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6 **IN THE UNITED STATES DISTRICT COURT**  
7 **FOR THE DISTRICT OF ARIZONA**  
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9 Christina Chavez,

10 Plaintiff,

11 v.

12 City of Phoenix, et al.,

13 Defendants.  
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No. CV-20-01144-PHX-SMB

**ORDER**

15 Pending before the Court is Defendants City of Phoenix and Jeri Williams’  
16 (“Defendants”) Motion for Judgment on the Pleadings. (Doc. 25.) Plaintiff Christina  
17 Chavez responded and motioned for leave to file an amended complaint. (Doc. 31.)  
18 Defendants replied. (Doc. 33.) The Court has reviewed the pleadings and now issues this  
19 order.

20 **I. BACKGROUND**

21 This lawsuit arises from actions that allegedly occurred on May 31, 2020. (Doc. 1.)  
22 Plaintiff alleges that after Governor Ducey issued an emergency order declaring an 8 P.M.  
23 curfew in response to civil rights demonstrations on that date, Plaintiff was confronted by  
24 officers as she drove her vehicle home after 8 P.M. (*Id.*) Plaintiff alleges that as she was  
25 slowly driving home from a restaurant, an officer stopped her and shone a light in her face  
26 before yelling “go home.” (*Id.* ¶ 26.) Allegedly, after Plaintiff responded by saying “shup  
27 up,” officers fired bean bags at her car shattering a window on her car. (*Id.* ¶¶ 27-32.)  
28 Plaintiff has brought a claim under 42 U.S.C. § 1983 against Defendant Williams and

1 officers to be named for unreasonable seizure through excessive force in violation of the  
2 Fourth Amendment of the U.S. Constitution. (*Id.* ¶¶ 34-49.) Plaintiff has also brought a  
3 *Monell* claim against the City of Phoenix. (*Id.* ¶¶ 50-57.)

4 Defendants now bring this Motion for Judgment on the Pleadings arguing that,  
5 based on the allegations in Plaintiff’s complaint, because no seizure occurred under the  
6 Fourth Amendment, Plaintiffs claim against all Defendants fails.<sup>1</sup> (Doc. 25.) In response,  
7 Plaintiff concedes that her claims fail because there was no seizure or excessive force under  
8 the Fourth Amendment. (Doc. 31 at 3.) However, Plaintiff brings a motion to amend her  
9 complaint arguing that the pleading can be saved by amendment. (*Id.*) Defendants oppose  
10 Plaintiff’s motion to amend her complaint. (Doc. 33.)

## 11 **II. ANALYSIS**

12 The Court will grant Defendants’ Motion for Judgment on the pleadings because  
13 Plaintiff has conceded to Defendants’ arguments.

14 The Court next turns to Plaintiff’s motion for leave to amend her complaint. In the  
15 Ninth Circuit, dismissal without leave to amend is inappropriate unless it is clear that a  
16 complaint cannot be saved by amendment. *Harris v. Cty. of Orange*, 682 F.3d 1126, 1131  
17 (9th Cir. 2012); *Eminence Cap., LLC v. Aspeon, Inc.*, 316 F.3d 1048, 1152 (9th Cir. 2003).  
18 Here, while Plaintiff argues that her complaint can be cured by amendment, the Defendant  
19 argues Plaintiff’s pleading cannot be saved by amendment. However, Plaintiff failed to  
20 comply with LRCiv 15.1 in requesting leave to amend by failing to attach a proposed  
21 amended complaint as an exhibit. Under Local Rule 15.1(a), “[a] party who moves for  
22 leave to amend a pleading must attach a copy of the proposed amended pleading as an  
23 exhibit to the motion, which must indicate in what respect it differs from the pleading which  
24 it amends...” The Court will give Plaintiff two weeks to re-file a motion to amend which  
25 complies with the Federal and Local Rules of Civil Procedure.

## 26 **III. CONCLUSION**

27 Accordingly,

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28 <sup>1</sup> Defendants also argue the *Monell* claim against Defendant Williams and the City of Phoenix fail for independent reasons. (Doc. 25.)

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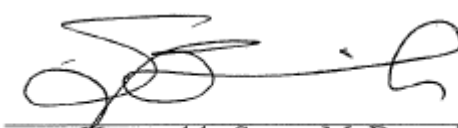
**IT IS ORDERED** granting Defendants Motion for Judgment on the Pleadings.  
(Doc. 25.)

**IT IS FURTHER ORDERED** denying Plaintiff's Motion for Leave to File First Amended Complaint. (Doc. 31.)

**IT IS FURTHER ORDERED** that Plaintiff's may re-file their Motion for Leave to File First Amended Complaint in compliance with the applicable rules within two weeks of the date that this order is issued.

**IT IS FURTHER ORDERED** that if Plaintiff fails to re-file a Motion for Leave to File First Amended Complaint within two weeks of the date this order is issued, the Clerk of Court is directed to terminate the case.

Dated this 13th day of July, 2021.

  
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Honorable Susan M. Brnovich  
United States District Judge