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**IN THE SUPERIOR COURT FOR THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF MOHAVE**

Joseph "Sonny" Borrelli and Jane and John
Doe, et al.,

Plaintiffs

v.

Katie Hobbs, in her capacity as Secretary of
State and in her personal capacity; Stephen
Richer, in his official capacity as Maricopa
County Recorder and in his personal capacity;
Bill Gates, Clint Hickman, Jack Sellers,
Thomas Galvin, and Steve Gallardo, in their
official capacities as members of the Maricopa
County Board of Supervisors and in their
personal capacities; and Scott Jarrett, in his
official capacity as Maricopa Director of
Elections and in his personal capacity,

Defendants.

Case No.: CV-2022-01480

NOTICE OF NON-SUIT

Plaintiffs, residents of Mohave County, Arizona, brought this action against Katie Hobbs, in her official capacity as Secretary of State and her personal capacity; Steven Richer, in his official capacity as Maricopa County Recorder and in his personal capacity; the Maricopa County, Arizona Board of Supervisors; Bill Gates, Clint Hickman, Jack Sellers, Thomas Galvin, and Steve Gallardo, in their official capacities as members of the Maricopa County Board of Supervisors and their

1 personal capacities; Scott Jarrett, in his official capacity as Maricopa Director of Elections and in
2 his personal capacity; and the Maricopa County Board of Supervisors (collectively, “Defendants”).

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4 Plaintiffs brought this case in the wake of the state-wide canvass following the 2022 general
5 election to challenge multiple irregularities that took place in Maricopa County during the early
6 voting period and on Election Day. Maricopa County is by far the most populous county in the
7 state. Accordingly, the irregularities in Maricopa County impacted not only Maricopa County
8 voters but also voters in other counties, especially those in Mohave County, which followed the
9 rules. One but far from the only consequence of Maricopa County’s not following the statutory
10 rules was that more Maricopa County mail-in ballots (unverified as required by statute, *see* A.R.S.
11 § 16-550(A)) were tallied than should have been tallied. This diluted the relative voting strength
12 of Mohave County voters, as different standards were applied in different counties within the state.
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14 *See Bush v. Gore*, 531 U.S. 98 (2000).

15
16 Gubernatorial candidate Kari Lake filed a parallel election challenge in Maricopa County
17 within the same compressed 5-business days, as required for an election challenge brought under
18 A.R.S. § 16-672 *et seq.* *Lake v. Hobbs, et al.*, CV 2022-095403 (Airz. filed Dec. 9, 2022). Counsel
19 for candidate Lake raised many similar issues as Plaintiffs in her Complaint. During the week of
20 December 12, 2022, Ms. Lake’s case was scheduled for a two day trial, December 21 and 22, 2022.
21
22 *Id.* In her complaint, Ms. Lake ably addressed many (though admittedly not all) of the non-
23 technical issues Plaintiff Mohave County electors would have raised were this case to proceed to
24 trial.
25

26 This case was e-filed via Turbo-Court in the Mohave County Superior Court on December
27 12, 2022. For some unknown reason, the automated system for Turbo-Court and the Mohave
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1 County Clerk's Office generated what amounted to a void summons for each defendant. For some
2 inexplicable reason, each summons that was autogenerated materially varied from the standard
3 form generated through the Court's electronic filing system. In essence, the forms autogenerated
4 were void as they did not comply with the form required under the Arizona Election Code for an
5 elections contest. *See* A.R.S. § 16-675, (setting out a specific summons format for election
6 contests). On December 13, the undersigned counsel contacted the Judicial Assistant for the
7 Honorable Lee F. Jantzen bringing this issue to her attention and requesting that a correct summons
8 be issued for each Defendant. She responded that same day, indicating that "[t]here *definitely needs*
9 *to be an amendment[.]*" *See* Exhibit 1 (email exchange, emphasis added).

12 Over the course of the next three days, while trying to reconcile the automated system with
13 the statutory requirements, seven additional email communications were exchanged between the
14 undersigned counsel and various individuals of the Mohave County Superior Court. Each email
15 communication carbon copied Judge Jantzen's Judicial Assistant. On Thursday, December 15,
16 2022, this Court asked the undersigned counsel to draft a correct version of each summons to
17 submit to the Court for the Mohave County Clerk's Signature and stamp. A statutorily compliant,
18 signed, and stamped summons for each defendant was received by the undersigned counsel on
19 Thursday, December 15. *See* Exhibit 1.

22 On December 16, 2022, this Court held a status conference. Although many Defendants in
23 this case appeared through counsel, they took the untenable position that they had not received
24 sufficient notice they had been sued. They had not yet been served—but not for the reason
25 Defendants put forth. In Mohave County, a party filing a lawsuit has no opportunity to modify a
26 summons generated automatically by the Turbofile system. The summons is auto populated by
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1 the Turbofile system, as a convenience to the attorney filing the lawsuit. While that typically
2 works, it did not in this case and, obviously, using white-out was not an option.

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4 At the status conference on December 16, 2022, the Court acknowledged the gravity and
5 complexity of the issues Plaintiffs raise regarding the growing use of automation in elections. The
6 Court noted it would be impractical to try to hold a trial in the compressed time frame required by
7 statute under the Election Code given the allegations. So, the Court took the opportunity to dismiss
8 only the election challenge portion of this case allowing the rest to proceed as a regular civil
9 lawsuit.
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11 In sum, timely service was not grounds to dismiss the election challenge portion of this case.
12 Be that as it may, Plaintiffs have carefully weighed the proceedings that took place in Ms. Lake's
13 trial in Maricopa County and the evidence presented over two full days. Ms. Lake and her counsel
14 are seeking post-trial avenues. Considering that, Plaintiffs have determined it best in the interest
15 of efficient judicial administration not to re-try these matters in Mohave County and instead to
16 non-suit this case without prejudice.
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18 The undersigned will also proceed with a separate case in Maricopa County.
19 WHEREFORE, Plaintiffs file this notice of non-suit without prejudice.
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21 Respectfully submitted,

22 By: /s/ RYAN L. HEATH
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