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9 and John Kelly

10 IN THE UNITED STATES DISTRICT COURT
11 FOR THE DISTRICT OF ARIZONA

12 James Ziegenfuss Jr.,
13 Plaintiff,
14 v.
15 Joseph Arpaio, et al.,
16 Defendant.

NO. CV 05-1215-OHX-DGC (DKD)
**DEFENDANTS' ANSWER TO
PLAINTIFF'S SECOND AMENDED
COMPLAINT**
(JURY TRIAL DEMANDED)

17 Defendants, Joseph Arpaio, Maricopa County, Officers David Moyer and
18 John Kelly ("Maricopa County Defendants"), by and through undersigned
19 counsel, hereby answer Plaintiff's Second Amended Complaint as follows:

20 **JURISDICTION AND VENUE**

21 1. Maricopa County Defendants admit the allegations of paragraph 1 section
22

1 A, that this court has jurisdiction and that venue is proper.

2 **PARTIES**

3 2. Maricopa County Defendants admit the allegations of paragraph 2,
4 section A as to Plaintiff's name and present mailing address; deny remaining
5 allegations which presume a violation of Plaintiff's civil rights occurred.

6 3. Maricopa County Defendants admit the allegations of paragraph 3,
7 section A as to Defendant's (Joseph M. Arpaio) name and employment, and
8 admit that he is and was at all times relevant to this action the Sheriff of
9 Maricopa County and acting under the color of state law. Defendants further
10 admit that he is the commanding officer of the Maricopa County Sheriff's Office;
11 deny remaining allegations and demand the Plaintiff meet his burden of proof
12 thereon.

13 4. Maricopa County Defendants admit the allegations of paragraph 4,
14 section A as to Defendant's (David Moyer S897) name and employment, and
15 was at all times relevant to this action a Maricopa County Sheriff Deputy and
16 acting under the color of state law; deny remaining allegations and demands the
17 Plaintiff meet his burden of proof thereon.

18 5. Maricopa County Defendants admit the allegations of paragraph 5,
19 section A as to Defendant's (John Kelly 1777) name and employment, and was
20 at all times relevant to this action a Maricopa County Sheriff Deputy and acting
21 under the color of state law; deny remaining allegations and demand the Plaintiff
22 meet his burden of proof thereon.

1 6. Maricopa County Defendants admit the allegations of paragraph 6,
2 section A as to Defendant's (Maricopa County) identity; deny remaining
3 allegations and demand the Plaintiff meet his burden of proof thereon.

4 7. Maricopa County Defendants are without knowledge or information
5 sufficient to form a belief as to the truth of the allegations contained in
6 paragraphs 7, 8, 9 and 10 , section A, which are continued onto page 2-B of the
7 Second Amended Complaint and therefore deny allegations contained therein
8 and demand the Plaintiff meet his burden of proof thereon.

9 **PREVIOUS LAWSUIT**

10 8. Maricopa County Defendants admit the allegations set forth in paragraphs
11 1, 2 and 4 of section B, Second Amended Complaint; and are without
12 knowledge or information sufficient to form a belief as to the truth of the
13 allegations contained in paragraph 3, section B, Second Amended Complaint
14 and therefore deny same and demand the Plaintiff meet his burden of proof
15 thereon.

16 **FACTUAL ALLEGATIONS**

17 **COUNT ONE**

18 **(Deprivation of Right to be Free from Unreasonable Seizure)**

19 9. Maricopa County Defendants deny the allegations in paragraphs 1, 2, 3,
20 and 4 set forth on page 4, Second Amended Complaint; and further allege that
21 at all times material the Plaintiff's civil rights were modified by the terms and
22 conditions of his probation and the interstate compact agreement which he

1 signed.

2 10. Maricopa County Defendants admit the allegations in paragraphs 5 a, b, c
3 and d set forth on page 4, Second Amended Complaint.

4 (In Answer to allegations set forth on pages 4-A, B, C, D, & E of Claim I)

5 11. Maricopa County Defendants admit the allegations of paragraphs 4 and 5.

6 12. Maricopa County Defendants deny the allegations in paragraph 6 in that it
7 misstates the terms and procedures of the interstate compact agreement.

8 13. Maricopa County Defendants are without knowledge or information
9 sufficient to form a belief as to the truth of the allegations contained in
10 paragraphs 7 and 8, and therefore deny same.

11 14. Maricopa County Defendants admit the allegations in paragraph 9.

12 15. Maricopa County Defendants deny the allegations in paragraph 10.

13 17. Maricopa County Defendants admit the allegations in paragraph 11.

14 18. Maricopa County Defendants are without knowledge or information
15 sufficient to form a belief as to the truth of the allegations contained in
16 paragraphs 12 and 13, and therefore deny same.

17 19. Maricopa County Defendants admit the allegations in paragraphs 14, 15,
18 and 16.

19 20. Maricopa County Defendants deny the allegations in paragraphs 17.

20 21. Maricopa County Defendants admit the allegations in paragraphs 18, 19,
21 20, 21 and 22.

22 22. Maricopa County Defendants deny the allegations in paragraph 23.

1 23. Maricopa County Defendants admit the allegations in paragraph 24.

2 24. Maricopa County Defendants deny the allegations in paragraphs 25, 26,
3 27, 28, 29 and 30.

4 25. Maricopa County Defendants admit the allegations in paragraphs 31, 32,
5 33, and 34.

6 26. Maricopa County Defendants deny the allegations in paragraph 35.

7 27. Maricopa County Defendants admit the allegations in paragraph 36.

8 28. Maricopa County Defendants deny the allegations in paragraphs 37 and
9 38.

10 29. Maricopa County Defendants are without knowledge or information
11 sufficient to form a belief as to the truth of the allegations contained in
12 paragraphs 39, 40, 41, 42, and 43, and therefore deny same.

13 30. Maricopa County Defendants deny the allegations in paragraphs 44, 45,
14 46, 47, 48, 49, 50, and 51; and further allege in answer to paragraph 49 that the
15 Plaintiff specifically waived any objection to extradition as a condition of the
16 interstate compact agreement.

17 31. Maricopa County Defendants admit the allegations in paragraph 52.

18 32. Maricopa County Defendants deny the allegations in paragraphs 53, 54,
19 and 55.

20 33. Maricopa County Defendants admit the allegations in paragraph 56.

21 34. Maricopa County Defendants deny the allegations in paragraphs 57, 58,
22 59, 60, and 61.

1 35. Maricopa County Defendants admit the allegations in paragraphs 62, 63,
2 and 64.

3 36. Maricopa County Defendants deny the allegations in paragraphs 65, 66,
4 67, 68, 69, and 70.

5 37. Maricopa County Defendants are without knowledge or information
6 sufficient to form a belief as to the truth of the allegations contained in
7 paragraphs 71, 72, 73, 74, 75, 76, 77, 78 and 79, and therefore deny same.

8 38. Maricopa County Defendants admit the allegations in paragraph 80.

9 39. Maricopa County Defendants deny the allegations in paragraphs 81, 82,
10 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, and 93.

11 40. Maricopa County Defendants are without knowledge or information
12 sufficient to form a belief as to the truth of the allegations contained in
13 paragraphs 94, 95, and 96, and therefore deny same.

14 41. Maricopa County Defendants deny the allegations in paragraphs 97, 98
15 and 99.

16 **COUNT TWO**

17 **(Deprivation of Right to be Free from False Imprisonment)**

18 42. Maricopa County Defendants deny the allegations in paragraphs 1, 2, 3,
19 and 4 set forth on page 5, Second Amended Complaint; and further allege that
20 at all times material the Plaintiff's civil rights were modified by the terms and
21 conditions of his probation and the interstate compact agreement which he
22 signed.

1 43. Maricopa County Defendants admit the allegations in paragraphs 5 a, b, c
2 and d set forth on page 5, Second Amended Complaint.

3 (In Answer to allegations set forth on pages 5-A, B, C, D, & E of Claim II)

4 44. Maricopa County Defendants admit the allegations of paragraphs 4 and 5.

5 45. Maricopa County Defendants deny the allegations in paragraph 6 in that it
6 misstates the terms and procedures of the interstate compact agreement.

7 46. Maricopa County Defendants are without knowledge or information
8 sufficient to form a belief as to the truth of the allegations contained in
9 paragraphs 7 and 8, and therefore deny same.

10 47. Maricopa County Defendants admit the allegations in paragraph 9.

11 48. Maricopa County Defendants deny the allegations in paragraph 10.

12 49. Maricopa County Defendants admit the allegations in paragraph 11 in
13 part; and further allege the Plaintiff was held pursuant to a probable cause
14 hearing held by the Pennsylvania Parole and Probation authorities and was
15 pending removal to Arizona under the interstate compact agreement.

16 50. Maricopa County Defendants deny the allegations in paragraph 12.

17 51. Maricopa County Defendants admit the allegations in paragraphs 13, 14,
18 15, and 16.

19 52. Maricopa County Defendants deny the allegations in paragraphs 17.

20 53. Maricopa County Defendants admit the allegations in paragraphs 18.

21 54. Maricopa County Defendants deny the allegations in paragraphs 19 and

22 20.

1 55. Maricopa County Defendants admit the allegations in paragraphs 21, 22,
2 23, and 24.

3 56. Maricopa County Defendants are without knowledge or information
4 sufficient to form a belief as to the truth of the allegations contained in
5 paragraphs 25, 26, and 27, and therefore deny same.

6 57. Maricopa County Defendants admit the allegations in paragraph 28.

7 58. Maricopa County Defendants admit the allegations in paragraphs 29, 30,
8 31, 32, 33, 34, and 35.

9 59. Maricopa County Defendants admit the allegations in paragraphs 36, 37,
10 38, and 39.

11 60. Maricopa County Defendants deny the allegations in paragraphs 40, 41,
12 42, and 43.

13 61. Maricopa County Defendants are without knowledge or information
14 sufficient to form a belief as to the truth of the allegations contained in
15 paragraphs 44, 45, 46, 47, and 48, and therefore deny same.

16 62. Maricopa County Defendants deny the allegations in paragraphs 49, 50,
17 51, 52, 53, 54, 55, and 56; and further allege in answer to paragraph 54 that the
18 Plaintiff specifically waived any objection to extradition as a condition of the
19 interstate compact agreement.

20 63. Maricopa County Defendants admit the allegations in paragraph 57.

21 64. Maricopa County Defendants deny the allegations in paragraphs 58, 59,
22 and 60.

- 1 65. Maricopa County Defendants admit the allegations in paragraph 61.
- 2 66. Maricopa County Defendants deny the allegations in paragraphs 62, 63,
3 64, 65, and 66.
- 4 67. Maricopa County Defendants admit the allegations in paragraphs 67, 68,
5 and 69.
- 6 68. Maricopa County Defendants deny the allegations in paragraphs 70, 71,
7 72, 73, 74, 75, 76, and 77.
- 8 69. Maricopa County Defendants are without knowledge or information
9 sufficient to form a belief as to the truth of the allegations contained in
10 paragraphs 78, 79, and 80, and therefore deny same.
- 11 70. Maricopa County Defendants admit the allegations in paragraph 81.
- 12 71. Maricopa County Defendants are without knowledge or information
13 sufficient to form a belief as to the truth of the allegations contained in
14 paragraphs 82, 83, 84, 85, and 86, and therefore deny same.
- 15 72. Maricopa County Defendants admit the allegations in paragraph 87.
- 16 73. Maricopa County Defendants deny the allegations in paragraphs 88, 89,
17 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, and 100.
- 18 74. Maricopa County Defendants are without knowledge or information
19 sufficient to form a belief as to the truth of the allegations contained in
20 paragraphs 101, 102, and 103, and therefore deny same.
- 21 75. Maricopa County Defendants deny the allegations in paragraphs 104, 105
22 and 106.

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COUNT THREE

(Intentional Infliction of Emotional Distress)

76. Count III was dismissed by the Court and does not require Maricopa County Defendants to submit admissions or denials.

AFFIRMATIVE DEFENSES

1. Plaintiff’s Complaint fails to state a claim upon which relief may be granted in that at all times material his civil rights were limited by the terms and conditions of his parole and the interstate compact agreement.
2. Plaintiff’s Complaint fails to state a claim upon which relief may be granted in that it fails to allege all necessary elements of the claims.
3. Plaintiff specifically waived any objection to extradition as a condition under the interstate compact for his placement in Pennsylvania; and at all times material was subject to removal to the state of Arizona premised upon a probable cause hearing by Pennsylvania Parole and Probation.
4. Maricopa County Defendants assert qualified immunity under federal law and Arizona law.
5. As a separate defense, Maricopa County Defendants affirmatively allege that the acts or omissions alleged do not rise to the level necessary to find a violation of any provision of federal law or the United States Constitution.
6. Maricopa County Defendants, in their official capacity, are not “persons” within the meaning of § 1983 and cannot be sued for money damages.
7. Maricopa County Defendants are entitled to immunity for any claims which

1 were not included in a timely notice of any state claim, meeting the requirements
2 of A.R.S. § 12-821.01.

3 8. Maricopa County Defendants affirmatively allege that the theory of
4 *respondeat superior* is insufficient to support Plaintiff's Complaint against
5 supervisors or county.

6 9. As a separate defense, Maricopa County Defendants affirmatively allege
7 that Plaintiff sustained no injury or harm as a result of Defendants' actions or
8 inactions.

9 10. Maricopa County Defendants affirmatively allege that Plaintiff is not
10 entitled to punitive damages.

11 11. Additional facts may be revealed by further discovery that support
12 affirmative defenses presently available but unknown to Maricopa County
13 Defendants. Accordingly, Maricopa County Defendants allege, as though
14 asserted herein, all affirmative defenses set forth in Rules 8 and 12 of the
15 Federal Rules of Civil Procedure.

16 WHEREFORE, having fully answered Plaintiff's Complaint, Maricopa
17 County Defendants respectfully requests the Court to grant Defendant the
18 following relief:

- 19 1. Dismiss Plaintiff's Complaint in its entirety;
- 20 2. Award Defendants their costs incurred in defending against this
21 action;
- 22 3. Award Defendants any other further relief the Court deems just and

1 proper.

2 RESPECTFULLY SUBMITTED this 22nd day of June 2007.

3 ANDREW P. THOMAS
4 MARICOPA COUNTY ATTORNEY

5 BY: /s/ Randall R. Garczynski
6 RANDALL R. GARCZYNSKI
7 Deputy County Attorney
8 Attorneys for Joseph Arpaio, et al.

8 ORIGINAL of the foregoing E-FILED
9 and copies MAILED this
10 22nd day of June 2007 to:

10 Honorable David G. Campbell
11 United States District Court
12 Sandra Day O'Connor U.S. Courthouse, Suite 623
13 401 West Washington, SPC 58
14 Phoenix, Arizona 85003

13 Honorable David K. Duncan
14 United States District Court
15 Sandra Day O'Connor U.S. Courthouse, Suite 325
16 401 West Washington, SPC 14
17 Phoenix, Arizona 85003

16 James Ziegenfuss, Jr. #136479
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21 *Pro Se*

21 /s/Dey Lynn Moore

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