

1 MEMORANDUM OF POINTS AND AUTHORITIES

2 **1. Procedural History**

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4 On March 31, 2026 Defendants’ filed their Verified Partial Motion to Dismiss
5 (Dkt #264). The Court, in its Minute Entry filed on May 5, 2026, first discussed Plaintiff’s
6 Motion to Strike or Deny Defendant’s (sic) Partial Motion to Dismiss (Dkt #267)
7 (hereafter, the “Response”) filed on April 3, 2026. The Court stated that the “Court will
8 consider this Motion (Dkt #267) as a partial response to the March 31, 2026 Motion to
9 Dismiss.”
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11 As detailed in the Court’s Recusal filed on May 7, 2026, the Court “did not receive
12 a document entitled a Response (to Defendants’ Partial Motion to Dismiss) but did
13 receive an April 3, 2026 *Plaintiff’s Motion to Strike or Deny Defendant’s (sic) Partial*
14 *Motion to Dismiss* which the Court will treat as a Response (Dkt #267).”
15

16 As stated in the Recusal filed on May 7, 2026, the “Court has previously denied
17 the Motion to Strike (*Motion to Strike or Deny Defendant’s (sic) Partial Motion to*
18 *Dismiss* (Dkt #267)) as procedurally improper.” The Court, however, reiterated is
19 statement that it will consider the Response (Dkt #267) a “Response” to the Defendants’
20 Partial Motion to Dismiss.
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22 Since the Defendants’ had no knowledge that the Plaintiff’s Response would be
23 considered a Response to the Defendants’ Partial Motion to Dismiss until May 5, 2026,
24 the Defendants did not offer a Reply.
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1 Therefore, Defendants, now understanding the Court's position, hereby offer this
2 Reply in Support of Defendants' Motion to Dismiss the Plaintiff's Amended Complaint
3 in order to officially close the pleadings.
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5 **2. The Court Has Already Ruled on Several Aspects of the Response.**

6 The Court, in its Minute Entry filed on May 5, 2026 has already evaluated a great
7 deal of the Plaintiff's Response and has dismissed much of the Plaintiff's arguments in
8 her Response. All of the Plaintiff's procedural arguments against the Partial Motion to
9 Dismiss were rejected in the Court's Minute Entry filed on May 5, 2026. The Court
10 specifically held:
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13 For the reasons stated above, the April 3, 2026 *Plaintiff's Motion to Strike*
14 *or Deny Defendant's Partial Motion to Dismiss* is not a proper motion to
15 strike. Some of the arguments asserted in this Motion were also asserted in
the *Motion to Strike ... Defendant's ... Answer* and are addressed above.

16 Much of the Plaintiff's Response has already been evaluated by the Court and
17 rejected, as seen in the Court's Minute Entry filed on May 5, 2026. Therefore, the
18 Defendants' Partial Motion to Dismiss should be granted.
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20 **3. Plaintiff Fails to Provide a Rebuttal to the Defendants' Legal Arguments**

21 Nowhere in the Plaintiff's Response does the Plaintiff directly contest the legal
22 arguments of the Defendants in their Partial Motion to Dismiss. The Plaintiff does not
23 provide any case law or other legal analysis to refute the position of the Defendants.
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25 Instead, the Plaintiff argues that the Defendants' Partial Motion to Dismiss should
26 be denied based on her perceived discovery and disclosure disputes, which have nothing
27 to do with the Partial Motion to Dismiss.
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1 In evaluating a Rule 12(b)(6) motion, the Court assumes the truth of the well-pled
2 factual allegations in the complaint but does not accept legal conclusions or unsupported
3 inferences as true. *Cullen v. Auto-Owners Ins. Co.*, 218 Ariz. 417, 419-20, ¶¶ 7-9 (2008).
4

5 While the Court assumes the truth of the alleged facts, dismissal is appropriate
6 where those allegations, even if true, do not establish a legally cognizable claim for relief.
7 *Coleman*, 230 Ariz. at 356, ¶ 8.
8

9 Therefore, the Plaintiff's discovery and disclosure disputes would have no bearing
10 on the Partial Motion to Dismiss as the facts are assumed to be true.

11 **4. Conclusion**

12 For the foregoing reasons, Plaintiff's Amended Complaint fails to state any claim
13 upon which relief may be granted. The Court need not speculate about hypothetical facts
14 that might entitle Plaintiff to relief. *Cullen v. Koty-Leavitt Ins. Agency, Inc.*, 168 P.3d 917
15 (App. 2007). The alleged facts are presumed true for purposes of this Rule 12(b)(6)
16 motion, without reference to or consideration of matters outside the Complaint. Even
17 accepting those allegations as true, the majority of her claims exceed the limited scope of
18 the Remand or fail to plead the essential elements of a cognizable cause of action under
19 Arizona law. Accordingly, Defendants respectfully request that the Court:
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- 23 1. Dismiss Counts I and II as to Focus and the Individual Defendants in their
24 entirety, and limit those claims as to the Association consistent with the
25 Remand, or dismiss any derivative portions in their entirety;
- 26 2. Dismiss Counts V-XI in their entirety;
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