

1 **WO**

2
3
4
5
6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
8

9 Southwest Fair Housing Council
10 Incorporated, et al.,

No. CV-17-01743-PHX-DWL

11 Plaintiffs,

ORDER

12 v.

13 Maricopa Domestic Water Improvement
District, et al.,

14 Defendants.
15

16 Pending before the Court is Defendants' motion to amend their answer to add the
17 affirmative defense of unclean hands. (Doc. 71.) Defendants argue (1) they recently
18 learned that Plaintiffs' investigator has encouraged tenants to violate their leases by not
19 paying their water bills and (2) the proposed amendment won't prejudice Plaintiffs or cause
20 undue delay because the discovery deadline isn't until May 31, 2019. (*Id.* at 1-4.)

21 Plaintiffs oppose this request. (Doc. 72.) They contend (1) the amendment is futile
22 because their claims arise under the Fair Housing Act, yet unclean hands is never a defense
23 in "actions enforcing civil rights under statutes that authorize equitable relief," and (2) the
24 facts proffered by Defendants wouldn't, in any event, support an unclean hands defense
25 because Plaintiffs seek to challenge "long-standing practices" that were in existence "long
26 before and independent of any conduct by" their investigator. (*Id.* at 3-4.)

27 In their reply, Defendants argue (1) the alleged misconduct may be "relevant to the
28 question of whether [Plaintiffs] suffered a frustration of mission and diversion of resources

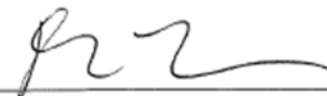
1 sufficient to confer standing,” (2) they aren’t required, at the pleading stage, to spell out all
2 of the facts supporting their affirmative defense and simply need to describe it in “general
3 terms,” (3) the cases cited by Plaintiffs are distinguishable, and (4) the alleged misconduct
4 may be relevant to the range of equitable remedies available and to Plaintiffs’ claim for
5 monetary damages. (Doc. 74.)

6 Defendants’ motion to amend will be granted. Rule 15(a)(2) provides that leave to
7 amend should be granted “freely” when “justice so requires.” Here, although Plaintiffs
8 argue the unclean hands defense has limited applicability in civil rights actions, they
9 haven’t established that it is categorically unavailable in FHA cases. *Cf. Ramirez v.*
10 *Greenpoint Mort. Funding, Inc.*, 268 F.R.D. 627, 638 (N.D. Cal. 2010) (declining to
11 resolve whether the defense “could succeed ‘under no set of circumstances’” and
12 conducting only a likelihood-of-success analysis); *see also Silvas v. G.E. Money Bank*, 449
13 Fed. App’x 641, 644 (9th Cir. 2011) (“[T]he district court . . . concluded generally that
14 Silvas was barred from equitable relief [in lawsuit raising claims under the FHA and the
15 Truth in Lending Act] under the doctrine of unclean hands. We affirm the district court’s
16 denial of a preliminary injunction on this basis.”). Accordingly, the Court is not prepared
17 to find—at least at this early juncture—that the defense is inapplicable as a matter of law
18 to all issues that may arise in this case (*i.e.*, futile).

19 Accordingly, **IT IS ORDERED** that:

- 20 (1) Defendants’ motion to amend (Doc. 71) is **GRANTED**; and
21 (2) Defendants must, pursuant to LRCiv 15.1(a), file and serve the amended
22 answer on all parties under Rule 5 of the Federal Rules of Civil Procedure within 14 days
23 of today’s date.

24 Dated this 4th day of February, 2019.

25
26
27
28


Dominic W. Lanza
United States District Judge