

1 **INTRODUCTION**

2 Defendant Maricopa County’s Motion for Sanctions and Application for Attorney’s Fees
3 under A.R.S. § 12-349 (the “Motion”), and Defendant Hobbs joinder in that Motion has no basis
4 in law or fact. At issue here is whether or not counsel for Plaintiff Kari Lake should be
5 sanctioned for bringing claims that Defendants argue are not only without substantial
6 justification but were also brought in bad faith and constitute harassment. Though this Court
7 found for Defendants on the issue of whether Plaintiff had shown clear and convincing evidence
8 of Defendants’ “intentional misconduct”, neither the Court’s findings nor the record support
9 Defendants’ motion for sanctions. In fact, Arizona law and the record at trial reflect that
10 Defendants’ Motion for sanctions has no basis whatsoever. Moreover, the issues raised before
11 this Court were of significant concern to millions of Arizona voters as to the causes of chaos that
12 arose on Election Day—and the administration of elections in Maricopa County generally—and
13 Plaintiff’s claims deserved to be brought and heard.
14
15
16

17 Specifically, Plaintiff’s claims were neither legally groundless nor were they brought in bad
18 faith or for purposes of harassment as is required under Arizona law to justify sanctions.
19 Plaintiff’s Complaint laid out detailed facts and alleged violations of law supported by the sworn
20 testimony of over two hundred witnesses, including employees from MCTEC² and Runbeck
21 Election Services (“Runbeck”); the testimony of credentialed experts in electronic voting
22 systems and election voter surveys; and internal government documents only recently made
23
24

25 _____
26 ² Maricopa County Recorder and Elections Department

1 public. The Complaint unequivocally identified specific numbers of illegal votes that far
2 exceeded the 17,117 vote margin between Plaintiff Kari Lake and Secretary of State Katie
3 Hobbs.
4

5 Indeed, the Court denied Defendants’ motions to dismiss Count II (Illegal Tabulator
6 Configurations) and Count IV (Ballot Chain of Custody) of the Complaint finding that Plaintiff
7 had stated a claim in accordance with Arizona law. That fact alone supports a denial of
8 Defendants’ motions for sanctions. Further, while the Court ultimately found after trial that
9 Plaintiff had not proven intentional misconduct by “clear and convincing” evidence, that is a far
10 cry from amounting to sanctionable conduct under Arizona law. Indeed, the testimony at trial
11 exposed facts, which while the Court found were not sufficient to show “clear and convincing
12 evidence” of violations of A.R.S. § 16-672(A)(1), nonetheless showed Defendants’ conflicting
13 testimony on issues of Maricopa County’s administration of elections and compliance with
14 Arizona law that injured Plaintiff and millions of Arizona voters. Defendants’ motion should be
15 denied.
16
17

18 **ARGUMENT**

19
20 Defendants assert that an award of attorneys’ fees and costs is justified under A.R.S. § 12-
21 349 arguing that Plaintiff’s claims were brought “without substantial justification” and that
22 Plaintiff’s claims were not “made in good faith.” *See, e.g.*, County Br. at 6 citing A.R.S. § 12-
23 349(F). As demonstrated above, Plaintiff’s claims were substantiated, brought in good faith, and
24 further are a matter of public concerns. None of Defendants arguments has any merit nor do
25
26

1 Defendants point to single case analogous to this case that would justify sanctions and attorneys’
2 fees.

3
4 There is a high bar for establishing entitlement to sanctions under A.R.S. § 12-349. Indeed,
5 the case of *Fisher on Behalf of Fisher v. Nat’l Gen. Ins. Co.*, 192 Ariz. 366 (App. 1998) cited by
6 Maricopa County makes this point clear:

7 To award sanctions under these statutes the court must determine that the party's
8 claim: (1) constitutes harassment; (2) is groundless; and (3) is not made in good
9 faith. ***All three elements must be shown and the trial court must make
appropriate findings of fact and conclusions of law.***

10 *Id.* at 370 (denying motion for sanctions) (citations omitted) (emphasis added).

11
12 The recent case of *Goldman v Sahl* is almost perfectly on-point. There, the trial court
13 awarded Sahl attorney’s fees under A.R.S. § 12-349 in connection with an abuse of process
14 claim, finding that Goldman's claim was “clearly groundless” because his position that an
15 absolute privilege applies only to the content of a bar charge and not the act of filing a bar charge
16 was "directly contrary to long-standing and well-established case law.” *Goldman v. Sahl*, 248
17 Ariz. 512, 531, 462 P.3d 1017 (Ct. App. 2020). The trial court also found that Goldman did not
18 act in good faith because he continued to pursue the abuse-of-process claim based on the bar
19 charge after Sahl “cited binding legal authority establishing that the claim was meritless and
20 even though Goldman admitted that the claim was likely barred as a matter of law in an email to
21 Sahl’s counsel.” *Id.* The trial court made a finding of harassment but did not find that the action
22 was solely or primarily brought for the purposes of harassment. *Id.*
23
24
25
26

1 The Court of Appeals reversed, holding that even where an attorney believes where his
2 clients' claim is "likely barred as a matter of law" and "a long shot" such sanctions are not
3 appropriate where a party and their attorneys have advanced "thoughtful, well-reasoned, and
4 well-supported – positions on the law." *Id.* Such is the case here.

6 **A. Defendants Misstate This Court's Order and the Record to Concoct Their**
7 **Sanctions Motion**

8 Maricopa argues that "among Plaintiff's multiple thousands of pages of disclosed exhibits,
9 there was not a single piece of evidence that such [intentional] misconduct [directed to affect the
10 outcome of the election occurred] had occurred." Maricopa Br. at 3. In fact, Defendants'
11 assertion is itself false. Specifically, despite the Court finding that Plaintiff had not sufficiently
12 met the Court's standard, the Court recognized in its December 24, 2022 Order that Plaintiff's
13 witnesses did in fact testify and provide evidence of intent and outcome determinative
14 misconduct. *See* Order at page 4 ("the Court cannot follow Mr. Sonneklar to ascribing
15 intentional misconduct to any party.") and at page 7-8 (Baris's analysis does not have the "degree
16 of precision that would provide clear and convincing evidence that the result did change as a
17 result of BOD printer failures"). *See also* Day 1 Parikh Transcript 100:17 102:15. (19 inch ballot
18 image could not happen accidently, would be detected by logic and accuracy testing); Day 1
19 Honey Transcript 231:15 – 233:1 (decision not to follow chain of custody requirements an
20 intentional decision).

24 Maricopa County also cites certain of Plaintiff's Twitter posts as supporting sanctions.
25 Maricopa Br. 7-8. First, Defendants cite no case law that supports sanctions based on Twitter
26

1 posts. Plaintiff has a First Amendment right to voice her opinions. Second, Maricopa seeks to
2 support the motion for sanctions by citing a tweet to an article *authored by someone else*
3 “@Rach_IC” that Plaintiff simply retweeted. Tweets, especially those authored by others, do not
4 support sanctions under Arizona law. Maricopa also argues that Plaintiff unnecessarily expanded
5 these proceedings to include Maricopa County and certain officers as Defendants. Maricopa Br.
6 8-9. The evidence and testimony in this proceeding discussed above (and below) shows that
7 naming of Maricopa County and its official as Defendants was justified. Indeed, the evidence
8 from over 200 sworn declarations, and expert testimony, as to Maricopa County’s conduct in the
9 2022 general election shows that Plaintiff’s allegations were brought in good faith.

12 **B. Maricopa County Co-Director of Elections’ Revelation That The County Is**
13 **Performing A Root Cause Analysis of Improperly Configured Election Day**
14 **Ballots Also Shows Plaintiff’s Claims Were Supported and Brought in Good**
15 **Faith**

16 In the 2022 general election, Maricopa’s tabulators were configured to read only a 20-inch
17 ballot image. Prior to this trial, the public did not know that on Election Day, illegally configured
18 19 inch ballot images were printed on 20 inch ballot paper thereby rendering thousands of ballots
19 unreadable on tabulators. Plaintiff’s cyber expert, Clay Parikh, discovered this issue upon
20 examining a sampling of ballots from six Maricopa County vote centers pursuant to A.R.S. §
21 16-677. Mr. Parikh found: that these 19 inch misconfigured ballots existed *at all six vote centers*
22 from which he inspected ballots; and that the 19 inch ballot issue affected over 42% of the
23 combined spoiled and duplicated ballots he inspected, and 93% of the duplicated ballots he
24
25
26

1 inspected.³ Moreover, as Mr. Parikh testified, Maricopa County did not maintain the duplicated
2 ballots with original ballots as is required by law, so there was no way for him to confirm the
3 duplicate ballot during this inspection.⁴
4

5 Significantly, Maricopa County’s Director Elections, Scott Jarrett, took the witness stand
6 *prior to* Mr. Parikh’s disclosure of these findings. When asked if he knew of any way a 19 inch
7 ballot image could be projected onto 20 inch paper in the 2022 general election, Mr. Jarrett
8 testified “*I’m not aware of it occurring, and I’d be surprised if there was a ballot on a printer*
9 *that had a 19-inch ballot on it.*”⁵
10

11 However, when Mr. Jarrett took the witness stand the next day on behalf of Defendants,
12 Mr. Jarrett testified that, just after Election Day, Maricopa County had in fact discovered that 19
13 inch ballots were found in three Vote Centers, that Maricopa County: (i) was performing a root
14 cause analysis of this issue; and (ii) that Maricopa County had not disclosed this issue to the
15 public, (despite the County’s public statements downplaying the chaos on Election Day and
16 issuing a detailed written response to the Arizona Attorney General’s office on November 26,
17 2022 about the Election Day chaos.⁶ The still unexplained existence of these 19 inch ballots
18 found by Mr. Parikh at all six vote centers he inspected, which cannot be processed by tabulators
19
20

21
22 ³ Door 3 ballots refer to the more than 17,000 ballots that were rejected by Vote Center tabulators
23 as unreadable and cordoned off for later tabulation.

24 ⁴ Day 1 Parikh Transcript 91:04 – 96:22.

25 ⁵ Day 1 Jarrett Transcript 68:24 – 69:09, 77:14-20.

26 ⁶ Day 2 (rough) Jarrett Transcript 204:12 – 210:09

1 and thus must be either be spoiled or require duplication, violates, among other things, Arizona's
2 requirements regarding logic and accuracy testing designed to ensure print on demand ballots
3 are in fact able to be processed through tabulators.⁷
4

5 **C. Maricopa County's Chain of Custody Violations Also Show Plaintiff's Claims**
6 **Were Supported and Brought in Good Faith**

7 Defendant Maricopa County Recorder, Stephen Richer's conflicting testimony on chain of
8 custody is another case in point. Richer initially testified that the County receive so many ballots
9 on Election Day that the ballots are simply processed at MCTEC *before* being counted at
10 Runbeck because Runbeck has a "a high-speed counter" and there were so many ballot packets.⁸
11 Richer then changed his testimony to say that the ballots are counted at MCTEC and the counts
12 are documented on chain of custody forms before being transferred to Runbeck where they are
13 counted again.⁹ Such inconsistency on a material fact such as chain of custody requirement
14 under A.R.S. § 16-621(E) supports Plaintiff's claims and is also a matter of public concern.
15

16
17 In addition, Richer testified he, as the custodian of Maricopa County's chain of custody
18 documents, produced all chain of custody forms with a ballot count for early ballots in response
19 to Plaintiff's public records act requests. However, such production did not occur and indeed
20 would be inconsistent with Richer's testimony discussed above that early vote ballots are simply
21
22

23
24

⁷ Day 1 Jarrett Transcript 52:17-55:10.

25 ⁸ Day 1 Richer Transcript 19: 9-21.

26 ⁹ Day 1 Richer Transcript 28: 3-12

1 processed at MCTEC and then later counted at Runbeck.¹⁰ While the Court found that such
2 evidence did not show clear and convincing evidence of intentional misconduct, it clearly is
3 supportive of Plaintiff's claims, and also raises matters of public concern regarding Maricopa
4 County's compliance with Arizona election law. Such concerns are underscored by the 25,000-
5 ballot increase in the number of ballots reported on November 10th from the prior day's reported
6 total.
7

8
9 **CONCLUSION**

10 At the conclusion of trial, the Court stated: "I'll also say that I appreciate—I know this is a
11 highly contested and emotional issue on both sides, but I want to express my appreciation for
12 counsel for both sides for your professionalism and your ability to present this case in a way that
13 was thought through, meaningful. Thank you." Plaintiff's put forth evidence in good faith that
14 showed substantial support for her claims—claims which also remain of great public concern.
15 Defendants' motion for sanctions is not supported by case law or the record. Trust in the election
16 process is not furthered by punishing those who bring legitimate claims as Plaintiff did here. In
17 fact, sanctioning Plaintiff would have the opposite effect. For the foregoing reasons, Plaintiff
18 requests that the Court deny Defendants' motion.
19
20

21 DATED this 26th day of December 2022.

22 /s/Bryan James Blehm

23 Bryan James Blehm, Ariz. Bar No. 023891

24 Blehm Law PLLC

25 ¹⁰ Day 1 Richer Transcript 28:18-24.
26

1 10869 N. Scottsdale Rd., Suite 103-256
2 Scottsdale, Arizona 85254
3 (602) 752-6213
4 bryan@blehmlegal.com

5 OLSEN LAW, P.C.
6 Kurt Olsen, D.C. Bar No. 445279*
7 1250 Connecticut Ave., NW, Suite 700
8 Washington, DC 20036
9 (202) 408-7025
10 ko@olsenlawpc.com
11 *to be admitted pro hac vice

12 *Attorneys for Plaintiff-Contestant*

13 ORIGINAL e-filed and served via electronic
14 means this 26th day of December, 2022, upon:

15 Honorable Peter Thompson
16 Maricopa County Superior Court
17 c/o Sarah Umphress
18 sarah.umphress@jbazmc.maricopa.gov

19 Daniel C. Barr
20 Alexis E. Danneman
21 Austin Yost
22 Samantha J. Burke
23 Perkins Coie LLP
24 2901 North Central Avenue
25 Suite 2000
26 Phoenix, AZ 85012
dbarr@perkinscoie.com
adanneman@perkinscoie.com
ayost@perkinscoie.com
sburke@perkinscoie.com
Attorneys for Defendant Katie Hobbs

Abha Khanna*
ELIAS LAW GROUP LLP
1700 Seventh Avenue, Suite 2100
Seattle, WA 98101
akhanna@elias.law

1 Telephone: (206) 656-0177

2 Lalitha D. Madduri*

3 Christina Ford*

4 Elena A. Rodriguez Armenta*

5 **ELIAS LAW GROUP LLP**

6 250 Massachusetts Ave NW, Suite 400

7 Washington, D.C. 20001

8 lmadduri@elias.law

9 cford@elias.law

10 erodriguezarmenta@elias.law

11 *Attorneys for Defendant Katie Hobbs*

12 D. Andrew Gaona

13 COPPERSMITH BROCKELMAN PLC

14 2800 North Central Avenue, Suite 1900

15 Phoenix, Arizona 85004

16 agoana@cblawyers.com

17 *Attorney for Defendant Secretary of State Katie Hobbs*

18 Sambo Dul

19 STATES UNITED DEMOCRACY CENTER

20 8205 South Priest Drive, #10312

21 Tempe, Arizona 85284

22 bo@statesuniteddemocracycenter.org

23 *Attorney for Defendant Secretary of State Katie Hobbs*

24 Thomas P. Liddy

25 Joseph La Rue

26 Joseph Branco

Karen Hartman-Tellez

Jack L. O'Connor

Sean M. Moore

Rosa Aguilar

Maricopa County Attorney's Office

225 West Madison St.

Phoenix, AZ 85003

liddy@mcao.maricopa.gov

1 laruej@mcao.maricopa.gov
2 brancoj@mcao.maricopa.gov
3 hartmank@mcao.maricopa.gov
4 oconnorj@mcao.maricopa.gov
5 moores@mcao.maricopa.gov
6 aguilarr@mcao.maricopa.gov

7 *Attorneys for Maricopa County Defendants*

8 Emily Craiger
9 The Burgess Law Group
10 3131 East Camelback Road, Suite 224
11 Phoenix, Arizona 85016
12 emily@theburgesslawgroup.com

13 *Attorneys for Maricopa County Defendants*

14 James E. Barton II
15 BARTON MENDEZ SOTO PLLC
16 401 West Baseline Road Suite 205
17 Tempe, Arizona 85283
18 James@bartonmendezsoto.com

19 E. Danya Perry (pro hac vice forthcoming)
20 Rachel Fleder (pro hac vice forthcoming)
21 Joshua Stanton (pro hac vice forthcoming)
22 Lilian Timmermann (pro hac vice forthcoming)

23 PERRY GUHA LLP
24 1740 Broadway, 15th Floor
25 New York, NY 10019
26 dperry@perryguha.com

Attorneys for Amici Curiae
Helen Purcell and Tammy Patrick

Bryan J. Blehm