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6 **SUPERIOR COURT OF ARIZONA**

7 **COUNTY OF MARICOPA**

8 MARK FINCHEM,  
Contestant/Plaintiff,  
9 v.  
10 ADRIAN FONTES, *et al.*,  
Contestees/Defendants.  
11

CASE No. CV2022-053927

**PLAINTIFF SECRETARY OF  
STATE ADRIAN FONTES'  
APPLICATION FOR ATTORNEYS'  
FEES AND COSTS**

**(Before the Hon. Melissa Iyer Julian)**

12 **I. Introduction.**

13 Pursuant to this Court's March 1, 2023 Under Advisement Ruling, Adrian Fontes,  
14 in his official capacity ("Secretary Fontes"), asks this Court to enter a Judgment awarding  
15 Secretary Fontes \$7,434.00 in attorneys' fees incurred in connection with defending this  
16 action. Attached as Exhibit A is the Declaration of D. Andrew Gaona in support of this  
17 Application ("Gaona Declaration"). Attached as Exhibit 1 to the Gaona Declaration is a  
18 detailed itemization of legal services rendered, which are incorporated herein by reference.  
19 A separate Statement of Taxable Costs is filed herewith.  
20

21 **II. Argument.**

22 **A. The Secretary's requested attorneys' fees are reasonable.**

23 "Once a party establishes entitlement to fees and meets the minimum requirements  
24 in an application and affidavit, . . . the burden shifts to the party opposing the fee award  
25 to demonstrate the impropriety or unreasonableness of the requested fees." *Assyia v. State*  
26 *Farm Mut. Auto. Ins. Co.*, 229 Ariz. 216, 223 ¶ 29 (App. 2012). Arizona courts generally  
27 follow the lodestar method for determining the reasonableness of a requested award of  
28 attorneys' fees. *See Schweiger v. China Doll Rest., Inc.*, 138 Ariz. 183, 187-89 (App.

1 1983) (holding that reasonable attorneys' fees are calculated by multiplying a reasonable  
2 hourly rate by the number of hours reasonably expended). In determining the  
3 reasonableness of rates and number of hours expended, the Court must consider:

4 (1) the qualities of the advocate: his ability, training, education, experience,  
5 professional standing and skill;

6 (2) the character of the work to be done: its difficulty, its intricacy, its importance,  
7 time and skill required, the responsibility imposed and the prominence and character of  
8 the parties where they affect the importance of the litigation;

9 (3) the work actually performed by the lawyer: the skill, time and attention given  
10 to the work;

11 (4) the result: whether the attorney was successful and what benefits were derived.  
12 *Id.* at 187 (quoting *Schwartz v. Schwerin*, 85 Ariz. 242 (1959)).

13 This Application seeks a total fee award of \$7,434.00 based on fees attributable to  
14 the work of Coppersmith Brockelman PLC ("CB"). See Ex. A (Gaona Declaration) ¶ 8;  
15 see also *id.*, Ex. 1 (itemized statement of attorney fees attached to Gaona Declaration). As  
16 demonstrated below, the reasonableness of the requested fees is underscored by  
17 application of the *China Doll* factors.

18 1. Quality of the Advocates.

19 To file the Special Action Complaint and related Motion to Consolidate, the  
20 Secretary retained experienced counsel with significant election law and/or commercial  
21 litigation experience. Specifically, the Secretary turned to D. Andrew Gaona, a partner  
22 with CB who has more than ten years of experience and is one of Arizona's leading  
23 election lawyers. As described fully in Exhibit A, and to provide the Secretary with the  
24 highest-quality representation, Mr. Gaona enlisted the assistance of Malvika Sinha, an  
25 associate with CB with extensive commercial litigation experience (and who worked  
26 under his supervision).

27 2. Character of the Work.

28 This was an expedited election proceeding that required extensive work by counsel

1 in a very short period. This included attempting to secure the dismissal of this frivolous  
2 action before the Court was required to consider it, drafting a motion to dismiss, and  
3 participating in the oral argument held by the court on that motion. Under the  
4 circumstances, the nature and character of the work performed was reasonable.

5 3. The Work Actually Performed.

6 In accordance with *China Doll*, the declaration of counsel [Exhibit A] and  
7 accompanying time entries [Exhibit 1 to Exhibit A] detail “the type of legal services  
8 provided, the date the service was provided, the attorney providing the service . . . and the  
9 time spent in providing the service.” *Id.* at 188. This information, incorporated herein by  
10 reference, demonstrates that the work was performed in connection with preparing for and  
11 attending the hearing in this matter.

12 4. The Results Achieved.

13 The Secretary achieved complete dismissal of this action with prejudice.

14 **IV. Conclusion**

15 For the foregoing reasons, the Secretary respectfully requests that the Court award  
16 him \$7,434.00 in reasonable attorneys’ fees and \$91.58 in taxable costs incurred in this  
17 action, for a total amount of \$7,526.21.

18  
19 RESPECTFULLY SUBMITTED this 27th day of March, 2023.

20 GENERAL COUNSEL FOR THE ARIZONA  
21 SECRETARY OF STATE

22 By/s/ Amy B. Chan  
23 Amy B. Chan  
24 *Attorneys for Secretary of State Adrian*  
25 *Fontes in his Official Capacity*  
26  
27  
28

1 **ORIGINAL** of the foregoing filed via  
2 TurboCourt and sent via email and/or U.S. Mail  
3 on 27th day of March, 2023 to:

4 Judicial Assistant to the Honorable Judge Melissa Iyer Julian  
5 Maricopa County Superior Court  
6 E-Mail: [CVJ03@JBAZMC.maricopa.gov](mailto:CVJ03@JBAZMC.maricopa.gov)

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22 *Attorneys for Contestee/Defendant Adrian Fontes*  
23 *in his Individual Capacity*

24 */s/ Amy B. Chan*  
25 \_\_\_\_\_  
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RETRIEVED FROM DEMOCRACYDOCKET.COM

# EXHIBIT A

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6 **SUPERIOR COURT OF ARIZONA**

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8 MARK FINCHEM,  
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12 Contestees/Defendants.

CASE No. CV2022-053927

**DECLARATION OF D. ANDREW  
GAONA IN SUPPORT OF  
APPLICATION FOR FEES AND  
COSTS**

**(Before the Hon. Melissa Iyer Julian)**

13 I, D. Andrew Gaona, hereby state that:

14 1. I am a partner in the law firm of Coppersmith Brockelman PLC (“CB”), and  
15 have been admitted to the practice of law in the State of Arizona since 2011. I was lead  
16 counsel for the Secretary of State (“Secretary”) in the above-captioned matter during all  
17 times relevant to the Application for Attorney’s Fees and Costs and have personal  
18 knowledge of the matters described herein.

19 2. This Declaration is submitted in support of the Secretary’s Application for  
20 Attorneys’ Fees incurred in connection with the March 1, 2023 ruling against Contestant  
21 with respect to Contestant’s Verified Complaint (“Complaint”).

22 3. To respond to the Complaint, the Secretary retained the services of myself  
23 and another CB attorney, Malvika Sinha, who operated at my direction and under my  
24 supervision.

25 4. I am aware of the fees charged by attorneys with similar experience and  
26 training in this community, and the billing rates on this matter are at or below the rates  
27 charged by other lawyers in this community with similar training and experience.  
28

1           5.     The Secretary seeks an award of fees for 15.6 hours of my time in  
2 connection with this matter. Prior to joining CB in 2015, I was a judicial clerk for then-  
3 Vice Chief Justice Andrew D. Hurwitz of the Arizona Supreme Court, and worked for 3.5  
4 years at the Phoenix offices of Perkins Coie LLP. My principal area of practice is  
5 commercial litigation, election law, and appeals. I have been recognized by Best Lawyers  
6 in America® in the Appellate Practice (2020 to present) and Business Litigation (2022 to  
7 present), and also by Super Lawyers (Southwest) Rising Stars in Business Litigation (2014  
8 to present). I have substantial experience in bringing complaints for special action relief,  
9 as well as bringing and defending election-related and claims for declaratory and  
10 injunctive relief. My discounted hourly rate for this matter is \$340.00.

11           6.     The Secretary also seeks an award of fees for 7.1 hours worked and  
12 attributable to my colleague Malvika Sinha, a senior associate at CB who assisted me in  
13 this matter. Ms. Sinha graduated in 2015 from UC Berkeley School of Law. Prior to  
14 joining CB in 2021, Ms. Sinha was a judicial clerk for the Honorable David G. Campbell  
15 at the District of Arizona. She worked for 2.5 years at the Los Angeles offices of  
16 O'Melveny & Myers LLP, and for 2 years at the Los Angeles offices of Venable LLP.  
17 Ms. Sinha's principal area of practice is commercial litigation. She has substantial  
18 experience representing a wide range of clients, including multiple Fortune 500  
19 companies. Ms. Sinha is admitted to practice and in good standing in California. She  
20 passed the Arizona bar in May 2022 and was admitted in Arizona on February 13, 2023.  
21 Per Ariz. R. Prof. Conduct 5.5, she worked on this matter in close association with me and  
22 with my active participation. Ms. Sinha's discounted hourly rate for this matter is  
23 \$300.00.

24           7.     Attached as Exhibit 1 to this Declaration is an itemized statement containing  
25 a description of the time spent on this matter by CB. That description includes the identity  
26 of the professional providing the services, the amount of time incurred, and a description  
27 of the legal work performed. All the information contained in Exhibit 1 was taken from  
28 the contemporaneous records maintained by CB.



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2 TurboCourt and sent via email and/or U.S. Mail  
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23 *in his Individual Capacity*

24 */s/ Amy B. Chan*  
25 \_\_\_\_\_  
26  
27  
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# EXHIBIT 1

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|                           | Date       | Timekeeper | Rate      | Hours       | Amount             | Description  |
|---------------------------|------------|------------|-----------|-------------|--------------------|--|
| <b>Fees</b>               |            |            |           |             |                    |  |
|                           | 12/09/2022 | DAG        | \$ 340.00 | 0.6         | \$ 204.00          | Preliminary review of complaint; confer with co-counsel re same  |
|                           | 12/10/2022 | DAG        | \$ 340.00 | 0.6         | \$ 204.00          | Call with co-counsel regarding response to complaint; begin to outline same  |
|                           | 12/12/2022 | DAG        | \$ 340.00 | 3.1         | \$ 1,054.00        | Draft Rule 11 letter; work on draft of motion to dismiss; email with plaintiff's counsel regarding meet and confer obligations   |
|                           | 12/13/2022 | DAG        | \$ 340.00 | 3           | \$ 1,020.00        | Prepare for and participate in return hearing; meet and confer regarding motion to dismiss and Rule 11; calls regarding motion to dismiss strategy; revise, finalize, and file motion to dismiss |
|                           | 12/14/2022 | DAG        | \$ 340.00 | 2.2         | \$ 748.00          | Analyze response to motion to dismiss; work on reply in support of motion to dismiss   |
|                           | 12/15/2022 | DAG        | \$ 340.00 | 1.2         | \$ 408.00          | Work on reply in support of motion to dismiss and attend to filing of same   |
|                           | 12/16/2022 | DAG        | \$ 340.00 | 1.9         | \$ 646.00          | Prepare for and conduct oral argument; review court order dismissing case  |
|                           | 12/27/2022 | MSI        | \$ 300.00 | 6.8         | \$ 2,040.00        | Draft motion for sanctions   |
|                           | 12/27/2022 | MSI        | \$ 300.00 | 0.3         | \$ 90.00           | Review Fontes' fee application; strategize regarding joinder   |
|                           | 12/28/2022 | DAG        | \$ 340.00 | 1.1         | \$ 374.00          | Analyze Fontes' motion for sanctions; strategize regarding potential joinder; draft and attend to filing of joinder and separate certification of counsel  |
|                           | 01/05/2023 | DAG        | \$ 340.00 | 0.7         | \$ 238.00          | Preliminary review of response to sanctions motion   |
|                           | 01/17/2023 | DAG        | \$ 340.00 | 0.4         | \$ 136.00          | Various emails with A. Chan regarding joinder in reply   |
|                           | 02/06/2023 | DAG        | \$ 340.00 | 0.6         | \$ 204.00          | Review COA docketing of appeal; analyze same; email to client regarding same   |
|                           | 02/15/2023 | DAG        | \$ 340.00 | 0.2         | \$ 68.00           | Email to A Chan with recent Finchem filing   |
| <b>Total for Fees</b>     |            |            |           | <b>22.7</b> | <b>\$ 7,434.00</b> |  |
| <b>Advances</b>           |            |            |           |             |                    |  |
|                           | 12/12/2022 |            |           |             | \$ 10.61           | Filing Fee -- Maricopa County Superior Court   |
|                           | 12/13/2022 |            |           |             | \$ 10.61           | Filing Fee -- Maricopa County Superior Court   |
|                           | 12/13/2022 |            |           |             | \$ 10.61           | Filing Fee -- Maricopa County Superior Court   |
|                           | 12/13/2022 |            |           |             | \$ 10.61           | Filing Fee -- Maricopa County Superior Court   |
|                           | 12/15/2022 |            |           |             | \$ 10.61           | Filing Fee -- Maricopa County Superior Court   |
|                           | 12/28/2022 |            |           |             | \$ 6.70            | Filing Fee -- Maricopa County Superior Court   |
|                           | 12/28/2022 |            |           |             | \$ 10.61           | Filing Fee -- Maricopa County Superior Court   |
|                           | 01/03/2023 |            |           |             | \$ 10.61           | Filing Fee -- Maricopa County Superior Court   |
|                           | 01/17/2023 |            |           |             | \$ 10.61           | Filing Fee -- Maricopa County Superior Court   |
| <b>Total for Advances</b> |            |            |           |             | <b>\$ 91.58</b>    |  |
| <b>GRAND TOTALS</b>       |            |            |           | <b>22.7</b> | <b>\$ 7,526.21</b> |  |