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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
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9 Rebecca Carrasco,

10 Plaintiff,

11 v.

12 Evangelical Lutheran Good Samaritan
13 Society, et al.,

14 Defendants.

No. CV-14-01585-PHX-DGC

ORDER

15 Defendant The Evangelical Lutheran Good Samaritan Society has filed a motion
16 to dismiss. Doc. 4. The Court will deny the motion.

17 Defendant's motion does not cite a Federal Rule of Civil Procedure upon which
18 dismissal could be granted. Instead of relying on Rule 12(b), Defendant argues that
19 Plaintiff's complaint should be dismissed because she agreed to binding arbitration.
20 Doc. 4 at 2. In support, Defendant cites facts outside of the pleadings, as does Plaintiff's
21 response. The Court will not consider these facts. *See Arpin v. Santa Clara Valley*
22 *Transp. Agency*, 261 F.3d 912, 925 (9th Cir. 2001) (refusing to consider matters outside
23 the pleadings in deciding motion to dismiss the plaintiff's complaint). With the extra-
24 pleading facts disregarded, the Court finds no basis in the motion for dismissing
25 Plaintiff's claim.¹

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27 ¹ Plaintiff asserts that the Court should treat Defendant's motion as one for
28 summary judgment because the Court has been asked to consider matters outside the
pleading. Doc. 5 at 1. But summary judgment is a merits determination and Defendant's
argument does not address the merits of Plaintiff's complaint. The Court therefore will
not convert Defendant's motion to one for summary judgment.

