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IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF MARICOPA

KARI LAKE,

Contestant/Petitioner,

vs.

KATIE HOBBS, et al.,

Defendants.

No. CV2022-095403

**MARICOPA COUNTY DEFENDANTS'
MOTION FOR SANCTIONS**

(Honorable Peter Thompson)

1 Pursuant to Ariz. R. Civ. P. 7.1, A.R.S. §§ 12-349 and 16-671 to -678, and this
2 Court’s inherent power to impose sanctions for attorney misconduct before the court, the
3 Maricopa County Defendants move for an award of sanctions against Plaintiff-Contestant
4 Kari Lake and her counsel. This Motion is supported by the following Memorandum of
5 Points and Authorities.

6 Introduction

7 As the Arizona Supreme Court has explained:

8 Candidates are free to timely challenge election procedures and results, and
9 the public has a strong interest in ensuring the integrity of elections.
10 Sometimes campaigns and their attendant hyperbole spill over into legal
11 challenges. But once a contest enters the judicial arena, rules of attorney
12 ethics apply. Although [the judiciary] must ensure that legal sanctions are
13 never wielded against candidates or their attorneys for asserting their legal
14 rights in good faith, [the judiciary] also must diligently enforce the rules of
ethics on which public confidence in our judicial system depends and where
the truth-seeking function of our adjudicative process is unjustifiably
hindered.

15 (*Lake v. Hobbs*, No. CV-23-0046-PR, Order, at 2–3 (Ariz. S. Ct. May 4, 2023)). The
16 Maricopa County Defendants respectfully request that this Court issue sanctions against
17 Lake and her counsel because they ignored this admonition and repeatedly made
18 demonstrably false statements to this Court on remand. These material misstatements of
19 fact brought frivolous arguments and frivolous claims before the Court. This conduct
20 warrants meaningful sanctions.

21 Background

22 I. The Supreme Court remands on limited grounds

23 Following the Court of Appeals’ affirmation of this Court’s rulings stemming from
24 the first trial, Lake filed a Petition for Review, which essentially sought review of all of
25 Lake’s many failed claims. The Arizona Supreme Court denied review of all issues
26 presented except for one related to Count III. The Supreme Court granted review of that
27 issue, vacated the portion of the Court of Appeals’ opinion related to it, and remanded that
28 solitary Count to this Court for new consideration with explicit instructions. The Supreme

1 Court construed Count III as a challenge to the signature verification determinations made
2 by the Recorder. The Supreme Court provided specific instructions on the limits of
3 jurisdiction on remand:

4 . . . determine whether the claim that Maricopa County failed to comply with
5 A.R.S. § 16-550(A) fails to state a claim pursuant to Ariz. R. Civ. P. 12(b)(6)
6 for reasons other than laches, or, whether Petitioner can prove her claim as
7 alleged pursuant to A.R.S. § 16-672 and establish that “votes [were] affected
8 ‘in sufficient numbers to alter the outcome of the election’” based on a
9 “competent mathematical basis to conclude that the outcome would plausibly
10 have been different, not simply an untethered assertion of uncertainty.”
11 (Opinion ¶ 11.)

12 (*Lake v. Hobbs*, No. CV-23-0046-PR, Order, at 3–4 (Ariz. S. Ct. Mar. 22, 2023).) In issuing
13 its Order, the Supreme Court sanctioned Lake’s counsel for making “unequivocally false”
14 statements to the Supreme Court. (*Lake v. Hobbs*, No. CV-23-0046-PR, Order, at 5–6 (Ariz.
15 S. Ct. May 4, 2023).)

16 **II. On remand, Lake filed a Rule 60 Motion and intentionally misrepresented**
17 **material facts to the Court to support a request for a three-day trial.**

18 On remand, Lake and her counsel filed a Motion for Relief from Judgment under
19 Arizona Rule of Civil Procedure 60 (“Rule 60 Motion”); it contained several demonstrably
20 false statements intended to confuse the Court and expand the remand proceedings. Lake’s
21 Rule 60 Motion asked the Court to vacate its dismissal of Counts II, V, and VI and to
22 consider purportedly new evidence on these issues at trial under Rule 60(b)(2)-(3), (6).¹
23 (Rule 60 Mot. 1, 17.) In making this request, however, Lake and her counsel intentionally
24 misrepresented facts to the Court on several fronts.

25 First, Lake and her counsel misstated the contents of the McGregor Report to the
26 Court. Lake sought to link the McGregor Report to her frivolous argument about the nature

27 ¹ Lake sought relief from judgment on Count V (equal and protection) and Count VI (due
28 process) in a footnote but failed to make any substantive arguments to support these Counts.
This is another example of frivolous arguments Lake advanced on remand to expand these
proceedings.

1 of Jarrett’s testimony (discussed below). But the McGregor Report did nothing to establish
2 that any of Jarrett’s testimony was fraudulent—it established that Jarrett’s testimony was
3 accurate. (*See* Rule 60 Mot. 15–16 (citing Maricopa BOD Rep. at 12 (Lake’s Exh. E).) The
4 McGregor Report relevantly provides:

5 Another printing anomaly occurred at several vote centers, where ballots were
6 re-sized as “fit to page,” a process that entirely changed the location of the
7 timing marks on the ballots and assured that neither the on-site tabulators nor
8 the central count tabulators could read the ballots. We could not determine
9 whether this change resulted from a technician attempting to correct the
10 printing issues, the most probable source of change, or a problem internal to
11 the printers. During our testing, four printers randomly printed one or a few
12 “fit to page” ballots in the middle of printing a batch of ballots. None of the
13 technical people with whom we spoke could explain how or why that error
14 occurred.

15 (*Id.*, Exh. E at 12 (emphasis added).) Lake and her counsel cited this portion of the
16 McGregor Report to “prove” her theory that the “fit-to-page” problem must have been
17 caused by an intentional act. (Rule 60 Mot. 16.) Yet the Report simply states that it could
18 not conclude how or why this problem occurred. As this Court wrote:

19 The allegation of fraud also leaps over a substantial gap in the evidence
20 presented. The Court notes that counsel’s representation of what the
21 McGregor report would show is 180 degrees from what the report actually
22 says. Rather than demonstrating that Mr. Jarrett lied, it actually supports his
23 contention that the machine error of the tabulators and ballot printers was a
24 mechanical failure not tied to malfeasance or even misfeasance.

25 (*Lake v. Hobbs*, CV 2022-095403, Minute Entry, at 6 (Maricopa Cnty. Super. Ct. May 15,
26 2023).)

27 Second, Lake and her counsel intentionally misstated the content of Scott Jarrett’s
28 prior testimony. Lake again re-urged the spurious claim that Jarrett lied in his testimony and
caused the first judgment to be obtained via fraud. This argument was already tried and
defeated through three levels of courts prior to the remand. (*See Lake v. Hobbs*, CV 2022-
095403, Minute Entry, at 6–7 (Maricopa Cnty. Super. Ct. May 15, 2023).) Without
rehashing the whole discussion, in essence, Lake and her counsel misrepresented the nature

1 and process of ballot printing and intentionally confused the ideas of creating ballot
2 definitions in the election management system with the “fit-to-paper” option when
3 printing—two separate issues that Lake and her counsel repeatedly and deliberately
4 conflate. Re-urging—again, for the fourth time—this point in the Rule 60 Motion
5 unnecessarily expanded these proceedings and further represented a significant
6 misrepresentation of the record concerning Jarrett’s testimony.

7 Third, Lake and her counsel asserted that 8,000 ballots were improperly rejected and
8 not tabulated in the 2022 general election. For support, Lake cited three paragraphs of the
9 new Parikh declaration. (Rule 60 Mot. 16.) But Parikh’s declaration not only failed to
10 support Lake’s assertion, it contradicted Lake’s assertion. Parikh admitted that he “had and
11 ha[s] *no way of knowing* if the original ballots were . . . tabulated and counted.” (Parikh
12 Decl., ¶ 38 (emphasis added).) As this Court previously noted:

13 counsel’s representation in the Motion to the effect that the Parikh Declaration
14 supports a finding that 8,000 ballots “maliciously misconfigured to cause a
15 tabulator rejection, *were not counted*” is not supported by a Declaration that
16 8,000 ballots were “affected” by an error. The oral arguments presented on
17 May 12, 2023, clarified that error codes do not correspond to votes not
18 counted. Counsel cannot leap a gap in proof with unsupported bare assertions.

19 (*Lake v. Hobbs*, CV 2022-095403, Minute Entry, at 7 (Maricopa Cnty. Super. Ct. May 15,
20 2023).) Yet again, Lake and her counsel presented uncertainty as certainty despite the plain
21 text of her primary documents.

22 Fourth, Lake and her counsel proceeded to trial on a claim regarding signature
23 verification that she knew lacked factual merit based on her own witness’ statements. This
24 Court’s May 15 Order on her Rule 60 Motion limited Lake’s case to a single issue: her
25 claim that Maricopa County did not do *any* signature verification in violation of A.R.S. §
26 16-550(A), and that the County’s alleged failure to so do materially affected the results of
27 the 2022 general election. (*Lake v. Hobbs*, CV 2022-095403, Minute Entry, at 3 (Maricopa
28 Cnty. Super. Ct. May 15, 2023) (“Lake now clarifies for the first time that, under the widest
possible reading of Count III, she is contending that election officials failed to comply with

1 the EPM and A.R.S. § 16-550 by not performing ANY steps to comply with level 2 or level
2 3 screening or notification of electors to cure ballots where level 1 screeners found
3 signatures were inconsistent.”); *see also Lake v. Hobbs*, CV 2022-095403, Minute Entry, at
4 2 (Maricopa Cnty. Super. Ct. May 16, 2023) (permitting Lake to bring a claim regarding
5 level 1 screeners while noting that “Plaintiff is further bound by her concession that she
6 “brings a *Reyes* claim, not a *McEwen* claim. She challenges Maricopa’s failure to act, not
7 its action on any particular ballot.”.)

8 The claim that “no signature verification was conducted” was entirely frivolous, and
9 Lake and her counsel knew it. On the first day of trial, Lake’s fact witness, Jacqueline
10 Onigkeit, testified that she received a week’s worth of training, was instructed to carefully
11 review all signatures to ensure consistency, and that she did, in fact, work in signature
12 verification both before and after election day. Another fact witness, W. Andrew Myers,
13 also testified that he received training and actually performed signature verification work
14 with other “signature verifiers.” This testimony—known by Lake and her counsel before
15 trial and offered to substantiate her signature verification claim—conclusively defeated
16 Lake’s spurious assertion that signature verification did not occur. Lake and her counsel
17 cannot now argue that they thought her claim stood any chance of success when her own
18 fact witnesses would testify that signature verification did, in fact, occur.

19 Fifth, and finally, at oral argument on the Rule 60 Motion and Motions to Dismiss,
20 Lake’s counsel claimed “this election was rigged,” a remarkably bold assertion. The
21 Merriam-Webster Dictionary defines “rigged” as “manipulated or controlled by deceptive
22 or dishonest means.” Merriam-Webster, “rigged” [https://www.merriam-](https://www.merriam-webster.com/dictionary/rigged#dictionary-entry-1)
23 [webster.com/dictionary/rigged#dictionary-entry-1](https://www.merriam-webster.com/dictionary/rigged#dictionary-entry-1). Lake’s counsel, therefore, asserted in
24 this Court that Maricopa County deceptively fixed the election against Lake. Lake not only
25 failed to prove that the election was rigged by a clear and convincing evidence standard,
26 but also she did not bother attempting to prove the election was “rigged” at trial. She did
27 not even ask a single witness any question that could have elicited evidence that the election
28 was rigged. Even her own expert witness testified that he could not say that a single ballot

1 was improperly tabulated, let alone that the election was rigged. Lake’s counsel engaged in
2 a blatant effort to deceive the Court when he said that the election was “rigged.” Blatantly
3 false statements like this should prompt a strong retributive response from the Court.

4 **Argument**

5 **I. Lake’s repeated misrepresentation of the facts warrant sanctions.**

6 Following a Rule 60 Motion and a three-day trial that Lake and her counsel should
7 not have pursued, sanctions under A.R.S. § 12-349(A) are appropriate. Under § 12-349(A),
8 claims are sanctionable if they are brought “without substantial justification.” Further,
9 “without substantial justification” means that the “claim or defense is groundless and is not
10 made in good faith.” § 12-349(F). Groundlessness is “determined objectively,” and a claim
11 is groundless “if the proponent can present no rational argument based upon the evidence
12 or law in support of that claim.” *Takieh v. O’Meara*, 252 Ariz. 51, 61 ¶ 37 (App. 2021)
13 (quoting *Rogone v. Correia*, 236 Ariz. 43, 50 ¶ 22 (App. 2014)). Section 12-349(A) also
14 authorizes sanctions when an attorney or party “[u]nreasonably expands . . . the
15 proceeding.”

16 An award under § 12-349 is mandatory where factually supported, and a violation
17 need only be proven by a preponderance of the evidence. *See Democratic Party v. Ford*,
18 228 Ariz. 545, 548 ¶10 (App. 2012) (stating if party makes showing required by § 12-349,
19 “the award of attorney fees becomes mandatory”); *City of Casa Grande v. Ariz. Water Co.*,
20 199 Ariz. 547, 555 ¶27 (App. 2001) (noting § 12-349(A) “mandates an award of attorney’s
21 fees if a party” violates the statute by a preponderance of the evidence). And when awarding
22 attorneys’ fees under § 12-349, the Court must set forth the specific reasons for the award.
23 *See* A.R.S. § 12-350. In doing so, the Court can consider any variety of factors, including
24 those listed in § 12-350. *See id.*

25 In addition to its authority under § 12-349, this Court retains inherent authority to
26 sanction Lake’s counsel for their bad faith conduct. *See Hmielewski v. Maricopa Cnty.*, 192
27 Ariz. 1, 4, ¶ 14 (App. 1997) (“The trial court has the inherent power to sanction bad faith
28 conduct during litigation independent of the authority granted by Rule 11.”); *Precision*

1 *Components, Inc. v. Harrison, Harper, Christian & Dichter, P.C.*, 179 Ariz. 552, 555 (App.
2 1993) (noting “the availability of specific procedural rules like Rule 11 does not deprive the
3 trial court of its inherent power to impose sanctions for attorney misconduct before the
4 court”). “These powers are governed by the control necessarily vested in courts to manage
5 their own affairs so as to achieve the orderly and expeditious disposition of cases.”
6 *Hmielewski*, 192 Ariz. at 4, ¶ 14. “The rules of conduct for attorneys contained in the Rules
7 of the Arizona Supreme Court also provide a legal basis for imposition of sanctions against
8 attorneys.” *Id.*

9 Here, Lake and her counsel presented five material misrepresentations of fact to this
10 Court. At a minimum, these statements to the Court implicate Ethical Rules 3.1
11 (Meritorious Claims and Contentions) and 3.3 (Candor Toward the Tribunal).

12 First, in her Rule 60 Motion, Lake and her counsel misled the Court about the
13 content of the McGregor Report. As this Court previously noted, “counsel’s representation
14 of what the McGregor report would show is 180 degrees from what the report actually
15 says.” (*Lake v. Hobbs*, CV 2022-095403, Minute Entry, at 6 (Maricopa Cnty. Super. Ct.
16 May 15, 2023).)

17 Second, in her Rule 60 Motion, Lake and her counsel presented intentional
18 misstatements about the content of Jarrett’s testimony at the first trial. These misstatements
19 of fact are particularly egregious because Lake’s assertions were already raised in her
20 briefing on appeal, so she did not even have a legal basis to re-urge this argument. *See*
21 *Francine C. v. Dep’t of Child Safety*, 249 Ariz. 289, 298 (App. 2020) (stating relief under
22 Rule 60 is intended to provide a means to correct judgment which “are unjust because of
23 extraordinary circumstances that cannot be remedied by legal review.”); (*see also Lake v.*
24 *Hobbs*, CV 2022-095403, Minute Entry, at 7 (Maricopa Cnty. Super. Ct. May 15, 2023)
25 (“The Court is not required to accept that premise, especially on remand after a full trial
26 and appeal.”).)

27 Third, in her Rule 60 Motion, Lake and her counsel misled the Court about the
28 contents of their own declarant’s declaration to prop up her frivolous claim that 8,000 “were

1 not counted.” (See *Lake v. Hobbs*, CV 2022-095403, Minute Entry, at 7 (Maricopa Cnty.
2 Super. Ct. May 15, 2023) (“Counsel cannot leap a gap in proof with unsupported bare
3 assertions.”).)

4 Fourth, the basis of Lake’s signature verification claim is refuted by Lake’s own fact
5 witnesses, supposed “whistleblowers.” Her witnesses’ testimony—known to her and her
6 counsel prior to trial—confirmed that signature verification occurred and that Lake’s claim
7 was therefore frivolous. See *Standage v. Jaburg & Wilk, P.C.*, 177 Ariz. 221, 229–30 (App.
8 1993) (citing *Boone v. Super. Ct.*, 145 Ariz. 235, 241–42 (1985)) (stating that attorney had
9 an obligation “to review and reevaluate his client’s position as the facts of the case
10 developed and—although he should have known at the outset that the claims were
11 frivolous—if he did not know at the outset, as he became aware of information that should
12 reasonably lead him to believe there was no factual or legal bases for his position”).

13 Fifth, Lake’s counsel falsely claimed at oral argument that “the election was rigged.”
14 Lake and her counsel then failed to introduce any evidence during the three day trial to
15 support this wrongful statement. Wrongfully and publicly asserting that the election was
16 “rigged” is heinous and profoundly harmful.

17 Lake and her counsel engaged in a program of intentional and repeated fallacious
18 misstatements of fact to mislead this Court. This conduct is plainly unethical and warrants
19 sanctions from this Court.

20 Indeed, meaningful sanctions are particularly called for. Ethical parties would have
21 been suitably admonished by both the Supreme Court’s statement that they made
22 “unequivocally false” statements to the Court and the monetary sanction that the Supreme
23 Court consequently issued. But Lake and her counsel were not deterred. Instead, they were
24 inexplicably emboldened. On remand, Lake and her counsel blithely misstated the truth
25 about the content of the McGregor Report; the nature of Jarrett’s prior testimony; that
26 Maricopa County failed to tabulate 8,000 ballots; and the factual support for Count III that
27 falsely claimed that Maricopa County did not conduct signature verification. The
28 misstatements of fact from Lake and her counsel are not a series of mere accidents or

1 zealous advocacy; they represent a determined program of misinformation. And all of this
2 *after* the Supreme Court's admonishment. Lake and her counsel have absolutely no excuse
3 for offering these falsehoods in Court and should face sanctions from this Court.

4 **Conclusion**

5 The Maricopa County Defendants respectfully request that the Court sanction Lake
6 and her counsel, jointly and severally, in an amount determined appropriate by the Court,
7 and/or allow the Defendants to file an application for attorneys' fees laying out their fees
8 and costs incurred on remand.

9 RESPECTFULLY SUBMITTED this 23rd day of May, 2023.

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22 ORIGINAL of the foregoing E-FILED
23 this 23rd day of May, 2023 with
24 AZTURBOCOURT, and copies e-served / emailed to:

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