



1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **1. The Facts Alleged by Plaintiff.**

3  
4 Plaintiff’s Amended Civil Complaint #3 alleges disputes concerning common-  
5 area maintenance, architectural approvals, records access, and her interactions with the  
6 Association, its board, and its managing agents. *See* Am. Compl. Section IV.

7  
8 Plaintiff alleges Defendants failed to maintain common areas and sanitation  
9 conditions, and failed to act after notice of alleged health and safety risks. *See* Am.  
10 Compl. Section IV, Count I, ¶ 3(a); Count III, ¶¶ 7(a)(i)-(iii); Count IV, ¶¶ 11(a)-(d).

11  
12 Plaintiff alleges that Defendants obstructed remediation efforts at her property  
13 by delaying or withholding architectural approvals related to mold and water intrusion.  
14 *See* Am. Compl. Section IV, Count I, ¶ 3(d); Count X, ¶¶ 45, 47.

15  
16 Plaintiff alleges that Defendants restricted her access to records, meetings, and  
17 communications after she requested information and participated in governance, and  
18 made false or misleading statements to third parties and law enforcement. *See* Am.  
19 Compl. Section IV, Count V, ¶ 13(c); Count VII, ¶¶ 26-27; Count X, ¶¶ 39, 41-47.

20  
21 Plaintiff claims these actions caused physical injury, emotional distress, financial  
22 harm, and loss of insurance or housing stability. *See* Am. Compl. Section IV, Count 1 ¶  
23 5, Count V, ¶ 19; Count X, ¶ B; Count XI, ¶ 54.

24  
25 Plaintiff further alleges a broader pattern of retaliation, discrimination, and civil  
26 rights violations arising from her complaints and participation in Association matters.  
27 *See* Am. Compl. Section I; Section IV, Count VI; Count VII.

1                   **2. The Standard of Review for a Rule 12(b)(6) Motion to Dismiss.**

2                   Dismissal for failure to state a claim under Rule 12(b)(6) is appropriate “if as a  
3 matter of law plaintiffs would not be entitled to relief under any interpretation of the facts  
4 susceptible of proof.” *Coleman v. City of Mesa*, 230 Ariz. 352, 356, ¶ 8 (2012) (quoting  
5 *Fid. Sec. Life Ins. Co. v. State Dep’t of Ins.*, 191 Ariz. 222, 224, ¶ 4 (1998)). In evaluating  
6 a Rule 12(b)(6) motion, the Court assumes the truth of the well-pled factual allegations  
7 in the complaint but does not accept legal conclusions or unsupported inferences as true.  
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9 *Cullen v. Auto-Owners Ins. Co.*, 218 Ariz. 417, 419-20, ¶¶ 7-9 (2008).

10                   While the Court assumes the truth of the alleged facts, dismissal is appropriate  
11 where those allegations, even if true, do not establish a legally cognizable claim for relief.  
12  
13 *Coleman*, 230 Ariz. at 356, ¶ 8. Courts act as gatekeepers to prevent claims from  
14 proceeding where the complaint fails, as a matter of law, to state a viable cause of action.  
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17                   **3. Legal Arguments**

18                   **a. The Sufficiency of Plaintiff’s Legal Claim.**

19                   “Arizona is a notice pleading state, and therefore does not require extensive fact  
20 pleading.” *Rosenberg v. Rosenberg*, 123 Ariz. 589, 593 (1979). All complaints filed in  
21 Arizona superior courts must meet the minimal pleading requirements of Ariz. R. Civ. P.  
22 8(a)(2). At the very least, this requires a “short and plain statement of the claim showing  
23 that the pleader is entitled to relief,” so that the defendant has “fair notice of what the...  
24 claim is and the grounds upon which it rests.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544,  
25 555 (2007). To avoid dismissal, a complaint must contain “enough facts to state a claim  
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1 to relief that is plausible on its face.” *Ashcroft v. Iqbal*, 556 U.S. 662, 697 (2009). This  
2 requires “more than labels and conclusions, and a formulaic recitation of the elements of  
3 a cause of action will not do.” *Twombly*, 550 U.S. at 555.  
4

5 When evaluating a motion to dismiss, a court need not accept legal conclusions  
6 couched as allegations of fact, nor “speculate about hypothetical facts that might entitle  
7 the plaintiff to relief.” *Cullen v. Koty-Leavitt Ins. Agency, Inc.*, 168 P.3d 917 (App. 2007).  
8

9 Further, Plaintiff’s approach parallels the pleading defect addressed in the  
10 recently issued Arizona Court of Appeals decision in *Toliver v. U.S. Bank National*  
11 *Association*, No. 1 CA-CV 25-0573 (filed Jan. 6, 2026).<sup>1</sup> There, the Court affirmed  
12 dismissal where the pro se plaintiff cited scattered legal authorities and asserted  
13 conclusions without pleading facts showing entitlement to relief or explaining how  
14 cited authorities applied.<sup>2</sup> Plaintiff’s amended complaint suffers the same defect by  
15 reciting statutes, doctrines, and broad allegations without pleading elements necessary  
16 to state a claim or tying the factual assertions to legally recognized causes of action.  
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19 Throughout the Amended Complaint, to the extent Plaintiff’s allegations  
20 concerning community maintenance, sanitation, and common-area conditions assert  
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24 <sup>1</sup> The Association acknowledges that *Toliver v. U.S. Bank National Association* is a memorandum  
25 decision and therefore not binding precedent. Nevertheless, because *Toliver* addresses analogous  
26 pleading deficiencies and applies the same Rule 12(b)(6) standards governing whether a complaint states  
27 a legally cognizable claim, it provides persuasive and directly analogous guidance. It is cited pursuant to  
28 Ariz. R. Sup. Ct. 111(c). Thus, a copy is attached hereto as **Exhibit “2”**.

<sup>2</sup> See *Toliver*, No. 1 CA-CV 25-0573 at ¶¶ 15-16 (affirming dismissal where, even giving the pro se  
plaintiffs “the most charitable reading,” the amended complaint “failed to state a claim,” alleging  
“nothing about the parties’ relationship,” alleging no conduct “that would entitle [plaintiff] to any kind  
of relief,” and failing “to explain the significance of the legal authorities cited therein”).

1 harm to the community generally, those claims are derivative. Arizona courts treat  
2 claims alleging injury to the association or its membership collectively as derivative.  
3  
4 *Albers v. Edelson Tech. Partners LP*, 31 P.3d 821, 826 ¶ 17, 201 Ariz. 47, 52 (Ariz.  
5 App. 2001); *Iqtunheimr, LLC v. Val Vista Lakes Community Association*, No. 1 CA-CV  
6 25-0095, ¶¶ 10-12 (Ariz. App. 2026). Because Plaintiff pleads no compliance with the  
7 statutory prerequisites set forth in A.R.S. §§ 10-3631 and 10-3632 for derivative  
8 actions, those allegations must be dismissed.  
9

10 Accordingly, each proposed count must be assessed to determine whether it falls  
11 within the scope of the August 12, 2025 Court of Appeals’ ruling and this Court’s  
12 February 3, 2026 ruling (both collectively, the “Remand”) and states a legally  
13 cognizable claim.  
14

15 **b. Count I Fails Entirely as to Focus and in Part as to the Association.**

16 Count I fails entirely as a matter of law as to Defendant Focus. The Remand  
17 affirmed dismissal of contract-based claims against the management company and the  
18 individual defendants, Harman Cadis, Brooke Sortor, and Anna Schultz (hereafter, the  
19 “Individual Defendants”), and this Court’s ruling expressly limited claims against such  
20 defendants to tort claims. A trial court on remand is bound by the appellate court’s  
21 mandate and may not permit claims inconsistent with that ruling.<sup>3</sup> Because Count I is a  
22 contract-based claim, it cannot be maintained against Focus.  
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27 <sup>3</sup> See *Jordan v. Jordan*, 132 Ariz. 38, 40-41, 643 P.2d 1008, 1010-11 (1982) (holding that, on remand,  
28 the trial court must follow the appellate court’s mandate and that further proceedings are limited to the  
scope of that mandate absent an intervening change in controlling law).

1           Moreover, Focus is not a party to any contract with Plaintiff. The Declaration of  
2 Covenants, Conditions, Restrictions, and Easements for The Gardens recorded at  
3 Document No. 2002-0039460 (hereafter, the “CC&Rs”) constitute a contract between  
4 the association and its members.<sup>4</sup> Agents acting on behalf of a disclosed principal are not  
5 liable for breach.<sup>5</sup> Accordingly, Count I must be dismissed entirely as to Focus.  
6

7           As to the Association, Count I exceeds the limited scope of the Remand, which  
8 permits contract claims only to duties arising from the CC&Rs relating to common-area  
9 maintenance, records access under A.R.S. § 33-1805, and any narrowly tied retaliation.  
10

11           However, Plaintiff attempts to expand Count I beyond those permissible bounds  
12 by asserting alleged breaches based on litigation conduct, alleged misrepresentations,  
13 enforcement actions, and generalized governance disputes. *See* Am. Compl. Section IV,  
14 Count I, ¶¶ 3(b), (d)-(e), 4. A breach of contract claim requires violation of a specific  
15 contractual provision, and a plaintiff may not recast tort, statutory, or litigation-related  
16 conduct as contract claims absent an identified contractual duty.<sup>6</sup> Because Plaintiff does  
17 not identify any express CC&R provision at issue, those allegations fail to state a claim.  
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23 <sup>4</sup> *See Horton v. Mitchell*, 200 Ariz. 523, 525 ¶ 8, 29 P.3d 870, 873 (Ariz. App. 2001) (“The Restrictions  
are ‘a contract between the subdivision's property owners as a whole and the individual lot owners.’”) quoting  
*Ariz. Biltmore Estates Ass’n v. Tezak*, 177 Ariz. 447, 448, 868 P.2d 1030, 1031 (1993).

24 <sup>5</sup> *See Ferrarell v. Robinson*, 11 Ariz. App. 473, 475 (Ariz. App. 1970) (“One who signs an agreement as  
25 the agent of a fully disclosed principal is not a party to that agreement and thus incurs no personal  
26 liability for the principal’s breach of that agreement”); *see also* Restatement (Second) of Agency § 320  
27 (“Unless otherwise agreed, a person making or purporting to make a contract with another as agent for a  
disclosed principal does not become a party to the contract”).

28 <sup>6</sup> *See Graham v. Asbury*, 112 Ariz. 184, 185 (1975) (requiring breach of contractual obligations); *see also*  
*Wells Fargo Bank v. Arizona Laborers, Teamsters & Cement Masons Local No. 395 Pension Trust Fund*,  
201 Ariz. 474, 491, ¶ 60 (2002) (distinguishing contractual duties from independent tort obligations).

1           Accordingly, Count I must be dismissed as to Focus and limited, as to the  
2 Association, to those claims arising from the CC&Rs and statutory duties within the  
3 scope of the Remand.  
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5           **c. Count II Fails Entirely as to Focus and the Individual Defendants and**  
6           **in Part as to the Association.**

7           Count II fails as a matter of law as to Focus and the Individual Defendants. The  
8 implied covenant arises solely from a contractual relationship and may be asserted only  
9 against a party to the contract. Because these Defendants are not parties to any contract  
10 with Plaintiff,<sup>7</sup> no such claim exists as to them. Further, agents of a disclosed principal  
11 are not liable for breach of that principal's contract.<sup>8</sup>  
12

13           This result is independently required by the Remand limiting claims against such  
14 Defendants to tort claims. Accordingly, Count II must be dismissed as to Focus and the  
15 Individual Defendants.  
16

17           As to the Association, Count II cannot expand the limited contract-based duties  
18 preserved on Remand. Plaintiff instead relies on allegations concerning enforcement  
19 actions, communication restrictions, architectural-approval disputes, and generalized  
20 governance disputes. *See* Am. Compl. Section IV, Count II, ¶¶ 7-8. These allegations are  
21 not tied to specific contractual provisions and therefore fail.  
22

23           Although every contract includes an implied covenant, a plaintiff must identify  
24 specific contractual benefits that were denied. Plaintiff does not do so. Her reliance on  
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27 <sup>7</sup> *See supra* note 4.

28 <sup>8</sup> *See supra* note 5.

1 alleged deprivation of “expected benefits”<sup>9</sup> of homeownership is insufficient, as the  
2 implied covenant protects only those benefits arising from the contract itself, not  
3 generalized expectations. *See Rawlings v. Apodaca*, 151 Ariz. 149, 154 (1986).  
4

5 To the extent Plaintiff attempts to assert a tort-based claim for breach of the  
6 implied covenant, it independently fails because no special relationship exists. Arizona  
7 law permits such claims only where a fiduciary relationship, public interest, or adhesion  
8 is present. *See Wells Fargo Bank*, 201 Ariz. at 491 ¶ 60; *McAlister v. Citibank*, 171 Ariz.  
9 207, 213 (App. 1992). Plaintiff alleges no facts establishing such a relationship, and  
10 homeowners associations do not owe fiduciary duties to individual members as a matter  
11 of law. *See Rohde v. Beztak of Arizona, Inc.*, 164 Ariz. 383 (App. 1990).  
12  
13

14 Accordingly, Count II must be dismissed entirely as to Focus and the Individual  
15 Defendants and limited, as to the Association, to those claims, if any, arising from the  
16 narrow CC&R-based duties permitted on Remand.  
17

18 **d. Count III Fails in Part.**

19 Count III survives, if at all, only to the extent Plaintiff alleges a duty of reasonable  
20 care relating to known health and safety risks arising from common-area sanitation and  
21 maintenance, a breach of that duty, and resulting physical injury or property damage.  
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23 Plaintiff’s allegations, such as trespass, sanitation issues, and risks affecting her  
24 residence, survive past Remand only to the extent they relate to failures in common-area  
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28 <sup>9</sup> Am. Compl. Section IV, Count II, ¶ 8.

1 sanitation posing actual health and safety risks. *See* Am. Compl. Section IV, Count III, ¶  
2 7(a)(i)-(iii). Allegations beyond that limited scope fail.

3  
4 Further, Plaintiff fails to establish an independent tort duty as to the Individual  
5 Defendants and Focus. Any duties arise solely from the CC&Rs, and Arizona law does  
6 not permit recasting contract claims as tort claims absent a separate duty. *See Aspell v.*  
7 *Am. Contract Bridge League of Memphis, Tenn.*, 122 Ariz. 399, 402 (App. 1979).

8  
9 Plaintiff fails to allege specific hazardous conditions, unreasonable risks of harm,  
10 or proximate causation. Conclusory allegations of “physical illness,” “emotional  
11 distress,” and use interference are insufficient. *See* Am. Compl. Section IV, Count III, ¶  
12 8; *see also Cullen v. Auto-Owners Ins. Co.*, 218 Ariz. 417, 419-20, ¶¶ 7-9 (2008).

13  
14 Accordingly, Count III must be dismissed in part to the extent it exceeds the scope  
15 of Remand and fails to allege facts sufficient to state a negligence claim.

16  
17 **e. Count IV Fails in Part.**

18 Plaintiff improperly expands Count IV beyond the scope of Remand by asserting  
19 gross negligence based on alleged misrepresentations, enforcement authority, and  
20 governance conduct. *See* Am. Compl. Section IV, Count IV, ¶ 11(b). These allegations  
21 do not arise from common-area sanitation or maintenance.

22  
23 Plaintiff also fails to establish an independent tort duty. Any alleged duties arise  
24 solely from the CC&Rs, and because contract-based claims against them have already  
25 been dismissed, Plaintiff cannot establish the existence of a separate tort duty necessary  
26 to support a gross negligence claim. Plaintiff’s gross negligence allegations merely  
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1 restate her contract claims under a different label, which Arizona law does not permit.  
2 *See Aspell*, 122 Ariz. at 402 (“[a] breach of contract is not a tort unless the law imposes  
3 a duty on the relationship created by the contract which exists apart from the contract.”).  
4

5 Even if true, Plaintiff’s allegations reflect disagreement with discretionary  
6 decisions, not conduct that created an unreasonable risk of bodily harm and involved “a  
7 high probability that substantial harm will result.” *Walls v. Ariz. Dep’t of Pub. Safety*,  
8 170 Ariz. 591, 595 (App. 1991). Conclusory assertions of “gross negligence” or  
9 “conscious disregard” are precisely the type of “labels and conclusions” that fail under  
10 *Twombly*. 550 U.S. at 555.  
11

12 Plaintiff alleges no facts showing Defendants acted with reckless disregard or  
13 without any reasonable basis. *See Rawlings*, 151 Ariz. 158.  
14

15 Accordingly, Count IV may proceed, if at all, only as limited to alleged failures  
16 relating to common-area sanitation and maintenance posing health and safety risks, and  
17 only to the extent such allegations plausibly rise to gross negligence.  
18

19 **f. Count V Fails in its Entirety.**

20 Plaintiff improperly expands Count V beyond the scope of Remand by asserting  
21 intentional tort theories based on enforcement communications, governance decisions,  
22 and alleged coordination among Defendants. *See Am. Compl. Section IV, Count V, ¶¶*  
23 *13-21*. These allegations arise from routine association governance, not from the limited  
24 remand-preserved theory concerning common-area sanitation and maintenance.  
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1 Plaintiff also fails to plead facts establishing intentional torts. Such claims require  
2 facts showing conduct undertaken with the purpose of causing harm or knowledge that  
3 harm was substantially certain to result. *See* Restatement (Second) of Torts § 8A; see  
4 also *Rawlings*, 151 Ariz. at 162. Conclusory allegations of “intentional,” “willful,” or  
5 “retaliatory” conduct are insufficient absent factual allegations supporting that mental  
6 state. Plaintiff alleges only enforcement actions, communications, and governance  
7 decisions under the CC&Rs, which do not constitute intentional misconduct. *See* Am.  
8 Compl. Section IV, Count V, ¶ 13(a)-(c), ¶ 16.

9  
10  
11 Further, Plaintiff identifies no independent duty supporting tort liability, as the  
12 alleged duties arise solely from the CC&Rs. Arizona law does not permit recasting  
13 contractual or governance disputes as intentional torts. *See Aspell*, 122 Ariz. at 402.

14  
15 Plaintiff’s specific theories also fail. Her “abuse of process” identifies no misuse  
16 of judicial process and instead relies on enforcement communications, which are not  
17 “process.” *See Nienstedt v. Wetzel*, 133 Ariz. 348, 353 (App. 1982). Her “intentional  
18 interference” and “obstruction” allegations are conclusory and fail to identify a legally  
19 protected interest or cognizable tort. Her civil conspiracy claim fails because it requires  
20 an underlying tort, which is absent.

21  
22  
23 Finally, Plaintiff’s reliance on conclusory terms such as “intentional,” “willful,”  
24 and “retaliatory” fails under *Twombly*. 550 U.S. at 555.

25  
26 Accordingly, Count V must be dismissed in its entirety.

27 ///

1                   **g. Count VI Fails in its Entirety.**

2                   Plaintiff’s discrimination claim is not a recognized common-law tort and must  
3 arise, if at all, under a specific statutory framework such as the Fair Housing Act.  
4

5                   Plaintiff alleges selective enforcement, restricted access, and unequal treatment.  
6 *See* Am. Compl. Section IV, Count VI, ¶¶ 24(a)-(c). However, she pleads no facts  
7 showing that any conduct was based on a protected characteristic such as race, religion,  
8 sex, or similar status. Conclusory allegations of “disparate treatment” or lack of a  
9 rational basis are insufficient. *See Twombly*, 550 U.S. at 555.  
10

11                   The relationship between Plaintiff and the Association is contractual under the  
12 CC&Rs.<sup>10</sup> Absent facts establishing discrimination under a recognized statutory or  
13 contractual scheme, governance disputes do not give rise to a civil rights claim. Plaintiff  
14 may not repackage such disputes as “discrimination” to avoid dismissal.  
15

16                   Accordingly, Count VI must be dismissed in its entirety.  
17

18                   **h. Count VII Fails in its Entirety.**

19                   Plaintiff’s retaliation claim exceeds the scope of Remand, as it is based on alleged  
20 governance actions such as enforcement decisions, records requests, and participation in  
21 Association affairs, not on common-area sanitation or maintenance. *See* Am. Compl.  
22 Section IV, Count VII, ¶¶ 26-27.  
23

24                   As to Focus and the Individual Defendants, the claim is barred because it arises  
25 from contractual or constitutional theories, which the Remand has already ruled cannot  
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28 <sup>10</sup> *See supra* note 4.

1 be asserted against Association agents or the Management Company. To the extent  
2 Plaintiff relies on the First Amendment, such claims fail because Defendants are private  
3 actors.  
4

5 Further, Arizona does not recognize a freestanding tort of “retaliation” in this  
6 context. Such claims arise under statutory frameworks and Plaintiff may not transform a  
7 contractual or governance dispute into a tort claim. *See Flagstaff Affordable Hous. Ltd.*  
8 *P’ship v. Design Alliance, Inc.*, 223 Ariz. 320, 325 ¶ 26 (2010); *see also Aspell*, 122 Ariz.  
9 at 402.  
10

11 As to the Association, Plaintiff fails to allege facts showing protected activity,  
12 adverse action, and causation. Allegations of enforcement actions, access restrictions,  
13 and governance decisions are conclusory<sup>11</sup> and reflect conduct authorized under the  
14 CC&Rs, not unlawful retaliation.  
15

16 Arizona law does not permit a plaintiff to relabel previously dismissed or non-  
17 actionable theories as tort claims to avoid dismissal. Accordingly, Count VII must be  
18 dismissed in its entirety.  
19

20 **i. Count VIII Fails in its Entirety.**  
21

22 Under Arizona law, vicarious liability and respondeat superior are derivative  
23 doctrines, not independent claims. Respondeat superior is a theory by which a principal  
24 may be held liable for the tortious conduct of its agent acting within the course and  
25 scope of employment. *See Engler v. Gulf Interstate Engineering, Inc.*, 230 Ariz. 55, 57 ¶  
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<sup>11</sup> *See Twombly*, 550 U.S. at 555.

1 9 (2012). The doctrine does not create liability in absence of an underlying tort. If the  
2 alleged agent committed no actionable tort, there is no basis for derivative liability. *See*  
3  
4 *Kopp v. Physician Group of Arizona, Inc.*, 244 Ariz. 439, 441 ¶ 9 (2018).

5 Here, Plaintiff alleges that Focus and Individual Defendants acted as agents of the  
6 Association. *See* Am. Compl. Section IV, Count VIII, ¶¶ 30-31. However, as set forth  
7 above, Plaintiff fails to state viable claims against those Defendants except in narrowly  
8 limited respects defined by Remand. To the extent the underlying tort claims fail, any  
9 derivative claim for vicarious liability necessarily fails as well.  
10

11 Moreover, to the extent Plaintiff attempts to premise vicarious liability on  
12 contract or governance-related conduct arising from the CC&Rs, such allegations do not  
13 support tort liability. Recorded CC&Rs constitute a contract between the Association  
14 and its members.<sup>12</sup> A principal cannot be held vicariously liable in tort for conduct that  
15 does not independently constitute a tort.<sup>13</sup>  
16  
17

18 Further, even assuming arguendo that any agent acted within the scope of  
19 delegated authority, actions taken in furtherance of association governance, enforcement,  
20 record administration, or architectural review arise from contractual obligations and  
21 discretionary authority under the CC&Rs. Disagreement with those decisions does not  
22 transform such conduct into an actionable tort against agents.  
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27 <sup>12</sup> *See supra* note 4.

28 <sup>13</sup> *See supra* note 5.

1           Accordingly, Count VIII must be dismissed to the same extent as the underlying  
2 tort claims and cannot proceed as an independent cause of action.

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4           **j. Counts IX, X, and XI Fail in Their Entirety.**

5           Counts IX, X, and XI are not independent claims, but instead are duplicative,  
6 repackaged versions of Counts III, IV, and V, respectively, asserted against a narrower  
7 subset of overlapping Defendants. As set forth in the Amended Complaint, each of these  
8 counts relies on the same operative facts, alleged duties, and claimed damages already  
9 asserted in the earlier counts.  
10

11           Specifically, Count IX (Negligence) merely restates the allegations of Count III  
12 (Negligence) by recharacterizing the same alleged failures relating to sanitation,  
13 maintenance, enforcement, and governance decisions as arising from “personal control.”  
14 Count X (Gross Negligence) likewise duplicates Count IV (Gross Negligence) by  
15 alleging the same purported reckless conduct based on the same underlying facts  
16 concerning maintenance disputes, communications, and enforcement activity. Count XI  
17 (Intentional Torts) mirrors Count V (Intentional Torts) by reasserting the same  
18 allegations of intentional misconduct arising from enforcement actions, communication,  
19 and HOA governance conduct. In each instance, Plaintiff does not identify a new duty,  
20 distinct conduct, or separate damages theory.  
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24           Arizona law does not permit a plaintiff to maintain redundant claims based on the  
25 same alleged conduct merely by re-labeling them or asserting them against a subset of  
26 the same defendants. Where multiple counts arise from identical factual grounds and  
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1 legal theories, dismissal is appropriate because such claims are duplicative and fail to  
2 state independent causes of action. Further, these counts fail for the same substantive  
3 reasons previously addressed. Arizona law is clear that a breach of contractual or  
4 governance obligations does not give rise to tort liability absent an independent duty.  
5 *See Flagstaff*, 223 Ariz. at 325 ¶ 26; *see also Aspell*, 122 Ariz. at 402.  
6

7 Accordingly, Counts IX, X, and XI should be dismissed in their entirety.  
8

9 **k. Plaintiff's Prayer for Relief Fails to the Extent It Exceeds the Scope of**  
10 **Remand and Relies on Non-Viable Claims.**

11 For the same reasons set forth above, Plaintiff's Prayer for Relief fails, in  
12 substantial part, as a matter of law. Each category of requested relief is entirely derivative  
13 of the underlying claims asserted in the Amended Complaint. Accordingly, Plaintiff's  
14 Prayer for Relief should be dismissed to the extent it is predicated on claims that exceed  
15 the scope of Remand or otherwise fail to state a claim upon which relief may be granted.  
16

17 **4. Conclusion**

18 For the foregoing reasons, Plaintiff's Amended Complaint fails to state any claim  
19 upon which relief may be granted. The Court need not speculate about hypothetical facts  
20 that might entitle Plaintiff to relief. *Cullen v. Koty-Leavitt Ins. Agency, Inc.*, 168 P.3d 917  
21 (App. 2007). The alleged facts are presumed true for purposes of this Rule 12(b)(6)  
22 motion, without reference to or consideration of matters outside the Complaint. Even  
23 accepting those allegations as true, the majority of her claims exceed the limited scope of  
24 the Remand or fail to plead the essential elements of a cognizable cause of action under  
25 Arizona law.  
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1 Plaintiff impermissibly attempts to expand this case beyond its narrow remanded  
2 scope by reasserting contract-based claims against non-contracting Defendants, recasting  
3 governance disputes as tort and civil rights claims, and duplicating previously asserted  
4 theories under new labels. Arizona law does not permit such recharacterization or  
5 expansion, and Rule 12(b)(6) requires dismissal where, as here, the allegations do not  
6 establish a legally viable claim.  
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8  
9 Accordingly, Defendants respectfully request that the Court:

- 10 1. Dismiss Counts I and II as to Focus and the Individual Defendants in their entirety,  
11 and limit those claims as to the Association consistent with the Remand, or dismiss  
12 any derivative portions in their entirety;
- 13 2. Dismiss Counts V-XI in their entirety;
- 14 3. Limit Counts III and IV to the narrow claims permitted under the Remand, or  
15 dismiss any derivative portions in their entirety; and  
16
- 17 4. Dismiss Plaintiff's Prayer for Relief to the extent it is predicated on non-viable or  
18 non-remanded claims.  
19
- 20 5. Award Defendants their reasonable attorneys' fees and costs pursuant to A.R.S.  
21 §§ 12-341, 12-341.01, and 12-349, and grant such other relief as the Court deems  
22 just and proper.  
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1 DATED this 31<sup>st</sup> day of March 2026.

2  
3 SHAW & LINES, LLC

4 /s/ Dominick D. Detente  
5 Augustus H. Shaw, IV, Esq.  
6 Dominick D. Detente, Esq.  
7 1490 South Price Road, Suite 318  
8 Chandler, Arizona 85286  
9 *Counsel for Defendants*

10 ORIGINAL submitted for filing  
11 This 31<sup>st</sup> day of March 2026, with:

12 Clerk of the Court  
13 Maricopa County Superior Court  
14 Via TurboCourt (online filing)

15 COPY of the foregoing served by email  
16 This 31<sup>st</sup> day of March 2026, to:

17 Sandra Rodriguez  
18 4375 East Betsy Lane  
19 Gilbert, Arizona 85296  
20 [sandra.rodriquez0339@gmail.com](mailto:sandra.rodriquez0339@gmail.com)  
21 *Plaintiff, Pro Per*

22  
23  
24  
25  
26  
27  
28 By: /s/ Diane Fincher

**VERIFICATION**

STATE OF ARIZONA     )  
  ) ss.  
County of Maricopa             )

Anna Schultz declares and states as follows:

I am the President for Gardens/Gilbert Community Association (hereafter, the “Association”), an Arizona nonprofit corporation. I am authorized by the Board of Directors for and on behalf of the Association to execute this verification regarding the allegations contained in the foregoing Partial Motion to Dismiss and know the contents thereof; the matters and things stated and alleged therein are true and of my own knowledge, except those matters therein stated upon information and belief, and, as to those matters, I believe them to be true.

I declare and verify under penalty of perjury that the foregoing is true and correct.



\_\_\_\_\_  
Anna Schultz, President of the Board of Directors of  
Gardens/Gilbert Community Association

---

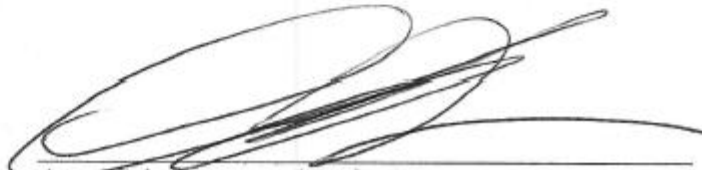
**VERIFICATION**

STATE OF ARIZONA     )  
  ) ss.  
County of Maricopa         )

Anna Schultz declares and states as follows:

I am a named Defendant in the foregoing Partial Motion to Dismiss and know the contents thereof, and state that the matters and things stated and alleged therein are true and of my own knowledge, except those matters therein stated upon information and belief, and, as to those matters, I believe them to be true.

I declare and verify under penalty of perjury that the foregoing is true and correct.

  
\_\_\_\_\_  
Anna Schultz, named Defendant

1  
2 **VERIFICATION**

3 STATE OF ARIZONA     )  
4                                     ) ss.  
5 County of Maricopa             )

6  
7 Harman Cadis declares and states as follows:

8 I am the Authorized Representative for Focus HOA Management, LLC  
9 (hereafter, "Focus"), an Arizona limited liability company. I am authorized by Focus  
10 for and on behalf of Focus to execute this verification regarding the allegations  
11 contained in the foregoing Partial Motion to Dismiss and know the contents thereof;  
12 the matters and things stated and alleged therein are true and of my own knowledge,  
13 except those matters therein stated upon information and belief, and, as to those  
14 matters, I believe them to be true.

15 I declare and verify under penalty of perjury that the foregoing is true and  
16 correct.

17  
18 Digitally signed by Harman  
19 Harman Cadis Cadis  
20 Date: 2026.03.31 12:33:18  
-07'00'

21 \_\_\_\_\_  
22 Harman Cadis, Authorized Representative of  
23 Focus HOA Management, LLC  
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2 **VERIFICATION**

3 STATE OF ARIZONA )  
4 ) ss.  
5 County of Maricopa )

6 Harman Cadis declares and states as follows:

7 I am a named Defendant in the foregoing Partial Motion to Dismiss and know  
8 the contents thereof, and state that the matters and things stated and alleged therein are  
9 true and of my own knowledge, except those matters therein stated upon information  
10 and belief, and, as to those matters, I believe them to be true.

11 I declare and verify under penalty of perjury that the foregoing is true and  
12 correct.

13  
14 Harman  
15 Cadis

Digitally signed by  
Harman Cadis  
Date: 2026.03.31  
12:33:39 -07'00'

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18 Harman Cadis, named Defendant



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# Exhibit 1



1 DATED this 31<sup>st</sup> day of March 2026.

2  
3 SHAW & LINES, LLC

4 /s/ Dominick D. Detente  
5 Augustus H. Shaw, IV, Esq.  
6 Dominick D. Detente, Esq.  
7 1490 South Price Road, Suite 318  
8 Chandler, Arizona 85286  
9 *Counsel for Defendants*

10 ORIGINAL submitted for filing  
11 This 31<sup>st</sup> day of March 2026, with:

12 Clerk of the Court  
13 Maricopa County Superior Court  
14 Via TurboCourt (online filing)

15 COPY of the foregoing served by email  
16 This 31<sup>st</sup> day of March 2026, to:

17 Sandra Rodriguez  
18 4375 East Betsy Lane  
19 Gilbert, Arizona 85296  
20 [sandra.rodriquez0339@gmail.com](mailto:sandra.rodriquez0339@gmail.com)  
21 *Plaintiff, Pro Per*

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28 By: /s/ Diane Fincher

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# Exhibit 2



1 ¶3 In December 2024, Prime Recon LLC ("Prime") was substituted as trustee under the  
2 deed of trust and initiated foreclosure proceedings because Toliver and Craig "stopped  
3 paying their home loan[.]" That same month, Toliver and Craig filed a complaint against  
4 Prime. In January 2025, they filed an amended complaint substituting US Bank as  
5 defendant in place of Prime. The amended complaint, under "Statement of Facts and  
6 Breach" read, in its entirety:

7  
8 12 U.S. Code 83. No national bank shall make any loan or discount on the  
9 security of the shares of its own capital stock.

10 The fiduciary/lender did not give a loan, they drafted a note and exchanged it  
11 with the United States for lawful money to pay for the Property Warranty Deed  
12 on our behalf, they then made us sign an agreement/promissory note which  
13 became the security interest not the Property to pay a mortgage and to give them  
14 consent to control the property and full access to all the assets and proceeds. All  
15 [a]ccounts are prepaid.

16 ¶4 Under "Applicable Law Supporting Claims" the amended complaint read, in its  
17 entirety:

18 U.S. Code 83. No national bank shall make any loan or discount on the security  
19 of the shares of its own capital stock.

20 Senate Document No. 43, 73rd Congress "The ownership of all property is in the  
21 state. Individual [*sic*]

22 Title 18.8 — Obligation or other security of the United States

23 FRN's are obligations of the United States HJR 192 Title 31.3123

24 16 CFR 444.3 unfair or deceptive cosigner practices Truth in Lending Act, Right  
25 of Rescission

26 Caselaw Arizona Wells Fargo Bank v. Dreyer (2014)

27 ¶5 The amended complaint asserts a claim for "financial hardship" and "mental distress  
28 and [a]nguish," seeking "rescission" and "full reimbursement of all federal reserve notes  
paid." Toliver and Craig also moved for a temporary restraining order ("TRO"),  
asserting that "banks/Defendant cannot loan securities of its own shares or stocks" and  
"the note that was drafted on the Plaintiff's behalf by the bank belonged to the  
Plaintiff's." They did not explain this argument any further. They also claimed, again

1 without elaboration, that "Defendant never offered any consideration thus making the  
2 Loan null and void[.]"

3 ¶6 The superior court held an order to show cause hearing in early February 2025 at  
4 which Toliver, Craig, and counsel for US Bank appeared. The court denied the TRO and  
5 directed US Bank to respond to the amended complaint by February 26, 2025.

6 ¶7 On February 27, 2025, US Bank filed a motion to dismiss, arguing that the amended  
7 complaint consisted of "conclusory allegations" of purported violations of "various  
8 United States Code sections" and baseless objections to the "securitization" of  
9 "Plaintiffs' loan obligations." These claims entitled Plaintiffs to no relief, US Bank  
10 argued, because "[n]othing [in] any agreement . . . among secondary-market participants  
11 relieved Plaintiffs of their obligations" under the Loan Agreement. The next day, Toliver  
12 and Craig filed an "Application and Affidavit for Default" because US Bank had missed,  
13 by one day, the deadline set by the court to respond to the amended complaint.

14 ¶8 Toliver and Craig never responded to US Bank's motion to dismiss, and US Bank  
15 never responded to their application for entry of default. In March 2025, Toliver and  
16 Craig filed a "Motion for Entry of Default Judgment" arguing that US Bank's motion to  
17 dismiss should be rejected as untimely and that US Bank had not contested their  
18 application for default.

19 ¶9 US Bank then filed a response to the application for default, asserting that it was  
20 ineffective because it was not filed until after US Bank had moved to dismiss. In the  
21 alternative, US Bank moved to set aside the default for good cause because US Bank  
22 had a meritorious defense, *i.e.*, that the amended complaint failed to state a claim for  
23 relief.

24 ¶10 At around the same time, Toliver and Craig sold the Property to a third party.

25 ¶11 In April 2025, the superior court granted US Bank's motion to dismiss, finding that  
26 the amended complaint failed to state a claim for relief. In May 2025, Toliver and Craig  
27 filed a "Motion to Reinstate Case," which the superior court treated as a motion to  
28 reconsider the dismissal of the amended complaint. The court refused to reconsider the  
dismissal and, on June 11, 2025, entered final judgment under Arizona Rule of Civil  
Procedure 54(c).

¶12 Toliver then filed another motion for reconsideration and, about two weeks later,  
filed a timely notice of appeal. The superior court denied the second motion for  
reconsideration. We have jurisdiction under A.R.S. § 12-2101(A)(1).

## **DISCUSSION**

1 ¶13 Toliver challenges the dismissal of the amended complaint, arguing that "recent  
2 audits reveal Fannie Mae profited \$294,000,000" from selling their mortgage "on the  
3 secondary stock market" and that "[s]ystemic bank violations must be  
4 exposed."<sup>11</sup> Toliver also argues that the dismissal was a result of "Judicial Bias,"  
5 alleging that the superior court "ignored fraud evidence" and improperly permitted "late  
6 filings[.]"

7 ¶14 We review the dismissal of a complaint for failure to state a claim under Arizona  
8 Rule of Civil Procedure 12(b)(6) *de novo*. *Lane v. City of Scottsdale*, 258 Ariz. 460, 465,  
9 ¶ 10 (App. 2024). "In determining if a complaint states a claim on which relief can be  
10 granted . . . courts look only to the pleading itself." [Coleman v. City of Mesa](#), 230 Ariz.  
11 [352, 356, ¶ 9 \(2012\)](#) (citation modified).

12 ¶15 In dismissing the amended complaint, the superior court concluded that it failed to  
13 state a claim for relief. Acknowledging that "the Plaintiffs are representing themselves  
14 and are not trained in the law," the court held that "even with the most charitable  
15 reading, the Court cannot conclude that a claim has been properly pled."

16 ¶16 The record supports the court's determination. The amended complaint alleges  
17 nothing about the parties' relationship, nor does it allege that US Bank engaged in any  
18 action that would entitle Toliver to any kind of relief. Although the amended complaint  
19 appears to challenge US Bank's financial arrangements with third parties, it pleads no  
20 facts that would suggest that Toliver has been harmed by these arrangements, or that he  
21 otherwise has standing to challenge them. See [Monroe v. Arizona Acreage LLC](#), 246  
22 [Ariz. 557, 565, ¶ 31 \(App. 2019\)](#) ("To initiate a claim in Arizona, a party must have  
23 standing — that is, a plaintiff must allege a distinct and palpable injury." (citation  
24 modified)). And the amended complaint makes no attempt to explain the significance of  
25 the legal authorities cited therein. The amended complaint, for example, cites "U.S.  
26 Code 83" in an apparent reference to 12 U.S.C. § 83, which prohibits a national bank  
27 from accepting as collateral the borrower's stock in the bank itself. See [Trazell v.](#)  
28 [Wilmers](#), 975 F.Supp.2d 133, 143 (D.D.C. 2013) (noting that 12 U.S.C. § 83 "prohibits a  
bank from using the bank's capital stock as security for loans or discounts."). Nothing in  
the amended complaint suggests that those circumstances are present here. Likewise, the  
amended complaint's citation to "Title 18.8" appears to refer to 18 U.S.C. § 8, which  
defines the term "obligation or other security of the United States[.]" The amended  
complaint makes no attempt to explain how this definition has any bearing on this case.

¶17 The amended complaint's reference to "Senate Document No. 43, 73rd Congress" is  
equally puzzling. The citation appears to refer to a resolution of the United States  
Senate, passed in 1933, authorizing the printing of a monograph by George Cyrus  
Thorpe as a Senate document. See S. Res. 62, Doc. 43, 73rd Cong. (1933). The  
monograph, entitled "Contracts Payable in Gold," addresses whether loan agreements

1 whose terms require payment in gold can be satisfied by payment in dollars instead. *See*  
2 *id.* As other courts have recognized, this document "is not legal authority" because it "is  
3 not a law," a "statute," a "regulation," or a "rule." *In re Rodgers*, No. 22-54229-PWB,  
4 2022 WL 3363895 at \*3 (N.D. Ga. Bkrcty. Aug. 12, 2022). In any event, Toliver has not  
5 alleged that any party to this case agreed to make or accept payments in gold, and so this  
6 document has no possible relevance here.

7 ¶18 The amended complaint's citation to "H.J.R. 192" appears to refer to House Joint  
8 Resolution 192 of 1933, the resolution that "suspended the gold standard in the United  
9 States." *Broughton v. Truist Bank*, 23-CV-6042, 2024 WL 3227948 at \*3 (S.D.N.Y.  
10 June 27, 2024). Toliver has utterly failed, however, to offer any explanation for his  
11 position that the abandonment of the gold standard almost a century ago somehow  
12 entitles him to relief in this case. Because Toliver has not presented a coherent argument  
13 on this point, we decline to consider it further. *See Schabel v. Deer Valley Unified Sch.*  
14 *Dist. No. 97, 186 Ariz. 161, 167 (App. 1996)* ("Issues not clearly raised and argued in a  
15 party's appellate brief are waived.").

16 ¶19 The amended complaint includes a cursory reference to "unfair or deceptive  
17 cosignor [*sic*] practices," without articulating any supporting facts or identifying the  
18 specific "practices" to which Toliver objected. In his briefing on appeal, Toliver asserts  
19 that "US Bank failed to comply with disclosure requirements, issued fraudulent 1099s."  
20 We cannot determine if this assertion is offered in support of the amended complaint's  
21 claim for "unfair or deceptive cosignor [*sic*] practices," or if the assertion raises a new  
22 argument for the first time on appeal. In either case, the argument is unintelligible, and  
23 we do not consider it further. *Schabel, 186 Ariz. at 167.*

24 ¶20 In his reply brief, Toliver states that "US Bank failed to disclose TILA (15 U.S.C. §  
25 1638) and RESPA (12 CFR 1024.36) protections[.]" Because Toliver asserted no such  
26 claim in the amended complaint or in his opening brief, he waived it, and we do not  
27 consider it. *Westin Tucson Hotel Co. v. State Dep't of Revenue, 188 Ariz. 360, 364 (App.*  
28 *1997)* ("[A] claim raised for the first time in a reply is waived.").

¶21 Toliver's claim of alleged judicial bias is equally unavailing. "A party who  
challenges a judge's impartiality must overcome the presumption that superior court  
judges are free of bias and prejudice." *Contreras v. Bourke*, \_\_\_ Ariz. \_\_\_, \_\_\_, ¶ 25,  
574 P.3d 224, 229 (2025) (citation modified). "Judicial rulings alone do not support a  
finding of bias or partiality without a showing of an extrajudicial source of bias or deep-  
seated favoritism." *State v. Macias, 249 Ariz. 335, 342, ¶ 22 (App. 2020).*

¶22 In support of his claim of bias, Toliver asserts that the superior court allegedly  
"[c]onfused late filings and defaults[.]" Evidently, Toliver objects to the court's decision  
to address US Bank's motion to dismiss on the merits even though it was filed a day after

1 the deadline set by the court. But even if US Bank could be said to have been in default  
2 by failing to timely respond to the amended complaint, Arizona Rule of Civil Procedure  
3 ("Rule") 55(a)(5) afforded US Bank an opportunity to cure. *See* Ariz. R. Civ. P. 55(a)(5)  
4 ("A default will not become effective if the party claimed to be in default pleads or  
5 otherwise defends . . . within 10 days after the application for entry of default is filed.").  
6 Because US Bank filed its motion to dismiss before the expiration of Rule 55(a)(5)'s  
7 cure period, the superior court properly declined to enter a default judgment against US  
8 Bank.

9 ¶23 Toliver offers no other basis for his claim of judicial bias other than his  
10 disagreement with the court's rulings, which, as a matter of law, is insufficient to  
11 overcome the presumption that the judge was impartial. [Macias, 249 Ariz. at 342, ¶ 22.](#)  
12 Moreover, a review of the record reveals that the superior court treated Toliver  
13 respectfully and fairly. Toliver's allegation to the contrary has no basis in the record.

14 ¶24 The amended complaint fails to set forth a coherent, cognizable claim for relief, and  
15 the superior court did not err in granting US Bank's motion to dismiss.<sup>[2]</sup>

## 16 CONCLUSION

17 ¶25 For the foregoing reasons, we affirm. As the prevailing party on appeal, US Bank is  
18 entitled to recover its costs upon compliance with ARCAP 21(b).

19 [1] The notice of appeal that Toliver filed bears only his signature. Because Toliver does  
20 not contend, nor does the record indicate, that he is licensed to practice law in this state,  
21 he cannot represent another person in proceedings before this Court. *See Haberkorn v.*  
22 *Sears, Roebuck & Co., 5 Ariz. App. 397, 399 (1967).* The notice of appeal was effective,  
23 therefore, only as to Toliver. On June 18, 2025, Toliver and Craig filed a document  
24 entitled an "amended notice of appeal" that they each signed. Because this document  
25 was filed more than thirty days after the entry of final judgment, this Court lacks  
26 jurisdiction to consider Craig's appeal. *See* ARCAP 9(a); *see also In re Real Property*  
27 *Known as 3567 E. Alvord Road, 249 Ariz. 568, 571, ¶ 6 (App. 2020)* (holding that court  
28 lacked jurisdiction to consider order forfeiting co-owner's interest in property because  
co-owner failed to file timely notice of appeal). Craig is not, therefore, a party to this  
appeal.

[2] During the pendency of this appeal, Toliver filed a motion entitled "Motion for  
Expedited Ruling on Appeal Pursuant to ARCAP 27 and ARCP 60(b)" in which he  
asked this Court to issue its decision "no later than January 15, 2026" We deny Toliver's  
motion as moot.

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# Exhibit 3

1 On Mon, Mar 23, 2026, 12:35 PM Diane Fincher <[Diane@shawlines.com](mailto:Diane@shawlines.com)> wrote:

2 Good afternoon,

3 The Defendants intend to file a Motion to Dismiss. Pursuant to rule 12(j) and Rule 7.1(h), Arizona Rules of Civil Procedure, we are required to confer with you in person or by telephone prior to filing the Motion to Dismiss.

4 We are available at your convenience for a telephone conversation or an in-person meeting this week?

5 We look forward to hearing from you.

6 Diane Fincher  
7 *Paralegal*  
8 **SHAW & LINES, LLC**  
9 *We've Moved!*  
10 [1490 S. Price Rd., Suite 318](https://www.shawlines.com)  
11 [Chandler, Arizona 85286](https://www.shawlines.com)  
12 Phone 480-456-1500  
13 Fax 480-456-1515  
14 [www.shawlines.com](https://www.shawlines.com)

15  
16 CONFIDENTIALITY STATEMENT: THIS E-MAIL MESSAGE AND ANY ACCOMPANYING DOCUMENTS CONTAIN INFORMATION WHICH IS ATTORNEY PRIVILEGED, CONFIDENTIAL AND INTENDED ONLY FOR THE USE OF THE ABOVE-NAMED RECIPIENT. IF THE READER OF THIS MESSAGE IS NOT THE INTENDED RECIPIENT, YOU ARE HEREBY NOTIFIED THAT ANY DISSEMINATION, DISTRIBUTION, PRINTING OR COPYING OF THIS MESSAGE IS STRICTLY PROHIBITED. IF YOU HAVE RECEIVED THIS MESSAGE IN ERROR, PLEASE IMMEDIATELY NOTIFY US BY TELEPHONE OR RETURN THE E-MAIL MESSAGE TO US. THANK YOU. This firm may act as a debt collector. Any information obtained will be used for that purpose.

17 On Mon, Mar 23, 2026, 4:52 PM Sandra Rodriguez <[sandra.rodriguez0339@gmail.com](mailto:sandra.rodriguez0339@gmail.com)> wrote:

18 Dear Mr. Shaw,

19 I write in response to Defendants' stated intent to seek dismissal under **Ariz. R. Civ. P. 12(j)** and **Rule 7.1(h)**. Any such request is improper in light of Defendants' ongoing failure to comply with their discovery obligations.

20 At the outset, I must correct a mischaracterization. At no time have I stated that I will not participate in a deposition. My position has consistently been that I will participate once Defendants comply with their disclosure obligations so the deposition may proceed fairly.

21 As of March 24, 2026, 113 days have passed since December 1, 2025, and Defendants have not provided the requested discovery. This continued noncompliance makes any attempt to proceed with deposition or dismissal improper. (See February 23, 2026 Court Order)

22 Defendants' characterization of this as a refusal is inaccurate. Notably, Defendants indicated an intent to seek dismissal just 11 days after Plaintiff produced substantial evidence—including photographs, video, and testimony—while continuing to withhold responsive materials.

23 Defendants' assertion of "good faith consultation" is not supported by the record. Communications have been limited to email, with no meaningful effort to confer or resolve the issues.

24 Defendants' continued refusal to provide discovery while invoking meet-and-confer requirements reflects obstruction rather than compliance. Nevertheless, in good faith and to eliminate any procedural dispute, I am available for a telephonic meet-and-confer at the following times:

- 25 • March 25, 2026 10:00 AM – 12:00 PM (AZ)
- 26 • March 26, 2026 1:00 PM – 3:00 PM (AZ)
- 27 • March 30, 2026 9:00 AM – 11:00 AM (AZ)


1 **Dominick D tente** <Dominick@shawlines.com>  
2 To: Sandra Rodriguez <sandra.rodriguez0339@gmail.com>  
3 Cc: Augustus Shaw <ashaw@shawlines.com>, Diane Fincher <Diane@shawlines.com>

Tue, Mar 24, 2026 at 9:00 AM

4 Good morning Ms. Rodriguez,

5 I will give you a call tomorrow, the 25th, at 10:00 am to go over our two meet & confer topics - being the deposition and  
6 motion to dismiss.


7 Talk to you then. Have a lovely rest of your day,

8  
9  Sandra Rodriguez <sandra.rodriguez0339@gmail.com>  
10 To: Augustus Shaw  
11 Cc: Dominick D tente



Tue 3/24/2026 10:14 AM

12  **Flag for follow up. Completed on 3/23/2026.**

13  Gmail - Plaintiff's Response t...  
14 122 KB

15 Dear Mr. Shaw,

16 I am in receipt of your March 24, 2026 email indicating that Mr. Dente intends to contact me regarding a meet-and-confer on the  
17 deposition and Defendants' anticipated motion to dismiss.

18 At the outset, any meet-and-confer must be conducted with counsel of record. Mr. Dente is not counsel of record in this matter, and  
19 therefore is not an appropriate party to conduct such discussions on behalf of Defendants. Please ensure that all communications and  
20 scheduling efforts are handled through counsel of record in compliance with the Arizona Rules of Civil Procedure.

21 Under Ariz. R. Civ. P. 16, the Court requires meaningful participation by the parties and their counsel of record in the management and  
22 resolution of pretrial matters, including discovery disputes and scheduling issues. A meet-and-confer conducted by an individual who is  
23 not counsel of record does not satisfy these obligations and undermines the purpose of Rule 16's case management requirements.

24 Additionally, Arizona law contemplates that litigation actions—including discovery coordination and motion-related discussions—be  
25 conducted by properly appearing counsel. See also A.R.S.   12-2234 and related provisions governing representation and attorney  
26 participation in civil proceedings.

27 To the extent Defendants seek to satisfy any meet-and-confer requirements under the Arizona Rules of Civil Procedure (including Rules  
28 26, 37, and 7.1), such efforts must be undertaken in good faith by counsel of record. Any attempt to proceed otherwise will be noted as  
noncompliant.

I remain available to meet and confer in good faith with counsel of record at the previously provided times. Please confirm which counsel  
of record will be participating and provide availability accordingly.  
Nothing herein waives Plaintiff's prior positions regarding Defendants' ongoing discovery noncompliance, as outlined in my prior  
correspondence.

I also note that I have not received a response to my email sent yesterday, nor have I received any of the outstanding discovery responses  
or production of evidence previously requested on December 1, 2025.

Sincerely,

Sandra Rodriguez

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Augustus Shaw  
To: Sandra Rodriguez <sandra.rodriguez0339@gmail.com>  
Cc: Dominick D tente; Diane Fincher

Reply Reply all Forward ...

Tue 3/24/2026 12:40 PM

**High importance**



Ms. Rodriguez,

Mr. D tente is an attorney of record in this case as he is an attorney with Shaw & Lines, LLC. He is perfectly able to conduct the meet and confers desires regarding the Partial Verified Motion for Summary Judgment and the Ariz. R. Civ. Proc. 26(d) Motion.

If you are refusing to meet with Mr. Dentente, due to my extremely busy schedule, I can only meet today (3/24) from 2:00pm to 4:00pm and Wednesday (3/25) between 10:30am and noon.

If this arrangement does not meet your approval, then I will file a Good Faith Consultation Certificate notating same. Also, if you are unwilling please complete the attached Ariz. R. Civ. Proc. 26(d) Motion where indicated so I may file it.

Please let me know.



Sandra Rodriguez<sandra.rodriguez0339@gmail.com>  
To: Augustus Shaw  
Cc: Dominick D tente

...

Tue 3/24/2026 1:13 PM

Dear Shaw,

I never received any Notice of Appearance for Mr. Dente. Please advise when such notice was filed and served, and provide a copy for the record.

Under the Arizona Rules of Civil Procedure, an attorney must formally appear in an action—typically by filing a notice of appearance or signing a pleading—before acting on behalf of a party. See Ariz. R. Civ. P. 5 (service on counsel of record) and Rule 11 (signature requirement). Absent such appearance, an attorney is not recognized as counsel of record for purposes of communications, discovery, or meet-and-confer obligations.

Accordingly, please confirm whether Mr. Dente has formally appeared in this matter. Wednesday at 10:30 a.m. works for me for a telephonic meet-and-confer with you personally. Please confirm.

I look forward to connecting with you then.

Sincerely,

Sandra Rodriguez

1 **From:** Sandra Rodriguez <sandra.rodriguez0339@gmail.com>  
2 **Sent:** Tuesday, March 24, 2026 6:03 PM  
3 **To:** Diane Fincher <Diane@shawlines.com>  
4 **Cc:** Augustus Shaw <ashaw@shawlines.com>  
5 **Subject:** Re: Rodriguez v. Gardens Gilbert, et al - CV2024-005940

6 Dear Diane,


7 I previously responded to this matter directly to Mr. Shaw.

8 This email is to document that I have not received any draft or copy of Defendants' anticipated partial summary judgment motion or supporting evidence.


9 Defendants continue to withhold responsive discovery, in violation of Rules 26 and 34, Ariz. R. Civ. P., warranting relief under Rule 37, notwithstanding the Court's February 23, 2026 Order.


10 Sincerely,

11 Sandra Rodriguez

12  
13  
14  Dominick D tente  
15 To: Sandra Rodriguez <sandra.rodriguez0339@gmail.com>  
Cc: Augustus Shaw; Diane Fincher

  Reply  Reply all  Forward   ...  
Wed 3/25/2026 4:10 PM

16  You replied on Mon 3/30/2026 9:43 AM

17  DRAFT Motion to Dismiss.pdf  
330 KB

18 Good afternoon Ms. Rodriguez,

19 Please see the attached DRAFT of our intended Partial Motion to Dismiss.

20 Accordingly, could you please provide dates and times either this week or next in which you and I can discuss via telephone for the required meet and confer according to Ariz. R. Civ. P. 12(j) and 7.1(h)?

21 Thank you, and I hope you have a great rest of your day,  
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Dominick D tente

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

Mon 3/30/2026 9:43 AM

Cc: Augustus Shaw; Diane Fincher

Good morning Ms. Rodriguez,

I hope you are doing well. I am sending one last follow-up attempt to meet and confer with me regarding our upcoming Motion to Dismiss.

Please feel free to call anytime today or tomorrow.

Thank you,

Dominick Detente, Esq.  
**SHAW & LINES, LLC**  
*We've Moved!*  
1490 S. Price Rd., Suite 318  
Chandler, Arizona 85286  
480.456.1500

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