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IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF MARICOPA

AMERICAN OVERSIGHT,

Plaintiff,

vs.

KAREN FANN, et al.

Defendants, and

CYBER NINJAS, INC.,

Real Party in Interest.

**Case No. CV2021-008265
Case No.: LC2021-00180-001**

**OBJECTION AND MOTION
TO RECONSIDER**

(Assigned to the Honorable Judge Kemp)

**PHOENIX NEWSPAPERS, INC., an
Arizona corporation, and KATHY
TULUMELLO,**

Plaintiffs,

vs.

**ARIZONA STATE SENATE, a public body
of the State of Arizona; KAREN FANN, in
her official capacity as President of the
Arizona State Senate; WARREN
PETERSEN, in his official capacity as the
Chairman of the Arizona Senate Committee**

1 **on the Judiciary; SUSAN ACEVES, in her**
2 **official capacity as Secretary of the Arizona**
3 **State Senate; and CYBER NINJAS, INC.;**

4 **Defendants, and**

5 **CYBER NINJAS, INC.,**

6 **Real Party in Interest.**

7
8 Undersigned counsel is in receipt of this Court's January 18th Order granting Plaintiff
9 American Oversight's January 8th Motion to Compel and awarding \$1,000 in attorneys' fees to
10 American Oversight on the Motion. CNI hereby moves to reconsider the award of fees. Because
11 CNI was not afforded the time under the Rules to file a response to the Motion (which would be
12 January 31st) and there was no order providing for expedited briefing, CNI has not been heard on
13 the matter and this Objection and Motion are proper. Ariz.R.Civ.P. 7.1(a)(3); A.R.S. Const. Art.
14 2 § 4.

15 Fees should be not be awarded against CNI because (1) the deposition notice for January
16 5th violated Rule 26(f), which provides that a party may not seek discovery from any source before
17 it serves its initial disclosure statement, "[u]nless the court orders otherwise for good cause"; (2)
18 to date, Plaintiff has not served an initial disclosure statement, and as of January 5th the Court had
19 not ordered a deposition; (3) there was no meet-and-confer pursuant to Rules 26(i) and 7.1(h) on
20 the subject of setting another deposition prior to Plaintiff's Motion to Compel; and (4) CNI
21 notified Plaintiff more than 24 hours in advance of the deposition that nobody would be appearing
22 and so there should be no deposition costs. CNI also advised Plaintiff that the deposition notice
23 violated Rule 26(f) before Plaintiff motioned this Court to set another deposition. Finally, to the
24 extent it could be argued that Rule 26(f) does not apply because this is a special action: there is in
25 fact no discovery allowed in a special action absent a court order; and again, the Court did not
26 order any deposition on January 5th. *See* Special Action Rules, Rule 4(f)("[i]f a triable issue of
27 fact is raised in an action under this Rule, it shall be tried subject to special orders concerning
28

1 discovery”); *see also Riggins v. Graham*, 20 Ariz. App. 196, 198, 511 P.2d 209, 211 (1973).¹
2 Plaintiff was also specifically advised of this provision of the Rules of Special Actions before
3 motioning the court for another deposition and the fees award. The Court’s award of \$1,000 for
4 the Motion to Compel is therefore unwarranted, and CNI asks the Court to reverse the award of
5 fees. Finally, the parties have conferred and Plaintiff has agreed to make proper disclosures before
6 any deposition, including disclosure of all documents that it intends to question Logan/CNI about.
7 CNI also reserves the right to object to deposition scope if and as appropriate.

8 **RESPECTFULLY SUBMITTED** January 20, 2022.

9 **WILENCHIK & BARTNESS, P.C.**

10 /s/ John “Jack” D. Wilenchik

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18 **ELECTRONICALLY** filed January 20, 2022,
19 via AZTurboCourt.com

20 **COPY** electronically transmitted by the Clerk
21 of the Court via AZTurboCourt.com
22 to the Honorable Michael Kemp

23 ¹ “There is neither case law not comment which sheds much light as to the scope of discovery in
24 special actions. The 1969 State Bar Committee note states as follows: . . . Discovery in special
25 action proceedings may be necessary in particular circumstances, though it will certainly not be
26 routinely required...The Rule gives necessary latitude to allow discovery in those rare instances
27 when it is necessary. Rule 4(a) places the burden of determining this question where it belongs—
28 on the trial court. That court in its discretion determines whether discovery is to be had and, if so,
the type and degree. The very nature of a special action is a unique remedy designed for an unusual
set of circumstances where the speedy determination of the issue is of prime consideration. To
allow a wide range of discovery, attendant with the delays involved, would tend to defeat the very
purpose of a special action.” Emphasis added.

1 **ELECTRONICALLY** served January 20, 2022 via
2 AZTurboCourt.com and emailed upon:

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By: /s/ Christine M. Ferreira