

1 Michele M. Iafrate (#015115)
2 miafrate@iafratelaw.com
3 IAFRATE & ASSOCIATES
4 649 North Second Avenue
5 Phoenix, Arizona 85003
6 Telephone: (602) 234-9775

7 WILLIAM G. MONTGOMERY
8 MARICOPA COUNTY ATTORNEY
9 By Thomas P. Liddy (#019384)
10 Douglas A. Schwab (#019289)
11 Deputy County Attorney
12 MCAO Firm No. 00032000
13 liddy@mcao.maricopa.gov

14 Attorneys for Defendants Sheriff Joseph M.
15 Arpaio and Maricopa County Sheriff’s Office

16 UNITED STATES DISTRICT COURT
17 FOR THE DISTRICT OF ARIZONA

18 Manuel de Jesus Ortega Melendres, et al.,) No. CV-07-2513-PHX-GMS

19 Plaintiffs,)

20 v.)

21 Joseph M. Arpaio, et al.,)

22 Defendants.)

23) **EXPEDITED MOTION TO VACATE**
24) **HEARING AND REQUEST FOR**
25) **ENTRY OF JUDGMENT**

26 **Preliminary Statement**

27 The purpose of this Motion is to convey to the Court and to Plaintiffs that
28 Defendants Joseph M. Arpaio and Maricopa County Sheriff’s Office, and identified non-
party Chief Deputy Gerard Sheridan (collectively, “Defendants”) consent to a finding of
civil contempt against them and the imposition of remedies designed to address their
conduct. Under these circumstances, a 4-day evidentiary hearing, which would cost the
county taxpayers hundreds of thousands of dollars, and which would consume significant

1 time of the Court, is unnecessary. Defendants acknowledge and appreciate that they have
2 violated the Court's orders and that there are consequences for these violations. There is
3 nothing Defendants can do to change what has already been done, but through the entry
4 of an order finding them in civil contempt and by implementing remedies discussed
5 herein, Defendants can express sincere remorse to the Court and to Plaintiffs, begin to
6 make amends to those who have been injured and take affirmative steps to ensure nothing
7 like this occurs in the future. Defendants respect the Court and the Court's Orders.

8 **Discussion**

9 The Order to Show Cause identifies the following three areas of contemptuous
10 conduct: (1) a "failure to abide by and apprise MCSO deputies of the terms of the
11 [December 23, 2011] preliminary injunction." [Doc. 880 at 90]; (2) the failure to
12 disclose audio and video recordings made and maintained by MCSO deputies, as well as
13 other materials maintained by or relating to the MCSO HSU. [Doc. 880 at 20]; and (3)
14 the failure to cooperate with the Court's May 14, 2014 oral directives with respect to the
15 collection of recordings that were in the possession of patrol deputies. [Doc. 880 at 21-
16 22].

17 The facts, with respect to each of these areas, have been discussed in detail in the
18 Order to Show Cause (Doc. 880) and the Plaintiffs' Memorandum of Law and Facts re
19 Contempt Proceedings and Request for Order to Show Cause (Doc. 843). Defendants do
20 not intend to present any arguments or evidence which materially dispute these facts.
21 Thus, consuming the Court's time and the parties' time is unnecessary and wasteful. *See*
22 *Thomas, Head and Greisen Employees Trust v. Buster*, 95 F.3d 1449, 1458-59 (9th Cir.
23 1996) (a finding of contempt without a hearing did not constitute a denial of due process
24 when alleged contemnors do not present any arguments which created any material issues
25 of fact); *Peterson v. Highland Music, Inc.*, 140 F.3d 1313, 1324 (9th Cir. 1998) (district
26 court did not abuse discretion finding contempt on basis of affidavits submitted in
27 response to order to show cause when defendants did not controvert plaintiff's facts);
28 *New York State Nat'l Organization for Women v. Terry*, 732 F. Supp. 388, 396 n.3 (S.D.

1 N.Y. 1990)(hearing not necessary when no material facts in dispute; defendants did not
2 dispute the fact they blocked access to abortion clinic and did not dispute they had
3 knowledge of court order prohibiting them from doing so).¹

4 Accordingly, Defendants will adopt and stipulate to the facts as stated in the
5 Court's Order to Show Cause, as well as to the entry of an order finding them in civil
6 contempt of court, as described in the Order to Show Cause. To the extent the Court
7 believes that such a stipulation is not sufficient to establish an appropriate factual basis to
8 support an order finding Defendants in contempt, Defendants attach at Exhibit A a
9 proposed statement of facts, to which they will stipulate as well.

10 A necessary component of a civil contempt is the imposition of a remedy that
11 ensures compliance and compensates injured parties for harm they have suffered. *Int'l*
12 *Union, United Mine Workers of Am. V. Bagwell*, 512 U.S. 821, 827-28 (1994).
13 Defendants and their legal counsel are committed to identifying and implementing
14 measures that accomplish both of these objectives. In particular, Defendants
15 acknowledge that the remedies will encompass the identification and compensation of
16 individuals who were harmed by violations of the December 23, 2011 preliminary
17 injunction, as well as putting in place structural measures to ensure that the Court's
18 orders are disseminated and complied with in a timely fashion. Defense counsel,
19 plaintiffs' counsel, and the court monitor can collectively meet and confer and present a
20 plan for Court. Defendants further acknowledge that in order for some of the remedies to
21 be meaningful, they will need to be the responsibility of Defendants personally. To that

22 ///

23 ///

24 ///

25 ///

26
27 _____
28 ¹ In addition, this ongoing litigation is taking a heavy toll on the manpower and resources
of MCSO by diverting management from their law enforcement functions to the
detriment of the public safety and welfare.

1 end, attached at Exhibit B is a proposed list of remedial measures to which Defendants
2 are prepared to stipulate and implement.²

3 **Relief Requested**

4 Defendants have been ordered to “appear before the Court and show cause . . .
5 why the Court should not impose sanctions on them pursuant to 18 U.S.C. § 401 and/or
6 Federal Rule of Civil Procedure 37(d).” [Doc. 880 at 26] Because Defendants, by their
7 stipulations, consent to the Court imposing sanctions upon them, there is no need for an
8 evidentiary hearing. Accordingly, Defendants request that the evidentiary hearing set for
9 April 21 – 24, 2015 be vacated and that the Court enter orders finding Defendants in civil
10 contempt and imposing the remedial measures identified in Exhibit B. *See Mercer*, 908
11 F.2d at 769 n.11 (“When there are no disputed factual matters that require an evidentiary
12 hearing, the court might properly dispense with the hearing prior to finding the defendant
13 in contempt and sanctioning him.”); *U.S. v. Ayres*, 166 F.3d 991, 996 (9th Cir. 1999) (no
14 need for hearing when defendant conceded contempt motion by explaining why he chose
15 not to comply with court order rather than asserting he could not comply); *United States*
16 *v. City of Yonkers*, 856 F.2d 444, 453 (2d Cir. 1988) (need for plaintiffs to present
17 evidence to meet burden to establish defendants’ contempt was obviated when defendants
18 did not dispute the representation they had violated court’s order); *In re Grand Jury*
19 *Proceedings*, 795 F.2d 226, 234-35 (1st Cir. 1986) (evidentiary hearing not required
20 where documentary evidence established the contempt and no material issues of fact
21 about ownership of documents in question were raised); *Hush v. Taylor*, 995 N.Y.S. S.2d
22 336, 339 (2014) (no evidentiary hearing necessary on question whether defendants had

23
24 ² The remedies proposed in Exhibit B are suggestions to the Court that the Court may
25 adopt, reject or modify, at its discretion. The remedies are designed to address the court’s
26 directives mentioned in the February 26, 2015 status conference in which the Court
27 stated: “I don’t want to refer this matter to a criminal contempt hearing if I can have
28 adequate assurance—if I can have adequate remedies for the victims of this case; if I can
have, if I believe it is necessary, a punitive element to the individuals who may have been
culpable of criminal contemptuous behavior such that it will not happen again.” See
February 26, 2015 transcript pp. 62:20-63:1.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

violated court order not to interfere with plaintiffs’ use of rights-of-way and easements where defendants did not dispute factual allegations or challenge authenticity of underlying property deeds).

RESPECTFULLY SUBMITTED March 17th, 2015.

IAFRATE & ASSOCIATES

By: s:/Michele M. Iafrate

Michele M. Iafrate
Attorneys for Sheriff Joseph M. Arpaio
and Maricopa County Sheriff’s Office

MARICOPA COUNTY ATTORNEY
CIVIL SERVICES DIVISION

By: s:/Thomas P. Liddy (w/permission)

Thomas P. Liddy
Douglas A. Schwab
Attorneys for Sheriff Joseph M. Arpaio
and Maricopa County Sheriff’s Office

JONES SKELTON & HOCHULI

By: s:/A. Melvin McDonald (w/permission)

A. Melvin McDonald
Attorney for Sheriff Joseph M. Arpaio

MITCHELL STEIN & CAREY

By: s:/Lee Stein (w/permission)

Lee Stein
Barry Mitchell
Attorneys for Chief Deputy Sheridan

CERTIFICATE OF SERVICE

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

I hereby certify that on March 17th, 2015, I electronically transmitted the attached document using the CM/ECF system for filing, and which will be sent electronically to all registered participants as identified on the Notice of Electronic Filing, and paper copies will be sent to those indicated as non-registered participants.

s:/Jill Laforvara
