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14 *Attorneys for Contestant/Plaintiff*

15 **ARIZONA SUPERIOR COURT**

16 **MARICOPA COUNTY**

17 **KARI LAKE,**

18 **Contestant/Plaintiff,**

19 **vs.**

20 **KATIE HOBBS, personally as Contestee;**
21 **ADRIAN FONTES in his official capacity**
22 **as the Secretary of State; *et al.*,**

23 **Defendants.**

24 **No. CV2022-095403**

25 **PLAINTIFF KARI LAKE'S MOTION**
26 **FOR STATUS CONFERENCE**

27 **(Assigned to Hon. Peter Thompson)**

1 **MOTION FOR STATUS CONFERENCE VIA TELEPHONE**

2 Contestant and Plaintiff Kari Lake respectfully moves the Court to schedule a status
3 conference as soon as the Court's calendar will permit to address further proceedings in this
4 case after the remand from the Arizona Supreme Court. Further, because many of the counsel
5 in this matter live far from the Court, Lake respectfully requests that the Court hold the status
6 conference by telephone or videoconference.
7

8 This Motion is supported by the entire record in this case, the appellate decisions and
9 orders of Division One of the Arizona Court of Appeal and the Arizona Supreme Court, and
10 the following Memorandum of Points and Authorities.
11

12 **MEMORANDUM OF POINTS AND AUTHORITIES**

13 In a series of rulings in December 2022, this Court dismissed all 10 counts of Plaintiff-
14 Contestant Lake's election contest of the November 8, 2022, general gubernatorial election.
15 The Arizona Court of Appeals affirmed the dismissal, but the Arizona Supreme Court
16 reversed the dismissal of one count—Count III on signature verification—to allow further
17 proceedings in this Court. Today, the Supreme Court issued the final order in the appeal and
18 directed its Clerk to enter the mandate forthwith. When the case returns to this Court, Lake
19 respectfully submits that it would streamline further proceedings to have a status conference
20 to address procedural and evidentiary issues that likely will arise on remand.
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24 **I. PROCEDURAL BACKGROUND**

25 On December 9, 2022, Plaintiff-Contestant Lake brought a 10-count complaint to
26 challenge the November 8, 2022, general gubernatorial election under Arizona's election-
27 contest statute. ARS § 16-672. In an Under Advisement Ruling dated December 19, 2022,
28

1 this Court dismissed Counts I, III, and V through X on the pleadings. The Court then held a
2 two-day bench trial on Counts II and IV on December 21-22, 2022, and dismissed those two
3 counts in an Under Advisement Ruling dated December 24, 2022. The Court then finalized
4 its actions in a Minute Entry dated December 27, 2022.

6 In an Opinion dated February 16, 2023, Division One of the Arizona Court of Appeals
7 affirmed, although that court disagreed with this Court’s ruling on the question whether
8 Maricopa officials must have intended their alleged misconduct to affect the outcome of the
9 election, stating:
10

11 Lake contends that the superior court erred by defining “misconduct” under §
12 16-672(A)(1) as requiring proof that an elections official intended to improperly
13 affect the result. We agree that there may be circumstances under which
14 something less than intentional misconduct may suffice. *Cf. Findley*, 35 Ariz. at
15 269 (explaining that “honest mistakes or mere omissions” are insufficient to
16 invalidate an election “*unless* they affect the result, or at least render it
17 uncertain”) (emphasis added).

18 Court of Appeals Opinion ¶ 11 (2023) Mar. 22, 2023) (emphasis in original). The Court of
19 Appeals nonetheless affirmed because it found the alleged misconduct did not involve a
20 sufficient number of votes to affect the outcome of the election. *Id.*

21 In an Order dated March 22, 2023, the Arizona Supreme Court affirmed the Court of
22 Appeals with respect to all counts except Count III (signature verification). The Supreme
23 Court disagreed with this Court’s finding that laches barred Count III “because Lake could
24 not have brought this challenge before the election.” Order, at 3 (Mar. 22, 2023). As such,
25 the Supreme Court remanded Count III for further proceedings, stating:

26 **IT IS FURTHER ORDERED** remanding to the trial court to determine
27 whether the claim that Maricopa County failed to comply with A.R.S. § 16-
28 550(A) fails to state a claim pursuant to Ariz. R. Civ. P. 12(b)(6) for reasons
other than laches, or, whether Petitioner can prove her claim as alleged pursuant
to A.R.S. § 16-672 and establish that “votes [were] affected ‘in sufficient
numbers to alter the outcome of the election’” based on a “competent

1 mathematical basis to conclude that the outcome would plausibly have been
2 different, not simply an untethered assertion of uncertainty.” (Opinion ¶ 11.)

3
4 *Id.* 4-5 (emphasis in original).

5 The Supreme Court issued its final order today and directed its Clerk to issue the
6 mandate forthwith. Upon issuance of the mandate, the case would return to this Court for
7 further proceedings on Count III.

8 **II. JUSTIFICATION FOR STATUS CONFERENCE**

9 This Court likely will need to decide several procedural and evidentiary issues on
10 remand. These additional issues may arise from proceedings related to the Arizona Supreme
11 Court’s remand of Count III.

12 Pursuant to ARS § 16-677(A), parties to an election contest may petition the trial court
13 to inspect the ballots. Plaintiff-Contestant Lake intends to petition this Court to inspect the
14 ballots verified by Maricopa, based on new evidence that came to light in 2023. In addition,
15 Lake has filed a special action in this Court to compel Maricopa to produce ballot envelopes
16 and related public records for the 2022 election in response to Lake’s Public Records
17 Request. The new special action thus relates directly to the facts underpinning the remanded
18 Count III, and Lake thus intends to move to consolidate the new special action with the
19 above-captioned special action pursuant to ARCP 42.
20
21

22 In addition, pursuant to the Arizona Supreme Court’s remand order, the defendants
23 may move to dismiss under Rule 12(b)(6) for reasons other than laches. Depending on what
24 issues (if any) Defendants intend to raise under Rule 12(b)(6), the parties may have
25 competing views on which issues—*e.g.*, ballot inspection under § 16-677 or dismissal under
26 Rule 12(b)(6)—should or must be briefed and decided first. A status conference would likely
27
28

1 aid the Court and the parties in setting the procedural calendar for further proceedings.

2 Plaintiff-Contestant Lake is also contemplating a motion to reconsider the dismissal
3 of Count IV (logic-and-accuracy testing) under ARCP 60(b)(3) within the same likely time
4 frame as the proceedings remand. Indeed, she may also bring a new and separate action under
5 42 U.S.C. § 1983 and state law to press her federal and Arizona constitutional claims. Under
6 this Court's Rule 3.1(c)(1), the new case likely would relate to this action, and either party
7 or the Court may consolidate the actions under ARCP 42. Given the relatedness of the
8 potential motion to reconsider and potential independent action, the issue of consolidation
9 may provide further justification for a status conference.
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12 Because of the exigency of resolving election contests before new terms begin in
13 January, the election-contest statute requires expedited hearings. *See* ARS § 16-676(A)-(B).
14 Although the election-contest statute does not expressly rule out civil discovery, the timing
15 of election challenges often does not allow discovery. Because that exigency is now lacking,
16 Plaintiff-Contestant Lake may seek discovery as part of either the remand itself or her motion
17 for reconsideration. Similarly, a new action for constitutional violations would have the
18 benefit of civil discovery. The issue of discovery provides further justification for a status
19 conference.
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23 To aid the Court and to prevent any surprise at a status conference, Plaintiff-
24 Contestant Lake respectfully submits that the parties should submit a joint status report at
25 least 5 court days prior to the status conference.
26

27 **III. JUSTIFICATION FOR TELEPHONIC PARTICIPATION**

28 Pursuant to this Court's Rule 3.2(e), the Court has discretion to order or allow parties

1 to participate by telephone or videoconference in any proceeding. Because some counsel live
2 in the Washington, DC, and Seattle areas, Plaintiff-Contestant Lake respectfully requests that
3 the Court either hold the status conference telephonically or allow counsel to participate
4 remotely by telephone, even if the Court holds the status conference in court or chambers.
5

6 **CONCLUSION**

7 WHEREFORE, Plaintiff-Contestant Lake respectfully submits that a status
8 conference would aid the Court and the parties in arranging for the orderly presentation of
9 legal and evidentiary issues that may arise in the further proceedings in this matter on remand
10 from the Arizona Supreme Court.
11

12 Date: May 4, 2023

Respectfully submitted

13
14 /s/ Bryan James Blehm

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15 **ARIZONA SUPERIOR COURT**

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21 **ADRIAN FONTES in his official capacity**
22 **as the Secretary of State; *et al.*,**

23 **Defendants.**

No. CV2022-095403

[PROPOSED] ORDER

(Assigned to Hon. Peter Thompson)

24 On considering “Plaintiff Kari Lake’s Motion for Status Conference,” the materials
25 filed in conjunction therewith, and the entire record herein, the Court finds that the motion is
26 well taken and it is hereby

27 **ORDERED** that Plaintiff’s motion is GRANTED;

28 **IT IS FURTHER ORDERED** that by May __, 2023, counsel shall file a Joint Status

1 Report stating their respective clients' positions on forthcoming motions, discovery, and any
2 related proceedings;

3 **IT IS FURTHER ORDERED** that counsel for the parties appear telephonically for
4 a status conference at _____ [a.m./p.m.] (Pacific) on May __, 2023;

5
6 **SO ORDERED.**

7 Dated: _____, 2023
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11 _____
12 PETER A. THOMPSON
13 SUPERIOR COURT JUDGE
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22 as the Secretary of State; et al.,**

23 **Defendants.**

24 **No. CV2022-095403**

25 **PROOF OF SERVICE**

26 **(Assigned to Hon. Peter Thompson)**

27 I certify that, on May 4, 2023, I electronically filed with the Arizona Superior Court
28 for Maricopa County, using the AZ Turbo Court e-filing system, Plaintiff Kari Lake's Motion
for Status Conference. On that date, I also caused a copy of the same to be emailed to:

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