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4

5 IN THE SUPERIOR COURT OF ARIZONA
6 IN AND FOR THE COUNTY OF MARICOPA

7 BOB PARSONS AND RENEE PARSONS,

Case No.: CV2023-002276

8 Plaintiff,

9 vs.

MOTION FOR LEAVE TO FILE MOTION TO
VACATE JUDGMENT.

10 TOBY HARRIS

11 Defendant

12
13 **MOTION FOR LEAVE TO FILE MOTION TO VACATE JUDGMENT**

14
15 Defendant respectfully moves for leave to file the attached Motion to Vacate
16 Judgment, as required by the Court's vexatious-litigant order. Leave is required
17 solely because of the Court's own mid case vexatious-litigant order, which
18 mandates that any proposed filing be submitted as an exhibit to a Motion or
19 Leave.
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24 WHEREFORE, Defendant respectfully requests that the Court grant leave to file
25 the attached Motion to Vacate Judgment and deem it filed as of the date leave is
26 granted.
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28 MOTION

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Respectfully submitted,

/s/ Toby Harris

Toby Harris, Pro Per

May 17th, 2026

served by Turbo Court to May 17th, 2026

Jackie Pakula, Sally Odegard and Stephen Hopkins

EXHIBIT A

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MOTION

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8 Plaintiff,

9 vs.

10 TOBY HARRIS

11 Defendant

Case No.: CV2023-002276

MOTION TO VACATE JUDGMENT

12
13 **MOTION TO VACATE JUDGMENT**

14
15 INTRODUCTION

16
17 Defendant Toby Harris respectfully moves this Court to vacate the judgment
18 entered in this matter. The judgment rests on multiple structural due-process and
19 First Amendment defects created by the Court’s own rulings. The Court granted
20 party-level protections to a self-declared non-party, shielded that non-party from
21 discovery obligations, and permitted the destruction of subpoenaed evidence. The
22 Court further allowed Plaintiff Robert Parsons—a public figure—to plead and
23 proceed under the lower negligence standard, entered judgment without any
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MOTION

1 actual-malice findings, and imposed a speech-restrictive injunction constituting a
2
3 prior restraint without the constitutionally required findings. The Court then
4 invoked constitutional-avoidance principles to decline review of the
5
6 constitutional violations its own rulings produced.

7
8 A judgment produced under these conditions is void and must be vacated.

9 *Cockerham v. Zikratch*, 127 Ariz. 230, 234 (1980).

10
11 ISSUES PRESENTED

12
13 Whether the judgment must be vacated where the Court (1) granted party-only
14
15 protections to a non-party, (2) allowed that non-party to destroy subpoenaed
16
17 evidence, (3) permitted Parsons to plead the negligence standard and entered
18
19 judgment with no actual-malice findings, (4) imposed a speech-restrictive
20
21 injunction constituting a prior restraint without the required constitutional
22
23 findings, (5) invoked constitutional avoidance to decline review of the resulting
24
25 constitutional injuries, and (6) left the proceeding so structurally compromised
26
27 that no piecemeal correction could restore an impartial contest.
28

1 STATEMENT OF FACTS

2
3 Defendant Harris published commentary concerning Plaintiff Robert Parsons, a
4 nationally known businessman and public figure. Parsons filed suit alleging
5 defamation but pleaded only the negligence standard, never alleging actual malice
6 and never amending his complaint.
7
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9
10 During discovery, Harris issued subpoenas to PXG, a non-party entity controlled
11 by Parsons. PXG refused to comply, asserted objections, and then destroyed the
12 subpoenaed evidence while the subpoena remained active. PXG simultaneously
13 insisted it was a non-party yet sought and received party-level protections from
14 the Court, including excusable-neglect relief, reply briefing, and immunity from
15 sanctions. The Court never ruled on PXG's status, never ruled on its objections,
16 and never addressed the destruction of evidence.
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21 Despite the incomplete record, the Court entered judgment for Parsons under the
22 negligence standard and issued a speech-restrictive injunction prohibiting Harris
23 from making future statements about Parsons. The Court made no actual-malice
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1 findings, no narrow-tailoring findings, and no findings supporting the necessity of
2
3 a prior restraint.

4
5 When Harris raised these constitutional defects, the Court invoked constitutional
6 avoidance, declining to address the constitutional issues created by its own
7 rulings.
8

9
10 PROCEDURAL HISTORY

- 11
- 12 1. Parsons filed a defamation complaint pleading negligence.
- 13 2. Harris issued subpoenas to PXG.
- 14 3. PXG asserted non-party status and refused discovery.
- 15 4. The Court granted PXG party-level protections.
- 16 5. PXG destroyed subpoenaed evidence.
- 17 6. The Court issued no sanctions and made no findings.
- 18 7. The Court entered judgment under the negligence standard.
- 19 8. The Court imposed a speech-restrictive injunction.
- 20 9. The Court made no actual-malice findings.
- 21 10. The Court invoked constitutional avoidance.
- 22 11. Harris now moves to vacate.
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1 ARGUMENT

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4 I. Granting party-level protections to a non-party created a structural due-process
5 defect.

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7 Courts may not extend party-level procedural benefits to non-parties while
8 simultaneously shielding them from party obligations. Doing so violates
9 fundamental fairness and renders resulting judgments void. Smith v. Ariz.
10 Citizens Clean Elections Comm’n, 212 Ariz. 407, 415 (2006).

11
12
13 Arizona law requires courts to apply procedures uniformly and fairly. A.R.S. §
14 12-123 grants the Superior Court authority to administer justice “according to
15 law,” not by extending party-level protections to non-parties.

- 16
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 - ARCP 1 requires “just, speedy, and inexpensive” procedures.
 - 20 • ARCP 26–37 impose discovery duties and sanctions only on parties or
21 properly subpoenaed non-parties.
 - 22 • ARCP 45 governs non-party subpoenas and defines the exclusive
23 mechanism for compelling non-party compliance.
 - 24 • ARCP 60(b)(4) requires vacatur of judgments entered without due process.

25
26

27 Structural due-process violations require automatic vacatur. State v. Maldonado,
28 223 Ariz. 309, 311 (2010).

1 II. The destruction of subpoenaed evidence under Court-granted protections
2 renders the record legally insufficient and independently voids the judgment.

3
4 PXG destroyed evidence while under an active subpoena issued under ARCP 45.

5 Rule 45(e)(1)(D) authorizes contempt sanctions for non-compliance.

6 Rule 37(b)(2)(A) authorizes sanctions for failure to obey discovery orders.

7
8 Arizona law recognizes that spoliation undermines the integrity of the judicial
9 process. *Souza v. Fred Carries Contracts, Inc.*, 191 Ariz. 247, 250 (App. 1997).

10
11 Where the Court's own rulings enable spoliation, the resulting judgment is void.

12 *McMurtry v. Weatherford Hotel, Inc.*, 231 Ariz. 244, 258 (App. 2013).

13
14 A.R.S. § 12-349(A) authorizes sanctions for discovery abuse and conduct that
15 unreasonably expands proceedings.

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17
18 Destruction of subpoenaed evidence falls squarely within this statutory authority.

19
20 A judgment entered on a corrupted record violates due process and must be
21 vacated under ARCP 60(b)(4).

22
23 Arizona law recognizes that destruction of evidence undermines the integrity of
24 the judicial process. *Souza v. Fred Carries Contracts, Inc.*, 191 Ariz. 247, 250
25 (App. 1997).
26
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1 Where the Court's own rulings enable spoliation, the resulting judgment is void
2 because the record is legally insufficient. McMurtry v. Weatherford Hotel, Inc.,
3 231 Ariz. 244, 258 (App. 2013).

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8 III. The judgment is void because Parsons was permitted to plead the wrong legal
9 standard and the Court entered judgment without any actual-malice findings.

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11 Parsons is a public figure. Public-figure plaintiffs must plead and prove actual
12 malice. The Court nevertheless permitted Parsons to proceed under the
13 negligence standard and entered judgment without any actual-malice findings.
14
15

16 This constitutional pleading failure renders the judgment void.

17
18 Public-figure plaintiffs must plead and prove actual malice. New York Times Co.
19 v. Sullivan, 376 U.S. 254, 279–80 (1964).

20
21
22 Negligence is constitutionally insufficient. Curtis Publ'g Co. v. Butts, 388 U.S.
23 130, 155 (1967).

24
25 Arizona follows the same rule. Dombey v. Phoenix Newspapers, 150 Ariz. 476,
26 481 (1986).

1 Under ARCP 8(a), a complaint must state a claim upon which relief can be
2 granted.
3

4 A defamation claim by a public figure that omits actual-malice allegations fails to
5 state a claim as a matter of constitutional law.
6
7

8 A.R.S. § 12-653.02 (Arizona’s defamation damages statute) presupposes a valid
9 defamation claim — which cannot exist without actual malice for public figures.
10
11

12 Entering judgment on a constitutionally defective pleading renders the judgment
13 void under ARCP 60(b)(4).
14
15

16 A judgment entered without actual-malice findings is void.
17
18

19 IV. The judgment is void because the Court imposed a prior restraint without the
20 constitutionally required findings.

21 The injunction is a prior restraint—presumptively unconstitutional. The Court
22 made no findings of compelling interest, narrow tailoring, necessity, or actual
23 malice. A prior restraint entered without these findings is void.
24

25 Prior restraints are “the most serious and least tolerable infringement on First
26 Amendment rights.” Nebraska Press Ass’n v. Stuart, 427 U.S. 539, 559 (1976).
27

1 They are presumptively unconstitutional and require:

- 2 • a compelling interest,
- 3 • narrow tailoring,
- 4 • necessity, and
- 5 • actual-malice findings for public-figure plaintiffs.

7 Arizona courts strictly prohibit prior restraints absent these findings. *Phoenix*
8 *Newspapers, Inc. v. Superior Court*, 101 Ariz. 257, 259 (1966).

9 Under ARCP 65(d)(1), every injunction must:

- 10 • state the reasons why it issued,
- 11 • state its terms specifically, and
- 12 • describe in reasonable detail the acts restrained.

14 Prior restraints are disfavored because “the remedy for speech that is false is
15 speech that is true,” not judicial suppression. Organization for a *Better Austin v.*
16 *Keefe*, 402 U.S. 415, 419 (1971).

21 The injunction here contains none of the findings required by Rule 65(d)(1) or
22 First Amendment doctrine.

24 A.R.S. § 12-1801(A)(3) prohibits injunctions that restrain speech unless expressly
25 authorized by law.

27 A.R.S. § 12-1802(4) bars injunctions that prevent publication of speech.

1 The injunction violates both statutes.

2
3 An injunction issued without the findings required by Rule 65(d) and A.R.S. §§
4 12-1801–1802 is void and must be vacated under ARCP 60(b)(4).

5
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7 The injunction here contains none of the required findings and is therefore void.

8
9 V. Constitutional avoidance is unavailable where the Court’s own rulings created
10 the constitutional injury.

11 Avoidance applies only when a valid non-constitutional path exists. Here, the
12 Court’s own rulings created the constitutional defects. Avoidance cannot be used
13 to shield those defects.

14
15 Avoidance applies only when a valid non-constitutional basis exists. Ashwander
16
17 v. TVA, 297 U.S. 288, 347 (1936).

18
19 Courts cannot invoke avoidance to sidestep constitutional issues created by their
20 own actions. Bond v. United States, 572 U.S. 844, 855 (2014).

21
22 Under ARCP 52(a), the Court must make findings sufficient to permit meaningful
23 review.

24
25
26 Avoidance cannot substitute for findings the Rules and statutes require.

1 A.R.S. § 12-2101(A) requires appealable orders to contain sufficient findings to
2
3 permit review.

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5 A judgment lacking constitutionally required findings cannot be insulated by
6 avoidance.

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10 VI. The defects cannot be cured through piecemeal corrections because the
11 structural integrity of the proceeding has been destroyed.

12
13 The errors here are interlocking and mutually reinforcing. Structural errors “defy
14 analysis by harmless-error standards.” *United States v. Gonzalez-Lopez*, 548 U.S.
15 140, 148 (2006).

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17
18 Arizona courts hold that structural defects cannot be repaired through
19 supplemental findings. *State v. Ring*, 204 Ariz. 534, 552 (2003).

20
21 Under ARCP 60(b)(4), a void judgment must be vacated — not amended,
22 supplemented, or partially repaired.

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25 A.R.S. § 12-122 authorizes the Superior Court to “vacate or modify” judgments
26 only when jurisdiction exists.

1 A void judgment is not within the Court’s jurisdiction to modify — only to vacate.

2 Once the evidentiary foundation is corrupted, no after-the-fact findings can

3
4 reconstruct a fair contest.

5
6 Vacatur is the only remedy.

7
8 **CONCLUSION**

9
10 For the foregoing reasons, Defendant respectfully requests that the Court vacate

11 the judgment in its entirety and dissolve the injunction.

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13 Respectfully submitted,

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15
16 /s/ Toby Harris

17 Toby Harris, Pro Per

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20 served by Turbo Court to

21 Jackie Pakula, Sally Odegard and Stephen Hopkins

1 IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
2 IN AND FOR THE COUNTY OF MARICOPA

3 Robert Parsons, et al., Plaintiffs,

4 v.

5 Toby Harris, Defendant.

6 Case No. CV2023-002276

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9
10 [PROPOSED] ORDER GRANTING MOTION TO VACATE

11 The Court, having considered Defendant's Motion to Vacate, and good cause
12 appearing,

13 IT IS ORDERED:

- 14 1. The judgment entered in this matter is VACATED in its entirety.
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- 16 2. The speech-restrictive injunction is DISSOLVED.
- 17
- 18 3. All findings and orders predicated on the negligence standard are SET
19 ASIDE.
- 20
- 21 4. The Court finds that structural due-process and First Amendment defects
22 render the prior judgment void.
- 23
- 24 5. This matter shall not proceed further until all constitutional requirements
25 are satisfied.
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28 MOTION

1 DATED this ____ day of _____, 2026.

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Hon. Scott Sebastian Minder
Judge of the Superior Court

MOTION

1 TABLE OF AUTHORITIES

2 Arizona Cases

- 3 • Cockerham v. Zikratch, 127 Ariz. 230 (1980)
- 4 • Dombey v. Phoenix Newspapers, 150 Ariz. 476 (1986)
- 5 • McMurtry v. Weatherford Hotel, Inc., 231 Ariz. 244 (App. 2013)
- 6 • Phoenix Newspapers, Inc. v. Superior Court, 101 Ariz. 257 (1966)
- 7 • Smith v. Arizona Citizens Clean Elections Comm’n, 212 Ariz. 407 (2006)
- 8 • Souza v. Fred Carries Contracts, Inc., 191 Ariz. 247 (App. 1997)
- 9 • State v. Maldonado, 223 Ariz. 309 (2010)
- 10 • State v. Ring, 204 Ariz. 534 (2003)

11 Federal Cases

- 12 • Ashwander v. TVA, 297 U.S. 288 (1936)
- 13 • Bond v. United States, 572 U.S. 844 (2014)
- 14 • Curtis Publ’g Co. v. Butts, 388 U.S. 130 (1967)
- 15 • Nebraska Press Ass’n v. Stuart, 427 U.S. 539 (1976)
- 16 • New York Times Co. v. Sullivan, 376 U.S. 254 (1964)
- 17 • Organization for a Better Austin v. Keefe, 402 U.S. 415 (1971)
- 18 • United States v. Gonzalez-Lopez, 548 U.S. 140 (2006)

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