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13 Attorney for Defendants Joseph M. Arpaio and
14 the Maricopa County Sheriff's Office

15 IN THE UNITED STATES DISTRICT COURT

16 FOR THE DISTRICT OF ARIZONA

17 Manuel de Jesus Ortega Melendres, et al.,

18 Plaintiffs,

19 vs.

20 Joseph M. Arpaio, et al.,

21 Defendants.

CV 07-02513-PHX-GMS

**AMENDED AND
SUPPLEMENTAL
APPLICATION TO WITHDRAW
AS COUNSEL OF RECORD FOR
DEFENDANTS**

22 Pursuant to Rules 83.2(e) and 83.3(b)(2), Local Rules of the United States District
23 Court, District of Arizona, and ER 1.7(a)(1) and (2), ER 1.16(a)(1), and Rule 42, Rules of
24 the Arizona Supreme Court, Deputy County Attorneys Thomas P. Liddy, Ann Thompson
25 Uglietta, and Douglas A. Schwab (collectively "Movants") hereby respectfully apply for
26 the Court's permission to withdraw as co-counsel of record for defendant Joseph Arpaio
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1 and the Maricopa County Sheriff's Office ("MCSO") in this matter. This Motion is
2 intended to supplement and amend the motion filed on April 21, 2015, at Docket #1015.

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4 Movants seek permission to withdraw in compliance with their obligations under
5 the Arizona Rules of Professional Responsibility. Recent developments in this matter
6 have given rise to an ethical conflict of interest such that Movants' continued
7 representation of defendants is ethically prohibited. This Motion is supported by the
8 following Memorandum of Points and Authorities and includes Movants' Certification
9 that Mr. Arpaio has been notified in writing of the status of the case including the dates
10 and times of any court hearings or trial settings, pending compliance with any existing
11 court orders and the possibility of sanctions.
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14 **MEMORANDUM OF POINTS AND AUTHORITIES**
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16 Movants are three Deputy Maricopa County Attorneys, Thomas P. Liddy, Ann
17 Thompson Uglietta, and Douglas A. Schwab. As this Court is aware, Movants have
18 appeared for and currently represent the defendant Joseph Arpaio and the Maricopa
19 County Sheriff's Office ("MCSO") in this matter. Defendant Arpaio is also represented
20 by counsel Michelle Iafrate of Iafrate & Associates, who has been appearing as lead
21 counsel for Arpaio since November, 2014, and by attorney A. Melvin McDonald.
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24 This litigation in various stages has been pending since December 2007 with a
25 trial on the merits concluding in 2012. That trial resulted in an Order granting injunctive
26 relief to the plaintiffs against defendants MCSO and Arpaio.¹ Proceedings in this Court
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¹ An appeal was taken from the judgment.

1 have continued through what has been referred to as the “compliance phase,” which
2 involves the enforcement and implementation of the Court’s May 2013 Findings of Facts
3 and Conclusions of Law.

4
5 In February 2015, the Court issued an Order to Show Cause (“OSC”) against
6 MCSO, defendant Arpaio, and certain other non-party individuals after finding that the
7 plaintiffs had presented sufficient evidence that the defendants violated the Court’s
8 preliminary injunction, violated certain discovery obligations, and took actions in
9 derogation of the Court’s May 14, 2014 Orders.

10
11 A hearing pursuant to the Order to Show Cause began on April 21, 2015, to
12 determine whether the defendants and other non-parties have in fact committed contempt
13 by violating the Court’s prior Orders, and if so, for the Court to determine the “sanctions
14 for any such violations.” In issuing the Order to Show Cause, the Court noted that it
15 would first hold civil contempt proceedings to assess the adequacy of civil remedies
16 “before referring the matter, if appropriate, for criminal prosecution.” Defendant Arpaio
17 has been represented in the OSC proceedings by Michelle Iafrate, A. Melvin McDonald,
18 Jr., and by the Movants.

19
20 On April 15, 2015, the Court of Appeals for the Ninth Circuit issued an Opinion
21 deciding certain issues that were taken on appeal from this Court’s judgment entered after
22 the 2012 trial and its final remedial order. The Court of Appeals in that Opinion
23 determined that MCSO was a non-jural entity and thus, under Arizona law, incapable of
24 suing or being sued in its own name. Without further explanation of its reasoning, the
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1 Court of Appeals directed that Maricopa County “be substituted as a party in lieu of
2 MCSO.”²

3 Under Arizona law, Maricopa County and the office of the Sheriff are separate,
4 distinct legal entities. Neither entity has any explicit or inherent lawful authority to
5 control the other. Each has nearly complete autonomy and control over its day to day
6 operations. These entities are operated through duly elected constitutional officers; for
7 the MCSO, that is the Maricopa County Sheriff. The County is operated through its
8 elected Board of Supervisors. The respective authority of each of these constitutional
9 officers is specifically set forth and circumscribed by the Arizona legislature and is
10 limited to those specific powers enumerated.
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14 Indeed there is only one discrete area in which the County has any authority
15 whatsoever *vis a vis* the Sheriff (or other constitutional officers) and that authority is
16 narrowly circumscribed. Specifically, A.R.S. § 11-201(6) provides the County with the
17 power to “determine the budgets of all elected and appointed county officers enumerated
18 under § 11-401 by action of the board of supervisors.” In all other respects, the various
19 entities and the elected officials that run them are separate, independent, and autonomous.
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21
22 Movant Thomas P. Liddy is an employee of the Maricopa County Attorney’s
23 Office and Litigation Practice Group Leader for its Civil Services Division. His regular
24 ongoing duties in that position require him to advise Maricopa County (through its Board
25 of Supervisors) and the County’s appointed executive leadership with respect to legal
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28 ² The Court allowed that the district court “may consider dismissal of Sheriff Arpaio in his official capacity because
“an official—capacity suit is, in all respects other than name, to be treated as a suit against the entity.”

1 matters impacting the County. Over the past several years, this position has required that
2 Mr. Liddy provide legal advice to the Board with respect to this case and other related
3 matters. As a result of his position and role, Mr. Liddy has also received confidential
4 information from the County with respect to this matter.
5

6 Movants Schwab and Uglietta are also employees of the Maricopa County
7 Attorney's Office. Each of them is also privy to confidential communications with the
8 County involving legal issues arising out of this litigation. Ms. Uglietta has provided
9 advice and counsel to the County pursuant to the statutory obligations of the County
10 Attorney in a role similar to that of Mr. Liddy's on various matters, including this case.
11

12 As co-counsel for defendant Arpaio and MCSO, Mr. Liddy, Ms. Uglietta, and Mr.
13 Schwab are also privy to confidential information regarding Arpaio. Each has provided
14 legal advice and counsel to Arpaio in the context of this case overall and, in particular,
15 Mr. Schwab has been involved during the compliance phase and Mr. Liddy has been
16 involved in the ongoing contempt proceedings.
17

18 Accordingly, the Movants have an ongoing attorney-client relationship with
19 Maricopa County, which has recently been thrust into this litigation as a party-defendant,
20 and an ongoing attorney-client relationship with defendant Arpaio and MCSO. As
21 distinct legal entities, Maricopa County and the MCSO/Arpaio may have distinct legal
22 interests in this case that may well conflict as a result of the currently ongoing contempt
23 proceedings and/or as operational options necessitated by compliance with current and
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1 future orders of this Court, and their respective interests may very well be materially
2 adverse to one another.

3 Arizona Rules of Professional Conduct Ethical Rule (ER) 1.7 prohibits Arizona
4 Rules of Professional Conduct Ethical Rule (ER) 1.7 provides:
5

6 (a) Except as provided in paragraph (b), a lawyer shall not represent a client if the
7 representation involves a concurrent conflict of interest. A concurrent conflict of interest
8 exists if:
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10 (1) the representation of one client will be directly adverse to another client; or
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12 (2) there is a significant risk that the representation of one or more clients will be
13 materially limited by the lawyer's responsibilities to another client, a former client, or a
14 third person or by a personal interest of the lawyer. * * *
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16 This is precisely the unfortunate position that Movants find themselves in as a
17 result of the recent unanticipated decision of the Ninth Circuit, and it necessarily requires
18 them to withdraw from representation of Sheriff Arpaio in order to comply with their
19 ethical obligations. As a result of the recent decision, the movants are now faced with a
20 concurrent conflict of interest that prohibits their continued representation in this matter.
21 Specifically, Arizona's ER 1.7(a)(1) and (2) prohibit the movants' continued
22 representation and require that they withdraw.
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24 Now that Maricopa County has become, at least provisionally, a named defendant
25 subject to further review by the 9th Circuit Court of Appeals, the ultimate legal risks and
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1 exposures faced by Maricopa County have changed dramatically. Likewise as a party,
2 the County has markedly different legal standing and ability to direct its defense, allocate
3 resources, determine objectives, formulate and implement strategy to protect the
4 County's interests, and potentially pursue settlement. Previously the County's interest
5 was with respect to its duties to address fiscal obligations; as a party it now faces weighty
6 issues of responsibility, accountability, and direct legal liability to the plaintiffs and the
7 Court. Its interests in defending and resolving this action are not necessarily aligned with
8 those of defendant Arpaio and circumstances may inevitably arise on many issues where
9 the County's and the Sheriff's interests may be directly at odds.
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13 Presently the County's potential exposure as a named defendant is predicated on
14 alleged acts or omissions by defendant Arpaio; this alone places the County's interests
15 squarely at odds with those of Mr. Arpaio. Direct adversity is manifest with respect to
16 the parties' competing interests involving ultimate responsibility and accountability for
17 any liability, sanctions, fines, or compliance costs. Inevitably, defense strategies that
18 may be employed by one party will conflict with strategies the other wishes to pursue. It
19 is highly likely that the defendants' interests will diverge with respect to settlement
20 decisions, as those decisions will necessarily require the assessment of accountability and
21 responsibility, the allocation of limited resources, and disagreement as to where the
22 ultimate responsibility falls.
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26 Each party defendant in this matter is entitled to counsel that can exercise
27 independent judgment without concern that the advice given and actions taken on behalf
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1 of one of them will be to the other's detriment. The policies and principles behind ER
2 1.7 and the prohibition of engaging in representation with a concurrent conflict
3 recognizes this essential right of clients to have conflict-free counsel. The rule prohibits
4 conflicted representation in circumstances such as this, where unfettered representation is
5 not possible because of competing interests.
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7
8 Clearly the representation of Arpaio and MCSO by Movants in this case may very
9 well be directly adverse to the interests of Maricopa County. Equally clear is that the
10 Movants' ability to effectively represent Mr. Arpaio in this matter is materially limited by
11 their ethical duties and responsibilities to Maricopa County. Arizona ER 1.16 provides
12 that a lawyer "shall withdraw from the representation of a client if "(1) the representation
13 will result in violation of the Rules of Professional Conduct or other law."
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16 For all the above reasons, Movants respectfully request a formal written order
17 permitting them to withdraw as counsel of record for defendant Arpaio.
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19 By signing below, Movants certify that Mr. Arpaio has been notified in writing of
20 the status of the case including the dates and times of any court hearings or trial settings,
21 pending compliance with any existing court orders and the possibility of sanctions.
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23 The last known address and phone number for Sheriff Joseph Arpaio and the
24 Maricopa County Sheriff's Office is as follows:
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26 Maricopa County Sheriff's Office Headquarters
27 550 West Jackson Street
28 Phoenix, AZ 85003
(602) 876-1801

1 WHEREFORE, undersigned Movants respectfully request that the Court grant this
2 Application to Withdraw as Counsel of Record for Defendants.

3 **RESPECTFULLY SUBMITTED** this 24th day of April 2015.

4 WILLIAM G. MONTGOMERY
5 MARICOPA COUNTY ATTORNEY

6 BY: /s/ Thomas P. Liddy
7 THOMAS P. LIDDY

8 BY: /s/ Ann Thompson Uglietta
9 ANN THOMPSON UGLIETTA

10 BY: /s/ Douglas Scwab
11 DOUGLAS A. SCHWAB

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13 **CERTIFICATE OF SERVICE**

14 I hereby certify that on April 24, 2015, I caused the foregoing document to be
15 electronically transmitted to the Clerk's Office using the CM/ECF System for filing and
16 transmittal of a Notice of Electronic Filing to the following CM/ECF registrants:

17 Honorable G. Murray Snow
18 United States District Court
19 Sandra Day O'Connor U.S. Courthouse, Suite 622
20 401 West Washington Street, SPC 80
Phoenix, AZ 85003

21 Stanley Young, Esq.
22 Andrew Carl Byrnes, Esq.
23 COVINGTON & BURLING, LLP
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Attorney for Plaintiffs

25 Daniel Pochoda, Esq.
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28 ***Attorney for Plaintiffs***

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27 ...
28

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5 ***Attorneys for Defendant Joseph Arpaio***

6 /s/ Selena Rojas

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