

SETTLEMENT AGREEMENT,

The parties to this Settlement Agreement (“Agreement”) are the Arizona Democratic Party (“ADP”), Supervisor Steve Gallardo in his individual capacity (“Gallardo”), Secretary of State Katie Hobbs in her official capacity (“Secretary”), the First Amendment Coalition of Arizona, Inc. (“FACA”), Senate President Karen Fann in her official capacity (“Fann”), Senator Warren Petersen in his official capacity (“Petersen”), Ken Bennett (“Bennett”), and Cyber Ninjas, Inc. (“CN”). ADP, Gallardo, the Secretary, and FACA may be referred to collectively hereafter as “Plaintiffs.” Fann, Petersen, and Bennett may be referred to collectively hereafter as the “Senate Defendants.” Fann, Petersen, Bennett, and CN may be referred to collectively hereafter as “Defendants.” The parties may be referred to separately hereafter as a “Party” or collectively as the “Parties.”

Recitals

1. On April 22, 2021, ADP and Gallardo filed an action in Arizona Superior Court (Maricopa County) against Defendants related to the conduct of an audit of the 2020 General Election results in Maricopa County, CV2021-006646 (“Litigation”).
2. On April 27, 2020, FACA and the Secretary were permitted to intervene in the Litigation.
3. The Parties, in consultation with their respective counsel and in order to avoid additional litigation, have agreed to settle all claims against each other that have been in the Litigation.

The Parties affirm the accuracy of the foregoing recitals, and agree as follows:

Terms of Agreement

1. **Conduct of the Audit.** In exchange for the release provided in this Agreement, the Defendants agree as follows:
 - a. Defendants have disclosed or will disclose the following policies or procedures for the audit, and CN warrants and represents that each of the following was in effect on or earlier than April 27, 2021 and will remain in place for the duration of the audit: all documents comprising “Exhibit D” originally lodged under seal with the Court on April 25, 2021, and all policies and procedures Defendants and their agents are using to conduct the audit. This includes training plans and documents to ensure that all workers understand and comply with all security procedures applicable to ballots and electronic voting systems, and forms utilized to conduct the audit, including chain of custody forms, tally sheets, and forms used to aggregate tallies.
 - b. CN and their agents will not compare signatures on early ballot envelopes with signatures from the voter registration file. The Senate Defendants warrant

and represent that they are not currently comparing signatures on early ballot envelopes with signatures from the voter registration file, and will notify Plaintiffs within 48 hours of any decision to undertake such signature comparison and afford Plaintiffs 48 hours to respond to resolve any concerns. If the parties cannot resolve the issue in a mutually agreeable manner, Plaintiffs may seek emergency injunctive and/or declaratory relief in court to seek compliance with the law.

- c. Defendants and their agents will not have pens with blue or black ink anywhere ballots are handled and will take reasonable precautions to prevent the alteration, damage, or destruction of any ballot during the conduct of the audit.
- d. Security assurances: (i) Defendants and their agents will continue to have and abide by policies to ensure that Maricopa County voting systems are secured in a manner that prevents unauthorized access or tampering, including maintaining a detailed log of who accesses the machines; (ii) Defendants and their agents will continue to have and abide by policies to ensure that ballots are secured in a manner that prevents unauthorized access, including maintaining a detailed log of who accesses the ballots; (iii) Defendants and their agents will continue to have and abide by policies to ensure that electronic data from and electronic or digital images of ballots are secured in a manner that protects them from physical and electronic access, including unauthorized copying or transfer; (iv) Defendants and their agents will continue to have and abide by policies to ensure that voter information from the voter registration database, including digital images of voter signatures, are secured in a manner that protects them from physical and electronic access, including unauthorized copying or transfer.
- e. Defendants and their agents will have and abide by policies to prevent the publication of scanned images of ballots without first securing a court order authorizing such publication.
- f. Defendants and their agents will have and abide by policies to ensure that no provisional ballot envelope that was not verified by the County Recorder (and was therefore previously unopened) is opened.
- g. Defendants and their agents will allow the news media to observe and report on the audit without signing up to participate in or volunteer at the audit, and on reasonable terms, including allowing the news media to use note pads and red or green pens. The news media is free to take still and video photography, except of ballots where the ballot markings can be ascertained by the naked eye or a zoom lens.
- h. Defendants and their agents will permit observers designated in advance by the Secretary, not to exceed three designees per shift, to observe and monitor the audit, including processing of ballots and election equipment hardware, without the designees signing up as volunteer observers for the audit. Such observation and monitoring shall be permitted on reasonable terms, and observers will be permitted to use non-white note pads and red or green pens, including on the counting floor.

2. **Dismissal of Claims in the Litigation.** The Parties agree that they will stipulate to the dismissal of the Litigation with prejudice and with all parties to bear their own fees and costs upon the execution of this Agreement.

3. **Release.** Each Plaintiff releases Defendants from legal liability for all claims that were advanced by that Plaintiff in the Litigation. This release does not include any claim that is not currently pending in the Litigation or any claim that may arise in the future.

4. **No Admission of Fault.** By entering into this Agreement, the Parties do not admit any fault or liability, or lack thereof, related to the allegations or defenses made by any Party in the Litigation. This Agreement is a compromise of disputed claims.

5. **Public Release of Agreement.** This Agreement is not confidential and may be released or discussed in public by any Party.

6. **Knowing and Voluntary Agreement.** Each Party enters into this Agreement as a matter of free will and has not been pressured or coerced in any way into signing this Agreement. Each Party expressly represents and warrants that the persons signing below are authorized to execute this Agreement on the Party's behalf.

7. **Severability.** If any provision or part of any provision of this Agreement is held to be invalid or for any reason unenforceable by a court of competent jurisdiction, the remaining portions of this Agreement will remain in full force and effect to the maximum extent permitted by law.

8. **Modification/Waiver.** No modification, amendment or waiver of any of the provisions contained in this Agreement will be binding upon any Party hereto unless made in writing and signed by such party or by a duly authorized officer or agent of such Party.

9. **No Presumption Against Drafter.** This Agreement has been negotiated and prepared by all Parties and their respective counsel, and any rule of construction under which ambiguities are to be resolved against the drafter will not apply in interpreting this Agreement.

10. **Entire Agreement; Choice of Law.** This Agreement constitutes a single, integrated written contract expressing the entire agreement of the Parties concerning the subject matter of this Agreement. No other agreements or understandings of any kind concerning the subject matter of this Agreement, whether express or implied in law or fact, have been made by the Parties to this Agreement. This Agreement will be construed in accordance with, and be governed by, the laws of the State of Arizona.

11. **Enforcement.** If there is a question or concern about Defendants' or their agents' compliance with any part of this Agreement, Plaintiffs and Defendants will make a

good faith effort to resolve the issue by mutual agreement. Within 48 hours of identifying a potential breach of this Agreement, Plaintiffs shall notify Defendants of the issue and afford the Defendants 48 hours to respond. If the parties cannot resolve the issue in a mutually agreeable manner, Plaintiffs may seek emergency injunctive and/or declaratory relief in court to seek compliance with the law, in addition to raising a claim for breach of contract. Any action to enforce the terms of this Agreement must be brought in Maricopa County (Arizona) Superior Court, and the Parties unconditionally and irrevocably consent to that court's exercise of personal jurisdiction over them in any such action. By entering into this Agreement, the Defendants do not waive or limit any argument or defense, including but not limited to legislative immunity or privilege. Likewise, Plaintiffs do not waive or limit their arguments that any such defenses, including immunity or privilege, do not apply to the Senate Defendants or their agents. In any action to enforce this Agreement (or any dispute otherwise arising out of this Agreement), the Parties agree to bear their own fees and costs.

12. **Counterparts.** This Agreement may be signed in counterparts, each of which will constitute an original, but all of which together will constitute one and the same instrument. The counterparts may be executed and delivered by facsimile or other electronic signature by any of the Parties to any other Party and the receiving Party may rely on the receipt of such document delivered by facsimile or other electronic means as if the original had been received.

13. **Signatures and Effective Date.** The Parties have executed this Agreement on the dates appearing below. This Agreement will become effective immediately upon its execution by all Parties.

ARIZONA DEMOCRATIC PARTY.

SUP. STEVE GALLARDO

By: Charles Fisher
Its: Executive Director

Date 5/4/21

Date

SECRETARY OF STATE KATIE HOBBS

**FIRST AMENDMENT
COALITION OF ARIZONA,
INC.**

By: Sambo "Bo" Dul
Its: State Elections Director

By: Daniel C. Barr
Its: Attorney

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Its: State Elections Director



By: Daniel C. Barr
Its: Attorney

5/5/2021
Date

PRESIDENT KAREN FANN

Date

CYBER NINJAS, INC.

By: Doug Logan
Its: CEO

Date

5/5/2021
Date

SEN. WARREN PETERSEN

Date

KEN BENNETT

Date

Date

PRESIDENT KAREN FANN

President Karen Fann

May 5, 2021

Date

CYBER NINJAS, INC.

By: Doug Logan
Its: CEO

Date

Date

SEN. WARREN PETERSEN

Warren Petersen

5/5/21

Date

KEN BENNETT

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