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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).<sup>1</sup>  
(Rule 60 Mot. 1, 17.) In making this request, however, Lake and her counsel intentionally  
23 misrepresented facts to the Court on several fronts.

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

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26 <sup>1</sup> Lake sought relief from judgment on Count V (equal and protection) and Count VI (due  
27 process) in a footnote but failed to make any substantive arguments to support these Counts.  
28 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  
“fit to page” ballots in the middle of printing a batch of ballots. None of the  
technical people with whom we spoke could explain how or why that error  
occurred.

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

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

21 (*Lake v. Hobbs*, CV 2022-095403, Minute Entry, at 6 (Maricopa Cnty. Super. Ct. May 15,  
22 2023).)

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

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

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