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8 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**
9 **IN AND FOR THE COUNTY OF MARICOPA**

10 STRONG COMMUNITIES
11 FOUNDATION OF ARIZONA
12 INCORPORATED, ERIC LOVELIS, and
13 WILLIAM JOSEPH APPLETON;

Plaintiffs,

v.

14 MARICOPA COUNTY; BILL GATES,
15 STEVE GALLARDO, THOMAS
16 GALVIN, CLINT HICKMAN, and
17 JACK SELLERS, in their respective
18 official capacities as members of the
19 Maricopa County Board of Supervisors;
20 and STEPHEN RICHER, in his official
21 capacity as Maricopa County Recorder;
22 COCONINO COUNTY; JERONIMO
23 VASQUEZ, PATRICE HORSTMAN;
24 ADAM HESS, JUDY BEGAY, and
25 LENA FOWLER, in their respective
26 official capacities as members of the
27 Coconino County Board of Supervisors;
28 and PATTY HANSEN, in her official
capacity as Coconino County Recorder;

Defendants.

Case No. CV2024-002441

**PLAINTIFFS' RESPONSE IN
OPPOSITION TO MARICOPA
COUNTY DEFENDANTS' MOTION
FOR LEAVE TO FILE RESPONSE
TO PLAINTIFFS' NOTICE OF
DISMISSAL**

(Assigned to the Hon. Jay Adleman)

Plaintiffs Strong Communities Foundation of Arizona Incorporated, Eric Lovelis,
and William Joseph Appleton, by and through undersigned counsel, hereby respond in
opposition to the Maricopa County Defendants' Motion for Leave to File Response to

1 Plaintiffs’ Notice of Dismiss (“Motion”) and ask this Court to deny the Motion and the
2 Maricopa County Defendants’ accompanying Response to Plaintiffs’ Notice of Dismissal
3 (“Response”).

4 The Plaintiffs’ Response in Opposition is supported by the following memorandum
5 of points and authorities.

6 **MEMORANDUM OF POINTS AND AUTHORITIES**

7
8 I. The Plaintiffs’ Complaint For Special Action Relief Was Dismissed By
9 Operation of Law Such That This Court No Longer Has Jurisdiction Over The
10 Case

11 Under well-settled Arizona law and jurisprudence, notices of dismissal are self-
12 executing and do not require the court to issue orders to effectuate dismissal. *Goodman v.*
13 *Gordon*, 103 Ariz. 538, 540 (1968); *State ex rel. Dep’t of Econ. Sec. v. Martinez*, No. 1
14 CA-CV 17-0247 FC, 2018 WL 4164323, at *2 ¶ 9 (Ariz. Ct. App. Aug. 30, 2018) (quoting
15 *Goodman*, 103 Ariz. at 540) (same); *see also Evans v. Reyes*, No. 2 CA-CV 2022-0144,
16 2023 WL 5354416, at *3 ¶ 13 (Ariz. Ct. App. Aug. 21, 2023) (“[A] notice of dismissal
17 under Rule 41(a)(1)(A)(i), Ariz. R. Civ. P., is self-executing and ‘completely effective
18 upon the filing of a written notice of dismissal.’” (quoting *Spring v. Spring*, 3 Ariz. App.
19 381, 383 (1966))).

20 In fact, once a valid Rule 41(a)(1) notice has been filed, the dismissal is automatic
21 as of the time the notice was filed. *E.g., Vicari v. Lake Havasu City*, 222 Ariz. 218, 222–
22 23 ¶ 17 (App. 2009) (holding that case was automatically dismissed on the date the plaintiff
23 filed a notice of dismissal, and not five days later when the court issued an order
24 recognizing that dismissal).

25 Here, just sixteen days after Plaintiffs filed their Complaint for Special Action Relief
26 and just six days after Plaintiffs filed their First Amended Complaint, and before either an
Answer or a Motion for Summary Judgment had been filed by any of the Defendants,
Plaintiffs filed a Voluntary Notice of Dismissal (“Notice”) under Rule 41(a)(1) of the

1 Arizona Rules of Civil Procedure. As stated by subsection B of that Rule, unless the
2 dismissal notice “states otherwise, the dismissal is without prejudice.” Ariz. R. Civ. P.
3 41(a)(1)(B). The only exception is “if the plaintiff previously dismissed an action in any
4 court based on or including the same claim,” *id.*, which is not relevant to these proceedings.

5 Accordingly, this case has already been dismissed by operation of law, and this
6 Court lacks jurisdiction to consider either the Maricopa County Defendants’ Motion or its
7 Response. Defendants cite to no authority to defeat either the plain language of Rule
8 41(a)(1), or the well-established jurisprudence that the case is dismissed immediately upon
9 the filing of the Notice.

10 II. The Maricopa County Defendants Have Made It Clear They Intend To Abuse
11 The Judicial Process to Delay Adjudication of the Plaintiffs’ Petition.

12 When the Legislature adopted A.R.S. § 12-408, it clearly recognized the inherent
13 power imbalance when litigating against a county on its home turf and conferred on parties
14 the power and authority, as of right, to change venue when the county is an opposing party.
15 Yet, despite the clear statutory authority for the Plaintiffs to change venue *as of right*, the
16 Maricopa County Defendants have worked to delay adjudication of the merits of the
17 Plaintiffs’ case through abusive, and *unsupported*, motion practice. It is because of the
18 Maricopa County Defendants’ abuse of the judicial process that Plaintiffs sought to
19 voluntarily dismiss this case.

20 Critically, neither the Maricopa County Defendants’ Motion to Dismiss (MTD) nor
21 the Motion for Leave is supported by the facts or law. They were seemingly designed to
22 delay adjudication in what appears to be a brazen attempt to run out the clock before the
23 2024 election with the likely intent to moot the Plaintiffs’ claims.

24 A. *The Maricopa County Defendants’ Motion To Dismiss Is Frivolous.*

25 Plaintiffs in election cases regularly name Maricopa County in their complaints. *See*
26 *e.g.*, **Exhibit A** at ¶ 12 (*Kari Lake for Arizona v. Richer*, CV2022-015519, Verified Special
Action Complaint (Maricopa Cnty Sup. Ct. Nov. 28, 2022)) (exhibits omitted) (alleging

1 that “Maricopa County is a political subdivision of the State of Arizona. Maricopa County
2 is ... charge[d] by law with conducting elections within its jurisdictional boundaries,
3 including through its Board of Supervisors, appointing inspectors, marshals and judges to
4 staff polling places on Election Day, and appointing certain Central Counting Boards.”

5 And Maricopa County, through *the very same counsel* in the case herein, has readily
6 admitted in those cases that it is a proper party to sue. *See, e.g.*, attached **Exhibit B** at ¶ 12
7 (*Kari Lake for Arizona v. Richer*, CV2022-015519, Answer (Maricopa Cnty. Sup. Ct. Dec.
8 4, 2022)) (admitting the allegations about Maricopa County’s role in administering
9 elections).

10 In fact, A.R.S. § 11-201(A)(1) states that the county can sue and be sued in its own
11 name. Further, binding precedent establishes that “[D]epartments and subordinate entities
12 of ... counties ... that are not separate legal entities or bodies do not have the capacity to sue
13 or be sued in the absence of specific statutory authority.” *Brailard v. Maricopa Cnty.*, 224
14 Ariz. 481, 487 ¶ 12 (App. 2010) (citations omitted). In *Brailard*, the plaintiff’s case against
15 the Maricopa County Sheriff’s Office was dismissed because Maricopa County was not
16 named as a defendant. Accordingly, a case challenging the conduct of elections by
17 Maricopa County officials that does not also name the county as a party is subject to
18 dismissal. The Plaintiffs *rightly* named Maricopa County as a party to the case.

19 The Plaintiffs voluntarily dismissed this case precisely because it became clear after
20 the Maricopa County Defendants filed its frivolous MTD that the Maricopa County
21 Defendants were so scared of litigating this case on the merits outside of its home turf that
22 it would stop at nothing to bog this case down in months of procedural maneuvers to
23 prevent transfer. And, as soon as that became evident, Plaintiffs wasted no time filing the
24 Notice, doing so just sixteen hours after the frivolous MTD was filed. Rather than allow
25 the Maricopa County Defendants to needlessly delay the case through abusive and
26 frivolous motions, Plaintiffs chose to quickly and voluntarily dismiss this case to zealously

1 guard Plaintiffs’ right to be heard in a venue outside of Maricopa County—a right explicitly
2 *guaranteed* by the Legislature in A.R.S. § 12-408.

3 *B. Maricopa County Defendants’ Motion Herein Is Also Frivolous.*

4 As if the MTD didn’t make clear that Maricopa County Defendants would stop at
5 nothing to prevent litigating this case on the merits before the 2024 election, its Motion for
6 Leave and the accompanying proposed response, left no room for speculation by
7 demanding that this Court, despite lacking further jurisdiction over this matter, nonetheless
8 *dismiss this case with prejudice*. Maricopa County Defendants are now working to *prevent*
9 the Plaintiffs, and by extension, the voters of Arizona, from obtaining justice to ensure the
10 *lawful* administration of the 2024 election.

11 Furthermore, the Maricopa County Defendants knew its Motion was frivolous as
12 Plaintiffs emailed the Maricopa County Defendants, with the relevant citations to law and
13 authorities, shortly after it notified this Court it intended to request leave to respond. *See*
14 *attached Exhibit C* (Email from James Rogers to Joseph LaRue and Brett Johnson (Feb.
15 22, 2024 at 3:34pm)). The Maricopa Defendants did not respond to that email.

16 But the Defendants did not need to be told their motion was frivolous. The plain
17 language of Rule 41(a) already makes that obvious. On the first page of their proposed
18 motion, the Defendants claim that “courts have authority under the Arizona Rules of Civil
19 Procedure to order that cases are dismissed **with** prejudice, even when a Rule 41 notice is
20 filed. Ariz. R. Civ. P. 41(a)(1)(B) (providing that “[u]nless the notice **or** order states
21 otherwise, the dismissal is without prejudice” (emphasis added)).” This interpretation of
22 the rule ignores its plain language. In context, it is clear that when Rule 41(a)(1)(B) refers
23 to an “order,” it is not talking about an order to be issued at the discretion of the court.

24 Rather, when Rule 41(a)(1)(B) refers to “the notice or order,” it is referring to the
25 specific “notice or order” that dismissed the action, not just to any order issued by a court.
26 And Rule 41(a)(1)(A) explains precisely the nature of that kind of notice or order.

1 Specifically, Rule 41(a)(1)(A) lays out two different ways a case can be voluntarily
2 dismissed. *First*, Rule 41(a)(1)(A)(i) says that a case may be dismissed “by filing a **notice**
3 **of dismissal** before the opposing party serves either an answer or a motion for summary
4 judgment.” (emphasis added). *Second*, “by **order based on a stipulation of dismissal**
5 **signed by all parties** who have appeared. The order may be signed by a judge, an
6 authorized court commissioner, the clerk, or a deputy clerk.” (emphasis added). Thus, the
7 only type of “order” applicable in this context is a *stipulated order signed by all parties*.
8 Rule 42(a)(1)(B)’s reference to an “order” confers no discretion at all on this court to
9 dismiss this case with prejudice.

10 Thus, the Court of Appeals explained only last month in an opinion issued on
11 January 5, 2023 that “Rule 41(a)(1) allows a plaintiff to voluntarily dismiss an action as a
12 matter of right and without a court order before the defendant serves an answer or motion
13 for summary judgment. *The first time, the dismissal is without prejudice.*” *Olewin v. Nobel*
14 *Manufacturing*, 254 Ariz. 346, 353 ¶25, 523 P.3d 413, 420 (App. 2023) (emphasis added).
15 The course of action the Maricopa Defendants are asking this Court to take would be
16 unprecedented and contradictory to the Rule’s plain language and decades of Arizona case
17 law.

18 Indeed, as *Goodman*, 103 Ariz. at 540, and its progeny make clear, this case already
19 *has* been dismissed. It was dismissed automatically as soon as the Plaintiffs filed their
20 Notice of Dismissal.

21 If this Court is inclined to grant the Maricopa Defendants’ Motion for Leave and
22 allows them to file their motion, the Plaintiffs request leave to file a Reply to elucidate
23 further the Response’s numerous and manifest errors and fallacious reasoning.

24 **Request for Fees and Costs**

25 The Maricopa County Defendants have engaged in abusive and unsupported motion
26 practice with the sole intent to delay adjudication of this case on the merits. For that reason,

1 Plaintiffs request reasonable attorney fees, expenses, and double damages from the
2 Maricopa County Defendants for bringing both the MTD and this Motion without
3 substantial justification and primarily for the purpose of delay, as well as bringing this
4 Motion to unreasonably expand these already dismissed proceedings. A.R.S. §§ 12-
5 349(A)(1)-(3). This request for fees and costs is supported by section II *supra*.

6 **Conclusion**

7 For the preceding reasons, the Plaintiffs respectfully request that this Court deny the
8 Defendants' Motion for Leave to File Response to Plaintiffs' Notice of Dismissal and
9 dismiss the Maricopa County Defendant's Response to Plaintiffs' Notice of Dismissal as
10 moot. If this Court grants the Maricopa County Defendants' Motion for Leave and
11 considers its Response, the Plaintiffs respectfully request leave to file a Reply to address
12 all claims raised by the Response.

13 RESPECTFULLY SUBMITTED this 22nd of February, 2024.

14
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1 ORIGINAL filed and served via electronic
2 means this 22nd day of February, 2024, upon:
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4 Maricopa County Superior Court
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25 *Voto Latino*

26 By: /s/ James Rogers

Exhibit A

Description	Amount
----- CASE# CV2022-015519 -----	
ELECTION CONTEST:NEW	333.00

TOTAL AMOUNT	333.00
Receipt# 29027933	

1 Timothy A. La Sota, SBN # 020539
2 **TIMOTHY A. LA SOTA, PLC**
3 2198 East Camelback Road, Suite 305
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8 *Kari Lake for Arizona*

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

11 KARI LAKE FOR ARIZONA, an Arizona political
12 committee,

13 Plaintiff,

14 v.

15 STEPHEN RICHER, in his official capacity as the
16 Maricopa County Recorder; REY VALENZUELA,
17 in his official capacity as the Maricopa County
18 Director of Elections for Election Services and
19 Early Voting; SCOTT JARRETT, in his official
20 capacity as the Maricopa County Director of
21 Elections for Election Day and Emergency Voting;
22 BILL GATES, CLINT HICKMAN, JACK
23 SELLERS, THOMAS GALVIN, AND STEVE
24 GALLARDO, in their official capacities as
25 members of the Maricopa County Board of
26 Supervisors; and MARICOPA COUNTY;

27 Defendants.
28

CV2022-015519
No. _____

**VERIFIED SPECIAL ACTION
COMPLAINT**

(Show Cause Hearing Requested)

1 Plaintiff Kari Lake for Arizona brings this special action to compel the prompt
2 production of public records¹ pursuant to the Arizona Public Records Act, A.R.S. § 39-121,
3 *et seq.* (“PRA”).

4 Plaintiff desires that every lawful vote be properly counted and every voter who was
5 eligible to vote be allowed to vote. Unfortunately, due to Defendants’ failures, many eligible
6 voters may not have been able to vote. Because Defendants were unable or unwilling to
7 conduct a reconciliation of voter check ins against ballots cast of each polling center on
8 election night in accordance with Arizona law and have now unlawfully refused to produce
9 public records in response to two public records requests regarding how they administered
10 the election, Plaintiff cannot determine that every lawful vote will be properly counted. The
11 records Plaintiff requested in response to the numerous issues with Defendants’
12 administration of the election are consistent with a parallel demand by the Arizona Attorney
13 General for answers to questions about the Defendants’ actions.

14 Plaintiff hereby alleges as follows:

15 **SUMMARY OF THE CASE**

16 1. The courts of this state have “the duty of insuring that the constitutional and
17 statutory provisions protecting the electoral process (*i.e.*, the manner in which an election
18 is held) are not violated.” *Tilson v. Mofford*, 153 Ariz. 468, 470 (1987).

19 2. Following a series of failures in Defendants’ administration of the election,
20 Plaintiff, through Kari Lake’s attorney of record, has requested from the Defendants the
21 production of public records relating to the general election that took place on November 8,
22 2022. *See* Exhibit 1 & 2. Given instances of misprinted ballots, the commingling of counted
23 and uncounted ballots, and long lines discouraging people from voting, as demonstrated in
24 the attached declarations, these records are necessary for Plaintiff to determine the full
25 extent of the problems identified and their impacts on electors.

26
27
28

¹ As the definitions of “records” and “other matters” have essentially merged, the term records, as
used in this action, should be construed as encompassing other matters.

PARTIES

1
2 8. Plaintiff Kari Lake for Arizona is an Arizona political committee that is
3 registered with the Arizona Secretary of State. Kari Lake for Arizona is the authorized
4 campaign committee of Kari Lake, a candidate for Governor of Arizona in the November
5 8, 2022 general election.

6 9. Defendant Stephen Richer is the Recorder of Maricopa County and is named
7 in this action in his official capacity only. Defendant Richer is the officer in charge of
8 elections in Maricopa County. The County Recorder is an “officer” within the meaning of
9 A.R.S. § 39-121.01(A)(1). Upon information and belief, the County Recorder has custody,
10 and is responsible for the preservation, maintenance and care, of some or all the public
11 records requested by Plaintiff.

12 10. Defendant Rey Valenzuela is the Director of Elections for Election Services
13 and Early Voting in Maricopa County, and is named in this action in his official capacity
14 only. Director Valenzuela is an “officer” within the meaning of A.R.S. § 39-121.01(A)(1).
15 Upon information and belief, Director Valenzuela has custody, and is responsible for the
16 preservation, maintenance and care, of some or all the public records requested by Plaintiff.

17 11. Defendant Scott Jarrett is the Director of Elections for Election Day and
18 Emergency Voting in Maricopa County, and is named in this action in his official capacity
19 only. Director Jarrett is an “officer” within the meaning of A.R.S. § 39-121.01(A)(1). Upon
20 information and belief, Director Jarrett has custody, and is responsible for the preservation,
21 maintenance and care, of some or all the public records requested by Plaintiff.

22 12. Maricopa County is a political subdivision of the State of Arizona. Maricopa
23 County is charged by law with various duties under the PRA and charge by law with
24 conducting elections within its jurisdictional boundaries, including through its Board of
25 Supervisors, appointing inspectors, marshals and judges to staff polling places on Election
26 Day, and appointing certain Central Counting Boards. *See* A.R.S. §§ 11-251(3), 16-531;
27 EPM at pp. 196–212. The Maricopa County Board of Supervisors is a “public body” within
28 the meaning of A.R.S. § 39-121.01(A)(2). The Maricopa County Board of Supervisors has

1 custody, and is responsible for the preservation, maintenance and care, of some or all the
2 public records requested by Plaintiff, and its members are likewise sued here in their official
3 capacities.

4 **GENERAL ALLEGATIONS**

5 **The Printer/Tabulator Problem**

6 13. Maricopa County had 223 polling centers open on Election Day.

7 14. Of these 223 polling centers, upon information and belief, at least 118 polling
8 centers, or 53%, had experienced problems when the County's ballot printers produced ballots that
9 were not printed darkly enough for the County's vote tabulation machines to read the ballots. (See
10 Decl. Sonnenklar Ex. e, ¶ 13; Decl. Patrick Ex. 4, ¶ 8-9).

11 15. The Defendants failed to detect, prevent or timely remedy this problem during setup
12 and testing of their polling stations. Although poll workers tested the printers, according to
13 observers they did not test whether the tabulators could read the test print. (See Decl. Alford Ex. 5,
14 ¶ 5).

15 16. Based upon information and belief, the following polling centers appear to have had
16 a printer/tabulator problem:

- 17 a. Buckeye City Hall
- 18 b. Altrain Medical and Dental Assisting Academy
- 19 c. Biltmore Fashion Park
- 20 d. Buckeye Fire Station 704
- 21 e. Carefree Town Council Center
- 22 f. Cave Creek Town Hall
- 23 g. Dayspring United Methodist Church
- 24 h. Deer Valley Unified School District Office
- 25 i. Envision Community Center
- 26 j. Estrella Mountain Community College
- 27 k. Fountain Hills Community Center

- 1 l. Glendale Community College/Student Union
- 2 m. Mountain Park Health Center
- 3 n. Outlets at Anthem
- 4 o. Radiant Church Sun City
- 5 p. San Tan Village
- 6 q. Shadow Rock Congregational Church
- 7 r. Union Elementary School/District Office
- 8 s. Wickenburg Community Center
- 9 t. Youngtown Clubhouse
- 10 u. Asante Library
- 11 v. Black Mountain Baptist Church
- 12 w. Burton Barr Library
- 13 x. Camelback Christian Church
- 14 y. Chandler Bible Church
- 15 z. Church of Jesus Christ of LDS/Mesa Maricopa Stake
- 16 aa. Compass Church
- 17 bb. Copper Hills Church/Westwing
- 18 cc. Desert Christian Fellowship
- 19 dd. Eldorado Park Community Center
- 20 ee. Estrella Mtn School/Goodyear
- 21 ff. First United Methodist Church of Gilbert
- 22 gg. GCC North Chinle Bldg
- 23 hh. Glendale Christian Church
- 24 ii. Grace in the Desert Adventist Church
- 25 jj. Happy Trails Resort
- 26 kk. Islamic Center of the East Valley
- 27 ll. Laveen Elementary School District Office
- 28 mm. Lifeway Church

- 1 nn. Light and Life Church
- 2 oo. Litchfield Park First Baptist Ch
- 3 pp. Love of Christ Lutheran Chr
- 4 qq. Marley Park
- 5 rr. Memorial Presbyterian Church
- 6 ss. Mesa Baptist Church
- 7 tt. Mesquite Groves Aquatic Center
- 8 uu. North Phoenix Baptist Church PV Campus
- 9 vv. North Scottsdale United Methodist Church
- 10 ww. Nozomi Aquatic Center
- 11 xx. Oasis Community Church
- 12 yy. Salt River Pima Community Center
- 13 zz. Scottsdale Elks Lodge PBOE #2148
- 14 aaa. Shepherd of the Hills United Church of Christ
- 15 bbb. Sheriffs Posse of Sun City West
- 16 ccc. St. Margaret's Catholic Church
- 17 ddd. Standing Stones Community Church
- 18 eee. Tumbleweed Recreation Center
- 19 fff. Velda Rose United Methodist Church
- 20 ggg. Victory Lutheran Church
- 21 hhh. Worship & Word Church
- 22 iii. Academies at South Mountain
- 23 jjj. Aire Libre School
- 24 kkk. Ascension Lutheran Church
- 25 III. Cactus High School
- 26 mmm. Calvary Free Lutheran Ch
- 27 nnn. Central Christian Church/Mesa
- 28 ooo. Chandler Nature Center

- 1 ppp. Charles W Harris School
2 qq. Church of Jesus Christ of LDS Buckeye
3 rrr. Church of Jesus Christ of LDS Jomax
4 sss. Church of Jesus Christ of LDS Southern
5 ttt. Church of Jesus Christ of LDS Union Hills
6 uuu. Community of Christ
7 vvv. Community of Christ Church
8 www. Cooper Canyon School
9 xxx. Cottonwood Country Club
10 yyy. David Crockett School
11 zzz. Deer Valley Airport
12 aaaa. Desert Hills Community Church
13 bbbb. Dist 6 Community Service Center
14 cccc. Dove of the Desert Untd Methodist Chr
15 dddd. Dream City Church Phoenix Campus
16 eeee. Dream City Church Scottsdale Campus
17 ffff. Escalante Community Center/Tempe
18 gggg. Estrella Foothills High School #201
19 hhhh. Faith Baptist Church
20 iii. Gateway Fellowship Chr/Sbc
21 jjjj. Gilbert Freestone Frec Center
22 kkkk. Holiday Park School
23 llll. Holy Trinity Greek Orthodox Cathedral
24 mmmm. Islamic Center – Scottsdale
25 nnnn. Journey Church
26 oooo. Lakes Rec Ctr @ Westbrook Village
27 pppp. Laveen Baptist Church
28 qqqq. Madison Baptist Church

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- rrrr. Messinger Mortuary
- ssss. Mountain View Park Comm Ctr
- tttt. Mountain View School
- uuuu. Palm Lane School
- vvvv. Peace Lutheran Church
- www. Queen Creek Library
- xxxx. SE Regional Library/Gilbert
- yyyy. Sevilla Elementary School
- zzzz. Shadow Mountain High School
- aaaa. Skyway Church – West Valley
- bbbb. St. Nikolas Serbian Orthodox Church
- cccc. Sun lakes United Methodist Church
- dddd. Sunland Village East
- eeee. Tomahawk School
- ffff. Trilogy @ Power Ranch
- gggg. Trinity Bible Church of Sun City West
- hhhh. University Presbyterian Church
- iiii. Valley Baptist Chr/Tonopah
- jjjj. Valor Christian Center
- kkkk. Venue 8600
- llll. Via Linda (Scottsdale) Senior Center
- mmmm. Vineyard Church of North Phoenix
- nnnn. Youngker High School #201

17. Because of the printer/tabulator problems, the polling locations were chaotic, voters were frustrated, and voters had to endure long lines. (See Decl. Sonnenklar Ex. 3, ¶ 8; Decl. Marple Ex. 6, ¶ 7; Decl. Prince Ex. 7, ¶ 6-7; Decl. O’Toole Ex. 8, ¶ 6-7; Decl. Buser Ex. 9, ¶ 9; Decl. Lasham Ex. 10, ¶ 7; Decl. Tatom Ex. 11, ¶ 6; Decl. Liles Ex. 12, ¶ 7; Decl. Rathbun Ex. 13, ¶ 7; Decl. Woodburn Ex. 14, ¶ 7; Decl. Raboin Ex. *15, ¶ 5; Decl. Mettler Ex. 16, ¶ 5; and Decl. Payne

1 Ex. 17, ¶ 110. The County regularly updates on Election Day, its online listing of polling places,
2 including wait times. Those public records would provide additional information with regard to
3 the lines and wait times.

4 18. Many poll workers attempted to call the County hotline but were unable to timely
5 reach a tech person to fix the printer/tabulators. (See Decl. Sonnenklar Ex. 3, ¶ 27; Decl. Alford
6 Ex. 5, ¶ 10; Decl. Liles Ex. 12, ¶ 7; and Decl. Payne Ex. 17, ¶ 8).

7 19. Even when technical support was reached, poll workers were told that they did not
8 know how to fix the problem. (See Decl. Woodburn Ex. 14, ¶ 7).

9 20. Some poll workers ended up encouraging voters to go to different polling centers to
10 vote. (See Decl. Lasham Ex. 10, ¶ 7; and Decl. Damon Ex. 18, ¶ 17).

11 21. Many voters left without voting. (See Decl. Lasham Ex. 10, ¶ 7; Decl. Liles Ex. 12,
12 ¶ 7; Decl. Mettler Ex. 16, ¶ 9; Decl. Payne Ex. 17, ¶ 11; and Decl. Weiman Ex. 19, ¶ 10).

13 22. When a tabulator was unable to read a ballot, the voter was given the option to spoil
14 the ballot and vote again or they could put the ballot in “door #3.” (See Decl. Rathbun Ex. 13, ¶ 7;
15 Decl. Woodburn Ex. 14, ¶ 7; and Decl. Lindberg Ex. 20, ¶ 7).

16 23. Based upon information and belief, “door #3” was the bin that voters could place
17 their ballots into and these ballots would be tabulated at Maricopa County Tabulation and Election
18 Center (“MCTEC”).

19 24. Things were so chaotic that poll workers were unable to watch the voters feed their
20 ballots through the tabulator. (See Decl. Liles Ex. 12, ¶ 7). Poll workers were pulled in so many
21 different directions that one poll worker did not have the time to mark “spoiled” on original ballots.
22 (See Decl. Sonnenklar Ex. 3, ¶ 17).

23 25. As a result of the printer/tabulator problem, many voters were in fear of their vote
24 not being counted. (See Decl. Liles Ex. 12, ¶ 7).

25 26. This problem with the printer/tabulator never needed to occur because as early as
26 November 2, 2022, a manager at MCTEC discovered that some of the printers were printing faded
27 timing marks and the tabulators were not able to read those ballots. (See Decl. Patrick Ex. 4, ¶ 8-
28 9).

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Problems with Ensuring Every Legal Ballot is Counted

27. Many poll observers saw poll workers mix counted and uncounted ballots in the same container at the end of the night. (See Decl. Mettler Ex. 16, ¶ 10; Decl. Lindberg Ex. 20, ¶ 7; and Decl. Blankenship Ex. 21, ¶ 8).

28. According to the 2019 Elections Procedures Manual which governs this election, “the election board must conduct an audit to ensure that the number of voters who signed in on the signature roster or e-pollbook matches the number of ballots cast, including regular and provisional ballots and, if the accessible voting equipment independently tabulates votes, any votes cast on the accessible voting equipment, A.R.S. § 16-602(A)”. (Relevant Pages are attached as Exhibit 22, p. 192).

29. However, when asked on Election Night, many poll workers were unable to provide the observers with the number of voters who signed in on the signature roster or e-pollbook and therefore could not determine if those numbers matched the numbers of ballots cast. (See Decl. Marple Ex. 6, ¶ 7; Decl. Prince Ex. 7, ¶ 9; Decl. O’Toole Ex. 8, ¶ 8; Decl. Buser Ex. 9, ¶ 7; Decl. Woodburn Ex. 14, ¶ 7; Decl. Mettler Ex. 16, ¶ 11; and Decl. Blankenship Ex. 21, ¶ 9).

30. The canvass shall occur no “more than twenty days following the election,” *unless* “the returns from any polling place in the election district where the polls were opened and an election held are found to be missing.” A.R.S. § 16-642(A). In that case, “the canvass shall be postponed from day to day until all the returns are received or until six postponements have been had.” A.R.S. § 16-642(C).

31. In addition, there are numerous reports of voters who left the voting center without voting because the tabulators continued to reject the voters’ ballots. (*Id.* ¶ 22). The returns for those voters are deemed “missing.”

32. Defendants violated A.R.S. § 16-602(A) and Defendants have further compounded this problem by refusing to respond to Plaintiff’s Public Records Request (*see infra*).

33. In addition, based upon information and belief, Palm Ridge Recreational Center had over two bags of ballots that had been dropped off in Door #3 after the tabulators failed to count

1 their ballots. However, the County claims that there were only eighteen Door #3 ballots attributable
2 to this polling center.

3 34. Furthermore, based upon information and belief, Plaintiff has been informed that
4 certain ballots are not being counted at MCTEC because the blue ink used by the voter to mark
5 their preference was too light for the tabulators.

6 **Public Records Requests**

7 35. The first request was submitted on November 15, 2022 (the "First Records
8 Request") for the following public records:

- 9 a. "All public records related to voters who checked in to a vote center on
10 Election Day in the sitebook, and who also submitted a mail ballot on
11 Election Day, where the mail ballot was not counted, including names
12 and all available contact information for these electors."
- 13 b. "All public records related to voters casting drop-offs ballots that were
14 rejected due to voter submitting another ballot that day including names
15 and all available contact information for these electors."
- 16 c. "All public records related to the number of voters who tried to check in
17 at two different voting centers on Election Day and were (a) permitted to
18 cast a provisional ballot at the second site or (b) did not cast a ballot at
19 the second site."
- 20 d. "All public records related to the adjudication rates by legislative district,
21 because the write-in candidates for legislative district 22, Arizona
22 Senate."
- 23 e. "All public records related to the total number and names of any voter
24 who checked into a vote center that had any print malfunction of an on
25 demand printer such that ballots were placed into door 3."
- 26 f. "All public records to the total number of ballots in every category in any
27 vote center that had any print malfunction of an on demand printer such
28 that ballots were placed in door 3."

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- g. "All public records regarding the number of voided, spoiled, cancelled, or uncounted for any other reason from early ballots dropped off on Election Day."
- h. "All public records regarding the total number of ballots including serial number of any ballot that was duplicated in order to be tabulated as a result of any print malfunction of an on demand printer such that the ballots were placed into door 3."
- i. "All public records regarding the vote centers in which door 3 overflowed on Election Day causing any poll workers to utilize a means of transportation and/or storage of these ballots."
- j. "All public records regarding any commingled ballot."
- k. "All public records regarding all regarding UOCAVA ballots and verification processes for confirming these requests."

36. A true and correct copy of the First Records Request is attached hereto as Exhibit 1.

37. The Defendants have not yet provided to Plaintiff the public records in response to the First Records Request.

38. On November 16, 2022, Plaintiff submitted to the Defendants another public records request (the "Second Records Request") that sought the following additional public records:

- a. "All communications prior to Election Day between or among County employees, agents and vendors with regard to problems with tabulation or printing of ballots at vote centers."
- b. "All public records related to retabulation of votes cast in person at vote centers due to commingling and/or reconciliation issues."

(collectively, the "Requested Records").

39. A true and correct copy of the Second Records Request is attached hereto as Exhibit 2.

1 40. The Second Records Request sets forth in detail the reasons for the requests,
2 putting Defendants on notice that the circumstances demanded they provide an immediate
3 response.

4 41. To date, the Defendants have not produced or made available the public
5 records in response to the Second Records Request.

6 42. Public records requests must be fulfilled “promptly.” A.R.S. § 39-
7 121.01(D)(1).

8 43. Upon information and belief, the Defendants are scheduled to canvass the
9 election on November 28, 2022, a few days from the filing of this complaint, and the state
10 canvass would follow on December 5, 2022.

11 44. In the absence of an immediate and comprehensive production of the
12 requested public records, Plaintiff cannot ascertain the full extent of the problems identified
13 and their impacts on electors.

14 45. Defendants should be required to produce the records prior to the canvassing
15 of the election. This deadline (or its substantial equivalent) is, under the circumstances
16 presented, necessary to ensure that vital public records are furnished promptly and that
17 apparent deficiencies can be remedied before canvassing of the 2022 general election.

18 **The Arizona Attorney General’s Request for Information**

19 46. On November 19, 2022, the Arizona Attorney General sent a letter to Maricopa
20 County outlining many problems with how the elections were run in the County and asked the
21 County to respond to these questions prior to canvassing the election. (Ex. 23).

22 47. On November 21 2022, Maricopa County issued a statement from Chairman Bill
23 Gates on Upcoming Canvass:

24 Maricopa County has finished counting all legal ballots cast during the November
25 General Election and will hold a public meeting to canvass the election on Monday
26 November 28. The canvass is required by law and is the full accounting of ballots
27 cast. It’s meant to provide a record of the votes counted and those that were not
28 legally cast. There will be no delays or games; we will canvass in accordance with
state law.

....

1 48. Although they do not specify when they will respond the First and Second Records
2 Requests, Maricopa County is willing to respond to the Arizona Attorney General prior to the
3 canvassing of the election. Defendants have been unwilling to produce responses to Plaintiff even
4 though the Plaintiff is entitled to the information as a matter of law. Defendants' failure to conduct
5 this election in a proper manner and refusal to produce records in response to a lawful request has
6 caused voters to be concerned that about the validity of the election results.

7 49. Plaintiff will be prejudiced by Defendants refusal to produce relevant public records
8 in advance of canvassing. These public records are vital to the integrity of the election process and
9 necessary to show, ahead of canvassing, that every legal ballot was properly counted.

10
11 **COUNT I**
12 **Special Action Relief to Compel Prompt Production of Public Records**
13 **(A.R.S. § 39-121, et seq.)**

14 50. Plaintiff incorporates by reference the foregoing allegations as if fully set
15 forth herein.

16 51. The Defendants individually and collectively are required by law to preserve
17 and maintain all records "reasonably necessary or appropriate to maintain an accurate
18 knowledge of their official activities and of any of their activities that are supported by
19 monies from this state or any political subdivision of this state." A.R.S. § 39-121.01(B).

20 52. The Defendants are required by law to produce or make available such public
21 records to "any person" upon request. *See* A.R.S. § 39-121.

22 53. A public records request need not be presented in any particular format or
23 utilize any specific verbiage. *See* A.R.S. § 39-121.01(D)(1).

24 54. The PRA requires "the prompt and actual production of the documents"
25 sought by a public records request. *Phoenix New Times, L.L.C. v. Arpaio*, 217 Ariz. 533,
538, ¶ 12 (App. 2008).

26 55. An officer or public body acts "promptly" when the officer or body is "quick
27 to act" or "produc[es] the requested records 'without delay.'" *Am. Civil Liberties Union v.*
28 *Ariz. Dept. of Child Safety*, 240 Ariz. 142, 152, ¶ 32 (App. 2016).

1 56. The officer or public body from whom public records are requested has the
2 burden of proving that the response was “prompt given the circumstances surrounding each
3 request.” *Phoenix New Times*, 217 Ariz. at 538–39, ¶ 15.

4 57. Undue delay in the fulfillment of a public records request constitutes a denial
5 of access to the requested records. *See Phoenix New Times*, 217 Ariz. at 547, ¶ 51.

6 58. A person who has been denied access to requested public records “may appeal
7 the denial through a special action in the superior court.” A.R.S. § 39-121.02(A).

8 59. A court in a special action proceeding may compel a public officer “to
9 perform a duty required by law as to which he has no discretion.” Ariz. R. Proc. Special
10 Actions (“RPSA”) 3(a); *see also* A.R.S. § 12-2021.

11 60. All the documents sought by the First Records Request and the Second
12 Records Request are “public records” subject to mandatory and prompt disclosure under
13 the PRA because they have a “substantial nexus” to the Defendants’ official duties and
14 activities in connection with the conduct and administration of elections in Maricopa
15 County. *See Griffis v. Pinal County*, 215 Ariz. 1, 4, ¶ 10 (2007).

16 61. Upon information and belief, there are public records in the Defendants’
17 custody that are responsive to the First Records Request and/or the Second Records
18 Request.

19 62. The Defendants have a nondiscretionary statutory duty to promptly produce
20 or make available to Plaintiff all public records sought in the First Records Request and the
21 Second Records Request.

22 63. The Defendants have not produced or made available to Plaintiff the public
23 records in response to either the First Records Request or the Second Records Request.

24 64. The Defendants’ failure to promptly produce the requested documents
25 constitutes an effective denial of access to public records and prevents Plaintiff from
26 monitoring, and challenging, election activity in the most populous county of the state.

27 65. Plaintiff is accordingly entitled to a writ of mandamus or other relief
28 compelling the prompt production of the requested public records.

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PRAYER FOR RELIEF

WHEREFORE, the Plaintiff demands relief in the following forms:

- a. A writ of mandamus or other order requiring the Defendants to immediately produce or make available to Plaintiff all public records requested in the First Records Request and/or the Second Records Request.
- b. Such other relief as the Court deems necessary, equitable, proper, and just.

DATED this 23rd day of November 2022.

By: /s/ Timothy A. La Sota
Timothy A. La Sota, SBN 020539
TIMOTHY A. LA SOTA, PLC
2198 East Camelback Road, Suite 305
Phoenix, Arizona 85016
Telephone: (602) 515-2649
Email:
Attorney for Plaintiff Kari Lake for Arizona

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Verification

I, Caroline Wren, depose and say:

I have read the foregoing Verified Special Action Complaint and know the contents thereof by personal knowledge. I know the allegations of the Verified Special Action Complaint to be true, except the matters therein on information and belief, which I believe to be true.

Signed under penalty of perjury on this 23rd day of November 2022.

Caroline Wren

Caroline Wren

Exhibit B

1 RACHEL H. MITCHELL
2 MARICOPA COUNTY ATTORNEY

3 By: THOMAS P. LIDDY (Bar No. 019384)
4 JOSEPH J. BRANCO (Bar No. 031474)
5 JOSEPH E. LA RUE (Bar No. 031348)
6 JACK O'CONNOR (Bar No. 030660)
7 SEAN M. MOORE (Bar No. 031621)
8 Deputy County Attorneys
9 liddy@mcao.maricopa.gov
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11 laruej@mcao.maricopa.gov
12 oconnorj@mcao.maricopa.gov
13 moores@mcao.maricopa.gov

14 CIVIL SERVICES DIVISION
15 225 West Madison Street
16 Phoenix, Arizona 85003
17 Telephone (602) 506-8541
18 Facsimile (602) 506-4316
19 ca-civilmailbox@mcao.maricopa.gov
20 MCAO Firm No. 0003200

21 *Attorneys for Maricopa County Defendants*

22 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**

23 **IN AND FOR THE COUNTY OF MARICOPA**

24 KARI LAKE FOR ARIZONA, an
25 Arizona political committee,

26 Plaintiffs,

27 vs.

28 STEPHEN RICHER, *et al.*,

Defendants.

No. CV2022-015519

ANSWER

(Honorable Scott Blaney)

29 Pursuant to Ariz. R. Civ. P. 8(c)-(d) and 12(a)-(b), Defendants Maricopa County
30 Recorder Stephen Richer, Co-Directors of Elections Rey Valenzuela and Scott Jarrett,

1 Maricopa County Supervisors Bill Gates, Clint Hickman, Jack Sellers, Thomas Galvin, and
2 Steve Gallardo, and Maricopa County (together, “Recorder Richer and Maricopa County”)
3 ANSWER Plaintiff’s Complaint as follows.

4 **PREFATORY STATEMENT**

5 This lawsuit is a statutory special action brought pursuant to the Arizona Public
6 Records Act, A.R.S. § 39-121, *et seq.* [Cmplt. at 2 (first sentence of the Complaint).] *See*
7 *also* Cmplt., ¶¶ 63-64 (alleging that the “Defendants have not produced or made available to
8 Plaintiff the public records” and this constitutes a “failure to promptly produce the requested
9 documents”).] The Complaint has only one Count, which Plaintiff titles, “Special Action
10 Relief to Compel Prompt Production of Public Records.” [Cmplt. at 16 (Count I).] The only
11 identified relief that Plaintiff seeks is a writ of mandamus to compel Recorder Richer and
12 Maricopa County to “immediately” produce public records requested in two public records
13 requests. [Cmplt. at 18 (Prayer for Relief).] The Court recognized this fact, stating: “The
14 Court notes that the present case is not an election challenge; it is a statutory special action
15 to compel the prompt production of records from the election.” [Minute Entry, “Hearing
16 Set,” December 1, 2022, at 2.]

17 Despite that, the factual averments contain many inappropriate and inflammatory
18 claims about Recorder Richer and Maricopa County that have nothing to do with the alleged
19 denial of public records that Plaintiff asserts. Indeed, this Court recognized that Plaintiff’s
20 “allegations of election irregularities . . . are not before this Court.” [*Id.*]

21 Accordingly, those factual averments should be stricken from the record pursuant to
22 Ariz. R. Civ. P. 12(f)(2). A motion to strike is filed contemporaneously with this Answer.

23 For the Answer, all allegations not specifically admitted are deemed denied.

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ANSWER

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1. The cited authority speaks for itself, and no further answer is required.

2. ADMIT¹ that plaintiff’s attorney submitted two public records requests, which are Exhibits 1 and 2 to the Complaint. LACK KNOWLEDGE OR INFORMATION SUFFICIENT to form belief as to whether the requested records “are necessary for Plaintiff to determine the full extent of the problems identified and their impact on electors” and so DENY the same. DENY all other allegations in paragraph 2.

3. DENY that there has been an “unlawful failure” by Recorder Richer and Maricopa County “to produce the records.” The remainder of paragraph 3 asserts legal conclusions to which no response is required.

4. DENY all factual allegations of paragraph 4. To the extent Plaintiff intends paragraph 4 to be read as legal argument or legal conclusion, no response is required.

5. DENY all factual allegations of paragraph 5. To the extent Plaintiff intends paragraph 5 to be read as legal argument or legal conclusion, no response is required.

6. DENY that this Court has jurisdiction.

7. ADMIT that venue would be appropriate if the Court had jurisdiction.

8. LACK KNOWLEDGE OR INFORMATION SUFFICIENT to form belief as to truth of the allegations of paragraph 8 and so DENY the same.

9. DENY that Recorder Richer is “the officer in charge of elections.” ADMIT the remaining allegations contained in paragraph 9.

10. ADMIT.

11. ADMIT.

12. ADMIT.

13. Recorder Richer and Maricopa County MOVE TO STRIKE paragraph 13 in their contemporaneously filed Motion to Strike because it is immaterial to the issues raised

¹ Throughout this Answer, Recorder Richer and Maricopa County together “ADMIT,” “DENY,” or “LACK KNOWLEDGE OR INFORMATION SUFFICIENT” to form a belief as to the various allegations.

1 in this statutory special action under A.R.S. § 39-121.02.

2 14. Recorder Richer and Maricopa County MOVE TO STRIKE paragraph 14 in
3 their contemporaneously filed Motion to Strike because it is immaterial to the issues raised
4 in this statutory special action under A.R.S. § 39-121.02.

5 15. Recorder Richer and Maricopa County MOVE TO STRIKE paragraph 15 in
6 their contemporaneously filed Motion to Strike because it is immaterial to the issues raised
7 in this statutory special action under A.R.S. § 39-121.02.

8 16. Recorder Richer and Maricopa County MOVE TO STRIKE paragraph 16 in
9 their contemporaneously filed Motion to Strike because it is immaterial to the issues raised
10 in this statutory special action under A.R.S. § 39-121.02.

11 17. Recorder Richer and Maricopa County MOVE TO STRIKE paragraph 17,
12 along with the Exhibits referenced in this paragraph, in their contemporaneously filed
13 Motion to Strike because they are immaterial to the issues raised in this statutory special
14 action under A.R.S. § 39-121.02.

15 18. Recorder Richer and Maricopa County MOVE TO STRIKE paragraph 18,
16 along with the Exhibits referenced in this paragraph, in their contemporaneously filed
17 Motion to Strike because they are immaterial to the issues raised in this statutory special
18 action under A.R.S. § 39-121.02.

19 19. Recorder Richer and Maricopa County MOVE TO STRIKE paragraph 19,
20 along with the Exhibit referenced in this paragraph, in their contemporaneously filed Motion
21 to Strike because they are immaterial to the issues raised in this statutory special action under
22 A.R.S. § 39-121.02.

23 20. Recorder Richer and Maricopa County MOVE TO STRIKE paragraph 20,
24 along with the Exhibits referenced in this paragraph, in their contemporaneously filed
25 Motion to Strike because they are immaterial to the issues raised in this statutory special
26 action under A.R.S. § 39-121.02.

27 21. Recorder Richer and Maricopa County MOVE TO STRIKE paragraph 21,
28 along with the Exhibits referenced in this paragraph, in their contemporaneously filed

1 Motion to Strike because they are immaterial to the issues raised in this statutory special
2 action under A.R.S. § 39-121.02.

3 22. Recorder Richer and Maricopa County MOVE TO STRIKE paragraph 22,
4 along with the Exhibits referenced in this paragraph, in their contemporaneously filed
5 Motion to Strike because they are immaterial to the issues raised in this statutory special
6 action under A.R.S. § 39-121.02.

7 23. Recorder Richer and Maricopa County MOVE TO STRIKE paragraph 23
8 because it is immaterial to the issues raised in this statutory special action under A.R.S. §
9 39-121.02.

10 24. Recorder Richer and Maricopa County MOVE TO STRIKE paragraph 24,
11 along with the Exhibits referenced in this paragraph, in their contemporaneously filed
12 Motion to Strike because they are immaterial to the issues raised in this statutory special
13 action under A.R.S. § 39-121.02.

14 25. Recorder Richer and Maricopa County MOVE TO STRIKE paragraph 25,
15 along with the Exhibit referenced in this paragraph, in their contemporaneously filed Motion
16 to Strike because they are immaterial to the issues raised in this statutory special action under
17 A.R.S. § 39-121.02.

18 26. Recorder Richer and Maricopa County MOVE TO STRIKE paragraph 26,
19 along with the Exhibit referenced in this paragraph, in their contemporaneously filed Motion
20 to Strike because they are immaterial to the issues raised in this statutory special action under
21 A.R.S. § 39-121.02.

22 27. Recorder Richer and Maricopa County MOVE TO STRIKE paragraph 27,
23 along with the Exhibits referenced in this paragraph, in their contemporaneously filed
24 Motion to Strike because they are immaterial to the issues raised in this statutory special
25 action under A.R.S. § 39-121.02.

26 28. Recorder Richer and Maricopa County MOVE TO STRIKE paragraph 28,
27 along with the Exhibit referenced in this paragraph, in their contemporaneously filed Motion
28 to Strike because they are immaterial to the issues raised in this statutory special action under

1 A.R.S. § 39-121.02.

2 29. Recorder Richer and Maricopa County MOVE TO STRIKE paragraph 29,
3 along with the Exhibits referenced in this paragraph, in their contemporaneously filed
4 Motion to Strike because they are immaterial to the issues raised in this statutory special
5 action under A.R.S. § 39-121.02.

6 30. Recorder Richer and Maricopa County MOVE TO STRIKE paragraph 30 in
7 their contemporaneously filed Motion to Strike because it is immaterial to the issues raised
8 in this statutory special action under A.R.S. § 39-121.02.

9 31. Recorder Richer and Maricopa County MOVE TO STRIKE paragraph 29,
10 along with the Exhibits referenced in this paragraph, in their contemporaneously filed
11 Motion to Strike because they are immaterial to the issues raised in this statutory special
12 action under A.R.S. § 39-121.02.

13 32. DENY that Recorder Richer and Maricopa County have refused to respond
14 to the public records requests at issue in this lawsuit. MOVE TO STRIKE the remaining
15 allegations in this paragraph in their contemporaneously filed Motion to Strike because they
16 are immaterial to the issues raised in this statutory special action under A.R.S. § 39-121.02.

17 33. Recorder Richer and Maricopa County MOVE TO STRIKE paragraph 33 in
18 their contemporaneously filed Motion to Strike because it is immaterial to the issues raised
19 in this statutory special action under A.R.S. § 39-121.02.

20 34. Recorder Richer and Maricopa County MOVE TO STRIKE paragraph 33
21 because it is immaterial to the issues raised in this statutory special action under A.R.S. §
22 39-121.02.

23 35. ADMIT.

24 36. ADMIT.

25 37. ADMIT the allegations in paragraph 37 were true at the time the Complaint
26 was filed.

27 38. ADMIT that the “Second Records Request” was submitted on November 16,
28 2022, and that it requested the records identified in this paragraph. DENY that Plaintiff

1 submitted it.

2 39. ADMIT.

3 40. ADMIT that the Second Records Request identified reasons that it was sent.
4 DENY that the identification of those reasons “put[] Defendants on notice that the
5 circumstances demanded they provide an immediate response.” FURTHER
6 AFFRIMATIVELY STATE that the public records law does not work that way.

7 41. ADMIT that the allegations in paragraph 41 were true at the time the
8 Complaint was filed.

9 42. The cited authority speaks for itself and no further response is required.

10 43. Recorder Richer and Maricopa County MOVE TO STRIKE paragraph 43
11 because it is immaterial to the issues raised in this statutory special action under A.R.S. §
12 39-121.02.

13 44. LACK KNOWLEDGE OR INFORMATION SUFFICIENT to form belief as
14 to the truth of the allegations contained in this paragraph and so DENY the same.

15 45. This paragraph states a legal conclusion but applies it to the facts alleged in
16 the Complaint. Pursuant to the requirements set forth in Rule 8, Ariz. R. Civ. P., Recorder
17 Richer and Maricopa County DENY that the public records law requires them to produce
18 records prior to the canvass of the election where, as here, such a quick response time is not
19 required by the “promptly” standard under the public records law. Recorder Richer and
20 Maricopa County further DENY that there were any “deficiencies” that needed to “be
21 remedied before canvassing of the 2022 general election.”

22 46. Recorder Richer and Maricopa County MOVE TO STRIKE paragraph 46,
23 along with the Exhibit referenced in this paragraph, in their contemporaneously filed Motion
24 to Strike because they are immaterial to the issues raised in this statutory special action under
25 A.R.S. § 39-121.02.

26 47. Recorder Richer and Maricopa County MOVE TO STRIKE paragraph 47 in
27 their contemporaneously filed Motion to Strike because it is immaterial to the issues raised
28 in this statutory special action under A.R.S. § 39-121.02.

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48. DENY.
49. DENY.

COUNT I

50. Recorder Richer and Maricopa County incorporate by reference all foregoing answers and responses as if fully set forth herein.

51. The cited authority speaks for itself and no further response is required.
52. The cited authority speaks for itself and no further response is required.
53. The cited authority speaks for itself and no further response is required.
54. The cited authority speaks for itself and no further response is required.
55. The cited authority speaks for itself and no further response is required.
56. The cited authority speaks for itself and no further response is required.
57. The cited authority speaks for itself and no further response is required.
58. The cited authority speaks for itself and no further response is required.
59. The cited authority speaks for itself and no further response is required.
60. The cited authority speaks for itself and no further response is required. To

the extent that Plaintiff sets forth a legal conclusion in this paragraph, no response is required.

61. ADMIT.
62. ADMIT.

63. ADMIT that the allegations in paragraph 63 were true at the time the Complaint was filed.

64. DENY.
65. The allegations of this paragraph set forth a legal conclusion to which no

response is required.

AFFIRMATIVE DEFENSES

- 1. This Court lacks subject matter jurisdiction.
- 2. Plaintiff has failed to state a claim upon which relief can be granted.

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RESPECTFULLY SUBMITTED this 4th day of December, 2022.

RACHEL H. MITCHELL
MARICOPA COUNTY ATTORNEY

BY: /s/ Joseph E. La Rue
THOMAS P. LIDDY
JOSEPH J. BRANCO
JOSEPH E. LA RUE
JACK O'CONNOR
SEAN M. MOORE
Deputy County Attorneys
Attorneys for Maricopa County Defendants

ORIGINAL of the foregoing E-FILED
this 4th day of December, 2022 with
AZTURBOCOURT, and copies e-served / emailed to:

HONORABLE SCOTT BLANEY
MARICOPA COUNTY SUPERIOR COURT
Ricky McKaig, Judicial Assistant
Ricky.mckaig@jbazmc.maricopa.gov

Timothy A. La Sota
TIMOTHY A. LA SOTA, PLC
tim@timlasota.com
Attorney for Plaintiff Kari Lake for Arizona

/s/ Joseph E. La Rue

Exhibit C

Subject: Re: Notice of Dismissal

From: James Rogers <james.rogers@aflegal.org>

Date: 2/22/2024, 3:34 PM

To: "Joseph LaRue (MCAO)" <laruej@mcao.maricopa.gov>, "Johnson, Brett W. (PHX)" <bwjohnson@swlaw.com>

CC: Jennifer Wright <jen@jenwesq.com>

Joe--

The Maricopa Defendants do not appear to have a good faith basis for claiming that the dismissal should be with prejudice. The plain language of the rule states that unless the dismissal notice "states otherwise, the dismissal is without prejudice." Ariz. R. Civ. P. 41(a)(1)(B). The only exception is "if the plaintiff previously dismissed an action in any court based on or including the same claim," *id.*, which is not the case here.

Indeed, it is well-settled in Arizona that no order from the court is even needed to effectuate dismissal. Once a valid Rule 41(a)(1) notice has been filed, the dismissal is automatic as of the time the notice was filed. *E.g. Vicari v. Lake Havasu City*, 222 Ariz. 218, 222–23 ¶ 17 (App. 2009) (holding that case was automatically dismissed on the date the plaintiff filed notice of dismissal, and not five days later when the court issued an order recognizing that dismissal).

This case, therefore, is already dismissed and the Court already lacks jurisdiction to hear any reply the Defendants plan to file. Any request to the court that this case be dismissed with prejudice directly contradicts the plain language of the Rule, and also would be futile because the court lacks jurisdiction. We ask that you notify the Court that the Maricopa Defendants withdraw their request to respond to the notice of dismissal. If the Defendants do not do so by the end of the day, the Plaintiffs will seek fees for the time spent replying to the Maricopa Defendants' inappropriate attempt to respond to the Plaintiffs' Notice of Dismissal.

Regards,

James

James Rogers
Senior Counsel
America First Legal Foundation

On 2/22/2024 1:10 PM, Joseph LaRue (MCAO) wrote:

Ms. Stergulz,

If you could please let Judge Adelman know, the Maricopa County Defendants would like to be heard on whether the dismissal should be without prejudice. We will file a response to the notice of dismissal stating our position by close of business tomorrow if the Court would grant us leave to do so. I will be filing a formal motion asking for leave, and wanted to let the Court know that it will be coming.

Thank you,

Joe



Joseph E. La Rue

Election Law Team Leader

Email: laruej@mcao.maricopa.gov ■



Maricopa County Attorney's Office

225 West Madison St.

Phoenix, Arizona 85003

<http://www.maricopacountyattorney.org>

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From: Michelle Stergulz (SUP) <Michelle.Stergulz@JBAZMC.Maricopa.Gov>

Sent: Thursday, February 22, 2024 1:01 PM

To: James Rogers <james.rogers@aflegal.org>; Joseph LaRue (MCAO) <laruej@mcao.maricopa.gov>; jen@jenwesq.com; rose@flaglawgroup.com; agaona@cblawyers.com; Austin Yost <ayost@cblawyers.com>; lmadduri@elias.law; Daniel Cohen <dcohen@elias.law>; erodriguezarmenta@elias.law; jhawley@elias.law; Thomas Liddy (MCAO) <liddyt@mcao.maricopa.gov>; Jack O'Connor (MCAO) <oconnorj@mcao.maricopa.gov>; Rosa Aguilar (MCAO) <aguilarr@mcao.maricopa.gov>; bwjohnson@swlaw.com; Spencer, Eric H. <espencer@swlaw.com>; cahler@swlaw.com; Joyce, Ian <ijoyce@swlaw.com>

Subject: RE: Notice of Dismissal

Importance: High

Good afternoon,

Thank you, we have vacated the hearing for today at 130pm.

Michelle Stergulz
Judicial Assistant to Judge Jay Adleman
East Court Building Suite 712
Court Room 712
[Redacted]

From: James Rogers <james.rogers@aflegal.org>

Sent: Thursday, February 22, 2024 12:47 PM

To: Michelle Stergulz (SUP) <Michelle.Stergulz@JBAZMC.Maricopa.Gov>; Joseph LaRue (MCAO) <laruej@mcao.maricopa.gov>; jen@jenwesq.com; rose@flaglawgroup.com; agaona@cblawyers.com; Austin Yost <ayost@cblawyers.com>; lmadduri@elias.law; Daniel Cohen <dcohen@elias.law>; erodriguezarmenta@elias.law; jhawley@elias.law; Thomas Liddy (MCAO) <liddyt@mcao.maricopa.gov>; Jack O'Connor (MCAO) <oconnorj@mcao.maricopa.gov>; Rosa Aguilar (MCAO) <aguilarr@mcao.maricopa.gov>; bwjohnson@swlaw.com; Spencer, Eric H. <espencer@swlaw.com>; cahler@swlaw.com; Joyce, Ian <ijoyce@swlaw.com>

Subject: Notice of Dismissal

You don't often get email from james.rogers@aflegal.org. [Learn why this is important](#)

Good Afternoon--

In *Strong Communities Foundation of Arizona v. Maricopa County*, CV2024-002441, please find attached the Plaintiffs' Notice of Dismissal under Ariz. R. Civ P. 41(a)(1)(A)(i), which was just filed through TurboCourt

Regards,
James

--

James Rogers
Senior Counsel
America First Legal Foundation
[REDACTED]