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8 *Kari Lake for Arizona, and Save Arizona Fund, Inc.*

9 **IN THE SUPERIOR COURT FOR THE STATE OF ARIZONA**

10 **IN AND FOR THE COUNTY OF MARICOPA**

11 STEPHEN RICHER,

12 Plaintiff,

13 v.

14 KARI LAKE, JEFFREY E. HALPERIN,
KARI LAKE FOR ARIZONA, and SAVE
ARIZONA FUND, INC.,

15 Defendants.
16

No. CV-2023-009417

**MOTION PURSUANT TO RULE
55(B)(2)(D) FOR A DEFAULT
JUDGMENT BY HEARING**

JURY REQUESTED

17 Defendants Kari Lake, Jeffrey E. Halperin, Kari Lake for Arizona, and Save Arizona
18 Fund, Inc. (“Defendants”) move the Court to conduct a hearing pursuant to Arizona Rule
19 of Civil Procedure 55(b)(2)(D) within thirty (30) days, to include the empaneling of a jury
20 as needed to adjudicate factual disputes. Defendants further request an order setting a
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1 scheduling hearing within five (5) court days¹ to “secure the just, speedy, and inexpensive
2 determination” of this matter before the forthcoming primary and general elections.

3 **MEMORANDUM OF POINTS AND AUTHORITIES**

4 Rule 55(b)(2)(D) states,

5 (D) Hearings and Referrals. The court may conduct hearings or make
6 referrals—preserving any right to a jury trial—when, to enter or effectuate
7 judgment, it needs to: (i) conduct an accounting; (ii) determine the amount
of damages; (iii) establish the truth of any allegation by evidence; or (iv)
investigate any other matter.

8 Plaintiff Stephen Richer is “bring[ing] this case in his personal capacity.” Am.
9 Compl. ¶ 6. Richer has asserted five claims for defamation based on statements regarding
10 Richer’s official duties as Maricopa County Recorder, a job the public has allowed Richer
11 to keep for now. Setting aside the curious contradiction of a personal lawsuit based on the
12 performance of official duties, Richer’s defamation claims are ultimately “dignitary torts,”
13 which are typically “not objectively quantifiable.” *Havasupai Tribe of Havasupai*
14 *Reservation v. Arizona Bd. of Regents*, 220 Ariz. 214, 227, ¶ 45 (App. 2008). Rule
15 55(b)(1)(A)—which allows for default judgment without a hearing—cannot apply to an
16 unliquidated claim for reputational damages from defamation. *Id.* And although Rule
17 55(b)(2)(D) is couched in discretionary language, “the rule is that when the amount of
18 damages is unliquidated it is incumbent upon the court to conduct the hearing to determine
19 the amount of damages.” *Mayhew v. McDougall*, 16 Ariz. App. 125, 130 (1971). “When
20 damages are unliquidated, simply giving the plaintiff what he asks for may not attain that

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22 ¹ In his March 25, 2024 motion for sanctions, Plaintiff asked the Court to set a Rule 16
23 scheduling conference within five (5) days. Thus, Plaintiff and his attorneys presumably
can accommodate a truncated timeline.

1 level of judicial discretion which will pass appellate muster.” *Id.* Thus, as a matter of law,
2 the Court must hold a hearing to ascertain Richer’s damages before entry of judgment.

3 Additionally, to the extent Richer seeks special damages for his psychiatric,
4 psychological, or other mental health treatment, Rule 9(g) states, “If an item of special
5 damage is claimed, it must be specifically stated.” Here, Richer alleges in Paragraph 170 of
6 the Amended Complaint, that the “decline in his career prospects and constant calls for his
7 resignation, prosecution, and even execution have taken a toll on Richer’s physical and
8 mental health and required him to spend time and money on additional medical treatment
9 and medication.” Yet the Amended Complaint fails to allege precisely how much Richer
10 spent—if anything—for such treatment.² Given the absence of any specific allegation of
11 total expenses incurred for Richer’s psychiatric or psychological treatment, the Court can
12 only make a damages determination on Richer’s alleged medical treatment via Rule
13 55(b)(2)(D) hearing.³ This will include, at a minimum, requiring Richer to disclose his
14 medical records to Defendants and the Court to that support Richer’s damages claim.

15 The same can be said of what can only be described as “lost political profits.” In
16 paragraph 169 of the Amended Complaint, Richer alleges that Defendants “have damaged
17 Richer’s reputation by cutting him off from Republican networks and donors who once
18 supported his career and future ambitions for elected office.” Again, Richer fails to plead

19 ² Although Richer claims to be proceeding in his “personal capacity,” he presumably used
20 his tax-payer funded health insurance to pay for any psychiatric, psychological, or other
mental health treatment.

21 ³ Defendants reserve the right to move the Court to order Richer to submit to a compulsory
22 physical or mental examination under Rule 35(a), which states in relevant part, “A party
may request that a physician or psychologist perform a physical or mental examination of
23 another party, or a person who is in another party’s custody or under its legal control, when
that party or person’s physical or mental condition is in controversy.”

1 any cognizable dollar amount as to this item of special damages. At this point, Defendants
2 presume that the allegations in the Amended Complaint were made in good faith and based
3 on evidence in Richer's possession. Ariz. R. Civ. P. 11(b). Thus, Richer can be expected to
4 promptly disclose prior to a damages hearing precisely which donors and networks—to
5 include any independent expenditure or "dark money" groups—abandoned Richer and just
6 how much it cost him.

7 As noted above, Defendants request a jury to adjudicate any factual disputes. It is
8 often said that defaulting admits the allegations in the operative complaint. This is a
9 misnomer.

10 An entry of default serves as a judicial admission of all well-pleaded facts in
11 the complaint. A party against whom default is entered, however, is not held
12 to admit facts that are not well-pleaded or to admit conclusions of law. If a
complaint does not include well-pleaded facts for a required showing, entry
of default does not mean that required showing has been made.

13 *Smith & Wesson Corp. v. The Wuster*, 243 Ariz. 355, 358, ¶ 14 (App. 2017) (cleaned up).
14 Here, Richer's conclusory, *ipse dixit* allegations that Defendants "caused" him harm are not
15 the kind of "well-pled" allegations that are admitted upon default. *See Fappani v. Bratton*,
16 243 Ariz. 306, 311 (App. 2017) ("The complaint's allegation that Bratton 'caused' or
17 'demanded' the county attorney to prosecute Fappani is not based on well-pleaded facts.
18 Fappani's complaint does not allege what Bratton did or said, when it was done, or to whom
19 or how she communicated."). It is not enough, even at the default stage, for Richer rest on
20 conclusory allegations that "Richer's injuries are traceable to Defendants' attacks on
21 Richer." Am. Compl. ¶ 171. Again, Defendants presume for now that Richer's Amended
22 Complaint was compliant with Rule 11. Thus, Richer—himself once an actively licensed
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1 attorney in Arizona—knows he should be prepared to disclose competent evidence of
2 causation promptly and in advance of a damages hearing. This includes evidence of
3 precisely how Richer can establish the causal link between his categories of defamation
4 (“Ballot Size Sabotage” and “Bogus Ballot Injection”) and his claimed categories of
5 damages.⁴

6 **CONCLUSION**

7 Arizona requires any lawsuit to make “a short and plain statement of the claim
8 showing that the pleader is entitled to relief.” Ariz. R. Civ. P. 8(a). Richer’s complaint spans
9 over 40 pages and includes 171 numbered paragraphs before he alleges a single cause of
10 action. Of those 171 paragraphs, only eight of them address causation and damages. *See*
11 *Am. Compl. at ¶¶ 164-171*. An accelerated damages hearing is appropriate to adjudicate
12 those matters which occupy less than five percent of the amended Complaint. The Court
13 should therefore grant the motion.

14 RESPECTFULLY SUBMITTED this 26th day of March, 2024.

15 By: /s/ Jennifer J. Wright

Jennifer J. Wright (027145)

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22 ⁴ Although Richer’s Amended Complaint failed to allege a damages tier as required by Rule
23 8(b)(2), Richer has subsequently represented to the Court that this case should be assigned
to Tier 3. Under Rule 26.2(e), Tier 3 cases are those with \$300,000 in damages, excluding
“claims for punitive damages, interest, attorney's fees in the case to be tiered, and costs.”

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ORIGINAL efiled and served via electronic means
this 26th day of March, 2024, upon:

Commissioner Richard Albrecht
Maricopa County Superior Court
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