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IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF MARICOPA

LAURIE AGUILERA, *et al.*, Plaintiffs, v. ADRIAN FONTES, *et al.*, Defendants. _____ DONALD J. TRUMP FOR PRESIDENT, INC., *et al.*, Intervenors.	No. CV2020-014083 **RESPONSE OF REPUBLICAN PARTY INTERVENORS TO THE SECRETARY OF STATE'S MOTION TO TRANSFER AND CONSOLIDATE** (Before the Hon. Margaret Mahoney)

Intervenors Donald J. Trump for President, Inc. and the Republican National Committee (together, the "Republican Intervenors") submit this response to the Secretary

of State's motion to consolidate *Aguilera v. Fontes*, CV2020-014083 (the "First Action") with *Trump v. Hobbs*, CV2020-014248 (the "Second Action").

Consolidation is impossible because the First Action was dismissed prior to the initiation of the Second Action. On November 7, 2020, the Plaintiffs in the First Action filed a notice of dismissal, pursuant to Arizona Rule of Civil Procedure 41(a)(1)(A)(i), which permits unilateral voluntary dismissal without consent of the other parties or leave of the Court "before the opposing party serves either an answer or a motion for summary judgment." The Maricopa County Defendants have not filed any answer to the Complaint in the First Action. Although the Republican Intervenors and Intervenor Arizona Democratic Party lodged *proposed* answers with their respective motions to intervene, none of the intervenors subsequently *filed* any answers. The distinction is important, and recognized by Rule 24(c)(2), which instructs that: "[u]nless the court orders otherwise, an intervenor must file and serve the pleading in intervention within 10 days after entry of the order granting the motion to intervene." In other words, the mere lodging of a proposed answer is not tantamount to the filing of an operative answer. Because none of the parties had filed or served an answer, the Plaintiffs could—and did—dismiss their claims unilaterally, pursuant to Rule 41(a)(1)(A)(i).

In sum, the "voluntary dismissal of the . . . action, by filing notice of dismissal in accordance with Rule 41(a)(1), ended the matter and the court lost all jurisdiction to enter any further orders or take any other action with regard thereto. 'The dismissal is completely effective upon the filing of a written notice of dismissal.'" *Spring v. Spring*, 3 Ariz. App. 381, 383 (1966). Because there is no extant First Action with which the Second Action can be consolidated, the Motion is moot and must be denied.

Even if the First Action had not been terminated, there are insufficient grounds for consolidation. The Motion's statement that both actions related to "alleged problems related to the use of Sharpie brand markers," Motion at 4, is not accurate. The Complaint in the Second Action (a copy of which is attached as Exhibit A) contains not a single reference to Sharpie markers (or any other writing instrument). Rather, the gravamen of

the Second Action is that systemic poll worker error relating to the operation of polling place tabulation machines has resulted in the disenfranchisement of substantial numbers of Maricopa County voters. The use of Sharpie markers has no direct relevance to the Second Action's claims or requested remedies. Further, the nature of the relief sought in the Second Action—which entails the manual adjudication of ballots containing potential "overvotes" and other facial irregularities—is entirely different from the remedies requested in the First Action, which focused primarily on public observation of the tabulation process. These significant incongruities between the two cases would impel denial of the Motion in any event, even if the First Action were still pending.

CONCLUSION

For the foregoing reasons, the Court should deny the Motion.

RESPECTFULLY SUBMITTED this 9th day of November, 2020.

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