

1 MARICOPA COUNTY  
OFFICE OF GENERAL LITIGATION SERVICES

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10 Attorney for Defendants Maricopa Medical Center  
11 and Maricopa County Special Health Care District

12 IN THE UNITED STATES DISTRICT COURT

13 FOR THE DISTRICT OF ARIZONA

14 JOHN STEVEN SIMON,

15 Plaintiff,

16 v.

17 CITY OF PHOENIX, et al.

18 Defendants.

NO. CV09-701 (MHM)

**DEFENDANTS MARICOPA  
MEDICAL CENTER AND THE  
MARICOPA COUNTY SPECIAL  
HEALTH CARE DISTRICT'S  
RESPONSE TO PLAINTIFF'S  
MOTION FOR JUDGMENT ON THE  
PLEADINGS**

19 Defendants Maricopa Medical Center (“MMC”) and Maricopa County Special  
20 Healthcare District (“The District”) hereby submit their Response to Plaintiff’s Motion  
21 for Judgment on the Pleadings.

22 Plaintiff’s latest motion comes on the heels of so many frivolous and convoluted  
motions before it, each of which has required Defendants to waste time and money

1 responding. For instance, these Defendants, while waiting for the Court’s ruling on their  
2 Motion to Dismiss, have been forced to file Doc. #45 - Response to Plaintiff’s Motion  
3 To Strike Maricopa Medical Center And Maricopa County Special Healthcare District’s  
4 Motion To Dismiss and Response To Plaintiff’s Second Motion To Amend Plaintiff’s  
5 Response Motion To Strike Maricopa Medical Center And Maricopa County Health  
6 Care District’s Motion To Dismiss; Doc. #56 - Response To Plaintiff’s Motion To  
7 Compel; and Doc. # 59 - Response To Plaintiff’s Motion To Compel Items Of Request.  
8 Plaintiff’s latest foray into the land of impermissible motions is his Motion for Judgment  
9 on the Pleadings.

10 Federal Rules of Civil Procedure Rule 12 provides that “After the pleadings are  
11 closed--but early enough not to delay trial--a party may move for judgment on the  
12 pleadings.” Plaintiff apparently misapprehends the meaning of “after” since this motion  
13 was most certainly not filed after the pleadings were closed. “For purposes of Rule  
14 12(c), the pleadings are ‘closed’ only when the parties have filed all of the pleadings  
15 Rule 7(a) contemplates.” *Norcal Gold, Inc. v. Laubly*, 543 F.Supp.2d 1132,  
16 1135 (E.D.Cal., 2008). “Pleadings are not closed until at least an answer has been filed.  
17 .... Judgment on the pleadings may not be entered where no answer has been filed.” *Id.*  
18 (Internal citations omitted). Because there has been no ruling on the Motion to Dismiss,  
19 and no determination of whether an Answer will even be required, the pleadings are not  
20 closed and a Motion for Judgment on the Pleadings is improper.

21 Plaintiff’s motion should be denied. In order to put a halt to the onslaught of ill-  
22 conceived and baseless motions, Defendants ask that this Court enter an order

1 prohibiting Plaintiff from filing any further motions without first obtaining leave of the  
2 court. Moreover, in order to compensate Defendants for the expenses incurred in  
3 responding to this and Plaintiff's other injudicious motions, and as a means of providing  
4 a disincentive to Plaintiff for filing further similar motions, Defendants seek an order  
5 requiring Plaintiff to pay their attorneys' fees incurred in responding to this motion and  
6 any other motion filed by Plaintiff without leave of the court.

7  
8 RESPECTFULLY SUBMITTED this 9<sup>th</sup> day of November 2009.

9 MARICOPA COUNTY  
10 OFFICE OF GENERAL LITIGATION SERVICES

11 BY: /s/ Sherle R. Flaggman  
12 SHERLE R. FLAGGMAN  
13 Attorney for Defendants Maricopa  
14 Medical Center and Maricopa County  
15 Special Health Care District  
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1 ORIGINAL of the foregoing **E-FILED**  
and courtesy copy **MAILED** this 9<sup>th</sup>  
2 day of November 2009 to:

3 Honorable Mary H. Murguia  
UNITED STATES DISTRICT COURT JUDGE  
4 Sandra Day O'Connor U.S. Courthouse  
401 W. Washington St., Ste. 525, SPC 53  
5 Phoenix, AZ 85003

6 and copies **MAILED** to:

7 John Steven Simon  
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8 Box #507  
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9 *Plaintiff Pro Per*

10 Lori V. Berke, Esq.  
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13

14 /s/ Victoria Carbajal

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