects full rights
13 to protection of violations and for their constitutional right to protection of their
14 property values and safety of persons and property through enforcement of the
15 Covenants, Conditions and Restrictions (hereinafter “CC&Rs”) that are
16 consistently written for all phases of development. Evidence that a boiler plate
17 CC&R exists is again provided to the Court herein even though this Leave to
18 Amend is not intended to rehash prior denials. Plaintiff is left only with acceptance
19 that her rights are limited to prosecution of Tract 4076-B in this Complaint. This
20 Motion is supported by the accompanying Memorandum of Points and
21 Authorities, attached hereto and incorporated herein by this reference are Supra
22 Exhibits and the Court’s file in this matter.
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2 RESPECTFULLY SUBMITTED this 19 day of June, 2019.

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4 
5 Nancy Knight
6 Plaintiff Pro Per

7 **MEMORANDUM OF POINTS AND AUTHORITIES**

8 Rule 15(a), ARCP, provides, “Leave to amend shall be freely granted when justice
9 so requires.” Thus, “amendments to pleadings shall be liberally granted.” Dewey v.
10 Arnold, 159 Ariz. 65, 68, 764, 2d 1124, 1127 (App.1988). In Owen v Superior court, 133
11 Ariz. 75, 649 P. 2d 278 (1982), the Arizona Supreme Court held, “to justify denial of the
12 motion [to amend] there must be undue delay, bad faith, dilatory motive, repeated failure
13 to cure deficiencies by previous amendments or undue prejudice to the opposing party.”
14 Id. At 79 (inner citations omitted).

17 In the present matter, none of the reasons for denying an amendment to the
18 Complaint exists. The primary purpose for amending the Complaint in this matter is to
19 restore the Plaintiff’s right to trial for violations, attempted and threatened violations of
20 the CC&Rs in Tract 4076-B as was adjudicated as her right to prosecution by the Hon.
21 Derek Carlisle in Oral Arguments for the Summary Judgment dated April 2, 2018. The
22 amended Complaint will limit Defendants to only those who committed violations or
23 caused to commit violations in Tract 4076-B.
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26 **THE LAW**

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28 In the 1961 case of *David Lillard v Jet Homes Inc.* it is cited, “Where restrictive covenants are imposed upon an area included within a single

1 subdivision or plan of development, the restrictions are characterized as
2 real rights running with the land and not merely rights personal to the
3 vendor. They inure to the benefit of, and are consequently enforceable
4 by, all other grantees of property in the subdivision which come under
the same plan of development.

5 In determining what constitutes a general plan of development creating
6 these reciprocal rights, and what area is included therein, certain standards
7 are applied, among which are that an intent on the part of the original
8 grantor to establish such a plan must be found from either his language
9 or conduct, and the area covered by the scheme must be described so as
10 to be clearly ascertainable.

11 The remedy of one grantee to prevent a violation of, or to enforce a
12 compliance with, the restrictions by another is by injunction. *Edwards*
13 *v. Wiseman*, 198 La. 382, 3 So. 2d 661; *Ouachita Home Site & Realty Co.*
14 *v. Collie*, 189 La. 521, 179 So. 841; *Hill v. Wm. P. Ross*, 166 La. 581,
15 117 So. 725; *Queensborough Land Co. v. Cazeaux*, 136 La. 724, 67
16 So. 641, L.R.A.1916B, 1201; *McGuffy v. Weil*, 240 La. 758, 125 So.
17 2d 154; *Id.*, La.App. 2d Cir., 1960, 120 So. 2d 358.

18 In *Murphy v. Marino*, La.App. 1st Cir., 1952, 60 So. 2d 128,
19 in order to create a binding covenant running with the land in a subdivision
20 which is enforceable by any purchaser of property therein, there should be
21 a uniform plan of restriction applicable to the subdivision as a whole, or to
22 a particular part of the subdivision known to each purchaser, and, thereby,
23 by reference or by implication, forming a part of his contract with the
24 subdivider. See, also, *Salerno v. De Lucca*, 211 La. 659, 30 So. 2d 678;
25 *Alfortish v. Wagner*, 200 La. 198, 7 So. 2d 708.

26 Pertinent parts of the matter at hand and that are applicable to the Desert Lakes
27 Golf Course and Estates Tract 4076-B is for no advertisement..., or advertising structure
28 of any kind (such as signage and associated rider) on unimproved lots per paragraph 12
of the CC&Rs, twenty (20) foot front and rear building and projection setbacks per
paragraph 6 of the CC&Rs, and no noxious or offensive activities shall be carried on
upon any lot, nor shall anything be done thereon which may be or may become an
annoyance or nuisance to the neighborhood per paragraph 2 of the CC&Rs and subject to

1 constitutional rights to protections from such offensive activities such as social media
2 invitations to the public with notice to honk horns for access to the gate, a safety risk to
3 the public and members for an unlevel floor in the clubhouse as reported by a Fairway
4 Estates homeowner association (hereinafter "FE HOA") member, inadequate surveillance
5 of trespass and prompt cleanup of feces on the floor, and more.
6

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8 Other uniform plans of restrictions are applicable to the Desert Lakes Subdivision
9 Tract 4076-B including the life of the CC&Rs into perpetuity and consequences for
10 violations or attempted or threatened violations. These restrictions are enforceable by any
11 purchaser of property therein and therefore the Plaintiff claims enforcement rights
12 throughout the Desert Lakes Subdivision Tract 4076-B.
13

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15 Per CC&R paragraph 20, in pertinent part "...no failure of the Trustee or any
16 other person or party to enforce any of the restrictions, covenants or conditions contained
17 herein shall, in any event, be construed or held to be a waiver thereof or consent to any
18 further or succeeding breach or violation thereof...."

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21 As cited in *Lillard v Jet Homes*: "Where these principles must be applied
22 to determine one's right to enforce a covenant, it becomes necessary to
23 define" (1) a "plan of development," (2) the basic nature of the rights
24 acquired, and (3) a *grantee* under such plan of development.

25 The Plaintiff contends legal principles support the plaintiff's case as a grantee
26 under a general plan of development with imposed upon restrictions for the purpose of
27 mutuality of benefit and burdens as it is for all property owners within the entire Desert
28 Lakes Golf Course and Estates Subdivision Tract 4076 -B.

1 The case has merit. In the professional opinion of David Fyke, VP/State
2 Development Services Manager at Chicago Title in Scottsdale, AZ “The CC&Rs are still
3 valid”. A letter from the Arizona Attorney General’s office dated January 4, 2018 also
4 supported the filing of the January 2018 Complaint as a civil matter. **Exhibit A** – Emails
5 dated April 13 and April 14, 2017 from Mr. Fyke and letter from the Office of the
6 Arizona Attorney General.
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9 Plaintiff was denied prior Motions to Amend the Complaint for Count One, denied
10 a Stay for time purchase a lot in Tract 4076-A, denied that Desert Lakes Golf Course and
11 Estates Tract 4076 is one subdivision in accordance with laws and appeal decisions cited
12 by the Plaintiff. This Motion for Leave to Amend the Complaint is not cosmetic.
13

14 The Amended Complaint is intended to restore Plaintiff’s right to trial that was
15 denied as a result of Summary Judgment on or about April 2, 2018, denial for
16 Reconsideration of Dismissal of Count One with prejudice, in whole or in part on or
17 about June 13, 2019, denial of requests of the Court for Declaratory Judgments per advice
18 by attorney Moyer for controversies on CC&Rs and in accordance with the present
19 controversy of abandonment of CC&Rs and the other for a controversy on advertising
20 signage, and to exhaust Plaintiff’s administrative remedies. Per the Status Conference
21 held on June 17, 2019, Plaintiff incorporates herein her opening comments related to the
22 Court’s denials.
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26 “I don’t understand what Conflicting state law you are referring to that
27 may have rendered the CC&Rs unenforceable which you say you could
28 have answered but chose not to do so. I think that if there was such a state
law, I am now in a position of jeopardy as you prefer me to go to trial with
the uncertainty still hanging over my head. Even if you did not feel it was

1 your place to rule on prior enforcement, the CC&R clause that states
2 “no failure to enforce any of the CC&Rs shall in any event be construed
3 or held to be a waiver thereof or consent to any further or succeeding breach
4 or violation thereof”. This is a valid reason to rule no abandonment. Now
5 there is no incentive for Mr. Azarmi to confer to consider my settlement
6 offer cheaply and amiably.

7 Regarding the ruling on the Signage, I understand that I need to address the
8 law with the Legislative Council or other Legislative body. And you prefer
9 that a jury decide the issue of whether the signage is one-and-the-same as a
10 “For Sale” sign. Trial is necessary for this question and therefore the Injunction
11 is not appropriate at this time either and shall await trial or mediation.

12 Regarding your understanding of the Court ruling in April 2018, I think
13 you missed the point that the Court having looked over all of the evidence
14 it had at the time regarding whether or not Desert Lakes was one Subdivision,
15 he could not say it was one subdivision. That left him with only the
16 Tract 4076-B CC&Rs as a separate subdivision from the whole which is
17 arguable today given the evidence of one subdivision platted in 1988 and built
18 in phases for which Tract 4076-B was the second phase with CC&Rs
19 consistently applied to all phases of development. With all due respect of the
20 Court, the evidence of one subdivision created in 1988 is not rehashed before
21 you by the Plaintiff. This evidence was not available to the Court in June 2018.
22 And you then ruled the evidence is not persuasive.

23 I understand the Defendant’s are desperate and have informed me that they
24 even threaten Impeachment. I understand your concern as Mr. Oehler has
25 connections to make or break your career. All things considered, I will make
26 one last attempt at justice to exhaust my administrative remedies. That said, I
27 request a 90 day extension on the Scheduling Order for time to get an answer
28 from the Legislature and from Public Records Requests from the County.”

29 During the discussion, the Court said it was not aware of the prior evidence
30 of a boilerplate that was used for all of the Tract CC&Rs. Three email
31 correspondences between a Real Estate professional regarding CC&Rs,
32 the existence of a boilerplate, and terminated correspondence from Mr. Rinaldi
33 are attached as exhibits hereto.

34 **Exhibit 1** - Gina Harris email correspondences; April 6, 2017, June 28, 2018,
35 May 2, 2019.

36 The Amended Complaint will focus on the attempted violation proposed by
37 Defendant Azarmi that swept the entire Desert Lakes Subdivision and affected the
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1 Plaintiff in her Tract 4076-B; three existing homes with setback violations in Tract 4076-
2 B; and injunctive relief for offensive activities of the Defendant's private recreational
3 facility in violation of Article II, paragraph 2 of Tract 4076-B CC&Rs and/or
4 constitutional right to protection from such activities. Additional discovery is pending
5 Plaintiff's Public Records Requests regarding this private recreational facility. The cited
6 violations are all within the statute of limitations of six years from the time the Plaintiff
7 found out about these violations.
8

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10 The attempted violation for setback reductions in Tract 4076-B occurred on June
11 16, 2016 as proposed by Defendant Azarmi and placed the Plaintiff in jeopardy of
12 litigation had she opted-in for the setback reduction, built an RV garage, and then was
13 sued for her CC&R violation by an objecting Tract 4076-B property owner (supra exhibit
14 of email with Scott Holtry for the garage). County zoning ordinances that are less
15 restrictive than the CC&Rs are irrelevant for defenses against prosecution. **Exhibit 2** - 2
16 pages includes a copy of the postmarked envelope from Development Services to the
17 Plaintiff and Mr. Azarmi being identified as the Proponent by Director Tim Walsh in
18 paragraph 1 of his email. **Exhibit 3** - Tract 4076-B CC&Rs from Book 1641, page 899
19 (pertinent paragraph 21 regarding zoning ordinances).
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23 The twenty foot building and projection setback violations occurred in Tract 4076-
24 B by the Defendants for three homes during the process of this litigation. The home at
25 1839 E. Lipan Blvd was built on the Grice lot (**Exhibit 4**). The homes at 1951 E. Desert
26 Dr. built on the Siavosh lot and at 5867 Desert Lakes Dr. built on Judith Rovno's lot were
27 disclosed to the Plaintiff to be in violation of setbacks by the Defendants on or about
28

1 December 3, 2018 in their Objection to Plaintiff's Motion For Injunctive Relief. The
2 Grice's were notified by the Plaintiff with ample time for remediation. The Grice's
3 responded through their sales agent, Vilma Hall, to contact Fairway Village aka Fairway
4 Constructor's. Mr. Sanaye Siavosh was sent a certified letter to the address on his
5 property tax bill that was returned undelivered. Judy Rovno did not reply to online
6 delivery of Plaintiff's message to her at US Southwest but did acknowledge the Plaintiff
7 through Desert Lakes Nextdoor social media.
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10 The offensive private recreational activities on land that abuts Tract 4076-B is an
11 annoyance and/or nuisance for the Tract 4076-B neighborhood. Crime, noise, health and
12 safety, and the attractive nuisance it presents affects the Tract 4076-B neighborhood.
13 These activities are conducted on land that had specific zoning restrictions for golf course
14 use and is thus pending discovery per Public Records Requests. Injunctive relief is a
15 constitutional right for remedies of offensive activities that affect the Plaintiff's
16 neighborhood Tract 4076-B. The County has already determined that no permits are on
17 file for the clubhouse and swimming pool known to be owned by the FE HOA where
18 Defendant Azarmi is reported to be the Chairperson.
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22 Advertising signage and associated advertising structure is a violation of Tract
23 4076-B CC&Rs per Article II, paragraph 12 and it has been proven to be left for extended
24 periods of time, deteriorates, and may become a hazard to persons and property. The
25 Court ruled on or about June 13, 2019 that it could not rule on whether the Defendant's
26 signage is a violation of the CC&Rs and therefore injunctive relief at this time is a moot
27
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1 point and awaits trial. Statute 33-440 is pending clarification or amendment from an
2 Arizona Legislative body.

3
4 The Plaintiff herself was already deprived of her views by a self-serving adjacent
5 neighbor who trespassed on her fence, increased the fence height in violation of the
6 CC&Rs, removed the steel rails and filled the space with cement block on both her side
7 yard fence and the adjacent neighbor's rear yard fence. Enforcement was successful for
8 restoration of her fence and the adjacent neighbor's fence in mediation in case CV 2016
9 04026. A ruling denying Plaintiff's rights to enforcement in this matter places the
10 Plaintiff in jeopardy of a new adjacent neighbor taking her views again or for any
11 neighbor to violate any other provision of the CC&Rs with no available recourse for the
12 Plaintiff.
13
14 Plaintiff.

15
16 Thus, based on the foregoing, Plaintiff respectfully requests this Court grant the
17 Plaintiff's leave to amend the Complaint as proposed and attached to this Motion and to
18 restore her prosecution rights to Count One as violations of CC&Rs.

19 RESPECTFULLY SUBMITTED this 19 day of June, 2019

20
21 
22 Nancy Knight
23 Plaintiff Pro Per

24 Copy of the foregoing was emailed on June 19, 2019 to:
25 djolaw@frontiernet.net
26 Attorney for the Defendants

27 The Law Office of Daniel Oehler
28 2001 Highway 95, Suite 15
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