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9 **ARIZONA SUPERIOR COURT**
10 **MARICOPA COUNTY**

11 ARIZONA REPUBLICAN PARTY,) No. CV2020-014553
12)
Plaintiff,)
13 v.) **ARIZONA SECRETARY OF STATE**
14) **KATIE HOBBS' APPLICATION FOR**
ADRIAN FONTES, as Maricopa County) **ATTORNEYS' FEES**
15 Recorder; and the MARICOPA COUNTY)
BOARD OF SUPERVISORS, by and through)
16 CLINT HICKMAN, JACK SELLERS, STEVE) (Assigned to The Hon. John Hannah)
CHUCRI, BILL GATES, and STEVE)
17 GALLARDO,)
18 Defendants.)
19)
KATIE HOBBS, in her official capacity as)
20 Arizona Secretary of State; ARIZONA)
DEMOCRATIC PARTY,)
21)
22 Intervenor.)
23)

24 As directed by the Court's November 19, 2020 Minute Entry Order dismissing this matter
25 with prejudice, Arizona Secretary of State Katie Hobbs (the "Secretary") hereby applies for an
26 award of her attorneys' fees under A.R.S. § 12-349.

1 **Introduction**

2 Election officials throughout Arizona just completed the administration of a safe, secure,
3 and successful general election. They did so in the face of once-in-a-generation challenges
4 caused by a global pandemic, near-record turnout, and the shameful politicization of
5 longstanding administrative processes carried out by consummate professionals of all parties and
6 political persuasions. And as Arizona’s Chief Elections Officer, the Secretary can say, without
7 reservation, that she is proud of those professionals, and equally proud of the millions of
8 Arizonans who exercised their fundamental right to vote. Their votes counted, their voices were
9 heard, and the results of the General Election are final. In short, our democracy worked.

10 Despite all this, the Arizona Republican Party (“ARP”) filed this litigation seeking to
11 disrupt democratic processes and delay Maricopa County’s official canvass of its election results.
12 Based on nothing more than unfounded allegations of “fraud” made by ARP’s leadership and
13 allies, ARP asked this Court to order the County Defendants to violate the law by conducting a
14 hand count audit inconsistent with the clear command of Arizona’s Election Procedures Manual
15 (“EPM”). Not only was ARP’s underlying claim completely baseless, but it also failed to seek
16 appropriate relief and was brought far too late – that is, after the hand count audit procedure at
17 issue had already been used in two prior elections in Maricopa County under the watch of ARP’s
18 affiliate in Maricopa County.

19 For all these reasons, (1) it’s no surprise that the Court swiftly dismissed ARP’s claim
20 with prejudice and (2) the Court should award the Secretary her fees under A.R.S. § 12-349(A).
21 Such an award is mandatory if an attorney or party brings a claim “without substantial
22 justification” or “solely or primarily for delay or harassment.” A.R.S. § 12-349(A)(1) & (2).
23 Here, ARP and its counsel easily check off both boxes. They brought a meritless claim,
24 prosecuted it in truly amateurish fashion by failing to seek necessary relief and half-heartedly
25 seeking to enjoin Maricopa County’s canvass, and thought so strongly of their claim that they
26

1 didn't appeal when it was dismissed with prejudice. Their motives were transparent: delay final
2 election results and sow doubt about the integrity of Arizona's elections system.

3 That's simply not what litigation is for, and this abuse of the judicial system should not
4 go without sanction. As detailed below, the Court should award the Secretary her fees against
5 ARP and its counsel, jointly and severally, in the amount of \$18,237.59.

6 **Factual Background**

7 In 2011, the Legislature amended A.R.S. § 16-411 to authorize "the use of voting centers
8 in place of or in addition to specifically designated polling places." Under a "vote center" model
9 for Election Day voting, a voter can cast a valid ballot at any polling place, in stark contrast with
10 the traditional "precinct model."

11 Recognizing that this could impact how certain counties conduct the hand count audit
12 required by law, the Legislature also amended A.R.S. § 16-602(B) to require that the "hand count
13 shall be conducted as prescribed by this section and in accordance with hand count procedures
14 established by the secretary of state in the official instructions and procedures manual adopted
15 pursuant to § 16-452." (Emphasis added). The Legislature couldn't have been clearer: it allowed
16 counties to use voting centers instead of precincts, and it authorized the Secretary to adopt
17 procedures in the EPM to address A.R.S. § 16-602's silence on hand count procedures for
18 counties that use voting centers.

19 The Secretary and her predecessors did just that. In 2012 and 2014, Secretary Bennett
20 drafted hand count batch selection procedures in the EPM that allowed "counties utilizing vote
21 centers" to consider "a vote center . . . to be a precinct/polling location during the selection
22 process." [See 2012 EPM and 2014 EPM, Excerpts attached as Exhibits A and B to the
23 Secretary's Motion to Dismiss ("MTD")] In 2018, Secretary Reagan drafted (but never
24 ultimately finalized) an EPM that said: "In counties that conduct vote center-based elections, the
25 officer in charge of elections must conduct a hand count of regular ballots from at least 2 percent
26 of the vote centers, or 2 vote centers, whichever is greater." [2018 Draft EPM, Excerpt attached

1 hereto as Exhibit 1] Counsel for ARP (Lee Miller) knows this, as he was the Deputy Secretary
2 of State at the time. In 2019, the Secretary adopted the current version of the EPM, which
3 likewise allows “counties that utilize vote centers” to consider “each vote center . . . to be a
4 precinct/polling location and the officer in charge of elections must conduct a hand count of
5 regular ballots from at least 2% of the vote centers, or 2 vote centers, whichever is greater.”
6 [2019 EPM, Excerpt attached as Exhibit C to the MTD] The Secretary adopted the 2019 EPM,
7 with approval from the Attorney General and Governor, and it thus has the force and effect of
8 law. *Arizona Pub. Integrity All. v. Fontes*, __ Ariz. __, 2020 WL 6495694, at *3 (Nov. 5, 2020)
9 (“Once adopted, the EPM has the force of law[.]”) (citing A.R.S. § 16-452(C)).

10 In the face of the COVID-19 pandemic, Maricopa County authorized the use of vote
11 centers for the 2020 Presidential Preference Election, 2020 Primary Election, and 2020 General
12 Election. The County complied with the hand count audit procedures set forth in the EPM in all
13 three elections, including the 2020 General Election at issue in this litigation. Political party
14 representatives are involved in the hand count audit process, and representatives from the
15 Maricopa County Republican Party – ARP’s affiliate – participated in that process for all three
16 elections. They lodged no objection in real time, and certainly no objection in advance of the
17 general election. Maricopa County is not alone in using vote centers; multiple Arizona counties
18 used a voting center model, including Cochise, La Paz, Maricopa, Santa Cruz, Yavapai, and
19 Yuma Counties, and still others used a hybrid model. In all of those counties, hand count audits
20 were conducted using the same procedure that Maricopa County used, which is required by the
21 EPM.

22 After Maricopa County’s hand count audit for the 2020 General Election revealed 100%
23 accuracy, ARP filed its Complaint on November 12, 2020. Before ARP filed its Complaint, the
24 Attorney General publicly released a letter confirming that Arizona has long-authorized
25 sampling from vote centers for the hand count audit. [Nov. 12, 2020 Letter, attached as Exhibit
26 D to the MTD] Despite this additional guidance, the Complaint sought to compel the County

1 Defendants to conduct a precinct-based hand count audit in direct violation of the EPM, yet did
2 not seek declaratory or injunctive relief as against the provision of the EPM mandating that the
3 County Defendants do exactly what they did. Tellingly, it did not seek this relief against the
4 other counties that used a vote center model and conducted their hand count audit in accordance
5 with the EPM. What followed is best summarized in bullet point form:

- 6 • The County Defendants filed a Motion to Dismiss, and the Secretary and Arizona
7 Democratic Party (“ADP”) moved to intervene;
- 8 • The Court held a return hearing on November 16, 2020, during which the defects in
9 the Complaint were discussed at length. This included ARP’s failure to seek
10 declaratory or injunctive relief regarding the EPM provision, and its similar failure to
11 seek to enjoin Maricopa County from completing its canvass;
- 12 • Later that same day, the Secretary and ADP filed motions to dismiss, and ARP
13 (finally) filed a Motion for Preliminary Injunction (“PI Motion”) along with a
14 proposed first amended complaint;
- 15 • The PI Motion sought extraordinary relief, yet was a whopping four-pages long. It
16 inexplicably failed to develop arguments under all four traditional criteria for the
17 issuance of a preliminary injunction, and the only facts on which it relied came from
18 a self-serving declaration filed by Lee Miller, one of ARP’s counsel of record;
- 19 • The County Defendants, Secretary, and ADP all filed responses opposing the PI
20 Motion;
- 21 • For its part, ARP’s proposed first amended complaint still did not seek declaratory or
22 injunctive relief as against the EPM provision at issue;
- 23 • After an extended argument held on November 18, 2020, and after repeatedly
24 expressing skepticism about all aspects of ARP’s claim, the Court dismissed this case
25 with prejudice and invited the Secretary to file this Application; and
26

- ARP did not subsequently appeal, and Maricopa County unanimously approved its canvass on November 20, 2020.

In sum, ARP was informed multiple times about the weakness of its case, clumsily fumbled when given an opportunity to file a belated application for preliminary injunction, and the Court then promptly dismissed its Complaint. And when ARP failed to achieve its goals of delaying the canvass and holding an evidentiary hearing during which it could attempt to cast doubt on the integrity of the election, it folded up its tent and went home.

Argument

I. The Secretary Is Entitled to a Fee Award.

Under these circumstances, a fee award under A.R.S. § 12-349 in favor of the Secretary is more-than-warranted. That statute requires a fee award if an attorney or party engages in certain forms of misconduct, including bringing a claim “without substantial justification” or “solely or primarily for delay or harassment.” A.R.S. § 12-349(A)(1) & (2). Plaintiff and its counsel meet both requirements here.

The phrase “without substantial justification” means that “the claim or defense is groundless and is not made in good faith.” A.R.S. § 12-349(F). “Groundlessness is determined objectively whereas harassment and bad faith are subjective determinations.” *Rogone v. Correia*, 236 Ariz. 43, 50 ¶ 22 (App. 2014). “‘Groundless’ and ‘frivolous’ are equivalent terms, and a claim is frivolous ‘if the proponent can present no rational argument based upon the evidence or law in support of that claim.’” *Id.* (quotation omitted). The standard for an award under A.R.S. § 12-349 is a preponderance of the evidence. *Fisher on Behalf of Fisher v. Nat’l Gen. Ins. Co.*, 192 Ariz. 366, 369-370 (App. 1998).¹

¹ In awarding attorneys’ fees under § 12-349, a court must “set forth the specific reasons for the award and may include” any of eight specified factors, “as relevant, in its consideration” of the award. A.R.S. § 12-350. The purpose of this requirement is to assist the appellate court on review, so the court’s findings “need only be specific enough to allow an appellate court to test

1 There’s simply no question that ARP’s claim here was both “groundless” and “not made
2 in good faith.” The EPM provision at issue in this case had been on the books for nearly a decade,
3 and ARP and its allies knew that it had been used in prior elections without raising a single
4 objection. It was only after the election results in Maricopa County for a single candidate didn’t
5 go the way ARP hoped that it dashed off to Court to seek extraordinary relief in that county
6 alone. Never mind that several other counties in which the election results favored the ARP’s
7 preferred candidate used the exact same procedure. This was a textbook case for the application
8 of the laches doctrine, and ARP’s choice to sue only Maricopa County should also not go
9 unnoticed.

10 But ARP’s troubles didn’t end there, as once they decided to go to Court, their claim had
11 no merit whatsoever. A simple pre-filing review of the legislative history and the statutes
12 themselves would have revealed to any reasonable party or any reasonable attorney that ARP’s
13 claim was dead on arrival, yet here we are. And there’s no doubt ARP was aware of this
14 legislative history. The Attorney General clearly laid it out in his November 12 letter [Exhibit D
15 to the MTD], and ARP’s counsel included this longstanding procedure in a draft EPM during
16 his tenure as Deputy Secretary of State. Even if there were some infinitesimal chance that ARP’s
17 claim could succeed (and there wasn’t), ARP failed to seek appropriate relief in the form of an
18 injunction against the enforcement of the EPM provision at issue despite being specifically told
19 about this fatal defect in its Complaint during the November 16, 2020 hearing. In short, ARP’s
20 claim was objectively groundless.

21 ARP’s claim was also made in bad faith, as demonstrated by the inexcusable delay in
22 bringing it, the claim’s lack of merit, and its place as part of a larger scheme carried out by ARP’s
23 chair to spread disinformation about election results in Maricopa County. *See* Ronald J. Hansen,
24 et al., *As Arizona vote count continues, Rep. Paul Gosar, GOP Chair Kelli Ward take lead in*

25 _____
26 the validity of the judgment.”” *Bennett v. Baxter Grp., Inc.*, 223 Ariz. 414, 421 (App. 2010)
(quotation omitted).

1 sowing doubt, ARIZ. REPUBLIC (Nov. 6, 2020), available at
2 [https://www.azcentral.com/story/news/politics/elections/2020/11/06/arizona-election-count-](https://www.azcentral.com/story/news/politics/elections/2020/11/06/arizona-election-count-continues-rep-paul-gosar-gop-chair-kelli-ward-take-lead-sowing-doubt/6181815002/)
3 [continues-rep-paul-gosar-gop-chair-kelli-ward-take-lead-sowing-doubt/6181815002/](https://www.azcentral.com/story/news/politics/elections/2020/11/06/arizona-election-count-continues-rep-paul-gosar-gop-chair-kelli-ward-take-lead-sowing-doubt/6181815002/). Indeed,
4 the entire purpose of this litigation was to cause delay and plant baseless seeds of doubt in the
5 electorate’s mind about the integrity and security of the General Election in Maricopa County.
6 And while it’s one thing to do so in a press conference, it’s another thing entirely to attempt to
7 use the imprimatur of the courts to attempt to achieve that goal. ARP’s obvious attempt to do so
8 here merits sanctions under A.R.S. § 12-349(A)(1).

9 Lastly, and for similar reasons, ARP brought and continued to pursue this claim “solely
10 or primarily for delay or harassment.” A.R.S. § 12-349(A)(2). Its goal was always to delay
11 Maricopa County’s certification of its canvass. To be sure, it failed in spectacular fashion in
12 achieving that goal by not seeking that relief in its Complaint and filing a half-hearted PI Motion
13 at the Court’s invitation. But that improper goal is still relevant, and merits sanctions under
14 A.R.S. § 12-349(A)(2).

15 At bottom, the Secretary is entitled to a fee award under A.R.S. § 12-349. “Section 12–
16 349 was enacted with the express purpose of reducing groundless lawsuits,” *Phoenix*
17 *Newspapers, Inc. v. Dep’t of Corr., State of Ariz.*, 188 Ariz. 237, 244 (App. 1997), and this is
18 one such lawsuit.

19 **II. The Secretary Seeks a Reasonable and Appropriate Fee Award.**

20 Having established that she is entitled an award of fees under A.R.S. § 12-349(A), the
21 Secretary seeks an award in the amount of \$18,237.59.

22 “Once a party establishes entitlement to fees and meets the minimum requirements in an
23 application and affidavit, . . . the burden shifts to the party opposing the fee award to demonstrate
24 the impropriety or unreasonableness of the requested fees.” *Assyia v. State Farm Mut. Auto. Ins.*
25 *Co.*, 229 Ariz. 216, 223 ¶ 29 (App. 2012). Arizona courts generally follow the lodestar method
26 for determining the reasonableness of a requested award of attorneys’ fees. *See Schweiger v.*

1 *China Doll Rest., Inc.*, 138 Ariz. 183, 187-89 (App. 1983) (holding that reasonable attorneys’
2 fees are calculated by multiplying a reasonable hourly rate by the number of hours reasonably
3 expended). In determining the reasonableness of the actual billing rates and number of hours
4 expended, the Court must consider:

- 5 (1) the qualities of the advocate: his ability, training, education, experience,
6 professional standing and skill;
- 7 (2) the character of the work to be done: its difficulty, its intricacy, its importance,
8 time and skill required, the responsibility imposed and the prominence and
9 character of the parties where they affect the importance of the litigation;
- 10 (3) the work actually performed by the lawyer: the skill, time and attention given to
the work;
- 11 (4) the result: whether the attorney was successful and what benefits were derived.

12 *Id.* at 187 (quoting *Schwartz v. Schwerin*, 85 Ariz. 242 (1959)).

13 This Application seeks a total fee award of \$18,237.59 based on the fees paid by the
14 Secretary for the work of Coppersmith Brockelman PLC (“CB”). [See Exhibit 2 (Declaration of
15 Roopali H. Desai)] As demonstrated below, the reasonableness of the requested fees is
underscored by application of the *China Doll* factors.

16 **A. Quality of the Advocates.**

17 To defend against Plaintiff’s Complaint, Defendant retained experienced counsel with
18 significant election law and litigation experience. Specifically, the Secretary turned to Roopali
19 Desai, a partner with CB who has more than twelve years of experience and is one of Arizona’s
20 leading election lawyers. As described fully in Exhibit 2, and to provide the Secretary with the
21 highest-quality representation, Ms. Desai enlisted the assistance of (1) D. Andrew Gaona,
22 another partner with CB with ten years of experience, the past five of which have focused
23 primarily on election law and related matters, and (2) Kristen Yost, an associate with CB with
24 extensive commercial litigation experience and a great deal of recent experience in election law
25 matters.

1 **B. Character of the Work.**

2 This was an expedited election proceeding that required extensive work by counsel in a
3 very short period. This included drafting a Motion to Dismiss, responding to Plaintiff’s belated
4 Application for Preliminary Injunction, and participating in the two hearings held by this Court.
5 Under the circumstances, the nature and character of the work performed was reasonable.

6 **C. The Work Actually Performed.**

7 In accordance with *China Doll*, the declaration of counsel [Exhibit 2] and accompanying
8 time entries [Exhibit 3] detail “the type of legal services provided, the date the service was
9 provided, the attorney providing the service . . . and the time spent in providing the service.” *Id.*
10 at 188. This information, which is incorporated herein by reference, demonstrates that the work
11 was performed in connection with preparing for and attending the hearing in this matter.

12 **D. The Results Achieved.**

13 As a result of the efforts of the Secretary’s counsel, the Court dismissed Plaintiff’s
14 Complaint in its entirety. Accordingly, the Secretary prevailed, and achieved a total victory in
15 this litigation.

16 **Conclusion**

17 Courts exist to resolve legitimate disputes between parties, and not as fora for the airing
18 of political grievances. This case is proof positive that ARP fails to appreciate this important
19 distinction. The Secretary thus seeks an award of \$18,237.59 in attorneys’ fees under A.R.S.
20 § 12-349, jointly and severally against ARP and its counsel.

21 RESPECTFULLY SUBMITTED this 7th day of December, 2020.

22 **COPPERSMITH BROCKELMAN PLC**

23 By /s/ Roopali H. Desai

24 Roopali H. Desai
25 D. Andrew Gaona
26 Kristen Yost

*Attorneys for Intervenor
 Arizona Secretary of State Katie Hobbs*

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2 this 7th day of December, 2020, upon:

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27 /s/ Sheri McAlister _____