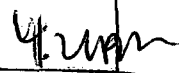


MAR 26 2026



D. Avila, 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 SANDRA RODRIGUEZ,

10 **Plaintiff,**

11 vs.

12  
 13 GARDENS GILBERT COMMUNITY  
 14 ASSOCIATION an Arizona non profit  
 15 corporation; FOCUS HOA  
 16 MANAGEMENT, LLC, and Arizona  
 17 limited liability company; HARMIN  
 18 CADIS, BROOKE SORTOR, ANNA  
 19 SCHULTZ

20 **Defendants,**

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

25 **PLAINTIFF'S SUPPLEMENTAL**  
 26 **EVIDENCE IN SUPPORT OF**  
 27 **MOTION FOR**  
 28 **PROTECTIVE ORDER**

**TO THE HONORABLE JUDGE MCDOWELL:**

Rodriguez ("Plaintiff"), appearing pro per, submits this Supplemental Evidence in support of her Motion for Protective Order pursuant to Rule 26(c), Ariz. R. Civ. P. This filing addresses Defendants' ongoing misconduct following that motion, including their continued refusal to comply with court-ordered discovery, obstruction of the discovery process, shifting and inconsistent litigation positions, and attempts to pursue dispositive relief—first through a threatened partial summary judgment motion and now through a partial motion to dismiss—while withholding discovery and critical evidence.

1 In support of this filing, Plaintiff provides (1) a copy of Defendants' email transmitting  
2 their draft partial motion to dismiss and requesting a meet-and-confer, and (2) a copy of  
3 Defendants' draft Partial Motion to Dismiss, both issued while Defendants remain in violation of  
4 their discovery obligations.

5 As referenced in the Motion for Protective Order which evidences of a meet-and-confer  
6 call with Defendants' counsel, Augustus H. Shaw IV, during which counsel refused to produce  
7 requested discovery and instead engaged in conduct attempting to elicit statements to Plaintiff's  
8 detriment while withholding evidence. This conduct, viewed in conjunction with Defendants'  
9 ongoing noncompliance, demonstrates a coordinated effort to obstruct discovery while advancing  
10 dispositive relief on an incomplete and controlled record. Defendants previously attempted to  
11 limit discovery to Tier 1 to restrict disclosures and avoid producing damaging evidence. After the  
12 Court ordered Tier 3 discovery, Defendants escalated to outright obstruction. Counsel Augustus  
13 H. Shaw IV has been directly involved in this conduct, implicating Rule 37.

14 As detailed below, Defendants' actions also violate the Arizona Court of Appeals'  
15 mandate, which held Plaintiff's negligence, gross negligence, and intentional tort claims were  
16 sufficiently pled and must proceed on a developed record. Defendants' attempt to relitigate those  
17 issues while blocking discovery is improper, prejudicial, and deprives Plaintiff of due process,  
18 warranting protective relief. (*See Exh. 3*)

19 **II. SUPPLEMENTAL FACTUAL BACKGROUND AND CONTINUED LITIGATION**  
20 **ABUSE**

21 Plaintiff incorporates by reference her Motion for Protective Order. Since its filing,  
22 Defendants have continued to refuse discovery served on December 1, 2025, despite the Court's  
23 February 23, 2026 Order and repeated follow-ups, including March 2, 2026. After unsuccessfully  
24 attempting to limit discovery to Tier 1, Defendants now obstruct Tier 3 discovery, demonstrating  
25 continued intent to withhold and block evidence. (*See Exhs. 1-2*)

26 Defendants persist in a pattern of obstruction, offering shifting explanations through  
27 counsel—first claiming discovery was not due, then asserting "*confusion*," despite repeated  
28 clarification. As detailed in Plaintiff's March 25, 2026 Motion, these excuses mirror prior  
unsupported claims regarding Tier designation and reflect evasive conduct, not good faith

1 compliance. Arizona law does not permit such shifting justifications. *See Bryan v. Riddel*, 178  
2 Ariz. (1994).

3 Defendants have further escalated their conduct by shifting from an intent to file partial  
4 summary judgment to a partial motion to dismiss, while continuing to withhold discovery and  
5 providing no draft motion or legal basis during meet-and-confer. This demonstrates an effort to  
6 avoid factual scrutiny rather than resolve the case on a developed record. Defendants remain in  
7 violation of Rules 26.1, 34, and 37 and the Court's February 23, 2026 Order, offering no valid  
8 legal justification.

9 The withheld materials are directly relevant and within Defendants' control, and likely  
10 further implicate their liability. Refusing discovery while pursuing dispositive relief constitutes  
11 clear obstruction and is precisely the conduct Rule 37 is designed to prevent and sanction.

### 12 **III. THE COURT OF APPEALS' RULING IS CONTROLLING AND BINDING**

13  
14 The Arizona Court of Appeals' August 12, 2025 decision is binding under the mandate  
15 rule and governs this case. The Court reversed dismissal of Plaintiff's negligence, gross  
16 negligence, and intentional tort claims, finding them sufficiently pled under Arizona's notice  
17 pleading standard.

#### 18 **The Court made clear that Plaintiff**

19 *"has alleged facts that, at this stage of the proceedings, are sufficient to*  
20 *support her gross negligence and intentional tort claims,"*

21  
22 and reaffirmed that dismissal is improper where a plaintiff would be entitled to relief  
23 under any interpretation of the facts susceptible of proof. The Court of Appeals remanded for  
24 further proceedings on a developed record. This ruling is binding and may not be revisited or  
25 relitigated by Defendants.

### 26 **IV. DEFENDANTS ARE VIOLATING THE APPELLATE MANDATE AND** 27 **RELITIGATING RESOLVED ISSUES**

28 Despite the binding appellate ruling, Defendants attempt to relitigate issues already  
decided by reasserting that Plaintiff's claims are insufficient—arguments the Court of Appeals

1 rejected under Arizona's notice pleading standard. They also improperly narrow the scope of  
2 remand by limiting claims to isolated issues while excluding broader allegations, despite the  
3 appellate court allowing the claims to proceed on a developed record. This shift follows receipt  
4 of Plaintiff's evidence while Defendants continue withholding their own.

5 Defendants further seek dismissal of negligence, gross negligence, and intentional tort  
6 claims that were expressly reinstated, even as supporting evidence is being subpoenaed. This  
7 violates the mandate rule and constitutes an improper collateral attack. See A.R.S. § 12-  
8 3201(E)(1)(f).

9 **V. DEFENDANTS ARE OBSTRUCTING DISCOVERY WHILE SEEKING**  
10 **DISPOSITIVE RELIEF**

11 Defendants are improperly withholding discovery while pursuing dismissal. They  
12 continue to withhold documents, interrogatory responses, and admissions required under Rules  
13 26.1 and 34, in violation Court Order, yet seek to file a partial motion to dismiss without  
14 producing the evidence necessary for Plaintiff to respond. Arizona law prohibits a party from  
15 benefiting from its own failure to disclose or seeking dispositive relief while preventing access to  
16 relevant evidence. See *Zimmerman v. Shakman*, 204 Ariz. 231 (App. 2003); *Orme School v.*  
17 *Reeves*, 166 Ariz. 301 (1990); *Brown v. Superior Court*, 137 Ariz. 327 (1983).

18 Defendants' anticipated motion to dismiss is not a legitimate procedural challenge, but a  
19 strategic attempt to eliminate claims before relevant evidence is disclosed. By withholding  
20 discovery while seeking dismissal, Defendants are attempting to: (1) control the evidentiary  
21 record; (2) prevent Plaintiff from obtaining incriminating evidence within their possession; and  
22 (3) secure dismissal based on an artificially incomplete record. This conduct is precisely what  
23 Rule 37 is designed to prevent and sanction.

24 Defense counsel, Augustus H. Shaw IV, has actively participated in this obstruction  
25 through refusal to produce discovery, unsupported legal positions, and shifting explanations for  
26 noncompliance. The timing of Defendants' conduct—blocking discovery while advancing  
27 dispositive motions—demonstrates a deliberate strategy to avoid factual development and  
28 adjudication on the merits. Arizona courts have consistently rejected such tactics, and  
Defendants' conduct warrants intervention and sanctions by this Court.

1 **VI. DEFENDANTS' CONDUCT CONSTITUTES LITIGATION ABUSE, VEXATIOUS**  
2 **CONDUCT, AND PREJUDICES PLAINTIFF**

3 Defendants' conduct reflects a sustained pattern of litigation abuse aimed at obstructing  
4 discovery, relitigating resolved issues, and avoiding adjudication on the merits. This includes  
5 attempting to limit discovery to Tier 1, refusing discovery after Tier 3 was ordered, shifting  
6 positions with unsupported claims of "confusion," relitigating issues decided by the Court of  
7 Appeals, and pursuing dispositive motions while withholding evidence. Defendants have also  
8 mischaracterized procedural rules and violated this Court's February 23, 2026 Order,  
9 demonstrating a lack of good faith.

10 Such conduct constitutes vexatious litigation under A.R.S. § 12-3201(E)(1)(b)-(f),  
11 including abuse of discovery, delay, and attempts to relitigate previously decided issues.  
12 Defendants' actions fall squarely within these categories.

13 The prejudice to Plaintiff is substantial. She is forced to defend against dispositive motions  
14 without access to critical evidence in Defendants' control, while they remain in violation of their  
15 obligations and a court order. This creates an unfair litigation posture and deprives Plaintiff of a  
16 meaningful opportunity to present her claims.

17 **VI. DEFENDANTS' CONDUCT VIOLATES DUE PROCESS**

18  
19 Defendants' actions deprive Plaintiff of a meaningful opportunity to prepare and present  
20 her case. By withholding discovery—particularly evidence solely within their possession that  
21 would further implicate them—while simultaneously pursuing dispositive relief, Defendants  
22 prevent Plaintiff from obtaining the information necessary to respond and be heard. This creates  
23 a fundamentally unfair litigation environment in which Defendants seek adjudication on an  
24 incomplete and controlled record.

25 *Such conduct violates Plaintiff's due process rights under the Fourteenth Amendment to*  
26 *the United States Constitution and Article 2, § 4 of the Arizona Constitution, both of which*  
27 *guarantee a meaningful opportunity to be heard at a meaningful time and in a meaningful manner.*  
28 *It also undermines the core principles embodied in Rules 26 and 37 of the Arizona Rules of Civil*  
*Procedure, which are designed to ensure fair disclosure and prevent precisely this type of*

1 litigation by ambush. Forcing Plaintiff to proceed under these circumstances is fundamentally  
2 unfair and constitutionally impermissible.

3 **VII. PROTECTIVE RELIEF IS NECESSARY**

4  
5 Under Rule 26(c), this Court has broad authority to issue protective orders to prevent  
6 discovery abuse and protect parties from undue burden, oppression, and unfair litigation tactics.  
7 Defendants' continued noncompliance with discovery obligations, violation of a court order,  
8 improper attempt to relitigate appellate issues, and pursuit of dispositive relief on an incomplete  
9 record establish good cause for protective relief.


10 Absent Court intervention, Defendants will continue to obstruct discovery and attempt to  
11 secure dismissal through procedural maneuvering rather than adjudication on the merits.

12 **IX. REQUEST FOR RELIEF**

13 Plaintiff respectfully requests that this Court:

- 14
- 15 1. Grant Plaintiff's Motion for Protective Order;
  - 16 2. Stay Plaintiff's deposition until Defendants fully complies with all discovery obligations  
17 and court orders;
  - 18 3. Order Defendants to provide full, complete, verified discovery responses, and evidence  
19 by a date certain;
  - 20 4. Preclude Defendants from filing or proceeding with any motion to dismiss or motion for  
21 summary judgment until full compliance with discovery obligations;
  - 22 5. Impose appropriate sanctions under Rule 37 for Defendants' noncompliance; and
  - 23 6. Grant such further relief as the Court deems just and necessary to prevent further  
24 prejudice and ensure compliance with the Arizona Rules of Civil Procedure.

25 Respectfully submitted this 26<sup>th</sup> day of March 2026.

26   
27 Sandra Rodriguez

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**V. EXHIBITS**

1. **Exhibit 1** - Defendant's Email Informing Rodriguez Intent to File Partial Motion to Dismiss (March 25, 2026)
2. **Exhibit 2** - Defendant's Email Informing Rodriguez Intent to File Partial Motion to Dismiss (March 25, 2026)
3. **Exhibit 3** – Arizona Court of Appeals Ruling (1 CA-CV 25-0040) (1 CA-CV24-0790) *(Consolidated)* (August 12, 2025)

**VI. CERTIFICATE OF SERVICE**

I served copies of this ***PLAINTIFF'S MOTION FOR PROTECTIVE ORDER, TO STAY DEPOSITION AND FOR SANCTIONS*** for on all parties of record via U.S. Mail.

**OPPOSING PARTY INFORMATION**

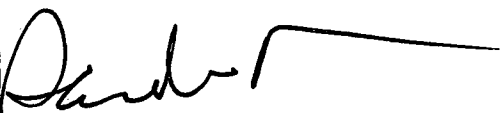
**DEFENDANTS:**

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

**DEFENDANT'S LEGAL COUNSEL:**

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

Respectfully submitted this *21<sup>st</sup>* day of March 2026.



Sandra Rodriguez

# EXHIBIT 1



Sandra Rodriguez <sandra.rodriguez0339@gmail.com>

---

**Rodriguez v. Gardens Gilbert, et al - CV2024-005940 - Motion to Dismiss Meet and Confer**

---

Dominick Détente <Dominick@shawlines.com>

Wed, Mar 25, 2026 at 4:10 PM

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

Cc: Augustus Shaw <ashaw@shawlines.com>, Diane Fincher <Diane@shawlines.com>

Good afternoon Ms. Rodriguez,

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

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)?

Thank you, and I hope you have a great rest of your day,

---

**From:** Sandra Rodriguez <sandra.rodriguez0339@gmail.com>

**Sent:** Tuesday, March 24, 2026 6:03 PM

**To:** Diane Fincher <Diane@shawlines.com>

**Cc:** Augustus Shaw <ashaw@shawlines.com>

**Subject:** Re: Rodriguez v. Gardens Gilbert, et al - CV2024-005940

Dear Diane,

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

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

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.

Sincerely,

Sandra Rodriguez

On Mon, Mar 23, 2026, 12:35 PM Diane Fincher <Diane@shawlines.com> wrote:

Good afternoon,

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.

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

We look forward to hearing from you.

Diane Fincher  
*Paralegal*  
**SHAW & LINES, LLC**  
*We've Moved!*  
1490 S. Price Rd., Suite 318  
Chandler, Arizona 85286  
Phone 480-456-1500  
Fax 480-456-1515  
www.shawlines.com

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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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# EXHIBIT 2



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.  
8  
9 *Cullen v. Auto-Owners Ins. Co.*, 218 Ariz. 417, 419-20, ¶¶ 7-9 (2008).

10  
11           While the Court assumes the truth of the alleged facts, dismissal is appropriate  
12 where those allegations, even if true, do not establish a legally cognizable claim for relief.  
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.  
15  
16

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  
26  
27  
28

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.  
17  
18

19 Throughout the Amended Complaint, to the extent Plaintiff’s allegations  
20 concerning community maintenance, sanitation, and common-area conditions assert  
21

---

22  
23  
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.  
23  
24  
25  
26

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           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.  
4

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  
25  
26

27 \_\_\_\_\_  
28 <sup>7</sup> *See supra* note 4.

<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.

22  
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  
25  
26  
27

---

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  
27  
28

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.  
25  
26  
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28

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  
26  
27

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

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 ¶  
26  
27

28 <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.  
23  
24  
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28 <sup>12</sup> *See supra* note 4.

<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.

3  
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.  
21  
22

23  
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  
27  
28

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

7  
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.  
26  
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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.  
7

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 4. Dismiss Plaintiff's Prayer for Relief to the extent it is predicated on non-viable or  
17 non-remanded claims.
- 18 5. Award Defendants their reasonable attorneys' fees and costs pursuant to A.R.S.  
19 §§ 12-341, 12-341.01, and 12-349, and grant such other relief as the Court deems  
20 just and proper.  
21  
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1 DATED this \_\_\_\_ day of March 2026.

2  
3 SHAW & LINES, LLC

4 /s/  
5 Augustus H. Shaw IV, Esq., CCAL  
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 \_\_\_\_ day of March, 2026 to:

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

15 COPY of the foregoing served by e-mail and mail  
16 this \_\_\_\_ day of March, 2026 to:

17 Sandra Rodriguez  
18 4375 East Betsy Lane  
19 Gilbert, Arizona 85296  
20 sandra.rodriguez0339@gmail.com  
21 *Plaintiff, Pro Per*

22 By: /s/ Diane Fincher  
23  
24  
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1 **VERIFICATION**

2 STATE OF ARIZONA )

3 ) ss.

4 County of Maricopa )

5  
6 Anna Schultz declares and states as follows:

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

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

16  
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19  
20 **Anna Schultz, President of the Board of Directors of  
21 Gardens/Gilbert Community Association**  
22  
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**VERIFICATION**

1  
2 STATE OF ARIZONA     )  
3                                     ) ss.  
4 County of Maricopa             )

5  
6         Anna Schultz 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.

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17                                     \_\_\_\_\_  
18                                     Anna Schultz, named Defendant  
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1 **VERIFICATION**

2 STATE OF ARIZONA )

3 ) ss.

4 County of Maricopa )

5  
6 Harman Cadis declares and states as follows:

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

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

16  
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20 \_\_\_\_\_  
21 Harman Cadis, Authorized Representative of  
22 Focus HOA Management, LLC  
23  
24  
25  
26  
27  
28

**VERIFICATION**

STATE OF ARIZONA )

) ss.

County of Maricopa )

Harman Cadis 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.

---

**Harman Cadis, named Defendant**

1 **VERIFICATION**

2 STATE OF ARIZONA )

3 ) ss.

4 County of Maricopa )

5  
6 **Brooke Sortor 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.

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**Brooke Sortor, named Defendant**

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# Exhibit 1



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DATED this \_\_\_ day of March 2026.

SHAW & LINES, LLC

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

ORIGINAL submitted for filing  
This \_\_\_ day of March 2026, with:

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

COPY of the foregoing served by email  
This \_\_\_ day of March 2026, to:

Sandra Rodriguez  
4375 East Betsy Lane  
Gilbert, Arizona 85296  
sandra.rodriguez0339@gmail.com  
*Plaintiff, Pro Per*

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 *Wilwers*, 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.

# EXHIBIT 3

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

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

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SANDRA RODRIGUEZ, *Plaintiff/Appellant*,

*v.*

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

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

FILED 08-12-2025

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

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

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COUNSEL

Sandra Rodriguez, Gilbert  
*Plaintiff/Appellant*

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

**MEMORANDUM DECISION**

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

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**CATTANI**, Judge:

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

**FACTS AND PROCEDURAL BACKGROUND**

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

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

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

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

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

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

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

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

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

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

DISCUSSION

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

I. The Gardens/Gilbert Case.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## II. The Focus Case.

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

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

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

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

**CONCLUSION**

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



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