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6 **IN THE UNITED STATES DISTRICT COURT**  
7 **FOR THE DISTRICT OF ARIZONA**  
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9 Robert D. Maguire,

10 Plaintiff,

11 v.

12 Cathleen A. Coltrell, et al.,

13 Defendants.

No. CV-14-01255-PHX-DGC

**ORDER**

14 Defendants Cathleen Coltrell and John Carmichael have filed a counterclaim for  
15 civil extortion against Plaintiff Robert Maguire, alleging violations of A.R.S. § 13-  
16 1804(6). Doc. 38 at 10. Plaintiff moves to dismiss the counterclaim pursuant to  
17 Rule 12(b)(6), asserting that it is barred by the statute of limitations. Doc. 34. The  
18 motion is fully briefed and no party seeks oral argument. The Court will grant the motion.

19 **I. Background.**

20 Defendants assert the following facts in their answer to Plaintiff's amended  
21 complaint. Doc. 38. In January 2006, Plaintiff and Coltrell began living together at a  
22 house Coltrell owned (the "Justine House"). *Id.* at 1. Plaintiff immediately began to pay  
23 Coltrell \$1,500 per month, which Coltrell used in part to retire the mortgage that  
24 encumbered the house. *Id.* Plaintiff and Coltrell agreed to a "reasonable cost-sharing  
25 aspect to the arrangement when [Plaintiff] moved into the Justine House." *Id.* at 2.

26 In 2008, Plaintiff suffered the failure of a business, and certain personal property  
27 was recorded in Coltrell's name. *Id.* In 2009, Coltrell purchased another property (the  
28 "Milton House") where both Plaintiff and Coltrell "took an active part" of negotiations

1 and renovation oversight. *Id.* While attempting to obtain financing to purchase the  
2 Milton House, a third party's legal action against Plaintiff's ex-wife damaged Plaintiff's  
3 credit score and Coltrell agreed to purchase the Milton House solely in her name. *Id.*  
4 Plaintiff contributed financially to the purchase of the Milton House. *Id.* at 3. Plaintiff  
5 claims he provided \$104,000 toward the \$160,000 down payment. *Id.* In July of 2009,  
6 Plaintiff and Coltrell moved into the Milton House following its renovation. *Id.*

7 In February of 2013, while Plaintiff was out of the country, Coltrell notified him  
8 by telephone that she had met another man, Defendant John Carmichael, and that she  
9 intended to pursue a relationship with him. *Id.* Following Plaintiff's return to Arizona,  
10 Coltrell asked Plaintiff to move out of the Milton House. *Id.* Shortly after Plaintiff  
11 moved out, Coltrell and Carmichael were married. *Id.*

12 On March 10, 2013, Coltrell received an email from Plaintiff in which she claims  
13 he accepted her settlement offer of \$25,000 to resolve all of his claims and right to  
14 payment. *Id.* at 7, 17. Coltrell paid Plaintiff the \$25,000. *Id.* at 7.

15 On April 11, 2013, Coltrell received another email from Plaintiff (the "April 2013  
16 email") demanding further payment of \$50,987.86. *Id.* at 10, 19. The April 2013 email  
17 threatened to distribute personal and private information about Coltrell unless she paid  
18 the demand by April 29, 2013. *Id.* In response, Coltrell's attorney sent Plaintiff a letter  
19 informing him that Coltrell was represented by counsel and instructing him not to contact  
20 her directly again. Doc. 40 at 24.

21 Coltrell sold the Justine House for \$412,000 in June of 2013, and the Milton  
22 House for \$800,000 in September of 2013. Doc. 38 at 4-5. In December of 2013,  
23 Plaintiff hired attorney David Carmichael on the recommendation of another attorney.  
24 Doc. 41-1 at 2. On April 1, 2014, Plaintiff's attorney sent a demand letter directly to  
25 Coltrell. Doc. 40 at 4. The letter requested an accounting of assets and expressed hope  
26 that the matter could be settled without litigation. *Id.* at 18.

27 On May 7, 2014, Plaintiff brought this action against Defendants in Maricopa  
28 County Superior Court. Doc. 1. Defendants removed the action to this Court and filed

1 their answer and counterclaims. *Id.*; Doc. 4. Plaintiff has amended his complaint once.  
2 Doc. 33. Defendants have amended their answers and counterclaims twice. Docs. 7, 38.

### 3 **II. Legal Standard.**

4 “[T]he statute of limitations defense . . . may be raised by a motion to dismiss . . .  
5 [i]f the running of the statute is apparent on the face of the complaint.” *Jablon v. Dean*  
6 *Witter & Co.*, 614 F.2d 677, 682 (9th Cir. 1980) (citing *Graham v. Taubman*, 610 F.2d  
7 821 (9th Cir. 1979)). The ““complaint cannot be dismissed unless it appears beyond  
8 doubt that the plaintiff can prove no set of facts that would establish the timeliness of the  
9 claim.”” *Hernandez v. City of El Monte*, 138 F.3d 393, 402 (9th Cir. 1998) (quoting  
10 *Supermail Cargo, Inc. v. United States*, 68 F.3d 1204, 1206 (9th Cir. 1995)).

### 11 **III. Analysis.**

12 Plaintiff asserts that Defendants’ civil extortion counterclaim was filed beyond the  
13 one-year statute of limitations in A.R.S. § 12-541(5). Doc. 34. Defendants do not  
14 dispute that a one-year limitation period applies. *See* Doc. 40. The April email, which  
15 serves as the basis of Defendants’ civil extortion claim, was sent on April 11, 2013.  
16 Doc. 38 at 10. Defendants first filed their counterclaim for civil extortion more than 14  
17 months later on June 23, 2014. Doc. 4.

18 Defendants oppose Plaintiff’s motion for two reasons: (1) Plaintiff’s violation of  
19 A.R.S. § 13-1804 was a continuing violation that should toll the statute of limitations, and  
20 (2) the Court must treat Defendants’ extortion claim as a recoupment defense that is not  
21 subject to the statute of limitations. *See* Doc. 40. These arguments are not persuasive.

22 First, Plaintiff’s actions do not support a continuing violation. The theory of  
23 continuing violations is an equitable doctrine that “prevent[s] a defendant from using its  
24 earlier conduct to avoid liability for later illegal conduct of the same sort.” *O’Loughlin v.*  
25 *Cnty. of Orange*, 229 F.3d 871, 875 (9th Cir. 2000). To establish a continuing violation,  
26 the asserting party must show a series of related acts, one or more of which falls within  
27 the limitations period. *Green v. L.A. Cnty. Superintendent of Sch.*, 883 F.2d 1472, 1480  
28 (9th Cir. 1989). A “continuing violation” is occasioned by continual unlawful acts, not

1 by continual ill effects from an original violation. *Ward v. Caulk*, 650 F.2d 1144, 1147  
2 (9th Cir. 1981). Defendants’ claim falls short of this standard.

3 Defendants assert that Plaintiff’s continuing acts of extortion are demonstrated by  
4 the following facts: (1) Plaintiff hired David Carmichael, a cousin of John Carmichael, as  
5 his attorney; (2) David Carmichael sent a demand letter to Coltrell on her anniversary;  
6 (3) David Carmichael showed a private photograph to Coltrell at her deposition in order  
7 to demonstrate Plaintiff’s knowledge of, and access to, her personal life; and (4) David  
8 Carmichael sent a letter directly to Coltrell when she was represented by counsel, and the  
9 letter made reference to the “intrusive nature of litigation.” Doc. 40 at 3-4. These  
10 litigation-related events do not allege unlawful behavior by Plaintiff, much less continual  
11 unlawful behavior. The Court concludes that the limitations period for the extortion  
12 counterclaim was not tolled by these activities. The claim is therefore barred by the one-  
13 year statute of limitations.

14 Although not raised by Plaintiff, the Court also seriously doubts that the criminal  
15 statute relied on by Defendants, A.R.S. § 13-1804(6), gives rise to a civil cause of action.  
16 Under Arizona law, “no private cause of action should be inferred based on a criminal  
17 statute where there is no indication whatsoever that the legislature intended to protect any  
18 special group by creating a private cause of action by a member of that group.” *Phoenix*  
19 *Baptist Hosp. & Med. Ctr., Inc. v. Aiken*, 877 P.2d 1345, 1350 (Ariz. App. 1994).  
20 Section 13-1804(6) contains no indication that the legislature had such intent.

21 Nor does Defendants’ civil extortion claim constitute a recoupment defense. A  
22 recoupment defense must arise from the existence of “some feature of the transaction  
23 upon which the plaintiff’s action is grounded.” *Aetna Finance Co. v. Pasquali*, 626 P.2d  
24 1103, 1105 (Ariz. App. 1981). Where a lawsuit, like this one, is based on claims such as  
25 breach of contract, the recoupment defense must “arise out of mutual obligations or  
26 covenants of the . . . transaction upon which [the] suit [is] founded.” *Id.* Defendants’  
27 civil extortion claim does not arise out of the dealings between Plaintiff and Coltrell  
28 before their relationship ended, “but is an affirmative action which exacts a penalty for an

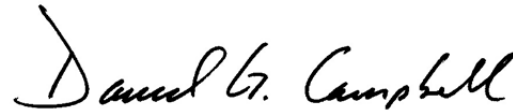
1 independent wrong.” *Id.* It therefore is not a recoupment defense. *Id.*

2 Defendants ask the Court to permit them to amend their counterclaim to allege that  
3 “Plaintiff continued his campaign of extortion by continuing to threaten Cathleen  
4 Carmichael in 2014.” Doc. 40 at 6. For reasons explained above, this amendment would  
5 not save the counterclaim. The motion to amend will therefore be denied.

6 **IT IS ORDERED**

- 7 1. Plaintiff’s motion to dismiss (Doc. 34) is **granted**.  
8 2. Defendant’s motion to amend (Doc. 40) is **denied**.

9 Dated this 4th day of February, 2015.

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14 David G. Campbell  
15 United States District Judge  
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