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Maricopa County Sheriff's Office**

**IN THE UNITED STATES DISTRICT COURT**

**FOR THE DISTRICT OF ARIZONA**

Manuel de Jesus Ortega Melendres, et al.	)	NO. CV07-02513-PHX-GMS
	)	
Plaintiffs,	)	<b>DEFENDANTS JOSEPH M.</b>
	)	<b>ARPAIO AND MARICOPA</b>
vs.	)	<b>COUNTY SHERIFF'S OFFICE'S</b>
	)	<b>OBJECTION TO COURT-</b>
Joseph M. Arpaio, et al.,	)	<b>ORDERED DISCLOSURE</b>
	)	<b>PROCEDURE</b>
Defendants.	)	

Pursuant to this Court's April 27, 2015 Order (Doc. 1032), Defendants Sheriff Arpaio and Maricopa County Sheriff's Office ("Defendants") object to the unorthodox process instituted in the evidentiary hearing and to the procedure extended after the evidentiary hearing to disclose documents. Defendants object to disclosing the documents within the timeframe that the Court ordered because it denies them the benefit of review for privileged communication and work product, and redaction of confidential personal and financial information. Defendants support their objection with the following Memorandum of Points and Authorities.

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## MEMORANDUM OF POINTS AND AUTHORITIES

### I. INTRODUCTION

On April 23, 2015, the Court questioned Defendant Arpaio about the areas of contempt it identified in its Order to Show Cause (Doc. 880) regarding previous investigations that the Maricopa County Sheriff's Office Special Investigations Divisions conducted. (Evidentiary Hearing transcript-day 3, 635:23-642:12). The Court then discussed a blog that New Times reporter, Stephen Lemmons published. (*Id.* at 642:17-22). The Court handed a printed copy of the blog to Defendant Arpaio. (*Id.* at 643:5-7). This blog was not previously identified as an exhibit. The Court told Defendant Arpaio that the article was long and that "if you need to take the time to read it, you can do that." (*Id.* at 643:14-15). However, the Court did not allow Defendant Arpaio the time to read the document; instead, the Court continued to question Defendant Arpaio about the article and the statements in it. (*Id.* at 643:15-25; 644:1-25). After the Court finished questioning Defendant Arpaio about the investigations about which Stephen Lemmons blogged, the Court stated that a hold should be placed on all records that related to the subject investigations including electronic data, funding of the operation, all phone records, e-mails, reports, etc. (*Id.* at 659:1-24). The Court next sent the monitor to take possession of those records. (*Id.* at 659:25-660:3). Next, two Deputy County Attorneys performed an expedited and cursory review of over 3,300 pages of documents that contained, among other things, financial documents bearing individuals' account numbers and social security numbers and documents deemed "for law enforcement

1 use only.” The attorneys had only a few hours to review the documents because the  
 2 Court ordered that they be released to the monitors immediately.

## 3 **II. LAW AND ARGUMENT**

### 4 **A. Sheriff Arpaio was Entitled to Notice Regarding The Court’s Line** 5 **of Questioning and the Previously Undisclosed Document Placed** 6 **Before Him.**

7 At a minimum, a Court must provide an alleged contemnor with notice and an  
 8 opportunity to be heard. *Int’l Union, United Mine Workers of America v. Bagwell*,  
 9 512 U.S. 821, 827 (1994). The concept of notice includes prior disclosure and  
 10 provision of documents used at trial and prior identification of areas of examination.  
 11 *See generally, Stuart v. United States*, 813 F.2d 243, 251 (9th Cir.1987), *rev’d on*  
 12 *other grounds*, 489 U.S. 353 (1989); *DP Aviation v. Smiths Indus. Aerospace & Def.*  
 13 *Sys. Ltd.*, 268 F.3d 829, 846-47 (9th Cir. 2001). Such advance notice is consistent  
 14 with an alleged contemnor’s right to present a defense. *See United States v.*  
 15 *Powers*, 629 F.2d 619, 625 (9<sup>th</sup> Cir. 1980). Further, the law requires progressively  
 16 greater procedural protections for indirect contempts of complex injunctions that  
 17 necessitate more elaborate and in-depth factfinding as in this case. *See Int’l Union,*  
 18 *United Mine Workers of America v. Bagwell*, 512 U.S. 821 at 833-34. Here,  
 19 although Defendant Arpaio testified that he previously read the article (Transcript,  
 20 643:23-24), the Court nor any other party previously provided it to Defendants nor  
 21 gave notice that Defendant Arpaio would be questioned about it. It was not  
 22 identified as an exhibit. Nor was Defendant Arpaio provided notice that this subject  
 23 area would be addressed. In contempt proceedings, procedural protections such as  
 24

1 prior notice are crucial “in view of the heightened potential for abuse posed by the  
2 contempt power.” *Taylor v. Hayes*, 418 U.S. 488, 498 (1974).

3 **B. Defendants Are Entitled to Preserve the Attorney-Client and Work**  
4 **Product Privileges.**

5 The procedure outlined by the Court in its Order (Doc. 1032) places Defendants  
6 in an untenable position in which they must immediately provide documents  
7 pursuant to the Court’s Order in such a way that sacrifices the attorney-client and  
8 work product privileges. The two Deputy County Attorneys who quickly reviewed  
9 documents on April 23, 2015 made random selections throughout the documents to  
10 discern what the documents were and made a cursory check for any privileged  
11 documents. They did not view any privileged documents; however, time did not  
12 allow for a careful or thorough review. It is possible that privileged documents were  
13 given to the monitors. This Court, could however, order pursuant to Federal Rules  
14 of Evidence 502, that the privilege or protection is not waived by disclosure. As to  
15 documents containing financial information, social security numbers, and those  
16 marked as “for law enforcement use only,” Defendants ask that the Court designate  
17 these documents, at a minimum, “for attorney eyes only.”  
18

19 **III. CONCLUSION**

20 Based on Defendants’ arguments above, Defendants request the following: 1)  
21 that the Court allow them sufficient time to review the documents disclosed to the  
22 monitors for attorney client and/or work product privilege and any other privilege that  
23 may apply; 2) allow Defendants additional time to review the documents contained  
24 on the external hard drive (two terabytes of data) provided to the monitors, that the

1 Court either allow defendants time to redact account numbers and social security  
2 numbers from the documents or designate them "for attorney eyes only".

3 Finally, Defendant Arpaio objects to the unorthodox manner that violated  
4 Defendant Arpaio's due process rights by questioning Defendant Arpaio on areas on  
5 which he did not receive prior notice.

6 **DATED** this 28th day of April, 2015

7 **IAFRATE & ASSOCIATES**

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9  
10 By: s/Michele M. Iafrate  
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13 **ORIGINAL** of the foregoing e-filed  
14 this 28th day of April, 2015, with:

15 Clerk of the Court  
16 **United States District Court**  
17 Sandra Day O'Connor U.S. Courthouse  
18 401 W. Washington Street, Suite 130, SPC 1  
19 Phoenix, Arizona 85003

20 **COPIES** of the foregoing e-mailed via ECF  
21 this 28th day of April, 2015, to:

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