

DEC 02 2025 8:41 am
S. Slaughter, Deputy

1 Sandra Rodriguez
2 4375 E. Betsy Lane
3 Gilbert, Arizona 85296
4 Phone Number: 602-688-9720
5 Email Address: sandra.rodriguez0339@gmail.com
6 Representing: Self Represented, without a Lawyer

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, FOCUS HOA
15 MANAGEMENT, LLC, HARMIN CADIS,
16 BROOKE SORTOR, ANNA SCHULTZ

17 Defendants,

18 AUGUSTUS H. SHAW IV

19 Defendant's Legal Counsel,

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

(Please Expedite)
PLAINTIFF'S MOTION
FOR PROTECTIVE ORDER
(AMENDED)

20
21
22 DEAR HONORABLE JUDGE MCDOWELL;

23 Plaintiff Sandra Rodriguez respectfully renews and expands her request for a Protective
24 Order under Rule 26(c). The newly served discovery—including *Non-Uniform Interrogatories*,
25 *Requests for Admissions*, and *Requests for Production*—demonstrates retaliation, surveillance,
26 and discriminatory targeting of an indigent, self-represented litigant. Defendants now demand
27 highly private information unrelated to any claim, including bank records, tax returns,
28 AHCCCS/SNAP information, alleged childcare-licensing documents, medical/psychological

1 records, and surveillance-style inquiries into Plaintiff's home and daily life. This is not legitimate
2 discovery; it is harassment.

3 I. DEFENDANTS' DISCOVERY VIOLATES RULE 26(b)(1)

4
5 The discovery seeks irrelevant, invasive, and disproportionate material. Plaintiff's
6 complaint does not place at issue: income or employment, childcare licensing, benefit programs,
7 taxes or banking, medical conditions, or household activities. Yet Defendants demand these
8 records anyway, including RFA No. 6 ("Admit you are operating a daycare"), interrogatories
9 asking Plaintiff to identify children inside her home, and RFP 1(a)-(f) demanding licensing,
10 income, and benefit documentation. These requests reflect surveillance and retaliation—not
11 relevance.

12 II. EVIDENCE OF SURVEILLANCE AND RETALIATION

13 Defendants repeatedly reference Plaintiff's home, movements, and in-home activity.
14 None of these inquiries relate to CC&R enforcement or harassment claims. This mirrors the same
15 surveillance Plaintiff has reported for over a year. Using civil discovery to monitor Plaintiff's
16 household exceeds Rule 26 and violates Arizona law.

17 III. DISCOVERY CONSTITUTES HARASSMENT UNDER A.R.S. § 12-1809

18 Harassment includes a "*series of acts... that would cause a reasonable person to be*
19 *seriously alarmed or annoyed.*" The surveillance-based admissions, invasive financial/medical
20 requests, and attempts to create criminal or regulatory exposure would alarm any reasonable
21 person and constitute clear retaliation.

22 IV. CONTINUED AND IRREPARABLE HARM

23
24 Defendants' actions result in

- 25
26 1) continued harm preventing Plaintiff's meaningful participation (*LaBombard*), and
27 2) irreparable harm impairing constitutional rights (*Elrod*).

28 The discovery chills Plaintiff's ability to litigate safely, exposes her to false allegations,
and targets the sanctity of her home.

1 8. Granting heightened protection due to Plaintiff's indigency and pro se status.
2
3

4 X. CONCLUSION

5 Defendants' discovery is retaliatory, invasive, discriminatory, and consistent with a
6 documented pattern of HOA litigation abuse and deceptive conduct by counsel. It threatens
7 Plaintiff's safety, privacy, and constitutional rights. Plaintiff respectfully requests the Court grant
8 the Amended Protective Order in full.
9

10
11
12 Respectfully submitted this ___ day of
13

14
15 Sandra Rodriguez
16
17
18

19 X. EXHIBITS

- 20 1. Exhibit A – Defendants Non-Uniform Interrogatories
21 2. Exhibit B – Defendants Requests for Admissions
22 3. Exhibit C – Defendants Requests for Production
23 4. Exhibit D – *Lyon v. Helton* (2022), (2022-1-ca-cv-21-0130)
24 5. Exhibit E – *Mendez v. Shaw, CV2010-017915, Minute Entry (June 18, 2010)*.
25
26
27
28

EXHIBIT A

1 **SHAW & LINES, LLC**
2 1490 South Price Road, Suite 318
3 Chandler, AZ 85286
4 Phone (480) 456-1500
5 ashaw@shawlines.com

6
7 Augustus H. Shaw IV, SBN 021593
8 Dominick D. Detente, SBN 040350
9 Attorney for Defendants

10
11 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**
12 **IN AND FOR THE COUNTY OF MARICOPA**

13 SANDRA RODRIGUEZ,
14 Plaintiff,
15 vs.

16 No. CV2024-005940
17 Consolidated with Case No. CV2024-
18 013806

19 GARDENS/GILBERT COMMUNITY
20 ASSOCIATION, an Arizona non-profit
21 corporation, et al.
22 Defendants.

23 **DEFENDANTS' FIRST SET OF**
24 **REQUESTS FOR ADMISSIONS**

25 Assigned to the Hon. David McDowell

26 **PROPOUNDING PARTY:** Defendants Gardens Gilbert Community Association
27 (hereafter, the "Association"), Focus HOA Management, LLC, Harman Cadis, Brooke
28 Sortor, and Anna Schultz (hereafter, "Defendants")

29 **RESPONDING PARTY:** Plaintiff Sandra Rodriguez (hereafter "Plaintiff")

30 Defendants by and through undersigned counsel, hereby requests Plaintiff
answer/respond in writing and under oath within thirty (30) days of receipt of this
document pursuant to Rule 36, *Ariz. R. Civ. P.*, the following Requests for Admissions.

NOTE: Rule 36(a)(4) provides: "*Time to Respond: Effect of Not Responding.*
A matter is admitted unless, within 30 days after being served, the party to
whom the request is directed serves on the requesting party a written answer or
objection addressed to the matter and signed by the party or its attorney."

Rule 36(b) provides: "*Effect of an Admission; Withdrawing or Amending It.* A
matter admitted under this rule is conclusively established unless the court, on
motion, permits the admission to be withdrawn or amended."

1 Definitions and instructions are provided for purposes of these Requests. If you
2 deny any fact, state with particularity the basis for your denial and attach any supporting
3 documentation to your answer.
4

5 DEFINITIONS AND INSTRUCTIONS

6 A. Where the terms “claim” or “claims” are used, they are meant to mean or to
7 include a demand, cause of action or assertion for something due or believed to be due.

8 B. Where the terms “defense” or “defenses” are used, it is meant to mean or to
9 include any justification, excuse, denial or affirmative defense in response to the opposing
10 party’s claim.

11 C. If you cannot answer a Request for Admission in full and you have exercised
12 thorough diligence in an attempt to secure the information requested, then you must state
13 so. You must also explain to the fullest extent possible the specific facts concerning your
14 inability to answer the Request and supply whatever information or knowledge you have
15 concerning any unanswered portion of any Request.

16 D. If your answer to a Request for Admission is “unknown”, “not applicable”
17 or any similar phrase or answer, state the following:

- 18 i. Why the answer to that Request is “unknown”;
- 19 ii. The efforts made to obtain answers to the particular Request; and
- 20 iii. The name and address of any person who may know the answer.

21 E. If you contend that the matter underlying a Request for Admission presents
22 a genuine issue of material fact, you may *not* object to the Request on that ground alone.
23 You must admit or deny that Request or state the reasons why you cannot admit or deny
24 the Request.

25 F. Where an individual Request for Admission calls for an answer which
26 involves more than one part, each part of the answer should be clearly set out so that it is
27 understandable.

28 G. Should you deny any Request for Admissions, please state with particularity
29 the basis for your denial and attach any supporting documentation to your answer.

30 H. The answers to these Requests shall include knowledge of the parties to
whom this Request is directed, their attorneys, all agents, servants, representatives,
investigators and others who may have obtained information on behalf of those parties or
their attorneys.

1
2 I. This is a continuing Request for Admissions. In the event that you become
3 aware of any further information responsive to this Request for Admissions, you are
4 required to provide supplemental responses.

5 **REQUEST FOR ADMISSIONS**

6 1. Admit that You own the Property located at 4735 E. Besty Lane, Gilbert,
7 Arizona 85296.

8 Admit _____ Deny _____

9 If denial, please explain: _____
10 _____
11 _____

12
13 2. Admit that Your Property/Unit is located within the Defendant's
14 condominium association.

15 Admit _____ Deny _____

16 If denial, please explain: _____
17 _____
18 _____

19
20 3. Admit that You purchased Your Property/Unit subject to the Defendant's
21 recorded Declaration of Covenants, Conditions, Restrictions, and Easements for
22 The Garden recorded at Document No. 2002-0039460 (hereafter, the
23 "Declaration").

24 Admit _____ Deny _____

25 If denial, please explain: _____
26 _____
27 _____

28
29 4. Admit that the recorded Declaration is a contract between Yourself and
30 Defendants.

1 **Admit** _____ **Deny**_____

2 **If denial, please explain:** _____

3 _____

4 _____

5
6 5. Admit that You are familiar with the requirements and restrictions of the
7 recorded Declaration.

8 **Admit** _____ **Deny**_____

9 **If denial, please explain:** _____

10 _____

11 _____

12
13 6. Admit that you are operating a day care out of your Property.

14 **Admit** _____ **Deny**_____

15 **If denial, please explain:** _____

16 _____

17 _____

18
19 7. Admit that the Association never refused to provide You with any existing
20 financial record required to be disclosed under A.R.S. § 33-1805 or Section 8.17
21 of the Declaration.

22 **Admit** _____ **Deny**_____

23 **If denial, please explain:** _____

24 _____

25 _____

26
27
28 8. Admit that You are not current on Your Assessments owed to the
29 Association.

30 **Admit** _____ **Deny**_____

1 **If denial, please explain:** _____

2 _____

3 _____

4
5 9. Admit that You did not file any complaint with Maricopa County Code
6 Enforcement regarding the alleged common area conditions nor receive any written
7 notice from any governmental authority stating that the common areas were unsafe
8 or unsanitary.

9 **Admit** _____ **Deny** _____

10 **If denial, please explain:** _____

11 _____

12 _____

13
14 10. Admit that You did not obtain any expert opinion stating that the
15 Association violated any maintenance standard.

16 **Admit** _____ **Deny** _____

17 **If denial, please explain:** _____

18 _____

19 _____

20
21
22 DATED this 26th day of November 2025.

23 **SHAW & LINES, LLC**

24 /s/ Augustus H. Shaw IV, Esq.

25 Augustus H. Shaw IV, Esq.

26 Dominick D. Detente, Esq.

27 1490 South Price Road, Suite 318

28 Chandler, Arizona 85286

29 *Attorneys for Defendant*

1 COPY of the foregoing e-mailed and mailed this
2 26th day of November 2025 to:

3 Sandra Rodriquez
4 4375 East Betsy Lane
5 Gilbert, Arizona 85296
6 sandra.rodriquez0339@gmail.com
7 *Plaintiff*

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By: /s/ Diane Fincher

EXHIBIT B

1 J. When the term “document” is used, it is meant to include every “writing”,
2 “recording” and photograph” as those terms are defined in Rule 1001, Ariz. R. Evid.

3 K. Where the terms “claim” or “claims” are used, they are meant to mean or to
4 include a demand, cause of action or assertion for something due or believed to be due.

5 L. Where the terms “defense” or “defenses” are used, they are meant to mean or
6 to include any justification, excuse, denial or affirmative defense in response to the
7 opposing party’s claim.

8 M. Where the term “accident(s)” or “incident(s)” are used, they are meant to mean
9 the incident which is the basis of this lawsuit, unless otherwise specified.

10 N. You have thirty (30) days to serve Answers or objections to these
11 Interrogatories pursuant to Ariz. R. Civ. P. Rule 33.

12
13 **DEFINITIONS**

14 1. As used herein, and unless the context otherwise requires, “Association”
15 shall mean the same as the definition set forth in Recitals in the *Declaration of Covenants,*
16 *Conditions, and Restrictions,* recorded at Document No. 2002-0039460 (hereafter, the
17 “Declaration” or “CC&Rs”) and includes all current and former officers, directors,
18 owners, members, managers, shareholders, interest holders, agents, affiliated entities,
19 independent contractors, predecessors in interest, successors in interest, employees,
20 attorneys, accountants, auditors, representatives, partners, and anyone else acting for or
21 on behalf of Gardens Gilbert Community Association.

22 2. As used herein, and unless the context otherwise requires, “Board” shall
23 mean the same as the definition set forth in Section 1.08 of the *Declaration* and as used
24 herein refer to that collective Board of Directors of the Association between January 1,
25 2023 and the Present, and includes all officers, directors, owners, members, managers,
26 shareholders, interest holders, agents, affiliated entities, independent contractors,
27 predecessors in interest, successors in interest, employees, attorneys, accountants,
28 auditors, representatives, partners, and anyone else acting for or on behalf of Association
29 Board of Directors during that time frame.

1 Non-Uniform Interrogatory No. 4: State the facts upon which You base Your
2 contention that the Association failed to respond to Your member financial-records
3 requests pursuant to A.R.S. § 33-1805, including the date and manner of each request,
4 the specific records sought, any response received, and how You contend the
5 Association's actions violated that statute.

6
7
8 Non-Uniform Interrogatory No. 5: Describe in detail all facts supporting Your
9 contention that the Association breached any contract or the covenant of good faith and
10 fair dealing, including the specific contractual or CC&R provisions You allege were
11 breached, the acts or omissions constituting each breach, and the harm You claim
12 resulted.

13
14
15 NOTE: These Interrogatories are deemed continuing in nature and must be
16 supplemented seasonably throughout the litigation.

17
18 DATED this 26th day of November 2025.

19 SHAW & LINES, LLC

20 /s/ Augustus H. Shaw IV, Esq.

21 Augustus H. Shaw IV, Esq.

22 Dominick D. Détente, Esq.

23 1490 South Price Road, Suite 318

Chandler, Arizona 85286

Attorneys for Defendant

24 COPY of the foregoing e-mailed and mailed this
25 26th day of November 2025 to:

26 Sandra Rodriguez

27 4375 East Betsy Lane

28 Gilbert, Arizona 85296

sandra.rodriguez0339@gmail.com

Plaintiff

29 By: /s/ Diane Fincher

EXHIBIT C

1 **DEFINED TERMS**

2 Whenever a request asks for copies to be provided, it is asking for legible
3 photocopies with reasonable lighting contrast and resolution or digital copies that
4 accurately depict the original document; if such photocopies cannot be made by the
5 responding party, then arrangements should be proposed to allow the requesting party to
6 inspect and copy such items.

7 The documents or things sought by the Requests includes documents and things in
8 the possession, custody or control of the party or persons, their attorney and all agents,
9 servants, representative, investigators and others who may have obtained custody of the
10 documents and things on behalf of the opposing party and their attorneys.

11 The singular shall include the plural, the use of the masculine gender shall include
12 the feminine gender, and vice-versa, whenever the context reasonably allows or requires
13 such construction.

14 If where an individual request calls for a response which involves more than one
15 item, the response should be clearly set out that it is understandable and so that the items
16 are differentiated.

17 Each party upon whom these Request are served is hereby notified that should such
18 party fail to comply with these Requests or any part hereof, then the undersigned party
19 may seek sanctions under Arizona Rules of Civil Procedure 37.

20 As utilized herein, the term "document" shall have the same meaning and scope as
21 in Arizona Rules of Civil Procedure 26 and 34 including, without limitations, writings
22 recordings and photographs (as such terms defined in Arizona Rules of Evidence 1001)
23 and every writing and record of every type and all descriptions in your possession, custody
24 or control, including, but not limited to: all printed, recorded or graphic matter,
25 photographic matter, sound reproductions, computer input, output or computerized
26 records or data, correspondence, memoranda, e-mail, CDs, DVDs, memory cards,
27 handwritten notes, tapes and records of all types, corporate minutes, studies, books,
28 pamphlets, schedules, pictures, physical articles, voice recordings and every other devise
29 or medium on which or through such information of any type is transmitted, recorded or
30 preserved, both front and back.

The term "document" also means a copy where the original is not in your
possession or control, and every copy of a document where such copy is not an identical
duplicate of the original or differs in any respect from the original including, but not
limited to, any notation, underlining, marketing or information not on the original.

///

1 limitation, difference caused by writings placed thereon by any person, number of pages
2 comprising the document or documents attached hereto by staple, clip or otherwise.

3 You are instructed to produce all documents that are in your possession, custody
4 or control, possession, custody or control includes constructive possessions whereby you
5 have a right to compel the production of a matter from a third party (including an agent,
6 authority, custodian or representative).

7 To the extent the location of any document called for by the Requests is unknown
8 to you, so state. If an estimate can reasonably be made as to the location of an unknown
9 document, describe the document with sufficient particularity so that it can be identified,
10 set forth your best estimate of the document's location and describe the basis upon which
11 the estimate is made.

12 If any document has been lost or destroyed, the document so lost or destroyed shall
13 be identified by author, date, subject matter, date of loss or destruction, the identity of the
14 person responsible for the loss or destruction or destroyed, the reason for such destruction.

15 REQUESTS FOR PRODUCTION

16 **Request No.1:** Produce copies of all non-privileged financial records sufficient to
17 evaluate and verify claimed damages and to verify Your claimed indigent status,
18 including:

- 19 a. All federal and state income tax returns (including W-2s, 1099s, and schedules)
20 for tax years 2022 through 2025;
- 21 b. All bank account statements (checking, savings, and investment) for the same
22 period;
- 23 c. Any employment records reflecting current or prior income, including pay stubs,
24 offer letters, or termination notices;
- 25 d. Any unemployment, disability, or government benefit documentation, including
26 SNAP, AHCCCS, or other assistance applications or approvals;
- 27 e. Any loan, credit card, or debt documentation evidencing current liabilities or
28 assets;
- 29 f. Any financial statements, declarations, or affidavits previously submitted to any
30 court or agency asserting indigency or inability to pay fees or costs.

Note: This request is limited to the extent Plaintiff has placed her financial
condition at issue through claims of damages, inability to pay, and requests for fee
waivers.

Request No. 2: Produce all medical, psychological, or health records You intend to rely
upon in support of Your claims for physical, emotional, or psychological injury, limited
to conditions You attribute to Defendants' alleged conduct or claims for distress,
including:

- a. All medical records and treatment notes from January 1, 2022, to present;

1 b. Any therapy, counseling, or mental health records relating to stress or emotional
2 distress You attribute to Defendants;

3 c. Insurance records, statements of benefits, or claims associated with treatment
4 allegedly caused by Defendants' conduct;

5 d. Any correspondence or communications between You and any healthcare
6 provider regarding this lawsuit.

7 Note: This request is limited to the extent Plaintiff has placed her physical,
8 emotional, or psychological condition at issue through claims for bodily harm, emotional
9 distress, anxiety, stress, or other health-related damages allegedly caused by Defendants.

10 **Request No. 3:** Produce all documents supporting Your claims for damages, including
11 but not limited to:

12 a. Receipts, invoices, or estimates for property repairs or remediation;

13 b. Documentation of alleged diminution in property value;

14 c. Any communications with appraisers, inspectors, or contractors regarding
15 alleged damage; and

16 d. Any journals, notes, or written descriptions of physical or emotional harm
17 allegedly caused by Defendants.

18 DATED this 26th day of November 2025.

19 **SHAW & LINES, LLC**

20 /s/ Augustus H. Shaw IV, Esq.

21 Augustus H. Shaw IV, Esq.

22 Dominick D. Détente, Esq.

23 1490 South Price Road, Suite 318

24 Chandler, Arizona 85286

25 *Attorneys for Defendant*

26 COPY of the foregoing e-mailed and mailed
27 this 26th day of November 2025 to:

28 Sandra Rodriguez

29 4375 East Betsy Lane

30 Gilbert, Arizona 85296

sandra.rodriquez0339@gmail.com

Plaintiff

By: /s/ Diane Fincher

EXHIBIT D

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

MICHAEL LYON, *Plaintiff/Appellant*,

v.

JODY HELTON, et al., *Defendants/Appellees*.

No. 1 CA-CV 21-0130

FILED 6-2-2022

Appeal from the Superior Court in Maricopa County

No. CV2020-008665

The Honorable Andrew J. Russell, Judge

REVERSED AND REMANDED

COUNSEL

Engelman Berger, P.C., Phoenix

By Steven N. Berger, Damien R. Meyer, Bradley D. Pack
Counsel for Plaintiff/Appellant

Shaw & Lines, LLC, Phoenix

By Augustus H. Shaw IV, Patrick J. Whelan
Counsel for Defendants/Appellees

MEMORANDUM DECISION

Presiding Judge Maria Elena Cruz delivered the decision of the Court, in which Judge Samuel A. Thumma and Judge Michael J. Brown joined.

C R U Z, Judge:

¶1 Plaintiff Dr. Michael Lyon appeals the superior court's dismissal of his gross negligence claim for failure to state a claim against Regency House Association ("the Association"), its officers and directors ("the Officers"), and the Association's management company, AAM, LLC ("AAM") (collectively "appellees"). We reverse and remand to the superior court because the allegations of the complaint are sufficient to allow Dr. Lyon the opportunity to develop supporting evidence.

FACTUAL AND PROCEDURAL HISTORY

¶2 Dr. Lyon purchased an apartment unit in Regency House Condominiums ("the Condo") in Phoenix in 2009. The Condo had an underground parking garage and Dr. Lyon was assigned a parking spot in the garage on level two. The Condo's parking areas were common elements under the Condo's Declaration of Horizontal Property Regime and of Covenants, Conditions, and Restrictions for Regency House ("CC&Rs"). Pursuant to the provisions of the CC&Rs, the Association had authority over all common elements.

¶3 In 2019, the Association had AAM make several changes to the configuration of levels one and two of the garage. Three parallel parking spots were added on level two north of Dr. Lyon's assigned parking spot in a space that had been part of an access aisle. This resulted in a narrowing of the two-way traffic access aisle from 26 feet to 18 feet. On level one, two parking spots were converted to three smaller spots and a new loading zone was created.

¶4 Dr. Lyon filed a six-count complaint against appellees in the superior court including claims based in contract and tort law and for injunctive relief. Appellees moved to dismiss four of the counts—count 3 (negligence/the Association and AAM), count 4 (gross negligence/all

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defendants)¹, count 5 (nuisance/the Association and AAM), and count 6 (injunctive relief) – pursuant to Arizona Rule of Civil Procedure (“Rule”) 12(b)(6). After oral argument, the superior court dismissed the gross negligence claim and denied the motion to dismiss as to the other counts. After entry of a partial final judgment, *see* Rule 54(b), Dr. Lyon timely appealed from the dismissal of the gross negligence claim, and we have jurisdiction pursuant to Arizona Revised Statutes (“A.R.S.”) section 12-2101(A)(1).

DISCUSSION

I. Motion to Dismiss

¶5 “Arizona follows a notice pleading standard, the purpose of which is to give the opponent fair notice of the nature and basis of the claim and indicate generally the type of litigation involved.” *Cullen v. Auto-Owners Ins. Co.*, 218 Ariz. 417, 419, ¶ 6 (2008) (citation and quotation marks omitted). Rule 8(a)(2) requires complaints to contain “a short and plain statement of the claim showing that the pleader is entitled to relief.”

¶6 We review the dismissal of a claim under Rule 12(b)(6) *de novo*. *Coleman v. City of Mesa*, 230 Ariz. 352, 355, ¶ 7 (2012). “Dismissal is appropriate under Rule 12(b)(6) 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 (citation and quotation marks omitted). Courts “look only to the pleading itself” when ruling on a Rule 12(b)(6) motion, and “must assume the truth of all well-pleaded factual allegations and indulge all reasonable inferences from those facts.” *Id.* at ¶ 9 (citation omitted).

¶7 Appellees assert that Dr. Lyon’s gross negligence claim failed to state a claim upon which relief can be granted because it contained

¹ The Condo’s CC&Rs shielded the Officers from liability for their conduct while acting on behalf of the Association except for actions that constitute gross negligence or fraud. Section 4.6 of the CC&Rs state:

Non-Liability of the Members of the Board, Officers and Declarant. Neither the members of the Board, officers of the Association nor Declarant shall be personally liable to the Owners for any mistake of judgment or for any acts or omissions of any nature whatsoever of such members, officers or Declarant, except for any acts or omissions found by a court to constitute gross negligence or fraud. . . .

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conclusory allegations. *See id.* (“[M]ere conclusory statements are insufficient” to defeat a Rule 12(b)(6) motion). “[A] complaint that states only legal conclusions, without any supporting factual allegations, does not satisfy [the Rule 8] notice pleading standard,” but the inclusion of a legal conclusion will not invalidate a complaint. *Cullen*, 218 Ariz. at 419, ¶ 7.

¶8 A complaint states a claim for gross negligence if it alleges the elements of negligence and additionally that the defendant’s breach of duty involved “gross, willful, or wanton conduct” that is “more than ordinary inadvertence or inattention . . . which falls closer to the recklessness standard that usually involves a conscious disregard of a risk.” *Noriega v. Town of Miami*, 243 Ariz. 320, 326, 328, ¶¶ 23, 36 (App. 2017) (citations and quotation marks omitted). Gross negligence “is action or inaction with reckless indifference to the . . . safety of others.” *Williams v. Thude*, 180 Ariz. 531, 539 (App. 1994). The issue of gross negligence is ordinarily a question of fact. *Luchanski v. Congrove*, 193 Ariz. 176, 179, ¶ 18 (App. 1998).

¶9 The complaint alleged that appellees owed a duty of care to Dr. Lyon and had created an unsafe environment for Dr. Lyon and other Condo residents through their actions. *See Martinez v. Woodmar IV Condos. Homeowners Ass’n*, 189 Ariz. 206, 209 (1997) (condominium association with control over common areas owed a duty “with respect to the common areas” to condo owners, tenants, and their guests). The complaint alleged that appellees breached their duty by (1) “delegating to AAM the task of coming up with a design for the changes to the Platted Parking Areas,” (2) “consciously disregarding their duty to examine that design from a health and safety perspective by consulting with a qualified parking expert,” (3) “failing to consider and/or consciously disregarding the [City of Phoenix] Zoning Ordinance and City Parking Guidelines,” and (4) “by implementing the dangerous changes to the Platted Parking Areas.”

¶10 The complaint further alleged that Dr. Lyon’s experts concluded that the changes to the parking garage resulted “in reduction of user safety by increasing the risk of vehicle collision” and “danger to pedestrians navigating between the parked car and building lobby entrances,” and that the reduction in the access aisle next to Dr. Lyon’s assigned spot to a width of 18 feet violated the Zoning Ordinance’s requirement that the access aisle be a minimum of 24 feet wide and the City Parking Guidelines’ minimum requirement that the aisle be 26 feet wide. Further, the “reduction in the access aisle forces the drivers traveling westbound to encroach the lane of the drivers traveling eastbound,” “increas[ing] the risk of head-on collision between vehicles,” and “[t]he danger caused by the reduction in the access aisle is compounded by other

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pre-existing conditions . . . such as existing columns . . . which create blind spots.” In addition, the complaint alleged that appellees “acted with recklessness and consciously disregarded the risks to the Regency House residents, including Dr. Lyon,” that appellees’ conduct as set forth in the complaint “was gross, willful, or wanton,” and that Dr. Lyon had been injured by appellees’ conduct.

¶11 Appellees cite *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007) and *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Twombly*) for the proposition that to survive a Rule 12(b)(6) motion, a complaint must contain factual allegations sufficient to “state a claim to relief that is plausible on its face.” *Twombly*, 550 U.S. at 570.

¶12 *Twombly* does not provide the standard in Arizona state court for determining whether a complaint states a claim upon which relief can be granted under Rule 12(b)(6). *Cullen*, 218 Ariz. at 420-21, ¶¶ 9, 16. In *Twombly*, the United States Supreme Court held that under the Federal Rules of Civil Procedure, to survive a motion to dismiss, the complaint’s “[f]actual allegations must be enough to raise a right to relief above the speculative level,” and the plaintiffs’ allegations must be compelling enough to “nudge[] their claims across the line from conceivable to plausible.” 550 U.S. at 545, 570. However, in *Cullen*, the Arizona Supreme Court made clear that there is no “plausibility” requirement or assessment for complaints in Arizona state court under the Arizona Rules of Civil Procedure. 218 Ariz. at 420-21, ¶¶ 9, 16 (rejecting *Twombly*’s “plausibility” requirement and vacating the portion of the Court of Appeal’s opinion citing to *Twombly*).

¶13 Taken as a whole, Dr. Lyon’s complaint alleged sufficient facts to state a claim upon which relief can be granted and effectively put appellees on notice of the nature and basis of Dr. Lyon’s gross negligence claim against them. See *Cullen*, 218 Ariz. at 419, ¶ 6 (“Under Rule 8, Arizona follows a notice pleading standard . . .”).

¶14 Appellees argue that to “properly plead that [appellees] were grossly negligent, [Dr. Lyon] must allege that [appellees] either knew that they acted without a reasonable basis or failed to perform an investigation or evaluation adequate to determine whether a reasonable basis supported [their] action.” But, as noted *supra* ¶ 9, one of the allegations of the complaint was that appellees “consciously disregard[ed] their duty to examine [the] design from a health and safety perspective by consulting with a qualified parking expert.”

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¶15 Appellees argue the Officers are protected by the Federal Volunteer Protection Act, 42 U.S.C. § 14503(a), because they are volunteers, and that if we do not affirm the superior court's dismissal we will be opening "floodgates of litigation to those having volunteered." Even if section 14503(a) applies, it limits the liability of volunteers for harm they cause only in certain circumstances, and specifically states that volunteers are not protected for harm caused by the volunteer's gross negligence. 42 U.S.C. § 14503(a)(3). Appellees' argument that they did not owe a duty to Dr. Lyon because they were acting on behalf of the Association is equally unconvincing. "Corporate officers are liable to those harmed by such officers' tortious conduct on behalf of the company they ostensibly serve." *Higgins v. Assmann Elecs., Inc.*, 217 Ariz. 289, 294, ¶ 13 (App. 2007). And, as noted above, the CC&Rs do not shield the Officers from acts or omissions that constitute gross negligence.

¶16 Appellees further argue that Dr. Lyon "cannot merely rest on his pleadings," and must support his factual allegations with "proper evidentiary material, which when coupled with undisputed background and contextual facts, show that the fact-finder could reasonably find in [Dr. Lyon's] favor," and "'in order to present [a gross negligence issue] to the jury, gross negligence need not be established conclusively, but the evidence on the issue must be more than slight and may not border on conjecture.'" (quoting *Walls v. Ariz. Dep't of Pub. Safety*, 170 Ariz. 591, 595 (App. 1991)). *Walls* involved an appeal from the superior court's *grant of summary judgment* in favor of defendants on the plaintiff's gross negligence claim. 170 Ariz. at 592, 596. Here, the superior court dismissed Dr. Lyon's gross negligence claim under Rule 12(b)(6) at the pleading stage. Taking the well-pled factual allegations of the complaint as true, the dismissal for failure to state a claim upon which relief can be granted was error.

II. Attorneys' Fees

¶17 Dr. Lyon requests attorneys' fees and costs pursuant to section 23 of the CC&Rs and A.R.S. §§ 12-341, -341.01. Section 23 of the CC&Rs is a one-way fee provision that would only apply if the Association or Board sued Dr. Lyon. Section 12-341.01 permits discretionary fees to the prevailing party in any contested action arising out of contract, express or implied. Even if § 12-341.01 applies to Dr. Lyon's gross negligence claim, we deny his fee request because he has not prevailed in the litigation. As the successful party on appeal, Dr. Lyon is entitled to costs upon compliance with ARCAP 21.

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CONCLUSION

¶18 For the foregoing reasons, we reverse and remand for further proceedings consistent with this decision.



AMY M. WOOD • Clerk of the Court
FILED: AA

EXHIBIT E

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2010-017915

06/18/2010

HON. EDWARD O. BURKE

CLERK OF THE COURT
L. Nixon
Deputy

JUAN MENDEZ

CRAIG A MORGAN

v.

AUGUSTUS SHAW, et al.

JAMES R HUNTWORK

BARBARA A BAILEY
MARY JO FOSTER
COLLEEN CONNOR

MINUTE ENTRY

The court has had plaintiff's complaint for special action and injunctive relief pursuant to A.R.S. § 16-351 challenging Augustus H. Shaw IV's ("SHAW") nominating petitions to run for the Republican nomination for the Arizona House of Representatives for Legislative District 17 under advisement and enters the following rulings.

Plaintiff's request for injunctive relief is GRANTED.

Facts

The following facts were established at the hearing:

1. For more than three years, SHAW has owned a house at 7920 S. Stephanie Lane, Tempe, Arizona with his wife, Andrada Shaw which is in Legislative District 20. (the "District 20 House").
2. SHAW's father-in-law, Peter Bergsneider and his mother-in-law own a house at 5088 E. Laguna Drive, Tempe, Arizona which is in Legislative District 17 (the "District 17 House"). The two houses are 10 to 15 miles apart.

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pre-existing conditions . . . such as existing columns . . . which create blind spots." In addition, the complaint alleged that appellees "acted with recklessness and consciously disregarded the risks to the Regency House residents, including Dr. Lyon," that appellees' conduct as set forth in the complaint "was gross, willful, or wanton," and that Dr. Lyon had been injured by appellees' conduct.

¶11 Appellees cite *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007) and *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Twombly*) for the proposition that to survive a Rule 12(b)(6) motion, a complaint must contain factual allegations sufficient to "state a claim to relief that is plausible on its face." *Twombly*, 550 U.S. at 570.

¶12 *Twombly* does not provide the standard in Arizona state court for determining whether a complaint states a claim upon which relief can be granted under Rule 12(b)(6). *Cullen*, 218 Ariz. at 420-21, ¶¶ 9, 16. In *Twombly*, the United States Supreme Court held that under the Federal Rules of Civil Procedure, to survive a motion to dismiss, the complaint's "[f]actual allegations must be enough to raise a right to relief above the speculative level," and the plaintiffs' allegations must be compelling enough to "nudge[] their claims across the line from conceivable to plausible." 550 U.S. at 545, 570. However, in *Cullen*, the Arizona Supreme

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3. On June 5, 6, and 7, 2010, Brian Kidd, a private investigator conducted a surveillance of SHAW and presented a DVD of portions of his surveillance which was received in evidence as Exhibit 2. The DVD shows that SHAW spent the weekend coming and going from the District 20 House. Mr. Kidd reported that during the entire surveillance he never saw SHAW enter or leave the District 17 House on Laguna Drive.
4. SHAW's District 20 House is not now and has never been placed on the market for sale.
5. On Monday, June 7, 2010, at 9:00 p.m. Mr. Kidd called the District 20 House and asked to speak to SHAW who was called to and came to the phone identifying himself as "Augustus." This testimony was not challenged.
6. Andrada Shaw and SHAW have been married for 10 years and have two children, ages 6 and 3. They are not legally separated and there are no divorce proceedings pending.
7. Mrs. Shaw testified that SHAW is at home with her at the District 20 House four to five days a week when they are not at their cabin and that he sleeps at the District 20 House five to seven nights a week.
8. The Shaws' 2008 joint income tax return was filed using the District 20 House address.
9. The parties stipulated that SHAW's business address at Shaw & Lines, LLC is 7920 S. Stephanie Lane, Tempe, Arizona, the District 20 House and further stipulated that all utilities for the District 20 House are addressed to and paid by SHAW.
10. Mr. Bergsneider testified that a couple of weeks before SHAW decided to run for the State House of Representatives; SHAW asked him if he could use his house as a legal residence to run for office from. He testified in part:

"THE COURT:

... do you consider Mr. Shaw a resident of your home?

THE WITNESS: Yes.

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¶15 Appellees argue the Officers are protected by the Federal Volunteer Protection Act, 42 U.S.C. § 14503(a), because they are volunteers, and that if we do not affirm the superior court's dismissal we will be opening "floodgates of litigation to those having volunteered." Even if section 14503(a) applies, it limits the liability of volunteers for harm they cause only in certain circumstances, and specifically states that volunteers are not protected for harm caused by the volunteer's gross negligence. 42 U.S.C. § 14503(a)(3). Appellees' argument that they did not owe a duty to Dr. Lyon because they were acting on behalf of the Association is equally unconvincing. "Corporate officers are liable to those harmed by such officers' tortious conduct on behalf of the company they ostensibly serve." *Higgins v. Assmann Elecs., Inc.*, 217 Ariz. 289, 294, ¶ 13 (App. 2007). And, as noted above, the CC&Rs do not shield the Officers from acts or omissions that constitute gross negligence.

¶16 Appellees further argue that Dr. Lyon "cannot merely rest on his pleadings," and must support his factual allegations with "proper evidentiary material, which when coupled with undisputed background and contextual facts, show that the fact-finder could reasonably find in [Dr. Lyon's] favor," and "'in order to present [a gross negligence issue] to the jury, gross negligence need not be established conclusively, but the evidence on the issue must be more than slight and may not border on conjecture.'" (quoting *Walls v. Ariz. Dept of Pub. Safety*, 170 Ariz. 591, 595 (App. 1991)). *Walls* involved an appeal from the superior court's *grant of summary judgment* in favor of defendants on the plaintiff's gross negligence claim. 170 Ariz. at 592, 596. Here, the superior court dismissed Dr. Lyon's gross negligence claim under Rule 12(b)(6) at the pleading stage. Taking the well-pled factual allegations of the complaint as true, the dismissal for failure to state a claim upon which relief can be granted was error.

II. Attorneys' Fees

¶17 Dr. Lyon requests attorneys' fees and costs pursuant to section 23 of the CC&Rs and A.R.S. §§ 12-341, -341.01. Section 23 of the CC&Rs is a one-way fee provision that would only apply if the Association or Board sued Dr. Lyon. Section 12-341.01 permits discretionary fees to the prevailing party in any contested action arising out of contract, express or implied. Even if § 12-341.01 applies to Dr. Lyon's gross negligence claim, we deny his fee request because he has not prevailed in the litigation. As the successful party on appeal, Dr. Lyon is entitled to costs upon compliance with ARCAP 21.

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MARICOPA COUNTY

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THE COURT: How long has he been a resident?

THE WITNESS: Since right before he decided to run for office.

THE COURT: Which office?

THE COURT: For – he was thinking of running for state house of representatives.

THE COURT: This election that we're involved with?

THE WITNESS: Yes.

THE COURT: How much before he decided to run?

THE WITNESS: He – it was probably a couple of weeks.

THE COURT: How long ago was that, sir?

THE WITNESS: I don't remember. I just remember that he was thinking of running and asked me about you know running for office.

THE COURT: What did he say about it?

THE WITNESS: He said that he wanted to run for office and he wanted to represent my district.

THE COURT: And?

THE WITNESS: And asked me if he could use my house for his legal residence and I told him that I already thought that he resided there as family. When he moved back from Omaha, my daughter and him moved into my house for close to two months while they were looking for a place and at that time he got all his mail there also, so –

THE COURT: How many nights a week does Mr. Shaw spend at your house?

THE WITNESS: A couple of nights. He comes and goes. I don't pay attention to him as he has a lot different – I know he works late. I normally go to bed at

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Decision of the Court

CONCLUSION

¶18 For the foregoing reasons, we reverse and remand for further proceedings consistent with this decision.



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FILED: AA

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MARICOPA COUNTY

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10:30 so I don't pay much attention to his comings and goings. He has a key."
(trial transcript: p. 59, l. 21 to p. 59, l. 21).

Conclusions of Law

The court finds that SHAW is a resident of the District 20 House and not a qualified elector in District 17. Therefore defendants are enjoined from allowing SHAW's name to appear on the Republican Party primary ballot for the State House of Representatives for Legislative District 17.

A.R.S. § 16-101(B) defines a "resident" as:

"... an individual who has actual physical presence in this state, or for the purpose of a political subdivision actual physical presence in the political subdivision, combined with intent to remain."

A person's statement as to his place of residence in an affidavit of registration to vote is not conclusive, but constitutes strong proof of the correctness of the residence and post office address given therein. Kauzlarich v. Board of Trustees of Oak Creek School District Number 16, Yavapai County, 78 Ariz. 267, 270-271, 278 P.2d 888 (1955).

A.R.S. § 16-593(A) states:

"The election board, in determining the place of residence of a person, shall be governed by the following rules, so far as applicable:

1. The residence of a person is that place in which his habitation is fixed and to which he has the intention of returning when absent.

7. The place where a person's family permanently resides is his residence, unless he is separated from his family, but if it is a place of temporary establishment for his family, or for transient purposes, it is otherwise."

The above rules have been interpreted by the Attorney General as being the general rule for determining residence where ever that may be an issue, even though the rules in that section apply specifically only to voters. Op. Att. Gen. No. 71-15-L.

In reaching its decision, the court reasons as follows.

SHAW's testimony regarding the reason for staying at his in-laws' house i.e. his son's condition was compelling. Because it was so compelling, the court would think that his father-

~~EXHIBIT D~~

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in-law would have known of this reason and have been able to articulate it while on the stand when asked by the court. He did not.

The testimony of Mrs. Shaw that SHAW slept at their home five to seven nights a week was very persuasive and indicates that the District 20 House is the residence to which SHAW intends to and regularly returns when absent.

The mere fact of a voter's registration and driver's license addresses, although strong, does not alone compel the court to rule for SHAW. id. Kauzlarich.

For the above reasons the court finds for plaintiff.

Plaintiff's Amended Complaint also raised the issue that SHAW failed to qualify for the Republican Primary because he collected his signatures before forming a candidate campaign committee in violation of A.R.S. § 16-903, which was neither argued nor was any evidence presented concerning it.

Had such evidence been presented, the court believes that A.R.S. § 16-903(G) provides the remedy for a violation of that section i.e. a civil penalty. Compare that with A.R.S. § 19-114 which states:

“...no person other than a person who is qualified to register to vote ... may circulate an initiative or referendum petition and all signatures verified by any such person shall be void and shall not be counted ...”

This section indicates that the legislature, had it wanted to, could have provided in § 16-903 that any signatures collected before a candidate campaign committee was formed were void. Because the legislature did not do so, the court would probably not have found that SHAW's petitions were invalid for that reason had the question been presented to the court.

/ s / HON. EDWARD O. BURKE

JUDICIAL OFFICER OF THE SUPERIOR COURT

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

MICHAEL LYON, *Plaintiff/Appellant,*

v.

JODY HELTON, et al. *Defendants/Appellees.*

No. 1 CA-CV 21-0130

FILED 6-2-2022

Appeal from the Superior Court in Maricopa County

No. CV2020-008665

The Honorable Andrew J. Russell, Judge

REVERSED AND REMANDED

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Counsel for Defendants/Appellees