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 13 Sheriff’s Office and Joseph M. Arpaio

14 **IN THE UNITED STATES DISTRICT COURT**
 15 **FOR THE DISTRICT OF ARIZONA**

16 United States of America,

17 Plaintiff,

18 vs.

19 Maricopa County, Arizona; Maricopa
 20 County Sheriff’s Office; and Joseph M.
 21 Arpaio, in his official capacity as Sheriff
 22 of Maricopa County, Arizona,

23 Defendants.

No. 2:10-cv-01878-GMS

**MCSO DEFENDANTS’ ANSWER TO
 PLAINTIFF’S FIRST AMENDED
 COMPLAINT**

24 Defendants Joseph M. Arpaio and the Maricopa County Sheriff’s Office (together,
 25 “the MCSO Defendants”) hereby respond to Plaintiff’s First Amended Complaint as
 26 follows:

INTRODUCTION

27 1. The allegations contained in paragraph 1 of the First Amended Complaint
 28 are legal conclusions to which no response is required.

2. The allegations contained in paragraph 2 of the First Amended Complaint
 are legal conclusions to which no response is required.

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1 11. MCSO Defendants admit that they are located in Arizona. The remaining
2 allegations contained in paragraph 11 of the First Amended Complaint are legal
3 conclusions to which no response is required.

4 **FACTS**

5 12. The allegations contained in paragraph 12 of the First Amended Complaint
6 are legal conclusions to which no response is required.

7 13. The allegations contained in paragraph 13 of the First Amended Complaint
8 are legal conclusions to which no response is required.

9 14. The allegations contained in paragraph 14 of the First Amended Complaint
10 are legal conclusions to which no response is required.

11 15. MCSO Defendants admit that MCSO receives federal financial assistance.
12 MCSO Defendants are without information or knowledge to form a belief as to the truth
13 of the remaining allegations contained in paragraph 15 of the First Amended Complaint
14 and, therefore, deny the same.

15 16. MCSO Defendants are without information or knowledge to form a belief
16 as to the truth of the allegations contained in paragraph 16 of the First Amended
17 Complaint and, therefore, deny the same. To the extent that this information is contained
18 in public records, those records speak for themselves.

19 17. MCSO Defendants are without information or knowledge to form a belief
20 as to the truth of the allegation contained in paragraph 17 of the First Amended
21 Complaint and, therefore, deny the same. MCSO Defendants further aver that the terms
22 used in paragraph 17 are overly vague.

23 18. MCSO Defendants admit that MCSO receives federal financial assistance.
24 To the extent that specific grants are public records, these records speak for themselves.

25 19. MCSO Defendants admit that MCSO receives federal financial assistance.
26 To the extent that specific grants are public records, those records speak for themselves.

27 20. MCSO Defendants are without information or knowledge to form a belief
28 as to whether Maricopa County has signed contractual assurances regarding Title VI and

1 the implementing regulations and, therefore, deny the same. MCSO Defendants deny the
2 remaining allegations contained in paragraph 20 of the First Amended Complaint.

3 21. To the extent that the contractual assurances are public records, these
4 records speak for themselves. MCSO Defendants deny that they are required to provide
5 DOJ with unfettered access to and the right to examine any and all records and sources of
6 information without any limitations, at any time of its choosing. MCSO Defendants
7 further deny the remaining allegations contained in paragraph 21 of the First Amended
8 Complaint.

9 22. MCSO Defendants are without information or knowledge to form a belief
10 as to the exact parameters regarding the DOJ Civil Rights Division's preliminary inquiry
11 and, therefore, denies the same.

12 23. MCSO Defendants admit that on or about March 10, 2009, MCSO
13 Defendants were notified that DOJ was initiating an investigation, as contained in
14 paragraph 23 of the First Amended Complaint. To the extent that the notification is a
15 public record, this record speaks for itself.

16 24. MCSO Defendants admit that, on or about March 25, 2009, it received
17 Plaintiff's First Request for Documents. To the extent that the First Request is a public
18 record, this record speaks for itself. MCSO Defendants further admit that discussions
19 took place between Plaintiff and the MCSO Defendants to discuss the documents and
20 information requested by Plaintiff. MCSO Defendants deny the remaining allegations
21 contained in paragraph 24 of the First Amended Complaint.

22 25. MCSO Defendants admit that on or about April 30, 2009, MCSO
23 Defendants met with Plaintiff to discuss the investigation. MCSO Defendants deny the
24 remaining allegations contained in paragraph 25 of the First Amended Complaint.

25 26. MCSO Defendants admit that on or about May 12, 2009, MCSO
26 Defendants provided Plaintiff with documents that were responsive to the First Request.
27 MCSO Defendants deny the remaining allegations contained in paragraph 26 of the First
28 Amended Complaint.

1 27. MCSO Defendants admit that on or about May 12, May 20, and May 27,
2 2009, Plaintiff sought information regarding the status of its requests. MCSO Defendants
3 deny the remaining allegations contained in paragraph 27 of the First Amended
4 Complaint.

5 28. MCSO Defendants admit that on or about May 29, 2009, MCSO
6 Defendants informed Plaintiff that they would not provide DOJ with unfettered access to
7 and the right to examine any and all records and sources of information without any
8 limitations, at any time of its choosing. MCSO Defendants deny the remaining
9 allegations contained in paragraph 28 of the First Amended Complaint.

10 29. MCSO Defendants admit that on or about June 22, 2009, MCSO
11 Defendants informed Plaintiff that they would not provide DOJ with unfettered access to
12 and the right to examine any and all records and sources of information without any
13 limitations, at any time of its choosing. MCSO Defendants deny that they refuse to
14 cooperate with DOJ and deny the remaining allegation contained in paragraph 29 of the
15 First Amended Complaint.

16 30. MCSO Defendants admit that on or about July 7, 2009, Defendant Sheriff
17 Arpaio held a press conference. MCSO Defendants admit that Sheriff Arpaio stated that
18 MCSO would not provide DOJ with unfettered access to and the right to examine any
19 and all records and sources of information without any limitations, at any time of its
20 choosing. MCSO Defendants deny that they refused to cooperate with DOJ and deny the
21 remaining allegation contained in paragraph 30 of the First Amended Complaint.

22 31. MCSO Defendants admit that on or about July 16, 2009, MCSO
23 Defendants indicated that they would provide information regarding services to persons
24 with limited English proficiency in the MCSO jail facilities. MCSO Defendants deny the
25 remaining allegations contained in paragraph 31 of the First Amended Complaint.

26 32. MCSO Defendants admit that on or about August 12, 2009, MCSO
27 indicated that it would provide a position statement by October 2009. MCSO Defendants
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1 admit that the position statement was not provided by October 2009 as the information
2 was too voluminous to review by that date.

3 33. MCSO Defendants admit that on or about November 10, 2009, MCSO
4 indicated that it would provide a position statement by mid-December 2009. MCSO
5 Defendants admit that the position statement was not provided by mid-December 2009 as
6 the information was too voluminous to review by that date.

7 34. MCSO Defendants admit that on or about June 14, 2010 MCSO produced
8 an extensive position statement containing documents responsive to several of the
9 requests in the First Request. MCSO Defendants deny the remaining allegations
10 contained in paragraph 34 of the First Amended Complaint.

11 35. MCSO Defendants admit that on or about August 3, 2010 they received
12 notification from Plaintiff informing MCSO Defendants that in its opinion they were not
13 in compliance with Title VI. MCSO Defendants admit that Plaintiff requested
14 compliance by August 17, 2010. MCSO Defendants deny that they refuse to cooperate
15 with DOJ and deny the remaining allegations contained in paragraph 35 of the First
16 Amended Complaint.

17 36. MCSO Defendants deny that they refuse to cooperate in DOJ's
18 investigation. MCSO Defendants admit that they refused to provide Plaintiff with
19 unfettered access to and the right to examine any and all records and sources of
20 information without any limitations, at any time of its choosing. MCSO Defendants
21 admits that on or about August 5, 2010, they requested a discussion with Plaintiff
22 regarding the August 3 letter.

23 37. MCSO Defendants admit that on or about August 12, 2010, Maricopa
24 County directed MCSO to fully cooperate with DOJ in its Title VI inquiry. MCSO
25 Defendants are without information or knowledge to form a belief as to the truth of the
26 remaining allegations contained in paragraph 37 of the First Amended Complaint and,
27 therefore, deny the same.
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1 38. MCSO Defendants admit that MCSO responded to Maricopa County on or
2 about August 13, 2010. MCSO Defendants deny the remaining allegation contained in
3 paragraph 38 of the First Amended Complaint.

4 39. MCSO Defendants are without information or knowledge to form a belief
5 as to the truth of the allegation contained in paragraph 39 of the First Amended
6 Complaint concerning the conduct of Maricopa County. MCSO denies that it is
7 unwilling to provide requested documents and access to MCSO's facilities and staff.

8 40. MCSO Defendants admit that on or about August 24, 2010, MCSO met
9 with Plaintiff to discuss Plaintiff's investigation and requests for access. MCSO
10 Defendants deny that the United States' memorialization accurately summarizes that
11 meeting. MCSO Defendants are without information or knowledge to form a belief as to
12 the accuracy of Plaintiff's memorandum regarding the meeting and, therefore, deny the
13 same.

14 41. MCSO Defendants deny that they refuse to cooperate with the
15 investigation. MCSO Defendants admit they would not provide DOJ with unfettered
16 access to and the right to examine any and all records and sources of information without
17 any limitations, at any time of its choosing.

18 42. The allegations contained in paragraph 42 of the First Amended
19 Complaint are legal conclusions to which no response is required, however MCSO
20 Defendants deny the underlying allegation that compliance cannot be achieved by
21 voluntary means.

22 43. The allegations contained in paragraph 43 of the First Amended Complaint
23 are legal conclusions to which no response is required, however MCSO Defendants deny
24 the underlying allegation MCSO Defendants are not in compliance with Title VI, its
25 implementing regulations, and related contractual assurances.

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FIRST CLAIM FOR RELIEF

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2 44. MCSO Defendants reallege and incorporate by reference each and every
3 response set forth in paragraphs 1 through 43 as though fully set forth herein.

4 45. The allegations contained in paragraph 45 of the First Amended Complaint
5 are legal conclusions to which no response is required.

6 46. MCSO Defendants deny the allegations contained in paragraph 46 of the
7 First Amended Complaint.

8 47. MCSO Defendants deny the allegation contained in paragraph 47 of the
9 First Amended Complaint.

10 **SECOND CLAIM FOR RELIEF**

11 48. MCSO Defendants reallege and incorporate by reference each and every
12 response set forth in paragraphs 1 through 47 as though fully set forth herein.

13 49. MCSO Defendants deny the allegations contained in paragraph 49 of the
14 First Amended Complaint.

15 50. MCSO Defendants deny the allegations contained in paragraph 50 of the
16 First Amended Complaint.

17 51. MCSO Defendants deny the allegations contained in paragraph 51 of the
18 First Amended Complaint.

19 **OTHER ALLEGATIONS**

20 52. MCSO Defendants expressly deny any and all other allegations not
21 specifically addressed herein.

22 **PRAYER FOR RELIEF**

23 53. MCSO Defendants deny that Plaintiff is entitled to any of the relief
24 requested in the prayer for relief contained in the First Amended Complaint.

25 **AFFIRMATIVE DEFENSES**

26 MCSO Defendants hereby identify the following defenses to the claims in the First
27 Amended Complaint. Identification of these defenses is not intended to shift the burden
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1 of persuasion or production as required by law as to any claim contained in the First
2 Amended Complaint:

3 1. Plaintiff's claims are barred, in whole or in part, by their failure to state a
4 claim upon which relief may be granted.

5 2. Plaintiff's claims are barred, in whole or in part, by the doctrines of
6 estoppel or res judicata.

7 3. Plaintiff's claims are barred, in whole or in part, because the Court lacks
8 subject matter jurisdiction over the matters asserted in the First Amended Complaint.

9 4. Plaintiff's claims are barred, in whole or in part, because Plaintiff cannot
10 establish an adverse impact.

11 5. Plaintiff's claims are barred, in whole or in part, because MCSO
12 Defendants have acted in good faith to comply with the laws.

13 6. Plaintiff's claims are barred, in whole or in part, because MCSO
14 Defendants have legitimate, non-discriminator reasons for their actions.

15 7. Plaintiff's claims are barred, in whole or in part, by the statute of
16 limitations.

17 8. Plaintiff's claims are barred, in whole or in part, because the First Amended
18 Complaint was filed without exhausting all administrative or contractual procedures.

19 9. MCSO Defendants reserve the right to add additional affirmative defenses
20 as discovery proceeds.

21 WHEREFORE, having filed its Answer and Affirmative Defenses to Plaintiff's First
22 Amended Complaint, MCSO Defendants request:

23 A. That the First Amended Complaint be dismissed with prejudice, with
24 Plaintiff to take nothing thereby;

25 B. That MCSO Defendants be awarded their reasonable attorneys' fees
26 incurred herein pursuant to Rule 11, 42 U.S.C. §12205, and any other statute or Court
27 rule allowing for such recovery because Plaintiff's action is frivolous, unreasonable, or
28 without foundation;

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C. That MCSO Defendants be awarded their costs herein;

D. That MCSO Defendants be awarded post-judgment interest on the foregoing amounts at the maximum rate permitted by law; and

E. That MCSO Defendants be awarded such other and further relief as the court deems just and proper.

RESPECTFULLY SUBMITTED this 28th day of September, 2010.

Ogletree, Deakins, Nash, Smoak & Stewart, P.C.

By _____ s/Kerry S. Martin

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1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on the 28th day of September 2010, I electronically
3 transmitted the attached document to the Clerk's Office using the ECF Systems for filing
4 and transmittal of a Notice of Electronic Filing to the following ECF registrant:

5
6 Thomas E. Perez
7 Assistant Attorney General
8 Dennis K. Burke
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11 Matthew Colangelo
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