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6 In Propria Persona Plaintiff

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

Brian A. Wilkins,
Plaintiff,

vs.

Maricopa County; Joseph M. Arpaio, in
his individual and official capacity as
Maricopa County Sheriff; Darren Dauch, in
his individual and official capacity;
Defendants.

) CV: 09-01380-PHX-LOA

) **MOTION FOR SANCTIONS AGAINST**
) **DEFENDANT MARICOPA COUNTY**

PLAINTIFF hereby moves to Court, pursuant to *Fed. R. Civ. P. 11(b)(1)* and *(b)(2)* to issue sanctions against Defendant Maricopa County for failure to make initial disclosures in a timely fashion, persistence in making irrelevant, repeated vexatious discovery requests, asking the Court for unnecessary hearings, which has delayed depositions, and filing frivolous motions alleging the Plaintiff failed to comply with a discovery request. This motion is supported by the following memorandum of points and authorities.

Respectfully submitted on this 20th day of April, 2010.

/s/ _____
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1 **MEMORANDUM OF POINTS AND AUTHORTIES**

2 **I. Legal Argument**

3 If, after notice and a reasonable opportunity to respond, the Court determines
4 that Rule 11(b) has been violated, it may impose sanctions against the offending party.
5 *Id. 11(c)(1)*; see *Warren v. Guelker*, 29 F.3d 1386, 1388 (9th Cir. 1994). Under the plain
6 language of Rule 11, when one party seeks sanctions against another, the Court must
7 determine whether any provisions of Rule 11 have been violated. *Id. at 1389*.

8 Counsel for Defendant Maricopa County, Sherle Flaggman, has continually and
9 illegally pursued the Plaintiff's entire 35-year medical history, contrary to federal and
10 state law, after Plaintiff has repeatedly asked counsel to refrain from this and other
11 vexatious behavior. In fact, this discovery dispute was raised at the March 2nd Rule 16
12 conference in the Court's chambers; in the state and federal statutes are cited in the
13 Joint Case Management Report (Doc. #55); and raised by Defendant Maricopa
14 County's in their motion to compel (Doc. #95) and Plaintiff's subsequent response (Doc.
15 #99). The Plaintiff has given more than enough notice of his intention to remedy
16 counsel's vexatious activities, yet this has not deterred counsel's behavior.

17 **II. Failure To Make Timely Initial Disclosures**

18 A party must make the initial disclosures at or within 14 days after the parties' Rule
19 26(f) conference unless a different time is set by stipulation or court order...*Fed. R. Civ.*
20 *P. 26(c)*. Defendant Maricopa County did not disclose the most important documents
21 they have in this case – the jail medical records of the Plaintiff – until March 19, 2010
22 (see attached Exhibit A). This was well over one month after the Rule 26(f) conference
23 took place. Since the Defendants did not disclose said records as procedurally
24 mandated, the Plaintiff figured they had no medical records and proceeded accordingly,
25 specifically in amending the complaint. Defendant Maricopa County then served the
26 Plaintiff a request for admissions five days later, on March 24, 2010, which pertained to
27 said records (Exhibit B).

1 After finally getting the initial disclosure, the Plaintiff discovered what he had known
2 and what he has been claiming all along, but also learned what Maricopa County did not
3 want him to find out from the records. It has been discovered that Maricopa County
4 illegally obtained the Plaintiff's medical records from Banner Hospital and Walgreens
5 back in July of 2008. Maricopa County has records of the Plaintiff's broken hand
6 treatment and blood pressure prescriptions from the aforementioned providers, yet
7 Banner and Walgreens have no record of disclosing this information to the Defendants
8 (Exhibit C). There are also authorizations for disclosure contained in said jail medical
9 records (Exhibit D), however, Walgreens and Banner have no record of receiving them.
10 The illegal Walgreens authorization for disclosure asked for, and got the Plaintiff's entire
11 medical history, as it does not indicate a start date for disclosure; only indicates records
12 through the "present." *Id.* This was obviously not authorized by the Plaintiff. The
13 Defendants, in an answer to a set of interrogatories, said that someone they only called
14 "Mel" is the one who disclosed the records from Walgreens.

15 Though the Plaintiff is considering a separate action against Walgreens and Banner,
16 for illegally disclosing his medical records, Defendants should be sanctioned for this
17 illegal activity. The Plaintiff also should have been made aware of these jail medical
18 records prior to the Rule 16 conference, thus would have been better prepared to
19 articulate arguments in chambers and in the amended complaint; and the Court could
20 have decided this medical disclosure discovery dispute at said conference.

21 **III. Irrelevant, Vexatious Discovery Requests**

22 Counsel for Defendant Maricopa County continues this vexatious crusade in trying to
23 (again) force the Plaintiff to sign over his entire 35-year medical history (Doc. #95), even
24 though the medical claims in this case involve an acute broken bone injury from July of
25 2008, and blood pressure medication the Plaintiff had taken since 2005. The Court had
26 an opportunity to order the Plaintiff comply with this complete disclosure request at the
27 Rule 16 conference, yet for whatever reason, chose not to. The Plaintiff believes this is
28 because the Court recognizes the well-established privacy laws the Plaintiff has cited

1 repeatedly, and because the Defendant's intent is simply to harass the Plaintiff and
2 increase his cost to litigate.

3 4 **IV. Asking the Court For Unnecessary Hearings**

5 Though counsel for Maricopa County claims she was/is out of town at the time,
6 Flaggman had no problem interjecting herself into two-way discussions the Plaintiff and
7 counsel for Defendant Joseph M. Arpaio were having, via e-mail and telephone, about
8 depositions that were to take place on April 12, 2010. (Exhibit E). Before the
9 discussions the Plaintiff and counsel for Defendant Arpaio concluded, Maricopa County
10 filed a motion for oral argument on April 7 (Doc. #90), which the Court subsequently
11 granted the same day, and ordered oral argument on April 12, thus vacating the
12 depositions (Doc. #92). The Defendants then filed a motion to vacate the hearing the
13 very next day (Doc. #93), which was also granted by the Court the next day (Doc. #94).
14 The Plaintiff had worked extremely hard to coordinate said depositions and now must
15 start over.

16 Since counsel Flaggman was out of town, the Plaintiff spoke with Mr. Laurence
17 Tinsley, who is Senior General Counsel for Maricopa County, the morning of April 9 to
18 discuss possibly moving the depositions to another date. The Plaintiff informed Mr.
19 Tinsley that he had no idea why Flaggman even called for this hearing, to which Tinsley
20 replied, "I don't either." Since the April 12 hearing was vacated one day after it was
21 ordered, it has forcibly changed the Plaintiff's deposition strategy, since paying for a
22 notary may now not be possible. Plaintiff now has to put forth another round of difficult
23 coordination of witnesses and payment of notary/court reporter to get his depositions
24 done, with a deadline of April 30 approaching for disclosure of expert testimony.

25 **V. Frivolous Motions Alleging Plaintiff Isn't Complying With Discovery** 26 **Requests**

27 The latest chapter in counsel Flaggman's vexatious tactics is the pending motion to
28 compel, which alleges the Plaintiff is not complying with discovery requests. Flaggman

1 filed this motion on April 14, even though she claimed she would be out of town until
2 April 19. Counsel, however, moots her own motion, by attaching exhibits of the signed
3 authorization forms with the motion (Doc. #95). Though the Plaintiff is now even more
4 reluctant to disclose any medical records to Maricopa County, considering it has already
5 illegally dipped its hands into this private information, he has in fact, since Flaggman
6 first requested them, authorized five years of records to be disclosed for litigation
7 purposes. Regardless, Flaggman's continual insistence that the Plaintiff's entire 35-year
8 medical history is "germane" to this case, is legally frivolous.

9 **VI. Conclusion**

10 The Plaintiff, proceeding pro-se, has been forced to waste hours of time researching
11 and drafting responses to all these frivolous motions and requests by Flaggman, instead
12 of engaging in real discovery. It needs to be noted that the Plaintiff has no place of
13 residence, and no operational automobile, thus must walk hours at a time to get
14 somewhere to use internet, printers, and legal literature to respond to these vexatious
15 requests. The Plaintiff requests the Court issue monetary and declaratory sanctions,
16 ordering Maricopa County to compensate the Plaintiff for it needlessly increasing the
17 cost of litigation to the Plaintiff, including but not limited to travel, printing, and
18 researching expenses. Plaintiff further requests the Court order Maricopa County to
19 refrain from any further vexatious tactics, not to pursue the Plaintiff's entire 35-year
20 medical history anymore, and that they must pay for a court reporter for the depositions
21 which were involuntarily vacated on April 12, 2010, and now must be re-scheduled.

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23 Respectfully submitted on this 20th day of April, 2010.

24 /s/ _____
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1 **CERTIFICATE OF FILING AND SERVICE**

2 I hereby certify that on April 20, 2010, I electronically transmitted the foregoing
3 document to the Clerk's Office using the CM/ECF System for filing and thus
4 electronically served the attorneys for Defendants, at the following
5 addresses:
6

7 Sherle Rubin Flaggman
8 Office of General Litigation Services
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17 S. Lee White
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19 234 N Central Ave Ste 4400
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22 I further certify that one (1) copy of the foregoing document was mailed/delivered
23 on April 21, 2010 to:

24 Honorable Lawrence O. Anderson
25 United States District Court
26 Sandra Day O'Connor U.S. Courthouse
27 401 West Washington Street, Ste. 322, SPC 11
28 Phoenix, AZ 85003

29 /s/ _____
30 Brian A. Wilkins

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