

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF ARIZONA

Nancy S. Berent v. City of Surprise, et al.

Nancy S. Berent v. City of Surprise, No. CV-25-02870-PHX-MTL (D. Ariz. Apr. 14, 2026) · No. CV-25-02870-PHX-MTL · Decided April 14, 2026

SUMMARY

The United States District Court for the District of Arizona denied Nancy S. Berent’s motion for reconsideration of the dismissal of her original complaint. The court screened her amended complaint under 28 U.S.C. § 1915(e)(2), dismissed newly added claims and defendants outside the scope of leave to amend, and found that the remaining civil rights, ADA, and fraud-on-the-court claims were not cognizable or adequately pleaded. The court also denied her motion for a temporary restraining order and preliminary injunction, dismissed the amended complaint without prejudice, and closed the case.

CASE DETAILS

COURT	United States District Court for the District of Arizona
WRITING FOR THE COURT	Michael T. Liburdi
JURISDICTION	United States District Court for the District of Arizona
DECIDED	April 14, 2026
DOCKET	CV-25-02870-PHX-MTL
DISPOSITION	dismissed
PROCEDURAL POSTURE	Plaintiff moved for reconsideration of the prior dismissal of her original complaint, filed an amended complaint after receiving leave to amend, and sought a temporary restraining order and preliminary injunction. The district court denied reconsideration, screened and dismissed the amended complaint without prejudice under 28 U.S.C. § 1915(e)(2), and denied preliminary injunctive relief.
STANDARD OF REVIEW	A motion for reconsideration requires a showing of manifest error or newly discovered facts or legal authority that could not previously have been presented with reasonable diligence. On screening under 28 U.S.C. § 1915(e)(2), the court must dismiss claims that are frivolous, malicious, fail to state a claim, or seek monetary relief from an immune defendant. A preliminary injunction or temporary restraining order requires a likelihood of success on the merits, among other Winter factors.

PRECEDENTIAL VALUE	unpublished district court order; persuasive but not controlling precedent
PARTIES	Nancy S. Berent v. City of Surprise, et al.

TOPICS

[motion for reconsideration](#)
[injunctions](#)
[pleadings](#)
[section 1983](#)
[ada / disability](#)

PRACTICE AREAS

[civil procedure](#)
[civil rights](#)
[constitutional law](#)
[municipal law](#)
[remedies](#)
[ada / disability](#)

QUESTIONS PRESENTED

1. Whether Plaintiff's motion for reconsideration should be granted based on alleged newly discovered facts, manifest errors of law, or extraordinary circumstances.
2. Whether Plaintiff's amended complaint could add claims and defendants beyond the scope of the court's prior leave to amend.
3. Whether the remaining civil-rights claims stated cognizable claims under 42 U.S.C. §§ 1983 and 1985.
4. Whether Plaintiff stated claims for violations of equal protection, substantive due process, Title II of the Americans with Disabilities Act, or fraud upon the court.
5. Whether Plaintiff was entitled to a temporary restraining order or preliminary injunction.

HOLDINGS

1. The motion for reconsideration was denied because it was untimely and, even when considered on the merits, Plaintiff did not show newly discovered facts unavailable through reasonable diligence, manifest error, or other grounds warranting reconsideration.
2. Plaintiff could not use the amended complaint to add new causes of action or defendants beyond the limited leave granted to cure deficiencies in the original complaint.
3. The amended complaint failed to state a class-of-one equal protection claim because it did not adequately allege that Plaintiff and the alleged comparators were similarly situated or subject to the same ordinance and conduct.
4. The amended complaint failed to state a substantive due process claim based on zoning disputes, alleged property encroachments, nonenforcement of ordinances, or alleged fire-related danger.
5. Plaintiff failed to state a Title II ADA claim because she did not allege that the challenged governmental conduct occurred by reason of her disability.
6. Plaintiff failed to state a cognizable independent claim for fraud upon the court because she did not seek relief from a court order or judgment allegedly induced by fraud.
7. The motion for a temporary restraining order and preliminary injunction was denied because Plaintiff failed to show a likelihood of success on the merits.

KEY QUOTATIONS

“Motions for reconsideration are denied “absent a showing of manifest error or a showing of new facts or legal authority that could not have been brought to its attention earlier with reasonable diligence.”” (at 1)

“A pleading must contain a “short and plain statement of the claim showing that the pleader is entitled to relief.”” (at 8)

“While Rule 8 does not demand detailed factual allegations, “it demands more than an unadorned, the-defendant-unlawfully-harmed-me accusation.”” (at 8)

“Because the Court has already afforded Plaintiff an opportunity to cure the defects in her complaint, and Plaintiff does not request leave to amend her complaint again, the Court will dismiss Plaintiff’s Amended Complaint (Doc. 41) without prejudice.” (at 13)

FACTUAL BACKGROUND

Plaintiff's claims arose from alleged selective enforcement of municipal ordinances, disputes involving neighboring property, a driveway extension, a fire-hydrant obstruction, zoning and code-enforcement matters, and alleged governmental failures to protect or assist her. Her original complaint was dismissed for failure to provide fair notice and sufficiently specific allegations against the defendants. In the amended complaint, Plaintiff asserted thirty-one claims against thirty-one defendants, including civil-rights, ADA, and fraud-on-the-court claims, while adding claims and defendants beyond the scope of the court's limited leave to amend.

PROCEDURAL HISTORY

The court dismissed Plaintiff's original complaint under 28 U.S.C. § 1915(e)(2) and granted limited leave to amend to cure identified deficiencies. Plaintiff then moved for reconsideration, filed an amended complaint adding twenty-four defendants and fourteen claims, and sought emergency injunctive relief. The court denied reconsideration, dismissed claims and defendants that exceeded the scope of the leave to amend, concluded that the remaining claims failed to satisfy Rule 8 and applicable substantive standards, denied the temporary restraining order and preliminary injunction, and closed the case.

DISPOSITION

dismissed

CASES CITED

- Lerner & Rowe PC v. Brown Engstrand & Shelly LLC, 684 F. Supp. 3d 953, 955 (D. Ariz. 2023)
- Kona Enters., Inc. v. Est. of Bishop, 229 F.3d 877, 890 (9th Cir. 2000)
- Wyle Prof'l Corp. v. Texaco, Inc., 764 F.2d 604, 609 (9th Cir. 1985)
- Hess v. Centurion Healthcare, No. CV-22-01864-PHX-SPL, 2024 WL 4329673, at *2 (D. Ariz. Sept. 12, 2024)
- Riehle v. Bank of Am., N.A., No. CV-12-0051-PHX-NVW, 2013 WL 1694442, at *2 (D. Ariz. Apr. 18, 2013)
- Ashcroft v. Iqbal, 556 U.S. 662, 678-81 (2009)

- Erickson v. Pardus, 551 U.S. 89, 94 (2007)
- Hebbe v. Pliler, 627 F.3d 338, 342 (9th Cir. 2010)
- Lopez v. Smith, 203 F.3d 1122, 1127-29 (9th Cir. 2000) (en banc)
- Cuaglott v. City of Mesa, No. CV-24-02970-PHX-SHD, 2025 WL 1918541, at *3 (D. Ariz. July 11, 2025)
- Lacey v. Maricopa Cty., 693 F.3d 896, 935 (9th Cir. 2012)
- Dunbar v. City of Riverside, No. EDCV 13-847-JGB (SPx)
- Great Am. Fed. Sav. & Loan Ass’n v. Novotny, 442 U.S. 366, 372 (1979)
- Village of Willowbrook v. Olech, 528 U.S. 562, 564 (2000)
- Barroca v. Hayward Area Recreation and Parks District, No. 25-cv-00440-EMC, 2026 WL 497399, at *7 (Feb. 23, 2026)
- Nordlinger v. Hahn, 505 U.S. 1, 10 (1992)
- Arroyo Vista Partners v. Cty. of Santa Barbara, 732 F. Supp. 1046, 1053 (C.D. Cal. 1990)
- Sinaloa Lake Owners Ass’n v. City of Simi Valley, 882 F.2d 1398, 1405 (9th Cir. 1989)
- Doody v. Sinaloa Lake Owners Ass’n, Inc., 494 U.S. 1016 (1990)
- Ruckelhaus v. Monsanto Co., 467 U.S. 986, 1001 (1984)
- Fidelity Nat. Title Ins. Co. v. Pima Cty., 171 Ariz. 427, 429 (App. 1992)
- DeShaney v. Winnebago Cnty. Dep’t of Soc. Servs., 489 U.S. 189, 195 (1989)
- Martinez v. City of Clovis, 943 F.3d 1260, 1271 (9th Cir. 2019)
- Lovell v. Chandler, 303 F.3d 1039, 1052 (9th Cir. 2002)
- In re Intermagnetics America, Inc., 926 F.2d 912, 916-17 (9th Cir. 1991)
- Coultas v. Payne, No. 3:11-cv-00045-AC, 2016 WL 740421, at *4 (D. Or. Feb. 24, 2016)
- Kougasian v. TMSL, Inc., 359 F.3d 1136, 1141 (9th Cir. 2004)
- Edwards v. Edwards, CV 23-00552, 2023 WL 3010158, at *4 (C.D. Cal. Apr. 19, 2023)
- Winter v. Natural Res. Def. Council, Inc., 555 U.S. 7, 21 (2008)
- Stuhlberg Int’l Sales Co. v. John D. Brush & Co., 240 F.3d 832, 839 n.7 (9th Cir. 2001)

OPINION

Berent

PER CURIAM.

1 WO 2 3 4 5

6 IN THE UNITED STATES DISTRICT COURT

7 FOR THE DISTRICT OF ARIZONA

8 9 Nancy S Berent, No. CV-25-02870-PHX-MTL 10 Plaintiff, ORDER 11 v. 12 City of Surprise,
et al., 13 Defendants. 14 15 Pending before the Court are Plaintiff’s Motion for Reconsideration
(Doc. 40) and 16 Plaintiff’s Amended Complaint (Doc. 41).

17 I. MOTION FOR RECONSIDERATION

18 A. Background 19 Plaintiff filed a Motion for Reconsideration (Doc. 40), moving the Court to
20 reconsider and vacate its prior Order (Doc. 39). On December 5, 2025, the Court dismissed 21

Plaintiff's Complaint (Doc. 1) pursuant to 28 U.S.C. § 1915(e)(2). (Doc. 33.) On December 22, 2025, the Court struck numerous notices filed by Plaintiff and extended the deadline for Plaintiff to file her Amended Complaint (Doc. 39.) On January 14, 2026, Plaintiff filed a Motion for Reconsideration (Doc. 40). The Motion asks the Court to reconsider its Order issued on December 15, 2026. (Id. at 1.) The Motion, however, states that it is challenging the Court's "[O]rder of Dismissal," and the Motion challenges the Court's analysis of her claims. (Id.) The Court will therefore analyze her Motion as asking the Court to reconsider the Court's Order dismissing her original Complaint (Doc. 33). 1 Plaintiff's Motion for Reconsideration is untimely. "Absent good cause shown, any 2 motion for reconsideration shall be filed no later than fourteen (14) days after the date of 3 the filing of the Order that is the subject of the motion." LRCiv 7.2(g). Whether Plaintiff's 4 Motion is construed as challenging either of the Court's prior Orders, she filed it more than 5 fourteen days after those Orders issued. The untimeliness of her Motion is grounds for its 6 denial, but for the benefit of Plaintiff, the Court will consider her Motion as if it were timely 7 filed. 8 B. Legal Standard 9 Motions for reconsideration are denied "absent a showing of manifest error or a 10 showing of new facts or legal authority that could not have been brought to its attention 11 earlier with reasonable diligence." LRCiv 7.2(g). Motions for reconsideration should be 12 granted in only rare circumstances, *Lerner & Rowe PC v. Brown Engstrand & Shelly LLC*, 13 684 F. Supp. 3d 953, 955 (D. Ariz. 2023), and they should not be used to present evidence 14 for the first time when the evidence could have been raised earlier. *Kona Enters., Inc. v. 15 Est. of Bishop*, 229 F.3d 877, 890 (9th Cir. 2000). 16 C. Discussion 17 Plaintiff moves to vacate the order dismissing her original Complaint based on 18 "newly discovered evidence," "manifest errors of law in the prior Order," and 19 "extraordinary circumstances." (Doc. 40 at 1-2.) The Court will deny the motion (Doc. 40). 20 1. New Facts 21 Plaintiff makes no showing that the new facts she raises were previously 22 undiscoverable through the exercise of reasonable diligence. The first piece of evidence is 23 an April 26, 2017, email from former City Attorney Robert Wingo sent to the Surprise 24 Police Chief, Fire Chief, and City Manager stating, "Please do not respond further to this 25 individual unless it goes through legal. She retained attorney's and filed a Notice of Claim 26 last year and it is imperative that we not take some action... which would extend or waive 27 the statute of limitations in the matter." (Doc. 40 at 4 (emphasis in original).) Plaintiff 28 maintains only that the "email chain [was] previously withheld from Plaintiff and this 1 Court" and that it was "actively suppressed." (Id. at 4, 8.) Plaintiff does not provide the 2 Court with a copy of the email or the date that she discovered the email. Because Plaintiff 3 has not shown that the email "was newly discovered or unknown to it" and that the moving 4 party "could not with reasonable diligence have discovered and produced such evidence," 5 the Court finds that the evidence is not a basis for reconsideration of its prior order. *Wyle 6 Prof'l Corp. v. Texaco, Inc.*, 764 F.2d 604, 609 (9th Cir. 1985); see LRCiv 7.2(g). 7 The second set of facts Plaintiff raises is alleged misconduct relating to an 8 arbitration hearing that took place in December 2022. (Doc. 40 at 5.) Again, Plaintiff 9 provides

almost no explanation as to how this information was previously undiscoverable. 10 She relies on her statement that this information was “actively suppressed. (Id. at 8.) Her 11 only elaboration is that documents showing clerical errors made by the Maricopa County 12 Clerk’s Office were “withheld . . . for over three years, releasing them in July 2025—after 13 this federal case was dismissed.” (Id. at 5-6.) But Plaintiff filed her complaint in August 14 2025, one month after she claims the documents were released to her. (Doc. 1.) Since 15 Plaintiff does not adequately explain why the evidence was undiscoverable prior to filing 16 this action, the Court finds that Plaintiff has failed to show that these facts are new, so they 17 are not a basis for reconsideration. See Wyle, 764 F.2d at 609. 18 Plaintiff alleges that a third piece of evidence, the Maricopa County Sheriff’s 19 Office’s Internal Affairs Report, is being unlawfully withheld. (Doc. 40 at 6.) A motion for 20 reconsideration is an inappropriate vehicle to obtain facts from the Maricopa County 21 Sheriff’s Office. Compare LRCiv 7.2(g) with Fed. R. Civ. P. 26, 45. Rather, Plaintiff must 22 show the Court new facts or legal authority pursuant to Local Rule of Civil Procedure 23 7.2(g). She has not done so here. 24 The final new fact raised by Plaintiff is that her homeowner’s association 25 management company sent a letter, “[w]ithin days of this Court’s dismissal,” that “cited a 26 paint color that had been explicitly approved by the previous HOA management.” (Doc. 40 27 at 7.) If Plaintiff believes she is entitled to relief based on events that occurred after the 28 ruling, the appropriate course was to include that in her Amended Complaint (Doc. 41). 1 See Hess v. Centurion Healthcare, No. CV-22-01864-PHX-SPL, 2024 WL 4329673, at *2 2 (D. Ariz. Sept. 12, 2024) (finding that “arguments that events that occurred after [the 3 motion at issue] entitle [plaintiff] to reconsideration . . . are improper” because “the proper 4 recourse was to file a new Motion”). The management company’s alleged conduct is not a 5 basis for reconsideration. The Court therefore finds that Plaintiff presents no new facts 6 entitling her to the Court’s reconsideration of its order dismissing the Complaint (Doc. 1). 7 2. Manifest Error 8 Plaintiff argues that the Court’s prior order contains manifest errors of law. (Doc. 40 9 at 9-11.) Plaintiff asserts that the Court failed to take into account certain legal standards 10 that govern her claims. (Id.) But those legal standards were not the basis of the Court’s 11 prior order. Rather, the Court’s dismissal of Plaintiff’s Complaint was based on Federal 12 Rule of Civil Procedure 8(a) (2), which requires a party to provide fair notice of the claims 13 against each Defendant with requisite specificity. (Doc. 33 at 6-9.) See Riehle v. Bank of 14 Am., N.A., No. CV-12-0051-PHX-NVW, 2013 WL 1694442, at *2 (D. Ariz. Apr. 18, 15 2013). The Court dismissed Defendants that were judicial officers and non-jural entities. 16 (Doc. 33 at 6-7.) With respect to the remaining Defendants, the Court determined that 17 Plaintiff “d[id] not raise particular enough allegations as to any of them.” (Id. at 7-8.) 18 Plaintiff does not mention Rule of Civil Procedure 8(a)(2), so she has not shown 19 that the Court has committed a “manifest error” in its interpretation or application of the 20 law that the challenged ruling was based on. Moreover, the facts that Plaintiff relies upon 21 to demonstrate the Court’s purported manifest errors of law are the same facts that this 22 Court has already determined do not constitute new evidence. (Doc. 40 at 9-11.) The Court

23 finds that Plaintiff has not demonstrated a manifest error, so the Court will deny Plaintiffs' 24 Motion for Reconsideration (Doc. 40). See LRCiv 7.2(g).

25 II. SCREENING PER 28 U.S.C. § 1915(e)(2)

26 A. Background 27 Pursuant to the Court's order dismissing Plaintiff's Complaint and directing
28 Plaintiff to cure the identified deficiencies (Doc. 33), Plaintiff filed an Amended Complaint 1
(Doc. 41). From what the Court can discern, Plaintiff amended her Complaint to include 2 an
additional twenty-four defendants and fourteen claims. (Id.) Those defendants and 3 claims were
never raised in Plaintiff's first complaint. (Doc. 1.) In total, the Amended 4 Complaint asserts
thirty-one claims against thirty-one defendants. 5 B. Legal Standard 6 The Court may screen
complaints brought in forma pauperis. 28 U.S.C. 7 § 1915(e)(2). The Court must dismiss an action
if it is frivolous or malicious, fails to state 8 a claim on which relief may be granted, or seeks
monetary relief against a defendant who 9 is immune from such relief. Id. § 1915(e)(2)(B). 10 A
pleading must contain a "short and plain statement of the claim showing that the 11 pleader is
entitled to relief." Fed. R. Civ. P. 8(a)(2). While Rule 8 does not demand detailed 12 factual
allegations, "it demands more than an unadorned, the-defendant-unlawfully- 13 harmed-me
accusation." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). "Threadbare recitals 14 of the elements
of a cause of action, supported by mere conclusory statements, do not 15 suffice." Id. 16 Further,
"a complaint must contain sufficient factual matter, accepted as true, to 17 state a claim to relief
that is plausible on its face." Id (citation modified). A claim is 18 plausible "when the plaintiff
pleads factual content that allows the court to draw the 19 reasonable inference that the defendant
is liable for the misconduct alleged." Id. 20 "Determining whether a complaint states a plausible
claim for relief [is] . . . a context- 21 specific task that requires the reviewing court to draw on its
judicial experience and 22 common sense." Id. at 679. Thus, although a plaintiff's specific factual
allegations may be 23 consistent with a claim, a court must assess whether there are other "more
likely" 24 explanations for a defendant's conduct. Id. at 681. 25 "A document filed pro se is to be
liberally construed, and a pro se complaint, 26 however inartfully pleaded, must be held to less
stringent standards than formal pleadings 27 drafted by lawyers." *Erickson v. Pardus*, 551 U.S. 89,
94 (2007) (internal citations 28 omitted); see also *Hebbe v. Pliler*, 627 F.3d 338, 342 (9th Cir.
2010) (directing courts to 1 "continue to construe pro se filings liberally"). If the Court determines
that a pleading could 2 be cured by the allegation of other facts, a pro se litigant is entitled to an
opportunity to 3 amend a complaint before dismissal of the action. See *Lopez v. Smith*, 203 F.3d
1122, 4 1127-29 (9th Cir. 2000) (en banc). 5 C. Discussion 6 The Court will dismiss newly raised
claims and defendants unless they were 7 asserted to cure the identified deficiencies in Plaintiff's
original complaint. When a court 8 grants leave to amend, a plaintiff may not add new causes of
action beyond the scope of 9 that leave. See *Cuagloti v. City of Mesa*, No. CV-24-02970-PHX-
SHD, 2025 WL 10 1918541, at *3 (D. Ariz. July 11, 2025) ("Courts in this circuit generally hold
that when a 11 court grants leave to amend with specified limitations, a plaintiff does not have the
freedom 12 to make amendments beyond the scope of that leave." (citation omitted)). When this

Court 13 granted leave to Plaintiff to file an amended complaint, it granted leave for Plaintiff to 14 assert only “the balance of her claims” and only to the extent that “she [could] cure the 15 defects identified in th[e] order.” (Doc. 33 at 14.) This Court’s order was not an invitation 16 to add new claims or defendants. It allowed Plaintiff only to revise existing allegations and 17 to correct the deficiencies identified in the Court’s order. 18 Accordingly, the Court dismisses all claims not raised in Plaintiff’s original 19 Complaint, which include Counts 6-7, 10-21. (Compare Doc. 1 at 3 with Doc. 41 at 24-45.) 20 The remaining claims include Counts 1-5 (Civil Rights Violations), Count 8 (Americans 21 with Disabilities Act Violations), and Count 9 (Fraud Upon the Court). (Doc. 41 at 24-34.) 22 1. Counts 1-5: Civil Rights Violations 23 The first five counts in Plaintiff’s Amended Complaint allege civil rights violations 24 and are brought pursuant to 42 U.S.C. §§ 1983, 1985. (Doc. 41 at 24-30.) Counts 1 and 5 25 allege Defendants conspired to interfere with Plaintiff’s civil rights. (Id.) Count 4 alleges 26 Defendants failed to intervene to prevent their subordinate’s constitutional violations. (Id. 27 at 28-29.) Counts 2 and 3 allege constitutional violations: Equal Protection and Substantive 28 Due Process, respectively. (Id. at 25-27.) Because Sections 1983 and 1985(3) supply no 1 substantive rights themselves, Plaintiff’s ability to maintain any of her civil rights claims 2 depends on the veracity of Counts 2 and 3, the only claims that allege underlying 3 constitutional violations. See *Lacey v. Maricopa Cty.*, 693 F.3d 896, 935 (9th Cir. 2012) 4 (stating “there must always be an underlying constitutional violation” for a section 1983 5 violation); *Dunbar v. City of Riverside*, No. EDCV 13-847-JGB (SPx) (citing *Great Am. 6 Fed. Sav. & Loan Ass’n v. Novotny*, 442 U.S. 366, 372 (1979) (“[C]onspiracy under 42 7 U.S.C. § 1985 . . . requires an underlying constitutional claim.”)). 8 i. Equal Protection 9 Count 2 alleges that “Defendants and its code enforcement officials have engaged 10 in selective enforcement of laws and ordinances against Plaintiff[] while refusing to 11 enforce the same laws against the Mroczkowskas.” (Doc. 41 at 25 (emphasis in original).) 12 Plaintiff alleges that she is “a ‘class of one’ who ha[s] been intentionally treated differently 13 from others similarly situated without any rational basis.” (Id. at 26.) Plaintiff alleges the 14 municipal defendants cited Plaintiff’s son for “minor violations,” ignored Plaintiff’s 911 15 calls, and harassed Plaintiff regarding a “paint color.” (Id.) At the same time, Plaintiff 16 alleges the municipal defendants ignored the Mroczkowska defendants’ felony trespass, 17 responded to the Mroczkowskas’ complaints, and allowed “the Mroczkowskas to maintain 18 an illegal structure.” (Id.) 19 The Amended Complaint does not clearly describe the Mroczkowska defendants’ 20 role. Plaintiff alleges Grazyna Mroczkowska is “the original title holder,” Mirosław 21 Mroczkowska is her son, and Marta Mroczkowska is her daughter-in-law. (Id. at 9.) From 22 what the Court can discern, the Mroczkowska defendants are Plaintiff’s neighbors who 23 applied for and constructed a driveway extension that Plaintiff now takes issue with. 24 Plaintiff alleges that Mirosław retitled the deed of the house to himself via a “refinancing 25 scheme [that] used fraudulently obtained equity based on the illegal driveway 26 improvement.” (Id. at 10.) A purportedly fraudulent application for the driveway extension 27 was then sent to Plaintiff’s and the Mroczkowska

defendants' home owners' association 28 and management company. (Id. at 10-11.) 1 To state a claim under a "class of one" theory, a plaintiff must allege facts showing 2 he "has been intentionally treated differently from others similarly situated and that there 3 is no rational basis for the difference in treatment." Village of Willowbrook v. Olech, 528 4 U.S. 562, 564 (2000). "At minimum, this means alleging that the same ordinance was 5 enforced against [Plaintiff] but not [the Mroczkowskas] for the same conduct." Barroca v. 6 Hayward Area Recreation and Parks District, No. 25-cv-00440-EMC, 2026 WL 497399, 7 at *7 (Feb. 23, 2026). 8 The Amended Complaint does not adequately allege that Plaintiff and the 9 Mroczkowska defendants were similarly situated. Plaintiff identifies the Mroczkowska 10 defendants as the comparators but alleges no facts establishing that they were subject to 11 the same ordinance. That the Mroczkowska defendants were title holders of adjacent 12 property does not render them similarly situated "in all relevant respects." See Nordlinger 13 v. Hahn, 505 U.S. 1, 10 (1992). The Amended Complaint alleges the municipal defendants 14 enforced ordinances against Plaintiff relating to a paint color and unspecified "minor 15 violations," while declining to enforce ordinances related to a driveway extension and an 16 illegal structure. (Doc. 41 at 26.) It is not sufficient to allege that the municipal defendants 17 "enforced certain ordinances against Plaintiff while failing to enforce different ordinances 18 against other[s] does not satisfy the similarly situated requirement." Barroca, 2026 WL 19 497399, at *7. In short, Plaintiff fails to provide a common baseline upon which the Court 20 can analyze differential treatment. Because Plaintiff does not adequately allege that the 21 Mroczkowska defendants are similarly situated, her equal protection claim fails. 22 ii. Substantive Due Process 23 Plaintiff alleges "Defendants' conduct violates Plaintiffs' fundamental right to 24 property ownership and bodily integrity protected by the Due Process Clause." (Doc. 41 25 at 26 (emphasis in original).) With respect to her right to property ownership, Plaintiff 26 alleges Defendants "allowed neighbors to encroach on Plaintiffs' setback," "refused to 27 abate a public nuisance," and "created a cloud on Plaintiffs' title." (Id. at 28 (cleaned up).) 28 With respect to her right to bodily integrity, Plaintiff alleges Defendants "allowed the 1 obstruction of a fire hydrant," "refused to enforce fire codes," and "put Plaintiff at risk of 2 fire-related injury or death." (Id. (cleaned up).) 3 Based on what the Court can tell, Plaintiff is attempting to litigate a zoning dispute, 4 as much of her allegations center around a fire hydrant and driveway extension. "In zoning 5 dispute cases, the principle of substantive due process assures property owners of the right 6 to be free from arbitrary or irrational zoning actions." Arroyo Vista Partners v. Cty. of 7 Santa Barbara, 732 F.Supp. 1046, 1053 (C.D. Cal. 1990). To establish a violation of 8 substantive due process, Plaintiff must prove that the defendants' actions were "clearly 9 arbitrary and unreasonable, having no substantial relation to the public health, safety, 10 morals, or general welfare." Sinaloa Lake Owners Ass'n v. City of Simi Valley, 882 F.2d 11 1398, 1405 (9th Cir. 1989), cert denied by Doody v. Sinaloa Lake Owners Ass'n, Inc., 494 12 U.S. 1016 (1990). The property interests protected by the Due Process Clause are defined 13 by state law. Ruckelhaus v. Monsanto Co., 467 U.S. 986, 1001 (1984).

Under Arizona law, 14 “[a] property owner has no right to either the continuing existence of zoning or to a future 15 change in zoning.” *Fidelity Nat. Title Ins. Co. v. Pima Cty.*, 171 Ariz. 427, 429 (App. 1992). 16 To the extent Plaintiff attempts to challenge Defendants’ zoning decisions, her claims 17 under the Due Process Clause fail. 18 The balance of Plaintiff’s allegations are aimed at the government’s purported 19 failure to regulate her neighbors. Those allegations are improperly brought under the Due 20 Process Clause. “[N]othing in the language of the Due Process Clause itself requires the 21 State to protect the life, liberty, and property of its citizens against invasion by private 22 actors.” *DeShaney v. Winnebago Cnty. Dep’t of Soc. Servs.*, 489 U.S. 189, 195 (1989). The 23 Due Process Clause “is a limitation on state action and is not a ‘guarantee of certain 24 minimal levels of safety and security.’” *Maritnez v. City of Clovis*, 943 F.3d 1260, 1271 25 (9th Cir. 2019). 26 The “state-created danger” exception is an exception to the general rule that the Due 27 Process Clause may not be invoked based on a government’s failure to regulate private 28 actors. *Id.* Plaintiff invokes that exception under her claimed right to “bodily integrity,” as 1 she describes that right as “includ[ing] freedom from government-created danger.” 2 (Doc. 41 at 28.) The Court will therefore assess this claim under the “state-created danger” 3 exception. That exception subjects the government to liability when it “affirmatively 4 places” a plaintiff in danger by acting with “deliberate indifference” to a “known or obvious 5 danger.” *Martinez*, 943 F.3d at 1271. To prevail, Plaintiff must demonstrate that (1) she 6 was exposed to an actual, particularized danger that she would not otherwise have faced, 7 (2) she suffered a foreseeable injury, and (3) the government was deliberately indifferent 8 to the known danger. *Id.* Plaintiff merely asserts that “Defendants have created a dangerous 9 condition,” (Doc. 41 at 28), but she does not allege that she suffered an injury. The 10 “state-created danger” exception does not apply, so Plaintiff’s claim that Defendants 11 infringed her right to bodily integrity may not be brought under the Due Process Clause. 12 Plaintiff does not assert a colorable substantive due process claim, and as explained 13 above, she does not maintain a claim under the Equal Protection Clause. She therefore fails 14 to assert an underlying constitutional violation, a necessary element of all her claims 15 brought under 42 U.S.C. §§ 1983, 1985. Counts 1 through 5 of the Amended Complaint 16 do not state cognizable claims. 17 2. Count 8: Americans with Disabilities Act 18 Plaintiff brings a claim pursuant to the Americans with Disabilities Act, 42 U.S.C. 19 § 12132. (Doc. 41 at 32-33.) She claims, “Defendants City of Surprise and MSCO” have 20 “denied Plaintiff the benefits of their services, programs, and activities by: (a) refusing to 21 provide police protection; (b) refusing to enforce fire codes, (c) creating barriers to 22 accessing city services, and (d) discriminating in emergency response.” (*Id.* (cleaned up).) 23 She takes specific issue with “[t]he City’s refusal to abate he fire hydrant obstruction,” 24 which puts her “at greater risk in a fire emergency.” (*Id.* at 33.) 25 Title II of the Americans with Disabilities Act provides that: 26 No qualified individual with a disability shall, by reason of such disability, be excluded from participation in or denied the benefits of the services, 27 programs, or activities of a public entity, or be subjected to discrimination by 28 any such entity. 1 42 U.S.C. § 12132. “To establish a

violation of Title II of the ADA, a plaintiff must show that (1) she is a qualified individual with a disability; (2) she was excluded from participation in or otherwise discriminated against with regard to a public entity's services, programs, or activities, and (3) such exclusion or discrimination was by reason of her disability." *Lovell v. Chandler*, 303 F.3d 1039, 1052 (9th Cir. 2002). Plaintiff does not allege that any discriminatory action was taken because of her disability, so she fails to state a cognizable claim under the ADA. 3. Count 9: Fraud Upon the Court Plaintiff alleges a claim for fraud upon the court, arguing that Defendants "have committed fraud upon the Maricopa County Superior Court and this Court by: (a) concealing the fraudulent 2015 application; (b) presenting falsified documents to the court; (c) orchestrating a sham arbitration; (d) making false statements to judges; and (e) suborning perjury." (Doc. 41 at 33 (cleaned up).) Plaintiff then alleges that Defendants "induced the court to accept jurisdiction based on falsified documents," "corrupted the arbitration process," and "presented false evidence to multiple judges." (Id. at 33-34 (cleaned up).) "[F]raud upon the court includes both attempts to subvert the integrity of the court and fraud by an officer of the court." *In re Intermagnetics America, Inc.*, 926 F.2d 912, 916 (9th Cir. 1991). The Court should base its analysis "not so much in terms of whether the alleged fraud prejudiced the opposing party but more in terms of whether the alleged fraud harms the integrity of the judicial process." Id. at 917. Importantly, fraud upon the court "is a theory pursuant to which a party may seek relief from a judgment or court order induced on the basis of the opposing party's fraud." *Coultas v. Payne*, No. 3:11-cv-00045-AC, 2016 WL 740421, at *4 (D. Or. Feb. 24, 2016). In certain circumstances, this can apply to state court judgments. *Kougasian v. TMSL, Inc.*, 263 F.3d 1136, 1141 (9th Cir. 2004). Plaintiff does not reference or request relief from a court order or judgment, so she fails to state a cognizable claim for fraud on the court. See *Edwards v. Edwards*, CV 23-00552, 2023 WL 3010158, at *4 (C.D. Cal. Apr. 19, 2023) 1 (finding that the plaintiff failed to state a claim for fraud on the court because the plaintiff 2 "[did] not request relief from a state court order or judgment.").

3 III. MOTION FOR TEMPORARY RESTRAINING ORDER AND

4 PRELIMINARY INJUNCTION

5 On March 18, 2026, Plaintiff filed an Emergency Motion for Temporary Restraining 6 Order and Preliminary Injunction (Doc. 42). To prevail on such a motion, a plaintiff must 7 demonstrate, among other things, that they are likely to succeed on the merits of their 8 claims. See *Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. 7, 21 (2008); see also 9 *Stuhlbarg Int'l Sales Co. v. John D. Brush & Co.*, 240 F.3d 832, 839 n.7 (9th Cir. 2001) 10 (holding that the standard for a temporary restraining order is the same as that for a 11 preliminary injunction). As stated above, the Court has determined that Plaintiff has not 12 stated any colorable claim, so the Court finds that Plaintiff is not likely to succeed on the 13 merits of her claims. Plaintiff has not demonstrated that she is entitled to relief under 14 *Winter*, so the Court must deny her motion (Doc. 42).

15 IV. CONCLUSION

16 While the Court appreciates Plaintiff is proceeding pro se and construes Plaintiff's 17
complaint liberally, the Court must dismiss all of Plaintiff's claims. They do not satisfy the 18
pleading standards under Federal Rule of Civil Procedure 8. Because the Court has already 19
afforded Plaintiff an opportunity to cure the defects in her complaint, and Plaintiff does not 20
request leave to amend her complaint again, the Court will dismiss Plaintiff's Amended 21
Complaint (Doc. 41) without prejudice. See 28 U.S.C. § 1915(e)(2). 22 Accordingly, 23 IT IS
ORDERED that Plaintiff's Motion for Reconsideration (Doc. 40) is 24 DENIED. 25 IT IS
FURTHER ORDERED that Plaintiff's Motion for Temporary Restraining 26 Order and
Preliminary Injunction (Doc. 42) is DENIED. 27 IT IS FURTHER ORDERED dismissing
Plaintiff's Amended Complaint 28 (Doc. 41) without prejudice. 1 IT IS FINALLY ORDERED that
the Clerk of Court is directed to dismiss this action and close this case. 3 Dated this 14th day of
April, 2026. 4 6 Michael T. Liburdi 7 United States District Judge 8 9 10 11 12 13 14 15 16 17 18
19 20 21 22 23 24 25 26 27 28 -13-