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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

Gary Donahoe and Cherie Donahoe,
husband and wife,

Plaintiffs,

v.

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;
William Montgomery only in his
official capacity as Maricopa County
Attorney; Maricopa County, a
municipal entity; and John Does I-X;
Jane Does I-X; Black Corporations I-
V; and White Partnerships, I-V,

Defendants.

Lead No. CV10-2756-PHX-NVW

Consolidated with:

No. CV10-2757-PHX-NVW

No. CV10-2758-PHX-NVW

No. CV11-0116-PHX-NVW

No. CV11-0262-PHX-NVW

No. CV11-0473-PHX-NVW

ORDER

Susan Schuerman,

Plaintiffs,

v.

Sheriff Joseph Arpaio and Ava
Arpaio, husband and wife; Andres
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;

1 William Montgomery only in his)
2 official capacity as Maricopa County)
3 Attorney; Maricopa County, a)
4 municipal entity; and John Does I-X;)
Jane Does I-X; Black Corporations)
I-V; and White Partnerships, I-V,)
5 Defendants.)

6 Sandra Wilson and Paul Wilson,)
7 husband and wife,)
8 Plaintiffs,)

9 v.)

10 Sheriff Joseph Arpaio and Ava)
11 Arpaio, husband and wife; Andres)
12 Thomas and Anne Thomas, husband)
13 and wife; Lisa Aubuchon and Peter R.)
14 Pestalozzi, wife and husband; Deputy)
15 Chief David Hendershott and Anna)
16 Hendershott, husband and wife;)
17 William Montgomery only in his)
official capacity as Maricopa County)
Attorney; Maricopa County, a)
municipal entity; and John Does I-X;)
Jane Does I-X; Black Corporations)
I-V; and White Partnerships, I-V,)
18 Defendants.)

19 Conley D. Wolfswinkel, a single man;)
20 Brandon D. Wolfswinkel, a single)
21 man; Ashton A. Wolfswinkel, a single)
22 man; Vanderbilt Farms, LLC, an)
23 Arizona limited liability company;)
24 ABCDW, LLC, an Arizona limited)
25 liability company; Stone Canyon,)
26 LLC, an Arizona limited liability)
27 company; Vistoso Partners, LLC, an)
28 Arizona limited liability company;)
and W Harquahala, LLC, an Arizona)
limited liability company;)
Plaintiffs,)

1 v.)
2)
3 Joseph Arpaio and Ava Arpaio,)
4 husband and wife; David Hendershott)
5 and Anna Hendershott, husband and)
6 wife; Jonathan Halverson and Jane)
7 Doe Halverson, husband and wife;)
8 Patrick Roshetko and Jane Doe)
9 Roshetko, husband and wife; Andrew)
10 P. Thomas and Anne Thomas,)
11 husband and wife; Lisa Aubuchon)
12 and Peter R. Pestalozzi, wife and)
13 husband; William Montgomery only)
14 in his official capacity as Maricopa)
15 County Attorney; and Maricopa)
16 County, a municipal entity,)
17)
18 Defendants.)
19)

20 Stephen Wetzel and Nancy Wetzel,)
21 husband and wife,)
22)
23 Plaintiffs,)
24)

25 v.)
26)
27 Sheriff Joseph Arpaio and Ava)
28 Arpaio, husband and wife; Andrew)
29 Thomas and Anne Thomas, husband)
30 and wife; Lisa Aubuchon and Peter R.)
31 Pestalozzi, wife and husband; Chief)
32 Deputy David Hendershott and Anna)
33 Hendershott, husband and wife;)
34 William Montgomery, only in his)
35 official capacity as Maricopa County)
36 Attorney; Maricopa County, a)
37 municipal entity; and John Does I-X;)
38 Jane Does I-X; Black Corporations)
39 I-V; and White Partnerships, I-V,)
40)
41 Defendants.)
42)

43 Mary Rose and Earl Wilcox, wife and)
44 husband,)
45)
46 Plaintiffs,)
47)

1 v.)
 2)
 3 Sheriff Joseph Arpaio and Ava)
 4 Arpaio, husband and wife; Andrew)
 5 Thomas and Anne Thomas husband)
 6 and wife; Lisa Aubuchon and Peter R.)
 7 Pestalozzi, wife and husband; Deputy)
 8 Chief Sheriff David Hendershott and)
 9 Anna Hendershott, husband and wife;)
 10 William Montgomery only in his)
 11 official capacity as Maricopa County)
 12 Attorney; Maricopa County, a)
 13 governmental entity;)
 14)
 15 Defendants.)
 16 _____)

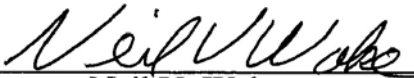
11 Before the Court is Defendant William Montgomery’s Rule 12(b)(6) Motion to
 12 Dismiss, which is pending in CV11-0116 (“Wolfswinkel Plaintiffs”) (Doc. 18). Defendant
 13 Montgomery is the current Maricopa County attorney. The Wolfswinkel Plaintiffs have sued
 14 Montgomery in his official capacity as County attorney, and not in his personal capacity.
 15 The Wolfswinkel Plaintiffs do not claim that Montgomery himself committed any
 16 wrongdoing, or that he is responsible for the wrongdoing of any other party; indeed,
 17 Montgomery became County attorney only after the events at issue in these actions took
 18 place.
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20 When a state or local official is sued in his official capacity, the practical effect is the
 21 same as suing the County itself for damages. Because the Wolfswinkel Plaintiffs have also
 22 named the County as a defendant in their action, there is no purpose in maintaining
 23 Montgomery as a defendant; the potential for Plaintiffs’ recovery is the same, whether
 24 Montgomery is a named defendant in his official capacity or whether he is dismissed,
 25 because the County remains a defendant. The fact that the County has to date denied the
 26 allegations against it does not make Montgomery a necessary party to this litigation. Rather,
 27

1 because he is a redundant defendant, the Court will grant Montgomery’s motion to dismiss.
2 *See Ctr. for Bio-Ethical Reform, Inc. v. L.A. County Sheriff Dep’t*, 533 F.3d 790, 799 (9th
3 Cir. 2008) (noting that when “both a municipal officer and a local government entity are
4 named, and the officer is named only in an official capacity, the court may dismiss the officer
5 as a redundant defendant”).

6 IT IS THEREFORE ORDERED that Defendant William Montgomery’s Rule 12(b)(6)
7 Motion to Dismiss, pending in CV11-0116 (Doc. 18), is granted.

8 DATED this 25th day of May, 2011.

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12 Neil V. Wake
13 United States District Judge
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