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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

Manuel de Jesus Ortega Melendres,)	CV-07-2513-PHX-GMS
et al.,)	
)	PLAINTIFFS' REPLY IN
Plaintiff(s),)	SUPPORT OF MOTION
)	TO COMPEL TESTIMONY RE:
v.)	JULY 17, 2015 MEETING AND
)	MCSO'S NONDISCLOSURE
Joseph M. Arpaio, et al.,)	OF THE "1500 IDS"
)	
Defendants(s).)	
)	

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1 To facilitate expeditious resolution of Plaintiffs' Motion to Compel Defendants
2 and members of the Maricopa County Sheriff's Office ("MCSO") to respond to
3 Plaintiffs' questioning about (1) discussions that occurred between MCSO personnel
4 and counsel on Friday, July 17, 2015 regarding approximately 1,459 identification
5 documents that had been turned in by Sergeant Jon Knapp (hereinafter the "1,500
6 IDs"); and (2) any other discussions MCSO had with counsel regarding nondisclosure
7 of the 1,500 IDs to the Monitor team in the lead up to the Monitor's site visit on July
8 20-24, 2015, Plaintiffs submit this abbreviated reply brief with additional authorities
9 and deposition testimony by Chief Deputy Gerald Sheridan demonstrating that
10 Defendants have waived any attorney-client privilege.

11 First, Defendants argue in their opposition brief, Doc. 1358, that it is Sheriff
12 Arpaio who holds the privilege and that any waiver was unintentional. Plaintiffs
13 argument, however, is that *Defendants*, not individual MCSO personnel, have waived
14 the privilege. Counsel for Defendant Arpaio were present at the deposition and
15 Monitor team interviews of Captain Bailey and the deposition of Lieutenant Seagraves.
16 As Arpaio's agents, those counsel made intentional decisions about what questions to
17 permit MCSO witnesses to answer and what questions not to permit them to answer.
18 Plaintiffs may therefore fairly rely on those witnesses' testimony to argue that the
19 privilege has been waived and the remainder of communications on the same subject
20 should be disclosed. In support, Plaintiffs direct the Court to authorities contained in
21 their Notice of Authorities filed today, September 17, 2015, in connection with the
22 waiver of privilege as to the January 2, 2015 meeting about the Seattle investigation.
23 Doc. 1360 ¶¶ 5-6, 9.¹

24
25 ¹ Defendants also object to use of the Monitor team's interview of Captain Bailey and
26 to the rough transcript of his deposition. But Dawn Sauer, an attorney with Iafrate &
27 Associates, which represents Sheriff Arpaio, was present at Captain Bailey's Monitor
28 team interview. As for the transcript of Captain Bailey's deposition, counsel for Sheriff
(continued...)

1 In addition, Plaintiffs wish to notify this Court of testimony that Chief Deputy
2 Sheridan gave, without objection by MCSO counsel, on Wednesday, September 15,
3 2015, relevant to the issue of subject matter waiver. During Chief Deputy Sheridan's
4 deposition, he stated, regarding the July 20, 2015 meeting with the Monitor team:

5 Q. Okay. Are you aware that Chief Sherry Kiyler of the monitor
6 team asked Captain Bailey and other PSB personnel about various
7 IA cases about ID documents?

8 A. Yes.

9 Q. And are you aware that after asking about some specific pending
10 cases, she asked whether there were other cases?

11 MR. MASTERSON: Form.

12 BY MS. WANG:

13 Q. Involving IDs?

14 A. Yes.

15 MR. MASTERSON: Form.

16 BY MS. WANG:

17 Q. And that Captain Bailey said no in response to that question. Are
18 you aware of that?

19 MR. MASTERSON: Form. Foundation.

20 THE WITNESS: Yes.

21 BY MS. WANG:

22 Q. Do you have an opinion about whether that statement by Captain
23

24 _____
25 Arpaio did not object to use of the rough transcript for this briefing during the
26 conference with the Court on September 8, 2015. In any event, since the final
27 transcript of Captain Bailey's deposition is now available, Plaintiffs attach to this reply
28 the relevant excerpts from the final transcript. *See* Transcript of Deposition of Steve
Bailey, Supplemental Declaration of Anne Lai ("Lai Supp. Decl."), Ex. A.

1 Bailey was true or false?

2 MR. MASTERSON: Form. Foundation.

3 MR. WALKER: Join.

4 THE WITNESS: Yes.

5 BY MS. WANG:

6 Q. What's your opinion?

7 MR. MASTERSON: Form. Foundation.

8 MR. WALKER: Join.

9 THE WITNESS: I don't think I can answer that question.

10 BY MS. WANG:

11 Q. Why not?

12 A. Goes back to the attorney-client privilege issue from earlier.

13 Q. So are you saying you do have an opinion about whether Captain
14 Bailey's answer was truthful, but your opinion is based on advice of
15 counsel?

16 MR. MASTERSON: Form. Foundation.

17 MR. WALKER: Join.

18 THE WITNESS: Yes.

19 Transcript of Deposition of Gerald Sheridan, Lai Supp. Decl., Ex. B, at 525:6-526:20.

20 If Defendants believe their failure to disclose the discovery of the 1,500 IDs was
21 reasonable, then they should state the grounds for that belief so that it may be
22 evaluated by this Court. As discussed by Plaintiffs in their initial motion, Defendants
23 cannot contend their actions were justified based on advice of counsel and then
24 obstruct Plaintiffs' efforts to conduct discovery into their reasons by hiding behind the
25 cloak of attorney-client privilege. *See* Doc. 1315 at 4-5; *see also* Doc. 1360 ¶¶ 2, 10,
26 13 (discussing subject matter waiver).
27
28

1 For all the reasons discussed herein and in Plaintiffs' Motion to Compel
2 Testimony Re: July 17, 2015 Meeting and MCSO's Nondisclosure of the "1500 IDs",
3 the Court should grant Plaintiffs' Motion.
4

5 Dated this 18th day of September, 2015.
6

7 By: /s/ Anne Lai

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26
27
28

CERTIFICATE OF SERVICE

I hereby certify that on September 18, 2015, I electronically transmitted the attached document to the Clerk's Office using the CM/ECF System for filing. Notice of this filing will be sent by e-mail to all parties by operation of the Court's electronic filing system or by mail as indicated on the Notice of Electronic Filing.

Dated: September 18, 2015
Phoenix, AZ

/s/ Anne Lai