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IN THE UNITED STATES DISTRICT COURT

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FOR THE DISTRICT OF ARIZONA

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9 DAVID AUBLE, et al.,

No. CV 08-1822-PHX-MHM

10 Plaintiffs,

**ORDER**

11 vs.

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MARICOPA COUNTY, a public entity;  
13 MARICOPA COUNTY SHERIFF'S  
OFFICE, a division of Maricopa County;  
14 JOSEPH M. ARPAIO, Maricopa County  
Sheriff; NEWMARK HOLDINGS I, LLC,  
15 a foreign limited liability corporation d/b/a  
AMAZING JAKE'S FUN & FOOD; and  
16 TEHRAN RYLES; et al.,

17 Defendants.

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21 On November 3, 2008, Defendants filed a motion to dismiss Maricopa County  
22 Sheriff's Office ("MCSO") on the grounds that it is a non-jural entity incapable of being  
23 sued. (Dkt. #5). Plaintiff responds that MCSO is a political subdivision amenable to suit.  
24 (Dkt. #11). For the reasons stated below, this Court certifies this question to the Arizona  
25 Supreme Court pursuant to A.R.S. § 12-1861 and Arizona Supreme Court Rule 27. See  
26 Binford v. Rhode, 116 F.3d 396, 400 (9th Cir. 1997); Torres v. Goodyear Tire & Rubber Co.,  
27 867 F.2d 1234, 1237-39 (9th Cir.1989).

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1 **I. WHETHER MCSO IS A POLITICAL SUBDIVISION**

2 Defendants move the Court to dismiss MCSO as a defendant, arguing that it lacks the  
3 capacity to be sued under Arizona law. (Dkt. #5). Plaintiffs, in their response, cite to several  
4 lawsuits in which MCSO has been involved, either as a plaintiff or defendant. (Dkt. #11).  
5 Plaintiffs also point out that MCSO “has an annual budget of millions, a staff numbering in  
6 the thousands, and the responsibility for creating and implementing policies and procedures  
7 dealing with the maintenance of the jails, the incarceration of approximately ten thousand  
8 inmates, and the care of those inmates.” (Id.). Plaintiffs further allege that MCSO has its  
9 own bank account, routinely retains its own legal counsel, and holds an insurance policy  
10 separate from other divisions of Maricopa County. (Id.).

11 According to Plaintiffs, “MCSO is related to and yet separate from Maricopa County  
12 and Sheriff Arpaio” and “exists with the purpose of discharging many functions of local  
13 government as required by the [Arizona] Constitution and other law: the care, custody, and  
14 control of inmates and pre-trial detainees within the Maricopa County jails.” (Id.).  
15 Additionally, “MCSO has a prescribed area in which it has jurisdiction and in which it  
16 operates,” including “the unincorporated parts of the County.” (Id.). Finally, “the fact that  
17 MCSO possesses the authority for subordinate self-government by officers and entities  
18 selected by it manifests itself in the complex hierarchy it maintains to perform its duties.”  
19 (Id.).<sup>1</sup> Thus, Plaintiffs argue, MCSO is a public entity as defined by A.R.S. § 12-820(6).  
20 (Id.)

21 Federal Rule of Civil Procedure 17(b) provides that the capacity of a party to sue and  
22 be sued is determined by the law of the state in which the court is located. Fed.R.Civ.P.  
23 17(b). Arizona law specifically provides that the power to sue and be sued is vested in  
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26 <sup>1</sup>MCSO does not specifically address Plaintiffs’ assertions, instead making the  
27 following general averment: “All of the power and authority is held by the Sheriff himself.  
28 Instead of a political entity, in truth the Maricopa County Sheriff’s Office is a group of  
buildings located at various places in Maricopa County. It is a short hand phrase for  
referring to the Sheriff and his deputies.” (Dkt. #14).

1 counties, their board of supervisors, agents, and officers acting under their authority. A.R.S.  
2 § 11-201(A) (2008). The enumerated officers of each county include a “sheriff,” but not a  
3 sheriff’s office. A.R.S. § 11-401(A). Although these statutes stand for the proposition that  
4 Maricopa County and its sheriff may be sued, they do not specifically authorize MCSO to  
5 be sued.

6 Nonetheless, it appears that MCSO may be sued if it qualifies as a public entity under  
7 A.R.S. § 12-820(6). See Carey v. Maricopa County, 602 F. Supp. 2d 1132, 1143 (D. Ariz.  
8 2009) (Silver, J.) (noting that, under Arizona law, public entities are liable for acts and  
9 omissions of their employees). The definition of a public entity includes any political  
10 subdivision of Arizona. A.R.S. § 12-820(6) (2008). Thus, although MCSO is not listed as  
11 an entity that may be sued under A.R.S. § 11-201(A), the capacity of MCSO to be sued  
12 depends on whether or not MCSO qualifies as a political subdivision.

13 The Court can find no Arizona case law resolving this issue. The Court notes,  
14 however, that MCSO has been amenable to suit, as both a plaintiff and defendant, in  
15 numerous state court actions. See, e.g. Maricopa County Sheriff’s Office v. Maricopa County  
16 Employee Merit Sys. Comm’n, 211 Ariz. 219 (2005); W. Valley View, Inc. v. Maricopa  
17 County Sheriff’s Office, 216 Ariz. 225 (Ariz. Ct. App. 2007); Patterson v. Maricopa County  
18 Sheriff’s Office, 177 Ariz. 153 (Ariz. Ct. App. 1993). Moreover, in W. Valley View, 216  
19 Ariz. 225, even though the Arizona Court of Appeals did not take up the issue of whether  
20 MCSO is a political subdivision, MCSO was described in the case caption as a political  
21 subdivision. In addition, in Flanders v. Maricopa County, which, like this case, involved a  
22 § 1983 claim, MCSO was also captioned as a political subdivision. 203 Ariz. 368 (Ariz. Ct.  
23 App. 2002). There, the issue of whether MCSO is a non-jural entity was raised, but the  
24 Arizona Court of Appeals declined to consider the issue because it was raised too late; the  
25 court urged “counsel to resolve questions of proper parties and ‘jural’ entities at the outset  
26 of a case rather than after the verdict.” Id. at 379 n.11.

27 There is no consensus within the District of Arizona as to whether MCSO is a political  
28 subdivision amenable to suit. Williams v. Tempe, 2006 WL 798701, at \*3 (D. Ariz. 2006)

1 (Teilborg, J.). In Wilson v. Maricopa County, the district court declined to hold that MCSO  
2 is a political subdivision capable of being sued. 2005 WL 3054051, at \*1 (D. Ariz. 2005)  
3 (Campbell, J.). The court held that the proposition that MCSO is a political subdivision is  
4 too broad, “particularly when the Arizona Legislature specifically has stated that the County  
5 is a political subdivision with authority to sue and be sued and has not made the same  
6 declaration with respect to MCSO.” Id. See also Ekweani v. Maricopa County Sheriff’s  
7 Office, 2009 WL 976520, at \*2 (D. Ariz. 2009) (Martone, J.) (declining to find that MCSO  
8 is a political subdivision because “[a]lthough the Arizona legislature specifically designated  
9 the county as a political subdivision with authority to sue and be sued, it did not make the  
10 same designation with respect to MCSO. . .”).

11 On the other hand, in Agster v. Maricopa County, No. CV-02-1686-PHX-JAT (March  
12 3, 2005 Order) (Teilborg, J.), the court refused to dismiss MCSO as a non-jural entity from  
13 the case, which, like this one, involved a § 1983 claim. In addition, in De Jesus Ortega  
14 Melendres v. Arpaio, this Court allowed MCSO to be sued. 598 F. Supp. 2d 1025, 1039 (D.  
15 Ariz. 2009). There, however, MCSO was subject to suit as a “program or activity” receiving  
16 federal funds under Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d. Id.

17 As stated above, there is no consensus within the District of Arizona on the issue of  
18 whether MCSO is a political subdivision under Arizona law. The position that MCSO is *not*  
19 a political subdivision appears to be at odds with the fact that Arizona courts have allowed  
20 MCSO to be sued as a political subdivision in several cases. More importantly, although  
21 MCSO has been sued and captioned a political subdivision in various state court cases, the  
22 Arizona courts have not directly considered the precise issue. For these reasons, this Court  
23 is reluctant to rule on this novel question of state law without first seeking an indication from  
24 the Arizona courts. Accordingly, in an abundance of caution, this Court will certify the  
25 following question to the Arizona Supreme Court pursuant to A.R.S. § 12-1861 and Rule 27  
26 of the Arizona Rules of Supreme Court: whether, under Arizona law, the Maricopa County  
27 Sheriff’s Office is a political subdivision capable of being sued?  
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1           This Court respectfully requests that the Arizona Supreme Court exercise its  
2 discretionary authority under Arizona Supreme Court Rule 27 to accept and decide this  
3 question. This Court's phrasing of the question should not restrict the Arizona Supreme  
4 Court's consideration of the problems and issues involved. If the Arizona Supreme Court  
5 declines certification this Court will resolve the issue according to its understanding of  
6 Arizona law.

7           The Clerk of this Court is directed to file with the Arizona Supreme Court an original  
8 and six certified copies of this order and a list of the counsel appearing in this matter along  
9 with their addresses and telephone numbers. See Ariz. S. Ct. R. 27(a)(3)(C), (a)(4). The  
10 Arizona Supreme Court may supplement the record in any way it believes appropriate to  
11 enable it to answer the certified questions. See Ariz. S. Ct. R. 27(a)(5). Any court fees and  
12 costs incurred in state proceedings shall be paid equally by both parties. See Ariz. S. Ct. R.  
13 27(a)(3)(D).

14           Until the Arizona Supreme Court resolves the issue, or otherwise declines to certify  
15 the question, MCSO will remain a named defendant in this action. MCSO is granted leave  
16 to re-urge its motion once the Arizona Supreme Court resolves the issue or declines  
17 certification.

18           **Accordingly,**

19           **IT IS HEREBY ORDERED** certifying a question of Arizona law to the Arizona  
20 Supreme Court.

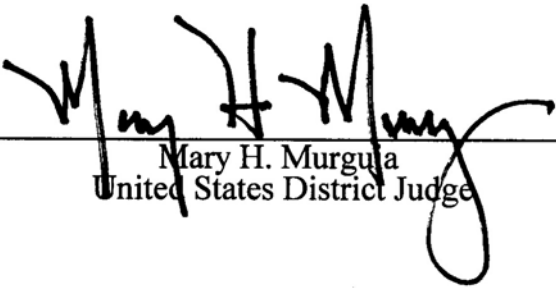
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**IT IS FURTHER ORDERED** dismissing without prejudice Defendant Maricopa County Sheriff's Office Motion to Dismiss, (Dkt. #5), and granting it leave to re-urge the motion once the Arizona Supreme Court has certified the above-stated question or otherwise declines certification.

DATED this 29th day of September, 2009.



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Mary H. Murgula  
United States District Judge