Paul F. Eckstein (#001822)
Alexis E. Danneman (#030478)
Matthew R. Koerner (# 035018)
Margo R. Casselman (#034963)
Samantha J. Burke (#036064)
PERKINS COIE LLP
2901 North Central Avenue, Suite 2000
Phoenix, Arizona 85012-2788
Telephone: +1.602.351.8000
PEckstein@perkinscoie.com
ADanneman@perkinscoie.com
MKoerner@perkinscoie.com
MCasselman@perkinscoie.com
SBurke@perkinscoie.com
DocketPHX@perkinscoie.com

Attorneys for Defendant/Contestee Kris Mayes

ARIZONA SUPERIOR COURT

MOHAVE COUNTY

TED BOYD, et al.,

Plaintiffs/Contestants,

v.

KRIS MAYES,

Defendant/Contestee,

and

ADRIAN FONTES, et al.,

Defendants.

No. S8015CV202201468

RESPONSE TO PLAINTIFFS' FIFTH NOTICE OF SUPPLEMENTAL AUTHORITY

(Assigned to the Hon. Lee F. Jantzen)

Plaintiffs have now filed a *fifth* notice of supplemental authority—an unpublished order issued by the Maricopa County Superior Court in another case. *See* Order Under Advisement, *Lake v. Hobbs*, No. CV 2022-095403 (Maricopa Cty. Super. Ct. May 15, 2023) ("Lake Order"). The Lake Order addressed a Rule 60 motion following an appeal and an order vacating and remanding the case back to the trial court based on legal error on a single claim. It did not involve, as here, a Rule 59 motion for a new trial filed before the entry of judgment and seeking, not just a new trial, but also to conduct an extensive, hand recount.[1]

Plaintiffs argue that the Lake Order assists them in two respects. It does not. The order is neither binding, nor persuasive.

First, Plaintiffs claim to submit the Lake Order to support their argument that "[t]o the extent that the civil rules can apply *without contradiction* to an election challenge, they do apply." [Lake Order at 8 (emphasis added)] The Attorney General agrees. [*See* Resp. to New Trial Mot. at 3] But here, Plaintiffs' Rule 59 motion *does* conflict with the election contest statute. [*See id.* at 2–3 (explaining conflict)] The Lake Order does not specifically address any of the arguments as to why a motion for a new trial would conflict with the contest statutes.

Second, Plaintiffs argue that the Lake Order "addressed the court's ability to grant relief despite Governor Hobbs having been in office for five months." The Lake Order glosses over and does not expressly address the specific mootness argument the Attorney General raised here, which is that an election contest becomes moot once an officer is sworn into office because the relief available under the election contest statute does not include removal from office. [*See* Mayes Resp. Mot. New Trial at 17]

Further, Plaintiffs' argument based on *Campbell v. Hunt* in the notice is both

[1] Last week, the Lake court conducted a limited trial on a single count. The trial court has since ruled against the contestant, ended the contest, and confirmed the election of the Governor.

inappropriate and misplaced. Again, the expedited timelines under the current election contest statute did not exist in 1917, when that case was decided. *See* 1913 Civ. Code §§ 3061, 3063–64 (1913).

Finally, Plaintiffs assert (at 2) that "Contestees have argued that . . . the recount provisions foreclose further proceedings." Plaintiffs misapprehend the law and the Attorney General's position. Again, Plaintiffs request a post-trial review of many thousands of ballots—Plaintiffs' own second recount. Recounts can only be conducted pursuant to statute. And "no authority exists in Arizona for ordering the [additional] recount requested by appellant." *Barrera v. Superior Ct., In And For Graham Cnty.*, 117 Ariz. 528, 530 (App. 1977).

Dated: May 23, 2023

PERKINS COIE LLP

By: *s/ Alexis Danneman*
Paul F. Eckstein
Alexis E. Danneman
Matthew R. Koerner
Margo R. Casselman
Samantha J. Burke
2901 North Central Avenue, Suite 2000
Phoenix, Arizona 85012-2788

Attorneys for Defendant/Contestee Kris Mayes

Original efiled with the Mohave County Superior Court and served on the following parties through AZTurboCourt on this 23rd day of May 2023:

Honorable Lee F. Jantzen
Mohave County Superior Court Judge
c/o Danielle Lecher
DLecher@courts.az.gov
Division4@mohavecourts.com

David A. Warrington
Gary Lawkowski
DHILLON LAW GROUP, INC.
2121 E. Eisenhower Ave., Ste. 608
Alexandria, VA 22314
DWarrington@dhillonlaw.com
GLawkowski@dhillonlaw.com

Timothy A. La Sota
TIMOTHY A. LA SOTA, PLC
21 E. Camelback Rd., Ste. 305
Phoenix, AZ 85016
tim@timlasota.com

Alexander Kolodin
Veronica Lucero
Arno Naeckel
James Sabalos
Davillier Law Group, LLC
4105 N. 20th St., Suite 110
Phoenix, AZ 85016
akolodin@davillierlawgroup.com
vlucero@davillierlawgroup.com
anaeckel@davillierlawgroup.com
jsabalos@davillierlawgroup.com
phxadmin@davillierlawgroup.com

Jennifer J. Wright
Jennifer Wright Esq., PLC
4350 E. Indian School Rd., Suite 21-105
Phoenix, AZ 85018
jen@jenwesq.com

Sigal Chattah
Chattah Law Group
5875 S. Rainbow Blvd. #204
Las Vegas, NV 89118
Chattahlaw@gmail.com
Attorneys for Plaintiff/Contestant Abraham Hamadeh

Thomas P. Liddy
Joseph La Rue
Joe Branco
Karen Hartman-Tellez
Jack L. O'Connor III
Sean M. Moore
Rosa Aguilar
Maricopa County Attorney's Office
225 West Madison St.
Phoenix, AZ 85003
liddyt@mcao.maricopa.gov
laruej@mcao.maricopa.gov
brancoj@mcao.maricopa.gov
hartmank@mcao.maricopa.gov
oconnorj@mcao.maricopa.gov
moores@mcao.maricopa.gov
aguilarr@mcao.maricopa.gov
c-civilmailbox@mcao.maricopa.gov

Emily Craiger
The Burgess Law Group
3131 E. Camelback Rd., Suite 224
Phoenix, AZ 85016
Emily@theburgesslawgroup.com
Attorneys for Defendants Stephen Richer, Maricopa County Recorder and Maricopa County Board of Supervisors

Celest Robertson
Joseph Young
Apache County Attorney's Office
245 W. 1st South
St. Johns, AZ 85936
crobertson@apachelaw.net
jyoung@apachelaw.net
Attorneys for Defendants Larry Noble, Apache County Recorder and Apache County Board of Supervisors

Christine J. Roberts
Paul Correa
Cochise County Attorney's Office
150 Quality Hill Rd.
Bisbee, AZ 85603
croberts@cochise.az.gov
pcorrea@cochise.az.gov
Attorneys for Defendants David W. Stevens, Cochise County Recorder and Cochise County Board of Supervisors

Bill Ring
Coconino County Attorney's Office
110 E. Cherry Ave.
Flagstaff, AZ 86001
wring@coconino.az.gov
Attorneys for Defendants Patty Hansen, Coconino County Recorder and Coconino County Board of Supervisors

Jeff Dalton
Gila County Attorney's Office
1400 E. Ash St.
Globe, AZ 85551
jdalton@gilacountyaz.gov
Attorneys for Defendants Sadie Jo Bingham, Gila County Recorder and Gila County Board of Supervisors

Jean Roof
Graham County Attorney's Office
800 W. Main St.
Safford, AZ 85546
jroof@graham.az.gov
Attorneys for Defendants Polly Merriman, Graham County Recorder and Graham County Board of Supervisors

Scott Adams
Greenlee County Attorney's Office
P.O. Box 1717
Clifton, AZ 85533
sadams@greenlee.az.gov
Attorneys for Defendants Sharie Milheiro, Greenlee County Recorder and Greenlee County Board of Supervisors

Ryan N. Dooley
La Paz County Attorney's Office
1320 Kofa Ave.
Parker, AZ 85344
rdooley@lapazcountyaz.org
Attorneys for Defendants Richard Garcia, La Paz County Recorder and La Paz County Board of Supervisors

Ryan Esplin
Mohave County Attorney's Office Civil Division
P.O. Box 7000
Kingman, AZ 86402-7000
esplinr@mohave.gov
Attorneys for Defendants Kristi Blair, Mohave County Recorder and Mohave County Board of Supervisors

Jason Moore
Navajo County Attorney's Office
P.O. Box 668
Holbrook, AZ 86025-0668
jason.moore@navajocountyaz.gov
Attorney for Defendants Michael Sample, Navajo County Recorder, and Navajo County Board of Supervisors

Daniel Jurkowitz
Ellen Brown
Javier Gherna
Pima County Attorney's Office
32 N. Stone #2100
Tucson, AZ 85701
Daniel.Jurkowitz@pcao.pima.gov
Ellen.Brown@pcao.pima.gov
Javier.Gherna@pcao.pima.gov
Attorney for Defendants Gabriella Cázares-Kelley, Pima County Recorder, and Pima County Board of Supervisors

Craig Cameron
Scott Johnson
Allen Quist
Jim Mitchell
Pinal County Attorney's Office
30 North Florence Street
Florence, AZ 85132

craig.cameron@pinal.gov
scott.m.johnson@pinal.gov
allen.quist@pinal.gov
james.mitchell@pinal.gov
Attorneys for Defendants Dana Lewis, Pinal County Recorder, and Pinal County Board of Supervisors

Kimberly Hunley
Laura Roubicek
Santa Cruz County Attorney's Office
2150 North Congress Drive, Suite 201
Nogales, AZ 85621-1090
khunley@santacruzcountyaz.gov
lroubicek@santacruzcountyaz.gov
Attorneys for Defendants Suzanne Sainz, Santa Cruz County Recorder, and Santa Cruz County Board of Supervisors

Colleen Connor
Thomas Stoxen
Yavapai County Attorney's Office
255 East Gurley Street, 3rd Floor
Prescott, AZ 86301
Colleen.Connor@yavapaiaz.gov
Thomas.Stoxen@yavapaiaz.gov
Attorney for Defendants Michelle M. Burchill, Yavapai County Recorder, and Yavapai County Board of Supervisors

Bill Kerekes
Yuma County Attorney's Office
198 South Main Street
Yuma, AZ 85364
bill.kerekes@yumacountyaz.gov
Attorney for Defendants Richard Colwell, Yuma County Recorder, and Yuma County Board of Supervisors

Craig Alan Morgan
Shayna Stuart
Jake T. Rapp
Law Offices of Sherman & Howard, LLC
2555 East Camelback Road, Suite 1050
Phoenix, Arizona 85016
CMorgan@ShermanHoward.com
SStuart@shermanhoward.com
JRapp@ShermanHoward.com
Attorneys for Defendant Arizona Secretary of State Adrian Fontes

s/ Indy Fitzgerald
Perkins Coie, LLP