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Plaintiff

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF COCHISE

Eli Dalton-Webb, Plaintiff v. CITY OF SIERRA VISTA, a municipal corporation in Arizona, OFFICER E. SLUSSER, R. Hertman, OFFICER S. McHunting, M. Partidge, peace officers of the Sierra Vista Police Department, Defendants	Case No. CV202400628 Assigned to: Hon. David Thorn Civil Rights Violations; Article 2 § 5 of the Arizona Constitution, etc. RE: Plaintiff's Reply to Defendant's Response to Motion For Leave To Amend Complaint
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PLAINTIFF'S REPLY TO DEFENDANT'S RESPONSE

1. Plaintiff filed a Motion for Leave to Amend the Initial Complaint on 13 December 2024. (would it have succeeded, would create the "first amended complaint"). Defendant City filed a Response to such motion on 6 January 2025.

Plaintiff hereby replies to Defendant City's response.

2. The basics of this entire action is that Eli Dalton-Webb (plaintiff) was petitioning in a government-owned and government-funded park. Article 2 Section 5 of the Arizona Constitution simply states: "**THE RIGHT OF PETITION**, and of the people peaceably to assemble for the common good, **SHALL NEVER BE ABRIDGED**". The Sierra Vista city police detained Eli Dalton-Webb and threatened

1 him with criminal litigation for petitioning. The government violated Plaintiff's right
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3 to petition. "Article 2 § 5 of the Arizona Constitution" is in the caption of this civil
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5 action against defendants. This is the simple part, and the government absolutely
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7 violated the law.
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10 3. Defendants are alleging a variety of tactics to wiggle out of the requirements
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12 of Article 2 § 5 of the Arizona Constitution without addressing the issue. They allege
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14 that Plaintiff filed complaint after state of limitations, no private cause of action exists
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16 under the Arizona Constitution, and that Plaintiff "fails to state a claim".
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18 RIGHT TO COMPLAIN

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20 4. Plaintiff has a right to complain about the government, pursuant to Article 2
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22 Section 1 of the Arizona Constitution.
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25 5. The government defendants in this action cannot avoid complying with the
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27 Arizona Constitution, pursuant to Article 2 Section 32 of the Arizona Constitution.
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29 6. The problem is that there is no absolute, concrete, crystal clear, pathway-
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31 already-paved authority that allows citizens from suing the government over
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33 constitutional claims. Vice versa is true: there is no absolute and crystal clear
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35 authority for this Court to deny the action, which the Defense wants to leave out.
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38 7. The Defendant City deceives this Court in omitting the fact that the
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40 decisions they cite are **FEDERAL** court decisions, not **STATE** court decisions.
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42 Federal courts have no jurisdiction to interpret state law claims. The only courts that
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44 can issue an opinion that is binding upon this Court (the Arizona Superior Court in
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1 and for the County of Cochise) is the Arizona Court of Appeals Division Two and the
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3 Arizona Supreme Court (with respect to state law), NOT ANY FEDERAL COURT.
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5 8. The Defendant City further deceives this Court in omitting the fact that in
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7 Diaz v. Arizona, the **FEDERAL** (again, not state) court said “The existence of such
8
9 claims is unresolved.”. Here, the federal court even knew that it was an “unresolved”
10
11 issue.
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13 9. In fact, in Diaz v. Arizona, the federal court dismissed the constitutional
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15 claims because the plaintiff didn’t respond to the defense. It highly suggests that if
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17 the plaintiff in that case had simply responded to the defense, they would have
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19 certified the question to the Arizona Supreme Court (because again, the federal court
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21 has no jurisdiction to interpret state laws), and maybe the citizen plaintiff would have
22
23 won against the government.
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26 10. Even if these federal courts have dismissed Arizona state constitutional
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28 claims, they have no binding authority over this Court. The Defendant City has yet to
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30 show this Court any precedential (Arizona Court of Appeals or Arizona Supreme
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32 Court) case that would warrant the dismissal of this civil action.
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35 **ALLEGATION OF NON-RESPONSE TO MOTION TO DISMISS**
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37 11. Defendant City alleges that this Court “should” grant the motion to dismiss
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39 and alleges that this Court “should” deny the motion for leave to amend the initial
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41 complaint.
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1 12. This Court should note that a motion to dismiss is a discretionary power.
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3 This court should also note that a motion for leave to amend the initial complaint is
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5 also a discretionary power.
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7 13. Defendants want this Court to believe that this Court is obligated to use
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9 their discretionary power in their favor in this instance.
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11 14. Plaintiff filed his initial Complaint, then Defendant City filed their motion
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13 to dismiss, then Plaintiff filed his motion for leave to amend the initial complaint.
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15 15. The motion for leave to amend the initial complaint is basically a response
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17 to the motion to dismiss. It addressed many of the issues that the Defendant City
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19 raised in their motion to dismiss. For judicial economy, Plaintiff did not see the
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21 practicality of responding to the motion to dismiss if an amended complaint
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23 addressed the issue by filing a whole cover titled “RESPONSE TO MOTION TO
24
25 DISMISS” and laying out Plaintiff’s arguments twice, making the Judge read twice
26
27 basically the same thing.
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30 16. Being that the motion to dismiss is a discretionary power of this Court, and
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32 so is the motion for leave to amend the initial complaint, and that common sense is
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34 that the motion for leave to amend the initial complaint **IS** the response to the motion
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36 to dismiss, and additionally, even though the “motion for leave to amend” is
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38 discretionary, Plaintiff asserts that it would be inappropriate for this Court not to grant
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40 the “motion for leave to amend”, as Rule 15(a)(2) says “Leave to amend must be
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42 freely given when justice requires.”. Further, the motion to dismiss is an extreme
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44 measure for this Court to use, and only appropriately for clear and extreme
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1 circumstances. The Defense has not shown that they have complied with Article 2
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3 Section 5 of the Arizona Constitution (and other provisions), and the Plaintiff has
4
5 articulated how they have violated Article 2 Section 5 (and other provisions). Surely
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7 this Court must find at least one legitimate claim that makes sense, and therefore, a
8
9 motion to dismiss would be inappropriate. The appropriate action is to grant the
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11 motion for leave to amend the complaint and deem the motion to dismiss as moot.
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14 17. It's clear that the Defendant wants to delay and milk as much of the clock
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16 as they can. Plaintiff also figured it would be in the Defendant's interest to file a leave
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18 to amend the initial complaint, the judge would rule on it in a couple weeks or so, be
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20 served with the amended complaint, have another 20 days to respond—easily another
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22 month for the Defense to milk the clock on this lawsuit. They also have a chance to
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24 come back with an even better motion to dismiss than the first one they filed.
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26 (Plaintiff does not agree that this action warrants a motion to dismiss, but states the
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28 obvious, professional defendants almost always file a motion to dismiss, regardless of
29
30 merit).
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33 18. The Defense implies that the Plaintiff had some sort of duty to call the
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35 Defense before filing a motion for leave to amend, but Plaintiff has found nothing in
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37 such rules. It has been the experience of the Plaintiff that it has been useless to talk to
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39 the Defense over the phone. Additionally, the Defense speaks of the Plaintiff wasting
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41 the Defense's resources in the alleged "good faith" phone call regarding the motion to
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43 dismiss. Defense said that the basis for their dismissal was on the statute of
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45 limitations issue. The Defense is being disingenuous when they submitted a
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1 certificate of good faith because the Defense, in the phone call, said that the basis for
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3 the motion to dismiss was based on the alleged 9 October 2024 filing date. Since that
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5 phone call, the Defense has added a whole lot of stuff that wasn't discussed in the
6
7 alleged "good faith" phone call.
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9 **STATUTE OF LIMITATIONS**

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11 19. The Statute of Limitations issue was explained in the proposed first
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13 amended complaint. Here is what the proposed first amended complaint says:
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15 40. Plaintiff filed the initial Complaint on 4 October 2024 (see
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17 the lower left corner of the first page of the initial Complaint) with the
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19 clerk of this Court.
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22 41. Plaintiff did not have the \$268 filing fee at the time of filing
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24 on 4 October 2024, and the initial Complaint accompanied a fee
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26 deferral application, which the duty judge of the Superior Court
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28 approved.
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30 42. Rule 3 simply states: "A civil action is commenced by filing
31
32 a complaint with the court.". Plaintiff properly commenced his action
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34 by filing his complaint with the Court on 4 October 2024.
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37 43. Article 2 Section 13 of the Arizona Constitution has been
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39 used several times in favor of indigent litigants. A person having \$268
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41 to give the clerk of the court and having a "FILED" stamp immediately
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43 given and a person not having \$268 and having the "FILED" stamp
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45 given several days later when a judge agrees to the fee application, and
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1 using the “FILED” date for statute of limitations purposes would set
2
3 two deadlines: a later deadline for plaintiffs with money, and an earlier
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5 deadline for plaintiffs without money. That would violate Article 2
6
7 Section 13 of the Arizona Constitution.
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10 44. Plaintiff asserts that within the meaning of Rule 3 combined
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12 with the requirements of Article 2 Section 13 of the Arizona
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14 Constitution, Plaintiff commenced his action on 4 October 2024, and is
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16 within the statute of limitations of A.R.S. § 12-821.
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18 20. Pursuant to Rule 15(a)(2), which states “Leave to amend must be freely
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20 given when justice requires.”, it would only be appropriate for this Court to grant the
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22 motion for leave to amend the initial complaint, as it clarifies the statute of limitation
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24 issue.
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27 **NOT ADDING NEW CLAIMS**
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29 21. The Defense characterizes the proposed amended complaint as “not...even
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31 new claims.” This isn’t true. At minimum, there is a fourth amendment through the
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33 Article 2 Section 3 of the Arizona Constitution claim that was added.
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35 22. It was obvious from the initial complaint that the Plaintiff was trying to
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37 complain about the Sierra Vista police detaining him, but Plaintiff did not quite fully
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39 spell out that the detention itself violated law (violating the fourth amendment
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41 through Article 2 Section 3 of the Arizona Constitution, and Article 2 Sections 4 and
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43 8 of the Arizona Constitution, among other state provisions for The People to be
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45 generally free from arrest), in addition to the Article 2 Section 5 issue, as you can see
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1 in Paragraphs 13, 14, 16, 24, and 25 of the initial complaint, where the Plaintiff is
2 clearly alleging that the police detained the Plaintiff.
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5 **ALLEGED FAILURE TO STATE A CLAIM**
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7 23. Defendant alleges that Plaintiff “fails to state a claim”. Plaintiff assumes
8 this is shorthand for “fails to state a claim in which relief could be granted”. Plaintiff
9 assumes that this argument relies on the alleged argument that the claims “are not
10 legally cognizable cause of action”. If this is the reason, this Court should grant the
11 motion for leave to amend the complaint, as the amended complaint would address
12 this issue. As stated several times in this lawsuit now, the federal court acknowledged
13 that the “The existence of such [Arizona Constitutional] claims is unresolved” in
14 Diaz v. Arizona.
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24 24. If the “fails to state a claim in which relief could be granted” argument is
25 not about “are not legally cognizable cause of action”, then it is an openly frivolous
26 defense. In the Defendant’s motion to dismiss, it says “Plaintiff alleges that he was
27 detained and instructed not to petition in a vaguely defined area of the park, which
28 violated his rights under Article 2 § 5 of the Arizona Constitution”. Clearly, the
29 Defense understands at least ONE stated claim. The only way this isn’t openly
30 frivolous is if they are arguing that they did, arguendo, violate Article 2 § 5, but are
31 not subject to being defendants in a civil action, because, as they allege, the claims
32 are not legally “cognizable”. (i.e. above the law)
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44 25. Plaintiff in no way agrees with the assertion that claims “are not legally
45 cognizable cause of action”. It is an absolutely preposterous assertion that the Arizona
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1 Constitution hangs on the wall somewhere, but there is no citizen remedy and no
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3 consequence to government defendants for violating it. That violates the very
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5 principle of Article 2 Sections 1, 2, and 32 of the Arizona Constitution or even having
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7 a constitution at all. This argument deserves to be heard and not dismissed. The
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9 defendants violated Article 2 Section 5 of the Arizona Constitution, and they (as of
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11 yet) don't even refute that.
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SIGNATURE

Submitted respectfully, this 13th day of January, 2025.



Eli Dalton-Webb