

1 Pavneet Singh Uppal, SBN 016805
2 Lori A. Guner, SBN 031646
3 FISHER & PHILLIPS LLP
4 3200 N. Central Avenue, Suite 805
5 Phoenix, Arizona 85012-2407
6 Telephone: (602) 281-3400
7 Fax: (602) 281-3401
8 puppal@fisherphillips.com
9 lguner@fisherphillips.com
10 Attorneys for Defendant

8 **UNITED STATES DISTRICT COURT**
9 **DISTRICT OF ARIZONA**

10 Dawn Jett,

11 Plaintiff,

12 v.

13 Maricopa County,

14 Defendant.

No. CV-19-02735-PHX-DLR

**DEFENDANT’S MOTION TO
STRIKE PLAINTIFF’S
VERIFIED COMPLAINT**

FISHER & PHILLIPS LLP
3200 N. Central Avenue, Suite 805
Phoenix, Arizona 85012-2407
(602) 281-3400

17 Pursuant to Federal Rule of Civil Procedure 12(f) and Local Rule 7.2(m),
18 Defendant Maricopa County (“Defendant” or “the County”), respectfully requests that
19 the Court: (1) strike paragraphs 17 through 28 and the phrase “once again” in
20 paragraph 30 of Plaintiff’s Verified Complaint (Doc. 10); (2) direct the Clerk of Court to
21 seal the Verified Complaint; and (3) order the Plaintiff to re-file the Verified Complaint
22 with paragraph 17 through 28 and the phrase “once again” in paragraph 30 omitted. In
23 short, Plaintiff has improperly included attorney-client privileged information in the
24 above-referenced paragraphs. The privilege belongs to Maricopa County, which does not
25 waive its privilege. Therefore, Plaintiff is not authorized to disclose the subject
26 information.

27 “Unless made at trial, a motion to strike may be filed only if it is authorized by
28 statute or rule, such as Federal Rules of Civil Procedure 12(f), 26(g)(2) or

FISHER & PHILLIPS LLP
3200 N. Central Avenue, Suite 805
Phoenix, Arizona 85012-2407
(602) 281-3400

1 37(b)(2)(A)(iii), or if it seeks to strike any part of a filing or submission on the ground
2 that it is prohibited (or not authorized) by a statute, rule, or court order.” Local Rule
3 7.2(m). “The court may strike from a pleading . . . any redundant, immaterial,
4 impertinent, or scandalous matter.” Federal Rule of Civil Procedure 12(f).

5 The Arizona District Court has held that inadmissible materials are immaterial for
6 purposes of Rule 12(f). *See Ogundele v. Girl Scouts-Arizona Cactus Pine Council, Inc.*,
7 CV-10-1013-PHX-GMS, 2011 WL 1770784, at *9 (D. Ariz. May 10, 2011) (granting
8 motion to strike exhibit containing documents referring to settlement communications or
9 negotiations on the ground that “settlement documents are inadmissible under Rule 408,
10 and are therefore immaterial”).

11 Under A.R.S. § 12-2234(B):

12 [A]ny communication is privileged between an attorney for a . . .
13 governmental entity . . . or other similar entity or an employer and any
14 employee, agent or member of the entity or employer regarding acts or
15 omissions of or information obtained from the employee, agent or member
16 if the communication is either:

- 17 1. For the purpose of providing legal advice to the entity or employer or to
18 the employee, agent or member.
- 19 2. For the purpose of obtaining information in order to provide legal advice
20 to the entity or employer or to the employee, agent or member.

21 Similarly, under federal common law, the attorney-client privilege arises under the
22 following circumstances:

23 The attorney-client privilege protects confidential communications between
24 attorneys and clients, which are made for the purpose of giving legal
25 advice. . . . The attorney-client privilege exists where: (1) legal advice of
26 any kind is sought (2) from a professional legal adviser in his capacity as
27 such, (3) the communications relating to that purpose, (4) made in
28 confidence (5) by the client, (6) are at his instance permanently protected
(7) from disclosure by himself or by the legal adviser, (8) unless the
protection be waived. Voluntary disclosure of privileged communications
constitutes waiver of the privilege for all other communications on the
same subject.

1 *United States v. Richey*, 632 F.3d 559, 566 (9th Cir. 2011) (internal citations and
2 quotations omitted). “[A]s a general proposition, the client's ultimate motive for
3 litigation or for retention of an attorney is privileged.” *In re Grand Jury Witness*, 695
4 F.2d 359, 362 (9th Cir. 1982).

5 Here, the subject paragraphs relate to confidential communications consisting of
6 legal advice between the Plaintiff, an employee of the County at the time of the alleged
7 communications, and “County [Inhouse] Attorney Christian Hamilton.” Compl. ¶ 17.
8 These communications meet the 8-part test outlined by the Ninth Circuit in *Richey*. That
9 is, Plaintiff alleges that she sought legal advice from the County’s Inhouse Counsel in
10 her capacity as such. Compl. ¶ 18 (“During the phone call, Jeff asked [Inhouse] Counsel
11 Hamilton for clarity related to leave and wage policies with respect to exempt
12 employees, including their enforcement by the County”). The circumstances surrounding
13 the communications clearly show that they were made confidentially and in confidence
14 between the parties for the purpose of legal advice. Further, the privilege, which belongs
15 to the County, has not been waived for the purpose of legal advice by holder of the
16 privilege. The paragraphs also relate to Plaintiff’s motive for seeking legal advice from
17 inhouse counsel, and the substance and details of inhouse counsel’s communications to
18 Plaintiff regarding the same. Accordingly, the communications fall undeniably within
19 the protection of the attorney-client privilege.

20 Moreover, Plaintiff does not have the authority to waive the attorney-client
21 privilege as to the subject communications. In *Creative Tent Int'l Inc. v. Kramer*, CV-15-
22 8005-PCT-SMM, 2015 WL 4638320, at *2 (D. Ariz. Aug. 4, 2015) the Arizona District
23 Court held that plaintiff’s former chief executive officer did not have the authority to
24 disclose attorney-client privileged information in his answer and counterclaim and
25 thereby waive the privilege. As the *Kramer* Court emphasized, the privilege belonged to
26 the plaintiff, the former employer, and not to defendant, the former employee. On that
27 basis, the Court ordered that the answer and counterclaim be sealed and directed the
28

FISHER & PHILLIPS LLP
3200 N. Central Avenue, Suite 805
Phoenix, Arizona 85012-2407
(602) 281-3400

1 defendant to file a redacted version of the same with the confidential attorney-client
2 communications omitted. *Id.* at *2-3.

3 Governmental entities such as the County are also entitled to assert attorney-client
4 privilege in order to prevent disclosure of information. *State ex rel. Thomas v. Schneider*,
5 212 Ariz. 292, 296, ¶ 16, 130 P.3d 991, 995 (App. 2006) (citing *Ariz. Dep’t of Econ. Sec.*
6 *v. O’Neil*, 183 Ariz. 196, 198, 901 P.2d 1226, 1228 (App. 1995)). “[Arizona] statute
7 does not purport to exclude communications made to government attorneys that would
8 otherwise fit within the privilege.” *Id.* at ¶ 22. As such, “the Legislature . . . has extended
9 to government officials the same attorney-client privilege to which agents of private
10 entities or, in appropriate cases, private persons in specified capacities are entitled.” *Id.*
11 at ¶ 28.

12 Here, paragraphs 17 through 28 and a portion of paragraph 30 contain attorney-
13 client privileged information. The County, as a governmental entity, is entitled to assert
14 attorney-client privilege in order to prevent disclosure of such privilege. Plaintiff, as the
15 County’s former employee, does not have the authority to waive the privilege. That is,
16 the privilege belongs to the County. As in *Ogundele*, given that the information in the
17 subject paragraphs is subject to the attorney-client privilege and is therefore
18 inadmissible, it also immaterial and the paragraphs must be stricken under Federal Rule
19 of Civil Procedure 12(f).

20 Accordingly, Defendant respectfully requests that the Court order that the
21 Verified Complaint at Doc. 1 be sealed and direct the Plaintiff to file a redacted version
22 of the same with paragraphs 17 through 28 and the phrase “once again” from paragraph
23 30 omitted.

24
25
26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

RESPECTFULLY SUBMITTED this 7th day of June 2019.

FISHER & PHILLIPS LLP

By s/ Pavneet Singh Uppal

Pavneet Singh Uppal
Lori A. Guner
3200 N. Central Avenue, Suite 805
Phoenix, Arizona 85012-2407
Attorneys for Defendant

FISHER & PHILLIPS LLP
3200 N. Central Avenue, Suite 805
Phoenix, Arizona 85012-2407
(602) 281-3400

CERTIFICATE OF SERVICE

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

I hereby certify that on June 7, 2019, I electronically transmitted the attached document to the Clerk’s Office using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing to the following CM/ECF registrant(s):

Michael Zoldan
Jessica Miller
Zoldan Law Group, PLLC
14500 N. Northsight Blvd., Suite 133
Scottsdale, Arizona 85260
Attorneys for Plaintiff

s/ Sue Cole

FISHER & PHILLIPS LLP
3200 N. Central Avenue, Suite 805
Phoenix, Arizona 85012-2407
(602) 281-3400