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IN THE UNITED STATES DISTRICT COURT

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FOR THE DISTRICT OF ARIZONA

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Fred Graves, Isaac Popoca, on their own)
behalf and on behalf of a class of all)
pretrial detainees in the Maricopa County)
Jails,)

No. CV-77-00479-PHX-NVW

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ORDER

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Plaintiffs,)

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vs.)

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Joseph Arpaio, Sheriff of Maricopa)
County; Fulton Brock, Don Stapley,)
Andrew Kunasek, Max W. Wilson, and)
Mary Rose Wilcox, Maricopa County)
Supervisors;)

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Defendants.)

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Before the Court is a Stipulation Regarding Automatic Stay (Doc. 1992), which
will be denied because it misstates provisions of 18 U.S.C. § 3626(e) and conflicts with
the parties' agreement stated in open court on July 6, 2011.

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Section 3626(e)(2) provides that a motion to modify or terminate prospective relief
“shall operate as a stay during the period . . . beginning on the 30th day after such motion
is filed . . . and ending on the date the court enters a final order ruling on the motion.”

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Section 3626(e)(3) provides that the Court may postpone the effective date of the
automatic stay for up to 60 days for good cause. Because the parties seek additional time
for discovery prior to the evidentiary hearing on Defendant Arpaio's Motion to Terminate

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1 (Doc. 1980), the Court finds good cause to postpone the effective date of the automatic
2 stay to September 6, 2011, which is 60 days after the initial effective date.

3 On July 6, 2011, a conference was held to set a schedule for discovery and an
4 evidentiary hearing on Defendant Arpaio's motion to terminate some of the provisions of
5 the Second Amended Judgment. While discussing possible dates for the evidentiary
6 hearing, the Court told counsel that it intended to rule on the pending motion within 90
7 days of its June 8, 2011 filing date, before any automatic stay would take effect. The
8 Court offered counsel the option of stipulating to override what otherwise would be
9 required under the statute and waive the statutory automatic stay, thus keeping all of the
10 Second Amended Judgment in effect until the motion is decided, rather than setting a
11 schedule to complete discovery, hearing, and ruling before the 90-day period expires.
12 Both Plaintiffs' counsel and Defendant Arpaio's counsel stated they agreed to a longer
13 schedule, *i.e.*, agreeing that the automatic stay would *not* become effective. Therefore,
14 the Court asked counsel to submit a written stipulation so that there would be no
15 uncertainty at all as to what was agreed upon.

16 What the parties have submitted, however, says exactly the opposite of what was
17 agreed upon in open court. The stipulation inaccurately states that the motion to
18 terminate "operates as an automatic stay" under § 3626(e)(2), and "the automatic stay can
19 be extended up to 90 days for good cause." It states that an evidentiary hearing "is
20 currently scheduled to commence on October 18, 2011, which extends beyond the 90 day
21 time limit for the automatic stay under the PLRA." Further, "the parties stipulate to an
22 extension of the automatic stay to enable the parties to present their evidence to the Court
23 and to allow the Court sufficient time to rule." It appears that counsel misunderstand both
24 the statute and the Court's intent.

25 Section 3626(e)(3) provides that an automatic stay will take effect *after* 90 days.
26 The Court will rule on Defendant Arpaio's motion before any automatic stay takes effect.
27 The parties agreed in open court to *wave* the statutory automatic stay so that the
28 evidentiary hearing could be held in October 2011, rather than August 2011.

