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

9  
10 SANDRA RODRIGUEZ,

11 **Plaintiff,**

12 vs.

13 GARDENS GILBERT COMMUNITY  
14 ASSOCIATION *an Arizona non profit*  
15 corporation; FOCUS HOA  
16 MANAGEMENT, LLC, and Arizona  
17 limited liability company; HARMIN  
18 CADIS, BROOKE SORTOR, ANNA  
19 SCHULTZ

20 **Defendants,**

**MARICOPA COUNTY  
SUPERIOR COURT**  
Case No.: CV2024-005940  
*Judge David McDowell,*

**PLAINTIFF'S MOTION TO  
STRIKE OR DENY  
DEFENDANT'S PARTIAL MOTION  
TO DISMISS**

21 Defendants' March 31, 2026 Partial Motion to Dismiss is procedurally defective, untimely,  
22 and improper. Rodriguez filed and served the Amended Civil Complaint on February 13, 2026.  
23 The motion—filed 46 days later—is 25 days late under Rule 15(a)(3). Rule 12(b) further requires  
24 such motions be made before a responsive pleading.

25 **I. INTRODUCTION**

26 Defendants' March 31, 2026 Partial Motion to Dismiss is procedurally defective, untimely,  
27 substantively improper, strategically abusive, and constitutionally prejudicial. Rodriguez filed and  
28 personally served the Amended Civil Complaint on February 13, 2026. From February 13, 2026  
to March 31, 2026 is 46 days. Courts routinely deny motions on this basis alone. Rule 12(b) further

1 requires that a motion asserting failure to state a claim be filed before the responsive pleading, not  
2 after Defendants have already responded to the complaint on the merits, joined issue in the case,  
3 and the case moved to discovery.

4 Instead, Defendants seek dismissal while withholding Tier 3 discovery, substituting  
5 affidavits for evidence, and relitigating issues already resolved on appeal.. It is part of a broader  
6 strategy to avoid merits review by withholding Tier 3 discovery, substituting affidavits and lawyer-  
7 crafted sworn narratives for actual documents, attempting to control the factual record, and  
8 reasserting arguments the Arizona Court of Appeals already rejected, limited, or deemed waived.  
9 Arizona disclosure rules require prompt disclosure of relevant information, Tier 3 is reserved for  
10 cases likely to require voluminous documentary evidence and numerous pretrial motions, and Rule  
11 37 authorizes preclusion and other sanctions for failure to disclose.

## 12 II. BACKGROUND

13  
14 This case arises from Rodriguez’s allegations that Defendants failed to address hazardous  
15 conditions, obstructed remediation, denied records, and engaged in discriminatory and retaliatory  
16 conduct. The Amended Civil Complaint alleges direct personal liability, including gross  
17 negligence and intentional torts, based on Defendants’ active participation. Rodriguez filed and  
18 served the Amended Civil Complaint on February 13, 2026. Under Rule 15(a)(3), a response was  
19 due within 21 days. Defendants filed their Verified Partial Dismiss on March 31, 2026—46 days  
20 later—rendering it untimely.

21 Defendants also failed to timely file an Answer, instead submitting a late “*Verified Partial*  
22 *Answer*” with a Rule 12(b)(6) motion. This is improper. Rule 12(b), Ariz. R. Civ. P., states:

23 *“A motion asserting any of these defenses must be made before pleading if a*  
24 *responsive pleading is allowed.”*

25 Defendants did not comply. Their motion was filed after the deadline and alongside a  
26 belated Answer, making it procedurally defective under Rules 12(b) and 15(a)(3). Defendants also  
27 continue to withhold key evidence. Rather than produce documents required under Rule 26.1 and  
28 Court Ordered Tier 3 discovery, they rely on affidavits while denying access to underlying  
materials. Arizona law requires disclosure of all relevant information and prohibits reliance on

1 undisclosed evidence. *See Bryan v. Riddel*, 178 Ariz. (1994); *Allstate Ins. Co. v. O'Toole*, 182  
2 Ariz. (1995); *Zimmerman v. Shakman*, 204 Ariz. (App. 2003). This conduct warrants preclusion  
3 and sanctions. Defendants' motion further attempts to narrow claims already resolved on appeal,  
4 seeking on remand what they failed to obtain on appeal.

### 5 **III. IMPROPER RELITIGATION OF APPELLATE DECISIONS**

6  
7 *Defendants continue to recycle three core theories: CC&Rs waiver, agency immunity, and*  
8 *blanket individual immunity—all already addressed by the Court of Appeals.*

9 First, Defendants attempt to revive the CC&Rs waiver. That argument was waived on  
10 appeal because it was not timely raised and cannot be revived on remand. *See Trantor v.*  
11 *Fredrikson*, 179 Ariz. (1994); *Dombey v. Phoenix Newspapers*, 150 Ariz. (1986). It also cannot  
12 bar gross negligence or intentional torts, as confirmed by the Court of Appeals and Arizona law.  
13 *See Airfreight Express Ltd. v. Evergreen Air Ctr., Inc.*, 215 Ariz. (App. 2007). Defendants'  
14 renewed attempt to dismiss these preserved tort claims through a late motion improperly seeks to  
15 relitigate a waived and limited defense.

16 Second, Defendants again assert agency immunity, despite the appellate ruling allowing  
17 tort claims against agents to proceed, not just contract-based claims. Third, Defendants assert  
18 overbroad individual immunity, attempting to expand limited appellate rulings into blanket  
19 protection from tort liability. These arguments collectively attempt to relitigate and expand issues  
20 already resolved, in violation of the appellate mandate and law-of-the-case doctrine. *See Powell-*  
21 *Cerkoney v. TCR-Montana Ranch JV*, Ariz. (App. 1993). This Court is bound to follow the  
22 appellate decision and may not revisit issues already decided.

### 23 **IV. GROUNDS FOR RELIEF**

#### 24 **A. THE VERIFIED PARTIAL TO DISMISS IS UNTIMELY RULE 15.**

25  
26 Rule 15(a)(3) requires a response to an amended pleading within 21 days after service  
27 unless the court orders otherwise. Here, the Court ordered a response within 10 days. Rodriguez  
28 filed and served the Amended Civil Complaint on February 13, 2026. Defendants' March 31, 2026

1 motion came 46 days later. It was untimely under either measure and should be denied or stricken  
2 as defective.

3 **B. THE MOTION IS PROCEDURALLY IMPROPER RULE (b)**  
4

5 Rule 12(b) requires a motion asserting failure to state a claim to be made before the  
6 responsive pleading. Defendants answered and only later filed this motion. Even if certain defenses  
7 may still be preserved in limited ways after the answer, that does not convert this filing into a  
8 proper Rule 12(b)(6) motion. The Court should not reward a procedurally improper motion that  
9 was filed after Defendants joined issue on the merits.

10 **C. RULE 26.1 & 37: DISCLOSURE ABUSE PRECLUDES DISMISSAL**  
11

12 Arizona's disclosure rules are mandatory and designed to ensure cases are decided on the  
13 merits—not through concealment. Rule 26.1 requires timely disclosure of all relevant information,  
14 and Rule 37(c)(1) prohibits a party from using information it failed to disclose absent good cause  
15 or lack of prejudice. Courts enforce these rules strictly to deter withholding of evidence and to  
16 promote fair litigation. *See Bryan v. Riddel*, 178 Ariz. (1994); *Allstate Ins. Co. v. O'Toole*, 182  
17 Ariz. (1995); *Zimmerman v. Shakman*, 204 Ariz. (App. 2003) A party may not benefit from its  
18 own nondisclosure..

19 This case is subject to Tier 3 disclosure under the Court's February 23, 2026 Order,  
20 requiring comprehensive production given the volume and complexity of evidence. Defendants  
21 have failed to produce key materials—including internal communications, records, approvals, and  
22 remediation evidence—while those materials remain exclusively within their control. Instead, they  
23 seek dismissal on an incomplete, self-created record. Arizona law does not permit a party to  
24 withhold evidence and then seek dispositive relief based on that absence. Such conduct is precisely  
25 what Rules 26.1 and 37 are intended to prevent and warrants denial of the motion and appropriate  
26 sanctions.  
27  
28

1 **D. DEFENDANTS' PREJUDICIAL USE OF AFFIDAVITS AND DISCOVERY NON-**  
2 **COMPLIANCE**

3 The record reflects a pattern in which Defendants, through counsel Shaw, rely on affidavits  
4 and basic sworn narratives instead of producing the underlying documents and evidence required  
5 by Rule 26.1. Affidavits are not a substitute for mandatory disclosure. Arizona law requires parties  
6 to disclose the actual information and materials supporting their claims and defenses, including  
7 unfavorable evidence, and to supplement those disclosures as required. *See Bryan v. Riddel*, 178  
8 *Ariz.* 472, 476 (1994); *Allstate Ins. Co. v. O'Toole*, 182 *Ariz.* (1995).

9 Where a party offers sworn statements without producing the supporting documents, the  
10 opposing party is deprived of the ability to test, verify, and challenge that evidence. Arizona courts  
11 prohibit parties from relying on undisclosed or unsupported materials and from benefiting from  
12 incomplete disclosure. *Zimmerman v. Shakman*, 204 *Ariz.* (App. 2003).

13 Defendants' use of affidavit-style narratives in place of actual evidence, while withholding  
14 the underlying materials, raises serious concerns regarding candor, factual support, and  
15 compliance with Rule 26(g) and Rule 11. Arizona courts have made clear that disclosure  
16 obligations cannot be satisfied through selective or self-serving summaries; the rules require  
17 production of the evidence itself so that claims are tested on a complete and accurate record.

18 **E. DEFENDANTS DEFY COURT OF APPEALS ORDER**

19 The appellate mandate is binding. Under ARCAP 24 and the mandate rule, this Court must  
20 follow the Court of Appeals' decision and may not revisit issues resolved or waived. *See Powell-*  
21 *Cerkoney v. TCR-Montana Ranch JV*, 176 *Ariz.* (App. 1993). Defendants' late Rule 12(b)(6)  
22 motion (filed after the Rule 15(a)(3) deadline) improperly seeks to relitigate and expand issues  
23 already decided. Granting it would violate the mandate, exceed this Court's authority, and raise  
24 due process concerns.

25 **F. CONSIDERATION OF THE MOTION IMPLICATES DUE PROCESS VIOLATIONS**  
26 **DUE TO EVIDENCE CONCEALMENT**

1 Due process guarantees a meaningful opportunity to be heard, including the ability to test  
2 opposing evidence. The Fourteenth Amendment provides that no State shall “*deprive any person*  
3 *of life, liberty, or property, without due process of law,*” U.S. Const. amend. XIV, § 1, and the  
4 Arizona Constitution provides the same protection. Ariz. Const. art. 2, § 4. Here, Defendants seek  
5 dismissal while withholding evidence and relying on unsupported affidavits, depriving Rodriguez  
6 of a fair opportunity to challenge the record and violating due process.

7 **G. DEFEDANTS HAVE NOT MET BURDEN OF PROOF UNDER THE LAW**

8 At the amended pleading stage—particularly after discovery has been ordered—Rodriguez  
9 is not required to prove her case; the Court must accept well-pleaded facts as true and draw  
10 reasonable inferences in her favor. Rule 12(b) requires that a motion for failure to state a claim be  
11 made before a responsive pleading. Here, Rodriguez filed her Amended Civil Complaint and  
12 discovery was ordered, yet Defendants filed a Rule 12(b)(6) motion after the deadline and outside  
13 the proper sequence. Rodriguez has already produced substantial evidence—nearly 2,000 exhibits,  
14 including photographs, videos, and witness statements—far exceeding what is required at this  
15 stage. Defendants nonetheless ask the Court to disregard both the pleadings and the developing  
16 discovery record, rely on unsupported affidavits, and resolve factual disputes in their favor. Their  
17 motion is procedurally improper, untimely, and unsupported, and provides no basis for relief.

18 **V. RULE 37, RULE 26(g), AND RULE 11 SANCTIONS ARE WARRANTED**

19 Rule 37 treats incomplete or evasive disclosures as failures and authorizes sanctions,  
20 including preclusion. Rule 37(c)(1) bars use of undisclosed information absent good cause. Rule  
21 26.1 requires full disclosure to prevent trial by ambush. *See Zimmerman v. Shakman*, 204 Ariz.  
22 231 (App. 2003); *Bryan v. Riddel*, 178 Ariz. 472 (1994); *Allstate Ins. Co. v. O’Toole*, 182 Ariz.  
23 284 (1995). Despite this Court’s February 23, 2026 Tier 3 Order, Defendants have not produced  
24 core materials within their control, including: internal HOA communications; maintenance and  
25 remediation records; work orders and vendor communications; financials and enforcement  
26 records; documents responsive to December 1, 2025 requests. They also withhold key ESI—  
27 emails, text messages, metadata, and digital activity—central to proving coordination, harassment,  
28 retaliation, discrimination, and civil conspiracy. Instead, Defendants rely on attorney-prepared

1 affidavits and generalized narratives without producing underlying evidence. This constitutes  
2 evasive disclosure under Rule 37.

3 Rule 26(g) requires certification that disclosures are complete after reasonable inquiry;  
4 Rule 11 requires factual support. Defendants' reliance on selective summaries, unsupported  
5 affidavits, and an untimely motion—while withholding evidence—violates these rules. A party  
6 cannot seek relief on an incomplete, self-created record. *See Zimmerman*, 204 Ariz. Even if  
7 considered, the Motion fails. The Amended Complaint satisfies Rule 8(a). *See Coleman v. City of*  
8 *Mesa*, 230 Ariz. 352 (2012). It plausibly alleges intentional torts based on Defendants' knowledge  
9 and deliberate inaction. Duties are not limited to CC&Rs; Arizona recognizes independent tort  
10 duties. *See Airfreight Express Ltd. v. Evergreen Air Ctr., Inc.*, 215 Ariz. 103 (App. 2007). The  
11 claims are fact-intensive and not suitable for dismissal. *See Coleman*, 230 Ariz. 352.

12 The Complaint sufficiently alleges selective enforcement, retaliation, and coordinated  
13 conduct. The Court of Appeals reinstated negligence, gross negligence, and intentional tort claims  
14 and directed further factual development, including as to Focus HOA Management, LLC, and  
15 agents Anna Schultz, Brooke Sortor, and Harman Cadis, whose liability arises from personal  
16 participation. Dismissal would violate the mandate and law-of-the-case doctrine. *See Powell-*  
17 *Cerkoney v. TCR-Montana Ranch JV*, 176 Ariz. (App. 1993). Finally, any alleged duplication is  
18 permitted under Rule 8(d). Accordingly, the Motion fails as a matter of law.

## 19 VII. REQUEST FOR RELIEF

20 WHEREFORE, Rodriguez respectfully requests that the Court:

- 21
- 22 1. Strike and deny Defendants' Partial Motion to Dismiss as untimely, improper, and contrary  
23 to the appellate mandate.
- 24 2. Order full Tier 3 disclosures under Rules 26.1 and 26.2.
- 25 3. Compel production of all responsive documents, communications, and ESI.
- 26 4. Preclude reliance on undisclosed evidence and unsupported affidavits.
- 27 5. Enforce the appellate mandate and bar re-litigation of resolved issues.
- 28 6. Impose sanctions under Rules 37, 26(g), 11, and the Court's inherent authority.
7. Grant further relief as the Court deems just.

1 Respectfully submitted this 3rd day of April 2026.

2 

3  
4 Sandra Rodriguez

5 **VII. EXHIBIT LIST**

- 6
- 7 1. *Court of Appeals Mandate (Aug. 12, 2025)*
  - 8 2. *Rodriguez Email – Service of Amended Complaint & Exhibits (Feb. 13, 2026)*
  - 9 3. *Shaw Receipt Confirmation – Amended Complaint & Exhibits (Feb. 13, 2026)*
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1 **VI. CERTIFICATE OF SERVICE**

2 I served copies of this ***PLAINTIFF'S MOTION TO STRIKE OR DENY DEFENDANT'S***  
3 ***PARTIAL MOTION TO DISMISS*** for on all parties of record via U.S. Mail.  
4

5 **OPPOSING PARTY INFORMATION**

6 **DEFENDANTS:**

- 7           o Gardens Gilbert Community Association  
8           o Focus HOA Management, LLC  
9           o Harmin Cadis  
10          o Brooke Sortor  
11          o Anna Schultz  
12          • **Address:** 4135 E. Power Road, Suite 133, Mesa, Arizona 85212

13 **DEFENDANT'S LEGAL COUNSEL:**

- 14          • **Name:** Augustus H. Shaw IV  
15          • **Firm:** Shaw & Lines, LLC  
16          • **Address:** 1490 S. Price Road, Suite 318 Chandler, Arizona 85286

17  
18 Respectfully submitted this 3rd day of April 2026.

19 

20 Sandra Rodriguez  
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# EXHIBIT 1

NOTICE: NOT FOR OFFICIAL PUBLICATION.  
UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL  
AND MAY BE CITED ONLY AS AUTHORIZED BY RULE.

IN THE  
**ARIZONA COURT OF APPEALS**  
DIVISION ONE

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SANDRA RODRIGUEZ, *Plaintiff/Appellant*,

*v.*

FOCUS HOA MANAGEMENT, LLC, et al., *Defendants/Appellees*.

No. 1 CA-CV 24-0790, 1 CA-CV 25-0040  
(Consolidated)

FILED 08-12-2025

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Appeal from the Superior Court in Maricopa County  
Nos. CV2024-005940 and CV2024-013806  
The Honorable Melissa Iyer Julian, Judge  
The Honorable Roderick Coffey, Judge

**AFFIRMED IN PART, REVERSED IN PART, VACATED IN PART,  
AND REMANDED**

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COUNSEL

Sandra Rodríguez, Gilbert  
*Plaintiff/Appellant*

Shaw & Lines, LLC, Phoenix  
By Augustus H. Shaw, IV  
*Counsel for Defendants/Appellees*

**MEMORANDUM DECISION**

Presiding Judge Kent E. Cattani delivered the decision of the Court, in which Judge Samuel A. Thumma and Judge Angela K. Paton joined.

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**CATTANI**, Judge:

¶1 Sandra Rodriguez appeals from two dismissals of complaints she filed against her community association, its management company, and some of their individual employees for failure to maintain the community according to its governing documents. We consolidated the cases on appeal under ARCAP 8(g). For reasons that follow, we affirm in part, reverse in part, vacate in part, and remand for proceedings consistent with this decision.

**FACTS AND PROCEDURAL BACKGROUND**

¶2 Rodriguez owns a home in the Gardens/Gilbert Community, a residential community in Gilbert. The HOA Gardens/Gilbert Community Association ("Gardens/Gilbert") governs the housing community according to its declaration of covenants, conditions, and restrictions ("CC&Rs"), and Anna Schultz is a member of the Gardens/Gilbert Board of Directors. Focus HOA Management ("Focus") is the managing agent for Gardens/Gilbert, and Brooke Sortor and Harmin Cadis are its employees.

**I. The Gardens/Gilbert Case (CV2024-005940).**

¶3 In March 2024, Rodriguez sued defendants Gardens/Gilbert, Focus, Sortor, Cadis, and Schultz and asserted claims for breach of contract and duty, gross negligence, and intentional torts. She also arguably asserted other claims regarding discrimination, failure to maintain and provide access to financial records, and violation of her First Amendment rights. All the defendants except Gardens/Gilbert moved to dismiss Rodriguez's complaint under Arizona Rule of Civil Procedure ("Rule") 12(b)(6) for failure to state a claim upon which relief may be granted. They argued Rodriguez's claims were better directed against Gardens/Gilbert than its employees because as agents they would not be liable for actions taken on behalf of Gardens/Gilbert. In May 2024, the superior court granted the motion and dismissed Rodriguez's claims against Focus, Sortor,

RODRIGUEZ v. FOCUS HOA, et al.  
Decision of the Court

Cadis, and Schultz by minute entry, expressly stating that the dismissal was “without prejudice.”<sup>1</sup>

¶4 In late August 2024, the court in the Gardens/Gilbert Case certified a partial final judgment under Rule 54(b) dismissing Rodriguez’s claims against Focus, Sortor, Cadis, and Schultz. This judgment—entered on the proposed form of final judgment lodged by the defendants—designated the dismissal as *with* prejudice (contrary to the minute entry ruling and with no explanation for the change). The court also awarded those defendants their attorney’s fees and costs. Rodriguez timely appealed, and we have jurisdiction under A.R.S. § 12-2101(A)(1).

**II. The Focus Case (CV2024-013806).**

¶5 In June 2024, while the parties litigated attorney’s fees (and before the final judgment) in the Gardens/Gilbert Case, Rodriguez filed a new case against Focus, Cadis, and Sortor (the “Focus Defendants”). Rodriguez’s operative pleading in the Focus Case (her amended complaint filed June 24, 2024, pursuant to Rule 15(a)) reasserted all claims from the Gardens/Gilbert Case and added claims for fraud, defamation, attorney misconduct, intentional infliction of emotional distress, and unfair and deceptive trade practices.

¶6 Later in June 2024, the Focus Defendants moved to dismiss the Focus Case under Rule 12(b)(6) on the basis of claim preclusion, stating that the Gardens/Gilbert Case had been dismissed with prejudice. In that motion, the Focus Defendants also cited the CC&Rs’ Waiver of Damages Clause relieving Gardens/Gilbert and its officers, directors, employees, and agents from liability arising from mistakes of judgment, negligence, malfeasance, or nonfeasance. In July 2024, the court granted the Focus Defendants’ motion, dismissing Rodriguez’s claims on the basis of claim preclusion, without addressing the defendants’ argument about the CC&Rs.

¶7 In September 2024, the court in the Focus Case entered a final judgment under Rule 54(c), dismissing Rodriguez’s complaint with prejudice and awarding the Focus Defendants their attorney’s fees and costs. Rodriguez timely appealed, and we have jurisdiction under A.R.S. § 12-2101(A)(1).

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<sup>1</sup> Rodriguez’s claims against Gardens/Gilbert in this case remain ongoing in superior court.

DISCUSSION

¶8 Rodriguez challenges the dismissal of the Gardens/Gilbert Case complaint as to Focus, Sortor, Cadis, and Schultz, the dismissal of the Focus Case, and the awards of attorney's fees and costs to the defendants in both cases.

I. The Gardens/Gilbert Case.

¶9 We review the dismissal of a complaint under Rule 12(b)(6) de novo. *Coleman v. City of Mesa*, 230 Ariz. 352, 355, ¶ 7 (2012). Dismissal on this basis is appropriate only if "as a matter of law [ ] plaintiffs would not be entitled to relief under any interpretation of the facts susceptible of proof." *Id.* at 356, ¶ 8 (alteration in original) (quoting *Fid. Sec. Life Ins. Co. v. State Dep't of Ins.*, 191 Ariz. 222, 224, ¶ 4 (1998)). The court looks only to the pleading itself, assuming the truth of all well-pleaded factual allegations and indulging all reasonable inferences from those facts. *Id.* at ¶ 9. Arizona follows a notice pleading standard under Rule 8, which requires that a pleading contain a "short and plain statement of the claim showing that the pleader is entitled to relief" and is aimed toward "giv[ing] the opponent fair notice of the nature and basis of the claim and indicat[ing] generally the type of litigation involved." *Cullen v. Auto-Owners Ins. Co.*, 218 Ariz. 417, 419, ¶ 6 (2008).

¶10 In their motion to dismiss, Focus, Sortor, Cadis, and Schultz relied on principles of agency liability, arguing that they cannot be personally liable for any acts relevant to Rodriguez's allegations because those fell within the scope of their employment with Gardens/Gilbert. While these defendants assert on appeal that Rodriguez agreed to limit their personal liability through the CC&Rs' Waiver of Damages Clause, they did not raise this argument before the superior court until their reply in support of the motion to dismiss and thereby waived it. *See Westin Tucson Hotel Co. v. Dep't of Revenue*, 188 Ariz. 360, 364 (App. 1997) (arguments raised for the first time in a reply are waived).

¶11 Turning to the specific claims Rodriguez asserted in the Gardens/Gilbert Case, Rodriguez does not dispute that Focus, Sortor, Cadis, and Schultz are agents of Gardens/Gilbert. As to her contract claims, the CC&Rs govern the relationship between Rodriguez and Gardens/Gilbert, and agents are not personally liable for their disclosed principal's obligations arising under a contract. *Ferrarrell v. Robinson*, 11 Ariz. App. 473, 475 (App. 1970); *see* Restatement (Second) of Agency § 328 (1958). Likewise, disclosed agents are generally not personally liable for

RODRIGUEZ v. FOCUS HOA, et al.  
Decision of the Court

their principal's alleged failure to provide access to financial records or alleged First Amendment violations committed in the context of breach of contract. See A.R.S. § 33-1805 (dictating the *association's* obligations regarding financial and other records) (emphasis added); Restatement (Second) of Agency § 328. Thus, Focus, Sortor, Cadis, and Schultz are not subject to personal liability for the alleged breach of the contract, failure to provide access to financial records, or First Amendment violations. Restatement (Second) of Agency §§ 328, 350. The superior court therefore properly dismissed these claims with respect to those defendants.<sup>2</sup>

¶12 Rodriguez also argued negligence in the Gardens/Gilbert Case. An agent can be liable for negligence to third parties even when acting on behalf of a principal. *Lombardo v. Albu*, 199 Ariz. 97, 100, ¶ 11 (2000) (citing Restatement (Second) of Agency §§ 348, 350 ("An agent is subject to liability if, by his acts, he creates an unreasonable risk of harm to the interests of others protected against negligent invasion.")). The superior court thus erred by dismissing on this basis.

¶13 Nevertheless, an agent owes no greater duty of care than their principal, which can contract to relieve itself of liability for harm caused by ordinary negligence. Restatement (Second) of Agency § 350 cmt. d. Because Focus, Sortor, Cadis, and Schultz have waived any argument that the CC&Rs' Waiver of Damages Clause relieves them of liability for negligence by failing to raise it until their reply in support of their motion to dismiss, see *Westin Tucson Hotel Co.*, 188 Ariz. at 364, we do not address this argument. Even assuming the contract between Gardens/Gilbert and its homeowners—the CC&Rs—included a clause that relieved Gardens/Gilbert and its agents of liability for mistakes in judgment, negligence, malfeasance, and nonfeasance, this waiver does not reach gross negligence or intentional torts. Restatement (Second) of Agency § 350 cmt. d. ("An agent acting for a master or other principal normally owes no greater duty of care than his principal, who by contract with another can relieve himself from liability for harm caused by ordinary negligence."); see generally *Lombardo*, 199 Ariz. at 100, ¶ 11 (establishing agent liability for negligence to third parties when acting on behalf of a principal).

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<sup>2</sup> Rodriguez also alleged the defendants in the Gardens/Gilbert Case discriminated and/or retaliated against her, but her complaint did not provide supporting facts sufficient to sustain the claim against the dismissed defendants. This claim may more properly lie against Gardens/Gilbert, as the alleged discrimination and retaliation occurred as part of Gardens/Gilbert's actions to enforce the provisions of the CC&Rs.

RODRIGUEZ v. FOCUS HOA, et al.  
Decision of the Court

¶14 In her Gardens/Gilbert Case complaint, Rodriguez asserted that the defendants were grossly negligent by failing to maintain the community to the standards specified in the CC&Rs by failing to enforce rules requiring owners to keep their dogs on leashes and pick up their dogs' waste, resulting in unclean communal areas. Rodriguez also alleged facts indicating the defendants blocked her access to the community resident portal, restricted her participation in community meetings, misrepresented community policies, and improperly fined her for violations. She alleged that these actions resulted in financial strain and physical health issues for her and her children, including allergic reactions, sinus infections, and respiratory problems. Rodriguez requested monetary relief and a myriad of other equitable remedies.

¶15 Under Arizona's notice pleading standard, a complaint need only have "a statement of the ground upon which the court's jurisdiction depends, a statement of the claim showing that the pleader is entitled to relief and a demand for judgment." *Rowland v. Kellogg Brown & Root, Inc.*, 210 Ariz. 530, 533, ¶ 10 (App. 2005) (quoting *Morn v. City of Phoenix*, 152 Ariz. 164, 166 (App. 1986)); *Cullen*, 218 Ariz. at 419, ¶ 6; *see also* Ariz. R. Civ. P. 8(a). While the inclusion of conclusory statements does not invalidate a complaint, a complaint that states only legal conclusions with no supporting factual allegations does not satisfy Arizona's notice pleading standard under Rule 8. *Cullen*, 218 Ariz. at 419, ¶ 7. "Pleadings must be construed so as to do justice." Ariz. R. Civ. P. 8(f).

¶16 While not precise, Rodriguez's complaint included sufficient factual allegations to notify the defendants in the Gardens/Gilbert Case of her gross negligence and intentional tort claims against them. *See Rowland*, 210 Ariz. at 533, ¶ 10. Those claims fall outside the superior court's basis for dismissal, which was premised on principles limiting an agent's liability for certain acts undertaken on behalf of a principal. Neither their roles as agents nor contractual limitations of liability shield Focus, Sortor, Cadis, and Schultz from personal liability for gross negligence or intentional torts. *See Lombardo*, 199 Ariz. at 100, ¶ 11; Restatement (Second) of Agency § 350 cmt. d. Rodriguez has alleged facts that, at this stage of the proceedings, are sufficient to support her gross negligence and intentional tort claims against Focus, Sortor, Cadis, and Schultz in their individual capacities. *See Coleman*, 230 Ariz. at 356, ¶ 8.

¶17 Thus, we vacate the partial final judgment in the Gardens/Gilbert Case. We reverse the order dismissing Rodriguez's claims of negligence, gross negligence, and intentional torts as against Focus,

RODRIGUEZ v. FOCUS HOA, et al.  
Decision of the Court

Sortor, Cadis, and Schultz, but we affirm the dismissal of Rodriguez's other claims with respect to those defendants.

¶18 In doing so, we note that the dismissal of the other claims is without prejudice. The superior court's minute entry ruling dismissed Rodriguez's claims against Focus, Sortor, Cadis, and Schultz, but did so expressly "without prejudice." The form of judgment submitted by counsel for the defendants, however, inexplicably purported to dismiss the claims "in their entirety, with prejudice." Although the judgment was entered on the form provided, the record gives no indication that the court changed its mind about its prior without-prejudice ruling, and we are aware of no authority permitting a party to submit a form of judgment contrary to the court's ruling. Our vacatur of that judgment renders moot the anomalous conversion of a dismissal without prejudice to one with prejudice. We clarify, however, that Rodriguez's claims that remain dismissed from the Gardens/Gilbert Case have been dismissed, as the superior court ruled, "without prejudice."

¶19 Finally, Rodriguez argues that the superior court ignored her financial hardship and imposed excessive fees by awarding the defendants their attorney's fees and costs. In light of our decision reversing the superior court's dismissal in part, we vacate the award of attorney's fees and costs, without prejudice to reconsidering an award following resolution of the merits of the remaining claims.

## II. The Focus Case.

¶20 Rodriguez argues that the superior court's dismissal based on claim preclusion in the Focus Case was erroneous, as the only ruling from the Gardens/Gilbert Case at the time was the partial dismissal without prejudice. *Airfreight Exp. Ltd. v. Evergreen Air Ctr., Inc.*, 215 Ariz. 103, 108, ¶ 13 (App. 2007) ("A dismissal without prejudice, however, is not an adjudication on the merits and does not bar a second action under the doctrine of claim preclusion.") (citing *Union Interchange, Inc. v. Van Aalsburg*, 102 Ariz. 461, 464 (1967)). Because no final judgment of any sort had been issued in the Gardens/Gilbert Case at the time the court granted the motion to dismiss in the Focus Case, there was no judgment that would have allowed the application of claim preclusion. See *In re Gen. Adjudication of All Rights to Use Water in Gila River Sys. & Source*, 212 Ariz. 64, 69-70, ¶ 14 (2006) (claim preclusion requires, among other things, "a final judgment on the merits in the previous litigation"). Moreover, because we have vacated the final judgment in the Gardens/Gilbert Case, reversed in part the order dismissing some of those claims, and concluded that the dismissal of the

RODRIGUEZ v. FOCUS HOA, et al.  
Decision of the Court

others was without prejudice, *see supra* ¶¶ 9-17, we reverse the dismissal of Rodriguez's complaint in the Focus Case, vacate the award of fees and costs, and remand.

**III. Attorney's Fees and Costs on Appeal.**

¶21 Because Focus, Sortor, Cadis, and Schultz are not the prevailing parties, we deny their requests for attorney's fees and costs on appeal. *See* A.R.S. §§ 12-341.01, -341. As the prevailing party on appeal, Rodriguez is entitled to an award of her costs on appeal upon compliance with ARCAP 21.

**CONCLUSION**

¶22 In the Gardens/Gilbert Case, we (1) affirm the dismissal as to Rodriguez's claims for breach of contract and duty, First Amendment violations, failure to provide access to financial records, and discrimination/retaliation, but clarify that the dismissal remains "without prejudice"; (2) reverse the dismissal as to Rodriguez's claims for negligence, gross negligence, and intentional torts; and (3) vacate the award of attorney's fees and costs. In the Focus Case, we reverse the dismissal of Rodriguez's complaint and vacate the award of fees and costs. Both cases are remanded to the superior court for further proceedings consistent with this decision.



MATTHEW J. MARTIN • Clerk of the Court  
FILED: JR

# EXHIBIT 2



Sandra Rodriguez <sandra.rodriguez0339@gmail.com>

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## Amended Civil Complaint + Exhibits

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Sandra Rodriguez <sandra.rodriguez0339@gmail.com>

Fri, Feb 13, 2026 at 5:33 PM

To: Augustus Shaw <ashaw@shawlines.com>

Bcc: Sandra Rodriguez <sandra.rodriguez0339@gmail.com>

Good Evening Shaw,

The Amended Civil Complaint, Master Exhibit List, and Exhibits have been dropped off at your office at 1490 S. Price Road Ste 318 Chandler, AZ 85286 this evening at about 5:26pm. Received by your employee Zeek. A copy will also be served via Maricopa County Superior Court Process Service.

Thank you

Sandra Rodriguez

# EXHIBIT 3



Sandra Rodriguez <sandra.rodriguez0339@gmail.com>

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**RE: Amended Civil Complaint + Exhibits - Rodriguez v. Gardens Gilbert - CV 2024005940 - Claim # 4554541 - Amended Complaint Failure to Provide Video Exhibits**

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Augustus Shaw <ashaw@shawlines.com>

Mon, Feb 16, 2026 at 11:11 PM

To: Sandra Rodriguez <sandra.rodriguez0339@gmail.com>

Cc: Diane Fincher <Diane@shawlines.com>, Dominick Détente <Dominick@shawlines.com>, Receptionist <receptionist@shawlines.com>

Ms. Rodriguez,

The Amended Complaint and paper exhibits were received by my office on Ferbruqary 13, 2026 at 5:30pm.

The video exhibits listed in the Amended Complaint were not received by my office on 2/13/2026.

Unless you provide my office with a copy of all video exhibits by 5:00pm on Wednesday, February 18, 2026, my client will file a Notice with the Court stating that video exhibits have not been provided.

Augustus H. Shaw IV†\*

Shaw & Lines, LLC

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Chandler, Arizona 85286

Phone 480-456-1500

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†Licensed in Arizona and Nebraska

\*President- College of Community Association Lawyers

\*Faculty Associate Professor - Arizona State University O'Connor College of Law

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**THIS FIRM MAY ACT AS A DEBT COLLECTOR. ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE.**

**From:** Sandra Rodriguez <sandra.rodriguez0339@gmail.com>  
**Sent:** Friday, February 13, 2026 5:34 PM  
**To:** Augustus Shaw <ashaw@shawlines.com>  
**Subject:** Amended Civil Complaint + Exhibits

Good Evening Shaw,

The Amended Civil Complaint, Master Exhibit List, and Exhibits have been dropped off at your office at 1490 S. Price Road Ste 318 Chandler, AZ 85286 this evening at about 5:26pm. Received by your employee Zeek. A copy will also be served via Maricopa County Superior Court Process Service.

Thank you

Sandra Rodriguez

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 **Ruling on Motion to Amend.pdf**  
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