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9 **UNITED STATES DISTRICT COURT**

10 **DISTRICT OF ARIZONA**

11 United States of America,

12 Plaintiff,

13 v.

14 Maricopa County, Arizona; Maricopa County
 Sheriff's Office; and Joseph M. Arpaio, in his
 15 official capacity as Sheriff of Maricopa
 County, Arizona,
 16

17 Defendants.

NO. CV10-01878-PHX-GMS

**MOTION TO EXTEND TIME TO
 FILE RESPONSE TO MOTION
 FOR SUMMARY JUDGMENT**

***(EXPEDITED RULING
 REQUESTED)***

18
 19 Pursuant to Local Rule 6, Joseph Arpaio and Maricopa County Sheriff's
 20 Office ("MCSO") move this Court for an Order extending the deadline by which to file a
 21 Response to the United States' Motion for Summary Judgment by ninety (90) days. Good
 22 cause, and not dilatory motive, justifies this requested extension.

23 As the Court is aware, it granted the Motion to Continue (Dkt. 27) filed by
 24 movants' previous counsel. That Motion specifically requested that the Court afford
 25 movants time to retain new counsel and to respond to the pending Motion for Summary
 26 Judgment. *Id.* The Court's Order specifically instructed movants to retain new counsel by
 27 October 20, 2010. Movants retained new counsel before that deadline; undersigned
 28

1 counsel filed a Substitution of Counsel with Consent on October 13, 2010 (Dkt. 33),
2 which this Court granted on October 21, 2010. (Dkt. 34)

3 The Court's Order did not specifically provide a date by which any
4 prospective, newly retained counsel must respond to the pending Motion for Summary
5 Judgment. Prior counsel, however, requested a November 3, 2010 deadline by which to
6 respond to that Motion. That requested deadline, however, is impracticable; it neither
7 allows sufficient time for the transition of the file to new counsel, nor sufficient time for
8 new counsel to come up to speed in this action.

9 Undersigned counsel is in the process of acquiring the file regarding this
10 action from movants' predecessor counsel, Ogletree, Deakins, Nash, Smoak & Stewart,
11 P.C. ("Ogletree"). The file consists of materials kept in Ogletree's Phoenix and
12 Indianapolis offices. At this time, undersigned counsel does not possess the entire file,
13 and does not expect to obtain the entire file until next week. Moreover, even if
14 undersigned counsel did possess the entire file, it would not have the necessary time to
15 digest its contents, the corresponding factual and legal issues, and to prepare and timely
16 file a substantive response to the pending Motion for Summary Judgment.

17 In addition, undersigned counsel spoke with Assistant U.S. Attorney
18 Matthew Colangelo regarding this requested extension. Mr. Colangelo stated that the
19 United States *may* agree to an extension to respond to its Motion for Summary Judgment,
20 but did not agree to grant an extension of any amount. The parties intend to continue to
21 confer regarding the requested extension, as well as other issues giving rise to this action,
22 on November 2, 2010, the day before the response is due. Although movants believe that
23 the parties can reach an accord regarding the requested extension and other issues, it
24 would be imprudent to wait until the eve of the response deadline to seek court
25 intervention.

26 Moreover, this action is in its infancy; the United States filed its Complaint
27 on September 2, 2010. Shortly thereafter, the United States filed its Motion for Summary
28 Judgment simultaneously with its First Amended Complaint on September 13, 2010.

1 Prior counsel filed a timely Answer to the First Amended Complaint on September 28,
2 2010. (Dkt.29) While the United States may consider this action to be older than it
3 actually is, the fact is that March 10, 2009, the date on which the United States informed
4 movants that they were the subject of an investigation, is not the controlling date for the
5 purposes of this requested extension. Upon information and belief, the United States
6 “took no action for well over a year” and “did not initiate this lawsuit until September 2,
7 2010.” (See Dkt. 30) This case is just shy of two (2) months old.

8 Moreover, in Plaintiff's Opposition to Motion for Continuance filed by
9 previous counsel, the United States argued that failure to comply with ordinary court
10 deadlines impaired its ability to ensure that defendants are not using public funds for
11 impermissible discrimination. (Dkt. 28) While the deadline to respond to the Motion for
12 Summary Judgment may be considered ordinary, this particular deadline arises within the
13 context of extraordinary circumstances.

14 First, the undersigned counsel has just appeared in this action, following the
15 termination of its predecessor—the result of a decision of Defendant Maricopa County,
16 not Sheriff Arpaio or any other MCSO representative.

17 Second, the contractual assurance of compliance with a request for
18 information is not without limits. *U.S. v. Phoenix Union High School District*, 681 F.2d
19 1235, 1238 (1982). It must be applied with an eye toward striking a proper
20 accommodation between the federal interest in ascertaining Title VI compliance and
21 movants' legitimate countervailing interests. *Id.* In addition, any consent found in the
22 execution of the assurances of compliance is consent only to searches that comport with
23 constitutional standards of reasonableness. *U.S. v. Harris Methodist*, 970 F.2d 94, 100
24 (1992) citing *Zap v. United States*, 328 U.S. 624, 628, 66 S.Ct. 1277, 1279, 90 L.Ed. 1477
25 (1946), *rev'd on other grounds*, 330 U.S. 800, 67 S.Ct. 857, 91 L.Ed. 1259 (1947). This
26 appears to be the crux of this case and the pending Motion for Summary Judgment which
27 must not be decided in haste.

28 Third, the United States previously opposed any extension of the deadline

1 that predecessor counsel requested, arguing that any extension undermines the expedited
2 processing of their request for records. (Dkt. 30) In reality, despite the claim that exigent
3 circumstances exist in obtaining information in this instance, approximately nineteen (19)
4 months after informing movants that they were the subject of an investigation passed
5 before the filing of this action and the motion for summary judgment.

6 The United States would suffer no prejudice if the Court extended the
7 deadline to respond to the Motion for Summary Judgment by ninety (90) days.
8 Conversely, forcing movants' new counsel to respond to the Motion for Summary
9 Judgment that raises complex legal and factual issues by November 3, 2010 would surely
10 handicap new counsel and, thus, severely prejudice movants. All parties should desire a
11 ruling on the Motion for Summary Judgment on the merits of this case. Under the
12 circumstances, a satisfaction of that desire and equity require a granting of the requested
13 ninety (90) day extension.

14 Given the fact that movants have just retained new counsel, that newly
15 retained counsel has not yet received the entire file, and that newly retained counsel must
16 digest and analyze the legal and factual issues relevant to this case to respond to the
17 Motion for Summary Judgment, a request for a ninety (90) day extension of time to
18 respond to the United States' Motion for Summary Judgment is reasonable.

19 Good cause exists for the Court to grant the requested ninety (90) day
20 extension. Under these circumstances, movants Joseph Arpaio and Maricopa County
21 Sheriff's Office respectfully request a ninety (90) day extension of time until January 4,
22 2011 to file a Response to the United States' Motion for Summary Judgment.

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RESPECTFULLY SUBMITTED this 29th day of October, 2010.

JONES, SKELTON & HOCHULI, P.L.C.

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