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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ARIZONA

Manuel de Jesus Ortega Melendres, et al.)	NO. CV07-02513-PHX-GMS
)	
Plaintiffs,)	DEFENDANTS JOSEPH ARPAIO
)	AND MARICOPA COUNTY
vs.)	SHERIFF'S OFFICE'S
)	RESPONSE TO PLAINTIFFS'
Joseph M. Arpaio, et al.,)	MEMORANDUM OF LAW AND
)	FACTS REGARDING
Defendants.)	CONTEMPT PROCEEDINGS
)	AND REQUEST FOR ORDER TO
)	SHOW CAUSE
)	

At the December 4, 2014, this Court asked Defendants to comment on the type of contempt at issue (criminal or civil), and if civil, the appropriateness of civil contempt proceedings and possible remedies. (Doc. 842-1, Ex. 3 at 26:19-22; 27:6-

15; 28:9-24; 30:20-24; 31:17-22; 35:19-20). In accord with this Court's January 16, 2015 Order (Doc. 856 at 1) allowing the parties to file responses, Defendants Joseph M. Arpaio and the Maricopa County Sheriff's Office (MCSO) (collectively "Defendants") respond as follows to Plaintiffs' Memorandum of Law and Facts re Contempt Proceedings and Request for Order to Show Cause (hereafter "Memorandum").

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

In Defendants' Memorandum pursuant to the Court's December 4, 2014 Order (Doc. 842), Defendants addressed the issues Plaintiffs raise in their Memorandum of Law and Facts Re Contempt Proceedings and Request for Order to Show Cause (hereafter "Memorandum")(Doc. 843). However, there are a few points that require a response and some clarification. These points involve criminal contempt and civil contempt remedies.

II. LAW AND ARGUMENT

A. Plaintiffs Waive Criminal Contempt.

This Court asked the parties to file briefs addressing whether or not civil and/or criminal contempt proceedings should follow. Plaintiffs mention criminal contempt in one sentence in the introduction section of their Memorandum, but assert no legal argument urging it. (Doc. 842, p.5:18-20). Where Plaintiffs fail to argue an issue and fail to cite supporting legal authority, they waive the issue. *Cf. United States v. Harman*, 297 F.3d 1116, 1131 (10th Cir. 2002)(arguments raised in

a perfunctory manner are waived); *see also City of Emeryville v. Robinson*, 621 F.3d 1251, 1262 n. 10 (9th Cir. 2010). Further, Local Rule of Civil Procedure 7.2 (b) requires parties to “set forth the points and authorities relied upon in support of the motion” in their memoranda. Where Plaintiffs fail to cite legal authority, their Memorandum does not comply with the rules and the Court should not consider the argument. Here, Plaintiffs address the issue of criminal contempt in a perfunctory manner—a single-sentence reference without citing any factual, statutory, or common law authority; therefore, Plaintiffs waived the issue.

B. The Court Should Base Any Ordered Compensation it May Consider on Actual Damages.

The parties agree that if the Court deems sanctions necessary to compensate for losses, the parties should identify victims of post preliminary injunction stops. (Doc. 842 at 26-27 and Doc. 843 at 23-24). Defendants, however, ask the Court to apply the actual loss standard set forth in *Shuffler v. Heritage Bank*, 720 F.2d 1141, 1148 (9th Cir. 1983), *In re Dyer*, 322 F. 3d 1178, 1195 (9th Cir. 2003), and *Ahearn ex rel. N. L.R.B.v. Int’l Longshore & Warehouse Union,,* 721 F.3d 1122, 1128-29 (9th Cir. 2013) and require Plaintiffs prove actual damages. Plaintiffs propose “an amount commensurate to the length of his or her detention and any other facts particular to the harm suffered.” (Doc. 843 at 23:27-28). Plaintiffs cite no legal authority to support this approach. To the extent that Plaintiffs proposed method of compensation is not based on actual damages, the Court should not, as a matter of law, adopt Plaintiffs’ methodology.

1 Additionally, Plaintiffs urge the Court to compensate the Plaintiff Class by
 2 requiring Defendants to pay to a non-profit organization (other than Plaintiffs'
 3 counsel)(Doc. 843 at 25:21-28). However, here again, Plaintiffs cite no legal
 4 authority for this method of compensation. Should the Court require monetary
 5 compensation to victims, such compensation must reflect actual damages for which
 6 Plaintiffs provide proof.

7 **III. CONCLUSION**

8 Based on the facts and law above, Defendants ask that the Court not find
 9 them in contempt. Alternately, should the Court deem Defendants in civil contempt,
 10 they respectfully request that the Court consider the remedies Defendants proposed
 11 in their Memorandum. (Doc. 842 at 25-27).

12 **DATED** this 23rd day of January, 2015

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1 **ORIGINAL** of the foregoing e-filed
2 this 23rd day of January, with:

3 Clerk of the Court
4 **United States District Court**
5 Sandra Day O'Connor U.S. Courthouse
401 W. Washington Street, Suite 130, SPC 1
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6 **COPIES** of the foregoing e-mailed via ECF
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