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ARIZONA SUPERIOR COURT

MARICOPA COUNTY

KARI LAKE, Contestant/Plaintiff, v. KATIE HOBBS, personally as Contestee; ADRIAN FONTES in his official capacity as the Secretary of State; *et al.*, Defendants.	No. CV2022-095403 **PLAINTIFF KARI LAKE'S NOTICE OF APPEAL** (Assigned to Hon. Peter Thompson)

Plaintiff Kari Lake ("Plaintiff") hereby provides her notice of appeal pursuant to Ariz. R. Civ. App. P. 8, 9 as follows:

I. Caption of Case and Case Number

The special action is captioned as Kari Lake, Contestant/Plaintiff, versus Katie Hobbs, personally as Contestee/Governor and in her then official capacity as Secretary of State (now Adrian Fontes); Stephen Richer in his official capacity as Maricopa County Recorder; Bill Gates,

Clint Hickman, Jack Sellers, Thomas Galvin, and Steve Gallardo, in their official capacities as members of the Maricopa County Board of Supervisors; Scott Jarrett, in his official capacity as Maricopa County Director of Elections; and the Maricopa County Board of Supervisors, Defendants.

The case number is No. CV2022-095403 in the Arizona Superior Court for Maricopa County.

II. Parties Taking Appeal

Plaintiff Kari Lake takes this appeal.

III. Judgement or Portion of Judgment from Which the Parties are Appealing.

Plaintiff appeals the final judgment entered May 30, 2023 (Exhibit A), denying all Plaintiff's requested relief, and dismissing the case. Incorporated into the judgment from which Plaintiff appeals also are:

(i) The Court's Under Advisement Ruling dated May 22, 2023 (Exhibit B), denying Plaintiff's requested relief on Count III regarding Maricopa County's alleged failure to perform signature verification in accordance with the requirements of A.R.S. § 16-550(A) with respect to an outcome determinative number of ballots;

(ii) The Court's Under Advisement Ruling dated May 15, 2022 (Exhibit C), denying Plaintiff's Rule 60(b) motion for relief from judgment as to Counts II, V, and VI concerning new evidence showing, *inter alia*, that Maricopa County knew before November 8, 2022 that tabulators at nearly two thirds of Maricopa County vote centers would reject significant numbers of ballots on Election Day due to the ballot on demand

("BOD") printers generating ballots that were misconfigured, defective, or otherwise unreadable by the tabulators; and

(iii) All other orders and rulings in this matter.

IV. Court to Which the Party is Appealing

Plaintiff appeals to Division 1 of the Arizona Court of Appeals. Transfer may be sought to the Arizona Supreme Court. In addition, Plaintiff may seek special action review by petition to the Division 1 of the Arizona Court of Appeals or to the Arizona Supreme Court.

DATED this 31st day of May 2023.

/s/ Bryan James Blehm
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Attorneys for Plaintiff-Contestant

ORIGINAL e-filed and served via electronic means this 31st day of May 2023 upon:

Honorable Peter Thompson
Maricopa County Superior Court
c/o Sarah Umphress
sarah.umphress@jbazmc.maricopa.gov

/s/ Bryan James Blehm
Bryan J. Blehm
ORIGINAL efiled and served via electronic means this 31st day of May, 2023, upon:

Honorable Peter Thompson
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Counsel for Plaintiff-Contestant Kari Lake

EXHIBIT A

Clerk of the Superior Court
*** Filed ***
05/30/2023 10:00 A.M.

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2022-095403 05/26/2023

HONORABLE PETER A. THOMPSON

CLERK OF THE COURT
I. Ostrander
Deputy

KARI LAKE

v.

KATIE HOBBS, ET AL.

BRYAN JAMES BLEHM

ALEXIS E DANNEMAN

THOMAS PURCELL LIDDY
EMILY M CRAIGER
CRAIG A MORGAN

JUDGE THOMPSON

Defendants' Motion for Attorney Sanctions;
Plaintiff's Motion to Strike;
Judgment Entered Pursuant TO Rule 54(c), Arizona Rules of Civil Procedure

Pending before this Court is Maricopa County Defendants' Motion for Sanctions, Governor Katie Hobbs' Statement of Joinder, and Secretary of State Adrian Fontes' Joinder in Motion for Sanctions. The Court has fully considered the memoranda of law submitted by counsel.

The Defendants seek an award of attorneys' fees as sanctions or a levy of other unspecified monetary sanctions against Plaintiff Kari Lake and her counsel pursuant to A.R.S. § 12-349(A) and the Court's "inherent power to impose sanctions for attorney misconduct before the court." In support, Defendants allege that Lake and her counsel "intentionally misrepresented facts to the Court" by misstating or inappropriately grounding factual assertions on unsupportive evidence in

her Rule 60 motion and proceeding to trial on a claim Lake knew "lacked factual merit" and that Lake's counsel asserted a groundless claim against the Defendants at oral argument.

Discussion

Arizona Revised Statutes § 12-349 mandates that the Court assess reasonable attorney fees and expenses against an attorney or party who brings or defends a claim without substantial justification or primarily for delay or harassment, unreasonably expands or delays the proceeding, or engages in abuse of discovery. A.R.S. § 12-349(A). The statute defines "without substantial justification" as "groundless" and "not made in good faith." A.R.S. § 12-349(F). A claim is "groundless" if its proponent can present no rational argument based on the evidence or law to support it. *Takieh v. O'Meara*, 252 Ariz. 51, 61 ¶ 37 (App. 2021).

The Defendants contend that Lake "unnecessarily expanded these proceedings" by intentionally misstating the content of a witness's testimony in her Rule 60 motion and that she proceeded to trial on a claim she knew lacked factual merit based on her own witness's statements. This view mistakenly looks beyond trial to the ultimate resolution of the merits and does not allow for presentation of evidence to prove a disputed claim. These proceedings were Lake's opportunity to prove her *Reyes* claim, to pursue which she elected to concede that she was not challenging signature matches for any individual ballots. Specifically, Plaintiff's Response to the Motion to Dismiss argued:

> Maricopa violated A.R.S. § 16-550(A) and did not, and could not, perform signature verification given the influx of 1.3 million ballots during the voting period for the November 2022 General Election. The Complaint sufficiently alleges this process was not followed by MCEC because in the 2022 election, Maricopa County officials, instead of attempting to cure ballots, systematically pushed mismatched ballots through for tabulation without following the required procedures."

Plaintiff's failure to establish her claim by clear and convincing evidence does not equate to bringing a claim "without substantial justification" as "groundless" and "not made in good faith." Even if her argument did not prevail, Lake, through her witness, presented facts consistent with and in support of her legal argument.

The remainder of Defendants' allegations appear to rely on the Court's inherent power as the authority by which they request the Court "award" unspecified sanctions "against" Lake's counsel. The Court acknowledges its inherent authority to sanction bad faith attorney conduct and that the rules of attorney conduct in the Rules of the Supreme Court provide a legal basis for imposing sanctions against attorneys. *See Hmielewski v. Maricopa Cnty.*, 192 Ariz. 1, 4 ¶ 14 (App. 1997). Nevertheless, there is a distinction between imposing sanctions by the Supreme Court of Arizona for continuing to represent as true facts or arguments which have been adjudicated

previously and found to be without merit and advocacy on a yet to be determined theory of the case in closing argument. Opposing litigants in a heated dispute will naturally view the same evidence differently. The inferences one draws will be anathema to the other, and they may question each other's good faith motivated simply by their conviction of their own cause and incomprehension at the conclusions of the other. The Court does not find that the "misstatements" in the Rule 60 motion briefing or the "remarkably bold assertion" at oral argument alleged by the Defendants stray from advocacy into misconduct as would warrant invocation of the Court's sanctioning authority. The proceedings in which the statements were made were Lake's and the Defendants' opportunity to argue their cases and present their evidence. They did so, and the Court ruled. Therefore,

IT IS ORDERED denying Defendants' Motion for Sanctions.

IT IS FURTHER ORDERED denying Plaintiff's Motion to Strike as moot.

Following remand from, and consistent with the mandate issued by, the Arizona Supreme Court, the Court, having weighed all the evidence, argument, and legal memoranda and having assessed the credibility and demeanor of witnesses testifying at trial, now enters the following Findings of Fact and Conclusions of Law as to Count III of Plaintiff Kari Lake's Statement of Election Contest:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

As to Count III – Signature Verification:

a. The Court DOES NOT find either clear and convincing evidence or a preponderance of evidence of misconduct in violation of A.R.S. § 16-672(A)(1).

b. The Court DOES NOT find either clear and convincing evidence or a preponderance of evidence that such misconduct was committed by "an officer making or participating in a canvass" under A.R.S. § 16-672(A)(1).

c. The Court DOES NOT find either clear and convincing evidence or a preponderance of evidence that such misconduct did in fact affect the result of the 2022 General Election by a competent mathematical basis.

Therefore,

IT IS ORDERED entering final judgment as follows:

1. AGAINST Plaintiff/Contestant Kari Lake on all claims;

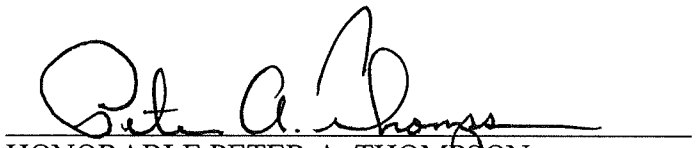
2. IN FAVOR OF Defendant/Contestee Katie Hobbs and all other named Defendants on all claims; and

3. CONFIRMING the election of Katie Hobbs as Arizona Governor pursuant to A.R.S. § 16-676(B).

IT IS FURTHER ORDERED pursuant to Arizona Rule of Civil Procedure 56(c) that no further matters remain pending and this constitutes the judgment required by A.R.S. § 16-676 in this matter.

IT IS ORDERED signing this minute entry as a final written order of the Court. **The Court notes that no further matters remain pending and the order is entered pursuant to Rule 54(c), Arizona Rules of Civil Procedure.**

DATED this 26th day of May 2023.



HONORABLE PETER A. THOMPSON
JUDICIAL OFFICER OF THE SUPERIOR COURT

EXHIBIT B

Clerk of the Superior Court
*** Filed ***
05/22/2023 6:45 PM

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2022-095403 05/22/2023

HONORABLE PETER A. THOMPSON

CLERK OF THE COURT
I. Ostrander
Deputy

KARI LAKE

BRYAN JAMES BLEHM

v.

KATIE HOBBS, ET AL.

ALEXIS E DANNEMAN

THOMAS PURCELL LIDDY
EMILY M CRAIGER
CRAIG A MORGAN
JUDGE THOMPSON

UNDER ADVISEMENT RULING

The Court has heard and considered the arguments and evidence presented at the hearing on May 17-19, 2023, on Count III of Plaintiff Kari Lake's Statement of Election Contest. The Court rules as follows on this claim.

LEGAL STANDARD

Plaintiff brings a claim of misconduct under A.R.S. § 16-672(A)(1). She must prove, by clear and convincing evidence, "misconduct on the part of election boards or any members thereof in any of the counties of the state, or on the part of any officer making or participating in a canvass for a state election." *Id.* She must prove that this misconduct affected the result of the election. *Miller v. Picacho Elementary Sch. Dist. No. 33*, 179 Ariz. 178, 180 (1994). And she must do so by "a competent mathematical basis . . . not simply an untethered assertion of uncertainty." *Lake v. Hobbs*, 525 P.3d 664, 668 (App. 2023).

As narrowed by Plaintiff at argument and in her response to the motion to dismiss, Plaintiff brings a claim under *Reyes v. Cuming*, 191 Ariz. 91, 94 (App. 1997). The Court understands this to be a purposeful concession: rather than trying to cast doubt on a specific number of ballots (a herculean evidentiary endeavor in these circumstances), she attempts to prove that the signature review process for Maricopa County was not conducted pursuant to A.R.S. § 16-550(A) or the EPM. More to the point, she was obligated to prove that the process for submitting and processing early ballots did not occur. To do so would prove misconduct pursuant to A.R.S. § 16-676(A)(1). Whether this would require a setting aside of the election outright under A.R.S. § 16-676(B) or a proportional reduction followed by a confirmation or setting aside under *Grounds v. Lawe*, 67 Ariz. 176 (1948), is unclear. In any event, crafting an appropriate remedy is unnecessary.

DISCUSSION

The evidence the Court received does not support Plaintiff's remaining claim. First, Ms. Onigkeit's testimony makes abundantly clear that level one and level two signature review did take place in some fashion. She expressed her concern that this review was done hastily and possibly not as thoroughly as she would have liked – but it was done. Mr. Myers's testimony similarly revealed that he participated in both a level one review and curing process. Mr. Valenzuela testified that four levels of signature verification took place: two levels of verification per se and two levels of auditing. The result was the timely verification and or/curing of about 1.4 million voter signatures.

Mr. Valenzuela's testimony, elicited by both parties, is most helpful to the Court, and the most credible. This is not merely for reasons of honesty (the Court makes no finding of dishonesty by any witness – and commends those signature reviewers who stepped forward to critique the process as they understood it). While Ms. Onigkeit and Mr. Myers have ground level experience with signature review, Mr. Valenzuela provided the Court with both a hands-on view based on the 1,600 signatures reviewed by him personally in November 2022 and a broad overview of the entire process based upon his 33 years of experience.

As he testified, the human element of signature review consisted of 153 level one reviewers, 43 level two reviewers, and two ongoing audits. This evidence is, in its own right, clear indicia that the comparative process was undertaken in compliance with the statute, putting us outside the scope of *Reyes.* 191 Ariz. at 92. There is clear and convincing evidence that the elections process for the November 8, 2022, General Election did comply with A.R.S. § 16-550 and that there was no misconduct in the process to support a claim under A.R.S. § 16-672.

At trial, Plaintiff's case attempted to overcome the barriers created by the bar to her complaints about the process that could have been brought before trial but were not. *See* A.R.S. §§ 16-552(D); 16-591. She conceded that she was not challenging signature matches for any

individual ballots by making a *Reyes* claim. Specifically, Plaintiff's Response to the Motion to Dismiss argues:

> Maricopa violated A.R.S. § 16-550(A) and did not, and could not, perform signature verification given the influx of 1.3 million ballots during the voting period for the November 2022 General Election. The Complaint sufficiently alleges this process was not followed by MCEC because in the 2022 election, Maricopa County officials, instead of attempting to cure ballots, systematically pushed mismatched ballots through for tabulation without following the required procedures."

Plaintiff's evidence and arguments do not clear the bar. Plaintiff's strategy shifted shortly thereafter to attempting to prove that time per signature verification per signature is deficient. Plaintiff argues that 274,000 signatures (or so) were compared in less than two seconds. Plaintiff then zeroes in on 70,000[1] – the number of ballots that she claims were given less than one second of comparison. Plaintiff argues that this is so deficient for signature comparison that it amounts to no process at all.[2] Accepting that argument would require the Court to re-write not only the EPM but Arizona law to insert a minimum time for signature verification and specify the variables to be considered in the process.

Plaintiff asks the Court to interpret the word "compare" in A.R.S. § 16-550(A) to require the Court to engage in a substantive weighing of whether Maricopa County's signature verification process, as implemented, met some analytical baseline. But there are several problems with this. First, no such baseline appears in Section 16-550. Not one second, not three seconds, and not six seconds: no standard appears in the plain text of the statute. No reviewer is required by statute or the EPM to spend any specific length of time on any particular signature. Second, the Court takes seriously the directive of the Arizona Supreme Court concerning statutory interpretation: to "effectuate the text if it is clear and unambiguous," reading words in statutes in their context, and giving "meaning to every provision so that none is rendered superfluous." *In re McLauchlan*, 252 Ariz. 324, 325 ¶ 6 (2022) (citations omitted).

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[1] The Court notes that, even if the Court had a basis for disqualifying 70,000 ballots, under the proportional reduction method prescribed by *Grounds v. Lawe*, given the mathematical computation set forth in her Response to Defendants' Motion to Dismiss, Plaintiff would not prevail.

[2] Plaintiff asserted in argument that the signature verification was the only safeguard against fraudulent ballots being counted. The Court disagrees and takes notice of the processes employed by Maricopa County to sanitize early voting lists, address verification, and voter name correlation to ballot envelopes as Mr. Valenzuela testified.

Accordingly, the Court will not give weight to Lake's definition of "compare" to the exclusion of the rest of the statute, which is helpful revisiting here:

> [O]n receipt of the envelope containing the early ballot and the ballot affidavit, the county recorder . . . shall compare the signatures thereon with the signature of the elector on the elector's registration record. If the signature is inconsistent with the elector's signature on the elector's registration record, the county recorder . . . shall make reasonable efforts to contact the voter, advise the voter of the inconsistent signature and allow the voter to correct or the county to confirm the inconsistent signature. . . .

A.R.S. § 16-550(A). Put another way, the recorder or other official must make some determination as to whether the signature is consistent or inconsistent with the voter's record. The Court finds that looking at signatures that, by and large, have consistent characteristics will require only a cursory examination and thus take very little time. Mr. Valenzuela testified that a level one signature reviewer need not even scroll to look at other writing exemplars (beyond the most recent one provided) if the signatures are consistent in broad strokes.

That said, there is an even more important clause ahead:

> If satisfied that the signatures correspond, the recorder or other officer in charge of elections shall hold the envelope containing the early ballot and the completed affidavit unopened in accordance with the rules of the secretary of state.

Id. The question after the comparison is whether the signatures are consistent *to the satisfaction of the recorder*, or his designee. This, not the satisfaction of the Court, the satisfaction of a challenger, or the satisfaction of any other reviewing authority is the determinative quality for whether signature verification occurred. It would be a violation of the constitutional separation of powers – *see* Ariz. Const. art. III – for this Court, after the recorder has made a comparison to insert itself into the process and reweigh whether a signature is consistent or inconsistent.

Even if the Court assumes in the alternative that it must consider whether the comparison was adequate, the Court finds that Mr. Valenzuela provided ample evidence that – objectively speaking – a comparison between voter records and signatures was conducted in every instance Plaintiff asked the Court to evaluate.

It bears noting that this case is based on completely different facts than in *Reyes*, where the county recorder had done *no signature verification whatsoever*. *See Reyes*, 191 Ariz. at 93 (describing Yuma County Recorder's failure as "complete non-compliance" with the statute). Plaintiff may find fault with the process as applied to some number of ballots, but the Court finds

that the process of comparison did take place in compliance with the statute, defeating a *Reyes* claim under misconduct.

While Plaintiff did not demonstrate any lack of compliance with statute or the EPM, she did bring in a signature verification expert who testified what he believed to be necessary for signature verification in his line of work. But there is no statutory or regulatory requirement that a specific amount of time be applied to review any given signature at any level of review. Giving all due weight to Mr. Speckin's signature verification expertise, his analysis and preferred methodology is not law, and a violation of law is what Plaintiff was required to demonstrate. Further, exhibit 47, the chart created by others for Mr. Speckin, depicts his interpretation of data derived from a public records request and was not admitted except as demonstrative to permit him to opine generally.

Mr. Valenzuela testified that the final canvass was accurate. No clear and convincing evidence, or even a preponderance of evidence, contradicts him.

The Court having weighed all the evidence, argument, and legal memoranda and having assessed the credibility and demeanor of witnesses presenting testimony at trial, now enters the following Findings of Fact and Conclusions of Law. Therefore:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

As to Count III – Signature Verification:

a. The Court DOES NOT find either clear and convincing evidence or a preponderance of evidence of misconduct in violation of A.R.S. § 16-672(A)(1).

b. The Court DOES NOT find either clear and convincing evidence or a preponderance of evidence that such misconduct was committed by "an officer making or participating in a canvass" under A.R.S. § 16-672(A)(1).

c. The Court DOES NOT find either clear and convincing evidence or a preponderance of evidence that such misconduct did in fact affect the result of the 2022 General Election by a competent mathematical basis.

Therefore:

IT IS ORDERED: confirming the election of Katie Hobbs as Arizona Governor pursuant to A.R.S. § 16-676(B).

IT IS FURTHER ORDERED: that no further matters remain pending, except for costs, if any, sought by Defendants. In order that an expedited appeal might be taken, Defendants are ordered to submit a proposed form of judgment with finality language pursuant to Arizona Rule of Civil Procedure 56(c) by 5:00 p.m. Tuesday, May 23, 2023. Any objection to the proposed form of judgment and/or statement of costs must be submitted by 5:00 p.m. Wednesday, May 24, 2023. The Court will then enter the judgment required by A.R.S. § 16-676 forthwith.

EXHIBIT C

Clerk of the Superior Court
*** Filed ***
05/15/2023 7:30 PM

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2022-095403 05/15/2023

HONORABLE PETER A. THOMPSON

CLERK OF THE COURT
I. Ostrander
Deputy

KARI LAKE

BRYAN JAMES BLEHM

v.

KATIE HOBBS, ET AL.

CRAIG A MORGAN
THOMAS PURCELL LIDDY

JUDGE THOMPSON

UNDER ADVISEMENT RULING

The Court has considered the filings of the parties: Governor Katie Hobbs Renewed Motion to Dismiss, the Maricopa County Defendants' Memorandum of Law Supplementing Their Motion to Dismiss, and Secretary of State Adrian Fontes' Supplemental Memorandum in Support of Motion to Dismiss, along with the associated response and replies. The Court has also considered Plaintiff Kari Lake's Motion for Relief from Judgment, along with the associated responses and reply. The Court has considered the arguments of the parties at the hearing on May 12, 2023.

The Court considers each request for relief in turn.

BACKGROUND

This case was returned on remand from the Arizona Supreme Court. This Court's dismissal of Counts I, II, and IV – X were affirmed, and this Court's dismissal of Count III on the ground of laches was vacated and remanded. The mandate of the Arizona Supreme Court, as relevant here, states:

> It is further ordered remanding to the trial court to determine whether the claim that Maricopa County failed to comply with A.R.S. § 16-550(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 mathematical basis to conclude that the outcome would plausibly have been different, not simply an untethered assertion of uncertainty.

(alterations in original) (quoting *Lake v. Hobbs*, 525 P.3d 664, 668, ¶ 11 (App. 2023)). It is with this mandate in mind that the Court proceeds.

I. Motions to Dismiss

This Court will grant a motion to dismiss based on a Plaintiff's failure to state a claim upon which relief can be granted when, as a matter of law, the Plaintiff is not "entitled to relief under any interpretation of the facts susceptible of proof." *Coleman v. City of Mesa*, 230 Ariz. 352, 356, ¶ 8 (2012). In determining whether a complaint states a claim, the Court must assume all well-plead allegations are true and "indulge all reasonable inferences from those facts, but mere conclusory statements are insufficient." *State ex rel. Brnovich v. Ariz. Bd. of Regents*, 250 Ariz. 127, 130, ¶ 7 (2020) (citation omitted).

A Plaintiff need only provide a "short and plain statement of the claim showing that the pleader is entitled to relief." Ariz. R. Civ. P. 8. Arizona follows a notice pleading standard, meaning that the opponent need only be given "fair notice of the nature and basis of the claim and indicate generally the type of litigation involved." *Cullen v. Auto-Owners Ins. Co.*, 218 Ariz. 417, 419, ¶ 6 (2008).

Defendants raise problems with Count III that broadly fall into three (loosely) defined areas. First, Defendants challenge the form of the allegations. The Secretary raises the issue of whether the verification of the Complaint was proper. This argument was waived by not being raised on the initial motion to dismiss and by proceeding to trial in December. *Michael Weller, Inc. v. Aetna Cas. & Sur. Co.*, 126 Ariz. 323, 326 (App. 1980). After a full trial and appeals process, Defendants cannot now raise the issue of a defective verification for the first time on remand.

Similarly, the Governor argues that Lake fails to allege that any specific mail-in ballots were illegally counted. This argument fails first because Arizona is a notice pleading state, as noted above, and the Complaint generally alleges a violation of the EPM and A.R.S. § 16-550 by

failure to cure or reconcile signatures. In her Response to the Motion to Dismiss, Plaintiff concedes that she is not contesting the signature verification process for specific ballots. Lake now clarifies for the first time that, under the widest possible reading of Count III, she is contending that election officials failed to comply with the EPM and A.R.S. § 16-550 by not performing ANY steps to comply with level 2 or level 3 screening or notification of electors to cure ballots where level 1 screeners found signatures were inconsistent. Lake argues those ballots were counted in sufficient numbers to affect the outcome of the election. While the wording of Count III does not state this allegation clearly, it can be read broadly enough that Lake's argument fits under notice pleading requirements. The response and oral argument have further narrowed this claim sufficient for the Defendants to be on notice as to what violation Lake is arguing.

The second area Defendants attack is the legal sufficiency of the allegations. Maricopa County makes the compelling argument that Lake's challenge to signatures on mail-in ballot envelopes seeks relief beyond that which the legislature has provided. Simply put, the County argues that because a party representative can challenge ballot signature reconciliation as it is taking place, the legislature has provided an exclusive remedy for the challenge that Lake brings. *See* A.R.S. § 16-552. It is true that where the legislature has provided for a right "and also provides a complete and valid remedy for the right created the remedy thereby given is exclusive." *Valley Drive-In Theatre Corp. v. Super. Ct. In and For Pima Cnty.*, 79 Ariz. 396, 400 (1955). The Court agrees with the County that the legislature statutorily limited a party's recourse for challenging individual signatures for consistency – which would otherwise completely cripple the election system. But this relief at the level of individual ballots does not preclude a claim that the County Recorder failed entirely to perform ANY level 2 or level 3 signature verification on ballots where level 1 screeners found signatures were not similar. *See Reyes v. Cuming*, 191 Ariz. 91 (App. 1997). This is in sharp contrast to an allegation that the Recorder or designee improperly exercised his or her discretion within the policy.

Additionally, the Governor argues that it is now simply too late to litigate Count III because Governor Hobbs has been in office for five months. But A.R.S. § 16-676 imposes no time limit on when, assuming all other procedural requirements are timely met, the Court may grant relief. Granted, the statute as written does not appear to take into consideration a fulsome appeals process resulting in a trial on remand – but the Court must give effect to each word of the statute as written. *See McCaw v. Ariz. Snowbowl Resort*, 254 Ariz. 221, 226, ¶ 16 (App. 2022). Subsection (C) states simply that if the court determines "that a person other than the contestee has the highest number of legal votes, the court shall declare that person elected" and further nullify the certificate of election of the person whose office is contested. The Court sees no requirement that appeal and remand take place within a certain time for Lake to be eligible for this relief, and cannot read such a requirement into the statute so as to expand its provisions. *City of Tempe v. Fleming*, 168 Ariz. 454, 457 (App. 1991); *see also Lake*, 525 P.3d at 667, ¶ 5 ("We are not permitted to read into the election contest statute what is not there.") (quoting *Grounds v. Lawe*, 67 Ariz. 176, 187 (1948)).

In this second area, Maricopa County argues that because Lake does not simultaneously allege both misconduct *and* illegal vote grounds under Count III that she cannot prevail. *See* A.R.S. § 16-672(A)(1), (4). But this argument is not persuasive. If Maricopa County is right, any challenger under Section 16-672 would be required to double-up and allege (A)(4) grounds whenever they bring any challenge under (A)(1), (A)(3), or (A)(5) as these grounds rest on the assumption that some number of ballots were illegally placed in or out of the correct column. The Court reads the statute as providing five discrete reasons that a challenger may seek relief. It may have been more prudent to allege more than one ground for each set of facts that Lake brings in her complaint, but the Court will not dismiss the Count on the grounds that her failure to do so leaves Defendants lacking notice as to what her claims are. Indeed, her complaint at Paragraph 151 specifically notes that "[t]o be *lawful and eligible for tabulation*, the signature on the affidavit accompanying an early ballot must match the signature featured on the elector's registration record." A.R.S. § 16-550. This is sufficient to put Maricopa County on notice of Lake's objections.

The third and last area focuses on the substance or completeness of the allegations. The Secretary objects that Lake has not stated in her complaint exactly how many ballots were improperly admitted. But Lake is not required to do so in her complaint: Arizona is a notice pleading state, and the Court finds that while she must raise the nature of the violation of election rules for which she seeks relief, she does not need to plead a precise number of ballots. Put another way, Lake must prove a competent mathematical basis to win at trial, but she need not plead a specific number of votes in her complaint under notice pleading. *See Verduzco v. Amer. Valet*, 240 Ariz. 221, 225, ¶ 9 (App. 2016) ("Under Arizona's notice pleading rules, 'it is not necessary to allege the evidentiary details of plaintiff's claim for relief.'") (quoting Daniel J. McAuliffe & Shirley J. McAuliffe, Arizona Civil Rules Handbook at 21 (2015 ed.)).

The Defendants also argue that these claims are at least in part based on reports and allegations related to the 2020 election. This is an evidentiary argument for trial rather than a basis to dismiss Plaintiff's claim wholesale. Any expert opinions based on the 2020 election analysis must be based upon adequate foundation for not only their reliability but their relevance to the 2022 election. Even where admitted at trial, such opinions would only be entitled to the weight deemed appropriate based upon their foundation.

In her response and at oral argument, Lake conceded that she is not challenging the process of signature review as to any specific ballot(s), whether any given signature matches a voter's record, or that the process was effective. She is instead alleging misconduct by the Maricopa County Defendants through a wholesale failure at the "higher-tier signature verification process" to reconcile non-conforming signatures, or to cure signatures pursuant to A.R.S. § 16-550. She alleges that Maricopa County entirely failed to perform the signature matching required by statute. As Lake put it in her response, she "brings a *Reyes* claim, not a *McEwen* claim. She challenges

Maricopa's failure to act, not its action on any particular ballot." (citing *McEwen v. Sainz*, No. CV-22-163 (Santa Cruz Super. Ct. Aug. 8, 2022)). Taking Lake's concession, she has stated a claim.

As was said in this Court's order of December 19, 2022, whether Maricopa County complied with the EPM and statutes governing elections is a question of fact. Lake has narrowed her claim to that complained of in *Reyes*, and she must demonstrate at trial pursuant to her concessions that Maricopa County's higher level signature reviewers conducted no signature verification or curing and in so doing had systematically failed to materially comply with the law. This is, of course, in addition to the requirement that she prove that this alleged complete failure to conduct signature verification resulted in a change in the outcome of the gubernatorial election proven by "competent mathematical basis." All of this must be done by clear and convincing evidence. *Lake*, 525 P.3d at 668, ¶ 10.

The renewed motions to dismiss as to Count III are denied.

II. Motion for Relief from Judgment

Lake moves for Rule 60 relief as to Counts II, V, and VI on grounds of newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b)(1), fraud on the court, and the catch-all "any other reason justifying relief." Ariz. R. Civ. P. 60(b)(2), (3), (6).

To the extent that the civil rules can apply without contradiction to an election challenge, they do apply. This includes Rule 60. The Court will not rehash arguments going back to the motion to dismiss order. While, admittedly, the election challenge statutes do not show a great deal of consideration for post-trial rules of civil procedure, had the legislature wanted to abrogate or accelerate the rules for an election challenge so as to preclude Rule 60 relief they would have done so. The Court finds the motion is timely.

However, the merits of the motion are another matter. The dismissed Count II alleged that "[t]he [Ballot on Demand] *printers* involved in the tabulator problems . . . are not certified and have vulnerabilities that render them susceptible to hacking . . . ." Lake attempts to rescue Count II by arguing that evidence now shows that Maricopa County reinstalled software on memory cards used in the ballot *tabulators* without performing logic and accuracy testing. Assuming that this evidence could not have been discovered before trial, it goes to a completely different set of election day processes than that alleged in Count II – suggesting that the tabulators were maliciously configured to not *read* ballots is different in kind from alleging that the printers could not *write* the ballots correctly. The time to amend a complaint is before the matter goes to trial, not after. In fact, the law does not permit amendments of election contest complaints at any time after the contest filing deadline has passed, even to conform to the evidence. *See Kitt v. Holbert*,

30 Ariz. 397, 406 (1926) (holding "a statement of contest in an election contest may not be amended, after the time prescribed by law for filing such contest has expired" to fix the failure to allege the contestant was a proper elector).

While the difference between a tabulator-based claim and a printer-based claim may seem like a subtle distinction, it is not. Count II was fully litigated at trial and this Court's disposition was affirmed by both the Court of Appeals and Arizona Supreme Court. This is not newly discovered evidence that goes to the claim as presented to the Court in December and reviewed on appeal, it is a wholly new claim, and therefore Count II remains unrevived.

Lake also takes issue with the testimony of Scott Jarrett, who testified that the voting center difficulties faced on election day were minor in scope. Lake, needless to say, disagrees, and offers additional evidence in an attempt to demonstrate fraud or misconduct. Lake took this same position at trial and even recalled Scott Jarrett in her case in chief. But evidence that is merely cumulative that would not have changed the result is not sufficient to revive a claim under Rule 60. *Ruesga v. Kindred Nursing Ctrs., L.L.C.*, 215 Ariz. 589, 595, ¶ 17 (App. 2007). Nor is it enough to disagree with a witness or find evidence contradicting a witness to prevail under Rule 60. Scienter – a knowing falsehood – is what is required to find fraud. *See Est. of Page v. Litzenburg*, 177 Ariz. 84, 94 (App. 1993) (affirming Rule 60 grant on basis of "conspicuous inference that [non-movant] engaged in knowing or deliberate misconduct"). Mere contradiction is not enough to prevail on grounds of fraud or misrepresentation, and this is all Lake offers now.

The allegation of fraud also leaps over a substantial gap in the evidence presented. The Court notes that counsel's representation of what the McGregor report would show is 180 degrees from what the report actually says. Rather than demonstrating that Mr. Jarrett lied, it actually supports his contention that the machine error of the tabulators and ballot printers was a mechanical failure not tied to malfeasance or even misfeasance. At trial in December 2022, Plaintiff presented the purely technical evaluation of Clay Parikh which found the only possible cause of the malfunctions on election day could be willful and intentional systemic manipulation to create the errors encountered. However, those conclusions were undermined completely by the very next witness at trial, David Betencourt. The testimony of Mr. Betencourt, who was called by Plaintiff, was summarized previously by this Court:

> "Mr. Betencourt testified that there were, in fact, multiple technical issues experienced on election day. He testified that these were solved by means such as: 1) taking out toner and/or ink cartridges and shaking them, 2) cleaning the corona wire, 3) letting the printers warm up, 4) cleaning the tabulators, and 5) adjusting settings on the printer. It is of note that, apart from 5), none of these solutions implicates the ballot in a manner suggesting intent. Mr. Betencourt testified that each of these on-site actions were successful to varying degrees, with shaking the

> toner cartridge being the most effective. It is worth repeating that ballots that could not be read by the tabulator immediately because of printer settings – or anything else – could be deposited in Door 3 of the tabulator and counted later after duplication by a bipartisan adjudication board.
>
> Mr. Betencourt testified that, not only did he lack knowledge of any T-Tech (or anyone else) engaging in intentional misconduct, but further testified that the T-Techs he worked with diligently and expeditiously trouble-shot each problem as they arose, and they did so in a frenetic Election Day environment. Plaintiff's own witness testified before this Court that the BOD printer failures were largely the result of unforeseen mechanical failure."

Interestingly, months later after extensive review, testing, and evaluation of the equipment involved under secure conditions, the report by Former Arizona Supreme Court Chief Justice Ruth McGregor came to the same conclusions. Plaintiff now seeks to allege fraud based upon the same type of purely technical evaluations presented in the first trial. This is not evidence of fraud, but additional evidence offered to support the view that error codes can prove intent and state of mind, exclusive of all other theories. The Court is not required to accept that premise, especially on remand after a full trial and appeal.

Ignoring Defendants' view of the testimony and taking all inferences in favor of Plaintiff, even if Lake may have demonstrated that Mr. Jarrett was mistaken on the first day of trial, that is not sufficient for Rule 60 relief. Even Mr. Parikh conceded that ballots which were not read by tabulators at the voting centers were transposed to new ballots and counted at Maricopa County's downtown central facility later.

Additionally, the Court notes that counsel's representation in the Motion to the effect that the Parikh Declaration supports a finding that 8,000 ballots "maliciously misconfigured to cause a tabulator rejection, *were not counted"* is not supported by a Declaration that 8,000 ballots were "affected" by an error. The oral arguments presented on May 12, 2023, clarified that error codes do not correspond to votes not counted. Counsel cannot leap a gap in proof with unsupported bare assertions.

Finally, the Court notes with respect to Lake's request to reconsider dismissal of Counts V and VI – pertaining to alleged equal protection and due process violations – the motion does not grapple at all with the reason the Court dismissed those claims in its December 19, 2022, minute entry. These counts are simply bootstrapped constitutional arguments "tak[ing] the verified statement beyond the remedies provided by the election contest statute, which is impermissible." (citing *Donaghey v. Att'y Gen.*, 120 Ariz. 93, 95 (1978)). The reply's suggestion that the "issues"

be revived independent of the "counts" does not remedy this issue. Reconsideration of them is not warranted.

This is a claim which was fully litigated at trial and on appeal over seven months since the November 8, 2022, election. The evidence presented falls far below what is needed to establish a basis for fraud. It is important to remember that this is an election challenge and focuses on votes affected which would change the outcome of the election. Plaintiff has not established a basis for relitigating the previously adjudicated counts.

IT IS THEREFORE ORDERED denying Plaintiff's Motion for Relief from Judgment.

IT IS FURTHER ORDERED reaffirming the trial dates set forth in this court's May 8, 2023, minute entry setting the matter for trial on Count III.

IT IS FURTHER ORDERED denying the Motion to File Amicus Curae Brief submitted by a third party and opposed by all parties to this litigation.

The Court notes the Amicus Brief is essentially a refiling of the Amicus Curae Briefs filed at the Arizona Court of Appeal and Arizona Supreme Court. Those issues have been ruled upon by those courts.