No.

In the Supreme Court of the United States

KIMBERLY R. SWEIDY,
Petitioner,
v.
SPRING RIDGE ACADEMY, et al.,
Respondents.

On Petition for a Writ of Certiorari
to the United States Court of Appeals for the
Ninth Circuit

APPENDIX TO THE PETITION FOR A WRIT OF CERTIORARI

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APPENDIX

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Appendix A

NOT FOR PUBLICATION
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

KIMBERLY R. SWEIDY, Plaintiff - Appellant, v. SPRING RIDGE ACADEMY, an Arizona corporation; JEAN COURTNEY; SUZANNE COURTNEY; BRANDON COURTNEY; ERIN SMITH; LESLIE FILSINGER; JUSTIN ZYCH; KATE DEILY; and VERONICA BORGES, Defendants - Appellees.	FILED JAN 23 2026 MOLLY C. DWYER, CLERK U.S. COURT OF APPEALS No. 24-4318 D.C. No. 3:21-cv-08013-SPL MEMORANDUM*

Appeal from the United States District Court for the District of Arizona
Steven Paul Logan, District Judge, Presiding

Argued and Submitted January 5, 2026 Phoenix, Arizona

Before: HAWKINS, RAWLINSON, and M. SMITH, Circuit Judges.
Concurrence by Judge RAWLINSON.

Plaintiff-Appellant Kimberly R. Sweidy (Sweidy) brought this suit against Spring Ridge Academy (SRA) and eight of its individual employees (collectively, Defendants) for claims related to her daughter, René Rearden Sweidy Stata (Rearden), and Rearden's enrollment at SRA. Sweidy appeals an order striking her statements of controverting facts and associated exhibits, and an order denying her motion to amend her complaint. Sweidy also challenges the partial summary judgment dismissal of her causes of action for (i) intentional infliction of emotional distress; (ii) breach of contract/breach of warranty; (iii) breach of the covenant of good faith and fair dealing; (iv) negligence per se; (v) actual and constructive fraud; (vi) consumer fraud; and (vii) conversion.[1],[2] We have jurisdiction pursuant to 28 U.S.C. § 1291.[3] Because the parties are familiar with

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[1] The only remaining claims were fraud claims against SRA and SRA's Admissions Director, Kate Deily (Deily).

[2] The district court also dismissed Sweidy's claim pursuant to the Racketeer Influenced and Corrupt Organization Act, but she makes no argument challenging that on appeal.

[3] Generally, "[o]rders granting partial summary judgment are not final appealable orders." *Jones v. McDaniel*, 717 F.3d 1062, 1068 (9th Cir. 2013) (internal quotation omitted). But Sweidy appeals the district court's grant of partial judgment based on a final judgment entered pursuant to Federal Rule of Civil Procedure 54(b).

the facts, we do not recount them here except as necessary. We affirm.

1. "We review a district court's ruling on a motion to strike for abuse of discretion." *Ehart v. Lahaina Divers, Inc.*, 92 F.4th 844, 849 (9th Cir. 2024). The district court did not abuse its discretion by striking Sweidy's statements of controverting facts or her supporting exhibits for noncompliance with the page limits in its case management order. *See, e.g.*, *Green v. California Ct. Apartments LLC*, 321 F. App'x 589, 591 (9th Cir. 2009). Sweidy could have filed a motion to exceed these limits, but she did not do so. Even if it were error, it was harmless because the district court expressly stated in its summary judgment order that it considered the exhibits at that stage.

2. We also review a district court's denial of a motion to amend a complaint for abuse of discretion. *See Solomon v. N. Am. Life & Cas. Ins. Co.*, 151 F.3d 1132, 1138 (9th Cir. 1998). Sweidy moved to amend her complaint to create "a clarified, reorganized, solidified, and expanded First Amended Complaint" based on "additional information" learned during discovery and through subsequent research. The district court did not abuse its discretion by denying Sweidy's motion. We have previously affirmed denials of such motions that are filed (as here) at a late stage in the litigation based on needless delay and prejudice. *See, e.g.*, *Lamon v. Ellis*, 584 F. App'x 514, 516 (9th Cir. 2014). Any error here was harmless because Sweidy was able to point to relevant evidence in her summary judgment briefing and at trial, including evidence related to punitive damages.

3. The district court did not err by granting

summary judgment on Sweidy's claim for intentional infliction of emotional distress (IIED).[4] We review grants of partial summary judgment de novo. *See Washington Mut. Inc. v. United States*, 636 F.3d 1207, 1216 (9th Cir. 2011). In Arizona, IIED requires: (i) "extreme and outrageous" conduct; (ii) "inten[t] to cause emotional distress or reckless[] disregard" for "the near certainty that such distress will result"; and (iii) "severe emotional distress . . . as a result of defendant's conduct." *Ford v. Revlon, Inc.*, 734 P.2d 580, 585 (Ariz. 1987) (en banc) (internal quotation omitted). Here, Sweidy's IIED claim fails because she offers no evidence of severe emotional distress.

Moreover, Sweidy's own arguments defeat her claim. According to Sweidy, Defendants' alleged conduct "inherently" causes severe emotional distress in all parents, so she "was not required to show proof of [her distress]" and "certainly not at the summary judgment stage." But proof of severe emotional distress is necessary to establish the third element of an IIED claim. Sweidy's "inherent distress" argument asks us to collapse the first and third elements. Sweidy's failure to identify any evidence of her severe emotional distress is fatal to her claim, especially where she herself has expressed a lack of such distress. *See Celotex Corp. v. Catrett*,

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[4] Summary judgment is warranted if the movant establishes that there is no genuine dispute of material fact, entitling it to judgment as a matter of law. *See* Fed. R. Civ. P. 56(a). A genuine fact dispute exists where there is sufficient evidence for a reasonable jury to find in favor of the nonmoving party. *See Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248–49 (1986). We view the facts in the light most favorable to the nonmovant and draw all reasonable inferences in their favor. *See id.* at 255.

477 U.S. 317, 324 (1986) ("Rule 56(e) . . . requires the nonmoving party to go beyond the pleadings and by her own affidavits . . . designate specific facts showing that there is a genuine issue for trial." (internal quotation omitted)).

4. The district court also did not err by granting summary judgment on Sweidy's breach of contract claim.[5] We first decline to expand the parties' contract beyond the Enrollment Agreement and Parent Manual, because Sweidy does not persuasively explain why we should do so. The Enrollment Agreement describes SRA as "a clinical boarding school for adolescents" that "combines a clinically sophisticated therapeutic program with a college preparatory academic curriculum." Before the district court, Sweidy argued that Defendants failed to "act within the scope of the authority granted in the Enrollment Agreement and the Parent Manual and not beyond the represented services, which included providing family therapy." Like the district court, we disagree. *See Collins v. Miller & Miller, Ltd.*, 943 P.2d 747, 755 (Ariz. Ct. App. 1996) (breach of contract claim requires specificity beyond "a general promise . . . to provide reasonably competent [] services.").

We do not address Sweidy's more specific arguments raised on appeal because they are waived for failure to develop below. *See In re Mercury Interactive Corp. Sec. Litig.*, 618 F.3d 988, 992 (9th Cir. 2010). Sweidy argues that there is no waiver because these arguments were alleged in her complaint. This is insufficient. *See Coverdell v. Dep't*

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[5] Sweidy does not appeal the grant of summary judgment for breach of contract with respect to Defendants other than SRA.

of Soc. & Health Servs., 834 F.2d 758, 769 (9th Cir. 1987) (at summary judgment, "[t]he nonmoving party may not rely merely on the unsupported or conclusory allegations of her pleadings"). Sweidy highlights that her complaint is verified, but that does not transform it into a brief, nor does it transform allegations into evidence if they are insufficiently specific or not based on personal knowledge. *See Moran v. Selig*, 447 F.3d 748, 759 n.16 (9th Cir. 2006). Regardless, even if we considered Sweidy's more specific arguments on the merits, we would still conclude that she has failed to raise a genuine dispute regarding her breach of contract claim. These arguments are based on only general promises and are otherwise unsupported.

5. We next hold that the district court did not err by granting summary judgment on Sweidy's claim for breach of the implied covenant of good faith and fair dealing. "A party breaches the covenant by exercising express discretion in a way inconsistent with a party's reasonable expectations and by acting in ways . . . which . . . bear adversely on the party's reasonably expected benefits of the bargain." *Keg Rests. Arizona, Inc. v. Jones*, 375 P.3d 1173, 1186 (Ariz. Ct. App. 2016) (internal quotation omitted). Sweidy argues that even if SRA's alleged actions (failure to provide licensed therapy and evidence-based treatment) were not expressly contemplated by the contract, they bear adversely on her reasonably expected benefits of the bargain.[6]

We reject Sweidy's argument. Sweidy's claim is based in tort, not contract, and thus, relies on

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[6] Sweidy does not challenge summary judgment on this claim related to other Defendants except SRA.

whether SRA complied with the applicable standard of care. Sweidy failed to develop and support her argument. For example, while the record below included expert reports that Sweidy might have used to support her claims, she failed to cite them in her opposition brief.

For the first time on appeal, Sweidy argues that "SRA actively prevented [her] and Rearden from receiving the benefits" of the family program, and "impeded" family enhancement by "actively preventing her from contacting or visiting Rearden." We find these arguments to be waived, but even if they were not, we would affirm. Sweidy offers no evidence that Defendants "impeded" family services. Rather, the record suggests that it was Sweidy who rejected these services.

6. Nor did the district court err by granting summary judgment on Sweidy's negligence per se claim. In Arizona, negligence per se requires "a valid statute, enacted for the public safety," which "provide[s] that a certain thing must or must not be done," and "a failure to comply with the regulations [that] is the proximate cause of injury to another." *Griffith v. Valley of Sun Recovery & Adjustment Bureau, Inc.*, 613 P.2d 1283, 1285 (Ariz. Ct. App. 1980) (internal quotation omitted). Sweidy's argument before the district court focused almost entirely on her claim pursuant to A.R.S. § 13-1302 (custodial interference), although she also referenced her allegations that Defendants "breach[ed] their duties to provide therapy and communication in compliance with the Arizona Administrative code governing behavioral health facilities."[7] On appeal,

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[7] According to Sweidy, Defendants did not move for summary

Sweidy clarifies that her negligence per se claims are brought pursuant to A.R.S. § 13-1302, A.R.S. § 32-3283 and A.A.C. § R4-6-1105 (confidentiality), and A.A.C. §§ R9-10-707(A), R9- 10-708, and R9-10-712 (operational standards for Behavioral Health Residential Facilities).

We reject Sweidy's arguments. Even assuming that it was enacted for public safety, A.R.S. § 13-1302 does not proscribe sufficiently specific acts for negligence per se liability. Its requirement that the person "know[] or hav[e] reason to know that the person has no legal right to [act]," A.R.S. § 13-1302(A), would necessarily require an "inquiry into the circumstances or reasonableness." *Griffith*, 613 P.2d at 229 (internal quotation omitted). Here, evaluating the merits of that claim would require interpretation of the Family Court's order.

We similarly reject Sweidy's arguments pursuant to A.R.S. § 32-3283 and A.A.C. § R4-6-1105. According to Sweidy, SRA and other Defendants disclosed or failed to prevent the disclosure of Sweidy's "protected documents" to her exhusband, which he filed publicly. Again, even assuming that these provisions are intended to protect the public, Sweidy offers no evidence that Defendants had anything to do with her ex-husband's decision to publicly file the documents. And to the extent that Defendants provided information to him, Sweidy

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judgment on her claims related to the Arizona Administrative Code, and the district court erred in granting relief that was not requested. But Defendants sought judgment "on all claims," and argued that "[Sweidy] cannot maintain a cause of action . . . for negligence *per se*" based on the legal provisions identified in the complaint.

does not offer evidence that these documents were "received by reason of the confidential nature of the behavioral health professional-client relationship." A.R.S. § 32-3283(A). These may be sensitive documents, but that does not mean that they implicate the cited statute and regulation, especially because Sweidy does not point to evidence that they were submitted by Sweidy to a behavioral health professional "by reason of the confidential nature of [that] relationship."

We also reject Sweidy's arguments pursuant to A.A.C. §§ R9-10-707(A), R9- 10-708, and R9-10-712. Sweidy merely supports them with conclusory allegations in her complaint.

7. The district court did not err by dismissing, except as to SRA and Deily (SRA's Admissions Director),[8] Sweidy's claims for actual and constructive common law fraud and consumer fraud pursuant to the Arizona Consumer Fraud Act (ACFA), A.R.S. § 44-1522(A), which are all based on the same alleged conduct. Common law fraud requires a false representation, known to be false, intended to be relied upon, which the hearer actually relies upon to their detriment. *See Taeger v. Catholic Fam. and Cmty. Servs.*, 995 P.2d 721, 730 (Ariz. Ct. App. 1999). Constructive fraud does not require intent to deceive where there is a relationship of trust and confidence. *See Rhoads v. Harvey Publ'ns,*

[8] The case proceeded to a jury trial on Sweidy's pre-enrollment fraud claims against SRA and Deily, which were the only claims to survive summary judgment. The district court entered a verdict in Sweidy's favor. However, the district court subsequently granted Defendants' motion for a new trial, leaving the fraud claims unresolved below.

Inc., 700 P.2d 840, 846–47 (Ariz. Ct. App. 1984). Consumer fraud pursuant to the ACFA requires concealment of material information in connection with the sale or advertisement of merchandise, which includes services. *See* A.R.S. § 44-1522(A); *Parks v. Macro-Dynamics, Inc.*, 591 P.2d 1005, 1008 (Ariz. Ct. App. 1979).

First, we decline to address Sweidy's argument, raised for the first time on appeal, that Jean, Brandon, and Suzanne Courtney, who "authored, published, and maintained" the Parent Manual, misrepresented SRA pre-enrollment as an "environment where students develop and practice effective emotional, relational, physical, and creative skills" and concealed that it was otherwise.

We also reject Sweidy's arguments related to alleged pre-enrollment representations and concealment by the other Defendants. She argues that the Courtneys, Filsinger, and Borges misrepresented and failed to disclose that certain mandatory workshops "were based on Lifespring's abusive and coercive seminars." But Sweidy offers no particularized evidence that any of them made pre-enrollment misrepresentations. She also offers no particularized evidence that Defendants (except for Jean Courtney, who admitted in her deposition that she knew Lifespring was subject to multiple lawsuits) considered the workshops to be "abusive" or "coercive," or lack evidence, much less concealed their nature from Sweidy.

We also affirm as to Sweidy's claims asserting post-enrollment misrepresentations and concealment. Sweidy has failed to offer evidence of economic damages: the evidence suggests that Sweidy's ex-husband, not Sweidy, was responsible for paying Rearden's tuition.[9] Sweidy nevertheless insists that she "paid for [Rearden]'s tuition in her compromises and negotiations that resulted in" her custody and support agreements. She offers no evidence to support her selfserving statement, and plaintiffs in Arizona cannot recover on a fraud claim for emotional distress alone. *See, e.g.*, *Echols v. Beauty Built Homes, Inc.*, 647 P.2d 629, 632 (Ariz. 1982).[10]

8. Last, the district court did not err in dismissing Sweidy's conversion claim. "Conversion is an intentional exercise of dominion or control over a chattel which so seriously interferes with the right of another to control it that the actor may justly be required to pay the other the full value of the chattel." *Miller v. Hehlen*, 104 P.3d 193, 203 (Ariz. Ct. App. 2005) (internal quotation omitted). Sweidy has failed to provide evidence demonstrating that Borges personally exercised control over the personal property at issue. Nor does she refer to any evidence that Defendants seriously interfered with her

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[9] Sweidy's exhibits show her calculated "damages," including attorneys' fees, experts' fees, lodging and travel, and dog boarding. But she does not connect them to the alleged fraud or explain why they are actionable damages. *See U.S. Fid. & Guar. Co. v. Frohmiller*, 227 P.2d 1007, 1009 (Ariz. 1951) ("Generally, the tendency of the courts is not to extend the meaning of 'damages' to include such elements as attorneys' fees."). We decline to address Sweidy's untimely argument that parents are entitled to a presumption of pecuniary damages for the loss of their child's society.

[10] While there may be an inconsistency in the district court's order dismissing postenrollment fraud claims—but not pre-enrollment fraud claims—for lack of damages, we do not address the surviving pre-enrollment claims at this time.

property rights. In her deposition, Sweidy refused to answer questions about the property, including whether she would have sent the property to Rearden had SRA sent it to Sweidy first.

Accordingly, we affirm the summary judgment dismissal of Sweidy's claims for intentional infliction of emotional distress, breach of contract, breach of the covenant of good faith and fair dealing, negligence per se, and conversion. We also affirm the dismissal of Sweidy's fraud claims against Defendants other than SRA and Deily. Because we do not address Sweidy's surviving fraud claims against SRA and Deily, those claims should proceed below.

AFFIRMED.

***Sweidy v. Spring Ridge Academy*, Case No. 24-4318**
Rawlinson, Circuit Judge, concurring in the result:

I concur in the result.

APPENDIX B

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

KIMBERLY R. SWEIDY, Plaintiff-Appellant, v. SPRING RIDGE ACADEMY, an Arizona corporation; JEAN COURTNEY; SUZANNE COURTNEY; BRANDON COURTNEY; ERIN SMITH; LESLIE FILSINGER; JUSTIN ZYCH; KATE DEILY; and VERONICA BORGES, Defendants-Appellees.	FILED MAR 16 2026 MOLLY C. DWYER, CLERK U.S. COURT OF APPEALS No. 24-4318 D.C. No. 3:21-cv-08013-SPL ORDER

Before: HAWKINS, RAWLINSON, and M. SMITH, Circuit Judges.

The panel unanimously votes to deny the petition for panel rehearing. Judge Rawlinson and Judge M. Smith vote to deny the petition for rehearing en banc, and Judge Hawkins so recommends. The full court has been advised of the petition for rehearing en banc, and no judge of the court has requested a vote on it. Fed. R. App. P. 40. The petition for panel rehearing and the petition for rehearing en banc are **DENIED**.

APPENDIX C
IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

Kimberly R Sweidy, Plaintiff, v. Spring Ridge Academy, et al., Defendants.	**NO. CV-21-08013-PCT-SPL** **AMENDED JUDGMENT IN A CIVIL CASE**

Decision by Court. This action came for consideration before the Court. The issues have been considered and a decision has been rendered.

IT IS ORDERED AND ADJUDGED that partial final judgment is entered in favor of Defendant Veronica Borges pursuant to Federal Rule of Civil Procedure 54(b).

Partial final judgment is entered in favor of Defendants Brandon Courtney, Jean Courtney, Suzanne Courtney, Erin Smith, Leslie Filsinger, and Justin Zych, as to all claims pursuant to Federal Rules of Civil Procedure 54(b). Partial final judgment is also entered in favor of Defendants Spring Ridge Academy and Kate Deily as to the claims for Breach of Contract/Breach of Warranty, Breach of the Covenant of Good Faith and Fair Dealing, RICO Violations (18 U.S.C. § 1961 et seq.), Negligence *per se*, Intentional Infliction of Emotional Distress, and Conversion.

Debra D. Lucas
District Court Executive/Clerk of Court

January 24, 2025

s/ Erica Aragon

By Deputy Clerk

APPENDIX D
IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF ARIZONA

Kimberly R Sweidy, Plaintiff, v. Spring Ridge Academy, et al., Defendants.	**NO. CV-21-08013-PCT-SPL** **AMENDED ORDER**[1]

Before the Court are Defendant Veronica Borges' Request for Entry of Judgement (Doc. 295), as well as Defendants Spring Ridge Academy, Brandon Courtney, Jean Courtney, Suzanne Courtney, Erin Smith, Leslie Filsinger, Justin Zych, and Kate Deily's Rule 54(b) Request for Entry of Judgment (Doc. 302). The Court now rules as follows.

On August 16, 2023, this Court issued an Order in which is granted Defendant Borges' Motion for Summary Judgment (Doc. 113), dismissing all claims against her with prejudice. (Doc. 166 at 31). In that same Order, Defendants Spring Ridge Academy, Jean Courtney, Suzanne Courtney, Brandon Courtney, Erin Smith, Leslie Filsinger, Justin Zych, and Kate Deily's own Motion for Summary Judgment (Doc. 115) was granted in part and denied in part. (Doc. 166 at 31). All claims against Defendants Jean Courtney, Suzanne

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[1] This Order amends line 16 on page 1, as well as lines 5–6 and line 8 on page 3 of the Court's January 10, 2025 Order (Doc. 389) to include Brandon Courtney within the listed Defendants requesting entry of judgment.

Courtney, Brandon Courtney, Erin Smith, Leslie Filsinger, and Justin Zych were dismissed with prejudice, leaving only Spring Ridge Academy and Kate Deily as the remaining Defendants. (*Id.*). As to Defendants Spring Ridge Academy and Kate Deily, summary judgment was granted with respect to all claims *except* Plaintiff's fraud claims (Counts I and II). (*Id.*). In June 2024, the case proceeded to jury trial against Defendants Spring Ridge Academy and Kate Deily on those two fraud claims, and a verdict was entered in favor of Plaintiff on both counts. (ME 273). Subsequently, on January 8, 2025, the Court granted Defendants' Motion for a New Trial (Doc. 318). (Doc. 387). Accordingly, the remaining two fraud claims are still unsettled.

On July 1, 2024, Defendant Borges filed her Motion for Judgment (Doc. 295), requesting that the Court "enter a final judgment in her favor and against Plaintiff Kimberly R. Sweidy." (Doc. 295 at 1). Defendant Borges contemporaneously filed a Bill of Costs (Doc. 297), and later an Amended Bill of Costs (Doc. 310), both of which were denied by the Clerk of Court on September 16, 2024 because no final judgment had been issued in the case. (Docs. 353, 355). Also on July 1, the other Defendants filed their Rule 54(b) Request for Entry of Judgment (Doc. 302), as well as a Bill of Costs (Doc. 303). This was also denied by the Clerk of Court on September 15, 2024 because no final judgment had been issued. (Doc. 354).

Pursuant to Federal Rule of Civil Procedure ("Rule") 54(b), "the court may direct entry of a final judgment as to one or more, but fewer than all, claims or parties only if the court expressly determines that there is no just reason for delay."

The Court now finds no just reason for delaying the entry of judgment as to the dismissed defendants and claims.

To the extent that any of the Defendants seek a money judgment for costs, a Bill of Costs may be filed within fourteen (14) days after the entry of final judgment pursuant to Rule 54(d)(1) and LRCiv 54.1, and such Bills of Costs will be considered by the Clerk of Court in due course. (*See* Docs. 353, 354, 355).

Accordingly,

IT IS ORDERED that Defendant Veronica Borges' Request for Entry of Judgement (Doc. 295) is **granted**. The Clerk of Court is directed to enter partial final judgment in favor of Defendant Veronica Borges pursuant to Federal Rule of Civil Procedure 54(b).

IT IS FURTHER ORDERED that Defendants Spring Ridge Academy, Brandon Courtney, Jean Courtney, Suzanne Courtney, Erin Smith, Leslie Filsinger, Justin Zych, and Kate Deily's Rule 54(b) Request for Entry of Judgment (Doc. 302) is **granted**. The Clerk of Court is directed to enter partial final judgment in favor of Defendants Brandon Courtney, Jean Courtney, Suzanne Courtney, Erin Smith, Leslie Filsinger, and Justin Zych as to all claims pursuant to Federal Rule of Civil Procedure 54(b). The Clerk of Court is also directed to enter partial final judgment in favor of Defendants Spring Ridge Academy and Kate Deily as to the claims for Breach of Contract/Breach of Warranty, Breach of the Covenant of Good Faith and Fair Dealing, RICO Violations (18 U.S.C. § 1961 et seq.), Negligence *per se*, Intentional Infliction of Emotional Distress, and Conversion.

Dated this 23rd day of January, 2025.

Honorable Steven P. Logan
United States District Judge

APPENDIX E
IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

Kimberly R Sweidy, Plaintiff, v. Spring Ridge Academy, et al., Defendants.	**NO. CV-21-08013-PCT-SPL** **JUDGMENT IN A CIVIL CASE**

Decision by Court. This action came for consideration before the Court. The issues have been considered and a decision has been rendered.

IT IS ORDERED AND ADJUDGED that partial final judgment is entered in favor of Defendant Veronica Borges pursuant to Federal Rule of Civil Procedure 54(b).

Partial final judgment is entered in favor of Defendants Jean Courtney, Suzanne Courtney, Erin Smith, Leslie Filsinger, and Justin Zych, as to all claims pursuant to Federal Rules of Civil Procedure 54(b). Partial final judgment is also entered in favor of Defendants Spring Ridge Academy and Kate Deily as to the claims of Breach of Contract/Breach of Warranty, Breach of the Covenant of Good Faith and Fair Dealing, RICO Violations (18 U.S.C. § 1961 et seq.), Negligence *per se,* Intentional Infliction of Emotional Distress, and Conversion.

Debra D. Lucas
District Court Executive/Clerk of Court

January 10, 2025

s/ E. Aragon
By Deputy Clerk

APPENDIX F
IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF ARIZONA

Kimberly R Sweidy, Plaintiff, v. Spring Ridge Academy, et al., Defendants.	**NO. CV-21-08013-PCT-SPL** **ORDER**

Before the Court are Defendant Veronica Borges' Request for Entry of Judgement (Doc. 295), as well as Defendants Spring Ridge Academy, Jean Courtney, Suzanne Courtney, Erin Smith, Leslie Filsinger, Justin Zych, and Kate Deily's Rule 54(b) Request for Entry of Judgment (Doc. 302). The Court now rules as follows.

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On July 1, 2024, Defendant Borges filed her Motion for Judgment (Doc. 295), requesting that the Court "enter a final judgment in her favor and against Plaintiff Kimberly R. Sweidy." (Doc. 295 at 1). Defendant Borges contemporaneously filed a Bill of Costs (Doc. 297), and later an Amended Bill of Costs (Doc. 310), both of which were denied by the Clerk of Court on September 16, 2024 because no final judgment had been issued in the case. (Docs. 353, 355). Also on July 1, the other Defendants filed their Rule 54(b) Request for Entry of Judgment (Doc. 302), as well as a Bill of Costs (Doc. 303). This was also denied by the Clerk of Court on September 15, 2024 because no final judgment had been issued. (Doc. 354).

Pursuant to Federal Rule of Civil Procedure ("Rule") 54(b), "the court may direct entry of a final judgment as to one or more, but fewer than all, claims or parties only if the court expressly determines that there is no just reason for delay." The Court now finds no just reason for delaying the entry of judgment as to the dismissed defendants and claims.

To the extent that any of the Defendants seek a money judgment for costs, a Bill of Costs may be filed within fourteen (14) days after the entry of final judgment pursuant to Rule 54(d)(1) and LRCiv 54.1, and such Bills of Costs will be considered by the Clerk of Court in due course. (*See* Docs. 353, 354, 355).

Accordingly,

IT IS ORDERED that Defendant Veronica Borges' Request for Entry of Judgement (Doc. 295) is **granted**. The Clerk of Court is directed to enter partial final judgment in favor of Defendant Veronica Borges pursuant to Federal Rule of Civil Procedure 54(b).

IT IS FURTHER ORDERED that Defendants Spring Ridge Academy, Jean Courtney, Suzanne Courtney, Erin Smith, Leslie Filsinger, Justin Zych, and Kate Deily's Rule 54(b) Request for Entry of Judgment (Doc. 302) is **granted**. The Clerk of Court is directed to enter partial final judgment in favor of Defendants Jean Courtney, Suzanne Courtney, Erin Smith, Leslie Filsinger, and Justin Zych as to all claims pursuant to Federal Rule of Civil Procedure 54(b). The Clerk of Court is also directed to enter partial final judgment in favor of Defendants Spring Ridge Academy and Kate Deily as to the claims for Breach of Contract/Breach of Warranty, Breach of the Covenant of Good Faith and Fair Dealing, RICO Violations (18 U.S.C. § 1961 et seq.), Negligence *per se*, Intentional Infliction of Emotional Distress, and Conversion.

Dated this 8th day of January, 2025.

Honorable Steven P. Logan

United States District Judge

APPENDIX G
IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

Kimberly R Sweidy, Plaintiff, v. Spring Ridge Academy, et al., Defendants.	**NO. CV-21-08013-PCT-SPL** **JUDGMENT IN A CIVIL CASE**

Jury Verdict. This action came before the Court for a trial by jury. The issues have been tried and the jury has rendered its verdict.

IT IS ORDERED AND ADJUDGED that pursuant to the Court's Order filed June 14, 2024, judgment is entered in favor of Plaintiff and against Defendant Spring Ridge Academy as to Count I(A) in the amount of $25,000.00, as to Count II(A) in the amount of $25,000.00, and $2,500,000.00 in punitive damages. Judgment is entered in favor of Plaintiff and against Defendant Kate Deily as to Counts I(C) and II(B).

Debra D. Lucas
District Court Executive/Clerk of Court

June 17, 2024

s/ E. Aragon
By Deputy Clerk

APPENDIX H
IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

Kimberly R Sweidy, Plaintiff, v. Spring Ridge Academy, et al., Defendants.	**NO. CV-21-08013-PCT-SPL** **ORDER**

Before the Court are two Motions for Summary Judgment, filed by the various Defendants in this action. First, Defendant Veronica Borges moves for summary judgment on all claims asserted against her by Plaintiff Kimberly R. Sweidy ("Plaintiff"). (Doc. 113). Second, Defendants Spring Ridge Academy ("SRA"), Jean Courtney, Suzanne Courtney, Brandon Courtney, Erin Smith, Leslie Filsinger, Justin Zych, and Kate Deily move for summary judgment in their favor on all claims asserted against them. (Doc. 115). The Motions are fully briefed and ready for review.[1] (Docs. 113, 154, & 160; 115, 152, & 161). The Court's ruling is as follows.[2]

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[1] Because it would not assist in resolution of the instant issues, the Court finds the pending Motions suitable for decision without oral argument. *See* LRCiv. 7.2(f); Fed. R. Civ. P. 78(b); *Partridge v. Reich*, 141 F.3d 920, 926 (9th Cir. 1998).

[2] The Court understands that it previously struck Plaintiff's Statements of Fact (Doc. 151). However, upon review of the parties' briefing and in the interest of justice, the Court has taken into consideration the exhibits attached to those Statements of Fact, despite Defendants' request to the contrary.

I. BACKGROUND

Plaintiff brings this suit against SRA and eight of its individual employees. (*See* Doc. 1 at 1). Her claims arise out of her Daughter's ("Plaintiff's Daughter") enrollment at SRA, a therapeutic[3] boarding school for girls in Mayer, Arizona. (Doc. 155 at 2). According to the Complaint, Defendant Jean Courtney and her then-husband David Gilcrease founded SRA in 1996. (Doc. 1 at 4–5). Defendant Suzanne Courtney is the Executive Director for SRA and "the SRA go-between that monitors communication between parents and their children who are enrolled at SRA." (*Id.* at 7–8). Suzanne Courtney is married to Defendant Brandon Courtney, who is SRA's President/CEO and Program Director, and Jean Courtney's son. (*Id.* at 8). Defendant Erin Smith "has the title of Director of Operational Excellence at SRA" and has a background in education. (*Id.*). Defendant Leslie Filsinger is the Clinical Director for SRA. (*Id.* at 9). As the lead member of all therapeutic teams, Filsinger oversees, authorizes, and approves all SRA treatment plans and therapeutic decision-making. (*Id.*). Filsinger has been a Licensed Professional Counselor in Arizona since 2014. (*Id.*). Defendant Justin Zych has served as SRA's Principal since approximately June 2019. (*Id.* at 9–10). Defendant Kate Deily is the Admissions Director for SRA. (*Id.* at 10). Finally, Defendant Veronica Borges is listed as a Therapist with SRA, despite the fact that she is not licensed as a therapist by Arizona's Board of Behavioral Health Examiners. (*Id.*).

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[3] The Court notes Plaintiff's contention that SRA is merely *advertised* as a therapeutic boarding school. (Doc. 155 at 2).

Plaintiff's Daughter was enrolled at SRA on December 12, 2019, approximately two years after the divorce of her parents, Plaintiff and Mr. Raymond Stata. (Docs. 153 at 2 & 155 at 2–3). As part of the enrollment process, Plaintiff signed the "Enrollment Terms and Agreement" (the "Enrollment Agreement") (Doc. 1 at 127–38) and received the "Parent Manual" (Doc. 1 at 140–72), documents that together comprise the parties' contract for purposes of this action. Between January 22–24, 2020, Plaintiff attended the Parent Challenge, a three-day workshop where she alleges that she was introduced to the "controversial methods" used at SRA. (*Id.* at 14–15). Following the Parent Challenge, Defendant Borges sent Plaintiff the "Master Treatment Plan" that had been developed for her Daughter. (*Id.* at 23). On January 25, 2020, Plaintiff and her Daughter were allowed to leave the SRA campus for approximately 24 hours. (*Id.* at 25). Over dinner, Plaintiff alleges that she and her Daughter were finally able to "speak freely" and that her Daughter described to Plaintiff "a series of disturbing events that had occurred since her enrollment at SRA." (*Id.*). This included, among other things, Plaintiff's Daughter's severe illness that caused her to miss two weeks of school and which Plaintiff had never been informed of. (*Id.* at 26). On January 26, 2020, Plaintiff's Daughter was returned to SRA and Plaintiff returned home to California where she began looking into the SRA program and the Master Treatment Plan. (*Id.* at 30). Over the following week, Plaintiff corresponded with Defendants and inquired into the SRA program. (*Id.* at 30–36).

On February 3, 2020, Plaintiff—who had

growing concerns over what her Daughter was experiencing at SRA—returned to SRA, accompanied by two Yavapai County Sheriffs, and removed her Daughter from the campus. (*Id.* at 35–36). Over the following nine days, Plaintiff alleges that SRA and Mr. Stata sought to force the return of Plaintiff's Daughter to SRA. (*Id.* at 36–39). On February 12, 2020, Plaintiff's Daughter was ordered by a California Family Law Judge—who had been petitioned by Mr. Stata—to return to SRA. (*Id.* at 39). On February 25, 2020, Plaintiff received a letter from SRA outlining new protocols in light of her temporary removal of her Daughter. (*Id.* at 40–41). The letter stated, among other things, that SRA would no longer provide therapeutic services involving Plaintiff and that she would only be allowed to communicate with her Daughter via SRA-monitored writing and telephone communications. (*Id.*). Over the following five months, Plaintiff's contact with her Daughter was limited. (*See id.* at 42–69). Plaintiff also alleges that her requests that her Daughter be allowed to return home due to the COVID- 19 pandemic were denied. (*Id.* at 41–42). Plaintiff's concerns over the therapeutic and educational services her Daughter was receiving increased. (*See id.* at 42–69). On June 25, 2020, Plaintiff asked the Family Law Court to order the return of her Daughter to California. (*Id.* at 68). To address any concerns over parental conflict—given Mr. Stata's consistent position that their Daughter remain at SRA—Plaintiff offered to give up all legal and physical custodial rights so long as her Daughter be ordered to return home to live with Mr. Stata. (*Id.* at 68–69). Plaintiff's so-called "Hail Mary Play" worked, and her Daughter was ordered to leave SRA and return to California on June 28, 2020. (*Id.* at 69).

On January 21, 2021, Plaintiff filed the present action. According to the Complaint, Plaintiff alleges that SRA uses a variety of seminars, workshops, and residential living conditions to take advantage of a vulnerable population—*i.e.*, divorced parents and their children—and make money. (*Id.* at 14). Plaintiff alleges that SRA does this by using tactics such as public shaming, manipulation and coercion, fear, yelling and violence, disclosure of confidential information, drugs, isolation, and food deprivation. (*Id.*). Such tactics "are designed to destroy the student's faith and relationship [with] the parents and to destroy the parent's faith in themselves, such that the school and its owners, with no credentials whatsoever, have unbridled access and ability to imprison students for an arbitrary and uncertain time period for money." (*Id.* at 14). Plaintiff alleges eight distinct causes of action, each against all named Defendants: (i) actual and constructive fraud; (ii) consumer fraud; (iii) breach of contract/breach of warranty; (iv) breach of the covenant of good faith and fair dealing; (v) violations of the Racketeer Influenced and Corrupt Organization ("RICO") Act, 18 U.S.C. § 1961, *et seq.*; (vi) negligence *per se*; (vii) intentional infliction of emotional distress ("IIED"); and (viii) conversion. (Doc. 1 at 95–123). On January 13, 2023, Defendants filed their Motions for Summary Judgment (Docs. 113 & 115), which are now presently before the Court.

II. LEGAL STANDARD

A court must grant summary judgment "if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a); *see also Celotex Corp. v. Catrett*, 477 U.S. 317, 322–23 (1986). Material facts are those facts "that might affect the outcome of the suit under the governing law." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). A genuine dispute of material fact arises if "the evidence is such that a reasonable jury could return a verdict for the nonmoving party." *Id.*

The party moving for summary judgment bears the initial responsibility of presenting the basis for its motion and identifying those portions of the record, together with affidavits, which it believes demonstrate the absence of a genuine issue of material fact. *Celotex*, 477 U.S. at 323. If the movant fails to carry its initial burden of production, the nonmovant need not produce anything. *Nissan Fire & Marine Ins. Co., Ltd. v. Fritz Co., Inc.*, 210 F.3d 1099, 1102–03 (9th Cir. 2000). But if the movant meets its initial responsibility, the burden shifts to the nonmovant to demonstrate the existence of a factual dispute and that the fact in contention is material. *Anderson*, 477 U.S. at 250. In other words, the nonmovant "must do more than simply show that there is some metaphysical doubt as to the material facts," and, instead, must "come forward with 'specific facts showing that there is a genuine issue for trial.'" *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586-87 (1986).

When considering a motion for summary judgment, the judge's function is not to weigh the evidence and determine the truth but to determine whether there is a genuine issue for trial. *Anderson*, 477 U.S. at 249. In its analysis, the court must view the factual record and draw all reasonable inferences in the nonmovant's favor. *Leisek v. Brightwood*

Corp., 278 F.3d 895, 898 (9th Cir. 2002). The court need consider only the cited materials, but it may consider any other materials in the record. Fed. R. Civ. P. 56(c)(3).

III. DISCUSSION

A. Fraud Claims – Actual, Constructive, and Consumer

To establish a claim for actual fraud under Arizona law, a plaintiff must prove nine separate elements: "(1) a representation, (2) its falsity, (3) its materiality, (4) the speaker's knowledge of its falsity or ignorance of its truth, (5) the speaker's intent that the information should be acted upon by the hearer and in a manner reasonably contemplated, (6) the hearer's ignorance of the information's falsity, (7) the hearer's reliance on its truth, (8) the hearer's right to rely thereon, and (9) the hearer's consequent and proximate injury." *Taeger v. Cath. Fam. & Cmty. Servs.*, 196 Ariz. 285, 294 (Ct. App. 1999). "Constructive fraud, as contrasted to actual fraud, is a breach of legal or equitable duty which, irrespective of the moral guilt or intent of the party charged, the law declares fraudulent because of its tendency to deceive others, to violate public or private confidence, or to injure public interests." *Rhoads v. Harvey Publ'ns, Inc.*, 145 Ariz. 142, 148 (Ct. App. 1984). "Dishonesty of purpose and intent to deceive are not essential elements of constructive fraud." *Id.* (citation omitted). "Where a relation of trust and confidence exists between two parties so that one of them places peculiar reliance in the trustworthiness of another, the latter is under a duty to make a full and truthful disclosure of all material facts and is liable for misrepresentation or concealment." *Id.* at 148–49. "The breach of this duty gives rise to an action in constructive fraud." *Id.* at 149 (citation omitted).

"The Arizona Consumer Fraud Act ("ACFA") broadly prohibits fraudulent, deceptive, or misleading conduct in connection with the sale or advertisement of consumer goods and services." *Cheatham v. ADT Corp.*, 161 F. Supp. 3d 815, 825 (D. Ariz. 2016) (citing A.R.S. § 44-1522(A)). "Arizona courts construe the ACFA to provide a right of action on any person damaged by a violation of the Act." *Id.* (citing *Sellinger v. Freeway Mobile Home Sales, Inc.*, 110 Ariz. 573 (1974)). "To prevail, a plaintiff must establish that (1) the defendant made a misrepresentation in violation of the Act, and (2) defendant's conduct proximately caused plaintiff to suffer damages." *Id.* (citing *Parks v. Macro–Dynamics, Inc.*, 121 Ariz. 517, 520 (Ct. App. 1979)). "It is not necessary for the plaintiff to show that the defendant made an affirmative misstatement." *Id.* "Material omissions are also actionable." *Id.* (citation omitted). "A misrepresentation causes injury where the consumer actually relies on it, but 'unlike common law fraud, this reliance need not be reasonable.'" *Id.* at 825–26 (quoting *Parks*, 121 Ariz. at 520).

As an initial matter, the Court will grant Defendant Borges' request for summary judgment on the fraud claims. Plaintiff's fraud claims are broadly based on her allegation that Defendants fraudulently induced Plaintiff into enrolling her daughter at SRA by concealing and otherwise misrepresenting the true nature of the SRA program. However, Defendant Borges argues that Plaintiff "admits that she did not meet or even speak to Borges until after [her daughter] was enrolled at SRA" and that

Plaintiff therefore cannot show that Defendant made any fraudulent representations that Plaintiff relied upon in enrolling her daughter at SRA. (Doc. 113 at 6–7). Plaintiff does not dispute this in her Response, but rather contends that her fraud claims against Defendant Borges are based on a different theory—that Defendant Borges "concealed essential information regarding [Plaintiff's Daughter's] health and welfare," a misrepresentation which Plaintiff alleges that she relied upon in deciding to keep her Daughter enrolled after she had already begun attending SRA. (Doc. 154 at 3–5).

The Court finds that Plaintiff's alternative theory of fraud does not fit within Arizona's framework for the common law tort of fraud because it does not directly involve a pecuniary or economic loss. "Arizona follows the Restatement (Second) of Torts." *Tavilla v. Cephalon, Inc.*, 870 F. Supp. 2d 759, 774 (D. Ariz. 2012). The Restatement provides that "[o]ne who fraudulently makes a misrepresentation . . . is subject to liability to the other in deceit *for pecuniary loss* caused to him by his justifiable reliance upon the misrepresentation." Restatement (Second) of Torts § 525 (1977) (emphasis added). The alleged harm underlying Plaintiff's theory against Defendant Borges appears to be emotional distress caused to Plaintiff as a result of her being misled into leaving her Daughter enrolled at SRA. The parties do not cite to—and this Court's own research has failed to turn up—any cases in which an Arizona court has permitted solely non-pecuniary, emotional damages in a common law fraud claim. Comment (h) of § 525 of the Restatement recognizes *physical* harm that may result from a misrepresentation, but even then only considers economic loss that derives from that physical harm. *See* Restatement (Second) of Torts § 525, comment (h) (1977) ("This Section [] covers pecuniary loss resulting from a fraudulent misrepresentation, and not physical harm resulting from the misrepresentation. As to the latter, see § 557A, which also covers the economic loss deriving from the physical harm. This type of economic loss is not intended to be included in the term, pecuniary loss, as used in this chapter.").

Plaintiff's ACFA claim against Defendant Borges fails for the same reason. The ACFA prohibits "[t]he act, use or employment . . . of any deception, deceptive or unfair act or practice, fraud, false pretense, false promise, misrepresentation, or concealment, suppression or omission of any material fact . . . *in connection with the sale or advertisement of any merchandise*." A.R.S. § 44-1522(A) (emphasis added). Plaintiff's theory of consumer fraud against Defendant Borges has no connection with the sale or advertisement of any product or service. Plaintiff had already purchased the service—that is, enrolled her daughter at SRA—by the time she met or spoke with Defendant Borges for the first time. Thus, even assuming the truth of Plaintiff's allegation that Defendant Borges concealed from Plaintiff material facts related to her Daughter's health and welfare postenrollment, Plaintiff has not shown any evidence that such concealment of facts was related to the "sale or advertisement of any merchandise" and her ACFA claim must be dismissed.

Turning to the remaining Defendants, the Court first grants summary judgment on Plaintiff's fraud claims in favor of Defendants Jean Courtney, Suzanne Courtney, Brandon Courtney, Erin Smith, Leslie Filsinger, and Justin Zych. Plaintiff's Response does not contend that any of these Defendants—in their individual capacities—made any misrepresentation or concealment of information prior to Plaintiff's enrollment of her Daughter at SRA. Rather, Plaintiff's Response argues that she relied on pre-enrollment false representations from Defendants SRA and Kate Deily, and that her fraud theory against the *other* Defendants is based on her allegation that they "committed grave omission during the early weeks of her daughter's enrollment by failing to inform [Plaintiff] that her daughter was attending Lifespring-based seminars and that she was emotionally upset, ill and missing class." (Doc. 152 at 7). As discussed above with respect to Defendant Borges, such allegations of misrepresentation and concealment cannot support a claim for fraud under common law or the ACFA because they had nothing to do with Plaintiff's decision to enroll her Daughter at SRA in the first place, *i.e.*, the actionable conduct at issue in this fraud claim. The Court dismisses Plaintiff's claims for common law fraud and for violation of the ACFA against Defendants Jean Courtney, Suzanne Courtney, Brandon Courtney, Erin Smith, Leslie Filsinger, and Justin Zych.

Second, with respect to Defendants SRA and Kate Deily, the Court finds that a material factual dispute exists as it relates to whether the written materials and express statements that were provided to Plaintiff prior to her Daughter's enrollment contained actionable misrepresentations or concealments of information. Although Defendants argue that the documentation provided to Plaintiff "clearly differentiated between the experiential activities [] and therapy services that SRA provided," (*see* Doc. 115 at 10), Plaintiff's position is that Defendants SRA and Kate Deily misrepresented *numerous* aspects of the SRA program. (*See* Doc. 152 at 3–7). More importantly, Plaintiff has evidence to support her position, including her own testimony as alleged in her Verified Complaint,[4] the documents at issue (namely, the Parent Manual and the Enrollment Terms and Agreement), and the testimony of three experts who opine to issues such as the problems associated with Large Group Awareness Training, what constitutes evidence-based therapy and whether the four therapy modalities used at SRA fell under that category, and whether—in the expert's opinion—the methodologies used at SRA were effective or appropriate. The Court is unpersuaded by Defendants' argument that Plaintiff's fraud claims must be dismissed merely because—in Defendants' view—the documents provided to Plaintiff clearly differentiated SRA's non-therapeutic activities from its therapeutic modalities.[5]

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[4] As Defendants note in their Reply, (*see* Doc. 161 at 2), a verified complaint *may* be treated as an opposing affidavit, so long as the allegations used are "based on personal knowledge and set[] forth facts admissible in evidence." *McElyea v. Babbitt*, 833 F.2d 196, 198 n.1 (9th Cir. 1987) (citation omitted). Here, the Court finds that Plaintiff could reasonably testify as to her personal knowledge about what she was told or otherwise informed of prior to enrolling her daughter as it relates to the services SRA provides.

[5] The Court notes that Defendants' Motion arguably fails to even meet Defendants' initial burden to identify those portions of the record which it believes demonstrate the absence of a

In the Reply, Defendants argue for the first time that Plaintiff's fraud claims should instead be considered a claim for lack of informed consent. (Doc. 161 at 3). Defendants then argue that Plaintiff fails to offer any expert testimony relating to Defendants' duty to disclose information and to the applicable standard of care, and that the absence of such expert testimony requires dismissal of her informed consent claim. (*Id.*). The Court is unpersuaded. First, Defendants made no mention of this argument in their initial Motion and cannot raise a new argument in the Reply. *See Surowiec v. Cap. Title Agency, Inc.*, 790 F. Supp. 2d 997, 1002 (D. Ariz. 2011) (quotation marks and citations omitted) ("[C]ourts will not consider new arguments raised for the first time in a reply brief."). In contrast, Defendants make a similar argument with respect to Plaintiff's contract claims—arguing that they are better characterized as tort claims—but do so in their Motion rather than waiting until the Reply to make the argument. (*See* Doc. 115 at 11). Second, even if Defendants' informed consent argument is considered to be a permissible

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genuine issue of material fact. "In order to carry its burden of production, the moving party must either produce evidence negating an essential element of the nonmoving party's claim [] or show that the nonmoving party does not have enough evidence of an essential element to carry its ultimate burden of persuasion at trial." *Nissan Fire*, 210 F.3d at 1102. Here, Defendants' Motion does not specifically identify the element of fraud that Plaintiff cannot prove at trial. Rather, Defendants make the conclusory assertion that Plaintiff cannot prove *all nine elements* merely because, in Defendants' view, the preenrollment documents provided to Plaintiff "clearly differentiated" between the nontherapeutic activities and the therapeutic modalities. (Doc. 115 at 10 (emphasis added)).

response to Plaintiff's Response arguments, the Court must keep its summary judgment analysis within the scope of the claims Plaintiff seeks to bring to trial. Here, Plaintiff did not assert an informed consent claim; rather, she asserted fraud claims. The Court will not speculate as to whether Plaintiff's fraud claims would be more accurately characterized as informed consent claims, nor will it speculate as to whether Plaintiff has sufficient evidence to support an informed consent claim. The remainder of Defendants' Reply arguments generally demonstrate the factual dispute that remains between the parties as it relates to Plaintiff's fraud claims. (*See* Doc. 160 at 3–5). The Court will not dismiss Plaintiff's common law or ACFA fraud claims against Defendants SRA and Kate Deily.

In sum, the Court grants summary judgment to all individual Defendants except for Defendant Kate Deily with respect to Plaintiff's fraud claims under the common law and the ACFA. Counts I and II are dismissed against these Defendants. The Court denies summary judgment with respect to Plaintiff's fraud claims under the common law and the ACFA against Defendants SRA and Kate Deily.

B. Breach of Contract, Warranty, and Implied Covenant Claims

As an initial matter, the Court will grant summary judgment to the individual Defendants on Plaintiff's contract-related claims because the individual Defendants lacked privity to the contract at issue. "Privity is that connection or relationship which exists between two or more contracting parties. It arises from the mere fact of entering into a contract. Generally, privity of contract must exist before one may seek to enforce or defeat the contract." *Mardian Equip. Co. v. St. Paul Fire & Marine Ins. Co.*, No. CV-05-2729- PHX-DGC, 2006 WL 2456214, at *2 (D. Ariz. Aug. 22, 2006) (quotation marks omitted) (citing *Samsel v. Allstate Ins. Co.*, 199 Ariz. 480, 484 (Ct. App. 2001)); *see also Hayden Bus. Ctr. Condos. Ass'n v. Pegasus Dev. Corp.*, 209 Ariz. 511, 514 (Ct. App. 2005) ("Time after time, however, Arizona courts have insisted on privity for breach of contract claims."); *Treadway v. W. Cotton Oil & Ginning Co.*, 40 Ariz. 125, 138 (1932) ("[A]s a general rule only the parties and privies to a contract may enforce it.").

Here, the contract at issue is the Enrollment Agreement signed by Plaintiff in December 2019. (*See* Doc. 114-1 at 2–6). The first page identifies the "Sponsors" as the parents of Plaintiff's daughter, *i.e.*, Raymond P. Stata and Plaintiff. (Doc. 114-1 at 2). The same page then expressly states that "[t]his Enrollment Agreement, *by and between Spring Ridge Academy* [] *and the Sponsor(s)* is made under the following agreements." (*Id.* (emphasis added)). The Enrollment Agreement makes no explicit mention of the individual Defendants in this case—Veronica Borges, Jean Courtney, Suzanne Courtney, Brandon Courtney, Erin Smith, Leslie Filsinger, Justin Zych, and Kate Deily. Thus, these individual Defendants were not parties to the contract and cannot be sued for breaching it.

In support of her claim for breach of the implied covenant of good faith and fair dealing, Plaintiff points to a provision from the Enrollment Agreement stating that "SRA and its staff operate in [sic] behalf of, and as agents for, the Sponsor(s)." (Doc. 1 at 127). Plaintiff argues that this provision formed an agency relationship and thereby created "an implied contract with [P]laintiff obligating each of [the individual Defendants] to deal with [Plaintiff] in good faith." (Docs. 154 at 7 & 152 at 8). Plaintiff further contends that the individual Defendants' roles as family therapists for Plaintiff created a "special relationship" as a matter of public policy. Given these fiduciary and/or special relationships, Plaintiff argues that "[t]he proper inquiry is whether a sufficient relationship exists between the parties to make it reasonable, as a matter of public policy, to impose a duty." (Doc. 152 at 8). Plaintiff's position appears to be that the individual Defendants can be held liable in contract for breach of the implied covenant of good faith and fair dealing because they failed to act in accordance with the duties arising from their fiduciary and/or special relationship with Plaintiff.

Plaintiff's argument misses the point. The covenant of good faith and fair dealing arises from a valid contract, *not* from the parties' relationship. *Rawlings v. Apodaca*, 151 Ariz. 149, 153–54 (1986) (citations omitted) (emphasis added) ("The law implies a covenant of good faith and fair dealing in every contract. *The duty arises by virtue of a contractual relationship*. The essence of that duty is that neither party will act to impair the right of the other to receive the benefits which flow from their agreement or contractual relationship.") Even *assuming* that an agency and/or special relationship existed between the individual Defendants and Plaintiff,[6] a breach of the implied covenant

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[6] The Court notes that assuming the existence of an agency relationship is no small assumption. "Agency is the fiduciary relationship that arises when one person (a 'principal')

nonetheless requires the existence of a valid contract. *See Johnson Int'l, Inc. v. City of Phx.*, 192 Ariz. 466, 473–74 (Ct. App. 1998) (finding that obligation under implied covenant of good faith and fair dealing "presumes the existence of a valid contract"); *Price v. Town of DeweyHumboldt*, No. CV-12-8086-PCT-FJM, 2012 WL 2415206, at *3 (D. Ariz. June 26, 2012) (noting that covenants of good faith and fair dealing "presume the existence of a valid contract" and finding that plaintiff failed to state claim for breach of those covenants when he failed to allege existence of a valid contract). Here, the fact of the matter is that the Enrollment Agreement was a contract solely between SRA and Plaintiff; the individual Defendants were simply not parties to that contract.

The fact that Plaintiff may bring her implied

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manifests assent to another person (an 'agent') that the agent shall act on the principal's behalf and subject to the principal's control, and the agent manifests assent or otherwise consents so to act." *Goodman v. Physical Res. Eng'g, Inc.*, 229 Ariz. 25, 29 (Ct. App. 2011) (quoting Restatement (Third) of Agency § 1.01 (2006)). In determining whether an agency relationship existed, courts consider the relation of the parties to one another and to the subject matter, as well as their acts and pattern of conduct. *Phx. W. Holding Corp. v. Gleeson*, 500 P.2d 320, 325–26 (Ct. App. 1972).

The Court therefore puts little weight into the labels assigned by the Enrollment Agreement in this case—that is, just because the Enrollment Agreement states that the individual Defendants, as SRA staff members, "operate . . . as agents for" Plaintiff does not necessarily mean an agency relationship existed without any consideration of all the other circumstances surrounding the parties' relationship. The parties do not meaningfully discuss the agency issue, and the Court will not consider it any further either.

covenant claim against the individual Defendants in tort rather than in contract changes nothing. To be sure—and unlike with an implied covenant claim sounding in contract—the existence of a "special relationship" is an important consideration in analyzing a tortious implied covenant claim. *See Wells Fargo Bank v. Ariz. Laborers, Teamsters & Cement Masons Loc. No. 395 Pension Tr. Fund*, 201 Ariz. 474, 490 (2002) (citation omitted) ("A party may bring an action in tort claiming damages for breach of the implied covenant of good faith, but only where there is a 'special relationship between the parties arising from elements of public interest, adhesion, and fiduciary responsibility.'"). However, Plaintiff fails to cite to any cases in which a claim for tortious breach of the implied covenant of good faith and fair dealing was sustained despite the absence of a valid contract in the first place. This Court's own review of the caselaw fails to turn up such a case either. Rather, the caselaw demonstrates that a valid contract is required *regardless* of whether the implied covenant claim is brought in contract or in tort. *See id.* at 490–91 (noting that "[t]here is a difference . . . in the proof required, depending on whether the claim sounds in tort or in contract," but recognizing that duties associated with implied covenant nonetheless "exist[] by virtue of a contract relationship"); *Rawlings*, 151 Ariz. at 158 (citation omitted) (emphasis added) ("[A] tort action for breach of the implied covenant is more often recognized where *the contract* creates a relationship in which the law implies special duties not imposed on other contractual relationships. These relationships are 'characterized by elements of public interest, adhesion, and fiduciary relationship.'"); *McAlister v.*

Citibank, 171 Ariz. 207, 212–13 (Ct. App. 1992) (citations and alterations omitted) (emphasis added) ("The law implies a covenant of good faith and fair dealing *in every contract*. . . . While the remedy for breach of this implied covenant is ordinarily by action on contract, in certain circumstances 'the breach may provide the basis for imposing tort damages.'").

In essence, Plaintiff's argument seems to conflate her implied covenant claim with a breach of fiduciary duty claim. It may be true that the individual Defendants had a fiduciary relationship with Plaintiff and that they breached that fiduciary duty. Had Plaintiff brought a breach of fiduciary duty claim, this Court's conclusion might be different because the existence of a contract is irrelevant to a breach of fiduciary duty claim sounding in tort. *See Marquette Venture Partners II, L.P. v. Leonesio*, No. 1 CA–CV 09–0166, 2011 WL 1867517, at *9 (Ct. App. Ariz. May 3, 2011) (citing Restatement (Third) of Agency § 1.01 cmt. e, d (2006)) ("'[T]he agency relationship creates the agent's fiduciary obligation as a matter of law.' And, a breach of fiduciary duty is not dependent on a contract."). However, Plaintiff's Complaint does not assert a claim for breach of fiduciary duty. The claim at issue is for breach of the implied covenant of good faith and fair dealing. That claim must be dismissed to the extent it is asserted against the individual Defendants because they were not parties to the Enrollment Agreement. The Court grants summary judgment in favor of the individual Defendants with respect to Plaintiff's contract claims, including her claim for breach of the implied covenant.

In contrast with the individual Defendants, it is undisputed that Defendant SRA was a party to the Enrollment Agreement and thus the requirement of contractual privity is not in question. Instead, Defendant SRA contends that Plaintiff's claims against Defendant SRA sound in tort rather than in contract. (Doc. 115 at 11). Defendant SRA argues that Plaintiff cannot maintain simultaneous tort and contract claims against Defendants under Arizona law, and that dismissal of her contract claims is appropriate. (*Id.* at 12–13).

In *Collins*, the Arizona Court of Appeals summed up the holdings from *Lewin* and *Barmat*—two relevant cases relied upon by Defendant SRA—as follows:

> We recognize that *Lewin* and *Barmat* are not precisely on point since they were concerned with distinguishing between contract and tort in the context of the statutory provision for attorneys' fees in actions arising out of contract. Nevertheless, they are persuasively instructive on the basic question of whether an action in contract can even be maintained in a malpractice setting. Essentially they teach that *even where there is an express contract between the professional and the client, an action for breach of that contract cannot be maintained if the contract merely requires generally that the professional render services*. Only if there is a specific promise contained in the contract can the action sound in contract, and then only to the extent the claim is premised on the nonperformance of that promise.

Collins v. Miller & Miller, Ltd., 189 Ariz. 387, 395 (Ct. App. 1996) (citations omitted) (emphasis added).[7] Having fully reviewed the parties' contract in this case, the Court finds that it merely requires that SRA renders therapeutic and academic services.[8] The terms of the Enrollment Agreement are primarily a series of disclosures intended to inform the parents and students "of the inherent risks and voluntary participation in the activities of SRA." (Doc. 1 at 127). It contains few, if any, express promises by SRA that could serve as the basis for a contract claim. Likewise, the Parent Manual provides the parents of prospective students with

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[7] In *Lewin*, the Arizona Court of Appeals held that:

> [W]here there is a contract for services which places the parties in such a relationship to each other that, in attempting to perform the promised service, a duty imposed by law as a result of the contractual relationship between the parties is violated through an act which incidentally prevents the performance of the contract, then the gravamen of the action is a breach of the legal duty, and not of the contract itself.

Lewin v. Miller Wagner & Co., Ltd., 151 Ariz. 29, 36 (Ct. App. 1986) (citation omitted). In *Barmat*, the Arizona Supreme Court approved *Lewin*'s rationale in holding that "[a]bsent some special contractual agreement or undertaking between those in the professional relationship . . . a professional malpractice action does not 'arise' from contract, but rather from tort." *Barmat v. John & Jane Doe Partners A–D*, 155 Ariz. 519, 524 (1987).

[8] For purposes of this analysis, the Court has considered the parties' "contract" to include not only the Enrollment Agreement, but also the Parent Manual that was provided to Plaintiff prior to enrollment.

more specific information as it relates to SRA's philosophy, purpose, vision, belief statements, and general policies and procedures, as well as an overview of the program's therapy, workshop, and academic services. (*See* Doc. 1 at 174– 215). Like the Enrollment Agreement, the Parent Manual lacks specific promises that could support a claim sounding in contract. The parties' contract "is nothing more than a general promise which encompasses the basic duty imposed by law to provide reasonably competent [therapeutic] services" and "clearly lacks the specificity required for a breach of contract action." *Collins*, 189 Ariz. at 395; *see also Towns v. Frey*, 149 Ariz. 599, 601 (Ct. App. 1986) ("[T]he contract relied upon must itself contain an undertaking to do the thing for the nonperformance of which the action is brought.").

It follows that the gravamen of Plaintiff's contract-related allegations is *not* that Defendant SRA failed to perform a "special contractual agreement or undertaking," *see Barmat*, 155 Ariz. at 524, but rather that Defendant SRA generally failed to provide Plaintiff and her Daughter with the therapy and academic services that were promised. Plaintiff contends that Defendant SRA failed to satisfy its duties under the parties' contract in numerous ways. For example, Plaintiff alleges that Defendant SRA publicly disclosed certain confidential information; subjected Plaintiff and her Daughter to public ridicule, shaming, violence, yelling, and abuse; denied Plaintiff's participation in family therapy; cut off or otherwise impeded Plaintiff's ability to communicate with her Daughter; denied medical care to Plaintiff's Daughter; impeded the educational progress of Plaintiff's Daughter;

staffed its program with unqualified and uncertified therapists; provided services that failed to comply with Arizona law; and otherwise failed to provide "good quality child care, schooling, family therapy and education, boarding services in a safe, nurturing environment, [and] evidence-based family therapy and a college prep curriculum." (Doc. 1 at 109–14). None of these allegations relate to a specific contractual promise made by SRA. As Defendant SRA puts it, Plaintiff simply asserts violations of professional and legal standards that are "based upon the obligations that behavioral health and educational professionals owe generally to a class or the public at large as a result of their professional standing and *not* solely because of a contractual duty." (Doc. 115 at 12–13 (emphasis added)). Likewise, neither Plaintiff's Complaint nor her summary judgment briefing identify a specific contractual provision that was violated.

Rather than bolstering her contract claims, Plaintiff's Response brief seems to lean into the idea that her claims sound in tort. Plaintiff discusses certain duties and standards of care that were imposed on Defendant SRA by virtue of the parties' "special" and/or "fiduciary" relationship, as well as duties and standards of care arising from statute and caselaw. (*See* Doc. 152 at 7–12). This includes a general duty of care, a duty to comply with certain professional standards, a duty to protect the confidentiality of therapy participants, and a duty to refrain from custodial interference. (*Id.*). None of these duties expressly arise from the parties' contract. At times, Plaintiff's apparent adoption of a tort theory is even more conspicuous. For example, Plaintiff asserts that her claim for breach of the implied covenant of good faith and fair dealing is both a contract claim *and* a tort claim, with its basis in tort being founded on the parties' "special relationship." (*Id.* at 7– 8). Later, Plaintiff asserts that her "claims against [Defendants] for fraud and breach of confidentiality necessarily triggers a finding pursuant to statute that the conduct of [Defendants] is unprofessional and a violation of a duty *giving rise to tort claims* for constructive fraud and breach of the covenant of good faith and fair dealing, *beyond that associated with the written contract* and negligence." (*Id.* at 9–10 (emphasis added)).

In sum, the Court agrees with Defendant SRA that Plaintiff has failed to demonstrate a basis for her breach of contract and breach of warranty claims, as well as her breach of the implied covenant claim to the extent it is brought under a contract theory. Under the parties' contract, Defendant SRA promised only to provide certain therapeutic and academic services to Plaintiff and her Daughter, a promise that it fulfilled. "That [SRA] may have done so in a negligent manner, in violation of the duty imposed on [it] by law [to provide services] in accordance with the applicable standard of care, does not change the gravamen of the action from tort to contract." *Collins*, 189 Ariz. at 395. The Court grants summary judgment to Defendant SRA on Plaintiff's contract claims.

As a final note, Plaintiff's Complaint does not specify whether her breach of the implied covenant claim is based in tort or contract. (Doc. 1 at 112–14). As this Court just found above, this claim is dismissed to the extent it is based in contract. That said, Plaintiff argues in her Response that the claim should survive summary judgment as a tort claim. In *McAlister*, the Arizona Court of Appeals explained covenant of good faith and fair dealing and when a breach of that covenant may provide the basis for tort damages:

> The law implies a covenant of good faith and fair dealing in every contract. This implied covenant prevents either party from acting 'to impair the right of the other to receive the benefits which flow from their agreement.' While the remedy for breach of this implied covenant is ordinarily by action on contract, in certain circumstances 'the beach may provide the basis for imposing tort damages.' However, *a 'special relationship' must exist in order to support a tortious breach of the implied covenant of good faith and fair dealing*. Such a relationship is characterized either by a fiduciary relationship, elements of public interest (*e.g.*, unequal bargaining positions), or adhesion.

McAlister, 171 Ariz. at 213 (citations and alterations omitted). Here, Plaintiff asserts that a special relationship existed by virtue of Defendant SRA's role as a therapy and residential behavioral health provider. Defendant SRA does not dispute the existence of a special relationship, and the Court will proceed under the assumption that it exists.

Defendant SRA instead argues that Plaintiff has failed to provide evidence— namely, expert witness testimony—demonstrating that Defendant

SRA failed to meet the applicable standard of care and caused some injury to Plaintiff. (Doc. 115 at 11–12). As noted above, Plaintiff's tort theory is based on her allegation that Defendant SRA failed to provide the therapeutic and academic services that complied with Arizona law and that were promised to her by the documents provided and discussions she had with SRA representatives prior to enrolling her Daughter. Defendant is correct that expert testimony is generally required to evidence "the accepted conduct of the profession and the defendant's deviation from that standard." *Valencia v. United States*, 819 F. Supp. 1446, 1463 (D. Ariz. 1993) (citing *Peacock v. Samaritan Health Serv.*, 159 Ariz. 123 (Ct. App. 1988)). The only exception is where "the negligence is so grossly apparent that a layman would have no difficulty in recognizing it." *Id.* (citing *Peacock*, 159 Ariz. at 123).

In response to Defendant's argument, Plaintiff asserts that her "claims against [Defendants] for fraud and breach of confidentiality necessarily triggers [sic] a finding pursuant to statute that the conduct of [Defendants] is unprofessional and a violation of a duty giving rise to tort claims for constructive fraud and breach of the covenant of good faith and fair dealing, beyond that associated with the written contract and negligence, *and require no expert testimony*." (Doc. 152 at 9–10 (emphasis added)). Plaintiff does not support this assertion with any caselaw or other legal authority, and this Court's own review of the relevant law did not reveal such an exception to the requirement that a plaintiff provide expert testimony. Rather, the only exception is where the negligence is "so grossly apparent" that a layman could recognize it. *See Valencia*, 819 F. Supp. at

1463. Plaintiff does not meaningfully demonstrate how the present case fits within this exception, and instead makes the conclusory assertions that SRA's conduct "is so egregious and unethical that the guidance of an expert is superfluous" and that "[t]he alleged negligence is so 'grossly apparent' that a layman would have no difficulty recognizing it." (*Id.* at 10).

Aside from arguing these two exceptions, Plaintiff makes no other efforts to respond to Defendant's argument that Plaintiff lacks the necessary expert testimony to support her tort claim. Plaintiff apparently has three experts to support her claims, but one would not know that from reading her Response as it fails to even mention these experts, let alone point the Court to a place in their reports where the experts opine as to the standard of care, whether and how Defendant SRA breached that standard, or how such a breach caused the harm to Plaintiff. It is not this Court's job to sort through hundreds of pages of expert reports in search of the evidence supporting Plaintiff's claim. *See Keenan v. Allan*, 91 F.3d 1275, 1279 (9th Cir. 1996) (quoting *Richards v. Combined Ins. Co.*, 55 F.3d 247, 251 (7th Cir. 1995)) ("It is not our task, or that of the district court, to scour the record in search of a genuine issue of triable fact. We rely on the nonmoving party to identify with reasonable particularity the evidence that precludes summary judgment."). Moreover, Plaintiff did not even include the export reports in the exhibits she submitted to the Court. (*See* Docs. 127 & 142). Instead, the Court was only able to review the expert reports by referring to the exhibits submitted by Defendants. (Docs. 116-3, 116-4, & 116-5). All told, Plaintiff has not made any meaningful demonstration that she would be able to offer expert evidence at trial concerning the relevant standard of care, whether Defendant SRA breached that standard, and how such a breach caused her harm. The Court grants summary judgment to Defendant SRA on Plaintiff's implied covenant claim to the extent it is brought as a tort.

Aside from Plaintiff's claim for negligence *per se*—which is discussed below—the Court need not consider whether Plaintiff has demonstrated sufficient evidence to support any additional tort claims against Defendant SRA, such as a malpractice or general negligence claim, because Plaintiff's Complaint does not contain any other tort claims. Although Plaintiff appears to argue for such additional tort liability in her briefing, "[i]t is impermissible to add a new claim at the summary judgment stage." *Buckhorn v. Hettinger*, 800 Fed. Appx. 542, 543 (9th Cir. 2020). In sum, the Court grants summary judgment in all Defendants' favor with respect to Plaintiff's claims for breach of contract, breach of warranty, and contractual and tortious breach of the implied covenant of good faith and fair dealing. These claims are dismissed.

C. RICO Claim

"To prevail on a civil RICO claim the plaintiffs must show, among other elements, a 'pattern of racketeering activity.'" *All Direct Travel Servs., Inc. v. Delta Air Lines, Inc.*, 120 Fed. Appx. 673, 675 (9th Cir. 2005) (quoting 18 U.S.C. § 1962). "'Racketeering activity' is any act indictable under several provisions of Title 18 of the United States Code." *Rothman v. Vedder Park Mgmt.*, 912 F.2d 315 (9th Cir. 1990) (citing 18 U.S.C. § 1961). This includes the four predicate acts alleged by Plaintiff in this case:

wire fraud, illegal monetary transactions from unlawful activity, witness tampering, and witness retaliation. *See* § 1961(1)(B).

Defendants—including Defendant Borges—argue that Plaintiff has failed to develop any evidence to support any of these four predicate acts. (*See* Doc. 113 at 10 ("Plaintiff's RICO claim fails because she has not developed any admissible evidence to establish that Borges personally engaged in any of the federal crimes upon which the RICO claim is based."); Doc. 115 at 13 ("None of [Plaintiff]'s disclosed experts support any of those claims. Nor has Plaintiff produced any evidence or made any specific allegations that would meet the threshold requirements for any of these four categories of criminal activity by any of the Defendants.")). In her Responses, Plaintiff entirely fails to put forth *any* evidence that any of the Defendants committed wire fraud, illegal monetary transactions, witness tampering, or witness retaliation.[9] Plaintiff fails to even point the Court in the direction of such evidence

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[9] In her Response to Defendant Borges' Motion, Plaintiff begins by asserting that Defendant Borges failed to meet her burden of production because she provided no support for her argument against Plaintiff's RICO claim. (Doc. 154 at 11). Thus, Plaintiff contends that the burden of production remains with Defendant Borges. (*Id.*). The Court is unpersuaded. "[T]o carry its burden of production, the moving party must either produce evidence negating an essential element of the nonmoving party's claim . . . or *show that the nonmoving party does not have enough evidence of an essential element* to carry its ultimate burden of persuasion at trial." *Nissan Fire*, 210 F.3d at 1102 (emphasis added). Here, Defendants did the latter by identifying an essential element (the "pattern of racketeering activity" element) and showing that Plaintiff lacked evidence to support it.

in the record. Rather, the *entirety* of Plaintiff's responsive argument on the "pattern of racketeering" element is as follows:

> The RICO cause of action arises from conduct related to wire fraud, (18 U.S.C. § 1343), illegal monetary transactions from unlawful activity (18 U.S.C. § 1957), witness tampering (18 U.S.C. § 1512) and retaliation against a witness (18 U.S.C. § 1513). As alleged in her Complaint, had defendants not been so misleading, Ms. Sweidy would never have had to invest in attorneys' fees to defeat their attempts to abuse the court process to keep her daughter confined and mentally abused. She would never have had to hire experts to consult and learn what really went on inside SRA and would not have had to give up all rights to her child and child support in a "Hail Mary" legal maneuver to get her child out of SRA and back in California.

(Docs. 152 at 12–13 & 154 at 12). In both Responses, Plaintiff immediately shifts focus to the "damage to business or property" element. (*See* Docs. 152 at 13 & 154 at 12–13).

Plaintiff's responsive argument does little to assist the Court in identifying whether she has sufficient evidence to support the "pattern of racketeering" element of her RICO claim. The evidence submitted by the parties in this case spans hundreds if not thousands of pages; Plaintiff's Responses alone are supported by 133 separate exhibits. This Court does not have the time nor the resources to parse through such an extensive factual record and piece together the evidence Plaintiff has to support her claims. *See Keenan*, 91 F.3d at 1279 (quoting *Richards*, 55 F.3d at 251) ("It is not our task, or that of the district court, to scour the record in search of a genuine issue of triable fact. We rely on the nonmoving party to identify with reasonable particularity the evidence that precludes summary judgment."); *see also Marceau v. Int'l Brotherhood of Elec. Workers*, 618 F. Supp. 2d 1127, 1140 (D. Ariz. 2009) ("A district court is not required to probe the record in search of a genuine issue of triable fact."); *Guarino v. Brookfield Twp. Trs.*, 980 F.2d 399, 405 (6th Cir. 1992) ("[The nonmoving party's] burden to respond is really an opportunity to assist the court in understanding the facts. But if the nonmoving party fails to discharge that burden—for example, by remaining silent—its opportunity is waived and its case wagered."). Given Plaintiff's failure to adequately respond with meaningful evidence to support her RICO claim at this summary judgment stage, the Court must grant summary judgment to Defendants on this claim.

D. Negligence *Per Se* Claim

"A person who violates a statute enacted for the protection and safety of the public is guilty of negligence *per se*." *Alaface v. Nat'l Invest. Co.*, 181 Ariz. 586, 596 (Ct. App. 1994) (citations omitted). Here, Plaintiff alleges a negligence *per se* claim based on Defendants' purported violations of (i) A.R.S. § 13-1302(A)(1) and (ii) the Arizona Administrative Code. (Doc. 1 at 118–19).

First, the Court grants summary judgment in Defendants' favor on Plaintiff's negligence *per se* claim to the extent it is based on violations of the

Arizona Administrative Code. The law is clear that in order for a statute or regulation to serve as the basis for a negligence *per se* claim, it "must proscribe certain or specific acts." *Hutto v. Francisco*, 210 Ariz. 88, 91 (Ct. App. 2005) (citation and quotation marks omitted). "Therefore, if a statute defines only a general standard of care, negligence *per se* is inappropriate." *Id.* (citation and quotation marks omitted). Most of the provisions of the Arizona Administrative Code referred to by Plaintiff are intended to define a general standard of care for healthcare providers. Although some could plausibly be considered to "proscribe certain or specific acts"—*e.g.*, A.R.S. § 32-3283, which proscribes a licensee from "divulg[ing] information that is received by reason of the confidential nature of the behavioral health professional-client relationship," (*see* Doc. 154 at 8)—it is not clear that these provisions are also intended to protect the public. For example, the confidentiality privilege provided under § 32-3283 was not enacted for the protection and safety of the public, but rather to encourage clients "to be candid with his or her mental health professional." *In re MH2019-004895*, 249 Ariz. 283, 288 (Ct. App. 2020). This case is now at the summary judgment stage and Plaintiff's Response needed to do more than premise her negligence *per se* claim on a vague, generalized assertion that Defendants violated numerous provisions of the Arizona Administrative Code. Plaintiff failed to demonstrate that her negligence *per se* claim is based on a violation of a *specific* provision(s) of statute or regulation that both proscribes certain or specific acts *and* is intended to protect the safety of the public.

Second, the Court will also grant summary judgment to Defendants on Plaintiff's negligence *per se* claim to the extent it is premised on a violation of § 13-1302(A)(1). Section 13-1302(A)(1), which is part of the criminal code, provides that:

> A person commits custodial interference if, knowing or having reason to know that the person has no legal right to do so, the person . . . [t]akes, entices or keeps from lawful custody any child . . . who is entrusted by authority of law to the custody of another person or institution.

Plaintiff alleges that Defendants committed custodial interference by denying her access to her Daughter by monitoring their mail and phone calls, limiting their in-person visits, and otherwise cutting off all contact between them. (Doc. 1 at 118–19). In seeking summary judgment, Defendant Borges argues that § 13-1302(A)(1) was not enacted for public safety purposes, but rather "to stem the flood of child-stealing acts often attendant to domestic relations cases." (Doc. 113 at 13 (quoting *State v. McLaughlin*, 125 Ariz. 505, 507 (1980))). The remaining Defendants join in Defendant Borges' argument. (Doc. 115 at 14). In her Response, Plaintiff argues that § 13-1302(A)(1) is intended to protect children, which she asserts "is a public safety issue [] rooted in safeguarding the interests of those who have their best interest at heart, their parents." (Doc. 154 at 14).

The Court is unpersuaded by Plaintiff's argument. First, Plaintiff fails to cite any caselaw or other legal authority to support her interpretation of the purpose underlying § 13-1302.[10] Second, this Court's own review of relevant caselaw reveals that § 13-1302 is not concerned with public safety in the manner that is necessary for the statute to serve as the basis of a negligence *per se* claim. Rather, the statute is intimately tied up with issues of domestic relations and custodial arrangements, concerns that have no direct effect on the safety of the general public. *See McLaughlin*, 125 Ariz. at 507 ("The purpose of the charging statute was to stem the flood of child-stealing acts often attendant to domestic relations cases."); *State v. Wilhite*, 160 Ariz. 228, 230 (Ct. App. 1989) ("The essential concern of § 13-1302 . . . is [] to discourage interference with custodial arrangements established by law."). The Court grants Defendants' request for summary judgment on Plaintiff's negligence *per se* claim.

E. IIED Claim

"As to a claim for [IIED], a plaintiff must establish (1) the conduct of defendant was 'extreme' and 'outrageous,' (2) defendant intended to cause emotional distress or recklessly disregarded the near certainty that such conduct would result from his conduct, and (3) severe emotional distress did occur as a result of defendant's conduct." *Day v. LSI Corp.*, 174 F. Supp. 3d 1130, 1158 (D. Ariz. 2016) (citing *Citizen Publ'g Co. v. Miller*, 210 Ariz. 513, 517

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[10] *Troxel*, the only case cited by Plaintiff, does not deal with § 13-1302. Although that case discusses the interest that parents have in the care, custody, and control of their children—recognizing it as a "fundamental liberty interest"—the case says nothing about whether a statute concerning custodial interference is intended to protect public safety. *See Troxel v. Granville*, 530 U.S. 57 (2000).

(2005)). Defendant Borges argues that Plaintiff lacks sufficient evidence to create a dispute of material fact with respect to any of these elements. (Doc. 113 at 14–17). The remaining Defendants argue that Plaintiff lacks sufficient evidence to satisfy the first and third elements. (Doc. 115 at 14–15).

With respect to the third element specifically, Defendants—including Defendant Borges—point out Plaintiff's previous assertions that Defendants' alleged acts caused her to suffer only "garden variety" emotional harm. (Docs. 113 at 16 & 115 at 15). Indeed, in the parties' October 27, 2022 Joint Motion for Discovery Dispute Resolution, Plaintiff stated that "[r]egarding [her] claims for . . . pain, suffering, humiliation, etc. (list not exhaustive) damages, these are 'garden variety' damages, stemming directly from Defendants' actions." (Doc. 78 at 5). On December 6, 2022, in opposing Defendants' Motion for an Order Compelling Plaintiff to Undergo a Rule 35 Psychological Examination, Plaintiff asserted the following:

> Plaintiff has no mental condition in controversy. No good cause exists for a psychological examination. Plaintiff leads a productive, healthy and fulfilling life. She is fortunate to be free of physical and/or psychological ailment. She is highly educated, and her circumstances allow her to devote countless hours to pro bono, charitable and philanthropic causes. She enjoys rewarding relationships with friends and family. She enjoys hobbies including hiking, sewing, playing the piano and writing music and

> poetry. On Saturday mornings, she is at Zumba classes given by the City of Palo Alto. Plaintiff is on no medication. Plaintiff does not drink alcohol, smoke marijuana or take illegal drugs. After a recent root canal, Plaintiff took 200 mg (one tablet, over the counter) of Ibuprofen per day for three days.

(Doc. 93 at 8–9). Later in the same response, Plaintiff stated that she "claims pain, suffering, humiliation and inconvenience" and that "[t]hese are 'garden variety' damages that anyone would suffer in the same situation." (*Id.* at 10).

Courts have consistently recognized that assertions of "garden variety" emotional damages are inconsistent with a claim for IIED. *See, e.g.*, *Hupp v. San Diego Cnty.*, No. 12cv0492 GPC(RBB), 2013 WL 5408644, at *7 (S.D. Cal. Sept. 25, 2013) (emphasis added) ("By alleging a claim for [IIED] and seeking damages for mental and emotional injuries, Hupp is seeking *more than* garden-variety emotional distress damages."); *Lira v. Chipotle Mexican Grill, Inc.*, No. 17-cv-02588-JSW (KAW), 2018 WL 2128707, at *3 (N.D. Cal. May 9, 2018) (emphasis added) ("In turn, 'garden-variety' emotional distress has been defined as 'ordinary or commonplace emotional distress' or that which is 'simple or usual.' . . . Emotional distress that is *not* garden-variety 'may be complex, such as that resulting in a specific psychiatric disorder,' *or where there is a claim for [IIED].*"); *Spector v. Bd. of Trs. of Cmty.-Tech. Colls.*, No. 3:06cv129 (JCH), 2007 WL 9753111, at *3 (D. Conn. June 28, 2007) ("A plaintiff making a claim for [IIED] must prove more than 'garden variety' emotional distress. In fact, in order to sustain these claims, plaintiffs must prove that they suffered severe emotional distress.").

In this case, Plaintiff cannot have it both ways. She cannot assert "garden variety" emotional damages in order to avoid a psychological examination during discovery, only to turn around and assert *severe* emotional distress sufficient to support a claim for IIED at the summary judgment stage. Moreover, Plaintiff's Reponses do not address the third element at all. Instead, she focuses *solely* on the first element by citing cases in which courts—none of which are courts from Arizona or the Ninth Circuit—found "that the unilateral separation of a child from its parent *can* be extreme and outrageous conduct." (Docs. 152 at 15–16 & 154 at 14–15). Thus, even if the Court were to overlook Plaintiff's inconsistency on this issue over the course of this litigation, summary judgment in Defendants favor on this claim would nonetheless be appropriate as a result of Plaintiff's failure to respond. *See Garcia v. Salt River Project Agric. Improvement & Power Dist.*, 618 F. Supp. 2d 1092, 1099 (D. Ariz. 2007) (citing LRCiv. 7.2(i)) ("Generally, a party's failure to respond to arguments in a motion 'may be deemed consent to the denial or granting of the motion and the Court may dispose of the motion summarily.'"). The Court grants summary judgment in Defendants' favor on Plaintiff's IIED claim.

F. Conversion of Property Claim

"Arizona has adopted the following definition of conversion, which is in the Restatement (Second) of Torts § 222A(1) (1965): 'Conversion is an intentional exercise of dominion or control over a chattel which so seriously interferes with the right of another to control it that the actor may justly be required to pay the other the full value of the chattel.'" *Miller v. Hehlen*, 209 Ariz. 462, 472 (Ct. App. 2005). "If those elements are shown, a court must then consider the seriousness of the interference and whether the offending party must pay full value." *Id.* (citing Restatement (Second) of Torts § 222A(2)). In this case, Plaintiff's conversion claim is based on her allegation that SRA failed to return certain personal property to Plaintiff after her Daughter was removed from SRA. (*See* Doc. 1 at 123). The property had been delivered by Plaintiff to SRA for use by her Daughter. (*Id.*). Plaintiff asserts that Defendants are liable for the value of the unreturned property. (*Id.*).

The Court will first grant summary judgment to Defendant Borges on the conversion claim. In her separate Motion, Defendant Borges argues, in part, that she never personally exercised control or dominion over the personal property at issue and that Plaintiff has failed to provide any evidence demonstrating otherwise. (Doc. 113 at 17–18). In her Response to Defendant Borges' Motion, Plaintiff offers the same, two-paragraph conversion argument that she uses in her Response to the other Defendants' Motion. (*Compare* Doc. 154 at 15–16 (Plaintiff's Response to Defendant Borges) *with* Doc. 152 at 16 (Plaintiff's Response to other Defendants)). The argument contains no reference to Defendant Borges specifically, let alone any evidence that she *personally* exercised intentional dominion or control over the personal property at issue at any time. The Court grants summary judgment to Defendant Borges as to Plaintiff's conversion claim.

The remaining Defendants argue that "Plaintiff cannot make a claim that the Defendants 'seriously interfered' with her right to control [her Daughter's] personal belongings or even that she is the rightful owner of those belongings." (Doc. 115 at 15). Defendants explain that Plaintiff "testified in deposition that she did not know if [her Daughter] received the property shipped to her from SRA, would *not* ask her Daughter what she received, and it is "none of your business" whether [Plaintiff] would have forwarded the property to her Daughter if Defendants had instead [] shipped [the property] to her address." (*Id.*). Indeed, when asked at the deposition about the property subject to her conversion claim, Plaintiff stated that the property did not get sent to her house and "that's what I know." (Doc. 116-10 at 3). When asked whether her Daughter received the property at her father's house, Plaintiff responded "I don't know. Ask [my Daughter]." (*Id.*). Later during the deposition, the parties returned to the topic:

> Q: [D]o you know where the property went?
>
> A: I know it did not go to me. I'm assuming that it went to Mr. Stata, but I have no necessarily direct evidence.
>
> Q: Do you know if it went with [your Daughter]?
>
> A: Do I know if it went with [my Daughter]?
>
> Q: Yes. Do you know?
>
> A: Do I—do I know for a fact? Was I

> there? No, I was not a recipient [sic] witness to whether it went with [my Daughter]. But I can say this. It was boxes and boxes, and there's no way they packed up all that, gave it to [my Daughter], and [my Daughter] then schlepped it home during COVID on the plane on Sunday, the 28th when she flew home in June. I don't believe—
>
> Q: I don't—I'm not saying she surfeited it back on her own back. Obviously, that's not what I meant, ma'am. Don't be deliberately—
>
> A: No, that's not obviously. I'm not deliberately anything. You asked me did it go with [my Daughter]. Well, going with [my Daughter] sounds like [my Daughter]'s leaving and the stuff's going with her.
>
> Q: Do you—did you—have you asked [your Daughter]?
>
> A: I'm not getting in a conversation with [my Daughter] about those belongings. . . . And I'm not going to bring up things that create nothing [but] animosity and problems thanks to Spring Ridge Academy.

(*Id.* at 6–7). Later during the deposition, Plaintiff expressly acknowledges that SRA did not maintain dominion or control over the disputed property but rather that SRA sent the property to her Daughter:

> What is relevant is that [SRA] sent my belongings to somewhere other than to me. No, I don't agree that . . . minors' belongings belong to the minor and that nor is that something that [SRA] gets to assert. I don't agree with either of those. And you're never going to get me to agree with it.
>
> And if I feel that [the property] belongs to [my Daughter], it's my place to give that to [her], not for [SRA] to preempt me and decide that they know better what possessions my daughter should have than I do. That's exactly what got us into this lawsuit, overstepping boundaries and not fulfilling their contractual obligations to behave in an ethical and appropriate manner vis-à-vis the sponsors . . . and the student.
>
> . . .
>
> [The property] should have been returned to me as I requested, documented, and asked. Should not have been sent anywhere else, and that would have been the end of that. And that's my position.

(*Id.* at 8, 11).

Plaintiff's Response does not offer any evidence—or otherwise refer the Court to some evidence in the record—that supports her conversion claim. Rather, she simply repeats her Complaint allegations that she "never received the property that was under the dominion and control of the Defendants," that she had "demanded its return," that Defendants denied her "the opportunity to physically retrieve the property herself," and that "[n]o evidence has been provided by the Defendants as to what happened to the items." (Doc. 152 at 16). This response from Plaintiff is entirely deficient and does nothing to meaningfully support her conversion claim with evidence. The above-excerpted deposition testimony from Plaintiff—which appears to be the *only* evidence that has been provided to this Court on this issue—indicates an agreement by all parties that SRA did *not* exercise dominion or control over the property in a manner that seriously interfered with Plaintiff's right to the property. Rather, SRA appears to have reasonably sent the property with and/or to Plaintiff's Daughter when she left SRA for her father's house. On the evidence before this Court, it appears that Plaintiff is merely frustrated that SRA did not comply with or even acknowledge her request that the property be sent to her. Such a grievance does not amount to an actionable conversion claim, and Plaintiff does not offer any meaningful argument or legal support to the contrary. The Court grants summary judgment to Defendants on Plaintiff's conversion claim.

G. Punitive and Special Damages

Defendants request that the Court deny Plaintiff's request for punitive damages. Defendants correctly assert that, under Arizona law, "[s]omething more than the mere commission of a tort is always required for punitive damages" and that such damages should only be available where "the defendant's wrongful conduct was guided by evil motives." *Rawlings*, 151 Ariz. at 162 (citation omitted). "The evil mind which will justify the imposition of punitive damages may be manifested in either of two ways. It may be found where defendant intended to injure the plaintiff. It may also be found where, although not intending to cause injury, defendant consciously pursued a course of conduct knowing that it created a substantial risk of significant harm to others." *Id.* Defendants also request that the Court deny Plaintiff's request for certain special damages, arguing that the special damages claims lack a cognizable legal basis, that Plaintiff lacks standing, and that the claims lack sufficient evidentiary support. (Doc. 115 at 17).

Given the Court's denial of summary judgment on Defendants SRA and Kate Deily's potential liability for the fraud claims, the Court declines to rule on punitive or special damages at this time. In the event that Plaintiff is entitled to damages, the parties will have the opportunity to assert their positions and provide supporting argument.

IV. CONCLUSION

Accordingly,

IT IS ORDERED that Defendants' requests for Joinder (Docs. 118, 119, 162, & 163) are **granted**.

IT IS ORDERED that Defendant Veronica Borges' Motion for Summary Judgment (Doc. 113) is **granted**. All claims against Defendant Borges are **dismissed with prejudice** and Defendant Borges is dismissed from this action.

IT IS FURTHER ORDERED that Defendants Spring Ridge Academy, Jean Courtney, Suzanne Courtney, Brandon Courtney, Erin Smith, Leslie Filsinger, Justin Zych, and Kate Deily's Motion for Summary Judgment (Doc. 115) is **granted in part**. All claims against Defendants Jean Courtney, Suzanne Courtney, Brandon Courtney, Erin Smith, Leslie Filsinger, and Justin Zych are **dismissed with prejudice**. Defendants SRA and Kate Deily's request for summary judgment is **denied** with respect to Plaintiff's actual, constructive, and consumer fraud claims, but **granted** with respect to all other claims. Thus, only Defendants SRA and Kate Deily remain, and the only remaining claims are Plaintiff's fraud claims (Counts I and II).

Dated this 15th day of August, 2023.

Honorable Steven P. Logan

United States District Judge

APPENDIX I

1. U.S. Const. Amend VII provides:

In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law.

2. Arizona Revised Statutes § 13-1301 provides:

Definitions

In this chapter, unless the context otherwise requires:

1. "Relative" means a parent or stepparent, ancestor, descendant, sibling, uncle or aunt, including an adoptive relative of the same degree through marriage or adoption, or a spouse.
2. "Restrain" means to restrict a person's movements without consent, without legal authority, and in a manner which interferes substantially with such person's liberty, by either moving such person from one place to another or by confining such person. Restraint is without consent if it is accomplished by:
   (a) Physical force, intimidation or deception; or
   (b) Any means including acquiescence of the victim if the victim is a child less than eighteen years old or an incompetent person and the victim's lawful custodian has not acquiesced in the movement or confinement.

3. Arizona Revised Statutes § 13-1302 provides:

Custodial interference; child born out of wedlock; defenses; classification

A. A person commits custodial interference if, knowing or having reason to know that the person has no legal right to do so, the person does one of the following:

1. Takes, entices or keeps from lawful custody any child, or any person who is incompetent, and who is entrusted by authority of law to the custody of another person or institution.
2. Before the entry of a court order determining custodial rights, takes, entices or withholds any child from the other parent denying that parent access to any child.
3. If the person is one of two persons who have joint legal custody of a child, takes, entices or withholds from physical custody the child from the other custodian.
4. At the expiration of access rights outside this state, intentionally fails or refuses to return or impedes the return of a child to the lawful custodian.

B. If a child is born out of wedlock, the mother is the legal custodian of the child for the purposes of this section until paternity is established and custody or access is determined by a court.

C. It is a defense to a prosecution pursuant to subsection A, paragraph 2 if both of the following apply:

1. The defendant has begun the process to obtain an order of protection or files a petition for custody within a reasonable period of time

and the order of protection or petition states the defendant's belief that the child was at risk if left with the other parent.

2. The defendant is the child's parent and has the right of custody and the defendant either:

(a) Has a good faith and reasonable belief that the taking, enticing or withholding is necessary to protect the child from immediate danger.

(b) Is a victim of domestic violence by the other parent and has a good faith and reasonable belief that the child will be in immediate danger if the child is left with the other parent.

D. Subsection A, paragraphs 2 and 3 do not apply to a person who is the child's parent if both of the following apply:

1. The person has filed an emergency petition regarding custodial rights with the superior court and has received a hearing date from the court.

2. The person has a good faith and reasonable belief that the child will be in immediate danger if the child is left with the other parent.

E. A violation of this section is:

1. A class 3 felony if committed by a person other than the parent or agent of the parent or custodian or agent of the custodian.

2. Notwithstanding paragraph 3 of this subsection, a class 4 felony if the child or incompetent person is taken, enticed or kept from lawful custody out of this state by the parent or agent of the parent or custodian or the agent of the custodian.

3. A class 6 felony if committed by a parent or agent of the parent or custodian or agent of the custodian.
4. A class 1 misdemeanor if the child or incompetent person is voluntarily returned without physical injury by the parent or defendant or the agent of the parent or defendant no later than forty-eight hours after the parent or defendant takes, entices or keeps from lawful custody the child or incompetent person.

4. Arizona Revised Statutes § 32-3283 provides:

Confidential relationship; privileged communications; clients with legal guardians; treatment decisions

A. The confidential relationship between a client and a licensee, including a temporary licensee, is the same as between an attorney and a client. Unless a client waives this privilege in writing or in court testimony, a licensee shall not voluntarily or involuntarily divulge information that is received by reason of the confidential nature of the behavioral health professional-client relationship.
B. A licensee shall divulge to the board information the board requires in connection with any investigation, public hearing or other proceeding.
C. The behavioral health professional-client privilege does not extend to cases in which the behavioral health professional has a duty to:

1. Inform victims and appropriate authorities that a client's condition indicates a clear and imminent danger to the client or others pursuant to this chapter.
2. Report information as required by law.

D. A client's legal guardian may make treatment decisions on behalf of the client, except that the client receiving services is the decision maker for issues:

1. That directly affect the client's physical or emotional safety, such as sexual or other exploitative relationships.
2. That the guardian agrees to specifically reserve to the client.
3. Where the right to seek behavioral health

services without parental or guardian consent is established by state or federal law.

5. Arizona Revised Statutes § 36-3211 provides:

Principals; significant relationships; contact orders; definitions

A. Unless inconsistent with the express directions of the principal in a health care directive, an agent shall encourage and allow contact between the principal and other persons who have a significant relationship with the principal.
B. An agent may not limit, restrict or prohibit reasonable contact between the principal and any other person without prior court approval, unless the principal has granted the agent such authority in a health care directive.
C. A person who has a significant relationship with the principal and whose contact with the principal has been limited, restricted or prohibited by an agent may petition the court for an order compelling the agent to allow the person to have contact with the principal. The petition shall describe the nature of the relationship between the person and the principal and the type and frequency of contact being requested. The person has the burden of proving that the person has a significant relationship with the principal and that the requested contact is in the principal's best interest. The petition and notice of the hearing on the petition shall be personally served on the principal and the agent and shall be provided to any other persons the court orders.
D. A principal whose contact with a person who has a significant relationship with the principal has been limited, restricted or prohibited by an agent may petition the court for an order compelling the agent to allow the principal to have contact with the

person. The petition shall describe the nature of the relationship between the person and the principal and the type and frequency of contact being requested. The principal has the burden of proving that the person has a significant relationship with the principal and that the requested contact is in the principal's best interest. The petition and notice of the hearing on the petition shall be personally served on the agent and the person whose contact will be affected and shall be provided to any other persons the court orders.

E. If an agent who does not have authority expressly granted in a health care directive to limit, restrict or prohibit contact between the principal and another person reasonably believes that contact between the principal and the person is not in the principal's best interest, the agent may petition the court for an order that limits, restricts or prohibits contact between the person and the principal. The petition shall describe the nature of the relationship between the person and the principal and the limitations or restrictions on the contact being requested and why the limitations or restrictions are in the principal's best interest. If the agent requests an order that prohibits all contact between a person and the principal because the contact would be detrimental to the principal's physical or emotional health or well-being, the agent shall file with the court a written statement or report of a physician, psychologist, physician assistant or registered nurse who has recently evaluated the principal and who supports this position. The petition and notice of the hearing on the petition shall be personally served on the principal and the person whose contact will be affected and shall be provided to any other persons the court orders.

F. In determining what, if any, contact between a person and the principal is in the principal's best interest, the court shall consider all factors that are relevant to the principal's health, safety and welfare, including the following:

1. The past and present relationship between the principal and the person whose contact is being considered.
2. If the principal has sufficient mental capacity to make an intelligent choice, the wishes of the principal.
3. The mental and physical health of the principal and the person whose contact is being considered.
4. Whether the person whose contact is being considered has committed any of the following:
    (a) Act involving domestic violence as defined in section 13-3601.
    (b) Child abuse.
    (c) Abuse, neglect or exploitation of a vulnerable adult.
5. Whether the person whose contact is being considered has abused drugs or alcohol or has been convicted of any drug offense listed in title 13, chapter 34 or a violation of title 28, chapter 4, article 3.
6. Whether the person whose contact is being considered is listed in the elder abuse central registry pursuant to section 46-457 or is required to register pursuant to section 13-3821.
7. Whether the person whose contact is being considered has been convicted of a violation of section 13-2907.02 or 13-2907.04.

G. On the filing of a petition under this section, the court:

1. Shall appoint an attorney or guardian ad litem, or both for the principal.
2. May appoint an investigator as provided under section 14-5308 or a physician, or both, to evaluate the principal and submit a written report to the court before the hearing.
3. May enter any other temporary order that the court determines is necessary and appropriate to protect the wishes or best interests of the principal, including an order exercising the power of a guardian or appointing a temporary guardian as provided under section 14-5310.
4. May issue, without notice, a temporary protective order that limits, restricts or prohibits contact between the principal and another person if the petition is supported by a written statement or report of a physician, psychologist, physician assistant or registered nurse who has recently evaluated the principal and the court finds, based on the statement or report and other specific facts shown by affidavit or verified petition, reasonable grounds to believe that contact between the principal and the person before the matter can be heard would result in immediate and irreparable injury, loss or damage to the principal. The temporary protective order expires on the date prescribed by the court but not later than fourteen days after the order is entered, unless within that time the court extends the order for good cause shown or the person whose contact is limited,

restricted or prohibited consents to the extension. If the temporary protective order is issued, the court shall require that the petition and order be personally served on the principal and the person whose contact is the subject of the order within the time ordered by the court but not more than seventy-two hours after entry of the order. If the court issues a temporary protective order without notice, the principal or the person whose contact has been limited, restricted or prohibited may file a motion requesting that the order be dissolved or modified. The person filing the motion shall cause a copy of the motion to be personally served on the agent and any other person the court orders. The court shall proceed to hear and determine the motion as expeditiously as possible.

H. Except as provided in subsection G, paragraph 4 of this section, the petitioner shall cause notice of the time and place of hearing of any petition filed under this section to be given at least fourteen days before the hearing.

I. Unless inconsistent with the standards and procedures set forth in this section, a petition filed under this section shall be heard and determined as a formal proceeding filed under title 14 and governed by the rules of probate procedure.

J. A principal, an agent or a person who has a significant relationship with the principal may petition the court to modify a contact order if a material change in circumstances affecting the principal's health, safety or welfare has occurred since the last contact order was entered. The petition shall be supported by an affidavit alleging the change of circumstances that has occurred since the entry of the last contact order. The court shall deny the petition unless the court finds that the petition establishes good cause for a hearing, in which case the court shall set a hearing on the petition. The petition and notice of the hearing on the petition shall be served on the principal, the agent and the person whose contact is being considered and shall be provided to any other persons the court orders.

K. A principal, an agent or a person who has a significant relationship with the principal may file a motion asking the court to temporarily modify or suspend a contact order if a material change in circumstances affecting the principal's health, safety or welfare has occurred since the last contact order was entered. The motion shall be supported by an affidavit alleging the change of circumstances that has occurred since the entry of the last contact order. The motion shall be filed contemporaneously with or after the filing of a petition to modify the prior contact order. The motion shall state whether the petitioner requests that the prior contact order be modified or suspended with or without notice to affected persons.

L. The court may temporarily modify or suspend a contact order without notice only if both of the following apply:

1. It clearly appears from specific facts shown in the motion or affidavit that immediate and irreparable injury, loss or damage likely will result if the order is not issued before the affected persons can be heard in opposition.
2. The moving party or the moving party's attorney certifies to the court in writing the efforts, if any, that the moving party or the

moving party's attorney has made to give the notice or the reasons supporting the claim that notice should not be required.

M. If the court grants a motion to temporarily modify or suspend a contact order without notice, the court shall set a hearing on the motion.

N. An order temporarily modifying or suspending a contact order that is granted without notice shall state the injury, loss or damage that would likely have occurred if the order were not issued before giving the affected persons the opportunity to be heard in opposition. The temporary order expires at the date and time set for the hearing on the motion unless the temporary order is extended by the court for good cause.

O. The moving party shall personally serve a copy of the order and notice of the hearing on the person whose contact with the principal has been modified or suspended without notice within the time period the court directs but not more than seventy-two hours after entry of the order. The moving party shall personally serve a copy of the order and notice of hearing on the principal or the agent if either person is not the moving party.

P. On notice and a hearing, the court may enter appropriate orders to safeguard the wishes of the principal if those wishes can be reasonably ascertained. The court may assess court costs, reasonable attorney fees and the cost of any professionals appointed to evaluate the principal against a party found to have proceeded in bad faith or to have acted unreasonably.

Q. In a proceeding brought pursuant to this section, the court may order alternative dispute resolution, including mediation.

R. For the purposes of this section:

1. "Abuse" in relation to a vulnerable adult has the same meaning prescribed in section 46-451.
2. "Child abuse" means abuse as defined in section 8-201 of an individual who is under eighteen years of age.
3. "Contact" includes communications through any method, including in person, in writing and by electronic methods.
4. "Court" means the superior court.
5. "Exploitation" has the same meaning prescribed in section 46-451.
6. "Neglect" has the same meaning prescribed in section 46-451.

6. Arizona Revised Statutes § 44-1522 provides:

Unlawful practices; intended interpretation of provisions

A. The act, use or employment by any person of any deception, deceptive or unfair act or practice, fraud, false pretense, false promise, misrepresentation, or concealment, suppression or omission of any material fact with intent that others rely on such concealment, suppression or omission, in connection with the sale or advertisement of any merchandise whether or not any person has in fact been misled, deceived or damaged thereby, is declared to be an unlawful practice.

B. The violation of chapter 9, article 16 or chapter 19, article 1 of this title is declared to be an unlawful practice and subject to enforcement under this article.

C. It is the intent of the legislature, in construing subsection A, that the courts may use as a guide interpretations given by the federal trade commission and the federal courts to 15 United States Code sections 45, 52 and 55(a)(1).

7. Arizona Administrative Code § R4-6-1105 provides:

Confidentiality

A. A licensee shall release or disclose client records or any information regarding a client only:

1. In accordance with applicable federal or state law that authorizes release or disclosure; or
2. With written authorization from the client or the client's legal representative.

B. A licensee shall ensure that written authorization for release of client records or any information regarding a client is obtained before a client record or any information regarding a client is released or disclosed unless otherwise allowed by state or federal law.

C. Written authorization includes:

1. The name of the person disclosing the client record or information;
2. The purpose of the disclosure;
3. The individual, agency, or entity requesting or receiving the record or information;
4. A description of the client record or information to be released or disclosed;
5. A statement indicating authorization and understanding that authorization may be revoked at any time;
6. The date or circumstance when the authorization expires, not to exceed 12 months;
7. The date the authorization was signed; and
8. The dated signature of the client or the client's legal representative.

D. A licensee shall ensure that any written authorization to release a client record or any information regarding a client is maintained in the client record.
E. If a licensee provides behavioral health services to multiple members of a family, each legally competent, participating family member shall independently provide written authorization to release client records regarding the family member . Without authorization from a family member, the licensee shall not disclose the family member's client record or any information obtained from the family member.

8. Arizona Administrative Code § R9-10-707 provides:

Admission; Assessment

A. An administrator shall ensure that:

1. A resident is admitted based upon:
    a. The resident's primary condition for which the resident is admitted to the behavioral health residential facility being a behavioral health issue, and
    b. The resident's behavioral health issue and treatment needs are within the behavioral health residential facility's scope of services;
2. A behavioral health professional, authorized by policies and procedures to admit a resident, is available;
3. Except as provided in subsection (A)(4), general consent is obtained from:
    a. An adult resident or the resident's representative before or at the time of admission, or
    b. A resident's representative, if the resident is not an adult;
4. General consent is not required from a patient receiving a court-ordered evaluation or court-ordered treatment;
5. The general consent obtained in subsection (A)(3) is documented in the resident's medical record;
6. Except as provided in subsection (E)(1)(a), a medical practitioner performs a medical history and physical examination or a registered nurse performs a nursing

assessment on a resident within 30 calendar days before admission or within 72 hours after admission and documents the medical history and physical examination or nursing assessment in the resident's medical record within 72 hours after admission;

7. If a medical practitioner performs a medical history and physical examination or a nurse performs a nursing assessment on a resident before admission, the medical practitioner enters an interval note or the nurse enters a progress note in the resident's medical record within seven calendar days after admission;

8. If a behavioral health assessment is conducted by a:

  a. Behavioral health technician or registered nurse, within 24 hours a behavioral health professional, certified or licensed to provide the behavioral health services needed by the resident, reviews and signs the behavioral health assessment to ensure that the behavioral health assessment identifies the behavioral health services needed by the resident; or

  b. Behavioral health paraprofessional, a behavioral health professional, certified or licensed to provide the behavioral health services needed by the resident, supervises the behavioral health paraprofessional during the completion of the assessment and signs the assessment to ensure that the assessment identifies the behavioral health services needed by the resident;

9. Except as provided in subsection (A)(10), a behavioral health assessment for a resident is completed before treatment for the resident is initiated;

10. If a behavioral health assessment that complies with the requirements in this Section is received from a behavioral health provider other than the behavioral health residential facility or if the behavioral health residential facility has a medical record for the resident that contains a behavioral health assessment that was completed within 12 months before the date of the resident's current admission:

a. The resident's assessment information is reviewed before treatment for the resident is initiated and updated if additional information that affects the resident's assessment is identified, and

b. The review and update of the resident's assessment information is documented in the resident's medical record within 48 hours after the review is completed;

11. A behavioral health assessment:

a. Documents a resident's:

i. Presenting issue;

ii. Substance abuse history;

iii. Co-occurring disorder;

iv. Legal history, including:

(1) Custody,

(2) Guardianship, and

(3) Pending litigation;

v. Criminal justice record;

vi. Family history;

vii. Behavioral health treatment history;
viii. Symptoms reported by the resident; and
ix. Referrals needed by the resident, if any;

b. Includes:

i. Recommendations for further assessment or examination of the resident's needs,
ii. The physical health services or ancillary services that will be provided to the resident until the resident's treatment plan is completed, and
iii. The signature and date signed of the personnel member conducting the behavioral health assessment; and

c. Is documented in resident's medical record;

12. A resident is referred to a medical practitioner if a determination is made that the resident requires immediate physical health services or the resident's behavioral health issue may be related to the resident's medical condition; and
13. Except as provided in subsection (E)(1)(d), a resident provides evidence of freedom from infectious tuberculosis:

a. Before or within seven calendar days after the resident's admission, and
b. As specified in R9-10-113.

B. An administrator shall ensure that:

1. A request for participation in a resident's behavioral health assessment is made to the resident or the resident's representative,
2. An opportunity for participation in the resident's behavioral health assessment is provided to the resident or the resident's representative, and
3. The request in subsection (B)(1) and the opportunity in subsection (B)(2) are documented in the resident's medical record.

C. An administrator shall ensure that a resident's behavioral health assessment information is documented in the medical record within 48 hours after completing the behavioral health assessment.

D. If information in subsection (A)(10) is obtained about a resident after the resident's behavioral health assessment is completed, an administrator shall ensure that an interval note, including the information, is documented in the resident's medical record within 24 hours after the information is obtained.

E. If a behavioral health residential facility is authorized to provide respite services, an administrator shall ensure that:

1. Upon admission of a resident for respite services:
    a. Except as provided in subsection (F), a medical history and physical examination of the resident:
        i. Is performed; or
        ii. If dated within the previous 12 months, is available in the resident's medical record from a previous admission to the

behavioral health residential facility;

b. A treatment plan that meets the requirements in R9-10-708:

i. Is developed; or

ii. If dated within the previous 12 months, is available in the resident's medical record from a previous admission to the behavioral health residential facility;

c. If a treatment plan, dated within the previous 12 months, is available, the treatment plan is reviewed, updated, and documented in the resident's medical record; and

d. The resident is not required to comply with the requirements in subsection (A)(13) if the resident is not expected to be present in the behavioral health residential facility:

i. For more than seven consecutive days, or

ii. For 10 days or more days in a 90-consecutive-day period;

2. The common area required in R9-10-722(B)(1)(b) provides at least 25 square feet for each resident, including residents who do not stay overnight; and

3. In addition to the requirements in R9-10-722(B)(3), toilets and hand-washing sinks are available to residents, including residents who do not stay overnight, as follows:

a. There is at least one working toilet that flushes and has a seat and one sink with running water for every 10 residents,

b. There are at least two working toilets that flush and have seats and two sinks with running water if there are 11 to 25 residents, and

c. There is at least one additional working toilet that flushes and has a seat and one additional sink with running water for each additional 20 residents.

F. A medical history and physical examination is not required for a child who is admitted or expected to be admitted to a residential behavioral health facility for less than 10 days in a 90-consecutive-day period.

9. Arizona Administrative Code § R9-10-708 provides:

Treatment Plan

A. An administrator shall ensure that a treatment plan is developed and implemented for each resident that:

1. Is based on the medical history and physical examination or nursing assessment required in R9-10-707(A)(6) or (E)(1)(a) and the behavioral health assessment required in R9-10-707(A)(9) or (10) and on-going changes to the behavioral health assessment of the resident;
2. Is completed:
    a. By a behavioral health professional or a behavioral health technician under the clinical oversight of a behavioral health professional, and
    b. Before the resident receives physical health services or behavioral health services or within 48 hours after the assessment is completed;
3. Is documented in the resident's medical record within 48 hours after the resident first receives physical health services or behavioral health services;
4. Includes:
    a. The resident's presenting issue;
    b. The physical health services or behavioral health services to be provided to the resident;
    c. The signature of the resident or the resident's representative and date

signed, or documentation of the refusal to sign;

d. The date when the resident's treatment plan will be reviewed;

e. If a discharge date has been determined, the treatment needed after discharge; and

f. The signature of the personnel member who developed the treatment plan and the date signed;

5. If the treatment plan was completed by a behavioral health technician, is reviewed and signed by a behavioral health professional within 24 hours after the completion of the treatment plan to ensure that the treatment plan is complete and accurate and meets the resident's treatment needs; and

6. Is reviewed and updated on an on-going basis:

a. According to the review date specified in the treatment plan,

b. When a treatment goal is accomplished or changed,

c. When additional information that affects the resident's behavioral health assessment is identified, and

d. When a resident has a significant change in condition or experiences an event that affects treatment.

B. An administrator shall ensure that:

1. A request for participation in developing a resident's treatment plan is made to the resident or the resident's representative,

2. An opportunity for participation in developing the resident's treatment plan is

provided to the resident or the resident's representative, and
3. The request in subsection (B)(1) and the opportunity in subsection (B)(2) are documented in the resident's medical record.

10. Arizona Administrative Code § R9-10-712 provides:

Medical Records

A. An administrator shall ensure that:

1. A medical record is established and maintained for each resident according to A.R.S. Title 12, Chapter 13, Article 7.1;
2. An entry in a resident's medical record is:
    a. Recorded only by a personnel member authorized by policies and procedures to make the entry;
    b. Dated, legible, and authenticated; and
    c. Not changed to make the initial entry illegible;
3. An order is:
    a. Dated when the order is entered in the resident's medical record and includes the time of the order;
    b. Authenticated by a medical practitioner or behavioral health professional according to policies and procedures; and
    c. If the order is a verbal order, authenticated by the medical practitioner or behavioral health professional issuing the order;
4. If a rubber-stamp signature or an electronic signature is used to authenticate an order, the individual whose signature the rubber-stamp signature or electronic signature represents is accountable for the use of the rubber-stamp signature or electronic signature;

5. A resident's medical record is available to an individual:

   a. Authorized according to policies and procedures to access the resident's medical record;

   b. If the individual is not authorized according to policies and procedures, with the written consent of the resident or the resident's representative; or

   c. As permitted by law;

6. Policies and procedures include the maximum time-frame to retrieve a resident's medical record at the request of a medical practitioner, behavioral health professional, or authorized personnel member; and

7. A resident's medical record is protected from loss, damage, or unauthorized use.

B. If a behavioral health residential facility maintains residents' medical records electronically, an administrator shall ensure that:

1. Safeguards exist to prevent unauthorized access, and

2. The date and time of an entry in a resident's medical record is recorded by the computer's internal clock.

C. An administrator shall ensure that a resident's medical record contains:

1. Resident information that includes:

   a. The resident's name;

   b. The resident's address;

   c. The resident's date of birth; and

   d. Any known allergies, including medication allergies;

2. The name of the admitting medical practitioner or behavioral health professional;

3. An admitting diagnosis or presenting behavioral health issues;
4. The date of admission and, if applicable, date of discharge;
5. If applicable, the name and contact information of the resident's representative and:
   a. If the resident is 18 years of age or older or an emancipated minor, the document signed by the resident consenting for the resident's representative to act on the resident's behalf; or
   b. If the resident's representative:
      i. Has a health care power of attorney established under A.R.S. § 36-3221 or a mental health care power of attorney executed under A.R.S. § 36-3282, a copy of the health care power of attorney or mental health care power of attorney; or
      ii. Is a legal guardian, a copy of the court order establishing guardianship;
6. If applicable, documented general consent and informed consent for treatment by the resident or the resident's representative;
7. Documentation of medical history and results of a physical examination;
8. A copy of resident's health care directive, if applicable;
9. Orders;
10. If applicable, documentation that evaluation or treatment was ordered by a

court according to A.R.S. Title 36, Chapter 5 or A.R.S. § 8-341.01;
11. Assessment;
12. Treatment plans;
13. Interval notes;
14. Progress notes;
15. Documentation of behavioral health services and physical health services provided to the resident;
16. If applicable, documentation of the use of an emergency safety response;
17. If applicable, documentation of time-out required in R9-10-714(6) ;
18. Except as allowed in R9-10-707(E)(1)(d), documentation of freedom from infectious tuberculosis required in R9-10-707(A)(13) ;
19. The disposition of the resident after discharge;
20. The discharge plan;
21. The discharge summary, if applicable;
22. If applicable:
    a. Laboratory reports,
    b. Radiologic reports,
    c. Diagnostic reports, and
    d. Consultation reports; and
23. Documentation of medication administered to the resident that includes:
    a. The date and time of administration;
    b. The name, strength, dosage, and route of administration;
    c. For a medication administered for pain, when administered initially or on a PRN basis:
        i. An assessment of the resident's pain before administering the

medication, and

ii. The effect of the medication administered;

d. For a psychotropic medication, when administered initially or on a PRN basis:

i. An assessment of the resident's behavior before administering the psychotropic medication, and

ii. The effect of the psychotropic medication administered;

e. The identification, signature, and professional designation of the individual administering or providing assistance in the self-administration of the medication; and

f. Any adverse reaction a resident has to the medication.