ARIZONA COURT OF APPEALS

DIVISION ONE

HIGH DESERT HEALING, LLC, Plaintiff/Appellee, v. CEC 141202761, LLC, Defendant/Appellant.	Court of Appeals Division One No. 1 CA-CV 25-0653 Maricopa County Superior Court No. CV2021-016161 CV2021-053708

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TABLE OF CONTENTS

TABLE OF AUTHORITIES.....5

INTRODUCTION.....10

STATEMENT OF FACTS AND CASE.....11

I. The litigation culminating in the February 2023 judgment for High Desert.....11

II. High Desert's February 2024 Order to Show Cause Petition.....14

III. The April 2024 injunction.....16

IV. CEC's Rule 60 motion.....17

V. The superior court's partial grant and denial of Rule 60 relief.....19

VI. This appeal.....20

STATEMENT OF THE ISSUES.....20

STANDARD OF REVIEW.....21

ARGUMENT SUMMARY.....22

ARGUMENT.....25

I. High Desert's method of service satisfied Rule 5(c)(1) and due process.....25

A. Standard of review.....25

B. High Desert properly served CEC's attorney of record under Rule 5(c)(1).....26

1. Rule 5(c)(1) required High Desert to serve CEC's attorney of record, which it accomplished by sending its filing to Goldman via ECF and email.....26

2. CEC's claim that Goldman was not its attorney under Rule 5(c)(1) is meritless. 27

C. Rule 5(c)(4) did not apply because the judgment had not "become final after appeal." 30

1. Rule 5(c)(4) does not apply when an appeal has been taken but not yet resolved. 30

2. CEC's interpretation ignores the text, structure, and purpose of the rule. 32

D. Service under Rule 5(c)(1) did not violate due process because High Desert did not know Goldman was no longer representing or informing his client 37

1. Service under the rules comports with due process unless the serving party actually knows service will be ineffective. 37

2. High Desert did not have actual knowledge that serving Goldman under Rule 5(c)(1) would be ineffective. 40

E. Lack of notice did not otherwise require Rule 60(b)(1) or (b)(6) relief. 46

F. Even if erroneous, refusal to vacate the injunction due to improper service was harmless error. 52

II. The injunction did not exceed the court's authority. 53

A. The injunction is properly limited to claims about issues arising before the February 2023 judgment. 54

B. The injunction does not prohibit CEC from recovering attorneys' fees under Lease Section 33. 55

C. CEC's argument that the injunction violates A.R.S. § 12-1802(4) is waived, and is meritless because the court did not enjoin any public officer. 56

1. CEC's § 12-1802(4) argument is waived on appeal. 56

2. The injunction does not violate § 12-1802(4). 58

III. CEC's argument that the injunction misapplies claim preclusion is waived, is barred, and is meritless because judgments can preclude claims made to regulators. 60

A. CEC's claim preclusion argument is waived. 61

B. Law of the case bars CEC's argument that the superior court misapplied claim preclusion. 62

C. The superior court did not misapply claim preclusion. 64

IV. The court did not abuse its discretion in denying Rule 60(b)(3) relief. 68

A. CEC's Rule 60(b)(3) argument is untimely. 69

B. In any event, CEC's Rule 60(b)(3) argument is meritless. 70

V. The Court may also affirm because CEC did not supply the required transcript. 75

REQUEST FOR ATTORNEYS' FEES 76

CONCLUSION 76

TABLE OF AUTHORITIES

Cases

In re $46,523 in U.S. Currency,
244 Ariz. 351 (App. 2018) 41, 45

In re 50,820 Am. Eagle Coins,
2023 WL 2663232 (Ariz. Ct. App. Mar. 28, 2023) 38, 39

Alejandro v. Harrison,
223 Ariz. 21 (App. 2009) 34

B & B Hardware, Inc. v. Hargis Indus., Inc.,
575 U.S. 138 (2015) 68

Baker v. Baker,
183 Ariz. 70 (App. 1995) 75

Barlage v. Valentine,
210 Ariz. 270 (App. 2005) 39

Blair v. Burgener,
226 Ariz. 213 (App. 2010) ..... *passim*

Boatman v. Samaritan Health Servs.,
168 Ariz. 207 (App. 1990) 72

Boruch v. State ex rel. Halikowski,
242 Ariz. 611 (App. 2017) 59

Circle K Corp. v. Indus. Comm'n,
179 Ariz. 422 (App. 1994) 67

Columbia Grp., Inc. v. Jackson,
151 Ariz. 76 (1986) 37

Columbia Grp., Inc. v. Jackson,
151 Ariz. 86 (App. 1985) 37

State ex rel. Corbin v. Portland Cement Ass'n,
142 Ariz. 421 (App. 1984) 53

Creach v. Angulo,
189 Ariz. 212 (1997) 22, 52

In re Drummond,
257 Ariz. 15 (2024) 32, 33

Dusenbery v. United States,
534 U.S. 161 (2002) 37

Epperson v. Indus. Comm'n,
26 Ariz. App. 467 (1976) 52

Est. of Page v. Litzenburg,
177 Ariz. 84 (App. 1993) 70, 71, 72, 73

Firishchak v. Holder,
636 F.3d 305 (7th Cir. 2011) 68

Fry v. Garcia,
213 Ariz. 70 (App. 2006) 69

Gonzalez v. Nguyen,
243 Ariz. 531 (2018) 50, 51

Graybill v. U.S. Postal Serv.,
782 F.2d 1567 (Fed. Cir. 1986) 68

Hall v. Lalli,
194 Ariz. 54 (1999) 67

Hancock v. O'Neil,
253 Ariz. 509 (2022) 67

Harper v. Pima Cnty. Treasurer,
2023 WL 4982005 (Ariz. Ct. App. Aug. 3, 2023) 39

Harris v. Cochise Health Sys.,
215 Ariz. 344 (App. 2007) 22, 46, 56, 62

Hilgeman v. Am. Mortg. Sec., Inc.,
196 Ariz. 215 (App. 2000) 42

Kline v. Kline,
221 Ariz. 564 (App. 2009) 28, 29, 36

Malnar v. Joice,
236 Ariz. 170 (2014) 37, 38, 45, 46

Mara M. v. Arizona Dep't of Econ. Sec.,
201 Ariz. 503 (App. 2002) 36

Mirchandani v. BMO Harris Bank, N.A.,
235 Ariz. 68 (App. 2014) 64, 65

Morrison v. Shanwick Int'l Corp.,
167 Ariz. 39 (App. 1990) 40, 52

Mullane v. Cent. Hanover Bank & Tr. Co.,
339 U.S. 306 (1950) 37, 38, 45

Navajo Cnty. v. Superior Ct. In & For Maricopa Cnty.,
105 Ariz. 248 (1969) 31

Pac. Greyhound Lines v. Brooks,
70 Ariz. 339 (1950) 62, 64

Panzino v. City of Phx.,
196 Ariz. 442 (2000) 50, 51

Parker Law Team, PLLC v. CEC 141202761, LLC,
2025 WL 3240167 (Ariz. Ct. App. Nov. 20, 2025) 10, 49, 51

Parks v. Rawson,
134 Ariz. 495 (App. 1982) 22

Peabody Coal Co. v. Navajo Cnty.,
117 Ariz. 335 (1977) 31

Pro Finish USA, Ltd. v. Johnson,
204 Ariz. 257 (App. 2003) 42

Ramos v. Nichols,
252 Ariz. 519 (App. 2022) 70

Schatt v. O. S. Stapley Co.,
84 Ariz. 58 (1958) 40

Sloan v. Fla.-Vanderbilt Dev. Corp.,
22 Ariz. App. 572 (1974) 47

Sycamore Hills Ests. Homeowners Ass'n, Inc. v. Zablotny,
250 Ariz. 479 (App. 2021) 22, 25

Tumacacori Mission Land Dev., Ltd. v. Union Pac. R. Co.,
231 Ariz. 517 (App. 2013) 67

W. Coach Corp. v. Mark V Mobile Homes Sales, Inc.,
23 Ariz. App. 546 (1975) 48

Windrose Ests. Homeowners Ass'n v. Wright,
__ Ariz. __, 2025 WL 3623023 (App. Dec. 15, 2025) 39

Woodbridge Structured Funding, LLC v. Arizona Lottery,
235 Ariz. 25 (App. 2014) 21, 74

Wuchter v. Pizzutti,
276 U.S. 13 (1928) 38

Statutes & Rules

A.R.S. § 12-341.01 76

A.R.S. § 12-1801 ..... 14, 53, 60

A.R.S. § 12-1802 ..... *passim*

A.R.S. § 12-2101 20

Ariz. R. Civ. P. 4 ..... *passim*

Ariz. R. Civ. P. 5 ..... *passim*

Ariz. R. Civ. P. 6 69

Ariz. R. Civ. P. 13 17

Ariz. R. Civ. P. 60 .....*passim*

Ariz. S. Ct. Rule 72 .....27, 28, 69

Other Authorities

Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* (2012).....32

INTRODUCTION

CEC lost this case at trial and on appeal. After a four-day bench trial, the superior court ruled that CEC, not High Desert, breached the parties' lease. This Court affirmed. Yet CEC refused to accept that judgment. Instead, CEC embarked on a campaign of post-judgment harassment, repeatedly asserting to High Desert, regulators, and insurers the very claims the judgment had already resolved against it.

When High Desert sought an injunction to stop this harassment, CEC's attorney failed to respond. That failure was not High Desert's fault. High Desert served CEC's counsel of record under Rule 5(c)(1)—exactly as required. The filing went through the court's electronic system, was mailed to counsel's office, and followed up by email. None were returned. CEC now asks this Court to vacate the resulting injunction because CEC's lawyer apparently stopped communicating with his client without telling anyone.

That is not how Arizona law works. An attorney who has entered an appearance remains responsible until he withdraws or is substituted. CEC knew its lawyer had problems—indeed, this Court recently affirmed denial of Rule 60 relief in *another* case where the same attorney abandoned CEC. *Parker Law Team, PLLC v. CEC 141202761, LLC*, 2025 WL 3240167 (Ariz. Ct.

App. Nov. 20, 2025). CEC did nothing. It cannot now shift the consequences of that inaction to High Desert.

CEC's remaining arguments fare no better. Its claims that the injunction exceeds the court's authority ignore the superior court's clarification limiting the order to pre-judgment conduct—exactly what CEC requested. Its arguments about claim preclusion and statutory violations were never raised below and are therefore waived. And its Rule 60(b)(3) fraud claim is both untimely and meritless.

The superior court properly enforced its judgment against a party that refuses to accept that it lost. This Court should affirm.

STATEMENT OF FACTS AND CASE

I. The litigation culminating in the February 2023 judgment for High Desert.

Defendant/Appellant CEC 141202761, LLC ("CEC"), owns a building in Chandler, Arizona that it leased to Plaintiff/Appellee High Desert Healing, LLC ("High Desert"), to operate a medical marijuana dispensary. IR-194 at 3, ¶ 1 (prior appellate decision in this case).

High Desert sued CEC in 2021, challenging CEC's lease termination and refusal to consent to High Desert's lease assignment. *Id.* at 4-5, ¶¶ 6-7.

CEC based that termination and refusal on purported lease breaches, including failure to obtain consent for an earlier assignment, failure to pay rent, and failure to pay an assignment fee. IR-44 at 6-8, ¶¶ 31, 41, 43 (APP024-26); *id.* at 10-13 (APP028-31). The superior court consolidated the case with a separate action in which CEC sought to evict High Desert for the same alleged breaches. IR-194 at 5, ¶ 7; IR-44 at 10 (APP028).

High Desert won after a four-day bench trial in May 2022. IR-194 at 5, ¶ 7. In June 2022, the superior court "ruled that High Desert did not breach the Lease, CEC did breach the Lease, and CEC was obligated to approve the assignment and could not evict High Desert." *Id.* ¶ 8; *see* IR-44 at 10-15 (APP028-33).

Despite losing in court, in November 2022, CEC sent High Desert a "Notice of Breach of Lease" alleging various breaches dating back to 2019 that were either already litigated or could have been raised as counterclaims. IR-69, Ex. 1. The Notice included claims about uncured breaches from 2019 arising from "[s]tructural, mechanical, and electrical construction modifications [that] were made to premises without building permit." *Id.*, Ex. 1 at 2-3.

In response, High Desert "request[ed] that the Court issue an order to Defendant CEC … to appear and show cause … why the Nov 2022 'Notice of Breach of Lease,'" among other similar Notices, "should not be declared invalid" given the court's June 2022 ruling for High Desert. IR-69 at 5. High Desert explained that CEC's "Notice … alleges breaches that date back to 2019 that … were required to be raised as compulsory counterclaims in the previous action pursuant to Rule 13(a)[.]" *Id.* at 3. Specifically, the "purported unpermitted construction … that CEC allege[d]" from 2019 "predate[d]" the filing of CEC's answer and the May 2022. *Id.* at 3-4. The superior court's ruling acknowledged that, in the lead-up to litigation, "CEC expressed objections … about the nature and extent of the construction and improvements" completed "without CEC's approval." IR-44 at 1-2 (APP019-20). So, High Desert explained, "[t]o the extent that any breach or default allegedly existed" regarding such construction, "Defendant was aware of it, and was required to raise the same as a compulsory counterclaim in the underlying action." IR-69 at 5. Yet, "CEC did not allege any counterclaim, and thus has waived any such theory of breach." *Id.*

The superior court agreed and entered judgment for High Desert on February 7, 2023. IR-78 at 1 (APP035).

Consistent with its June 2022 ruling, the judgment (1) declared High Desert "did not breach the Lease"; (2) directed CEC to "approve" High Desert's lease assignment; (3) "dismissed" CEC's "forcible entry and detainer claim" seeking eviction; (4) "permanently enjoined" CEC "from contending and/or acting as if the Lease … had been terminated as a result of any issues decided in this action," and (5) "declared" that CEC's post-trial Notices, including the "November 13, 2022 'Notice of Breach of Lease' … are invalid, for the reasons set forth in" High Desert's "applications for orders to show cause." IR-78 at 2-3 (APP036-37).

CEC appealed that February 2023 judgment. In a decision issued February 29, 2024, this Court affirmed. IR-194. The appeal then continued as the parties litigated CEC's motion for reconsideration and Supreme Court petition. The judgment became final on December 26, 2024, when this Court issued its mandate. *Id.*

II. High Desert's February 2024 Order to Show Cause Petition.

On February 21, 2024—while CEC's appeal from the judgment remained pending (and before this Court issued its decision, let alone the appellate mandate)—High Desert filed a Petition for Order to Show Cause ("OSC Petition") seeking an injunction under A.R.S. § 12-1801 to enforce the

judgment. IR-154 (APP057). High Desert sought that injunction because after the February 2023 judgment, CEC continued to reassert claims (to High Desert, regulators, and insurers) that the judgment had already resolved against CEC. These included claims about unpermitted construction that the judgment declared invalid because they needed to be raised as counterclaims. IR-154 at 12-14 (APP068-70).

High Desert served its OSC Petition on CEC's counsel of record (Mark Goldman) under Rule 5(c)(1), which required service on CEC's attorney rather than CEC: "If a party is represented by an attorney, service under this rule must be made on the attorney unless the court orders or a specific rule requires service on the party." Ariz. R. Civ. P. 5(c)(1). High Desert served Goldman via ECF, with a courtesy copy by mail and an email follow-up; none were returned. IR-221 at 2 (APP051); IR-193, Ex. D at 3-4, ¶¶ 10-11 (APP503-04).

"[T]o the best of [High Desert's] knowledge, Goldman continued to represent CEC" at all relevant times. *Id.* at 4, ¶ 13 (APP504). When it served the OSC Petition, High Desert had only heard "[Goldman] had been temporarily suspended for a thirty day period in the fall of 2023," a suspension which had ended months earlier. *Id.* ¶ 14, (APP504).

III. The April 2024 injunction.

The superior court ordered CEC to respond to the OSC Petition by March 8, 2024, but CEC did not submit any response. IR-160 at 2 (APP042). High Desert then "submitted a proposed Order Granting Relief." *Id.*; IR-159 (proposed order).

On April 9, 2024, the superior court entered an order stating that it "has reviewed and approves" High Desert's requested injunction. IR-160 at 2 (APP042). The order found, among other things, that High Desert "presented credible, admissible evidence" that (1) "CEC issued correspondence falsely claiming that it had the right to charge Plaintiffs 'legal fees' on account of supposed 'unauthorized modifications' to the leased property, which … all occurred … prior to the February 7, 2023 Judgment," and (2) "CEC falsely raised issues of alleged building safety, building code violations and unauthorized modifications … which allegedly arose and supposedly were in existence prior to the February 7, 2023 Judgment." *Id.* at 3 (APP043). The order explained that "[i]f CEC wished to raise th[ose] issues …, then … it was required to do so, if at all, during the litigation of this matter before the February 7, 2023 Judgment issued." *Id.*

The judgment therefore precluded CEC from making those claims "because of the application of Rule 13(a), Ariz. R. Civ. P." *Id.* at 4 (APP044).

Accordingly, the court "enjoined" CEC from making a variety of claims resolved by the court's judgment, including "[c]laiming there is any current or prior issue concerning any building safety or building code rule, regulation, ordinance or law violation caused by Plaintiffs," and "[c]laiming that there is any current or prior obligation of any Plaintiff to pay for any legal fees incurred by CEC." *Id.*

IV. CEC's Rule 60 motion.

Almost eight months later and represented by different counsel, CEC moved for Rule 60 relief from the April 2024 injunction. IR-181 (APP259). CEC's Rule 60 motion made four arguments. First, CEC argued that the injunction should not prevent it from raising code and safety violations at the leased property that were documented from June to September 2024, after the court's April 2024 injunction. *Id.* at 5-7 (APP263-65). Second, CEC argued that the injunction should not prevent it from seeking attorneys' fees under Section 33 of the lease. *Id.* at 7-8 (APP265-66). Third, CEC argued that the injunction should be vacated because High Desert did not disclose certain regulatory notices of code violations that postdated the court's

judgment. *Id.* at 9 (APP267). And fourth, CEC argued that the court should vacate the injunction (or reconsider it) because CEC's previous failure to oppose it was caused by High Desert's improper service of the OSC Petition. *Id.* at 9-10 (APP267-68). CEC's Rule 60 motion did not present any other grounds for relief.

High Desert responded that: (1) its service satisfied the applicable Rules of Civil Procedure and due process, IR-192 at 4-6 (APP449-51); (2) its failure to disclose post-judgment regulatory notices was irrelevant to the OSC Petition, which sought only to enforce the judgment that precluded CEC from claiming earlier code and safety issues, *id.* at 6-7 (APP451-52); and (3) the injunction did not in fact prevent CEC from raising post-judgment code issues or from seeking attorneys' fees under lease Section 33, *id.* at 7-9 (APP452-54).

CEC then filed a reply submitted by new attorneys who quickly withdrew because they had a direct conflict of interest. *See* IR-196 (APP548) (reply); IR-198 (withdrawal).

Five months later, and just two days before oral argument, CEC filed a "Motion to Supplement the Record" in support of its Rule 60 motion. IR-212 (APP560). CEC included new material that did not exist when the court

issued the April 2024 injunction. *See* IR-212 at 3-4 (APP562-63). It also presented new substantive arguments that CEC's Rule 60 motion had not raised.

V. The superior court's partial grant and denial of Rule 60 relief.

After hearing oral argument, the superior court partially granted and denied CEC's Rule 60 motion. IR-221 (APP050).

The superior court first explained that it "considered the filings and arguments of the Parties, the relevant authorities and applicable law, as well as the entire record of the case." *Id.* That included full consideration of CEC's supplemental record material. *See id.* ("granting Defendant's Motion to Supplement" because "long-established policy 'favors deciding cases on their merits'" and "Plaintiffs had an opportunity to address the supplemental material"). But the court "did not consider" CEC's Rule 60 reply because it was submitted by attorneys with a direct conflict of interest. *Id.*

The court rejected CEC's improper-service argument. It found that "Goldman was still CEC's attorney of record" and that Rule 5(c)(4) did not apply because the judgment had not "become final after appeal." *Id.* at 2-3 (APP051-52).

On scope, the court clarified that "current" means issues existing on or before February 7, 2023, and that CEC is not barred from seeking fees under the lease. The court granted the motion in part as to this clarification but denied all other relief. IR-221 at 3-4 (APP052-53).

VI. This appeal.

CEC appealed from the superior court's ruling on CEC's Rule 60 motion, which the superior court later signed. IR-226 (APP635); IR-245. The Court has jurisdiction under A.R.S. §§ 12-2101(A)(2) and (A)(5)(b).

STATEMENT OF THE ISSUES

1. Whether the superior court erred in denying CEC's Rule 60 request to vacate an injunction due to improper service, even though High Desert complied with the required service method under Ariz. R. Civ. P. 5(c)(1) and did not know that method failed to apprise CEC.

2a. Whether the superior court erred in denying CEC's Rule 60 argument that the injunction exceeded the judgment's scope, even though the court clarified the injunction does not reach claims about post-judgment activity and does not prohibit CEC from recovering attorneys' fees under the lease.

2b. Whether this Court should vacate the injunction for violating A.R.S. § 12-1802(4), even though CEC did not raise this argument below and the injunction does not enjoin any "officers of the law," § 12-1802(4).

3. Whether this Court should vacate the injunction for applying claim preclusion to regulatory claims, even though (a) CEC did not raise this argument below, (b) failed to raise any claim-preclusion argument in the prior appeal affirming the court's judgment, and (c) the injunction precluded only claims resolved by that judgment.

4. Whether the superior court abused its discretion in denying Rule 60(b)(3) relief based on High Desert's alleged misrepresentation that regulators had resolved certain code and safety issues, even though (a) that argument is untimely, (b) High Desert accurately represented the court's resolution of those issues, (c) the allegedly misrepresented events largely postdated High Desert's representations, and (d) CEC's evidence did not affect the injunction and was ultimately considered by the court.

STANDARD OF REVIEW

This Court "review[s] a trial court's denial of relief … under Rule 60 for an abuse of discretion," and "[t]rial courts enjoy broad discretion" when deciding Rule 60 motions. *Woodbridge Structured Funding, LLC v. Arizona*

Lottery, 235 Ariz. 25, 29-30, ¶ 21 (App. 2014). The trial court abused its discretion if this Court determines "*de novo*" that the trial court erred on "a question of law." *Sycamore Hills Ests. Homeowners Ass'n, Inc. v. Zablotny*, 250 Ariz. 479, 482, ¶ 6 (App. 2021). But the trial court's factual findings are reviewed for "clear error." *Parks v. Rawson*, 134 Ariz. 495, 498 (App. 1982). This "[C]ourt will not second-guess or substitute our judgment for that of the trial court on questions of disputed fact" that influenced the denial of Rule 60 relief. *Blair v. Burgener*, 226 Ariz. 213, 220, ¶ 23 (App. 2010) (quotation marks omitted).

In addition, this Court "will not consider issues not raised in the trial court," which are "waived on appeal." *Harris v. Cochise Health Sys.*, 215 Ariz. 344, 349, ¶ 17 (App. 2007). Nor will it disturb the trial court's order based on a "harmless error" that caused "no prejudice." *Creach v. Angulo*, 189 Ariz. 212, 215-16 (1997).

ARGUMENT SUMMARY

The superior court correctly denied CEC's motion for Rule 60 relief. CEC's arguments on appeal fail for multiple independent reasons.

High Desert properly served its February 2024 OSC Petition under Rule 5(c)(1). That rule required service on CEC's attorney, which High

Desert satisfied by serving CEC's attorney of record, Mark Goldman. (Argument § I.B.)

CEC's argument that Rule 5(c)(4) required personal service instead misreads the rule. Rule 5(c)(4) applies only after "the time for appeal from a judgment has expired" or "a judgment has become final after appeal." When an appeal remains pending, as here, the judgment has not achieved finality under either pathway. The judgment became final only when this Court issued its mandate in December 2024—months after the injunction issued. CEC's interpretation would render "become final after appeal" superfluous. (Argument § I.C.)

High Desert's service also satisfied due process, which requires only that service be "reasonably calculated" to apprise the opposing party—not that actual notice occur. High Desert had no knowledge that serving Goldman would be ineffective. CEC's arguments about what High Desert knew misrepresent the record. (Argument § I.D.)

CEC's fallback arguments under Rule 60(b)(1) and (b)(6) are waived because CEC never raised them below, and are untimely because CEC waited eight months to file. On the merits, attorney abandonment does not warrant Rule 60(b)(6) relief—as this Court recently held in another case

where the same attorney abandoned CEC. (Argument § I.E.) Any service error was also harmless because CEC ultimately received full consideration of its arguments. (Argument § I.F.)

CEC's arguments that the injunction exceeds its proper scope do not accurately reflect the injunction. The superior court clarified that the injunction reaches only issues existing on or before February 7, 2023. It does not prevent CEC from raising post-judgment code violations or seeking attorneys' fees under the lease. (Argument §§ II.A-II.B.)

CEC's remaining arguments—that the injunction violates A.R.S. § 12-1802(4) and misapplies claim preclusion—are waived because CEC never raised them below. (Argument §§ II.C.1, III.A.) They also fail on the merits. Section 12-1802(4) bars injunctions against "officers of the law," not private parties like CEC. (Argument § II.C.2.) And the February 2023 judgment already ruled that CEC's claims about pre-judgment code violations were barred as unraised compulsory counterclaims; the injunction simply enforces that ruling. (Argument § III.B-III.C.)

CEC's Rule 60(b)(3) fraud argument is untimely and meritless. Nearly all of CEC's evidence postdates the injunction. CEC cannot show any

misrepresentation occurred, was material, or interfered with its ability to present its case. (Argument § IV.)

Finally, the Court may also summarily affirm because CEC did not supply necessary transcripts. (Argument § V.)

The Court should affirm.

ARGUMENT

I. High Desert's method of service satisfied Rule 5(c)(1) and due process.

A. Standard of review.

This Court "review[s] the denial of a Rule 60(b)(4) motion *de novo*" because whether "a judgment is void" for lack of jurisdiction under Rule 60(b)(4) "is a question of law." *Sycamore Hills Ests. Homeowners Ass'n, Inc. v. Zablotny*, 250 Ariz. 479, 482, ¶ 6 (App. 2021). Still, a party requesting Rule 60 relief on the ground that an order is void due to improper "[s]ervice of process" must prove improper service "by clear and convincing evidence … [a]nd this court will not second-guess or substitute our judgment for that of the trial court on questions of disputed fact" that are relevant to proper service. *Blair*, 226 Ariz. at 220, ¶ 23 (quotations and citations omitted).

B. High Desert properly served CEC's attorney of record under Rule 5(c)(1)

1. Rule 5(c)(1) required High Desert to serve CEC's attorney of record, which it accomplished by sending its filing to Goldman via ECF and email.

The superior court correctly found that High Desert's service complied with the rules. APP052. High Desert properly served its OSC Petition under Rule 5(c)(1), which required service on CEC's attorney rather than CEC: "If a party is represented by an attorney, service under this rule must be made on the attorney unless the court orders or a specific rule requires service on the party." Ariz. R. Civ. P. 5(c)(1).

When High Desert filed its OSC Petition on February 21, 2024, Goldman was CEC's attorney of record and had not filed any withdrawal or substitution. High Desert thus properly served under Rule 5 by "transmitting [the filing] through an electronic filing service provider." Ariz. R. Civ. P. 5(c)(2)(E); *see* IR-221 at 2 (APP051). High Desert also physically "mailed a courtesy copy to CEC's counsel," *id.*, and then followed up by email, IR-193, Ex. D at 3 (APP503). The superior court thus found "that Goldman was still CEC's attorney of record and that Plaintiffs properly served CEC under" Rule 5(c)(1). IR-221 at 3 (APP052).

2. CEC's claim that Goldman was not its attorney under Rule 5(c)(1) is meritless.

CEC argues (at 21-23) that when High Desert filed its OSC Petition, Goldman could no longer be considered CEC's "attorney" for purposes of Rule 5(c)(1) because he had earlier been suspended for 30 days, did not file anything on the docket about his suspension, and did not file another notice of appearance once his suspension ended. But these facts confirm, rather than refute, that Goldman remained CEC's attorney of record in this case at all relevant times. Goldman never indicated to the court or High Desert that he was no longer CEC's attorney of record.

Supreme Court Rule 72 did not require him to do so during or after his brief suspension. Goldman's 30-day suspension in Fall 2023 did not require him to withdraw, associate other counsel, or reappear after his suspension ended. Under Rule 72(b)(1), "[i]n the case of suspensions of sixty (60) days or less, the suspended lawyer *may choose*," but is not required, "to associate with another lawyer … during the period of suspension" and is only obligated "not to practice law *during the period of suspension*." Ariz. S. Ct. Rule 72 (emphases added). Here, Goldman and CEC were not required to, and chose not to, associate other counsel during Goldman's suspension.

When High Desert filed its OSC Petition, Goldman was not suspended and was authorized to practice law.

Nor did Rule 72 require Goldman to reenter an appearance. A new appearance is required only if the lawyer and client chose to associate other counsel:

> It shall also be the responsibility of the lawyer, upon reinstatement to active status, to file either a notice of appearance as counsel of record *and dissolve the association*, or move for leave to withdraw in the relevant matters.

Ariz. S. Ct. Rule 72(b)(1) (emphasis added).

CEC offers no authority for its assertion (at 28) that Rule 72 "requires affirmative steps—association, withdrawal, or reappearance—before representation resumes" after a 30-day suspension. CEC cites (at 22) *Kline v. Kline*, 221 Ariz. 564 (App. 2009). But, *Kline* stands only for the proposition that service under "Rule 5 presupposes an [attorney] appearance and does not replace the need for Rule 4 service *on non-appearing parties*." Opening Br. 22 (emphasis added). *Kline* does not address Rule 72, suspension, or the need to reenter an appearance. It held only that service under Rule 4 was required where, unlike here, the attorney *had never appeared*—he was merely an attorney who represented the party in another case. 221 Ariz. at 569-70,

¶ 19-20. *Kline* also clarified that an attorney who has not appeared but has been "retained by an individual does not automatically qualify as an agent authorized by appointment to receive service" *under Rule 4*. *Id.* at 570, ¶ 19. That does not change the fact that the attorney who *has* entered an appearance can be served under Rule 5.

Nor is there merit to CEC's assertion (at 21) that proper service under Rule 5(c)(1) hinges on whether there is "an actual, ongoing attorney-client relationship" rather than an "appearance." CEC cites no authority for such a rule, which would require the court and the serving party (before every filing) to reconfirm that the attorney of record remains in an ongoing attorney-client relationship with the opposing party. That is the point of the appearance that triggers Rule 5—to put the court and opposing party on notice that the attorney is representing the client and authorized to receive service. Indeed, Rule 5.3 specifically confirms that High Desert and the court were entitled to rely on Goldman's undisturbed appearance for purposes of Rule 5(c)(1):

> Once an attorney has appeared as an attorney of record in an action, the attorney will be deemed responsible as the party's attorney of record in all matters involving the action until the action ends or the attorney withdraws as the party's attorney or is substituted.

Ariz. R. Civ. P. 5.3(a)(1)(B). If Goldman was no longer acting as CEC's attorney, it was his and CEC's responsibility to enter a withdrawal or substitution. They did not.

C. Rule 5(c)(4) did not apply because the judgment had not "become final after appeal."

1. Rule 5(c)(4) does not apply when an appeal has been taken but not yet resolved.

CEC's primary argument about service (at 16-20) is that Rule 5(c)(4)'s service requirements applied, instead of Rule 5(c)(1)'s. The superior court correctly rejected this argument.

Rule 5(c)(4) does not apply when an appeal has been taken but is not yet resolved:

> *After the time for appeal from a judgment has expired or a judgment has become final after appeal*, a motion, petition, complaint, or other pleading requesting modification, vacation, or enforcement of that judgment must be served in the same manner that a summons and pleading are served under Rule 4, 4.1, or 4.2, as applicable.

(emphasis added). Rule 5(c)(4) applies once a judgment has achieved finality. That happens in one of two ways: (1) when no appeal is taken, the judgment becomes final when "the time for appeal … has expired" or, (2) when an appeal is taken, after the "judgment has become final after

appeal." But when an appeal has been timely filed and remains pending, appellate review is ongoing and Rule 5(c)(1) still applies.

Here, Rule 5(c)(4) did not apply because CEC had filed an appeal and the judgment had not "become final after appeal." High Desert filed the OSC Petition on February 21, 2024, before the Court of Appeals had even issued its decision (on February 29). *See* IR-194 at 2. Even after the decision, the appeal continued, as the parties litigated CEC's motion for reconsideration and petition for review. The judgment did not become "final after appeal" under Rule 5(c)(4) until December 26, 2024, when the Court of Appeals issued the mandate. IR-194 at 1. "The final judgment, where an appeal is taken, is upon the return of the mandate." *Navajo Cnty. v. Superior Ct. In & For Maricopa Cnty.*, 105 Ariz. 248, 249 (1969); *accord Peabody Coal Co. v. Navajo Cnty.*, 117 Ariz. 335, 337 (1977) (judgment final "upon return of the mandate").

Accordingly, the superior court correctly ruled that Rule 5(c)(4) "does not apply because the case was on appeal at the time the Petition was filed," IR-221 at 3 (APP052), and so the judgment had not "become final after appeal," Rule 5(c)(4).

2. CEC's interpretation ignores the text, structure, and purpose of the rule.

To evade that result, CEC (at 17) asks this Court to rule that the first part of Rule 5(c)(4) ("[a]fter the time for appeal from a judgment has expired") applies even when an appeal has been filed and not yet resolved. This interpretation violates the text, structure, and purpose of the rule.

As a textual matter, when a party timely files a notice of appeal, the time for appeal has not "expired"; it has been *exercised*. The appeal period exists to provide an opportunity for appellate review. After that opportunity has been invoked, the appeal deadline has served its function and has not "expired" in the sense that it bars appellate review.

Moreover, CEC's interpretation reads that part of the rule out of context. CEC argues that Rule 5(c)(4) applied here as soon as the 30-day appeal clock ran because, at that point, "the time for appeal … ha[d] expired." According to CEC, Rule 5(c)(4) always applies after 30 days, even in cases (like this one) where an appeal was timely filed and the judgment has not yet "become final after appeal."

But "[c]ontext is a primary determinant of meaning." *In re Drummond*, 257 Ariz. 15, 18, ¶ 5 (2024) (quoting Antonin Scalia & Bryan A.

Garner, *Reading Law: The Interpretation of Legal Texts* 167 (2012)). Consequently, the words in the first clause cannot be "view[ed] … in isolation, but rather draw their meaning from the context in which they are used." *Drummond*, 257 Ariz. at 19, ¶ 9.

Here, the two clauses ("After the time for appeal from a judgment has expired" and "a judgment has become final after appeal") are not independent alternatives. Instead, they serve as complementary descriptions of the two mutually exclusive pathways by which a judgment achieves finality. The first clause applies when an appeal has not been taken, and the second applies after an appeal concludes. The disjunctive "or" connecting them ensures that the rule covers both scenarios. It does not serve to sever each clause from its context. "After the time for appeal … has expired" must therefore refer to situations where a notice of appeal was not filed before the deadline expired. Both clauses describe the same event—finality—reached through different means. Reading them as independent would allow Rule 5(c)(4) to apply while an appeal is still pending and the judgment remains non-final, an absurd result that would subject post-judgment filings during a pending appeal to Rule 4 service.

Indeed, "in construing a rule," courts must "attempt[] to give meaning to every word, … not making any word superfluous." *Alejandro v. Harrison*, 223 Ariz. 21, 23-24, ¶ 8 (App. 2009). CEC's interpretation, however, renders the second clause (when "a judgment has become final after appeal") entirely superfluous. If the first clause already applies once thirty days pass regardless of appellate activity, then the second clause adds nothing: a judgment that "has become final after appeal" always will have passed the thirty-day mark. To give meaning to the second clause, the Court must reject CEC's interpretation. The correct interpretation is that Rule 5(c)(4) applies once the judgment has achieved finality, whether because the appeal deadline lapsed without an appeal being taken, or because an appeal was taken and concluded.

The purpose of the rule confirms this interpretation. Rule 5(c)(4) responds to a basic feature of legal representation. When a case concludes, the attorney-client relationship typically terminates as a matter of course, without needing to formally withdraw. This natural termination creates a practical problem for post-judgment proceedings. Service on "counsel of record" presupposes that the counsel of record is engaged. While a lawsuit

is ongoing, this assumption works well. After the final conclusion of a case, however, the assumption may no longer hold.

Rule 5(c)(4) addresses this problem by requiring personal service once a judgment has achieved finality, whether because no appeal was taken before the deadline lapsed, or because appellate proceedings have concluded. At that point, it may no longer be reasonable to assume the lawyer continues to represent the client.

None of these concerns applies while an appeal is pending. A party pursuing an appeal (particularly as the appellant) knows that the judgment has not yet achieved finality. If the party is represented by counsel, the attorney remains engaged and continues to owe duties to the client, unless the attorney files a withdrawal or substitution. Consequently, the foundational premise of Rule 5(c)(1) (i.e., that service on counsel will reach the client) remains reasonable, and Rule 5(c)(4) does not apply.

Here, Goldman continued to owe duties to CEC while CEC pursued its appeal. To be relieved of those duties, Goldman had to withdraw or substitute out. CEC was actively litigating its appeal when High Desert filed the Petition. Accordingly, until the judgment achieved finality, Rule 5(c)(4) did not apply.

That understanding is how CEC and its attorneys proceeded. After judgment had been entered, David Abney filed a notice of appearance, indicating that he was "appearing in this matter as additional counsel for Defendant CEC[.]" IR-82 (emphasis in original). He emphasized "additional," reflecting his understanding that Goldman would continue to represent CEC. And Abney filed this notice one day before the appeal deadline, further confirming that CEC and its attorneys did not view the appeal deadline as terminating Goldman's role.

CEC offers no case supporting its contrary interpretation. It cites (at 18) *Mara M. v. Arizona Dep't of Econ. Sec.*, 201 Ariz. 503 (App. 2002), but *Mara. M.* held only that "a motion to terminate a parent's rights … does not seek to modify, vacate or enforce a final judgment" and so did not implicate Rule 5's provision for serving post-judgment motions. *Id.* at 507, ¶ 22. CEC cites (at 18-19) *Kline v. Kline*, 221 Ariz. 564 (App. 2009), but *Kline* did not interpret or apply Rule 5(c)(4). Rather, it held that service on an attorney who had represented a party in a *different* case was insufficient where "there was no evidence … [the attorney] appeared to represent [the party] in the new action." *Id.* at 570, ¶ 20.

For these reasons, the superior court correctly found that Rule 5(c)(4) "does not apply because the case was on appeal at the time the Petition was filed." IR-221 at 3 (APP052).

D. Service under Rule 5(c)(1) did not violate due process because High Desert did not know Goldman was no longer representing or informing his client

1. Service under the rules comports with due process unless the serving party actually knows service will be ineffective.

In denying CEC's Rule 60 request based on improper service, "the trial court necessarily rejected their arguments that the service … was inconsistent with … due process." *Blair*, 226 Ariz. at 220, ¶ 23. The superior court was correct. High Desert's compliance with Rule 5(c)(1) also satisfied due process.

"Due process does not require receipt of actual notice" by CEC. *Columbia Grp., Inc. v. Jackson*, 151 Ariz. 86, 89 (App. 1985), *aff'd*, 151 Ariz. 76 (1986). "[T]he question of actual receipt is immaterial." *Id.* Rather, due process requires only that High Desert's method was "reasonably calculated … to apprise" CEC of the filing. *Malnar v. Joice*, 236 Ariz. 170, 172 (2014) (quoting *Mullane v. Cent. Hanover Bank & Tr. Co.*, 339 U.S. 306, 314, 319 (1950)); *see also Dusenbery v. United States*, 534 U.S. 161, 171 (2002) ("our cases

have never required actual notice"). The service method must simply be one that someone "desirous of actually informing the absentee might reasonably adopt to accomplish it." *Mullane*, 339 U.S. at 315. "[R]easonable risks that notice might not actually reach" the party "are justifiable" and consistent with due process. *Id.* at 319.

Accordingly, complying with the service method prescribed by statute—here Rule 5(c)(1)—generally also "affords sufficient due process" where "'the statutory provisions in themselves indicate that there is reasonable probability that if … complied with, the defendant will receive actual notice.'" *Malnar*, 236 Ariz. at 172, ¶ 7 (quoting *Wuchter v. Pizzutti*, 276 U.S. 13, 24 (1928)). When an attorney has appeared as counsel of record, there is a reasonable probability that serving the attorney pursuant to Rule 5(c)(1) will result in actual notice. That is why serving the attorney under Rule 5(c)(1) is the ordinary, required method of service once a party appears.

This Court has routinely held that compliance with service methods prescribed by rule satisfies due process even if the party does not receive actual notice. In *In re 50,820 Am. Eagle Coins*, 2023 WL 2663232 at *1-2, ¶¶ 9-11 (Ariz. Ct. App. Mar. 28, 2023), the "[d]efendant argue[d] the superior court should have vacated the order … on due process grounds" because

"he never received the verified complaint or learned about the deadlines." The court held "that argument ignores the law. The State … electronically served Defendant's counsel-of-record" in compliance with Rule 5, which satisfied due process regardless of actual notice. *Id.* ¶ 11.

In *Harper v. Pima Cnty. Treasurer*, 2023 WL 4982005, at *4, ¶ 18-19 (Ariz. Ct. App. Aug. 3, 2023), the Court similarly held that when the statutory service method "was strictly followed and indicates that when complied with there was a reasonable probability [the party] would have been apprised of the action," "we cannot say that" the method of service "failed to satisfy due process."

Windrose Ests. Homeowners Ass'n v. Wright, __ Ariz. __, 2025 WL 3623023, at *3, ¶¶ 14-15 (App. Dec. 15, 2025), recently rejected a similar argument that "mail service without delivery confirmation" was "not reasonably calculated to provide" notice. Where the mailing complied with "[R]ule [4.1(k)(2)], which … contains no delivery-confirmation requirement," it was adequate even if the serving party "knew some homeowners were having issues with mail delivery." *Id.*

Likewise, *Barlage v. Valentine*, 210 Ariz. 270, 276-77, ¶¶ 24-25 (App. 2005) held that compliance with Rule 4.2 was "'reasonably calculated' to

provide notice" and that "it would … be anomalous for effective service to require a party's actual receipt … when the law recognizes and permits constructive notice of service in many different settings."

CEC is therefore wrong to suggest (at 24) that due process requires "that the party … actually receives notice." CEC relies (at 24) on *Morrison v. Shanwick Int'l Corp.*, 167 Ariz. 39 (App. 1990). But there, unlike here, the serving party "failed to follow the filing procedure described in" the rules of civil procedure, and so failed to give meaningful "notice" in the "manner … provided by established rules of procedure." 167 Ariz. at 42. In *Morrison*, unlike here, there were also "no facts demonstrating that Jacobs was Ms. Shannon's attorney of record in this matter when the motion was mailed" to that attorney. *Id.* at 43.

2. High Desert did not have actual knowledge that serving Goldman under Rule 5(c)(1) would be ineffective.

CEC is correct (at 18, 25) that there is a narrow due process exception that requires a serving party to make efforts beyond what the rules require *if and only if* the serving party has *actual knowledge* that the statutory method did not in fact apprise the opposing party. In *Schatt v. O. S. Stapley Co.*, 84 Ariz. 58, 60 (1958), for instance, service on an attorney under Rule 5 was

insufficient because "[p]laintiff's counsel knew they were not serving the attorney for the defendant" because that attorney "had been terminated and plaintiff's counsel knew of such termination" even though the attorney "ha[d] not formally withdrawn of record."

The Court stressed, however, that "parties are entitled to deal with counsel of record for opposing parties when they have no knowledge that the relationship of such attorney of record has been terminated. An undisclosed discharge will not affect their rights." *Id.* Similarly, in *In re $46,523 in U.S. Currency*, 244 Ariz. 351, 356, ¶ 24 (App. 2018), "knowledge that notice pursuant to the normal procedure was ineffective trigger[ed] an obligation … to take additional steps." "The salient fact … is knowledge by the [serving party] that notice was ineffective." *Id.* ¶ 23. There, "the state attempted to notify claimants at their provided address by certified mail, but upon learning its efforts had failed, did nothing more." *Id.* ¶ 25.

Here, there is no basis to apply that exception because High Desert had no actual knowledge that service under Rule 5(c)(1) would be insufficient.

CEC claims (at 24) that "Plaintiffs knew Goldman had been suspended, had closed his office, and was not receiving or responding to mail[.]" Not so. When High Desert served its OSC Petition in February 2024,

and even when the superior court issued the injunction in April 2024, High Desert knew only that Goldman had been suspended for 30 days, months earlier, in Fall 2023. High Desert did not know that Goldman no longer represented CEC, did not know that he had closed his office, did not know that he was not receiving or responding to mail, and did not know that he was not informing CEC of filings.

In rejecting CEC's improper service claim, the superior court did not specifically discuss those facts. But on appeal, this Court must "imply any findings necessary to sustain [the] judgment … if reasonably supported by evidence and not in conflict with express findings." *Pro Finish USA, Ltd. v. Johnson*, 204 Ariz. 257, 263 n.9 (App. 2003). This Court reviews the superior court's "implicit[]" findings for clear error, asking only whether "'the facts of the case' provide 'tenable grounds … in the record,' for the trial court's ruling" rejecting CEC's "assertion of inadequate notice due to insufficient service of process." *Hilgeman v. Am. Mortg. Sec., Inc.*, 196 Ariz. 215, 220, ¶ 14 (App. 2000) (citations omitted).

Here, High Desert's lawyer (Paul Conant) presented substantial and unrefuted evidence proving that High Desert did not know its compliance with Rule 5 failed to apprise CEC of its filing. As Conant attested, "to the

best of [High Desert's] knowledge, Mr. Goldman continued to represent CEC" at all relevant times. IR-193, Ex. D at 4, ¶ 13 (APP504).

Indeed, when High Desert served its filing on Goldman, it did so in three separate ways (ECF, mail, and follow-up email)—none of which were returned as undelivered. *See* IR-154 at 15 (certificate of service); IR-193, Ex. D at 3-4, ¶¶ 9-11 (APP503-04) (explaining service); IR-193, Ex. D at Ex. A (APP508) (copy of email to Goldman).

CEC claims (at 23) that "Mail sent to Goldman's former office was being returned as undeliverable." As a threshold matter, the cited portion of the record (IR-190, Ex. I, ¶ 5 (APP442)) does not support the assertion. The cited evidence says only that Goldman no longer had an office at the address; it says nothing about mail being returned. To the contrary, the unrefuted evidence is that only one piece of mail was returned, and it arrived three months after High Desert filed the OSC Petition. *See* IR-193, Ex. D at 5, ¶ 19 (APP505) ("The only returned mail which came back from Goldman's physical office came back on May 29, 2024."); *id.* at 6 (APP510) (returned mail showing "return to sender" on "5/24/24").

Moreover, regardless of the status of Goldman's office, "the ECF system" used for service "may be accessed from any computer with an

internet connection," *id.* at 3, ¶ 10 (APP503), and High Desert "never received any notification that Goldman's ECR privileges were no longer functional, nor did we receive any notification that his email address was non-functional," *id.* at 5, ¶ 18 (APP505). When High Desert reached out again "on March 13, 2024" with "another copy of the … filing," there was again "no bounceback email." *Id.* at 3-4, ¶ 11 (APP503-04).

What's more, as the superior court noted (IR-221 at 3 (APP052)), David Abney had filed a limited appearance on March 8, 2023, and stated he was joining as "additional" counsel for CEC, further indicating that Goldman remained as counsel. High Desert "never received any notification from Mr. Abney concerning any issues or concerns relative to Mr. Goldman" when High Desert filed its OSC Petition. IR-193, Ex. D at 4, ¶ 13 (APP504).

All High Desert had heard at that time was "that [Goldman] had been temporarily suspended for a thirty day period in the fall of 2023." *Id.* ¶ 14 (APP504). But that short suspension had long expired and "did not cover the time frame raised by Defendant's Motion" served in February 2024. *Id.* CEC offered no evidence refuting the above facts. To support its assertion on appeal that High Desert knew Goldman was no longer its attorney, CEC repeatedly cites (e.g., at 24) the same paragraph from Ayers's declaration.

But again, that declaration says only that "Goldman no longer had an office at 5702 East Camelback Road, Phoenix, AZ 85018 as he had closed it." IR-190 at 2, ¶ 5 (APP442). The declaration does not say that High Desert (the serving party) or its counsel knew that fact. It says nothing about High Desert's knowledge at all, nor would the declarant (Ayers) have any basis to know about High Desert's knowledge. And again, the record indisputably shows that the copy of the OSC Petition that High Desert physically mailed to that office was not returned undeliverable (IR-193, Ex. D at 5, ¶ 19 (APP505)), nor were High Desert's emails (*id.* ¶¶ 11, 18 (APP503-05)).

Accordingly, the "salient fact" that would have required High Desert to take steps beyond Rule 5(c)(1)—actual "knowledge … that notice was ineffective"—is simply not present here. *U.S. Currency*, 244 Ariz. at 356, ¶ 23. High Desert's compliance with Rule 5(c)(1) thus did not violate due process. When it was made, High Desert's service was "reasonably calculated … to apprise" CEC of its filing. *Malnar*, 236 Ariz. at 172, ¶ 7. Serving CEC's attorney of record under Rule 5(c)(1) was the method someone "desirous of actually informing the absentee might reasonably adopt to accomplish it." *Mullane*, 339 U.S. at 315. High Desert thought there was a "reasonable probability that if" Rule 5 was "complied with, the defendant will receive

actual notice." *Malnar*, 236 Ariz. at 172, ¶ 7 (quotation omitted). It did not act in bad faith. Instead, High Desert made additional efforts beyond what Rule 5(c)(1) required, by also physically mailing courtesy copies to Goldman and following up by email. IR-193, Ex. D at 3-4, ¶¶ 9-11 (APP503-04) (explaining service); IR-193, Ex. D at Ex. A (APP508) (copy of email to Goldman).

E. Lack of notice did not otherwise require Rule 60(b)(1) or (b)(6) relief.

CEC next argues (at 26-27) that the superior court abused its discretion in denying relief for "excusable neglect" under Rule 60(b)(1) or "extraordinary … hardship or injustice" under Rule 60(b)(6). This argument is waived, untimely, and wrong.

First, these arguments are waived because they were "not briefed at [the] trial court level" and "an appellate court will not consider issues not raised in the trial court." *Harris*, 215 Ariz. at 349, ¶ 17. CEC's Rule 60 motion did not argue that its lack of notice resulted from excusable neglect under Rule 60(b)(1) or resulted in an extraordinary injustice under Rule 60(b)(6).

IR-181 at 9-10 (APP267-68).[1] CEC argued only that its "lack of proper service denied CEC of due process," *id.*, which was implicitly an argument that the injunction was "void" under Rule 60(b)(4). That is not an excusable neglect argument, and cannot be a Rule 60(b)(6) argument because (b)(6) permits relief only for "other reason[s]" the first five subsections do not cover. *Sloan v. Fla.-Vanderbilt Dev. Corp.*, 22 Ariz. App. 572, 576 (1974) (reason for Rule 60(b)(6) relief "cannot be one of the reasons set forth in parts 1 through 5 …; they are mutually exclusive.").

Waiver aside, CEC's Rule 60(b)(1) excusable neglect argument is also untimely. A "motion under Rule 60(b) must be made within a reasonable time—and for reasons (1), (2), and (3), no more than 6 months after the entry of the judgment or order or date of the proceeding, whichever is later." Ariz. R. Civ. P. 60(c)(1). CEC filed its Rule 60 motion in December 2024, more than 6 months after the April injunction from which it sought relief. IR-181

[1] Nor did CEC make those arguments in its Rule 60 reply. *See* IR-196 (APP548). In any event, the superior court correctly refused to consider that reply because it was submitted by attorneys who had a direct conflict of interest. *See* IR-221 at 1 (APP050) ("The Court did not consider Defendant's Reply … based on the disqualification issue raised in Plaintiffs' Opposition"); IR-218 at n.1 (APP615).

(APP259). CEC's motion even acknowledged that some Rule 60 arguments "must be asserted within six months of the order," but asked the court to consider the Rule 60(b)(6) arguments "not subject to the six-month limitation." *Id.* at 4-5 (APP262-63). Any excusable neglect argument under Rule 60(b)(1) was untimely.

On the merits, "excusable neglect" occurs only if the party's conduct was "that of a reasonably prudent person under the circumstances." *W. Coach Corp. v. Mark V Mobile Homes Sales, Inc.*, 23 Ariz. App. 546, 548 (1975).

Importantly, Rule 60(b)(1) looks not to CEC's neglect, but to *Goldman's* neglect. It is "the neglect of the statutory agent" authorized to receive service, "rather the neglect of the principal itself … which is examined to determine whether the neglect is excusable." *W. Coach Corp.*, 23 Ariz. App. at 549. "[W]here service had been made on a[n] … agent, and the agent failed to notify his principal, through mere carelessness, … such a showing does not constitute 'excusable neglect but was indeed inexcusable neglect.'" *Id.* (citations omitted). CEC does not argue that Goldman's neglect was excusable, so the Rule 60(b)(1) argument fails.

Even if CEC's neglect were relevant, CEC has not shown that its own neglect was excusable. CEC represents that, by February 2024, "Goldman had closed his office" and that it "did not retain [him] to represent CEC [in] any post-judgment matters." IR-190 at 2, ¶ 3 (APP442). Yet CEC did not act as a "reasonably prudent party" in seeking to substitute or withdraw Goldman, or otherwise take any other action to ensure it would continue to receive court filings in this case despite known problems with Goldman. Indeed, a recent decision affirming the denial of Rule 60(b)(6) relief despite Goldman's "effective abandonment of CEC" confirms that CEC knew from other matters that Goldman was not properly communicating court updates:

> Ayers admitted that both he and CEC received in October 2023 a … minute entry recounting: (1) the suspension of Goldman's law license; (2) that CEC and Goldman failed to comply with court orders and participate in the proceedings; (3) the ruling striking CEC's answer and imposing sanctions; and (4) the lodging of the proposed judgment against CEC. There can be no doubt that the October 2023 minute entry was a red flag. Yet CEC took no action in response, allowing judgment to be entered two months later.

Parker Law, 2025 WL 3240167, at *3, ¶ 16. Likewise here, CEC did nothing to inform the court or opposing counsel that communications with CEC's counsel of record might not reach CEC, even though CEC knew of serious

issues with Goldman's representation. That was not a reasonably prudent approach and does not constitute excusable neglect.

Nor can CEC show its lack of notice otherwise demonstrates "extraordinary circumstances of hardship or injustice" requiring Rule 60(b)(6) relief. The Arizona Supreme Court has specifically held that Rule 60(b)(6) relief is unavailable to "a client whose attorney has abandoned him" and therefore fails to participate in litigation leading to an order or judgment. *Panzino v. City of Phx.*, 196 Ariz. 442, 444, ¶ 1 (2000), *partially abrogated on other grounds by Gonzalez v. Nguyen*, 243 Ariz. 531 (2018). That is true even when the attorney "completely abandoned his client, and th[e] [client] was relatively free from negligence." 196 Ariz. at 444, ¶ 3. The Supreme Court explained that "[a]lthough abandonment by a lawyer may afford his client—the injured principal—the right to bring an action against the lawyer, it does not affect the client's responsibility for the actions of his lawyer" under Rule 60(b)(6) because "the abandonment of a principal by an agent does not, absent notice to a third party, affect the agent's authority to bind the principal as to third parties …, i.e. adverse litigants." *Id.* at 447, ¶ 17. "We simply cannot adopt a rule that encourages lawyers, once their misconduct or inattention has made successful representation of a client

unlikely, to abandon the client so that the client can later seek relief under Rule 60(c)(6)."[2] This Court in fact recently invoked this principle to affirm the denial of CEC's Rule 60(b)(6) relief despite Goldman's complete abandonment of CEC in another case:

> CEC argues that Goldman's … effective abandonment of CEC … warrant[s] relief under Rule 60(b)(6). But abandonment of a client, without more, does not mandate relief under Rule 60(b)(6). *See Panzino v. City of Phoenix*, 196 Ariz. 442, 448 ¶ 21 (2000).

Parker Law, 2025 WL 3240167at *2, ¶ 12.

The Rule 60(b)(6) argument also fails because, contrary to CEC's suggestion (at 27), CEC ultimately participated in full, adversarial litigation where it presented, and the court considered, all its arguments that the injunction was void or otherwise improper. CEC thus suffered no extraordinary hardship or injustice due to its earlier lack of notice. After briefing and oral argument on CEC's Rule 60 motion, the superior court considered de novo (and correctly rejected) CEC's legal claim of improper service. IR-221 at 3 (APP052). The court also considered and correctly resolved CEC's challenges to the injunction's scope (*see* Argument § II,

[2] In 2016, the Arizona Supreme Court reorganized into Rule 60(b) what had been Rule 60(c). *Gonzalez*, 243 Ariz. at 532, ¶ 1 n.1.

below)—and in fact granted CEC's core request to clarify that the injunction did not affect CEC's ability to make claims about High Desert's post-judgment conduct. IR-221 at 4 (APP053). Moreover, the superior court did so based on "the entire record of the case," including CEC's supplemental material that was not previously considered. *Id.* at 1 (APP050).

F. Even if erroneous, refusal to vacate the injunction due to improper service was harmless error.

CEC correctly notes (at 26) that service defects are often not "harmless" errors. *Morrison v. Shanwick Int'l Corp.*, 167 Ariz. 39, 43 (App. 1990) (holding improper service was not harmless where attorney was given only an "unsuspecting and unprepared" opportunity to address an issue at the very hearing where it was "first mention[ed]"). Here, however, any service defect was harmless given "the absence of any prejudice … as a result of this faulty service." *Epperson v. Indus. Comm'n*, 26 Ariz. App. 467, 472 (1976). Failure to comply with a service requirement is "harmless error" where appellants "have shown no prejudice." *Creach*, 189 Ariz. at 215-16.

As explained above (Argument § I.E), any initial defect in service ultimately did not prejudice CEC. In the end, the superior court fully considered CEC's legal arguments against the injunction and all the

supplemental record material CEC would have presented at the original injunction hearing. APP50-53.

II. The injunction did not exceed the court's authority.

A.R.S. § 12-1801 authorized the superior court's injunction. Section 12-1801 specifically authorizes injunctions to enforce a prior judgment: "[T]he superior court may grant writs of injunction … [w]hen … it appears that a party is doing some act respecting the subject of litigation … in violation of the rights of the applicant, which would tend to render the judgment ineffectual." It more broadly authorizes relief whenever the "applicant is entitled to an injunction under the principles of equity." *Id.* Under § 12-1801, the superior court enjoined CEC from making claims against High Desert that were inconsistent with, and violated High Desert's rights under, the court's February 2023 judgment. IR-160 at 205 (APP042-45).

That injunction "through which the trial court sought to effectuate compliance with its judgment" is reviewed for "an abuse of the court's discretion." *State ex rel. Corbin v. Portland Cement Ass'n*, 142 Ariz. 421, 425 (App. 1984).

The superior court acted well within its discretion when granting the injunction to enforce its prior judgment. CEC's arguments to the contrary are meritless.

A. The injunction is properly limited to claims about issues arising before the February 2023 judgment.

CEC argues (at 31) that the injunction prevents it from claiming "code and safety issues documented in 2023, 2024, and 2025" that "arose long after trial and could not have been litigated," and (at 37-38) that it improperly "sweep[s] in … post-judgment code and safety issues that fall outside the 2021-2023 transaction" that were "temporally impossible" for the judgment to resolve. But the superior court already addressed these issues.

The superior court partially granted CEC's Rule 60 motion to clarify that the injunction against "claiming … current or prior issue[s]," IR-221 at 2-3 (APP051-52), does not reach issues regarding High Desert's post-judgment conduct: "[C]larification regarding the scope of the Order is warranted. 'Current' for purposes of the Order means the date the judgment was entered (i.e. February 7, 2023)." *Id.* at 4 (APP053). Consequently, the injunction as clarified does not apply to issues arising after February 7, 2023.

CEC's arguments on appeal about the temporal scope of the injunction ignore the superior court's clarification of its own order, and therefore do not warrant reversal.

The injunction prevents CEC from claiming only code and safety issues that existed before the judgment. As the judgment itself ruled (IR-78 at 2 (APP036)), CEC did not raise those claims in the litigation and so is precluded from doing so now. *See* Argument §§ III.B–III.C, below. That does not prevent regulators from addressing and requiring correction of any such issues. The injunction does not apply to regulators. *See* Argument § III.C, below. It only prevents CEC from affirmatively raising such claims to regulators or to High Desert as the basis for a breach of the lease.

B. The injunction does not prohibit CEC from recovering attorneys' fees under Lease Section 33.

CEC suggests (at 13, 31, 37) that the injunction exceeds its proper scope by barring CEC from seeking attorneys' fees under the lease. But High Desert agreed below that "CEC is … *not* barred from demanding and recovering its attorneys' fees pursuant to Section 33 of the Lease." IR-192 at 8 (APP453). The superior court agreed: "CEC is not barred from demanding

and recovering attorney's fees pursuant to Section 33 of the Lease." IR-221 at 4 (APP053).

Here, too, there is nothing in dispute and no reversible error.

C. CEC's argument that the injunction violates A.R.S. § 12-1802(4) is waived, and is meritless because the court did not enjoin any public officer.

1. CEC's § 12-1802(4) argument is waived on appeal.

CEC's other arguments that the injunction exceeds the court's authority are "waived on appeal" because they were "not briefed at [the] trial court level" and so the superior court had no opportunity to address them. *Harris*, 215 Ariz. at 349, ¶ 17.

On appeal, CEC argues (at 32-34), that "prevent[ing] CEC from raising code and safety concerns with regulators … conflicts with [A.R.S.] § 12-1802(4) and public policy." But CEC's Rule 60 motion never cited § 12-1802(4), let alone developed any argument that the injunction "prevent[ed] enforcement of a public statute by officers of the law." A.R.S. § 12-1802(4).

CEC's Rule 60 motion instead suggested only that the injunction "violates public policy" to the extent it bars CEC from addressing, with "Plaintiff or anyone else," code violations that occurred *after* the court's judgment. IR-181 at 4 (APP262). CEC's public policy argument was thus

expressly tied to its concern that the injunction reached post-judgment violations:

> [F]rom a public policy standpoint, [the injunction] purports to prohibit CEC … from discussing with Plaintiff … legitimate building code and safety violations documented by governmental authorities [in 2023-2025]. To be sure, *although counsel for Plaintiff recently represented to the Court that Plaintiff does not interpret the Order to prohibit CEC from addressing safety and building code violations purportedly arising after the date of the Order*, counsel's representations in this regard belie [earlier] correspondence[.]

Id. at 2 (APP260) (emphasis added).[3] As explained above (Argument § II.A), by clarifying that the injunction only reached issues arising before its February 2023 judgment, the superior court agreed with and resolved CEC's concern that the injunction might prevent it from discussing *post-judgment* violations with regulators. The superior court thus clarified the order in a manner that eliminated the only public-policy concern CEC raised in its Rule 60 motion.

CEC did not argue below that the injunction would still violate § 12-1802(4) or public policy if it were limited to code and safety issues arising

[3] CEC rehashed this argument in the Rule 60 reply. IR-196 at 5-6 (APP552-53). But, as explained (note 2 above), the superior court correctly refused to consider that reply.

before the February 2023 judgment—issues which CEC agrees (at 37) "could have been" raised in the litigation, and which the judgment therefore foreclosed CEC from raising thereafter (Argument § III.C, below). That argument not presented to the superior court is waived on appeal.

2. The injunction does not violate § 12-1802(4).

CEC's opening brief (at 33) likewise continues to focus its § 12-1802(4) argument on post-judgment conduct that the court clarified the injunction does not reach. CEC cites (at 33-34) "unpermitted construction and safety hazards" documented in "June 17, 2023" and "June 19, 2024"—after the injunction's February 7, 2023, cutoff—and then argues that a "court order that forbids a property owner from disclosing such information directly obstructs enforcement of public-safety laws—precisely what § 12-1802(4) forbids." Again, the superior court clarified that the injunction does not affect CEC's ability to discuss violations with regulators that occurred after February 7, 2023. There is thus no basis for CEC's argument that the injunction violates § 12-1802(4).

To the extent CEC argues that the injunction violates § 12-1802(4) even as to issues arising before February 2023, it is wrong. The statute bars injunctions "[t]o prevent enforcement of a public statute by officers of the

law." A.R.S. § 12-1802(4). But the injunction does not prevent any government officer from enforcing any statute.

Arizona courts have thus consistently applied § 12-1802(4) only in cases where a court has "*enjoin[ed] public officers* from engaging in conduct" by "granting injunctive relief *against a public officer*." *Boruch v. State ex rel. Halikowski*, 242 Ariz. 611, 616, 617, ¶¶ 15, 18 (App. 2017) (emphasis added) (collecting cases). By its terms, the injunction constrains only CEC's conduct. CEC is not an "officer[] of the law," and a commercial landlord seeking to use alleged code violations as a tool for ongoing harassment of its tenant is not engaged in "enforcement of a public statute." A.R.S. § 12-1802(4). CEC offers no authority extending A.R.S. § 12-1802(4) to prohibit actions by a private party.

The record confirms that regulatory enforcement has continued unimpeded. Government officials have inspected the property, issued notices, and overseen corrective work, all while the injunction has been in effect. IR-213, Ex. D (APP605) (documenting permits obtained and inspections passed).

In addition, and contrary to CEC's suggestion, the injunction does not silence CEC from responding to regulatory inquiries or complying with

government directives. The Order enjoins CEC from "claiming" that Plaintiffs have caused any current or prior building safety or code violation—a prohibition directed at CEC's pattern of making false and misleading statements to third parties regarding matters already resolved in the underlying litigation or waived through CEC's failure to assert them. The superior court properly concluded that CEC's conduct constituted harassment designed to circumvent the finality of the February 2023 judgment. The injunction therefore falls squarely within that court's equitable authority under A.R.S. § 12-1801 and implicates no limitation under § 12-1802(4).

III. CEC's argument that the injunction misapplies claim preclusion is waived, is barred, and is meritless because judgments can preclude claims made to regulators.

CEC also argues (at 35-40) that the injunction exceeds its proper scope by extending the judgment's claim-preclusive effect to claims made to regulators rather than courts. CEC states (at 35) that the superior court erred because claim preclusion "bar[s] only future litigation" in court, yet the injunction also bars CEC from making certain claims to regulatory bodies. *See also* Opening Br. 39 (preclusion imposes "limitations on relitigation … not on speech, compliance, or communication with regulators").

This argument is waived because it was not presented to the superior court. And it is barred by law of the case because the February 2023 judgment (which was affirmed on appeal) already ruled that CEC was precluded from claiming breaches based on certain regulatory violations.

Regardless, CEC's argument is also meritless because the claim-preclusive effect of a judgment properly extends not only to future claims made in court but also to claims made to regulatory agencies. And the injunction only bars CEC from reasserting a specific subset of precluded claims to regulators. It does not prohibit CEC from otherwise speaking or responding to regulators—or even prevent it from claiming regulatory violations arising after the judgment. That does not exceed the court's authority or misapply claim preclusion.

A. CEC's claim preclusion argument is waived.

The Court should reject CEC's claim preclusion argument because it was not presented below and is therefore waived.

CEC's Rule 60 motion did not argue that the court misapplied claim preclusion. *See* IR-181 (APP259). CEC cited none of the key cases on which it now relies. It advanced no argument that preclusion doctrines bar only "subsequent litigation" rather than extra-judicial harassment. CEC's Rule

60 reply—which the court correctly did not consider (*see* note 2 above)—made only one unrelated point about preclusion. It stated that the judgment could not preclude a claim about issues that arose in June 2023 and June 2024, "after the Judgment was rendered" in February 2023. IR-196 at 6 (APP553). Again, the court's clarification that the injunction applied only to claims existing on or before February 2023 solved that concern. IR-221 at 4 (APP053).

CEC's new claim-preclusion argument on appeal—that the judgment's claim-preclusive effect does not extend to claims made to regulators—is therefore "waived on appeal" because it was "not briefed at [the] trial court level." *Harris*, 215 Ariz. at 349, ¶ 17.

B. Law of the case bars CEC's argument that the superior court misapplied claim preclusion.

CEC's argument that the injunction misapplied claim preclusion is also barred by law of the case. "[W]hen a judgment is affirmed by this court, all questions raised by the assignments of error and all questions that might have been so raised are to be regarded as finally adjudicated against the appellant." *Pac. Greyhound Lines v. Brooks*, 70 Ariz. 339, 343 (1950).

The February 2023 judgment ruled that CEC's post-trial Notices of Breach (claiming regulatory violations from unpermitted construction) were "declared to be invalid, for the reasons set forth in" High Desert's "applications for orders to show cause." IR-78 (APP35-36). Those applications argued—in terms CEC now contests—that CEC's claims of regulatory violations arising from earlier construction were "required to [be] raise[d] … as a compulsory counterclaim," yet "CEC did not allege any counterclaim." IR-69 at 5. Consequently, the superior court's February 2023 judgment in fact ruled CEC's claims about regulatory violations from unpermitted construction were compulsory counterclaims that CEC failed to assert and were therefore barred.

CEC appealed that judgment, but did not challenge the ruling that precluded CEC's claims of regulatory violations. *See* Opening Brief, No. 1 CA-CV 23-0195 (Ariz. Ct. App. Div. 1) (June 5, 2023). This Court then "affirm[ed] the superior court's judgment." IR-194 at 8.

If CEC wanted to appeal the superior court's application of claim preclusion, it needed to do so in its appeal from the February 2023 judgment that first made that ruling. CEC cannot raise the issue in this subsequent appeal because "when a judgment is affirmed by this court, all questions

raised by the assignments of error and all questions that might have been so raised are to be regarded as finally adjudicated against the appellant." *Pac. Greyhound*, 70 Ariz. at 343.

C. The superior court did not misapply claim preclusion.

When issuing the injunction, the superior court correctly concluded that "CEC waived any issues, claims or allegations arising prior to the February 7, 2023 Judgment, or any such issues were resolved affirmatively against it as part of the Judgment" due to "the application of Rule 13(a), Ariz. R. Civ. P." IR-160 at 2-4 (APP042-44). Rule 13(a) required CEC to "state as a counterclaim any claim" it had against High Desert that "arises out of the transaction or occurrence that is the subject matter of the opposing party's claim." The rule applies if any "logical relationship exists between" the claim and counterclaim. *Mirchandani v. BMO Harris Bank, N.A.*, 235 Ariz. 68, 70, ¶ 8 (App. 2014) (emphasis omitted). The injunction therefore correctly enforced the February 2023 judgment by precluding CEC from making such claims that could have been, but were not, brought in the litigation that culminated in that judgment.

CEC agrees that the claims it could have raised are "'waived and barred in any subsequent action' under the doctrine of claim preclusion."

Opening Br. 35 (quoting *Mirchandani v. BMO Harris Bank, N.A.*, 235 Ariz. 68, 70, ¶ 8 (App. 2014)). CEC accordingly does not argue on appeal (at 35-40) that claim preclusion does not apply to its claims about issues that arose before the court's judgment. To the contrary, CEC explains (at 37) that the injunction bars CEC from claiming "alleged breaches that merely 'could have been' raised," and agrees (at 38) that, for such claims that "'could have been' raised…, Arizona law is clear: the consequence is preclusion of a later action" asserting those claims.

CEC does state (at 29-30, 32, 37, 40) that the judgment "preserved" lease rights not resolved by the litigation. But the litigation resolved not only claims actually litigated, but also counterclaims CEC could have raised. The line from the judgment that CEC cites says only that it does "not foreclose CEC's rights under the lease as they pertain to" matters not "decided in this action." IR-78 at 2 (APP036). CEC's potential counterclaims that were not raised are matters decided by the action for purposes of preclusion. Opening Br. 37; *Mirchandani*, 235 Ariz. at 70, ¶ 8.

CEC instead claims (at 38) that the injunction cannot preclude claims about post-judgment "building-code violations and fire-safety hazards documented in 2023, 2024, and 2025" that "could not have been raised"

because "they did not yet exist" prior to the February 2023 judgment. But, as already explained (Argument § II.A), the superior court specifically clarified that the injunction does not preclude CEC from making claims about regulatory violations that first arose after the judgment. APP053.

CEC's only remaining preclusion argument is that claim preclusion does not extend to claims made to regulators. *See* Opening Br. at 35-36, 39-40. But that is wrong, too.

CEC mischaracterizes the superior court's injunction as a "gag order" or "speech-restricting injunction." But the order does not prohibit CEC from speaking; it prevents CEC from asserting legally barred positions as a basis for interfering with rights that have been adjudicated in High Desert's favor. The record demonstrates that CEC engaged in a sustained course of post-judgment harassment, sending repeated correspondence to Trulieve executives asserting that various issues had been "put on hold" during the litigation (false), demanding information about sales tax audits (a claim it never raised during litigation), and threatening lease violations based on matters that were either adjudicated or waived. IR-154, Ex. 9, ¶ 13 (APP136); IR-156 at 8-16, ¶¶ 27-28, 32-36 (APP148-56). The superior court was entitled to enjoin this conduct.

CEC cites no authority establishing a contrary rule. It cites (at 35-37), for example, *Hall v. Lalli*, 194 Ariz. 54 (1999); and *Circle K Corp. v. Indus. Comm'n*, 179 Ariz. 422 (App. 1994) for the proposition that preclusion bars only later lawsuits. But these cases simply describe the typical operation of claim preclusion; they do not hold that a court is powerless to enjoin conduct that effectively circumvents a judgment by asserting precluded claims in extra-judicial harassment campaigns. CEC's citation (at 36) to *Hancock v. O'Neil*, 253 Ariz. 509, 513-14, ¶¶ 17-21 (2022), is similarly irrelevant. It concerned an unrelated, special rule against issue preclusion in attorney discipline proceedings. *Id.*

CEC does not explain why a judgment's preclusive effect ends at the courthouse doors. Such a loophole would undermine the core purposes of claim preclusion—to "provid[e] finality," "promote judicial economy," and "deter[] harassment of former litigants" by a party attempting to reassert a claim already resolved against it. *Hall*, 194 Ariz. at 57, ¶ 6; *Tumacacori Mission Land Dev., Ltd. v. Union Pac. R. Co.*, 231 Ariz. 517, 520, ¶ 11 (App. 2013) (same).

Indeed, while it appears Arizona cases have not addressed this point, courts consistently hold that when a "judgment[] decides an issue that

overlaps with" a regulatory agency's "analysis, the [regulatory body] gives preclusive effect to the court's judgment." *B & B Hardware, Inc. v. Hargis Indus., Inc.*, 575 U.S. 138, 152 (2015); *Firishchak v. Holder*, 636 F.3d 305, 306-07 (7th Cir. 2011) (court judgment had preclusive effect against same party in subsequent agency hearing); *Graybill v. U.S. Postal Serv.*, 782 F.2d 1567, 1571 (Fed. Cir. 1986) (appellant "has failed to demonstrate how agency proceedings differ from other judicial proceedings such that the [agency] should be precluded from applying the doctrine of collateral estoppel" based on a prior court judgment).

Accordingly, the superior court did not misapply claim preclusion by enjoining CEC from making precluded claims. And that is all the injunction prohibits. Contrary to CEC's suggestion (at 36), the injunction does not broadly silence CEC's speech or cooperation with regulators. It only narrowly prevents CEC from making certain claims that the court's judgment already resolved. That was not error.

IV. The court did not abuse its discretion in denying Rule 60(b)(3) relief.

CEC argues (at 40-46) that the superior court abused its discretion in denying Rule 60(b)(3) relief despite alleged misrepresentations in an affidavit supporting High Desert's OSC Petition. That argument is untimely

and so cannot be considered. It is also meritless because (1) the affidavit correctly represented that the court's judgment finally resolved issues that CEC could have raised in the litigation; (2) the misrepresentations that CEC alleges are unrelated to, and thus did not affect, the court's injunction; and (3) the alleged misrepresentations did not interfere with CEC's ability to present contrary evidence.

A. CEC's Rule 60(b)(3) argument is untimely.

First, CEC's Rule 60(b)(3) argument cannot be considered because it is untimely. "A motion under Rule 60(b) must be made within a reasonable time—and for reasons (1), (2), and (3), no more than 6 months after the entry of the judgment or order or date of the proceeding, whichever is later." Ariz. R. Civ. P. 60(c)(1). CEC filed its Rule 60 motion almost 8 months after the April 9, 2024, order from which it sought relief. IR-181 (APP259). And no stipulation or court order was sought or entered under Rule 6(b)(2) to extend the mandatory six-month deadline. *See* Rule 60(c)(1) (six-month "deadline" to seek Rule 60(b)(3) relief "may not be extended by stipulation or court order, except as allowed by Rule 6(b)(2)"). Accordingly, this Court cannot consider CEC's argument for relief based on "fraud …, misrepresentation, or other misconduct of an opposing party." Rule 60(b)(3); *See Fry v. Garcia*,

213 Ariz. 70, 73, ¶ 13 (App. 2006) ("A Rule 60(c) motion based on the misrepresentations or misconduct of the other party … must be filed within six months…. The superior court correctly denied this portion of the Rule 60 motion as time-barred").[4]

B. In any event, CEC's Rule 60(b)(3) argument is meritless.

CEC's Rule 60(b)(3) argument is also meritless. A party seeking relief under Rule 60(b)(3) "must show the opponent's misconduct by clear and convincing evidence." *Est. of Page v. Litzenburg*, 177 Ariz. 84, 93 (App. 1993). "Next, the moving party must show that the misconduct substantially interfered with its ability fully and fairly to prepare" and present its case. *Id.* It can do that "either by establishing [that] the material" it was prevented from presenting had "likely worth as … evidence," or "by presumption or inference, if the movant can successfully demonstrate that the misconduct was knowing or deliberate." *Id.* at 93-94. Regardless, relief is unwarranted

[4] CEC did not ask the superior court for relief under Rule 60(d)(3), so any such argument is waived. IR-181 (APP259). It is also waived because CEC (at 40-46) does not develop any such argument in its opening brief. *Ramos v. Nichols*, 252 Ariz. 519, 523, ¶ 11 (App. 2022) ("Issues not clearly raised and argued in a party's [opening] appellate brief are waived." (quotation omitted)).

if there is "a clear and convincing demonstration that the consequences of the misconduct were nugacious" on the court's decision. *Id.* at 94.

CEC fails to satisfy any of those requirements. CEC asserts that Koslow misrepresented that "all code, safety, and permit issues 'had been fully and finally resolved,' and that county officials had confirmed there were 'no issues of any kind.'" Opening Br. 41 (citing IR-156 at 3, ¶¶ 8-9; APP140). But Koslow's statement that such issues had been fully and finally resolved was accurate. The *superior court* resolved them in its February 2023 judgment, which "declared" that any alleged breaches based on those code and safety issues were "invalid" because CEC failed to raise them as counterclaims. IR-78 at 2-3 (APP036-37). Koslow's affidavit accurately explained that the court's judgment resolved such issues:

> The November 30, 2023 letter from CEC asked for "legal fees" … on grounds of supposed unauthorized modifications to the leased Premises. Again, *any such issues were required to have been raised, if at all, during the litigation, any and all such issues (if any) were fully and finally resolved by the February 7, 2023 Judgment*….
>
> The modifications which CEC claimed were supposedly made without authorization *were all made before the February 7, 2023 Judgment.*

IR-138 at 14-16, ¶¶ 32(d), 33(b) (APP154-56).

In addition, virtually all of CEC's purported evidence consists of records generated long after Koslow's February 2024 affidavit. CEC cites (at 42-43) documents issued on July 8, 2024, June 19, 2024, September 10, 2024, and February 2025. Every one of those documents came months after Koslow signed his affidavit, and therefore could not be a "misrepresentation" under Rule 60(b)(3).

And because that evidence was not "in existence at the time of the" injunction, that material could not have influenced the court's analysis anyway, and so cannot support relief. *Boatman v. Samaritan Health Servs.*, 168 Ariz. 207, 212 (App. 1990).

Only one document (issued on June 17, 2023) (APP439) predated the affidavit. For numerous reasons, the fact that High Desert did not mention that Notice when seeking the injunction did not require the superior court to later vacate the injunction under Rule 60(b)(3).

First, CEC cannot show, by "clear and convincing evidence," that High Desert made any "misrepresentation." *Page*, 177 Ariz. at 93. The Notice was sent to CEC, not to High Desert (IR-189, Ex. H (APP438)), and CEC cites no evidence that Koslow was aware of it at the time he signed his declaration.

Second, CEC cannot show by "clear and convincing evidence" that "the [alleged] misconduct 'substantially interfered' with the moving party's ability to present its defense." Opening Br. at 40, 44 (quoting *Page*, 177 Ariz. at 94). Again, the notice was sent to CEC, not to High Desert. CEC could have raised the notice with the superior court. The reason CEC didn't raise it was not because of any misconduct by High Desert, but because CEC's attorney never submitted a response to the OSC Petition. Consequently, no action by High Desert "substantially interfered" with CEC's ability to present its case, and the Koslow affidavit did not deprive CEC of the ability to present the notice to the superior court.

Third, CEC cannot show by "clear and convincing evidence" that the alleged misconduct was material to the outcome, in the sense that the notice had "likely worth as … evidence," as opposed to being "nugacious" to the court's decision. *Page*, 177 Ariz. at 94 (citation omitted). Here, the court's injunction did not depend at all on whether a code violation was identified in June 2023. The June Notice was therefore irrelevant, and its omission did not interfere with CEC's ability to present a defense. Specifically, the injunction enforced rulings already made in the February 2023 judgment, which included the "declar[ation]" that CEC's claims of breach based on

then-existing code violations were "invalid" due to claim preclusion, regardless of the merits of such violations. IR-78 at 2-3 (APP36-37). The code violation identified in June 2023 thus did not matter. If it was among those pre-judgment violations that CEC claimed breached the lease, the injunction properly precluded that claim. And if the violation instead arose after the February 2023 judgment, the injunction did not reach it in any way. *See* Argument § II.A. There is simply no basis for CEC's assertion (at 44) that the absence of code violations on or after June 2023 was "the factual predicate for the injunction."

Moreover, CEC was ultimately able to present this Notice and all its supplemental record material with its Rule 60 motion. The court "considered" it all "on the[] merits" and correctly ruled that none of it merited vacating the injunction. IR-221 (APP050). CEC is thus wrong to claim (at 45) that the court considered only a "one-sided, misleading evidentiary presentation." The superior court had "broad discretion" in considering CEC's evidence and did not "abuse" that discretion in denying its requested "relief from judgment under Rule 60." *Woodbridge Structured Funding, LLC*, 235 Ariz. at 29-30, ¶ 21.

V. The Court may also affirm because CEC did not supply the required transcript.

The Court may summarily affirm this appeal for another independent reason: CEC did not provide this Court with the transcript of the June 6, 2025 hearing on its Rule 60 motion. As the appellant, CEC had the "burden to ensure that the record on appeal contain[ed] all transcripts … necessary for [this Court] to consider the issues raised." *Blair*, 226 Ariz. at 217, ¶ 9 (citation and quotation marks omitted). CEC represented that it "will order a transcript of the oral argument held on June 6, 2025," but CEC never filed the transcript or explained its failure to do so. IR-226 at 2.

CEC's appeal turns on challenging the superior court's Rule 60 findings and conclusions—including that Goldman remained CEC's attorney who High Desert properly served under the rules, and that CEC's supplemental evidence did not support Rule 60 relief. But to challenge the superior court's findings and conclusions, CEC "must include in the record transcripts of all proceedings containing evidence relevant to that judgment, finding or conclusion" that it challenges on appeal. ARCAP 11(c)(1)(B). The consequences are serious: "we assume they would support the court's findings and conclusions." *Baker v. Baker*, 183 Ariz. 70, 73 (App. 1995).

Accordingly, this Court must assume that "the evidence and arguments presented at the hearing support the trial court's ruling." *Blair*, 226 Ariz. at 217, ¶ 9.

REQUEST FOR ATTORNEYS' FEES

High Desert requests its reasonable attorneys' fees and taxable costs incurred in this appeal pursuant to ARCAP 21, A.R.S. § 12-341.01(A), and the fee-shifting provision in the parties' lease (IR-184, § 28 (APP412)).

CONCLUSION

This Court should affirm.

RESPECTFULLY SUBMITTED this 4th day of February, 2026.

OSBORN MALEDON, P.A.

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