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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

Gary Donahoe and Cherie Donahoe,
husband and wife,

Plaintiffs,

vs.

Sheriff Joseph Arpaio and Ava Arpaio,
husband and wife; Andrew Thomas and
Anne Thomas, husband and wife; Lisa
Aubuchon and Peter R. Pestalozzi, wife and
husband; Deputy Chief David Hendershott
and Anna Hendershott, husband and wife;
Peter Spaw and Jane Doe Spaw, husband
and wife; Maricopa County, a municipal
entity; Jon Does I-X; Jane Does I-X; Black
Corporations I-V; and White Partnerships I-
V,

Defendants.

No. CV 10-02756-PHX-NVW

CONSOLIDATED WITH:

Sandra Wilson and Paul Wilson, husband
and wife,

Plaintiffs,

vs.

Sheriff Joseph Arpaio and Ava Arpaio,
husband and wife; et al.,

Defendants.

CV 10-02758-PHX-NVW

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Conley D. Wolfswinkel, a single man;
Brandon D. Wolswinkel, a single man;
Ashton A. Wolfswinkel, a single man;
Vanderbilt Farms, LLC, an Arizona limited
liability company; ABCDW, LLC, an
Arizona limited liability company; Stone
Canyon, LLC, an Arizona limited liability
company; Vistoso Partners, LLC, an
Arizona limited liability company; and W
Harquahala, LLC, an Arizona limited
liability company;

Plaintiffs,

vs.

Sheriff Joseph Arpaio and Ava Arpaio,
husband and wife; et al.,

Defendants.

CV 11-00116-PHX-NVW

Mary Rose Wilcox and Earl Wilcox, wife
and husband,

Plaintiffs,

vs.

Sheriff Joseph Arpaio and Ava Arpaio,
husband and wife; et al.,

Defendants.

CV 11-00473-PHX-NVW

Donald T. Stapley, Jr. and Kathleen
Stapley, husband and wife,

Plaintiffs,

vs.

Sheriff Joseph Arpaio and Ava Arpaio,
husband and wife; et al.,

Defendants.

CV 11-00902-PHX-NVW

ORDER

Before the Court is Maricopa County’s Amended Motion for Reconsideration and
Modification of May 31, 2012 (Doc. 514) and the Wolfswinkel Plaintiffs’ Motion to Set
Aside the Court’s May 26, 2011 Order Dismissing William Montgomery as a Party-
Defendant (Doc. 565). The County seeks a modification of this Court’s May 31 order

1 which required Maricopa County to produce documents in the possession of the
2 Maricopa County Attorney's office that are responsive to discovery requests from the
3 Wolfswinkel plaintiffs. The County Attorney, Bill Montgomery, has taken the position
4 that he is not required to produce the documents under his control to the County, and that
5 as a non-party to this suit, he is not compelled to cooperate with the Wolfswinkel
6 plaintiffs' discovery requests. Nonetheless, after he was served with a subpoena for the
7 documents by the County's attorney, Montgomery complied with the subpoena and
8 produce the requested documents. Accordingly, the motion for reconsideration is
9 effectively moot.

10 Nonetheless, it is likely that the County Attorney's office will need to cooperate in
11 this litigation because the former County Attorney, Andrew Thomas, is a defendant
12 related to actions he took in his capacity as County Attorney and documents in the
13 County Attorney's office will likely need to be produced in discovery. The Wolfswinkel
14 plaintiffs initially named Montgomery as a defendant in this action in his official capacity
15 as County Attorney (Doc. 1 in CV11-0116). Montgomery moved to dismiss the
16 complaint on the basis that he did not take office until after the alleged wrongdoing
17 underlying the complaint occurred (Doc. 18 in CV11-0116). In their response to
18 Montgomery's motion to dismiss (Doc. 55 in CV10-2756), the Wolfswinkel plaintiffs
19 acknowledged that they did not seek any relief against Montgomery personally, but that
20 in order to recover damages for actions taken by Thomas in his official capacity as
21 County Attorney, they were suing Montgomery in his official capacity to hold the County
22 responsible for the actions of Thomas, the former office holder.

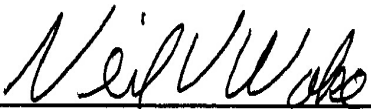
23 The Court granted Montgomery's motion to dismiss on the basis that naming
24 Montgomery was redundant to naming the County (Doc. 70 in CV10-2756). However,
25 because Montgomery has asserted that as a non-party, he is not required to cooperate
26 with the discovery obligations under the Federal Rules of Civil Procedures, the efficiency
27 of dismissing Montgomery is no longer present. The Court has no doubt that all of
28 Maricopa County's officers are responsible for complying with the County's discovery

1 obligations under the Federal Rules of Civil Procedure. Officers like the County
2 Attorney bear the County's responsibility and will render the County liable for sanctions
3 for not meeting that responsibility. The Court will therefore grant the Wolfswinkel
4 Plaintiffs' Motion to Set Aside the Court's May 26, 2011 Order Dismissing William
5 Montgomery as a Party-Defendant (Doc. 565) and give the Wolfswinkel plaintiffs leave
6 to amend their complaint to name Montgomery as a defendant in this action, thus
7 avoiding this conflict. The further amended complaint must be served upon the County
8 Attorney, and any challenge to the further amended complaint other than challenges
9 concerning process will be summarily denied.

10 IT IS ORDERED that Maricopa County's Amended Motion for Reconsideration
11 and Modification of May 31, 2012 (Doc. 514) is denied.

12 IT IF FURTHER ORDERED that the Wolfswinkel Plaintiffs' Motion to Set Aside
13 the Court's May 26, 2011 Order Dismissing William Montgomery as a Party-Defendant
14 (Doc. 565) is granted. The Wolfswinkel plaintiffs are given leave without further order
15 of the Court to file an amended complaint by September 7, 2012, to name Montgomery
16 as a defendant in this action. The further amended complaint must be served upon the
17 County Attorney, and any challenge to the further amended complaint other than
18 challenges concerning process will be summarily denied.

19 Dated this 28th day of August, 2012.

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23 Neil V. Wake
24 United States District Judge
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