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**IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF MARICOPA**

**ARIZONA DEMOCRATIC PARTY, an
Arizona political party and political action
committee; STEVE GALLARDO, a
qualified elector,**

Plaintiffs,

vs.

**KAREN FANN, in her official capacity as
President of the Arizona Senate; WARREN
PETERSEN, in his official capacity as
Chairman of the Senate Judiciary
Committee; KEN BENNETT, in his official
capacity as the liaison of the Arizona Senate;
and CYBER NINJAS, INC., a Florida
corporation,**

Defendants.

Case No.: CV2021-006646

**REQUEST FOR EMERGENCY STATUS
CONFERENCE REGARDING THE
COURT’S *SUA SPONTE* RELEASE OF
EXHIBIT D9 TO THE PUBLIC**

**(Assigned to the
Honorable Daniel Martin)**

Defendant Cyber Ninja, Inc. (“Cyber Ninjas”), by and through undersigned counsel, request an Emergency Status Conference Regarding the Court’s *Sue Sponte* Release of Exhibit D9 to the public.

On April 26, 2021, Cyber Ninjas filed its *Motion To File Ex Parte And Under Seal [Arcp 5.4] And Notice Of Lodging* (“**Motion to Seal**”). The Motion to Seal contained Exhibit D9 and Exhibit D10. Subsequently, on April 28, 2021, the Court held a hearing on the Motion to Seal,

1 *inter alia*. The Court denied the Motion to Seal, but as its part of the Order the Court stayed its
2 ruling “until 12:00 p.m. on April 29, 2021 in order to allow Defendant Cyber Ninjas, Inc. ... time
3 to seek appellate review.” *See* Min Entry, Apr. 29, 2021, at 3.

4 On April 29, 2021 at 11:02 am, fifty-eight (58) minutes prior to the 12:00 pm deadline,
5 undersigned counsel emailed the following to the Court’s judicial assistant:

6 Defendant Cyber Ninjas, Inc.’s previously filed Motion to Seal
7 documents, which has been commonly referred to as Exhibit D.
8 Yesterday, the Court denied the Motion to Seal and gave Cyber Ninjas
9 until 12:00 pm today to produce Exhibit D to Plaintiff Arizona
10 Democratic Party. Exhibit D contains subpart D9 which is the *Arizona*
11 *Audit Security Overview* (“Exhibit D9”). Exhibit D9 contains security
information that should not be available to the public. Cyber Ninja
and Plaintiff and intervenors have reached an agreement regarding
Exhibit D9. Accordingly, we request that the Court not publicly
release Exhibit D9 or instruct the Clerk of Court to publicly release
Exhibit D9.

12 Please let us know if the Court would prefer that the parties file a
13 stipulated motion regarding Exhibit D9 or have a quick status
conference to discuss further.

14 *See* Email, dated April 29, 2021, attached hereto as **Exhibit A**.¹

15 At 11:38 am, the Court’s judicial assistant stated that “The Court would prefer that the
16 parties file a stipulated motion regarding Exhibit D9.” *See id.* Accordingly, undersigned counsel
17 drafted the stipulated motion and emailed it to all parties involved in this matter.

18 At 12:58 pm, the Court’s judicial assistant sent an email to undersigned counsel, Ms. Desai,
19 and Mr. Langhofer, which stated, “The Court is asking for an update on the stipulated motion.”
20 Undersigned counsel informed the Court’s judicial assistant that “All parties have been provided
21 a proposed joint stipulated motion. I am waiting on approval. I will follow-up with the Court once
22 the parties have approved the joint stipulated motion.”² *Id.*

23 At 3:32 pm, Cyber Ninjas filed the *Stipulation To Seal Exhibit D9* (the “**Stipulation**”),
24 which requested that the Court seal Exhibit D9 because it contained “sensitive security
25 information regarding the Audit taking place at the Arizona Veterans Memorial Coliseum[.]” *Stip.*

26 _____
27 ¹ Rooplai Desai and Kory Langhofer were included on the email.

28 ² Undersigned counsel informed the Court that Cyber Ninja had already disclosed Exhibit D to
the plaintiffs. *See* Ex. A.

1 To Seal Ex. D9 at 1:25-27 attached hereto as **Exhibit B**. The Stipulation also stated that the parties
2 agreed that Exhibit D9 will be produced with the designation “Attorney’s Eyes Only” and
3 identified the parties that were authorized to review the document. *Id.* at 1:28-2:1, n. 1.³ A courtesy
4 copy of the Stipulation was provided to the Court’s judicial assistant at 3:45 pm, and three minutes
5 later, the Court’s judicial assistant responded, “Thank you.” *See* Email attached hereto as **Exhibit**
6 **C**.⁴

7 Although the Court had knowledge since 11:02 am that the Parties agreed that Exhibit D9
8 should be sealed and not made available to the public, the Court released Exhibit D9 to the public
9 via Maricopa County’s Clerk of the Superior Court website.⁵ *See* Image attached hereto as **Exhibit**
10 **D**. It is not known when the Court released the Exhibit D9, it began to appear on the internet after
11 6:00 pm. At or around 10:12 pm, ABC15.com published an article describing details of Exhibit
12 D9 and had knowledge of the agreement between the parties that Exhibit D9 was not to be release
13 to the public. *See* Article attached hereto as **Exhibit E**.⁶

14 Therefore, Cyber Ninjas request an emergency status conference regarding the public
15 disclosure of Exhibit D9.

16 **RESPECTFULLY SUBMITTED** this 29th day of April, 2021.

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

18 /s/ Jordan C. Wolff

19 Dennis I. Wilenchik, Esq.

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Attorneys for Defendant Cyber Ninjas, Inc.

24 ³ Cyber Ninja produced Exhibit D, including Exhibit D9, which was designated as “Attorney’s
25 Eyes Only” to plaintiffs prior to the 12:00 pm deadline. *See* Email attached as **Exhibit F**.

26 ⁴ The Court entered an Order granting the Stipulation on April 30, 2021. *See* **Exhibit G**.

27 ⁵ Cyber Ninjas was not provided any notice that the Court was going to publicly release Exhibit
28 D9.

⁶ <https://www.abc15.com/news/state/cyber-ninjas-security-plan-details-anticipated-attack-by-antifa>

1 **ELECTRONICALLY FILED** April 29, 2021 via AZTurboCourt

2 **ELECTRONICALLY SERVED** April 29, 2021 via AZTurboCourt upon:

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9 10 11 12 13 14	Roopali H. Desai D. Andrew Gaona Kristen Yost Coppersmith Brockelman PLC 2800 N. Central Ave., Ste. 1900 Phoenix, Arizona 85004 rdesai@cblawyers.com agaona@cblawyers.com kyost@cblawyers.com <i>Attorneys for Plaintiff Arizona Democratic Party</i>	Mary R. O'Grady Joshua D. Bendor, Emma J. Cone-Roddy OSBORN MALEDON, P.A. 2929 North Central Avenue, 21 st Fl. Phoenix, Arizona 85012-2793 mogrady@omlaw.com jbendor@omlaw.com econe-roddy@omlaw.com <i>Attorneys for Secretary of State Katie Hobbs</i>
15 16 17 18 19	Daniel C. Barr, Esq. Samantha J. Burke, Esq. 2901 N. Central Ave., Ste. 2000 Phoenix, Arizona 85012-2788 DBarr@perkinscoie.com SBurke@perkinscoie.com <i>Attorneys for First Amendment Coalition of Arizona, Inc.</i>	

20
21 /s/ Hilary Myers