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

13 United States of America,
14 Plaintiff,
15 v.
16 Maricopa County, Arizona; and Joseph M.
17 Arpaio, in his official capacity as Sheriff of
18 Maricopa County, Arizona,
19 Defendants.

No. 2:12-cv-00981-ROS

UNITED STATES' MOTION *IN*
LIMINE TO PRECLUDE
DEFENDANT ARPAIO'S USE OF
UNTIMELY PRODUCED EVIDENCE

20 Plaintiff, the United States, respectfully moves to preclude Defendants' use of
21 video evidence that Defendant Sheriff Arpaio failed to timely produce in discovery.
22 Because Defendant Sheriff Arpaio failed to produce this evidence prior to the close of
23 fact discovery, and prior to the United States' depositions of MCSO personnel, Defendant
24 Arpaio prevented the United States from being able to meaningfully evaluate the
25 evidence and make relevant inquiries to MCSO personnel during depositions. Because of
26 this prejudice, Defendants should be precluded from using the evidence at trial.

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DISCUSSION

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2 Discovery in this case began in February 2013. Rule 16 Sched. Order, ECF
3 No. 77. This Court's Scheduling Orders required the Parties to complete fact discovery,
4 including production of documents, by April 11, 2014. Second Am. R. 16 Sched. Order
5 at 2, ECF No. 134; Fourth Am. R. 16 Sched. Order at 2, ECF No. 279. The Fourth
6 Amended Rule 16 Scheduling Order further required the Parties to serve all final
7 supplements of all discovery by September 15, 2014. Order at 2, ECF No. 279.

8 Early in discovery, on April 16, 2013, the United States issued its First Set of
9 Requests for Production of Documents and Things to Defendant Arpaio. *See* Requests
10 for Production (attached Exh. A); Notice of Service, ECF No. 84. The United States
11 requested "Any and all documents and ESI relating to the . . . carrying out . . . of, each
12 and every worksite law enforcement operation, as defined above, from January 1, 2008,
13 to the present" *See* Request for Production No. 22 at 14. The Requests defined
14 "Worksite law enforcement operation" as "any worksite raid or law enforcement
15 operation of the nature of those that MCSO has called 'identity theft operations' and
16 'criminal employment operations' and of which MCSO had conducted 72 as of March
17 14, 2013, according to a March 14, 2013 MCSO News Release." Requests for
18 Production at 7.

19 Despite having some videos made as early as 2008, Defendant Apaio waited to
20 produce any videos of worksite law enforcement operations until the very last day to
21 supplement all discovery. On September 15, 2014, over one year after the United States'
22 Request, five months after the close of fact discovery, and the final day on which to
23 supplement all discovery, MCSO provided to the United States its Fourteenth
24 Supplemental Disclosures. *See* Defendant Arpaio's Notice of Service of Fourteenth
25 Supp. Disclosure Statement, ECF No. 319. In his Fourteenth Supplemental Disclosure,
26 Defendant Arpaio produced for the first time videos from identity theft operations. *See*
27 Excerpt of Defendant Arpaio's Fourteenth Supp. Disclosure at 122-24 (attached Exh. B).
28 Most of the operations for which Defendant produced videos occurred between 2008 and

1 2013. These videos appear to be taken by Defendant Arpaio's officers, and thus appear
2 to have been in his custody well before he produced them. Defendant Arpaio did not
3 provide any indication that the videos had not previously been in his custody or any other
4 explanation for why the videos had not been previously produced. *See* Excerpt of
5 Defendant Arpaio's Fourteenth Supp. Disclosure.

6 These untimely produced videos were responsive to Request No. 22 of the United
7 States' April 16, 2013, Requests for Production. Despite the United States' April 2013
8 Request, Defendant Arpaio failed to produce the videos, or otherwise notify the United
9 States of the videos' existence, until September 15, 2014. Had Defendant Arpaio timely
10 produced the videos during the course of discovery, the United States would have had an
11 opportunity to review the videos during discovery, issue follow-up discovery requests,
12 make proper inquiries regarding any acts reflected in the videos during depositions of
13 MCSO deputies involved in the worksite operations, and possibly have experts opine on
14 the videos. Defendant Arpaio's withholding these videos until the very last day to
15 supplement discovery thus prejudiced the United States' case. Because Defendant
16 Arpaio effectively precluded the United States from making any meaningful use of the
17 evidence that was in Defendant Arpaio's custody during the course of discovery, and that
18 evidence was responsive to the United States' Request, Defendants should be precluded
19 from using the video evidence at trial.

20 Accordingly, this Court should order that Defendants are precluded from using the
21 videos that Defendant Arpaio produced only in his Fourteenth Supplemental Disclosure.

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23 Respectfully submitted,
24 Mark Kappelhoff
25 Deputy Assistant Attorney General
26 Civil Rights Division

27 Judy Preston
28 Acting Chief, Special Litigation Section

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CERTIFICATE OF SERVICE

I certify that on July 10, 2014, I electronically filed the foregoing using the Court's CM/ECF System, which will send notice of the filing to counsel of record.

/s/ Puneet Cheema