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15
16 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**
17
18 **IN AND FOR THE COUNTY OF MARICOPA**

19 KARI LAKE,) No. CV2022-095403
20 Contestant/Plaintiff,)
21 v.) **PLAINTIFF'S RESPONSE TO**
22 KATIE HOBBS, personally as Contestee and) **DEFENDANT STEPHEN**
23 in her official capacity as the Secretary of) **RICHER'S MOTION TO QUASH**
24 State; et al.,) (Assigned to Hon. Peter Thompson)
25 Defendants.)
26

27 Plaintiff Kari Lake ("Plaintiff"), by and through undersigned counsel, hereby files her
28 Response to Defendant Stephen Richer's Motion to Quash. Given the importance of the issues
29 raised in this matter and Defendant Richer position in managing a significant portion of
30 Maricopa County's 2022 election, Plaintiff asks that this Court deny Defendant's Motion to

1 Quash in its entirety. This Response is supported by the following Memorandum of Points and
2 Authorities.

3 **MEMORANDUM OF POINTS AND AUTHORITIES**

4 **I. FACTS**

5 On December 15, 2022, at approximately 8:30 a.m. counsel for Plaintiff and Defendants
6 held a meet and confer. At that meet and confer, counsel for Plaintiff asked if Defendants
7 planned to appear at the trial of this matter. As none of the Defendants intended to appear
8 voluntarily, counsel for Plaintiff informed defense counsel that he would be serving subpoenas
9 to appear on Defendants Hobbs, Richer, Gates, and Liddy. On December 15, 2022, at
10 approximately 2:00 p.m., Plaintiff's counsel caused a subpoena to appear at the trial of this
11 matter to be served on Defendant Stephen Richer pursuant to Rule 45, *Arizona Rules of Civil*
12 *Procedure*.

13 During the 2022 general election held in Maricopa County, Defendant Richer was
14 responsible for implementing policies and procedures for the handling and processing of early
15 ballots, including signature verification. By law, Defendant Richer is also tasked with and
16 responsible for making and enforcing policies and procedures regarding chain of custody of
17 ballots as they are processed by Maricopa County and private non-governmental entities.
18 Lastly, it was Defendant Richer who implemented policies designed to censor the political
19 speech of Arizona residents.

20 **II. LEGAL ANALYSIS**

21 **A. NO ADEQUATE BASIS EXISTS FOR THIS COURT TO QUASH A** 22 **DULY ISSUED TRIAL SUBPOENA.**

23 Rule 45, *Arizona Rules of Civil Procedure*, allows this Court to quash a subpoena
24 to appear in very limited circumstances. Pursuant to Rule 45(e)(2)(A), a court may quash a
25 subpoena only if any of the following apply:

- 26 (i) it fails to allow a reasonable time for compliance;
(ii) it commands a person who is neither a party nor a party's officer to travel to a
location other than the places specified in Rule 45(b)(3)(B);

- 1 (iii) it requires disclosure of privileged or other protected matter, if no exception
2 or waiver applies; or
3 (iv) it subjects a person to undue burden.

4 Here, Defendant Richer can claim none of the protections requiring this Court to
5 quash the duly issued and served subpoena. At most, Defendant Richer can only claim
6 inconvenience as it relates to his alleged vacation to Panama. Defendant Richer, however,
7 provides no details of this “vacation” other than to argue Panama is remote and his availability
8 to appear by other means will be limited. Panama, however, is a well-developed country with
9 adequate infrastructure to support Defendant Richer’s ability to testify before this Court. As
10 Defendant Richer cannot meet his burden, Plaintiff asks that this Court deny Defendant
11 Richer’s Motion in its entirety.

11 **B. THE IMPORTANCE OF THE ISSUES BEFORE THIS COURT REQUIRE**
12 **DEFENDANT RICHER’S SWORN TESTIMONY**

13 Pursuant to Rule 45(e)(2)(B), a court may quash or modify a subpoena only for
14 the following reasons:

- 15 (i) it requires disclosing a trade secret or other confidential research,
16 development, or commercial information;
17 (ii) it requires disclosing an unretained expert’s opinion or information that does
18 not describe specific occurrences in dispute and results from the expert’s study
19 that was not requested by a party;
20 (iii) it requires a person who is neither a party nor a party’s officer to incur
21 substantial travel expense; or
22 (iv) justice so requires.

23 As with Section A, Defendant Richer can avail himself of none of the bases
24 allowing this Court to quash or modify a duly issued trial subpoena. With respect to subsection
25 (iv), justice requires Defendant Richer’s sworn testimony before this Court as he played a
26 pivotal role in an election marred by controversy and systemic failures and clouded by
27 censorship of his voter’s political speech.

28 **C. THE APEX DOCTRINE DOES NOT APPLY UNDER ARIZONA LAW**
29 **AND THE BUCK STOPS WITH DEFENDANT RICHER**

30 Defendant Richer seeks to avail himself of the apex doctrine, which he concedes
31 has not been adopted by the Arizona Supreme Court or Court of Appeals or legitimized by the

1 Arizona Legislature. In his Motion to Quash, Defendant Richer cites to *Kyle Eng'g Co. v.*
2 *Kleppe*, 600 F.2d 226, 231 (9th Cir. 1979) for the proposition that heads of government
3 agencies are not normally subject to deposition. Though that may be the general proposition
4 under the federal rules, it has not been adopted here and therefore does not apply in this matter.

5 Even if the Apex doctrine were to apply to this matter, it is Defendant Richer
6 whose policies are in question and not those of his underlings. Here, the allegations brought by
7 Plaintiff are directed at Defendant Richer. Defendant Richer is the individual responsible for
8 the Maricopa County Recorder's Office policy related to censoring the political speech of
9 Arizona residents and not one of his employees. Further, it was Defendant Richer who
10 implemented rules regarding signature verification and chain of custody, both policies clear
11 failures. Chain of custody documentation was so abysmal, Defendant Richer did not even
12 know how many ballots had been processed after the election. Lastly, as video evidence will
13 show at trial, it was Defendant Richer actively participating in the election and providing
14 routine and inconsistent updates regarding the number of ballots cast. It is precisely because
15 Defendant Richer is at the apex that his sworn testimony is necessary in this matter.

16 **III. CONCLUSION**

17 Defendant Richer can avail himself of none of the basis for quashing a duly issued trial
18 subpoena. Defendant Richer asks that this Court give him a pass and place the responsibility
19 for the decisions he made and that responsibility on the shoulders of the staff he manages.
20 Plaintiff asks, in the interest of justice, that Defendant Richer be compelled to testify about his
21 role in the 2022 Maricopa County General Election and the numerous failings, including
22 intentional misconduct, engaged in by Defendant Richer.

23 DATED this 18th day of December 2022.

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13 this 1th day of December, 2022, upon:

14 Honorable Peter Thompson
15 Maricopa County Superior Court
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