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ARIZONA SUPERIOR COURT

MOHAVE COUNTY

JEANNE KENTCH, an individual; TED
BOYD, an individual; ABRAHAM
HAMADEH, an individual; and REPUBLICAN
NATIONAL COMMITTEE, a federal political
party committee,

Plaintiffs/Contestants,

vs.

KRIS MAYES,

Defendant/Contestee,

and

KATIE HOBBS, in her official capacity as the
Secretary of State; LARRY NOBLE, in his
official capacity as the Apache County
Recorder; APACHE COUNTY BOARD OF
SUPERVISORS, in their official capacity;
DAVID W. STEVENS, in his official capacity
as Cochise County Recorder; COCHISE
COUNTY BOARD OF SUPERVISORS, in
their official capacity; PATTY HANSEN, in her
official capacity as the Coconino County

No. S8015CV202201468

PIMA COUNTY DEFENDANTS'
MOTION TO DISMISS

(Election Contest)

(The Hon. Lee F. Jantzen)

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1 Recorder; COCONINO COUNTY BOARD OF
2 SUPERVISORS, in their official capacity;
3 SADIE JO BINGHAM, in her official capacity
4 as Gila County Recorder; GILA COUNTY
5 BOARD OF SUPERVISORS, in their official
6 capacity; WENDY JOHN, in her official
7 capacity as Graham County Recorder;
8 GRAHAM COUNTY BOARD OF
9 SUPERVISORS, in their official capacity;
10 SHARIE MILHEIRO, in her official capacity as
11 Greenlee County Recorder; GREENLEE
12 COUNTY BOARD OF SUPERVISORS, in
13 their official capacity; RICHARD GARCIA, in
14 his capacity as the La Paz County Recorder; LA
15 PAZ COUNTY BOARD OF SUPERVISORS,
16 in their official capacity; STEPHEN RICHER,
17 in his official capacity as the Maricopa County
18 Recorder; MARICOPA COUNTY BOARD OF
19 SUPERVISORS, in their official capacity;
20 KRISTI BLAIR, in her official capacity as the
21 Mohave County Recorder; MOHAVE
22 COUNTY BOARD OF SUPERVISORS, in
23 their official capacity; MICHAEL SAMPLE, in
24 his official capacity as Navajo County
25 Recorder; NAVAJO COUNTY BOARD OF
26 SUPERVISORS, in their official capacity;
GABRIELLA CAZARES-KELLY, in her
official capacity as the Pima County Recorder;
PIMA COUNTY BOARD OF SUPERVISORS,
in their official capacity; DANA LEWIS, in her
official capacity as the Pinal County Recorder;
PINAL COUNTY BOARD OF
SUPERVISORS, in their official capacity;
SUZANNE SAINZ, in her official capacity as
the Santa Cruz County Recorder; SANTA
CRUZ COUNTY BOARD OF
SUPERVISORS, in their official capacity;
MICHELLE M. BURCHILL, in her official
capacity as the Yavapai County Recorder;

1 YAVAPAI COUNTY BOARD OF
2 SUPERVISORS, in their official capacity;
3 RICHARD COLWELL, in his official capacity
4 as the Yuma County Recorder; and YUMA
5 COUNTY BOARD OF SUPERVISORS, in
6 their official capacity,
7
8 Defendants.

9 The Pima County Recorder Gabriella Cázares-Kelly and the Pima County Board
10 of Supervisors (“Pima County Defendants”) hereby join in the Secretary of State’s
11 Motion to Dismiss as to Pima County Defendants and separately move to dismiss
12 Counts III & IV of Plaintiffs’ Contest as to Pima County Defendants pursuant to Ariz.
13 R. Civ. P. 12(b)(6).

14 **I. Laches bars the consideration of allegations against Pima County**
15 **Defendants.**

16 As the Court is aware, Plaintiff Hamadeh filed a previous lawsuit contesting the
17 election results, including in Pima County, with the same allegations. *See* CV2022-
18 015455 filed November 22, 2022. Plaintiff Hamadeh never served Pima County
19 Defendants in that matter and his Counsel was informed of Pima County’s objections
20 to the contest on November 28, 2022. Plaintiffs nevertheless filed this instant matter
21 with the same allegations on December 9, 2022. Plaintiffs then unnecessarily and
22 unreasonably delayed serving Pima County Defendants. It was not even until
23 December 15, 2022, that Plaintiffs sent Pima County Defendants a waiver of service
24 form. Even if this met the requirements for a waiver of service request, under Ariz. R.
25 Civ. P. 4.1(c)(1)(F), a defendant must have a reasonable time to return the waiver,
26 which must be at least 30 days after the request was sent. Pima County Defendants had

1 not yet determined whether to return the waiver. Pima County Defendants were not
2 actually served with process until the afternoon of December 21, 2022. Pima County
3 Defendants were not parties to this matter during the oral argument on December 19,
4 2022, and the Court lacked personal jurisdiction over Pima County Defendants when it
5 issued its decision on December 20, 2022. It is a fundamental due process right for
6 Pima County Defendants to have their objections heard and considered by the Court
7 and Pima County has been denied this right by Plaintiffs' dilatory conduct. Pima
8 County has been served with process less than a day and a half before trial. Pima
9 County Defendants are thus very much prejudiced in their defense of this matter and
10 the allegations against Pima County Defendants should be barred by laches.

11
12 **II. Counts III & IV violate Ariz. R. Civ. P. 8 and Pima County Defendants**
13 **should be dismissed.**

14
15 Counts III & IV simply fail to comply with Ariz. R. Civ. P. 8. Count III alleges,
16 upon completely unidentified information and belief, that the counties', including Pima
17 County's, ballot duplication boards incorrectly transcribed a material number of voter
18 selections. Count IV alleges, upon completely unidentified information and belief, that
19 the counties', including Pima County's, electronic adjudication boards¹ erroneously
20 and improperly counted a material number of ballots.

21
22 Arizona courts assess the sufficiency of a claim under Rule 8's requirement that
23 a pleading contain a "short and plain statement of the claim showing that the pleader is
24 entitled to relief." Under Rule 8, Arizona follows a notice pleading standard, the
25 purpose of which is to "give the opponent fair notice of the nature and basis of the

26

¹ Pima County does not even have an electronic adjudication board.

1 claim....” *Mackey v. Spangler*, 81 Ariz. 113, 115 (1956). If a pleading does not comply
2 with Rule 8, an opposing party may move to dismiss the action for “[f]ailure to state a
3 claim upon which relief can be granted.” Ariz. R. Civ. P. 12(b)(6). When adjudicating
4 a Rule 12(b)(6) motion to dismiss, Arizona courts look only to the pleading itself and
5 consider the well-pled factual allegations contained therein.

6
7 Counts III and IV however are a textbook case of nothing more than conclusory
8 allegations. There is no objective basis for any of the claims against Pima County
9 Defendants. Because Arizona courts evaluate a complaint's well-pled facts, mere
10 conclusory statements are insufficient to state a claim upon which relief can be granted.
11 The inclusion of conclusory statements does not invalidate a complaint...but a complaint
12 that states only legal conclusions, without any supporting factual allegations, does not
13 satisfy Arizona's notice pleading standard under Rule 8. *Cullen v. Auto-Owners Ins. Co.*,
14 218 Ariz. 417, 419, ¶¶ 6-7 (2008). *See also Matter of ABB Trust*, 251 Ariz. 313 (App.
15 2021) (When a motion to dismiss for failure to state a claim is before it, a court does not
16 accept as true allegations consisting of conclusions of law, inferences or deductions that
17 are not necessarily implied by well-pleaded facts, unreasonable inferences or unsupported
18 conclusions from such facts, or legal conclusions alleged as facts).

19
20 Instead, Plaintiffs seek to go on a fishing expedition to attempt to find facts to
21 support their otherwise unsupported allegations. Essentially, Plaintiffs are asking the
22 Court to verify that the election results in Pima County were accurate without any actual
23 basis to contest them, but merely for their personal satisfaction. Arizona has already
24 rejected this as a basis for reviewing election results. *See Barrera v. Superior Court*, 117
25 Ariz. 528 (App. 1977) (An unsuccessful candidate is not entitled to a recount merely for
26 personal satisfaction). An election contest is purely a creature of statute and Plaintiffs

1 have only pled conclusions rather than facts to support a permissible basis under A.R.S. §
2 16-672(A). The Court should not countenance this. *See Hunt v. Campbell*, 19 Ariz. 254,
3 263-64 (1917) (an election contest cannot be based upon mere theory, suspicion, or
4 conjecture). To permit this would be to allow every election to be contested based upon
5 mere speculation, and elections will not be concluded in time for properly elected
6 officials to take their positions. This is an abuse of the judicial system and flies in the
7 face of the strong public policy favoring stability and finality of election results.
8 *Donaghey v. Attorney Gen.*, 120 Ariz. 93, 95 (1978).

9
10 Accordingly, Pima County Defendants respectfully request that the Court dismiss
11 Pima County Defendants and provide such other and further relief as the Court
12 determines is warranted.

13
14 RESPECTFULLY SUBMITTED December 21, 2022.

15 LAURA CONOVER
16 PIMA COUNTY ATTORNEY

17 By: /s/ Daniel Jurkowitz
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CERTIFICATE OF SERVICE

Original of the foregoing efiled with the Mohave County Superior Court and served through AZTurboCourt this 21st day of December 2022:

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