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7 **IN THE SUPERIOR COURT IN THE STATE OF ARIZONA**
8 **IN AND FOR THE COUNTY OF MARICOPA**

9 SANDRA RODRIGUEZ,

10 **Plaintiff,**

11 vs.

12 GARDENS GILBERT COMMUNITY
13 ASSOCIATION, FOCUS HOA
14 MANAGEMENT, LLC, HARMIN CADIS,
15 BROOKE SORTOR, ANNA SCHULTZ

16 **Defendants,**

17
18
19 AUGUSTUS H. SHAW IV

20 **Defendant's Legal Counsel,**
21

**APPEALS COURT (DIVISION
ONE) Case No.: 1 CA-CV 24-0790; 1
CA-CV 25-0040 (Consolidated)**

**Maricopa County Superior Court
Case No.: CV2024-005940
Judge David McDowell,**

**PLAINTIFF'S RESPONSE TO
DEFENDANTS' RESPONSE AND
CROSS MOTION FOR SANCTIONS**

22 **TO THE HONORABLE JUDGE MCDOWELL:**

23
24 Sandra Rodriguez ("*Plaintiff*"), appearing pro se, submits this Response to Defendants'
25 filing. Defendants' motion is not only procedurally defective but also riddled with
26 misrepresentations of law and fact, designed to continue to mislead this Court and continue a
27 pattern of harassment already addressed by the Court of Appeals.
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1 **I. DEFENDANTS’ FILING IS PROCEDURALLY IMPROPER**

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3 On **August 29, 2025**, Judge McDowell issued a Minute Entry expressly requiring
4 **Plaintiff** to seek leave of Court before submitting further filings. Despite this directive,
5 Defendants filed their combined Response and Cross-Motion for Sanctions **without first**
6 **seeking leave of Court.**

7 This filing violates both the **Court’s specific order** and the **Arizona Rules of Civil Procedure**,
8 which govern motion practice:

- 9 • **Rule 7.1(a)(1), Ariz. R. Civ. P.** requires that motions “*state with particularity the grounds*
10 *for the motion and the relief sought.*” A combined “Response + Cross-Motion” is
11 improper because it sidesteps the separate notice and briefing requirements of Rule 7.1.
- 12 • **Rule 7.2(a), Ariz. R. Civ. P.** provides that the Court may regulate filings and require
13 leave before a party files additional or repetitive motions. Once Judge McDowell imposed
14 this condition on Plaintiff, principles of due process and equal application of the rules
15 demand that **all parties be held to the same standard.**
- 16 • **Rule 11(a), Ariz. R. Civ. P.** requires all filings to be made in good faith and not for
17 purposes of harassment, delay, or unnecessary cost. Defendants’ filing — submitted
18 without leave and coupled with yet another frivolous sanctions request — violates this
19 rule.

20 This unequal enforcement is highly prejudicial:

- 21 • Plaintiff is **barred from filing motions without permission**, while Defendants are
22 permitted and continue to file combined pleadings without any limitation.
- 23 • This disparity infringes on Plaintiff’s **Fourteenth Amendment rights to due process**
24 **and equal protection**, as courts must apply procedural rules consistently and fairly.
- 25 • Plaintiff is therefore compelled to file this Reply, not by choice, but to **protect her rights,**
26 **preserve the record, and deter further infringements** by Defendants.
27
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1 **B. CONTEMPT AND STAY VIOLATIONS**

2 On August 20, 2025, Defendants issued billing statements demanding lien and attorney
3 fees that had been vacated. Defendants falsely claim the stay expired with the appellate mandate.
4 **Reality:** Acts taken during a stay are void. *State ex rel. Corbin v. Superior Court*, 155 Ariz.
5 265 (App. 1987).

6 **C. LEAVE TO AMEND**

7
8 Defendants argue amendment is barred by **Rule 15** deadlines. **This is false.** The **Arizona**
9 **Court of Appeals, Division One**, in its August 12, 2025 consolidated ruling, clarified that
10 dismissals of Plaintiff’s retaliation and discrimination claims were “*without prejudice*.” Under
11 Arizona law, such dismissals are not adjudications on the merits and do not bar reassertion.
12 *Rodriguez v. Focus HOA Mgmt., LLC, et al.*, 1 CA-CV 24-0790; 1 CA-CV 25-0040
13 (Consolidated) (Ariz. Ct. App. Aug. 12, 2025); *Blankenbaker v. Marks*, 231 Ariz. 575, 578 ¶ 14
14 (App. 2013).

15 The appellate mandate does not limit Plaintiff to only post-appeal conduct. *It preserved*
16 *the entirety of Plaintiff’s retaliation and discrimination claims*, both pre-appeal and ongoing.
17 *State v. King*, 180 Ariz. 268, 278 (1994) (trial courts are bound by appellate mandates and lack
18 discretion to disregard them).

19 This is not the first time Defendants’ counsel, **Augustus H. Shaw IV**, has attempted to
20 mislead the Court with this strategy. In **CV2024-013806** before Judge Melissa Julian, Shaw
21 falsely argued that Plaintiff’s claims were barred by res judicata, misrepresenting that at the time
22 **CV2024-005940** had been “*fully adjudicated*.” Relying on that misrepresentation, the court
23 dismissed Plaintiff’s personal injury claims. On appeal, however, the Court of Appeals
24 discredited Shaw’s argument, holding no final judgment existed and that res judicata did not
25 apply.

26 Shaw’s repeated attempts to convert “*without prejudice*” dismissals into final
27 adjudications undermine Plaintiff’s constitutional right of access to the courts under the
28 **Fourteenth Amendment**. *Bounds v. Smith*, 430 U.S. 817, 828 (1977). This misconduct has
already been corrected once by the Court of Appeals and cannot be permitted again.

1 **Plaintiff's claims are supported by ongoing retaliation, including:**

- 2
- 3 • **Retaliatory Billing:** On August 20, 2025, Defendants issued lien and attorney fees
- 4 vacated by the Court of Appeals, violating this Court's January 24, 2025 Stay Order.
- 5 • **Blocked HOA Portal Access:** Plaintiff's records access was revoked, violating
- 6 **A.R.S. § 33-1805(A).**
- 7 • **Obstruction of Architectural Forms:** Defendants refused to process Plaintiff's
- 8 August 19 and 22, 2025 roof repair requests.

9 These continuing wrongs fall squarely within Plaintiff's preserved right to reassert

10 retaliation and discrimination claims.

11

12 In addition, the appellate court expressly recognized that Plaintiff's original complaints

13 alleged sufficient facts to support claims of gross negligence, intentional torts, and retaliation.

14 *Rodriguez v. Focus HOA Mgmt., LLC*, 1 CA-CV 24-0790; 1 CA-CV 25-0040 (Ariz. Ct. App.

15 Aug. 12, 2025). Because those allegations were dismissed without prejudice, they remain

16 preserved for reassertion. Denying amendment under these circumstances would contradict the

17 appellate mandate and create appealable error under **ARCAP 23(c)** (requiring compliance with

18 appellate rulings on remand) and **ARCAP 9(a)** (orders affecting substantial rights are

19 appealable).

20 **1. FEDERAL AUTHORITY**

- 21 • **Fair Housing Act (42 U.S.C. § 3617):** Prohibits retaliation against a homeowner
- 22 for exercising rights under the Act. Defendants' fabricated charges, denial of
- 23 repairs, and obstruction of participation constitute retaliation.
- 24 • **42 U.S.C. § 1983:** Protects against deprivation of constitutional rights under color
- 25 of state law. By misrepresenting appellate rulings and denying Plaintiff equal
- 26 access to the courts, Defendants have violated Plaintiff's Fourteenth Amendment
- 27 rights.
- 28 • **Fair Debt Collection Practices Act (15 U.S.C. § 1692e):** Prohibits false or
- deceptive collection practices, including charging fees not legally owed.

1 Defendants' billing of vacated lien and attorney fees fits directly within this
2 prohibition.

3
4 **2. ARIZONA LAW**

- 5 • **Planned Communities Act (A.R.S. §§ 33-1800 et seq.):** Requires associations
6 to act with transparency, provide record access (§ 33-1805), and prohibits
7 retaliation against homeowners enforcing rights.
- 8 • **Nonprofit Corporation Act (A.R.S. §§ 10-3830 et seq.):** Imposes fiduciary
9 duties of loyalty and good faith on directors. Retaliatory billing and obstruction
10 of repairs are ultra vires acts violating these duties.
- 11 • **Arizona Rule of Civil Procedure 15(a)(2):** Provides that courts “should freely
12 give leave [to amend] when justice so requires.” Arizona courts interpret this rule
13 liberally, especially when new facts arise post-filing. *Owen v. Superior Court*,
14 133 Ariz. 75, 79 (1982).

15 **3. RELVEVANT CASELAW**

- 16 • *Bounds v. Smith*, 430 U.S. 817 (1977): Access to the courts is a fundamental
17 constitutional right. Blocking Plaintiff from amending preserved claims would
18 violate this right.
- 19 • *Chambers v. NASCO, Inc.*, 501 U.S. 32 (1991): Courts possess inherent power to
20 sanction parties for bad faith litigation conduct, directly applicable to Defendants'
21 repeated misrepresentations.
- 22 • *Johnson v. Pointe Cmty. Ass'n, Inc.*, 205 Ariz. 485, 491 ¶ 23 (App. 2003): CC&Rs
23 and governing documents are enforceable contracts; HOA actions contrary to
24 them are actionable breaches.
- 25 • *Twin City Fire Ins. Co. v. Burke*, 204 Ariz. 251, 254 ¶ 11 (2003): Courts may not
26 permit parties to benefit from misconduct that prejudices the opposing party.
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1 **4. APPEALABLE ISSUE IF DENIED**

2 If this Court were to deny Plaintiff leave to amend to reassert retaliation and
3 discrimination claims that were explicitly preserved by the appellate mandate, such a ruling
4 would constitute **appealable error**:

- 5 • **ARCAP 9(a)**: A notice of appeal may be filed from an order affecting a
6 substantial right.
- 7 • **ARCAP 23(c)**: Requires trial courts to comply strictly with appellate mandates;
8 deviation is reversible error.
- 9 • *State v. King*, 180 Ariz. 268, 278 (1994): On remand, trial courts are bound by
10 the express terms of appellate decisions and lack discretion to disregard them.

11 **D. Defense Counsel Misconduct**

12 Defendants seek sanctions even though the **Arizona Court of Appeals vacated prior fee**
13 **awards**. Their renewed requests are **frivolous, retaliatory, and aimed at intimidating an**
14 **indigent, self-represented litigant**.

15 As an indigent Plaintiff, further sanctions would effectively deny access to the courts,
16 violating due process and equal protection under the **Fourteenth Amendment**. *Bounds v.*
17 *Smith*, 430 U.S. 817, 828 (1977).

18 Defense counsel is bound by the **Arizona Rules of Professional Conduct (ER 3.1, ER**
19 **3.3, ER 4.4)**, which prohibit frivolous filings, misrepresentations, and harassment. Pursuing
20 sanctions already vacated by the appellate court, while mischaracterizing Plaintiff's filings,
21 breaches these duties and constitutes Rule 11 abuse.

22 Sanctions are meant to deter misconduct, not punish an indigent litigant for exercising
23 rights preserved by the Court of Appeals.

1 The time has come to put an end to Defendants' pattern of abuse. Plaintiff has already
2 prevailed on these very issues before the Court of Appeals, based on the factual record.
3 Plaintiff's arguments are firmly rooted in law and fact, not irrelevant or improper as Defendants
4 claim. This Court should now enforce the appellate mandate, reject Defendants' continued
5 misrepresentations, and affirm that equal justice under law is not an empty promise but a reality
6 in this case.

7 Respectfully submitted this 5th day of September, 2025.

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