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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: Motion For Reconsideration
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MOTION FOR RECONSIDERATION

1. This court filed an order on 7 February 2025, stating, among other things, “The case is DISMISSED with prejudice.”. This order was not specifically under “Rule 54(c)”. Hereinafter, this order shall be referred to as “First Order”. Plaintiff hereby moves this Court to reconsider this order.

2. This court filed another order on 28 February 2025, stating, among other things, “Because Plaintiff’s claims are all barred by the applicable statute of limitations, amendment is futile, and judgement is hereby entered...” and “ORDERED dismissing Plaintiff’s Complaint, in its entirety...with prejudice” and it

1 was a final order under Rule 54(c). Hereinafter, this order shall be referred to as
2
3 “Second Order”. Plaintiff hereby moves this Court to reconsider this order.
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5 3. Plaintiff reads both the 7 February 2025 and 28 February 2025 orders as
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7 dismissing all claims on the sole reason that the civil action is allegedly time-barred
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9 by the statute of limitations, and not for any other reason. However, the Second Order
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11 order does not appear to nullify the First Order, and the First Order does not clearly
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13 and explicitly state that the only reason for dismissal is the statute of limitations time
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15 bar issue. In an abundance of caution, Plaintiff hereby addresses all other issues in
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17 addition to the timeliness issue.
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20 **PROPOSED AMENDMENT ADDRESSED TIMELINESS**
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22 4. Defendant City of Sierra Vista filed a motion to dismiss on 3 December
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24 2024, stating one of the reasons that the civil action is time-barred by the one-year
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26 statute of limitations under A.R.S. § 12-821. This appeared to be the only reason for
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28 this Court to dismiss, as this was the only issue that this Court elaborated on in the
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30 First Order, and the only issue addressed on the Second Order.
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33 5. On page 4 footnote 6 of the motion to dismiss, Defendant City stated
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35 “Plaintiff pointed to the date stamped by the Court on his Complaint was October 4,
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37 2024.”. Even if the Motion for Leave to Amend Complaint was denied, the Defendant
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39 presented this Court with sufficient reasoning for this Court to deny, sua sponte, the
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41 Defendant’s motion to dismiss point regarding alleged untimeliness of this action.
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43 This Court was informed of the fee deferral application affecting the timestamp of the
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45 complaint, this Court should have looked at the date of the fee deferral, the
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1 “RECEIVED” date stamp of the complaint, and, sua sponte, deemed this civil action
2 as timely.
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5 6. On page 7 and 8 of the proposed first amended complaint from the “Motion
6 for Leave to Amend Complaint” filed by Plaintiff on 13 December 2024, it addressed
7 the statute of limitations issue. It explained to this Court that the Plaintiff filed the
8 initial complaint with a fee deferral application, and that the Plaintiff filed his initial
9 complaint on 4 October 2024, (not 9 October 2024) which was within the statute of
10 limitations. This is the correct interpretation, pursuant to Rule 3 of the Arizona Rules
11 of Civil Procedure, the requirement of Article 2 Section 13 of the Arizona
12 Constitution to give indigent litigants access to the courts, and is within the statute of
13 limitations under A.R.S. § 12-821.
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24 7. The judge denied this Motion for Leave to Amend the Initial Complaint,
25 under the reason of it being futile. Plaintiff hereby requests this Court to reconsider
26 this position. Plaintiff properly commenced this action on 4 October 2024, which was
27 within the statute of limitation, and that was addressed in the Motion for Leave to
28 Amend the Initial Complaint, which this Court should have granted (pursuant to Rule
29 15(a)(2), which requires “Leave to amend must be freely given when justice
30 requires”) and would render Defendant City’s Motion to Dismiss moot. Plaintiff
31 hereby asserts this Court erred in denying the Motion for Leave to Amend Complaint,
32 which caused the Motion to Dismiss to not be moot, and the Plaintiff to be severely
33 prejudiced in this action.
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1 8. Plaintiff hereby moves this Court to reconsider its position in denying the
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3 Plaintiff's "Motion for Leave to Amend Complaint" filed on 13 December 2024.
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5 **TIMELINESS OF THIS ACTION**
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7 9. As stated in Plaintiff's "Motion for Leave to Amend Complaint", Filed 13
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9 December 2024, on Pages 7-8 (and hereby renumbered):
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11 10. Plaintiff filed the initial Complaint on 4 October 2024 (see
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13 the lower left corner of the first page of the initial Complaint) with the
14
15 clerk of this Court.
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17 11. Plaintiff did not have the \$268 filing fee at the time of filing
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19 on 4 October 2024, and the initial Complaint accompanied a fee
20
21 deferral application, which the duty judge of the Superior Court
22
23 approved.
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25 12. Rule 3 simply states: "A civil action is commenced by filing
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27 a complaint with the court.". Plaintiff properly commenced his action
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29 by filing his complaint with the Court on 4 October 2024.
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32 13. Article 2 Section 13 of the Arizona Constitution has been
33
34 used several times in favor of indigent litigants. A person having \$268
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36 to give the clerk of the court and having a "FILED" stamp immediately
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38 given and a person not having \$268 and having the "FILED" stamp
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40 given several days later when a judge agrees to the fee application, and
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42 using the "FILED" date for statute of limitations purposes would set
43
44 two deadlines: a later deadline for plaintiffs with money, and an earlier
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1 deadline for plaintiffs without money. That would violate Article 2
2
3 Section 13 of the Arizona Constitution.
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5 14. Plaintiff asserts that within the meaning of Rule 3 combined
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7 with the requirements of Article 2 Section 13 of the Arizona
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9 Constitution, Plaintiff commenced his action on 4 October 2024, and is
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11 within the statute of limitations of A.R.S. § 12-821.
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14 15. And from Defendant City's Motion to Dismiss, filed 3 December 2024, on
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16 page 4 footnote 6, Defendant City stated "Plaintiff pointed to the date stamped by the
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18 Court on his Complaint was October 4, 2024."
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20 16. Plaintiff hereby moves this Court to reconsider its position, as stated on the
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22 First Order, that implied that this Court believed the commencing of this action was
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24 on 9 October 2024, and reconsider the position on the Second Order that this civil
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26 action was untimely, and to reconsider the determination of the date of the
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28 commencing of this action. Plaintiff asserts that the correct date of the commencing
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30 of this action is 4 October 2024.
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33 **CLARIFYING OTHER ISSUES**

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35 17. It appears that these orders dismissing this case heavily relies on the
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37 statute of limitations issue. It is unclear if this Court agrees with the Defendant City
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39 on some or all other issues with the Defendant City, not excluding (1) the alleged no
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41 private cause of action; and (2) failure to state a claim for which relief may be
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43 provided issues. It appears that this Court disregarded both Plaintiff's and
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1 Defendant's arguments as both moot, due to the alleged statute of limitations issue,
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3 but this is unclear.
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5 18. Plaintiff reads the First Order and Second Order as disregarding both
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7 Plaintiff's and Defendant's arguments regarding issues other than statute of
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9 limitations. Notwithstanding, in an abundance of caution, under the alternative
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11 assumption that the Court ruled against Plaintiff on the other issues, Plaintiff hereby
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13 (1) disagrees with this Court on the alleged no private cause of action issue; and (2)
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15 disagrees with this Court on the alleged failure to state a claim for which relief may
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17 be provided issue, and hereby moves this Court to reconsider these positions.
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20 **ALLEGED NO PRIVATE CAUSE OF ACTION**
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22 19. As stated above, Plaintiff filed a "Motion for Leave to Amend Complaint"
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24 on 13 December 2024, which this Court incorrectly denied, which prejudiced the
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26 Plaintiff. The correct outcome in this case is to have granted the Motion for Leave to
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28 Amend Complaint, and deem the Motion to Dismiss moot, as the proposed First
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30 Amended Complaint would have addressed the issue of the alleged no private cause
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32 of action against the Defendant.
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35 20. "Amended Complaint" shall refer to the proposed First Amended
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37 Complaint from the 13 December 2024 filing.
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40 21. On Pages 8 through 16 from Amended Complaint, Plaintiff asserted the
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42 right of private action, citing Diaz v. Arizona, in which the federal court had
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44 acknowledged that the issue was "unresolved", that the cases that Defendants cited
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46 were federal court decisions NOT state court decisions and have no binding authority
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1 over this court since the issues in this case are of state law; that the legislature
2 regulates the “manner” and “in what courts”, but not “for what” or “why” a suit may
3 be brought against the state; Article 2 Sections 1, 2, and 32 give the right to the
4 Plaintiff to sue the Defendant in this action; analogously citing Bell v. Hood, giving
5 authority of the Plaintiff to sue a sovereign government for constitutional violations;
6 Plaintiff asserted the Defendant City does not enjoy the sovereign protections that the
7 state does; among other things.
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15 22. On 4 October 2024, the Plaintiff filed his Initial Complaint, which included
16 a First Amendment to the US Constitution (commonly known as the “federal free
17 speech” amendment) claim. On 22 December 2024, Plaintiff and Defendant filed a
18 stipulated motion to strike the First Amendment Complaint, in order to keep this
19 action out of federal court, which was granted. The strike order was filed on 3
20 December 2024, the same day the Defendant City filed the Motion to Dismiss.
21 However, the Article 2 § 5 state constitution claim (among other things) remained in
22 the complaint this whole time. Plaintiff is unsure if the Defendant City said “the
23 Arizona Constitution does not authorize a private cause of action under the First
24 Amendment” in the Motion to Dismiss was (1) a misdirection campaign, (2) a way to
25 partially dismiss the claims against Defendant under the assumption that the strike
26 wasn’t granted, or (3) if “First Amendment” was a colloquial term for “free speech
27 rights” and to be liberally construed to include Article 2 § 5 of the Arizona
28 Constitution.
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1 23. Under the assumption that it was a misdirection campaign, that “the
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3 Arizona Constitution does not authorize a private cause of action under the First
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5 Amendment”, Plaintiff reasserts, as asserted in the proposed First Amended
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7 Complaint on Page 16, paragraph 74, that the First Amendment to the US
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9 Constitution is reincorporated by the Arizona Constitution in Article 2 Section 3 of
10
11 the Arizona Constitution. This is legally incorrect that the First Amendment cannot be
12
13 found in the Arizona Constitution.
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15 24. Under the assumption that it was a way to partially dismiss the claims
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17 against the Defendant, Plaintiff asserts that the First Amendment was not the only
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19 asserted claim, there was, among other claims, an Article 2 § 5 Arizona Constitution
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21 claim. Even if the First Amendment claim were to be dismissed, it cannot dismiss
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23 everything else in this lawsuit. At most, this warrants a partial dismissal.
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26 25. Under the assumption that “First Amendment” was a colloquial term for
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28 “free speech rights” and extremely liberally construed to include Article 2 § 5 claims,
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30 and all other claims, Plaintiff hereby reincorporates the above-stated from paragraph
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32 21 of this Motion for Reconsideration. Additionally, using colloquial terms like “First
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34 Amendment” to dismiss Article 2 § 5 claims and all other claims is improper before
35
36 this court, and this would be an inappropriate assumption of this Court to make.
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39 26. The point of the Motion to Dismiss that "the Arizona Constitution does not
40
41 authorize a private cause of action under the First Amendment" does not make sense.
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43 Firstly, “First Amendment” was stricken from the Complaint, as ordered by this
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1 Court; Secondly, the “First Amendment” absolutely is privately actionable; Thirdly,
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3 there are other claims in the Complaint not just the “First Amendment”.
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5 27. Should the First Order mean that the Court agreed with the Defendant on
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7 the point that there is no private cause of action, Plaintiff hereby moves that this
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9 Court reconsider this position. Plaintiff asserts that there is a private cause of action,
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11 and that this issue was addressed in the proposed First Amended Complaint (which
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13 was incorrectly prohibited from being filed, and the Motion to Dismiss was
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15 incorrectly not deemed moot). This court should at least seriously consider the merits
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17 of both the Plaintiff and Defendant by granting the Motion for Leave to Amend
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19 Complaint, and the filings thereafter, deeming the Motion to Dismiss moot and giving
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21 a hearing on the matter. Defendants, without a doubt, violated Article 2 § 5 of the
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23 Arizona Constitution, and this Court should hear about it.
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27 **ALLEGED FAILURE TO STATE A CLAIM**
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29 28. Plaintiff asserts that there was at least one stated claim upon which relief
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31 could be granted contained in his Complaint. The police clearly violated Plaintiff’s
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33 rights under Article 2 § 5 of the Arizona Constitution, and this Court is required to
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35 “assume the truth of all well-pleaded factual allegations and indulge all reasonable
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37 inferences from those facts” (Coleman v. City of Mesa, 230 Ariz. 352).
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40 29. From the Proposed First Amended Complaint, the following facts were
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42 alleged, among other facts and conclusions:
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44 A. In ¶ 7 and ¶ 18, that “the park” is a government-owned park.
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1 B. In ¶ 13, that two peace officers detained Plaintiff and
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3 instructed him not to petition in a vaguely defined area of the park.
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5 (violating Article 2 § 5)
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7 C. In ¶ 19, that the same two peace officers set a vague standard
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9 for Plaintiff's right to petition being violated, and refused to clarify the
10
11 boundaries of Plaintiff's right to petition.
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13 D. In ¶ 25 and ¶ 26, that not petitioning was the reason for
14
15 detaining Plaintiff.
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17 E. In ¶ 26 that Plaintiff was detained by Officer Hertman.
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19 F. In ¶ 27 that Officer Slusser violated Plaintiff's Article 2 § 5
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21 rights by threatening to arrest him if he continued to petition in vaguely
22
23 defined areas of the park.
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26 G. In ¶ 28 that Officer Slusser instructed Plaintiff not to petition
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28 anyone leaving the event, violating Plaintiff's freedom of assembly
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30 under Article 2 § 5 of the Arizona Constitution.
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33 30. Either (1) the Initial Complaint must have been missing key facts that the
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35 proposed First Amended Complaint would have fixed, in which case this Court
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37 should have granted the Motion for Leave to Amend Complaint pursuant to Rule
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39 15(a)(2); or (2) the Initial Complaint had sufficient facts and that the amendment was
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41 futile, in which case, the facts were sufficient and a Rule 12(b)(6) would be denied.
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44 31. The only way for a Rule 12(b)(6) to be granted is if the defendant
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46 municipal corporation and its peace officers were above the law and the constitution
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1 didn't apply to them. This would be in direct violation of Article 2 § 32, which states
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3 "The provisions of this Constitution are mandatory, unless by express words they are
4
5 declared to be otherwise."
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7 32. Additionally, monetary relief is not the only requested relief. Declaratory
8
9 and injunctive relief was requested in both Initial Complaint and First Amended
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11 Complaint. Even if the Defendant City successfully argues that Plaintiff is not
12
13 entitled to monetary relief for the constitutional violations, they must survive the
14
15 other relief requested, including the injunctive and declaratory relief requested by
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17 Plaintiff.
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20 33. Should the 7 February 2025 order from this Court mean that the Court
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22 agreed with the Defendant on the point that there is no stated claim for which relief
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24 may be provided, Plaintiff hereby moves that this Court reconsider this position.
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26 Plaintiff asserts that there is a minimum of one claim on which relief could be
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28 granted, that there was at least one fact that was stated leading to a claim, and that the
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30 government does not have immunity from violating the Arizona Constitution.
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33 **CONTINUATION—DENIED LEAVE TO AMEND COMPLAINT**
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35 34. More on the issue of this Court denying the Motion for Leave to Amend
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37 the Complaint, from the proposed First Amended Complaint:
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40 35. In ¶ 17, Plaintiff added a claim for more damages.
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42 36. In ¶ 18, Plaintiff added clarification.
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44 37. In ¶ 19, Plaintiff added a claim for more damages.
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46 38. In ¶ 28, Plaintiff added a fact, claim and theory.
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1 39. In ¶ 32, Plaintiff added more parties for seeking damages for.

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3 40. In ¶ 36, Plaintiff added more legal theories and claims for
4
5 more damages.
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7 41. In ¶ 37, Plaintiff added more parties for seeking damages for,
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9 more legal theories and claims for more damages.
10

11 42. In ¶ 39, Plaintiff added more legal theories and claims.
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13 43. In ¶ 40-44, Plaintiff added more facts, legal theories, and
14
15 directly addressed the timeliness issue from the motion to dismiss.
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18 44. In ¶ 45-75, Plaintiff adds legal theories, and directly
19
20 addressed the issue of alleged no private cause of action from the
21
22 motion to dismiss.
23

24 45. In ¶ 76, It must be acknowledged that this is without a doubt
25
26 adding a new claim to this action.
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28 46. In ¶ 80, Plaintiff added new monetary relief requested.
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30 47. Plaintiff added legal theories to this civil action in his Motion for Leave to
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32 Amend Complaint, and is entitled to have his motion granted. “Denial of leave to
33
34 amend is generally considered an abuse of discretion where the amendment merely
35
36 seeks to add a new legal theory” (Walls v. Arizona Department of Public Safety 170
37
38 Ariz. 591). Denial of this motion was an abuse of this Court’s discretion.
39
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41 48. Additionally, it goes against the Arizona Supreme Court to deny
42
43 amendments to pleadings on mere technicalities. “This [Arizona Supreme C]ourt has
44
45 stated that amendments to pleadings should be granted with great liberality, so that
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1 cases may be decided on the merits rather than on mere technicalities of pleadings,
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3 and so long as the granting of the amendment does not prejudice the other party.”
4
5 (Cagle v. Carr, 101 Ariz. 225).
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7 49. Defendant City, in its 6 January 2025 “DEFENDANT CITY OF SIERRA
8
9 VISTA’S RESPONSE TO PLAINTIFF’S MOTION FOR LEAVE TO AMEND
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11 COMPLAINT” filing, only alleged that the Motion for Leave to Amend Complaint
12
13 was futile. In the 6 January 2025 response, Defendant City did not say that (1) the
14
15 motion for leave would cause undue delay; or (2) unfairly prejudice the Defendant
16
17 City. A very liberal reading of Defendant City’s response might be that the Defendant
18
19 City is alleging that the Motion for Leave was in bad faith because Plaintiff didn’t
20
21 confer with Defendant City prior to filing a Motion for Leave to Amend Complaint.
22
23 This is absolutely ridiculous. The Defendant City cites no authority (statute or court
24
25 rule) requiring Plaintiff confer with Defendant as a prerequisite to filing items with
26
27 this Court. If anything, it is the other way around—the Defendant, not the Plaintiff, is
28
29 required to certify good faith consultation, pursuant to Rule 12 and Rule 7.1. Even
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31 then, this good faith certificate does not pertain to Rule 15 Motions for Leave to
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33 Amend, it only pertains to, in this case, Rule 12(b)(6) motions. If anything, the
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35 Defendant is acting in bad faith. The Defendant added items to their Motion to
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37 Dismiss that were not mentioned in the “good faith” phone call with Plaintiff.
38
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40 50. Should the First Order and Second Order from this Court mean that the
41
42 Court agreed with the Defendant on the point that the Motion for Leave to Amend
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44 Complaint should be denied for reasons other than untimeliness of this civil action,
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1 Plaintiff hereby moves that this Court reconsider this position. Plaintiff asserts that
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3 the Defendant is not prejudiced by this motion, and is entitled to this Court granting
4
5 this Motion for Leave to Amend Complaint.
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7 **MOTION TO DISMISS**

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9 51. Plaintiff addressed all issues from the Defendant City's 3 December 2024
10 Motion to Dismiss in the 13 December 2024 Motion for Leave to Amend Complaint.
11
12 It added new facts, new legal theories, and directly addressed all issues from
13
14 Defendant City's Motion to Dismiss.
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18 52. The Motion for Leave to Amend Complaint should have been granted. Therefore,
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20 the 3 December 2024 Motion to Dismiss should have been deemed moot, and the Defendant
21
22 City, if they still wished to have this case dismissed, should have been required to file a new
23
24 motion to dismiss based on any deficiencies (if there were any) of the 13 December 2024
25
26 First Amended Complaint.
27

28 **RESPONSE TO MOTION TO DISMISS**

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30 53. Plaintiff primarily requests the Motion for Leave to Amend Complaint to
31
32 be granted. Should this request be continued to be denied, Plaintiff secondarily
33
34 requests that the Plaintiff be allowed to file a response to the Defendant's Motion to
35
36 Dismiss. Plaintiff expected this Court to approve the Motion for Leave to Amend
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38 Complaint, and under that assumption, did not file a whole cover titled "response to
39
40 Motion to Dismiss". Tertiarily, Plaintiff requests the Motion for Leave to Amend the
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42 Complaint to be construed as a response to the Motion to Dismiss.
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44

45 **CONCLUSION**

1 54. This issue of “when was the complaint filed when a fee deferral is attached for
2 statute of limitations purposes” is an excellent question. There is no caselaw on the matter,
3 and it is important that the Arizona Judicial Department provide guidance. Unfortunately,
4 nothing gets reported on Lexis Nexis from what happens at the Arizona Superior Court level
5 —only when an appellate court makes caselaw. Plaintiff filed his complaint and fee deferral
6 application on 4 October 2024, and the clerk stamped the complaint as “FILED” on 9
7 October 2024. Defendants’ cause of action date was 7 October 2023 and 8 October 2023.
8 A.R.S. § 12-821 gives a 1-year statute of limitations. Rule 3 of the Arizona Rules of Civil
9 Procedure state that a “civil action is commenced by filing a complaint with the court.”
10 Article 2 § 13 of the Arizona Constitution requires that indigent litigants have access to the
11 courts and not be treated differently. Plaintiff asserts that the proper date of this commencing
12 of this action was on 4 October 2024. Defendants and this Court imply that the commencing
13 of this action was actually on 9 October 2024 and outside the statute of limitations.
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Submitted respectfully this day, 3 March 2025,



Eli Dalton-Webb