

Lori V. Berke (#015628)
Anelisa Benavides (#036446)
BERKE LAW FIRM, PLLC
1601 N. 7th Street, Suite 360
Phoenix, AZ 85006
Phone: (602) 254-8800
Fax: (602) 254-8808
lori@berkelawfirm.com
anelisa@berkelawfirm.com
Attorneys for Defendant Big Brothers Big Sisters of America

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF MARICOPA

John CD Doe, a single man,

Plaintiff,

vs.

Big Brothers Big Sisters of America, a
District of Columbia, non-profit
corporation; Big Brothers Big Sisters of
Central Arizona, an Arizona corporation;
John Doe 1-100; Jane Doe 1-100; and Black
& White Corporations 1-100,

Defendants.

Case No. CV2020-014920

**RESPONSE IN OPPOSITION TO
MOTION TO AMEND COMPLAINT IN
THE NAME OF THE REAL PARTY IN
INTEREST FILED JULY 25, 2025**

(Assigned to the Hon. Christopher Whitten)

Defendant Big Brothers Big Sisters of America (“BBBSA”), by and through undersigned counsel, files its Response to John CD Doe’s Motion to Amend Complaint in the Name of the Real Party in Interest (“BBBSA’s Response”) filed on July 25, 2025. BBBSA respectfully requests that the Court deny John CD Doe’s Motion to Amend Complaint (the “Motion”) on the basis that (1) the Court already denied a nearly identical motion to amend that Plaintiff filed on March 20, 2025; (2) the Motion fails to comply with Ariz.R.Civ.P. 15(a)(4); and (3) Plaintiff failed to seek leave of Court to make any of the substantive changes in his proposed Second Amended Complaint (including the addition of an entirely new cause of action) and exhibited undue delay in seeking to make those substantive changes.

1 In the event the Court finds that the Motion should not be denied in its entirety on
2 those grounds, then BBBSA requests that the Motion be granted **only** as to those amendments
3 that reflect the trustee and real party in interest’s substitution as Plaintiff and that correct the
4 party names that change as a result of the trustee’s involvement, and that it be denied in all
5 other respects.

6 BBBSA’s Response is supported by the following Memorandum of Points and
7 Authorities.

8 **MEMORANDUM OF POINTS AND AUTHORITIES**

9 **I. RELEVANT PROCEDURAL BACKGROUND**

10 John CD Doe’s original Complaint was filed on November 18, 2020 and alleged
11 claims against Defendants BBBSA and Big Brothers Big Sisters of Central Arizona
12 (“BBBSCAZ”) (collectively “Defendants”), arising out of his allegations of sexual abuse by
13 Italo Arbulu (“Arbulu”). (*See* Original Complaint, generally). John CD Doe subsequently
14 filed his First Amended Complaint on June 29, 2021, wherein he asserts the following causes
15 of action against BBBSA: (1) Count One—violation of A.R.S. § 13-3623; (2) Count Two—
16 negligence; (3) Count Three—negligent training and supervision; (4) Count Four—negligent
17 retention of employees; (5) Count Five—breach of fiduciary duty; (6) Count Six—intentional
18 infliction of emotional distress; (7) Count Seven—endangerment; (8) Count Eight—child
19 abuse; and (9) Count Nine—assault pursuant to A.R.S. §§ 13-1203 and 13-1204. (*See* First
20 Amended Complaint, generally).

21 On December 26, 2024, BBBSCAZ filed a Motion for Summary Judgment seeking to
22 dismiss John CD Doe’s lawsuit on the basis that John CD Doe does not have standing to bring
23 this lawsuit because he filed for bankruptcy in 2009 and 2017 and failed to schedule or
24 disclose the claims he asserts against Defendants in this lawsuit.¹ (*See* BBBSCAZ’s Motion
25 for Summary Judgment, generally). On January 30, 2025, John CD Doe filed his Motion To
26 Re-Open Bankruptcies And Debtor’s Motion For An Order To Stay Underlying Tort Claim
27

28 ¹ BBBSCAZ withdrew the Motion for Summary Judgment on August 6, 2025.

(the “Motion to Re-open”) in the Bankruptcy Court. In the Motion to Re-open, John CD Doe requested that the Bankruptcy Court re-open both the 2009 and the 2017 Bankruptcy Cases so that the causes of action in this lawsuit can be administered as part of his bankruptcy estate. John CD Doe also requested that the Bankruptcy Court order a stay of this litigation. In response, BBBSAZ filed an objection to John CD Doe’s request for a stay, arguing that under federal law, an automatic stay does not “arise anew” when a bankruptcy case is re-opened. On February 21, 2025, the United States Bankruptcy Court for the District of Arizona reopened John CD Doe’s 2009 and 2017 bankruptcies and set a hearing for March 25, 2025 on the issue of whether an automatic stay is in effect, or should be ordered to be in effect. (*See* Motion at p. 3). Maureen Gaughan (“Trustee Gaughan”) has been appointed trustee for the bankruptcy estates. (*Id.*).

On February 28, 2025, this Court entered a Notice of Bankruptcy, entering a Stay Order in this case and placing the case on the Dismissal Calendar for dismissal on August 26, 2025. By Minute Entry filed April 23, 2025, this Court vacated that stay.

Prior to the Court vacating the stay, on March 20, 2025, Plaintiff filed a Motion to Amend Complaint in the Name of the Real Party in Interest. (*See* Motion to Amend Complaint in the Name of the Real Party in Interest filed March 20, 2025). Defendant BBBSA filed its Response to Plaintiff’s Motion to Amend Complaint on March 26, 2025, and Defendant BBBSA filed a Joinder in BBBSA’s Response on April 28, 2025. (*See* Response to Motion to Amend Complaint in the Name of the Real Party in Interest filed March 26, 2025 and Defendant Big Brothers Big Sisters of Central Arizona’s Joinder to Response to Motion to Amend Complaint in the Name of the Real Party in Interest and Additional Response in Opposition to Motion to Amend Complaint filed April 28, 2025). On May 7, 2025, the Court denied Plaintiff’s Motion to Amend Complaint. (*See* Minute Entry filed May 7, 2025). Plaintiff never filed a motion for reconsideration of the Court’s denial of his Motion to Amend Complaint.

According to Plaintiff’s Motion, “[o]n May 15, 2025, the United States Bankruptcy Court found that any stay that was in place with respect to the above-referenced bankruptcy

1 matters is lifted” and the United States Bankruptcy Court “found this tort claim is property
2 of the bankruptcy estate.” On July 25, 2025, John CD Doe filed another Motion to Amend
3 Complaint in which he again seeks leave to file a Second Amended Complaint to list Trustee
4 Gaughan as the real party in interest and to “reflect her substitution into the action.” (*See*
5 Motion at p. 3).² John CD Doe’s Motion does not seek permission from the Court to add **any**
6 additional facts, allegations or additional claims or causes of action. However, the proposed
7 Second Amended Complaint attached to John CD Doe’s Motion contains numerous new
8 factual allegations and an entirely new cause of action, none of which are relevant to Trustee
9 Gaughan’s substitution into this action and none of which are addressed in the Motion.

10 **II. LEGAL ARGUMENT**

11 **A. The Court Already Denied a Nearly Identical Motion to Amend that** 12 **Plaintiff Filed on March 20, 2025.**

13 The general rule in Arizona is that a trial court should not reconsider a motion already
14 decided unless new circumstances are demonstrated by the movant. *See Dunlap v. City of*
15 *Phoenix*, 169 Ariz. 63, 66, 817 P.2d 8, 11 (Ct. App. 1990), citing *Lemons v. Superior Court*,
16 141 Ariz. 502, 504, 687 P.2d 1257, 1259 (1984). This Court previously denied Plaintiff’s
17 Motion to Amend Complaint. (*See* Minute Entry filed May 7, 2025). Plaintiff did not seek
18 reconsideration of that ruling. Plaintiff has re-filed the same motion, seeking leave to file a
19 Second Amended Complaint to list Trustee Gaughan as the real party in interest and to
20 “reflect her substitution into the action.” (*See* Motion at p. 3). The substantive changes
21 Plaintiff sought to add in the Proposed Second Amended Complaint that he submitted with
22 the Motion to Amend Complaint he filed on March 20, 2025 are identical to the substantive
23 changes he is seeking to add in his new Proposed Second Amended Complaint, except that
24 in the new Proposed Second Amended Complaint he also adds an entirely new cause of action
25

26
27 ² In his Motion, John CD Doe falsely alleges that “On November 1, 1982, *Defendants*
28 evaluated Arbulo” and that “*Defendants* paired Italo Arbulo with Plaintiff John CD Doe in
January 1983.” (*See* Motion at pp. 2 and 3) (emphasis added). In fact, BBBSA had no
involvement in evaluating Arbulo or pairing Arbulo with John CD Doe.

1 – a second negligence claim. (See Motion at ¶¶ 51-63). In fact, the only difference between
2 the motion Plaintiff filed on March 20, 2025 and the Motion he filed on July 25, 2025, is the
3 addition of the following paragraph to the “Facts and Procedural History” section:

4 On May 15, 2025, the United States Bankruptcy Court found that any stay that
5 was in place with respect to the above-referenced bankruptcy matters is lifted.
6 The United States Bankruptcy Court also found this tort claim is property of
7 the bankruptcy estate. As property of the bankruptcy estate, the bankruptcy
8 trustee is the real party in interest. (Exhibit 3: *In Re David Campbell*, Order
9 05/15/2025, 09-bk-12121; 17-bk-09863).

10 Therefore, Plaintiff has not alleged any pertinent changes in circumstances (and there are
11 none) that merit reconsideration of the Court’s May 7, 2025 order denying Plaintiffs’ Motion
12 to Amend Complaint.

13 Regardless of the lift of the bankruptcy stay, the basis for denying Plaintiff’s Motion
14 remains the same: (1) Plaintiff’s Motion (like the previous motion) fails to comply with
15 Ariz.R.Civ.P. 15(a)(4), and (2) Plaintiff failed to seek leave of Court to make any of the
16 substantive changes in his proposed Second Amended Complaint (including the addition of
17 an entirely new cause of action) and exhibited undue delay in seeking to make those
18 substantive changes. Furthermore, *even if* Plaintiff had requested that the Court reconsider
19 its previous ruling (which Plaintiff has not), there is no pertinent change in circumstances
20 here that merits reconsideration. In *Dunlap*, the Arizona Court of Appeals discussed that
21 “pertinent changes in circumstances” exists where “five years of discovery separates the first
22 motion from the second motion.” (*Dunlap*, 169 Ariz. at 66). Here, there is no such basis for
23 the Court to reconsider its previous ruling.

24 For this reason alone, the Court should deny Plaintiff’s Motion.

25 **B. John CD Doe’s Motion Fails to Comply With Ariz.R.Civ.P. 15(a)(4).**

26 Rule 15(a)(4) requires a party seeking to amend a pleading to file a motion and to
27 attach, as an exhibit thereto, “a copy of the proposed amended pleading,” which “must show
28 the respects in which the proposed pleading differs from the existing pleading by bracketing
or striking through the text to be deleted and underlining the text to be added.” John CD

1 Doe's proposed Second Amended Complaint, which is attached to his Motion, does not
2 comply with Ariz.R.Civ.P. 15(a)(4). Throughout the proposed Second Amended Complaint,
3 John CD Doe makes changes that are not redlined as required by Ariz.R.Civ.P. 15(a)(4).
4 (See proposed Second Amended Complaint at ¶¶ 16, 49, 50, 73, 74, 76, 77, 80, 81, 83, 84,
5 85, 86, 89, 94, 101, 102, 103, 107, 109, 111, 112, 113, 116, 120, 121, 122, 123, 125, 126,
6 127, 130, 132, 133, 134, 135, 137).³ Some of the changes include facts that have been
7 moved to other paragraphs without any redlining to identify the proposed changes. (See *Id.*
8 at ¶¶ 40 and 43; see also First Amended Complaint at ¶ 33). Furthermore, none of the 137
9 numbered paragraphs in the Second Amended Complaint are redlined to reflect that the
10 paragraph number has changed. (See proposed Second Amended Complaint, generally). In
11 addition, not all references to "Plaintiff" and "John CD Doe" are amended to accurately
12 reflect Trustee Gaughan's substitution as Plaintiff. (See *Id.* at ¶ 16).

13 John CD Doe's failure to comply with Ariz.R.Civ.P. 15(a)(4) is alone a sufficient basis
14 to deny his Motion. See *Carranza v. Madrigal*, 237 Ariz. 512, 354 P.3d 389, 392 (2015)
15 (discussing that plaintiff's failure to comply with Ariz.R.Civ.P. 15(a)(4) constituted a
16 "sufficient basis for the trial court to deny" his motion to amend).

17 **C. John CD Doe's Motion Fails in Part Based on Failure to Seek Leave of**
18 **Court and Undue Delay.**

19 A plaintiff may amend his complaint "once as a matter of course," and any subsequent
20 amendment requires "leave of court or ... the written consent of all opposing parties who
21 have appeared in the action." See Ariz.R.Civ.P. 15(a)(1)-(2). Although "[l]eave to amend
22 must be freely given when justice requires," Ariz.R.Civ.P. 15(a)(2), a "court may deny leave

23 ³ In the proposed Second Amended Complaint attached to the motion Plaintiff filed
24 on March 20, 2025 (which this Court denied), Plaintiff also failed to redline his proposed
25 changes in various paragraphs. Plaintiff has failed to correct this issue in the proposed Second
26 Amended Complaint attached to Plaintiff's Motion. However, the paragraphs where Plaintiff
27 failed to properly redline any proposed changes are different than those where Plaintiff
28 previously failed to redline proposed changes. As such, undersigned counsel once again had
to spend a significant amount of time comparing the proposed Second Amended Complaint
with the First Amended Complaint to identify those paragraphs where Plaintiff failed to
redline any proposed changes.

1 to amend if it finds undue delay, bad faith, dilatory motive, repeated failure to cure
2 deficiencies by previous amendments or undue prejudice to the opposing party.” *Carranza*,
3 237 Ariz. at 512, 354 P.3d at 392, citing *Owen v. Superior Court*, 133 Ariz. 75, 79, 649 P.2d
4 278, 282 (1982) (internal citations omitted).

5 In his Motion, John CD Doe only addresses whether he meets the standard for
6 amendment as to the allegations relating to Trustee Gaughan. Specifically, he states that
7 Ariz.R.Civ.P. 17 “requires the trial court to grant Plaintiff’s Motion to Amend the Complaint
8 to include the name of the real party in interest” and that Rule 17(b)(3) “prohibits the trial
9 court from dismissing this lawsuit ‘for failure to prosecute in the name of the real party in
10 interest, until, after an objection, a reasonable time has been allowed for the real party in
11 interest to ratify, join or be substituted into the action.’” (See Motion at pp. 3-4). BBBSA
12 does not oppose John CD Doe’s Motion to the extent it seeks to add allegations relating to
13 Trustee Gaughan’s involvement. (See proposed Second Amended Complaint at ¶¶ 1, 2, 9,
14 36, 40, 43, 78, 79). However, BBBSA opposes all other redlined and non-redlined
15 amendments contained in the proposed Second Amended Complaint on two grounds: (1)
16 John CD Doe did not seek permission from the Court to add any additional facts, allegations,
17 claims or causes of action, and (2) undue delay. (See *Id.* at ¶¶ 16, 26, 27, 28, 29, 37, 38, 39,
18 41, 42, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 73, 74, 76, 77, 80,
19 81, 83, 84, 85, 86, 89, 94, 101, 102, 103, 107, 109, 111, 112, 113, 116, 120, 121, 122, 123,
20 125, 126, 127, 130, 132, 133, 134, 135, 137).

21 In his Motion, John CD Doe does not assert any legal basis to support being permitted
22 to add allegations regarding BBBSA’s involvement in setting BBBSA’s “[s]tandards for
23 the practice and operation of a Big Brothers and/or Big Sisters Agency” and BBBSA’s role
24 in overseeing BBBSA to ensure its operation in conformance to “the requirements of the
25 BB/BBA [s]tandards, rules and regulation.” (See *Id.* at ¶¶ 26-29) (internal citations omitted).
26 Nor does he assert any legal basis to add an entirely new cause of action. Therefore, his
27 Motion fails as to all new factual allegations that are unrelated to Trustee Gaughan’s
28 substitution as Plaintiff and/or the party names that change as a result of her involvement.

Furthermore, the Court should deny John CD Doe’s effort to sneak into the Second Amended Complaint new factual allegations and a new cause of action not addressed in his Motion based on undue delay. “Denial of a motion to amend is not an abuse of discretion where there has been undue delay in seeking the amendment.” *Gulf Homes, Inc. v. Goubeaux*, 136 Ariz. 33, 38, 664 P.2d 183, 188 (1983) (upholding the trial court’s denial of a party’s motion for leave to amend his complaint where the party “waited eight months before seeking to amend his complaint to introduce a new theory of recovery”); see *Matter of Torstenson's Est.*, 125 Ariz. 373, 377, 609 P.2d 1073, 1077 (Ct. App. 1980) (holding superior court did not abuse its discretion in denying motion to amend because “[n]othing in the record indicates any compelling reason for the delay” where the moving party had notice of the defects in their petition almost two years before they filed their motion for leave to amend); see *Bishop v. State, Dep’t of Corr.*, 172 Ariz. 472, 475, 837 P.2d 1207, 1210 (Ct. App. 1992) (upholding the trial court’s denial of the plaintiff’s motion to amend her complaint when the motion to amend was filed “more than two years after filing her original complaint and only a few months before the date set for trial.”). Here, the factual allegations and the new cause of action (a second claim for negligence) John CD Doe seeks to add in the Second Amended Complaint are based on documents that were produced with Defendants’ Initial Disclosure Statements back in October 20, 2023. However, John CD Doe does not provide any justification for the delay in amending. Therefore, if his Motion is not denied for the reasons set forth in Sections II(A) and/or (B) above, then it should be granted only with respect to those amendments that reflect Trustee Gaughan’s substitution as Plaintiff and that correct the party names that change as a result of her involvement, and denied in all other respects.

III. CONCLUSION

For the reasons set forth herein, BBBSA respectfully requests the Court deny John CD Doe’s Motion on the basis that his motion was previously denied, that it fails to comply with Ariz.R.Civ.P. 15(a)(4), that he failed to properly seek leave of Court to amend the substance of his Complaint and that he exhibited undue delay in bringing the Motion. In the event the

1 Court finds that the Motion should not be denied on those grounds, then BBBSA requests:
2 (1) that the Motion be granted **only** as to those amendments that reflect the trustee and real
3 party in interest's substitution as Plaintiff and that correct the party names that change as a
4 result of her involvement; (2) that it be denied in all other respects; and (3) that this Court
5 require John CD Doe to prepare a new proposed Second Amended Complaint that complies
6 with the Court's Order on the Motion and that fully complies with Ariz.R.Civ.P. 15(a)(4).

7
8 DATED this 8th day of August, 2025.

9 BERKE LAW FIRM, PLLC

10 By /s/ Lori V. Berke

11 Lori V. Berke

12 Anelisa Benavides

13 *Attorneys for Defendant Big Brothers Big Sisters of America*

14 The foregoing document was e-filed this
15 8th day of August 2025, and a copy
e-served via AZTurboCourt and e-mailed to:

16 Robert E. Pastor
17 Montoya, Lucero & Pastor, P.A.
18 3200 N. Central Ave., Suite 2550
Phoenix, AZ 85012
pastor@mlpattorneys.com

19 David L. Abney
20 Ahwatukee Legal Office, P.C.
21 P.O. Box 50351
Phoenix, AZ 85076
abneymaturin@aol.com

22 Michael S. Daoudi
23 Law Offices of Michael S. Daoudi, PC
24 346 Park Street, Suite 120
Birmingham, Michigan 48009
25 (248) 220-4377
msd@msd4law.com

26 *Attorneys for Plaintiff*

27 John O'Neal
28 Anthony F. Pusateri
Jeffrey D. Gardner

Quarles & Brady LLP
One Renaissance Square
Two North Central Avenue, Suite 600
Phoenix, AZ 85004-2322

John.ONeal@quarles.com
Anthony.Pusateri@quarles.com
Jeff.Gardner@quarles.com

*Attorneys for Defendant Big Brothers Big Sisters
Of Central Arizona*

By /s/ Anelisa Benavides