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ADVANCE SHEET HEADNOTE
September 14, 2026

2026 CO 62

No. 26SA84, SCP 3330 *Brighton OPCO, LLC v. Mountain Cement Co. LLC* – Waiver of Right to Jury Trial – Whether Amended Complaint Revives Right to Jury Trial.

In this C.A.R. 21 proceeding, the supreme court considers when, under C.R.C.P. 38, a party who has otherwise waived its right to a jury trial in a civil action may revive that right based on an amended pleading.

The court now concludes that to establish a right to a jury trial based on an amended complaint when a party has previously waived its jury trial right, the party must do more than assert new legal theories or clarifying details based on the same basic facts as alleged in the original complaint. Rather, the party must assert new triable issues not previously raised in the original pleadings.

Applying these principles here, the court concludes that the amended complaint filed by plaintiffs, which sought to add continuing trespass, continuing nuisance, and exemplary damages claims to plaintiffs' previously asserted trespass, nuisance, and negligence claims, did not raise any new triable issues that

had not previously been raised in their original complaint. Instead, the amended complaint merely asserted new legal theories based on the same facts as alleged in the original complaint. Accordingly, the amended complaint did not revive plaintiffs' previously waived jury trial right, and thus, the jury demand filed with plaintiffs' amended complaint was untimely.

The court therefore makes its order to show cause absolute and remands this case to the district court for further proceedings consistent with this opinion.

The Supreme Court of the State of Colorado
2 East 14th Avenue • Denver, Colorado 80203

2026 CO 62

Supreme Court Case No. 26SA84
Original Proceeding Pursuant to C.A.R. 21
District Court, City and County of Denver, Case No. 25CV30565
Honorable Sarah B. Wallace, Judge

**In Re
Plaintiffs:**

SCP 3330 Brighton OPCO, LLC; SCP 3330 Brighton, LLC; SCP 3350 Brighton,
LLC; and SCP 3330 Brighton Garage, LLC,

v.

Defendant:

Mountain Cement Company LLC.

Order Made Absolute

en banc
September 14, 2026

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JUSTICE GABRIEL delivered the Opinion of the Court, in which **CHIEF JUSTICE MÁRQUEZ, JUSTICE BOATRIGHT, JUSTICE HOOD, JUSTICE SAMOUR, JUSTICE BERKENKOTTER,** and **JUSTICE BLANCO** joined.

JUSTICE GABRIEL delivered the Opinion of the Court.

¶1 In this C.A.R. 21 proceeding brought by Mountain Cement Company LLC, we issued an order to show cause to consider principally when, under C.R.C.P. 38, a party who has otherwise waived its right to a jury trial in a civil action may revive that right based on an amended pleading.¹ We now conclude that to establish a right to a jury trial based on an amended complaint when a party has previously waived its jury trial right, the party must do more than assert new legal theories or clarifying details based on the same basic facts as alleged in the original complaint. Rather, the party must assert new triable issues not previously raised in the original pleadings. Consequently, we reject plaintiffs' contention that our opinion in *Mason v. Farm Credit of Southern Colorado*, ACA, 2018 CO 46, 419 P.3d

¹ Mountain Cement's petition framed the issues presented as follows:

1. Whether a plaintiff that waived its right to demand a civil jury trial under C.R.C.P. 38 and C.R.S. § 13-71-144 by failing to timely demand it may then revive its waived right by amending its pleading to add a request for exemplary damages without adding any new triable issue of fact.
2. Whether *Mason v. Farm Credit of Southern Colorado*, 2018 CO 46, 419 P.3d 975, requires trial courts to afford a categorical "second chance" to demand a jury whenever a pleading is amended, regardless of prior waiver and regardless of whether the amendment introduces any new triable issues of fact.

975, created a categorical second chance for a party to demand a jury trial whenever a party amends its pleading.

¶2 Applying these principles here, we conclude that the amended complaint filed by plaintiffs SCP 3330 Brighton OPCO, LLC, SCP 3330 Brighton, LLC, SCP 3350 Brighton, LLC, and SCP 3330 Brighton Garage, LLC, which sought to add continuing trespass, continuing nuisance, and exemplary damages claims to plaintiffs' previously asserted trespass, nuisance, and negligence claims, did not raise any new triable issues that had not previously been raised in their original complaint. Instead, the amended complaint merely asserted new legal theories based on the same facts as alleged in the original complaint. Accordingly, the amended complaint did not revive plaintiffs' previously waived jury trial right, and thus, the jury demand filed with plaintiffs' amended complaint was untimely.

¶3 We therefore make our order to show cause absolute, and we remand this case to the district court for further proceedings consistent with this opinion.

I. Facts and Procedural History

¶4 In February 2025, plaintiffs, which own and operate the Source Hotel, the Market Hall, and a parking garage in the River North Art District in Denver, filed a complaint against Mountain Cement, alleging that cement dust emitted from Mountain Cement's Portland cement terminal was adversely affecting plaintiffs' properties and operations. Based on these allegations, plaintiffs brought claims

for trespass, nuisance, and negligence and sought injunctive relief (1) prohibiting Mountain Cement from conducting operations at its cement terminal that emit dust at levels adversely impacting plaintiffs' properties and (2) requiring Mountain Cement to perform appropriate air quality sampling and monitoring to confirm compliance with the injunction. Plaintiffs further sought monetary damages for the harm to their properties.

¶5 Mountain Cement subsequently filed an answer generally denying liability. Neither party demanded a jury trial or paid the requisite jury fee, and the case was set for a bench trial.

¶6 Ten months later, and just two months before the scheduled bench trial, plaintiffs filed a motion for leave to amend their complaint. As pertinent here, plaintiffs' proposed amended complaint sought to supplement plaintiffs' factual allegations with clarifying details and further sought to add two causes of action, one for trespass based on the failure to remove the cement dust ("continuing trespass") and one for nuisance based on the failure to remove the cement dust ("continuing nuisance"). The amended complaint thus purported to assert two trespass claims (one for the initial intrusion of the cement dust and one for continuing trespass) and two nuisance claims (one for the initial intrusion of the cement dust and one for continuing nuisance). Plaintiffs also sought to add a

request for exemplary damages. And at the end of the proposed amended complaint, plaintiffs, for the first time, demanded a jury trial.

¶7 Mountain Cement opposed plaintiffs' motion for leave to amend, arguing, among other things, that the amendment was untimely and that even if the court were to allow the amendment, plaintiffs were not entitled to demand a jury because the proposed amended complaint did not present any new triable issues of fact.

¶8 The district court, however, granted plaintiffs' motion for leave to amend and, in doing so, also granted plaintiffs' demand for a jury trial. Regarding the new jury demand, the court expressed its view that in light of our opinion in *Mason*, ¶¶ 15–18, 419 P.3d at 980–81, “the caselaw is clear that once a party has been granted leave to amend their complaint or answer, the party gets a second chance to file a jury demand.”

¶9 Mountain Cement then petitioned this court pursuant to C.A.R. 21 for immediate relief, and we issued an order to show cause.

II. Analysis

¶10 We begin by addressing our jurisdiction under C.A.R. 21 and setting forth the applicable standard of review. We then turn to C.R.C.P. 38 and consider whether and when an amended pleading may revive a party's previously waived jury trial right. We end by applying these principles to the facts before us.

A. Original Jurisdiction

¶11 Our decision to exercise our original jurisdiction under C.A.R. 21 is a matter within our sole discretion. *People v. Lawrence*, 2026 CO 39, ¶ 12, 590 P.3d 278, 281. An original proceeding under C.A.R. 21 is an extraordinary remedy that is limited in its purpose and availability. *Lawrence*, ¶ 12, 590 P.3d at 281. As pertinent here, we have exercised our original jurisdiction under C.A.R. 21 when a district court's procedural ruling will have a significant effect on a party's ability to litigate the merits of the controversy. *McConnell v. Dist. Ct.*, 680 P.2d 528, 530 (Colo. 1984). This includes a court's determination as to whether a party will receive a jury trial. *Id.* at 531. We have also exercised our discretion under C.A.R. 21 to hear matters that present questions of significant public importance that we have not previously considered. *Lawrence*, ¶ 12, 590 P.3d at 281–82. We will grant relief under C.A.R. 21 “only when no other adequate remedy is available,” including by way of a direct appeal. C.A.R. 21(a)(2).

¶12 Here, the district court's order granting plaintiffs' jury trial demand is a procedural ruling that may have a significant effect on this litigation and, in our view, could not adequately be remedied by way of a direct appeal. Moreover, the question of whether and when a party can revive a previously waived jury trial right by filing an amended pleading presents a substantial issue of public importance that we have not previously considered. Accordingly, we believe that

the exercise of our original jurisdiction under C.A.R. 21 is warranted and appropriate here.

B. Standard of Review

¶13 We interpret the Colorado Rules of Civil Procedure de novo. *State ex rel. Weiser v. Ctr. for Excellence in Higher Educ., Inc.*, 2023 CO 23, ¶ 34, 529 P.3d 599, 607. In construing our procedural rules, we employ the same interpretive principles applicable to statutory construction. *Buell v. People*, 2019 CO 27, ¶ 19, 439 P.3d 857, 861.

¶14 Accordingly, we seek to determine and effectuate the rule framers' intent. *See N. Integrated Supply Project Water Activity Enter. v. VIMA Partners, LLC*, 2026 CO 29, ¶ 10, 588 P.3d 727, 731. To do this, we apply words and phrases in accordance with their plain and ordinary meanings, and we consider the entire scheme of the rules to give consistent, harmonious, and sensible effect to all of its parts. *See id.* We also must avoid interpretations that would render any words or phrases of a rule superfluous or that would lead to illogical or absurd results. *See id.* And because we respect the framers' choice of language, we may not add words to a rule or subtract words from it. *See id.* Finally, if a rule is unambiguous, then we will apply it as written. *Buell*, ¶ 19, 439 P.3d at 861.

C. C.R.C.P. 38

¶15 Mountain Cement contends that a plaintiff cannot revive a previously waived jury trial right by filing an amended complaint that raises no new triable issues but rather asserts new legal theories based on the same facts as alleged in the original complaint. Mountain Cement further asserts that this is what plaintiffs are attempting to do here. We agree with both points.

¶16 There is no constitutional right to a jury trial in a civil action in Colorado. *Ctr. for Excellence in Higher Educ.*, ¶ 37, 529 P.3d at 608. Rather, the right derives from C.R.C.P. 38, which, as pertinent here, provides that “[u]pon the filing of a demand and the simultaneous payment of the requisite jury fee by any party in actions wherein a trial by jury is provided by constitution or by statute, . . . all issues of fact shall be tried by a jury.” C.R.C.P. 38(a); *Ctr. for Excellence in Higher Educ.*, ¶ 37, 529 P.3d at 608. Even when our constitution or a statute does not expressly provide a civil jury trial right, however, we have interpreted C.R.C.P. 38 to provide such a right in proceedings that are legal, as opposed to equitable, in nature. *Ctr. for Excellence in Higher Educ.*, ¶ 38, 529 P.3d at 608.

¶17 C.R.C.P. 38 also sets forth the procedural requirements for demanding a jury trial in a civil case. Under that rule, a party may demand a jury trial “of any issue triable by a jury by filing and serving upon all other parties . . . a demand therefor at any time after the commencement of the action but not later than 14 days after

the service of the last pleading directed to such issue.” C.R.C.P. 38(b). The demanding party must also pay the requisite jury fee upon the filing of its demand. *Id.* A party’s failure to file and serve a jury demand in accordance with C.R.C.P. 38’s requirements “constitutes a waiver of that party’s right to trial by jury.” C.R.C.P. 38(e).

¶18 Although plaintiffs concede that they did not demand a jury trial in connection with their original complaint, they contend that they revived their jury trial right when they amended their complaint. In plaintiffs’ view, their amended complaint, which added claims for continuing nuisance and continuing trespass as well as a demand for exemplary damages, constituted “the last pleading directed to such issue[s]” under the language of C.R.C.P. 38(b). Accordingly, plaintiffs argue that under C.R.C.P. 38(b)’s plain language, they had fourteen days following the filing of their amended complaint to demand a jury.

¶19 Mountain Cement disagrees. It argues that the operative language in the rule is “issue,” and, thus, an amended complaint restarts the clock for a jury demand only when the amended complaint presents new triable issues not raised in the original pleadings. In Mountain Cement’s view, the rule’s reference to the “last pleading” serves only as a temporal marker and functions to differentiate between types of pleadings that address a given issue (e.g., a complaint versus an answer).

¶20 The meaning of C.R.C.P. 38(b)'s language and how it applies when a party has previously waived its jury trial right but subsequently files an amended pleading is an issue of first impression for this court. Federal courts, however, have interpreted nearly identical language in the parallel federal rule in similar circumstances. *See* Fed. R. Civ. P. 38(b)(1) (requiring that a jury demand be made “no later than 14 days after the last pleading directed to the issue is served”). Absent a compelling justification unique to Colorado practice, we have generally deemed it preferable to interpret the Colorado Rules of Civil Procedure harmoniously with our understanding of similarly worded federal rules of practice. *Warne v. Hall*, 2016 CO 50, ¶ 12, 373 P.3d 588, 592. Accordingly, we look for guidance to federal courts' interpretation of how amended pleadings impact a party's jury demand.

¶21 In reading Fed. R. Civ. P. 38(b)(1)'s requirement that a jury demand be made “no later than 14 days after the last pleading directed to the issue is served,” federal courts have, as Mountain Cement argues, deemed the word “issue” to be the operative language triggering the right to demand a jury. Specifically, federal courts have consistently read Fed. R. Civ. P. 38(b)(1) to require parties who have otherwise waived their jury trial right to raise *new* issues in their amended or supplemental pleading in order to revive their right to demand a jury. *See, e.g., Westchester Day Sch. v. Vill. of Mamaroneck*, 504 F.3d 338, 356 (2d Cir. 2007) (“A

litigant who has waived a jury may nonetheless demand one with respect to new issues raised by later pleadings”); *Fredieu v. Rowan Cos.*, 738 F.2d 651, 653 (5th Cir. 1984) (“An amended or supplemental pleading that raises new issues enables a party to request a jury trial for those issues in the manner established by Rule 38(b).”); *Trixler Brokerage Co. v. Ralston Purina Co.*, 505 F.2d 1045, 1049 (9th Cir. 1974) (“The answer [to whether a party made a timely jury demand for issues set forth in an amended complaint] lies in whether the [added] claims created new issues within the meaning of Rule 38(b), F.R.Civ.P.”); *Williams v. Farmers & Merchs. Ins. Co.*, 457 F.2d 37, 38 (8th Cir. 1972) (“Once waived, the [jury] right is revived by amendments to the pleadings only if new issues are raised in such amendments. [A]nd in such event the right is revived only as to the new issues.”) (citations omitted).

¶22 In stating this rule, federal courts have distinguished between new issues raised by later pleadings and mere “artful rephrasings” of existing issues. *Westchester Day Sch.*, 504 F.3d at 356 (quoting *Rosen v. Dick*, 639 F.2d 82, 94 (2d Cir. 1980)); see also *Fredieu*, 738 F.2d at 653 (“[A]n amended or supplemental pleading that merely restates issues previously raised does not revive the right to demand a jury trial when one had not earlier been demanded.”).

¶23 In addition, federal courts have made clear that an amended complaint that merely asserts new theories of recovery based on the same facts asserted in

the original complaint does not raise new issues for purposes of reviving a previously waived jury trial right. *See Westchester Day Sch.*, 504 F.3d at 356 (“An amended complaint asserting new theories of recovery, based on the same facts as the original complaint, will not renew a defendant’s right to a jury trial when that right was waived with respect to the original complaint.”); *Nissan Motor Corp. in U.S.A. v. Burciaga*, 982 F.2d 408, 409 (10th Cir. 1992) (per curiam) (“To establish a right to a trial by jury, the amended complaint must do more than merely raise new theories of recovery based on the same facts as those issues raised in the original complaint.”); *Trixler*, 505 F.2d at 1050 (“[W]e hold that the presentation of a new theory does not constitute the presentation of a new issue on which a jury trial should be granted under F.R.Civ.P., Rule 38(b).”).

¶24 And new facts that solely provide clarity to existing issues in the original complaint are likewise insufficient to constitute new issues for purposes of reviving a waived jury trial right. *See LaMarca v. Turner*, 995 F.2d 1526, 1545 (11th Cir. 1993) (“New facts that ‘merely clarif[y] “the same general issues” raised in the original complaint’ do not create new issues of fact upon which to assert a jury demand.”) (alteration in original) (quoting *Lanza v. Drexel & Co.*, 479 F.2d 1277, 1310 (2d Cir. 1973) (en banc)); *In re N-500L Cases*, 691 F.2d 15, 23 (1st Cir. 1982) (“One issue is the same as another when it is based on the same conduct or concerns the same general area of dispute.”); *Walton v. Eaton Corp.*, 563 F.2d 66, 72

(3d Cir. 1977) (noting that amended pleadings that concern the same general issues as previous pleadings do not raise new issues under Fed. R. Civ. P. 38(b), even if they differ from the earlier pleadings in some particulars).

¶25 Instead, “something more” is required for an amendment to constitute a new issue in a supplemental pleading that would support a jury demand. *Rosen*, 639 F.2d at 94. To determine whether an amendment provides that “something more,” courts compare the original and amended pleadings to assess the degree of similarity of both the facts and the legal framework in which the facts are analyzed. *See In re N-500L Cases*, 691 F.2d at 23. When an issue “is based on the same conduct or concerns the same general area of dispute” as another, the issues are the same, and no new issue is raised for purposes of a jury demand. *Id.*; *see also Las Vegas Sun, Inc. v. Summa Corp.*, 610 F.2d 614, 620 (9th Cir. 1979) (concluding that the issues in a party’s amended complaint were the same as those raised in the original complaint, despite the addition of new legal theories of recovery, because the complaints “turn[ed] on the same matrix of facts”).

¶26 Applying these principles in *In re Financial Federated Title & Trust, Inc.*, 309 F.3d 1325, 1330 (11th Cir. 2002), the court concluded that “[t]he case ha[d] changed” and the defendant’s jury right was revived when a bankruptcy trustee’s original complaint had sought to void a \$10,000 transfer made to the defendant but the trustee’s amended complaint increased that claim one hundredfold, to over

\$1 million, asserting that the allegedly voidable sum had passed through a conduit corporation, which the amended complaint added as a defendant. As the court put it in describing this amended complaint, “This is an entirely different case with new issues that force new methods of defense.” *Id.*

¶27 In contrast, in *Lanza*, 479 F.2d at 1310, which was a securities and common law fraud action, the court determined that a defendant’s right to a jury trial was waived, despite the plaintiffs having filed an amended complaint, because (1) the amended complaint added no new issues but instead involved “the same conduct and the same allegedly false documents” that constituted the basis for the original claim and (2) “the character of the suit was in no way changed by the amendments.”

¶28 We are persuaded by the analyses set forth in these federal cases and deem them consistent with the plain language of C.R.C.P. 38(b).

¶29 Just as the federal courts have read Fed. R. Civ. P. 38(b) to hinge on the meaning of the term “issue,” we read C.R.C.P. 38’s jury trial right also to turn on the issues raised by a party. *See* C.R.C.P. 38(a) (providing that upon exercising one’s right to a jury trial “all *issues* of fact shall be tried by a jury”) (emphasis added); C.R.C.P. 38(b) (providing that a party “may demand a trial by jury of any *issue* triable by a jury by filing and serving upon all other parties . . . a demand therefor at any time after the commencement of the action but not later than 14

days after the service of the last pleading directed to such *issue*") (emphases added); C.R.C.P. 38(d) (providing that "[a] demand may specify the *issues* to be tried to the jury; in the absence of such specification, the party filing the demand shall be deemed to have demanded trial by jury of all *issues* so triable") (emphases added); *see also* C.R.C.P. 39(a) (providing that "[w]hen trial by jury has been demanded and the requisite jury fee has been paid . . . [t]he trial shall be by jury of *all issues* so demanded," subject to certain exceptions) (emphasis added); C.R.C.P. 39(b) (providing that "[i]ssues not demanded for trial by jury . . . shall be tried by the court") (emphasis added).

¶30 Thus, in accordance with the reasoning of the federal authorities discussed above, we conclude that to establish a right to a jury trial based on an amended complaint when a party previously waived its jury trial right, the party must do more than assert new legal theories or clarifying details based on the same basic facts as alleged in the original complaint. Rather, the party must assert new triable issues not previously raised in the original pleadings.

¶31 In so concluding, we reject plaintiffs' contention that under C.R.C.P. 38(b), a party has fourteen days after service of an amended complaint directed to an issue to demand a jury trial of that issue, regardless of whether the party has previously raised the same issue and has waived a jury trial as to it. If plaintiffs were correct in this interpretation, then the rule would allow a party to circumvent

C.R.C.P. 38(e)'s waiver provision simply by filing an amended pleading with immaterial changes to a previously filed pleading. This, however, would effectively render C.R.C.P. 38(e)'s waiver provision meaningless, which we may not do. *See VIMA Partners*, ¶ 10, 588 P.3d at 731.

¶32 Plaintiffs' construction would also ignore an important distinction between the federal rules and our own procedural rules. Specifically, even when a party fails to make a proper jury demand under Fed. R. Civ. P. 38, "the court may, on motion, order a jury trial on any issue for which a jury might have been demanded." Fed. R. Civ. P. 39(b). Federal courts thus have discretion to grant a jury trial despite a party's failure to make a timely demand.

¶33 Our rules are different. As noted above, C.R.C.P. 38(e) provides, "The failure of a party to file and serve a demand for trial by jury and simultaneously pay the requisite jury fee as required by this Rule constitutes a waiver of that party's right to trial by jury." C.R.C.P. 39(b) then affirms that "[i]ssues not demanded for trial by jury as provided in Rule 38 *shall* be tried by the court." (Emphasis added.)

¶34 Although C.R.C.P. 39 previously provided Colorado courts with the same discretion afforded federal courts under Fed. R. Civ. P. 39(b) to order a jury trial despite the absence of a proper demand, the language of our rule was amended in 1990 to eliminate that discretion. *See Machol v. Sancetta*, 924 P.2d 1197, 1199 (Colo.

App. 1996). For this reason as well, our procedural rules make clear that a jury trial waiver will be enforced, absent the assertion of new triable issues.

¶35 We thus conclude that under C.R.C.P. 38(b), to revive a right to a jury trial based on an amended pleading when a party has previously waived its jury trial right, the party must assert new triable issues not previously raised in the original pleadings. This provides parties with an opportunity to make renewed jury demands based on significant factual or legal developments arising during civil litigation while preventing parties from seeking to revive a previously waived jury right by making “insubstantial alterations” to their pleadings. *Rosen*, 639 F.2d at 94.

D. Application

¶36 Applying these principles here, we conclude that plaintiffs’ amended complaint did not raise any issues not previously raised in their original complaint. Plaintiffs’ amended complaint merely added clarifying details to existing facts and new theories of recovery based on the same matrix of facts as the original complaint, which is insufficient to revive a previously waived jury demand. *See, e.g., Westchester Day Sch.*, 504 F.3d at 356; *Nissan Motor Corp.*, 982 F.2d at 409; *Fredieu*, 738 F.2d at 653. Specifically, the added claims of continuing trespass and continuing nuisance, which concern the alleged failure to remove dust emissions, are founded on the same basic factual allegations underlying the

original claims of trespass and nuisance. The added claims simply assert that the trespass and nuisance alleged in the original complaint are ongoing. We, however, do not view such additional allegations as setting forth new triable issues so as to revive plaintiffs' waived jury trial right.

¶37 Nor does plaintiffs' added "claim" for exemplary damages raise a new issue that would revive a previously waived jury demand. It is well settled that a "claim" for exemplary damages is not, in fact, a standalone claim for relief. *See Ferrer v. Okbamicael*, 2017 CO 14M, ¶ 44, 390 P.3d 836, 848, *superseded by statute on other grounds*, Ch. 147, sec. 1, § 13-21-111.5(1.5)(c), 2021 Colo. Sess. Laws 863, 863, *as recognized in*, *Brown v. Long Romero*, 2021 CO 67, ¶ 4 n.2, 495 P.3d 955, 957 n.2. Rather, it is a remedy that is tied to an underlying claim for actual damages. *See id.* Accordingly, a party may not premise a jury demand on a "claim" for exemplary damages.

¶38 Thus, because plaintiffs' amended complaint did not raise new issues pursuant to the requirements of C.R.C.P. 38, it did not revive plaintiffs' previously waived right to a jury trial, and therefore, the jury demand filed with plaintiffs' amended complaint was untimely.

¶39 Finally, we are unpersuaded by plaintiffs' argument that *Mason*, ¶ 1, 419 P.3d at 977-78, created a categorical right to a new jury demand upon the filing

of an amended pleading, whether or not a prior pleading was directed to the same issues. *Mason* did no such thing.

¶40 In *Mason*, ¶ 2, 419 P.3d at 978, a plaintiff sued a defendant, and neither party demanded a jury trial. The plaintiff then amended its complaint and added a new defendant against whom the plaintiff asserted additional claims. *Id.* at ¶ 3, 419 P.3d at 978. *That new defendant*, not the plaintiff, then requested a jury trial. *Id.* at ¶ 4, 419 P.3d at 978. Accordingly, *Mason* did not involve any issue of waiver of the right to a jury trial because the newly added defendant, who had requested the jury trial, had not previously waived that right. Thus, in *Mason*, we had no occasion to address the issue now before us.

¶41 In any event, *Mason* is distinguishable. *Mason* concerned whether claims in an amended complaint could give rise to a jury trial right at all, given that the plaintiff had deemed the claims in its original complaint to be equitable in nature and asserted that those claims were the sole determinants of whether the newly added defendant could demand a jury trial. *Id.* at ¶¶ 4–6, 419 P.3d at 978–79. The question before us therefore concerned only whether a district court could look to an amended complaint to determine whether the nature of a case’s claims entitled a party to a jury trial. *Id.* at ¶ 12, 419 P.3d at 980. We did not address whether an amended complaint automatically renews a party’s time to demand a jury trial,

nor did we conclude that it does. To the extent that the district court construed *Mason* otherwise, this was error.

III. Conclusion

¶42 For these reasons, we conclude that to establish a right to a jury trial based on an amended complaint when a party has previously waived its jury trial right, the party must do more than assert new legal theories or clarifying details based on the same basic facts as alleged in the original complaint. Rather, the party must assert new triable issues not previously raised in the original pleadings. Consequently, we reject plaintiffs' contention that our opinion in *Mason* created a categorical second chance for a party to demand a jury trial whenever a party amends its pleading.

¶43 Applying these principles here, we conclude that the amended complaint filed by plaintiffs did not raise any new triable issues that had not previously been raised in their original complaint. Accordingly, the amended complaint did not revive plaintiffs' previously waived jury trial right, and thus, the jury demand filed with plaintiffs' amended complaint was untimely.

¶44 We therefore make our order to show cause absolute, and we remand this case to the district court for further proceedings consistent with this opinion.