

1-6-2022 5:12 pm

A. Walker, Deputy

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

PHOENIX NEWSPAPERS, INC., an
Arizona corporation, and KATHY
TULUMELLO,

Case No. LC2021-000180-001

Plaintiffs,

AMENDED ORDER

v.

ARIZONA STATE SENATE, a public body
of the State of Arizona; KAREN FANN, in
her official capacity as President of the
Arizona State Senate; WARREN
PETERSEN, in his official capacity as the
Chairman of the Arizona Senate Committee
on the Judiciary; SUSAN ACEVES, in her
official capacity as Secretary of the Arizona
State Senate; and CYBER NINJAS, INC.,

Assigned to the Honorable John Hannah

Defendants, and

CYBER NINJAS, INC.,

Real Party in Interest,

Based on the information presented at the hearing in open court on January 6, 2022,
THE COURT FINDS by clear and convincing evidence (1) that Cyber Ninjas, Inc.
knew of the Order to Produce Public records entered by this Court on August 24, 2021 as
modified or clarified by the minute entry orders filed September 23, 2021 and October 12,
2021, the orders entered orally in the presence of counsel on October 28, 2021 and
memorialized in the hearing minute entry filed November 1, 2021, and the orders entered
orally in the presence of counsel on November 30, 2021 and memorialized in the minute
entry filed December 3, 2021 (collectively, the "Order to Produce Public Records" or the
"Order"); (2) that Cyber Ninjas, Inc. violated the Order to Produce Public Records; (3) that

1 the noncompliance with the Order to Produce Public Records by Cyber Ninjas, Inc. was
2 substantial; and (4) that the noncompliance was not based on a good faith and reasonable
3 interpretation of the Order

4 THE COURT FURTHER FINDS that Cyber Ninjas, Inc. has not shown by a
5 preponderance of the evidence that it did not or does not have the ability to comply with
6 the Order to Produce Public Records.

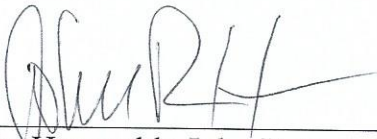
7 IT IS THEREFORE ORDERED the plaintiffs' Renewed Motion to Hold Cyber
8 Ninjas in Contempt for Its Failure to Comply with Court Orders to Produce Public Records
9 is granted.

10 IT IS FURTHER ORDERED that Cyber Ninjas, Inc. shall pay the sum of
11 \$50,000.00 per day beginning on January 7, 2022 and continuing on each Superior Court
12 business day for so long as Cyber Ninjas, Inc. continues to be non-compliant with the
13 Order. The payments shall be made to the Clerk of the Court, which shall hold the funds
14 until further order of this Court.

15 IT IS FURTHER ORDERED that Cyber Ninjas, Inc. may purge the contempt by
16 (1) compiling all records within the custody and control of Cyber Ninjas, Inc. or the
17 subcontractors or agents of Cyber Ninjas, Inc. that are related in any way to the "election
18 audit," (2) disclosing such records to the Arizona State Senate and conferring with the
19 Senate about which of those records should not be produced pursuant to the Order because
20 they are not public records or for any other legal reason, and (3) producing or
21 unambiguously and irrevocably authorizing the Senate to produce to plaintiff Phoenix
22 Newspapers Inc., pursuant to the Order, (a) all such records that are public records as to
23 which the Senate determines that interests of confidentiality, privacy or best interest of the
24 State do not outweigh the public's right of access to the records and (b) a "privilege log"
25 that individually lists and describes each of the remaining (non-disclosed) records and
26 states the reason for non-disclosure. The Court reserves the possibility of ordering records
27 listed on the "privilege log" to be produced for *in camera* inspection.
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1 For purposes of this order, "election audit" means the process of amassing and
2 interpreting data and reporting findings and conclusions concerning the accuracy and
3 efficacy of Arizona's electoral infrastructure, in which Cyber Ninjas, Inc. engaged on
4 behalf of the Arizona State Senate beginning in early 2021. "Public records" means
5 records described on page 1 of the Order to Produce Public records entered on August 24,
6 2021 that have a substantial nexus to the "election audit."
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10 DATED this 6th day of January, 2022.
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14 _____
15 The Honorable John R. Hannah
16 Judge of the Superior Court
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