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20 **ARIZONA SUPERIOR COURT**
21 **MARICOPA COUNTY**

22 ARIZONA DEMOCRATIC PARTY, an)
23 Arizona political party and political action)
24 committee; and STEVE GALLARDO, a)
25 qualified elector,)

26 Plaintiffs,)

v.)

27 KAREN FANN, in her official capacity as)
28 President of the Arizona Senate; WARREN)
29 PETERSEN, in his official capacity as)
30 Chairman of the Senate Judiciary Committee;)
31 KEN BENNETT, in his official capacity as)
32 the liaison of the Arizona Senate; and CYBER)
33 NINJAS, INC., a Florida corporation,)

34 Defendants.)

No.: **CV2021-006646**

**VERIFIED COMPLAINT FOR
DECLARATORY JUDGMENT AND
INJUNCTIVE RELIEF**

1 Plaintiffs Arizona Democratic Party (“ADP”) and Steve Gallardo (collectively,
2 “Plaintiffs”) allege as follows:

3 **PARTIES, JURISDICTION, AND VENUE**

4 1. Plaintiff ADP is a political party committee with a purpose of electing Democratic
5 Party candidates to public office in Arizona. ADP engages in important activities such as
6 supporting Democratic Party candidates, engaging in fundraising and organizing efforts, and
7 protecting the rights of Arizona voters. ADP has members and constituents throughout Arizona,
8 including many voters in Maricopa County.

9 2. Plaintiff Steve Gallardo is a registered Arizona voter residing in Maricopa County
10 and a member of the Maricopa County Board of Supervisors. Plaintiff Gallardo brings this action
11 in his individual capacity.

12 3. Defendant Karen Fann is a state senator and the President of the Arizona Senate.
13 President Fann is named in this action in her official capacity.

14 4. Defendant Warren Peterson is a state senator and the Chairman of the Arizona
15 Senate Judiciary Committee. Senator Peterson is named in this action in his official capacity.

16 5. Defendant Cyber Ninjas, Inc. (“CN”) is a Florida corporation and a cyber security
17 company hired by the Arizona Senate to conduct an “audit” of Arizona’s 2020 General Election
18 in Maricopa County (the “Audit”).

19 6. Defendant Ken Bennett is an Arizona resident and the Arizona Senate’s “liaison”
20 for the Audit.

21 7. This Court has jurisdiction pursuant to A.R.S. §§ 12-123, 12-1831 and the Arizona
22 Constitution.

23 8. Venue is proper pursuant to A.R.S. § 12-401.

24 **GENERAL ALLEGATIONS**

25 **The Legislative Subpoenas**

26 9. On January 12, 2021, President Fann and Senator Peterson, on behalf of the

1 Arizona Senate and the Senate Judiciary Committee, served legislative subpoenas on the
2 Maricopa County Board of Supervisors, the Maricopa County Recorder, and the Maricopa
3 County Treasurer (the “Subpoenas”). A true and correct copy of the Subpoenas is attached as
4 Exhibit 1.

5 10. The Subpoenas requested extensive materials, including physical voted ballots and
6 ballot envelopes, scanned images of voted ballots, voter registration records, ballot tabulation
7 equipment, and electronic voting systems.

8 11. The County and the Senators litigated the validity of the Subpoenas, and on
9 February 25, 2021, the Maricopa County Superior Court found that the Subpoenas were valid
10 legislative subpoenas. *See Maricopa County et al. v. Fann et al.*, Case No. CV2020-016840.

11 12. In making that finding, Judge Timothy Thomason specifically noted concerns
12 regarding ballot security and confidentiality: “This is not to say that the Court does not have
13 concern about the confidentiality of the subpoenaed ballot information. The Elections
14 Procedures Manual has carefully delineated provisions providing for the security of ballots. The
15 Manual, however, simply cannot be reasonably read to prevent production of subpoenaed
16 material to government officials, particularly State legislators who are constitutionally charged
17 with ensuring election integrity.” A true and correct copy of Judge Thomason’s order regarding
18 the legality of the Subpoenas is attached as Exhibit 2.

19 13. On or about February 26, 2021, the County informed the Senate that it was ready
20 to deliver the materials requested in the Subpoenas, including 2.1 million physical voted ballots,
21 hundreds of small tabulation machines, and large counting center tabulation machines and other
22 voting equipment.

23 14. The Senate responded by asking the County not to deliver the materials until the
24 Senate could arrange to receive them.

25 15. On information and belief, the County has already turned over large amount of
26 data and other information in response to the Subpoenas.

1 Audit, and neither the Senate nor any other government official will participate in the audit to
2 ensure security and confidentiality of the ballots, voter registration files, or voting equipment.

3 24. On April 1, 2021, Secretary of State Katie Hobbs wrote to the County expressing
4 her concerns regarding the Audit, and in particular, the Senate’s selection of CN to conduct the
5 audit. A true and correct copy of Secretary Hobbs’ letter is attached as Exhibit 4.

6 25. As Secretary Hobbs wrote,

7 Unfortunately, yesterday’s announcement made it clear that the Senate has no
8 intention of conducting an independent audit or ensuring the ongoing security
9 and confidentiality of Maricopa County’s ballots and voting equipment. As you
10 know, the Senate has confirmed its hiring of Cyber Ninjas Inc. This firm’s CEO
11 not only harbors conspiratorial beliefs about the 2020 election, but has shared
12 conspiracies about Dominion election equipment, the exact equipment he has
13 been hired to audit. Moreover, Jovan Hutton Pulitzer confirmed yesterday that he
14 too would be involved in this audit. To be sure, Mr. Pulitzer is also a known,
15 and frequently debunked, conspiracy theorist (to say nothing of “failed treasure
16 hunter” or inventor of one of the “25 worst tech products of all time”). To
17 compound the concerning nature of these revelations, the Statement of Work
18 signed by the Senate indicates that these “auditors” plan to visit Maricopa County
19 voters at their home to inquire about their registration and voting history.⁸ And if
20 all that were not concerning enough, the Senate President’s press release states
21 that the Senate “leadership will not be directly involved [in the audit], and
22 members do not expect to comment on any of the processes of the audit until the
23 report is issued.” In other words, the Senate intends to give free reign to Cyber
24 Ninjas, Inc. and will abdicate any responsibility or engagement in the audit
25 process to ensure the security and confidentiality of the ballots and voting
26 equipment or the integrity of the process. In addition to being dangerous and
irresponsible, this abdication appears contrary to Judge Thomason’s assumption
that the Senate will ensure any third parties will handle the subpoenaed materials
appropriately.

26 26. In addition, the Senate engaged former Arizona Secretary of State Ken Bennett to
serve as the Senate’s “liaison” to the Private Auditors.

27 27. On information and belief, CN has never conducted an election audit.

28 28. On information and belief, Mr. Bennett has never conducted an election audit.

1 29. CN’s CEO, Doug Logan, is a proud supporter of the “Stop the Steal” movement
2 and has retweeted numerous posts on Twitter claiming that the 2020 General Election was rigged
3 against Donald Trump. *See, e.g.,* Jeremy Duda & Jim Small, *Arizona Senate hires a ‘Stop the*
4 *Steal’ advocate to lead 2020 election audit*, *Ariz. Mirror* (Mar. 31, 2021),
5 [https://www.azmirror.com/2021/03/31/arizona-senate-hires-a-stop-the-steal-advocate-to-lead-](https://www.azmirror.com/2021/03/31/arizona-senate-hires-a-stop-the-steal-advocate-to-lead-2020-election-audit/)
6 [2020-election-audit/](https://www.azmirror.com/2021/03/31/arizona-senate-hires-a-stop-the-steal-advocate-to-lead-2020-election-audit/).

7 30. Mr. Logan also “drafted a document for U.S. senators who planned to object to the
8 certification of the election results on Jan. 6 promoting various disproven or baseless conspiracy
9 theories about the election, including claims against the company whose ballot tabulation
10 machines he’ll [be] tasked with inspecting.” Jeremy Duda, *Election auditor wrote ‘election fraud*
11 *facts’ report for GOP senators who tried to overturn the 2020 election*, *Ariz. Mirror* (Apr. 9,
12 2021), [https://www.azmirror.com/2021/04/09/arizona-audit-leader-doug-logan-wrote-fraud-](https://www.azmirror.com/2021/04/09/arizona-audit-leader-doug-logan-wrote-fraud-claims-on-kraken-lawyers-website/)
13 [claims-on-kraken-lawyers-website/](https://www.azmirror.com/2021/04/09/arizona-audit-leader-doug-logan-wrote-fraud-claims-on-kraken-lawyers-website/).

14 31. On information and belief, Mr. Logan has never administered a post-election audit.

15 32. On April 1, 2021, Mr. Logan sent a list of questions to President Fann, which he
16 claimed CN “absolutely need[ed]” to conduct the audit. He also attached a long list of additional
17 questions, explaining that “the team did have a bunch more questions that would be very useful
18 to know.” A true and correct copy of Mr. Logan’s email is attached as Exhibit 5.

19 33. Indeed, the Senate and Mr. Logan apparently expected that Maricopa County
20 would allow the audit to be performed at their facilities with the assistance of Maricopa County’s
21 audit experts. In an email to Maricopa County dated April 2, 2021, President Fann stated: “I had
22 hoped we would be able to do this together in the spirit of transparency and the desire to answer
23 our constituents[’] questions about the election.” Ex. 5.

24 34. Maricopa County confirmed they would not assist: “Maricopa County cannot be
25 involved in supporting your audit as to do so may expose it to liability for which it has no similar
26 legal protection. To avoid any confusion, I want to be clear that the audit is not a joint effort

1 between the County and the Senate Republican Caucus. Maricopa County will not communicate
2 with your vendors or interpret Arizona law for them.” Ex. 5.

3 35. On information and belief, unknown private right-wing groups and supporters of
4 former President Donald J. Trump have donated at least \$150,000 to fund the Audit.

5 36. On April 7, 2021, attorney Lin Wood – known for his support of the “Stop the
6 Steal” movement and adherence to the “QAnon” conspiracy theory – posted on Telegram
7 pledging a donation to fund the Audit and asked others to donate. He added: “When the fraud is
8 finally revealed in one state, just watch the other states fall like dominoes!” Lin Wood, Telegram
9 (Apr. 7, 2021), <https://t.me/linwoodspeakstruth/1400>.

10 37. On April 9, 2021, Christina Bobb, a host on far-right media outlet “One America
11 News”, tweeted about the Audit as follows: “Our goal is to fund \$150,000 to cover expenses of
12 the audit, which will ensure its complete scope of work. We’re \$10K away from our goal.”
13 Christina Bobb, Twitter (Apr. 9, 2021),
14 https://twitter.com/christina_bobb/status/1380562776918200320.

15 38. In a Telegram post that same day, Lin Wood announced that the \$150,000 goal
16 had been reached. He added: “I know the individual who is leading the Arizona audit team,” and
17 “He will reveal the truth. I did NOT make this happen. Nor did Christina. We merely showed
18 the way.” Lin Wood, Telegram (Apr. 9, 2021), <https://t.me/linwoodspeakstruth/1434>.

19 39. The Senate ultimately directed the County to deliver the materials requested in the
20 Subpoenas to the Arizona Veterans Memorial Coliseum, where the Private Auditors plan to
21 perform the Audit.

22 40. On April 21, 2021, the County delivered tabulators and central counting machines
23 to the Coliseum as requested by the Senate.

24 41. On April 22, 2021, the County is expected to deliver 2.1 million voted ballots to
25 the Coliseum as requested by the Senate.

26

1 57. Under Arizona law, certain components of a voter’s registration records, including
2 date of birth, signature, and country of birth, may not be viewed, accessed, reproduced, or
3 disclosed to a member of the public who is not an authorized government official. *See* A.R.S. §
4 16-168(F); Election Procedures Manual (“EPM”) Ch. 1 § X.C.I,
5 [https://azsos.gov/sites/default/files/2019_ELECTIONS_PROCEDURES_MANUAL_APPRO](https://azsos.gov/sites/default/files/2019_ELECTIONS_PROCEDURES_MANUAL_APPROVED.pdf)
6 [VED.pdf](https://azsos.gov/sites/default/files/2019_ELECTIONS_PROCEDURES_MANUAL_APPROVED.pdf).

7 58. The EPM – promulgated by the Secretary of State and approved by the Governor
8 and Attorney General – has the force and effect of law. *Arizona Pub. Integrity All. v. Fontes*, 250
9 Ariz. 58 ¶ 16 (2020); A.R.S. § 16-452(C).

10 59. The Private Auditors and their agents are not authorized to review confidential
11 voter registration records.

12 60. Only election officials, postal workers, and certain family members and other
13 authorized individuals may “gain possession or control” of voted early ballots. A.R.S. § 16-
14 1005(H).

15 61. The Private Auditors and their agents are not authorized to gain possession or
16 control of voted early ballots.

17 62. Under Arizona law, “[a]ll persons taking part in the actual processing and counting
18 of ballots, including the employees of a jurisdiction conducting an election, must be appointed
19 in writing and take an oath provided by the Board of Supervisors (or designee) that they will
20 faithfully and impartially perform their duties. Any person who has not been appointed in writing
21 or taken the oath shall, under no circumstances, be permitted to touch any ballot, computer, or
22 counting device used in processing ballots.” EPM Ch. 10 § I.A.

23 63. The Private Auditors and their agents have not been appointed in writing or taken
24 an oath required under EPM Ch. 10 § I.A, and thus are not authorized to touch any ballot,
25 computer, or counting device.

26

1 64. Arizona law also requires “that staff performing the signature verification are
2 properly trained.” EPM Ch. 6 § II.C.

3 65. On information and belief, the Private Auditors and their agents are not properly
4 trained in signature verification.

5 66. Under Arizona law, election officers “must develop and implement a training plan
6 to ensure that elections staff (and any temporary workers) understand and comply with all
7 security procedures applicable to the electronic voting system.” EPM Ch. 4 § III.

8 67. Arizona law also requires that hardware components of the electronic voting
9 system are, among other things: (1) “stored in a locked, secured location that prevents
10 unauthorized access”; (2) “sealed with tamper-resistant or tamper-evident seals once
11 programmed”; (3) “safeguarded from unauthorized access when being moved, transferred,
12 serviced, programmed, or temporarily stored”, (4) “accessed by elections staff only to the extent
13 necessary to perform their authorized task”; and (5) “witnessed by two or more election staff
14 members (of different political parties if possible) when being moved or transferred, which
15 includes an inventory of the equipment and chain of custody before and after the move or
16 transfer.” EPM Ch. 4 § III.A.

17 68. Further, components of the electronic voting system “may not be connected to the
18 internet, any wireless communications device, or any external network (except for e-pollbooks),”
19 and “must be observed by the officer in charge of elections or a designee if the election program
20 (or any software or firmware) is updated or modified.” EPM Ch. 4 § III.B.

21 69. On information and belief, Defendants have not adopted or implemented training
22 plans or security measures required by EPM Ch. 4 § III.

23 70. Arizona law requires security of official ballots, including requirements that
24 ballots: (1) “may be accessed by elections staff only to the extent necessary to perform their
25 authorized task; (2) “must be stored in a locked, secured location that prevents unauthorized
26 access”; and (3) “must be witnessed by two or more election staff members (of different political

1 parties if possible) when being moved or transferred, which includes an inventory of the ballots
2 before and after the move or transfer.” EPM Ch. 8 § V.E. Election officials also “must implement
3 security procedures to ensure that official ballots are properly secured prior to distribution to
4 voting locations.” *Id.*

5 71. On information and belief, Defendants have not adopted or implemented security
6 procedures required by EPM Ch. 8 § V.E.

7 72. On information and belief, experienced election officials would confirm that the
8 safeguards and requirements set forth in Paragraphs 55-68 are necessary to perform a secure and
9 reliable audit, that Defendants’ planned Audit does not comply with these safeguards and
10 requirements, and Defendants’ planned Audit undermines the integrity and security of Arizona’s
11 elections and voter information.

12 73. An actual and justiciable controversy exists regarding the legality of the Audit
13 procedures scheduled to begin on April 23, 2021.

14 74. Plaintiffs request a declaration that Defendants or their agents are in violation of,
15 or have threatened to immediately violate, the statutory and EPM provisions set forth above.

16 **COUNT II**

17 **(Injunctive Relief)**

18 75. All previous allegations are re-alleged as if set forth herein.

19 76. For the reasons set forth above in Paragraphs 53-70, *supra*, Defendants and their
20 agents will proceed with the Audit in violation of various statutory and EPM provisions absent
21 the entry of an injunction.

22 77. Plaintiff ADP will suffer irreparable harm absent the entry of an injunction because
23 the private information of its members – including how they voted in the 2020 General Election
24 – will be placed into the hands of unknown, untrained agents of the Private Auditors without the
25 protections guaranteed by statute and the EPM.

26

