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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 Plaintiff,

27 vs.

28 STEPHEN RICHER, *et al.*,

Defendants.

No. CV2022-015519

**MOTION FOR JUDGMENT ON THE
PLEADINGS**

(Honorable Scott Blaney)

INTRODUCTION

Plaintiff Kari Lake for Arizona (“Lake”) filed suit just eight business days after attorney Timothy A. La Sota submitted the first of what is now four related public records requests to the Maricopa County Elections Department. That first request sought “[a]ll public records” responsive to eleven categories of records. (Compl., ¶ 35 (emphasis added).)

1 The second request made the next day sought “[a]ll” records responsive to two categories
2 of records. (*Id.*, ¶ 38.) These requests were submitted while the Defendants were fulfilling
3 their statutory duties to administer a general election, including the preparation for the
4 county canvass under § 16-642(A). (*See* Exh. A; *see also* Compl., ¶¶ 4, 42–45, 64.)

5 As a matter of law, this Court lacks jurisdiction to hear this matter under § 39-
6 121.02(A). That statute provides:

7 Any person who has requested to examine or copy public records pursuant
8 to this article, and who has been *denied* access to or the right to copy such
9 records, may *appeal* the denial through a special action in the superior court,
10 pursuant to the rules of procedure for special actions against the officer or
11 public body.

12 § 39-121.02(A) (emphasis added). “Access to a public record is deemed denied if a
13 custodian fails to *promptly* respond to a request for production of a public record” §
14 39-121.01(E) (emphasis added). Critically, whether a response is “prompt” is determined
15 by the facts and circumstances surrounding the public body’s ability to respond and the
16 timing thereof; the requester’s subjective need for the records is irrelevant to the promptness
17 analysis.

18 Simply put, nothing in the statutory scheme or Arizona’s public records
19 jurisprudence authorizes a person making an extensive request for public records to sue a
20 public body on such a short timeframe absent an explicit denial. *See McKee v. Peoria*
21 *Unified Sch. Dist.*, 236 Ariz. 254, 258, ¶ 15 (App. 2014) (noting lack of fixed timeframes);
22 *Phx. New Times, L.L.C. v. Arpaio*, 217 Ariz. 533, 538, ¶ 14 (App. 2008) (“whether a
23 government agency’s response to a wide variety of document requests was sufficiently
24 prompt will ultimately be dependent upon the facts and circumstances of each request.”)
(internal quotation mark omitted).

25 Further, under the circumstances of this case, granting the requested relief would
26 have a deleterious effect on the orderly administration of Arizona’s public records laws by
27 governmental entities across the state. The Elections Department, like other public bodies,
28 receives many public records requests each month. When an important event occurs (such

1 as an election, the arrest of a notorious criminal defendant, or other event in the public eye),
2 public records requests may come in a flurry, with multiple, complicated requests arriving
3 on the same day. Allowing a plaintiff to file suit and obtain immediate relief under these
4 circumstances will encourage litigation by requesters who can afford an attorney and filing
5 fees to jump to the front of the line while most requesters wait longer to receive their
6 records.

7 Accordingly, pursuant to Rule 12(c), Ariz. R. Civ. P., Defendants Maricopa County
8 Recorder Stephen Richer, Co-Directors of Elections Rey Valenzuela and Scott Jarrett,
9 Maricopa County Supervisors Bill Gates, Clint Hickman, Jack Sellers, Thomas Galvin, and
10 Steve Gallardo, and Maricopa County (collectively, “the Recorder and the County”)
11 respectfully request that this Court grant judgment on the pleadings in their favor because
12 Lake’s Complaint fails to state a claim for relief.

13 The following Memorandum of Points and Authorities supports this Motion.

14 **Memorandum of Points and Authorities**

15 **Background¹**

16 **I. The public records requests and the work of the Elections Department**

17 On November 8, 2022, the County administered Election Day for the November
18 2022 general election. In the days that followed, the Recorder, the County, and their staff
19 performed their statutory obligations with respect to ballot tabulation and other election
20 administration tasks. The County was also responsible for the county canvass consistent
21 with § 16-642(A). (See Exh. A.)

22 _____
23 ¹ This Court can take judicial notice of the exhibits attached to this Rule 12(c) motion and
24 the links to governmental entity websites. See Ariz. R. Evid. 201(b); *Coleman v. City of*
25 *Mesa*, 230 Ariz. 352, 356, ¶ 9 (2012); *Ariz. Pub. Integrity All. v. Fontes*, 250 Ariz. 58, 65
26 n.2 (2020) (taking judicial notice of Recorder’s website); *Encanterra Residents Against*
27 *Annexation v. Town of Queen Creek*, No. 2 CA-CV 2020-0002, 2020 WL 1157024, at *9
28 (App. Mar. 9, 2020) (mem. decision) (taking judicial notice of video of a local government
body’s public meeting), available without charge at
<https://law.justia.com/cases/arizona/court-of-appeals-division-two-unpublished/2020/2-ca-cv-2020-0002.html>; cf. *Jarvis v. State Land Dep’t City of Tucson*, 104 Ariz. 527, 530 (1969)
(taking judicial notice of state agency records).

1 On Tuesday, November 15, 2022, attorney Timothy A. La Sota submitted a public
2 records request to the Maricopa County Elections Department via a letter to the chairman
3 of the Maricopa County Board of Supervisors (“November 15 Request”). (Compl., Exh. 1)
4 La Sota sought “[a]ll public records” responsive to eleven categories of records. (*Id.*
5 (emphasis added)) The next day, La Sota submitted a second public records request to the
6 Elections Department seeking two categories of records. (“November 16, 2022 Request”).
7 (Compl., Exh. 2.)

8 Thursday, November 24, and Friday, November 25, 2022, were legal holidays.

9 On Monday, November 28, 2022, the Maricopa County Board of Supervisors held
10 its statutorily-required canvass. (*See, e.g.*, Exh. A; *see also* 12News, *Maricopa County*
11 *November 2022 General Election canvass meeting*, YouTube,
12 <https://www.youtube.com/watch?v=LbeErDqNpdA> (last visited Dec. 4, 2022).) The
13 Defendants attended the canvass and addressed the public. (*Id.*)

14 On November 29, 2022, La Sota submitted a public records request on behalf of Kari
15 Lake and Kari Lake for Arizona (“the November 29 Request”). (Exh. B.) The November
16 29 Request sought four categories of records. (*Id.*)

17 During this time, the Elections Department was also busy performing other statutory
18 duties with respect to election administration, most notably the preparation for automatic
19 recounts set to begin after the December 5, 2022 state-wide canvass. (*See, e.g.*, Maricopa
20 Cnty. Elections Dep’t, Public Notice: Logic and Accuracy Tests for Automatic Recount on
21 December 6, Dec. 2, 2022 [https://elections.maricopa.gov/news-and-information/elections-](https://elections.maricopa.gov/news-and-information/elections-news/public-notice-logic-and-accuracy-tests-for-automatic-recount-on-december-6.html)
22 [news/public-notice-logic-and-accuracy-tests-for-automatic-recount-on-december-6.html](https://elections.maricopa.gov/news-and-information/elections-news/public-notice-logic-and-accuracy-tests-for-automatic-recount-on-december-6.html).)
23 The Elections Department personnel responsible to perform these statutory, election-
24 administration duties are the same personnel who are necessary to research and gather
25 election-related records responsive to public records requests.

26 **II. This lawsuit**

27 **A. The Complaint**

28 Meanwhile, on November 28, 2022—just eight business days after La Sota

1 submitted the November 15 Request—La Sota filed the Complaint on behalf of Lake.
2 (Compl., at 1.) Much of the Complaint contains immaterial (and false) allegations about
3 election administration. (See Recorder & Cnty.’s Dec. 4, 2022 Mot. to Strike (moving to
4 strike ¶¶ 13 through 31, ¶¶ 33 and 34, and ¶¶ 46 and 47 in their entirety, the first allegation
5 in ¶ 32, and Exhibits 3 through 23 in their entirety); Ans. (filed Dec. 4, 2022).)

6 Relevant to this Motion, Lake alleged: (1) “Plaintiff, through Kari Lake’s attorney
7 of record, has requested from the Defendants the production of public records relating to
8 the general election that took place on November 8, 2022,” (Compl., ¶ 2); and (2) at the
9 time the Complaint was filed, “[t]he Defendants have not yet provided to Plaintiff the public
10 records” requested, (Compl., ¶¶ 37, 41, 63.) For relief, Lake sought “[a] writ of mandamus
11 or other order requiring the Defendants to *immediately* produce or make available to
12 Plaintiff all public records requested in” the November 15 and 16 Requests. (*Id.*, at 18, ¶ a
13 (emphasis added).)

14 **B. The return hearing and “narrowing” the Requests**

15 On Thursday, December 1, 2022, this Court held a return hearing to address Lake’s
16 application for an order to show cause. (See Exh. C (Dec. 1, 2022 Hr’g Tr.)) Relevant to
17 this Motion, the Court and counsel for the parties discussed whether the requests could be
18 “narrow[ed].” (Exh. C at 5–6, 8; *see also id.* at 20 (discussing a phone call to occur between
19 counsel after the hearing).)

20 Following the hearing, counsel for Lake agreed to narrow the requests for records to
21 expedite production. At 3:41 p.m. on December 1, 2022, counsel for Lake sent an email
22 purporting to narrow the November 15 and 16 Requests. (Exh. D.) In fact, the email
23 represented an expansion of those requests—seeking categories requested in the November
24 29 Request and categories of records never before requested (“December 1 Request”). (See
25 Exh. E.)

26 **III. The production of responsive records**

27 On Sunday, December 4, 2022, the Recorder and the County produced or, in the case
28 of non-electronic records, offered to make available nearly all of the records requested in

1 the four public records requests. (See Exh. E.) A cover letter accompanying the production
2 detailed the status of each category of records in each of the four related public records
3 requests. (*Id.*)

4 **Legal Standard**

5 “A motion for judgment on the pleadings pursuant to Rule 12(c) . . . tests the
6 sufficiency of the complaint, and judgment should be entered for the defendant if the
7 complaint fails to state a claim for relief.” *Giles v. Hill Lewis Marce*, 195 Ariz. 358, 359,
8 ¶ 2 (App. 1999). “Analysis under Rule 12(c) is substantially identical to analysis under Rule
9 12(b)(6) because, under both rules, a court must determine whether the facts alleged in the
10 complaint, taken as true, entitle the plaintiff to a legal remedy.” *Chavez v. United States*,
11 683 F.3d 1102, 1108 (9th Cir. 2012) (internal quotation marks omitted).

12 Under the standard shared by Rules 12(b)(4), 12(b)(6) and 12(c), “Courts must . . .
13 assume the truth of the well-pled factual allegations and indulge all reasonable inferences
14 therefrom.” *Cullen v. Auto-Owners Ins. Co.*, 218 Ariz. 417, 419, ¶ 7 (2008). But “mere
15 conclusory statements are insufficient to state a claim upon which relief can be granted.”
16 *Id.* “Dismissal can be based on the lack of a cognizable legal theory or the absence of
17 sufficient facts alleged under a cognizable legal theory.” *Balistreri v. Pacifica Police Dep’t*,
18 901 F.2d 696, 699 (9th Cir. 1988).

19 Further, “[a] complaint’s exhibits, or public records regarding matters referenced in
20 a complaint, are not ‘outside the pleading,’ and courts may consider such documents
21 without converting a Rule [12(c)] motion into a summary judgment motion.” *Coleman v.*
22 *City of Mesa*, 230 Ariz. 352, 356, ¶ 9 (2012) (quoting *Strategic Dev. & Constr., Inc. v. 7th*
23 *& Roosevelt Partners, L.L.C.*, 224 Ariz. 60, 63, 64, ¶¶ 10, 13 (App. 2010)). And judgment
24 on the pleadings is appropriate if a court lacks jurisdiction. See *Shea v. Maricopa Cnty.*, 253
25 Ariz. 286, ¶ 10, 512 P.3d 1034, 1037 (App. 2022).

1 Argument

2 **I. The Complaint fails to state a claim for relief because this Court lacks**
3 **jurisdiction under § 39-121.02(A).**

4 Absent an affirmative denial from a public body, a public records requester cannot
5 claim that two public records requests seeking thirteen categories of documents have been
6 “denied” within the meaning of § 39-121.02(A) only eight business after making the first
7 request where the only relevant factual allegation shows that responsive records were not
8 yet produced. (*See Compl.*, ¶¶ 35–41.) Further, when compared to Arizona public records
9 jurisprudence, the circumstances here show that Lake cannot demonstrate that the Recorder
10 and the County failed to produce records “promptly.”

11 By law, a requester of public records can only initiate a statutory special action if the
12 public body has “denied access to or the right to copy such records.” § 39-121.02(A).
13 “Access to a public record is deemed denied if a custodian fails to promptly respond to a
14 request for production” § 39-121.01(E). Arizona case law “defines ‘prompt’ to mean
15 ‘quick to act or to do what is required’ or ‘done, spoken, etc. at once or without delay.’”
16 *W. Valley View, Inc. v. Maricopa Cnty. Sheriff’s Office*, 216 Ariz. 225, 230, ¶ 21 (App.
17 2007). The denial of access authorizes an “appeal” to the superior court. § 39-121.02(A).
18 Generally, the burden is on the agency to establish its responses to requests were prompt.
19 *See Phx. New Times*, 217 Ariz. at 538–39, ¶ 15.

20 Arizona public records jurisprudence has not addressed a superior court’s
21 jurisdiction to hear an “appeal” under § 39-121.02(A) when a plaintiff claims the public
22 body failed to act promptly consistent with § 39-121.01(E). But the case law on promptness
23 is instructive.

24 “[W]hether a government agency’s response to a wide variety of document requests
25 was sufficiently prompt will ultimately be dependent upon the facts and circumstances of
26 each request.” *Phx. New Times*, 217 Ariz. at 538, ¶ 14. These circumstances can include
27 such things as any delay caused by the inattentiveness of an official or entity, the scope and
28 complexity of the request, availability of the records, and whether the best interests of the

1 state in delaying production outweighs the public interest in disclosure. *Am. Civil Liberties*
2 *Union v. Ariz. Dep't of Child Safety*, 240 Ariz. 142, 152, ¶ 32 (App. 2016) [hereinafter
3 “*ACLU*”]. When analyzing the complexity of a public records request, its individual
4 components are not evaluated in isolation. *See McKee*, 236 Ariz. at 259, ¶ 19 (“The fact that
5 one document may be easily accessed does not necessarily create an obligation to
6 immediately turn over the document without waiting to compile other requested documents
7 and without allowing time for review and redaction.”). “Nothing . . . requires that a public
8 entity produce each individual responsive document (or category of documents)
9 *immediately*, as long as the response as a whole is provided ‘promptly.’” *Id.* (emphasis
10 added).

11 The case law provides further context. For example, in *Lunney v. State*, 244 Ariz.
12 170 (App. 2017), the plaintiff requested information about vehicle collisions in Maricopa
13 County. *Id.* at 180, ¶ 39. The State responded over three and one-half months later with
14 2,000 pages of records. *Id.* at 181, ¶ 39. The trial court found that this response was prompt,
15 and the plaintiff did not appeal that ruling. *Id.* Similarly, in *Phoenix New Times*, the court
16 of appeals explained that a response that occurred 143 days after the request was made
17 *might* have been considered prompt if the governmental entity had provided a legally
18 sufficient rationale for the delay. 217 Ariz. at 540, ¶ 25. And in *McKee*, the court deemed
19 the response prompt when the public body began a rolling production of records sixteen
20 business days after receiving the public records request. 236 Ariz. at 259, ¶ 20.²

21 Taken together, these cases stand for the proposition that a public body is afforded a
22 fair chance to review the public records request, collect responsive records, consider
23 whether production is appropriate under the circumstances, and provide responsive records
24 before a requester can sue under § 39-121.02(A).

25
26 ² The public body completed production within twenty-four business days. *McKee*, 236
27 Ariz. at 259, ¶ 20. But the court determined promptness under the circumstances of that
28 case, and *McKee* does not require public bodies to complete production within twenty-four
days when the circumstances are different. *Id.*

1 Here, in contrast, Lake’s allegations fail to state a claim for relief. Begin with the
2 Complaint. Factually, it alleges that the requests were made on November 15 and 16, the
3 requests contained requests for eleven and two categories of documents (respectively), and
4 the records were not yet produced. (*See* Compl., ¶¶ 35–41.) The Complaint was filed on
5 November 28. (*Id.*, at 1.)

6 The Complaint’s legal conclusion that the Recorder and the County failed to act
7 promptly is based solely on conclusory allegations that the production of the records should
8 have occurred before the canvass. (*See* Compl., ¶¶ 4, 42–45, 64.) For example, Lake alleges:
9 “If the Defendants do not produce the records prior to the canvassing of the election, *then*
10 they will have not acted promptly as required by the Arizona Public Records Act[.]”
11 (Compl., ¶ 4 (emphasis added).) Lake further alleges: “In this case, ‘promptly’ must mean
12 sufficiently in advance of the canvassing to permit Plaintiff and the court to quickly
13 determine the full extent of problems identified and their impacts on electors due to the
14 numerous [alleged] documented failures in the Defendants’ administration of the election.”
15 (*Id.*) And Lake alleges that “[i]n the absence of an *immediate and comprehensive* production
16 of the requested public records, Plaintiff cannot ascertain the full extent of the problems
17 identified and their impacts on electors.” (*Id.*, ¶ 44.; *see also id.*, at 18 (requesting “[a] writ
18 of mandamus or other order requiring the Defendants to *immediately* produce or make
19 available to Plaintiff all public records requested”) (emphasis added).)

20 These conclusory allegations—based solely on Lake’s interest in the records—do
21 not show a denial of the November 15 or 16 Requests. Nor do these conclusory allegations
22 support a “reasonable inference[.]” to conclude that the Recorder and the County failed to
23 act promptly. *See Cullen*, 218 Ariz. at 419, ¶ 7.

24 Instead, the allegations regarding promptness focus on Lake’s subjective interest in
25 the records rather than judicially-recognizable circumstances to be considered in the
26 promptness analysis. *See ACLU*, 240 Ariz. at 152, ¶ 32. These allegations are legally
27 immaterial. *See Phx. New Times*, 217 Ariz. at 544, ¶ 38 (App. 2008) (“It is well-established
28 that the requestor’s need, good faith, or purpose is entirely irrelevant to the disclosure of

1 public records.”); *Bolm v. Custodian of Recs. of Tucson Police Dep’t*, 193 Ariz. 35, 39, ¶
2 10 (App. 1998) (“A person’s right to public records under the Public Records Law is not
3 conditioned on his or her showing, or a court finding, that the documents are relevant to
4 anything.”). Similarly, when a requester seeks several categories of records, the
5 “immediate” production of some documents is not required by law. *See McKee*, 236 Ariz.
6 at 259, ¶ 19. And the requester’s preferred timeline for production is immaterial. *See id.* at
7 259, ¶ 20.

8 Turning to the judicially-recognized “promptness” analysis, the Complaint fails to
9 state a claim. First, there are no allegations of “inattentiveness.” *See ACLU*, 240 Ariz. at
10 152, ¶ 32. At the return hearing, Lake’s counsel stated: “we’ve received an
11 acknowledgement that the records request was received.” (Exh. C at 6.)

12 Second, concerning “the breadth and complexity” of the requests, *see ACLU*, 240
13 Ariz. at 152, ¶ 32, the November 15 and 16 Requests sought thirteen categories of records—
14 not a simple request for an isolated document. (*See Compl.*, Exhs. 1, 2); *cf. W. Valley View*,
15 216 Ariz. 225, 230 n.8 (“By contrast, the newspaper’s request in this case was for a single
16 category of documents that, by definition, are available for immediate production (because
17 they already have been distributed to other news media).”). Indeed, attesting to the
18 complexity of the requests, Lake’s attempt to “narrow” them actually led to their expansion.
19 (*See Exhs. D, E.*) And, despite producing a voluminous number of records, the Elections
20 Department has stated it is still searching for some records. (Exh. E.)

21 Third, to the extent there has been a “delay” in the production of records on this
22 timeline, the best interest of the state outweighed Lake’s interest in immediate disclosure.
23 *See ACLU*, 240 Ariz. at 152, ¶ 32 (considering “whether the best interests of the state in
24 delaying production outweighs the public interest in disclosure”). The only reasonable
25 inference from the Complaint is that the Elections Department received the November 15
26 and 16 Requests in the midst of statutorily-required election administration, including
27 preparation for the county canvass under § 16-642(A). (*See, e.g., Compl.*, ¶¶ 2, 43.)
28 Judicially-noticeable records support this inference. (*See Background*, above.)

1 In sum, the wholly insufficient factual (rather than conclusory) allegations in the
2 Complaint and the circumstances in this matter fail to show that the Recorder and the
3 County “denied access to or the right to copy [public] records” within the meaning of § 39-
4 121.02(A) and § 39-121.01(E). This Court therefore lacks jurisdiction to hear this action.

5 **II. Lake lacks standing to sue under § 39-121.02(A).**

6 Lake did not submit the November 15 or 16 Requests on which this lawsuit is
7 based—meaning Lake lacks standing to sue under § 39-121.02(A). That statute states: “Any
8 person *who has requested to examine or copy public records pursuant to this article . . .*
9 may appeal the denial through a special action in the superior court, pursuant to the rules of
10 procedure for special actions against the officer or public body.” § 39-121.02(A).

11 Looking at the November 15 and November 16 Requests, it is undisputed that Lake
12 did not submit them. (Compl., Exhs. 1, 2.) Indeed, the Complaint tacitly acknowledges this
13 fact, alleging that “Plaintiff, through Kari Lake’s attorney of record, has request from the
14 Defendants the production of public records[.]” (Compl., ¶ 2.) Of course, attorneys can
15 represent clients when making public records requests. (*E.g.*, Exh. B.); *see also Robertson*
16 *v. Alling*, 237 Ariz. 345, 348, ¶ 14 (2015) (“Our courts have long recognized that attorneys
17 can bind clients who have cloaked them with apparent authority to act on their behalf.”).
18 But here, nothing in the November 15 or November 16 Requests indicated that La Sota
19 represented Lake. (*Compare* Compl., Exhs. 1, 2 *with* Exh. B; *see also* Compl., Exh. 1 at 1
20 (seeking “[a]ll public records related to the adjudication rates by legislative district, because
21 the write-in candidates for legislative district 22, Arizona Senate [*sic*]”).)

22 Allowing Lake to pursue this public records lawsuit would read the modifying phrase
23 “*who has requested to examine or copy public records pursuant to this article*” out of § 39-
24 121.02(A). This reading is at odds with settled principles of statutory interpretation. *See*
25 *Nicaise v. Sundaram*, 245 Ariz. 566, 568, ¶ 11 (2019) (“A cardinal principle of statutory
26 interpretation is to give meaning, if possible, to every word and provision so that no word
27 or provision is rendered superfluous.”); *Babe Invs. v. Ariz. Corp. Comm’n*, 189 Ariz. 147,
28 151 (App. 1997) (rejecting argument that would “read out of the statute the modifying

1 phrase” because “[i]n interpreting statutes, we attempt to avoid rendering any of the
2 statutory language superfluous, void, contradictory, or insignificant.”). This Court should
3 dismiss this lawsuit because Lake lacks standing under § 39-121.02(A).

4 **CONCLUSION**

5 For these reasons, this Court should dismiss Lake’s action.

6 RESPECTFULLY SUBMITTED this 5th day of December 2022.

7
8 RACHEL H. MITCHELL
9 MARICOPA COUNTY ATTORNEY

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