ARIZONA SUPREME COURT

JACQUELIN JAMILEX LOPEZ SANCHEZ, et al., Plaintiffs/Appellants, v. MARICOPA COUNTY, Defendant/Appellee.	NO. CV-24-0013-PR COURT OF APPEALS, DIV. ONE No. 1 CA-CV 22-0572 Maricopa County Superior Court No. CV2022-092441

MARICOPA COUNTY'S SUPPLEMENTAL BRIEF

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Legal Argument

I. Review should be denied as improvidently granted.

This is not a notice of claim case. Maricopa County did not raise a notice of claim defense. [R. 7-8].[1] Plaintiffs' response to Maricopa County's motion to dismiss neither included a notice of claim argument nor referenced the Arizona Claims Act.[2] [R. 10-11]. The trial court's order granting the Maricopa County's motion to dismiss neither included the phrase "notice of claim" nor referenced the Arizona Claims Act. [R. 13]. The record does not contain the notice of claim Plaintiffs submitted to the County, and the record is devoid of any evidence relating to Plaintiffs' notice of claim.

Plaintiffs did not raise the notice of claim argument until their Court of Appeals opening brief [3] as an ill-founded means of avoiding the dispositive fact that Maricopa County is not vicariously liable for the conduct of sheriff's deputies because, as a matter of law, Maricopa County cannot and does not exert sufficient control over Sheriffs' deputies on the day to day execution of their duties to be vicariously liable for their conduct.

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[1] "R." refers to the Court's Electronic Index of Record.

[2] Though the order granting review does not define the Arizona Claims Act, Maricopa County assumes the Court is referring to A.R.S. § 12-821.01.

[3] Even then, Plaintiffs did not fully develop this argument until their two motions for reconsideration to the Court of Appeals.

In short, Plaintiffs' notice of claim/Arizona Claims Act argument is a red herring. It is immaterial to the reasons Maricopa County was dismissed from this lawsuit and is nothing more than an ill-fated attempt to manufacture liability where there is none. And with a record devoid of any evidence or preserved argument on notice of claim, the Court should deny review as improvidently granted. If the Court wishes to clarify issues related to the Arizona Claims Act, it should not do so in this case.

II. Even if the Court addresses the questions presented, Plaintiffs' lone claim fails as a matter of law and Maricopa County's dismissal was correct.

The trial court correctly dismissed Maricopa County because Maricopa County does not have day to day control over sheriff's deputies, and thus the lone claim Plaintiffs stated against it—vicarious liability—failed as a matter of law. Generally, "an employer may be liable for the negligence of its employee when, with respect to the physical conduct of the employee and the performance of his service, he is subject to the employer's control or right of control." *Myers v. City of Tempe*, 212 Ariz. 128, 132, ¶ 16 (2006). An employee's actions are within the "scope of employment" if the employer had control over or right to control the employee's activity at the time of the tortious conduct and if the employee was acting in furtherance of the employer's business. *Engler v. Gulf Interstate Eng'g, Inc.*, 227 Ariz. 486, 491, ¶ 17 (App. 2011), *aff'd* 230 Ariz. 55 (2012). Plaintiffs failed to meet this criteria to establish vicarious liability against Maricopa County because, as a

matter of law, Maricopa County cannot and does not exert sufficient control over Sheriffs' deputies on the day to day execution of their duties to be vicariously liable for their conduct.

Arizona counties can only act through their respective boards of supervisors. A.R.S. § 11-201(A).[4] The powers of county boards of supervisors are limited to those powers that the legislature has expressly given to them. *Associated Dairy Prods. Co. v. Page*, 68 Ariz. 393, 395 (1949) ("boards of supervisors of the various counties of [Arizona] have only such powers as have been expressly or by necessary implication, delegated to them by the state legislature."). Arizona county officers, including county sheriffs, are both constitutionally distinct from the counties and elected independently from the county boards of supervisors. Ariz. Const. art. 12, § 3; *see also* A.R.S. § 11-401(A). The separately elected county officers have powers and duties that are determined by statute and which are completely distinct from those of the county boards of supervisors. Ariz. Const. art. 12, § 4. By statute, the county sheriffs are given powers and duties which generally relate to law enforcement matters including the duty to "[p]reserve the peace," and "[p]revent and suppress all affrays, breaches of the peace, riots and insurrections that may come to the knowledge of the sheriff." A.R.S. § 11-441(A). The county boards of

[4] Because Arizona counties can only act through their boards of supervisors, and the boards of supervisors can only act with those powers expressly granted to them, this brief will refer to the counties and their boards of supervisors interchangeably.

supervisors, however, are given neither the duty nor the power to engage in law enforcement activities, though they are given limited power to oversee the separately elected officers, primarily in fiscal matters. *See* A.R.S. § 11-251(1).

Because the legislature did not give the county boards of supervisors the power to engage in the duties statutorily assigned to separately elected county officers, the Court of Appeals has repeatedly held that the boards do not have the power to direct the day-to-day conduct of those officers' deputies. *See, e.g., Fridena v. Maricopa Cnty.*, 18 Ariz. App. 527, 530 (1972). Consistently applying this logic, the Court of Appeals has held that because the county boards of supervisors do not have the power to control the day to day conduct of the deputies of the separately elected officials, the boards of supervisors cannot be vicariously liable for those deputies. *Id*. 18 Ariz. App. at 530-31; *Hernandez v. Maricopa Cnty.*, 138 Ariz. 143, 146 (App. 1983) (applying the same logic to a justice of the peace); *Yamamoto v. Santa Cruz Cnty. Bd. of Supervisors*, 124 Ariz. 538, 540 (App. 1979) (same for the clerk of the court). The District of Arizona has also kept in line with this reasoning and has consistently held that Arizona counties are not vicariously liable for the conduct of sheriffs' deputies. *See Norton v. Arpaio*, 2015 WL 13759956, at *6 (D. Ariz. Nov. 20, 2015) (collecting District of Arizona cases that refused to apply vicarious liability to counties for sheriffs' deputies' state law torts, and dismissing tort claims against the county for alleged torts committed by the sheriff's deputies).

The present case is simply the latest in a decades-long line of cases beginning with *Fridena* establishing that county board of supervisors cannot control the conduct of the separately elected officers' deputies and thus cannot be vicariously liable for the conduct of those deputies. The Court of Appeals correctly followed this sound logic and affirmed the dismissal of Maricopa County as a matter of law because Maricopa County does not control the conduct of sheriff's deputies and thus is not vicariously liable for their conduct. At least twice recently, the Court of Appeals has made the exact same ruling with respect to sheriffs' deputies in unpublished decisions. *Sarkis v. Maricopa Cnty.*, No. 1 CA-CV 20-0271, 2021 WL 1991857, at *2, ¶ 8 (App. May 18, 2021) (mem. decision) *available without charge at* https://casetext.com/case/sarkis-v-maricopa-cnty; *Loredo v. Maricopa Cnty.*, No. 1 CA-CV 22-0259, 2023 WL 2181126 (App. Feb. 23, 2023), *review denied* (Aug. 22, 2023), (mem. decision) *available without charge at* https://casetext.com/case/loredo-v-maricopa-cnty.

Plaintiffs' arguments relating to the Arizona Claims Act do absolutely nothing to change this vicarious liability analysis, and consequently do not revive Plaintiffs' claim against Maricopa County. Even if Maricopa County is considered the 'public entity' that is ultimately financially responsible for claims involving deputy county sheriffs for purposes of the Arizona Claims Act, the County is still not vicariously liable for the torts of the deputies. The Arizona Claims Act is simply a vehicle for

notifying a public entity of a claim that the claimant already possesses so that financial arrangements can be made to address that claim. *McKee v. State*, 241 Ariz. 377, 384, ¶ 30 (App. 2016) ("[T]he purpose of the notice of claim statute is limited to providing the government entity with an opportunity to investigate the claim, assess its potential liability, reach a settlement prior to litigation, budget and plan."). The language of the Arizona Claims Act presumes that a claimant already has a substantive claim for liability against a public employee or a public entity; it does not authorize a substantive vicarious liability claim against the entity. A.R.S. § 12-821.01(A) ("Persons *who have claims* against a public entity, public school or a public employee shall file claims. . .) (emphasis added); *see McKee*, 241 Ariz. at 384, ¶ 30 ("When a plaintiff *has a claim against a public entity*, the notice of claim statute requires the plaintiff to file notice with the public entity stating a factual basis and a settlement amount for the claim prior to filing the cause of action.") (emphasis added).

Nothing in the Arizona Claims Act suggests that it operates to create new legal liability for governmental entities when there otherwise would be none. *See State v. Miser*, 50 Ariz. 244, 257 (1937) (analyzing precursor statute; "the language of this section merely provides a remedy to enforce a liability existing under general law and does not create a cause of action where none existed before"). Arizona courts will infer a private cause of action into a statute only where such an interpretation is

consistent with "the context of the statutes, the language used, the subject matter, the effects and consequences, and the spirit and purpose of the law." *Transamerica Fin. Corp. v. Superior Ct. In & For Maricopa Cnty.*, 158 Ariz. 115, 116, (1988). The Arizona Claims Act does not present any of the factors necessary to infer that the legislature intended the Act to create new causes of action. A.R.S. § 12-821.01 merely concerns the *content* of a notice of claim and identifies the individuals on whom a notice of claim may be served. The Act does not suggest that it creates new avenues of legal liability from whole cloth where standard tort analyses would not hold the public entity liable; and interpreting the Act to create a private cause of action would be contrary to the Act's purpose. *See McKee*, 241 Ariz. at 384 ¶ 30 ("[T]he purpose of the notice of claim statute is limited to providing the government entity with an opportunity to investigate the claim, assess its potential liability, reach a settlement prior to litigation, budget and plan.")[5]; *Padilla v. Indus. Comm'n*, 113 Ariz. 104, 106, 546 P.2d 1135, 1137 (1976) (explaining that fundamental to statutory interpretation "is the presumption that what the Legislature means, it will say.").

And while A.R.S. § 12-823 provides that the public entity that employs a negligent public employee is financially responsible for any judgment in the

[5] While the purpose of the Act is to put the public entity on notice of the claim, the Act only requires a claimant to serve the notice of claim on the party the claimant intends to sue, and not necessarily the party that is ultimately fiscally responsible for paying the claim. *See* A.R.S. § 12-821.01.

plaintiff's favor, the statute does nothing to create substantive *liability* for the public entity if the plaintiff did not already have a claim against the public entity. For example, motor vehicle insurers are required by statute to be financially responsible for the covered torts of their insureds; but this statutory financial responsibility does not create an avenue for legal liability against the insurers. *See* A.R.S. § 20-259.01.

Even if the Court were to conclude that Maricopa County is the "public entity" that employs a deputy county sheriff for purposes of the Arizona Claims Act—it should not do so, as shown below—that would not change the vicarious liability analysis. A mere employment relationship alone does not create legal liability for an employer if the employer did not exert sufficient control over the employee at the time the tort was committed. For example, a general employer is not vicariously liable for the torts committed by its employee if the employee is on hire to another company who controls the employee's performance at the time the tort is committed. *Tarron v. Bowen Mach. & Fabricating, Inc.*, 225 Ariz. 147, 150 ¶¶ 12-13 (2010). It is the employer's actual control over the employee's conduct that creates vicarious liability, not the "employer" label.

The characterization of the Maricopa County Sheriff's Office as a county "department" also does not change the vicarious liability analysis. Even very closely related entities will not pass vicarious liability between one another without a finding that one controls the other. *See Bischofshausen, Vasbinder, & Luckie v. D.W.*

Jaquays Min. & Equip. Contractors Co., 145 Ariz. 204, 209 (App. 1985) (parent company is not liable for the acts of its wholly-owned subsidiary unless there is a showing that parent controls the subsidiary); *Keg Restaurants Arizona, Inc. v. Jones*, 240 Ariz. 64, 73 (App. 2016). Because Arizona counties, by law, do not have the authority to direct the conduct of sheriff's deputies, they are not vicariously liable for their conduct regardless of how the relationship between the counties and the sheriffs and their deputies is characterized. The consistent thread through these analyses is the element of control—the law assigns liability to entities that exerted control over a negligent employee, but does not assign liability to entities that do not or cannot exert that control.

In short, Maricopa County's dismissal from this case was legally correct because, regardless of the Arizona Claims Act, it does not control the day to day activities of, and thus cannot be vicariously liable for, the conduct of Sheriff's deputies. Therefore, Maricopa County's dismissal should be affirmed regardless of how the Court answers the questions presented.

III. For purposes of the Arizona Claims Act, the Maricopa County Sheriff in his official capacity, not Maricopa County, is the entity that employs deputy sheriffs.

A. Arizona county sheriffs are "public entities" for the purposes of the Arizona Claims Act.

To answer the Court's first question, an Arizona county is **not** the public entity that employs a deputy county sheriff; the county sheriff in his official capacity is the

public entity that employs its deputies. Plaintiffs' position is that county sheriffs cannot fit within the definition of "public entity." Plaintiffs are wrong because the definition of "public entity" is much broader than Plaintiffs argue. "Public entity," as defined in the Arizona Claims Act, "includes this state and any political subdivisions of this state." A.R.S. § 12-820(7). The legislature's use of the word "includes" indicates that the legislature intended for the phrase "public entity" to encompass entities beyond just the state and its political subdivisions. A.R.S. § 1-215(14) ("'Includes' or 'including' means not limited to and is not a term of exclusion"); *Tracy v. Superior Ct. of Maricopa Cnty.*, 168 Ariz. 23, 35 (1991) ("The word 'includes' is most often a term of enlargement, rather than limitation, and a court may find that it encompasses items that were not specifically enumerated."). Thus, before even considering county sheriffs specifically, Plaintiffs' interpretation of the phrase "public entity" is wrong because it assumes that the phrase has no reach beyond the state and its political subdivisions, and that interpretation that is plainly contrary to the legislature's language and intent.

Because the definition of "public entity" in A.R.S. § 12-820 is not fully descriptive of the entities included, courts have looked to other definitions to ascertain its boundaries. In *Carey v. Maricopa Cnty.*, 602 F. Supp. 2d 1132 (D. Ariz. 2009), Judge Silver cited to language from this Court reasoning that public entities include those that "embrace a certain territory and its inhabitants, [are] organized for

the public advantage, and not in the interest of particular individuals or classes; that their chief design is the exercise of governmental functions." *Id*. at 1143 (*citing Sorenson v. Superior Court*, 254 P. 230, 231 (1927)). In this vein, Arizona entities other than the state and its political subdivisions have been included within the definition of "public entity." For example, medical advisory boards and county integrated health systems both fall within the definition of "public entity" under A.R.S. § 12-820(7). *Carey*, 602 F. Supp. 2d at 1143–44 (county health system); Ariz. Op. Att'y Gen. I84-123 (1984) (medical advisory board).

County sheriffs in their official capacities are undoubtedly public entities apart from their respective counties, and the Arizona Constitution demonstrates so. As discussed above, the Arizona Constitution establishes county sheriffs separately from their counties; and the counties do not have the power to create or destroy the county sheriffs at their pleasure. Ariz. Const. art. 12, § 3. The counties do not have the power to appoint county sheriffs, who are separately elected by the citizens of each county. Ariz. Const. art. 12, § 3. The counties do not have the power to dictate the duties, powers, and responsibilities of county sheriffs, which are all determined by the state legislature. Ariz. Const. art. 12, § 4, *see* A.R.S. § 11-441(A). The county sheriffs, and only the county sheriffs, are given the important governmental policing power within a county's jurisdiction. A.R.S. § 11-441(A). This structure—which keeps the sheriffs legally distinct from the counties—stands in contrast to municipal

police departments, which may be created or eliminated by the municipalities and are completely controlled by the municipalities. *See* A.R.S. § 9-240(B)(12). Thus, the county sheriffs exhibit the hallmarks of public entities. They are established as a separate office under the Ariona Constitution for the express purpose of exercising a core governmental function—the policing function—over a certain geographical area.

Since the passage of the Arizona Claims Act, Arizona courts have implicitly recognized that the county sheriffs in their official capacities are the "public entities" that are vicariously liable for their deputies' torts. *See*, *e.g.*, *Watkins v. Arpaio*, 239 Ariz. 168, 173 ¶¶ 18-19 (App. 2016) (affirming dismissal of claims against deputy and sheriff because the notice of claim was untimely, not because sheriff was not a "public entity"); *Zupancic v. Penzone*, 2021 WL 2435643 (App. June 15, 2021) (mem. decision) *available without charge at* https://casetext.com/case/zupancic-v-penzone. Indeed, this Court has addressed claims for vicarious liability against a sheriff based upon the actions of a deputy sheriff. *See Ryan v. Napier* 245 Ariz. 54, 58 ¶ 7 (2018) ("McDonald's claim against the Pima County Sheriff was based solely on vicarious liability."). While these cases do not directly analyze the definition of "public entity," they demonstrate that litigants and courts alike commonly recognize that county sheriffs are the "public entities" that employ and are responsible for the conduct of sheriffs' deputies. *See, e.g.*, *Carver v. Sheriff of La Salle Cnty.*, 203 Ill.

2d 497, 512 (Ill. 2003) (discussing liability of "[t]he office of sheriff" as a public entity). The Court should construe the phrase "public entity" in accord with this common usage. A.R.S. § 1-213 ("[t]echnical words and phrases and those which have acquired a peculiar and appropriate meaning in the law *shall be construed according to such peculiar and appropriate meaning*.") (emphasis added).

This approach comports with this Court's long precedent holding that it is the county sheriffs, not the counties themselves, that are vicariously liable for the torts of their deputies. *See, e.g.*, *Miles v. Wright*, 22 Ariz. 73, 89 (1920) ("we think the law is that the sheriff is responsible for all acts of his deputy done under color and by virtue of his office"); *Chaudoin v. Fuller*, 67 Ariz. 144, 149–50 (1948) ("If the act from which the injury resulted was an official act, the authorities are clear that the sheriff is answerable."); *Savage v. Boies*, 77 Ariz. 355, 357 (1954); *McCutchen v. Hill*, 147 Ariz. 401, 404 (1985) ("In holding a sheriff liable for the acts of his deputies we have said, "If the act from which the injury resulted was an official act ... the sheriff is answerable.... [I]f he is acting under color of his office ... he and his sureties will be bound by such acts."), *abrogated on other grounds by Cal-Am Properties Inc. v. Edais Eng'g Inc.*, 253 Ariz. 78, 509 P.3d 386 (2022). Nothing in the Arizona Claims Act suggests that the legislature intended the Act to change decades of case precedent demonstrating that county sheriffs are the public entities

vicariously liable for the conduct of sheriffs' deputies. Therefore, the Court should hold in accordance with the common understanding and practice in Arizona.

Plaintiffs attempt to get around this commonly recognized usage of "public entity" by arguing that the county sheriffs are people, and not entities, and therefore cannot be a "public entity." Plaintiffs are wrong for two reasons. First, for the purposes of the Arizona Claims Act, the elected office of the county sheriff is the public entity, not the individual holding the office—who only embodies the "public entity" for the time that they hold the elected office. When someone sues a county sheriff in official capacity, the suit is not against the individual that holds the elected office; the suit is against the elected office itself. *Citizens for Growth Mgmt. v. Groscost*, 199 Ariz. 71, 74 (2000) ("[A] suit against a state official in his or her official capacity is not a suit against the official but rather is a suit against the official's office."); Ariz. R. Civ. P. 17(e) (providing that when a plaintiff sues a public officer, the plaintiff may name the office itself rather than the officer as the defendant). And if an officeholder involved in litigation leaves office, the new officeholder will be automatically substituted for the previous one. Ariz. R. Civ. P. 25(d) (providing for the automatic substitution of an elected officer if the officer leaves office during the pendency of a lawsuit). Therefore, it is the elected office of a county sheriff that is a public entity for the purposes of the Arizona Claims Act, and not the individual person that holds the office.

Second, county sheriffs are public entities under commonly used definitions of "entity" and "public entity." In relevant part, Black's Law Dictionary defines "entity" as "a governmental unit" that "has a legal identity apart from its members or owners." "Entity" *Black's Law Dictionary* (12th ed. 2024). It relevantly defines "public entity" as "[a] governmental entity, such as a state government or one of its political subdivisions." *Id*. The county sheriffs fit within these definitions. Again, the elected office of the county sheriff is a governmental entity created by the Arizona Constitution to exercise the government's policing power within a county. It is, by law, given its own separate and distinct powers and duties and its legal identity is separate from the individuals who temporarily hold the offices. Other definitions of the word "entity" are even broader. For example, the Merriam-Webster Dictionary defines "entity" as "something that has a separate and distinct existence and objective or conceptual reality." "Entity," *Merriam-Webster.com Dictionary, last accessed* September 24, 2024. The offices of the county sheriffs certainly fit within this definition. More importantly, Plaintiffs' effort to cherry-pick the most restrictive definitions of the word "entity" does nothing to overcome the common understanding of "public entity" as courts and litigants alike have understood it for decades.

In sum, the county sheriffs are public entities by virtue of their creation and their separate and independent power to exercise core governmental functions within

a geographic area. That the county sheriffs are "public entities" under the Arizona Claims Act is further confirmed by the long-held common understanding in Arizona that the county sheriffs are the entities vicariously liable for their deputies' conduct—an understanding the Arizona Claims Act does nothing to upset. The Court should confirm the current state of the law and rule that the county sheriffs are public entities who can sue and be sued.

B. County sheriffs, not the counties, employ sheriffs' deputies.

Plaintiffs' position is also incorrect because the sheriff's deputies are employed by county sheriffs, not the counties. *See Barth v. Cochise County,* Arizona, 213 Ariz. 59, 63, n.4 (App. 2006) (sheriff's deputy sent letter to county attorney complaining of allegedly intolerable working conditions; court stated "this letter should have been sent to Barth's employer, the sheriff or his representative, *see* A.R.S. § 23–1502(B)(1) [requiring employee bringing constructive discharge claim to "notify an appropriate representative of the employer"]"). The Arizona Claims Act defines both "employee" and "public employee," but these definitions are ambiguous as to *which* public entity employs a particular public employee. *See* A.R.S. § 12-820. Therefore, other definitions of public employee are helpful to determine whether the counties or the sheriffs employ sheriffs' deputies. Black's Law Dictionary defines 'employee' as "[s]omeone who works in the service of another person (the employer) under an express or implied contract of hire, *under*

which the employer has the right to control the details of work performance." "Employee" Black's Law Dictionary (12th ed. 2024) (emphasis added). Black's Law Dictionary defines 'public employee' as "[s]omeone *employed in a department* responsible for conducting the affairs of a national or local government."[6] *Id.*, "civil servant" (emphasis added). Read together, these definitions provide the reasonable explanation that a public employee is employed by a department that has the right to control the details of the public employee's conduct. *See also* Restatement (Third) of Agency § 7.07 (2006) ("An employee acts within the scope of employment when performing work assigned by the employer or engaging in a course of conduct subject to the employer's control.").

Deputy county sheriffs are employees of the sheriffs, and not the counties, because the sheriffs are the "departments" who control the details of the deputies' work performance and for whom the deputies work. First, as discussed above, the county sheriffs have the exclusive right to control the details of their deputies' work performance. The deputies work to achieve the statutory duties assigned to the sheriffs, and do not work to accomplish the statutory duties assigned to the counties. A.R.S. §§ 11-409, 38-462(A). County officers, including the county sheriffs, are given the right to appoint their deputies.[7] A.R.S. § 11-409; -401(A)(1); *Hounshell*

[6] This definition shares an entry with "civil servant."

[7] It is true that the counties must "consent" to any appointments, but this power is part of their general fiscal powers and they may not make the appointments

v. White, 220 Ariz. 1, 5 ¶ 18. (App. 2008) ("we conclude that the Sheriff is the sole appointing authority with respect to his or her deputies."). And county sheriffs have the exclusive right to discipline and fire their deputies. *Hounshell*, 220 Ariz. 6 ¶ 22. All of this demonstrates that the sheriffs, not the counties, employ the deputies.

Counties cannot be statutory employers of sheriffs' deputies when the counties—embodied by their boards of supervisors—cannot hire, fire, or discipline deputies; cannot direct or control the deputies' work; and when the deputies' work does not fulfill the counties' statutory duties. And the record before the Court is devoid of any evidence that county boards of supervisors employ sheriffs' deputies. Indeed, the only evidence in the record is the declaration from Deputy Godinez stating that he is an employee of the Maricopa County Sheriff's Office, not the County. [R. 7-8 at ep 10]. Therefore, to the extent the Court is inclined to answer the first question posed in its order granting review, it should answer the question in the negative and rule that the elected offices of the county sheriffs are the public entities that employ deputy county sheriffs for the purposes of the Arizona Claims Act.

IV. Absent any record on Plaintiffs' notice of claim, the Court cannot address whether Plaintiffs' notice of claim was valid.

Maricopa County has not previously argued that the notice of claim Plaintiffs

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themselves. *See* A.R.S. § 11-409; *Associated Dairy*, 68 Ariz. at 395.

served on Maricopa County was improper in any way or was invalidly served. Plaintiffs' notice of claim is not in the record, and there are no facts in the record upon which to assess its validity. As noted above, Plaintiffs' notice of claim has never been relevant to the reasons Maricopa County was dismissed from this lawsuit.

To respond to the second question posed in the order granting review, however, A.R.S. § 12–821.01 requires persons who have claims against a public employee to file a claim "with the person or persons authorized to accept service for the ... public employee as set forth in the Arizona rules of civil procedure." As noted above, the sheriff in his official capacity employs sheriffs' deputies, so any notice of claim relating to the conduct of a sheriffs' deputy would need to be served on the sheriff or his authorized representative. Service of a notice of claim on the county does not effect service on that county's sheriff. *See Harris v. Cochise Health Sys.*, 215 Ariz. 344, 351 ¶¶ 25-26 (App. 2007) (service of notice of claim on county did not satisfy requirement for serving notice of claim on director of county health services agency; "[f]ailure to comply with the statute is not cured by actual notice or substantial compliance"). Therefore, Plaintiffs' notice of claim on Maricopa County did not effect service on the Sheriff or Deputy Godinez. Beyond that, this record does not permit the Court to answer the question of whether Plaintiffs properly served a notice of claim.

Conclusion

For these reasons, the Court should either deny review as having been improvidently granted or affirm the Court of Appeals' Opinion.

RESPECTFULLY SUBMITTED this 3rd day of October 2024.

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