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

10 Mark Finchem, an individual,  
11 Plaintiff/Contestant,  
12 v.  
13 Adrian Fontes, *et al.*,  
14 Defendants/Contestees.

Case No.: CV2022-053927

**OBJECTION TO PLAINTIFF [sic]  
SECRETARY OF STATE ADRIAN  
FONTES' APPLICATION FOR  
ATTORNEYS' FEES AND COSTS**

15 Now comes Contestant, Mark Finchem, by and through his counsel undersigned, Daniel  
16 McCauley III of McCauley Law Offices, P.C., and files this Objection to *Secretary of State Adrian*  
17 *Fontes' Application for Attorneys' Fees and Costs* filed March 27, 2023, on the grounds that,  
18 *inter alia*, Fontes' *Motion for Sanctions* was untimely and should have been submitted before  
19 formally being replaced as counsel in this case, and as further argued herein below:

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21 **FACTS**

22 1. Contestant has already filed with this Court and served the following:  
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- A. *Opposition to Secretary of State Fontes’ Motion for Sanctions* filed January 5, 2023;
- B. *Motion for Reconsideration of Under Advisement Ruling (“Motion for Reconsideration”)* filed March 16, 2023; and his
- C. *Objection And Opposition To Adrian Fontes’ Motion For Sanctions And Application For Attorneys’ Fees* filed March 27, 2023.

In the interest of judicial economy, Finchem hereby restates and incorporates by reference, the foregoing as if fully set forth herein, including but not limited to all the arguments, authorities, and relief requested therein.

2. Katie Hobbs is named defendant in this action, in her official capacity as Secretary of State, and was represented by D. Andrew Gaona.

3. On or about December 28, 2022, Craig Morgan filed on behalf of Contestee, Adrian Fontes, *Secretary of State-Elect Adrian Fontes’ Motion for Sanctions*.

4. Then on January 3, 2023, Mr. Gaona filed a *Notice of Automatic Substitution of Public Officer* noting that he will now represent Adrian Fontes as Secretary of State.

5. On February 21, 2023, Ms. Amy Chan files an *Ex Parte Application to Substitute Counsel for Defendant Arizona Secretary of State Adrian Fontes in his Official Capacity* wherein she requests the Court authorize her substitution of Mr. Gaona as counsel for the Secretary of State – which was granted.

6. Most recently, on March 27, 2023, Ms. Chan has filed *Plaintiff [sic] Secretary of State Adrian Fontes’ Application for Attorneys’ Fees and Costs* wherein she has requested fees and costs on behalf of Mr. Gaona and his firm, via his Declaration attached thereto as Exhibit A.

1 **ARGUMENT**

2 7. First, this *Application* is untimely as it should have been filed by Mr. Gaona prior  
3 to his substitution. Mr. Gaona knew of his being substituted and easily could have submitted his  
4 “China Doll” application before the substitution was authorized by the court. Then his  
5 application could have ultimately been considered by the court if or when necessary.

6 8. Second, it is not the purview of the General Counsel for the Secretary of State to  
7 apply for the fees and costs on behalf of a private firm. Coppersmith Brockleman PLC should  
8 have timely filed for their own fees.

9 9. Moreover, Mr. Gaona’s Declaration cites work on behalf of both Defendant  
10 Hobbs and then Contestee Fontes, both as in their respective official capacity as Secretary of  
11 State. However, it is silent as to whether any of these fees have been paid and if so by whom and  
12 for whom? Mr. Morgan, who represents Mr. Fontes in his individual capacity, has already  
13 admitted in Paragraph 10 of his “China Doll” Application that Mr. Fontes’ fees were paid by a  
14 third-party. Did that same third-party (on another) already pay Mr. Fontes’ fees to Mr. Gaona as  
15 well? If so, who would receive these additional fees? Is Mr. Gaona’s firm being doubly  
16 compensated?

17 10. If Fontes is not actually responsible for paying these fees or costs how can a claim  
18 be made for “his” legal fees when there are none?

19 11. Also, on information and belief, then-Secretary Hobbs also had a third-party  
20 paying her legal fees. If true, then how can a legitimate claim be made for them now? Just as  
21 with Mr. Fontes’ fees, who is ultimately getting the money? And, are attorneys being doubly  
22 compensated? Or, are individuals potentially being reimbursed for fees and costs they never  
23 outlayed?

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**CONCLUSION**

Based on the above, including Contestant’s prior filings and the fact that not only is Ms. Chan’s Application submitted for another firm and Mr. Gaona’s Declaration untimely, but also due to the admission by Mr. Morgan that Mr. Fontes’ fees for his individual representation are actually being paid for by a third-party, there are legitimate questions if that is also the case with Mr. Gaona’s firm and its representation of both Hobbs and Fontes. Therefore, Secretary of State Adrian Fontes’ Application for Fees and Costs should be denied.

Respectfully submitted this 29<sup>th</sup> day of March 2023.

/s/ Daniel J. McCauley III  
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A copy of the foregoing was emailed this 1<sup>st</sup> day of April 2023 to the following:

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/s/ Dan McCauley  
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