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15 *Attorneys for Maricopa County Defendants*

16 IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

17 IN AND FOR THE COUNTY OF MARICOPA

18 Laurie Aguilera, a registered voter in
19 Maricopa County, Arizona; Donovan
20 Drobina, a registered voter in Maricopa
21 County, Arizona; DOES I-X;

22 Plaintiffs,

23 v.

24 Adrian Fontes, in his official capacity as
25 Maricopa County Recorder; Clint
26 Hickman, Jack Sellers, Steve Chucuri, Bill
27 Gates, and Steve Gallardo, in their official
28 capacities as members of the Maricopa
County Board of Supervisors; Maricopa
County, a political subdivision of the State
of Arizona;

Defendants.

NO. CV2020-014562

**MARICOPA COUNTY DEFENSE
MOTION TO QUASH 30(B)(6)
SUBPOENAS**

(Honorable Margaret Mahoney)

1 Plaintiffs, with less than 48 hours before the hearing in this matter¹, and a full two
2 weeks after filing *Sharpiegate I* have begun to serve discovery upon Maricopa County
3 seeking what appears to be some documents (see subpoena duces tecum asking for
4 program or manual and second subpoena duces asking for the same items and then
5 additional documents listed in Exhibits A to that subpoena, all of which are attached hereto
6 as Exhibit A) and serving three Rule 30(b)(6) subpoenas apparently seeking to depose
7 what appear to be unidentified fact witnesses. Specifically, they have served on Maricopa
8 County a number of Rule 30(b)(6) subpoenas for depositions (at the hearing schedule on
9 November 20, 2020 starting at 9 a.m.), including the following:

- 10 • The person “most knowledgeable to testify regarding allegations in paragraphs
11 3.1 – 3.14 of the Complaint.” See attached 30(b)(6) deposition notice at Exhibit
12 B.
- 13 • The person most knowledgeable regarding Plaintiff Aguilera’s “situation at the
14 polling place on election day” Plaintiffs go on to states that this 30(b)(6)
15 deponent is to be the poll worker that assisted her that day or they want the
16 contact information of the person. See Exhibit C.
- 17 • The person most knowledgeable regarding Plaintiff Drobina’s “situation at the
18 polling place on election day.” Plaintiffs once again explain that they expect
19 that this 30(b)(6) deponent, which appears to be a fact witness, will be the poll
20 worker that assisted her that day. Or they want the contact information of the
21 person. See Exhibit D.
- 22 • The person most knowledgeable to discuss the equipment and equipment issues
23 that needed to be addressed by voting system troubleshooters on election day
24
25

26 ¹ One set of discovery (a subpoena duces tecum and two 30(b)(6) Notices were sent via e-
27 mail at approximately noon on 11/18 and then another set was sent via e-mail at 3:11 p.m.
28 on 11/18, two of which are duplicate Rule 30(b)(6) Notices; one is a new subpoena duces
tecum requesting additional documents in an Exhibit A above and beyond the original
subpoena duces tecum; and the other is a new 30(b)(6) Notice.

1 or the contact information for the name of the person. See Exhibit E.

2 The Maricopa County Defendants object to these subpoenas and ask the Court to
3 quash them as (1) the need for discovery and identification of witnesses was never
4 discussed between the parties or with the Court during the return hearing in this matter or
5 during the preparation of the Joint Pretrial Statement; (2) if there was an expedited plan
6 (which there is not) the proper route for that would have been the use of Requests for
7 Production of Documents and Interrogatories to obtain the needed information relating to
8 documents and fact witnesses, not the use of a civil subpoena duces tecum or Rule 30(b)(6)
9 deposition notices; and (3) even if a Rule 30(b)(6) notice of deposition could be used to
10 subpoena witnesses to trial, the manner in which it is being used is improper.
11

12 **Plaintiffs Never Raised the Need for Discovery** - As this Court knows, the Plaintiffs
13 filed *Sharpiagate I* on November 4, 2020. At that time, the Court required the parties in
14 that suit, including the intervenors, to meet and confer about the hearing and the timing of
15 the litigation leading up to the hearing. The parties met and at no time was the issue of
16 the need for any discovery raised. Ultimately, the Plaintiffs decided to dismiss that matter
17 before any hearing took place. Then, after unsuccessfully attempting to intervene in
18 another case, this matter was filed on Friday, November 13, 2020. After the reassignment
19 of the case to this Court, a return hearing was held. Once again, the Court had the parties
20 meet and confer about the timing of this matter and to discuss the timing of the exchanging
21 of witness and exhibit lists. At no time during the return hearing did Plaintiffs discuss the
22 need for discovery. When the parties did meet and confer on that same day and during
23 the development of the Joint Pretrial Statement that was to be filed by 4:45 p.m. on
24 November 17, 2020, the Plaintiffs never inquired about submitting discovery or the need
25 for the names of any potential witnesses.
26

27 If the need for this discovery was so vital, Plaintiffs had a great deal of time and
28 several ways to get it. After all, they are seeking emergency relief. They could have

1 raised the need for the information when filing the first complaint or even the complaint
2 in this matter. They could have submitted a request for this information at any time over
3 the past two weeks either informally or via a public records request. They did not. And
4 they could have asked for it during the meet and confer. They did not. The various
5 subpoenas should be quashed.

6 **Use of Subpoenas Duces Tecum and Rule 30(b)(6) Deposition Notices is Improper**

7
8 *Subpoena Duces Tecum* – Plaintiff submitted a subpoena duces tecum to Defendant
9 Maricopa County seeking the production of certain documents on an extremely expedited
10 schedule. Specifically, Plaintiff served the subpoena duces tecum on Maricopa County at
11 approximately 12:00 p.m. on November 18, 2020. The subpoena commands production
12 within 4 hours. First, this is a ridiculously expedited time frame when there was no
13 anticipation of discovery being taken and there was not advanced consultation between
14 the parties. Additionally, the use of a subpoena on a party is simply an improper discovery
15 device. Rather, Interrogatories or Requests for Production pursuant to Rules 33 and 34,
16 Arizona Rules of Civil Procedure, would be the correct discovery devices, along with a
17 meet and confer given the need to expeditiously move this matter forward.

18
19 In addition, the second subpoena duces tecum that was sent to counsel at 3:11 p.m.
20 on November 18, 2020 commanded that the documents be produced by 4:00 p.m. that
21 same day. Even if a subpoena were proper, this 50-minute time to comply is not. Further,
22 it is uncertain what documents are being sought and what actually can be produced. The
23 subpoena duces tecum should be quashed.

24 *Rule 30(b)(6) Deposition Notices are Improper* - Rule 30 of the Arizona Rules of
25 Civil Procedures governs deposition testimony in cases. Ariz.R.Civ.P. 30. Rule 30(b)(6)
26 is a deposition notice directed to an entity and provides that “[i]n its deposition notice or
27 subpoena a party may name as the deponent a public or private corporation...a
28 government agency, or other entity, and must then describe with reasonable particularity

1 the matters for the examination.” This rule a specific discovery device to obtain the
2 collective knowledge of an entity and in issuing the person must state with reasonable
3 particularity what information it is seeking. A 30(b)(6) Notice of Deposition is not used
4 to subpoena a witness for hearing or trial testimony or to seek the name of a fact witness.
5 And that is exactly what the Plaintiffs are attempting to do here.

6 In Exhibit B, the first 30(b)(6) notice, Plaintiffs want to depose (or call as a witness
7 at the hearing) the person most knowledgeable as it relates to paragraphs 3.1 through 3.14
8 of the Complaint. So, are they wanting to depose this person? Or are they using this
9 discovery device to command the 30(b)(6) deponent to be present at the hearing? Either
10 way, it is an improper use of this discovery device. Had the Plaintiffs wanted to know
11 who could testify to this information, they had ample opportunity to consult with defense
12 counsel and they did not. Also, as to what they are seeking the person to testify about, a
13 general assertion that they want someone to testify about what is in certain paragraphs of
14 the Complaint are not with enough particularity. The Court should quash this 30(b)(6)
15 Notice of Deposition.
16

17 In Exhibits C and D, Plaintiffs once again are misusing this discovery device. They
18 are ultimately using this in place of an interrogatory seeking the names of potential fact
19 witnesses, which is something they could have easily done at any time over the last couple
20 of weeks. Also, their expectation is that Maricopa County identify the poll workers who
21 assisted them and produce them to testify. The poll workers were temporary employees
22 of Maricopa County and are no longer employees, so producing them under a Rule
23 30(b)(6) Notice of Deposition is not possible. Also, even if this was taking place on a
24 discovery time line, the information being sought is not collective knowledge of an
25 organization. Rather, they are seeking facts from, as they put it in Exhibit A to their
26 30(b)(6) Notices of Deposition, “expect ... to be the poll worker...” involved. This is a
27 fact witness not a 30(b)(6) witness.
28

1 **The Court Should Quash Plaintiffs Subpoenas** - The litigation in this case is fast paced
2 indeed, but there are norms that must be followed to make sure it moves forward fairly
3 and expeditiously. Part of that is making sure, while meeting and conferring, the parties
4 are up front about what is needed as far as time, the number of witnesses the party will
5 call, and informing the party and Court of the need for any discovery. The latter was not
6 done in this case. Had Plaintiffs wanted discovery, they should have raised the fact they
7 wanted it during the return hearing and then discussed it during the meet and confer and
8 if there were issues, the Court could have addressed these immediately.

9
10 Subpoenas to testify at trial are not governed by Rule 30(b)(6), but Rule 45,
11 Ariz.R.Civ.P. Subsection b of Rule 45 specifically notes that there is a distinction between
12 subpoenas for deposition, hearing and or trial. Subsection (b)(1) discusses separately the
13 procedures for issuing a subpoena commanding attendance at a hearing or trial versus
14 those for a deposition. Additional parts of the rules delineate the difference between a
15 trial subpoena and a deposition. Ultimately, the rules do not provide for or anticipate the
16 use of a Rule 30(b)(6) subpoena for trial or hearing testimony. Nor do the Rules anticipate
17 using this device to simply obtain the name of fact witnesses. Or replace subpoena duces
18 tecums with requests for production or interrogatories.

19
20 For these reasons, the Court should quash the subpoenas set forth herein. At the
21 hearing, Plaintiffs will have the opportunity to question those witnesses listed by the
22 Defendant, as well as the witnesses they list in their list of witnesses and exhibits.

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27 ///

28

1 RESPECTFULLY submitted this 19th day of November 2020.

2 ALLISTER ADEL
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4 BY: /s/ Emily Craiger

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11 ORIGINAL of the foregoing e-filed with
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