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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

) **RESPONSE TO DEFENDANT**
) **MARICOPA COUNTY'S MOTION TO**
) **COMPEL**

PLAINTIFF hereby responds to Defendant Maricopa County's Motion To Compel ((Doc #95). Plaintiff's authorizations for medical disclosures have been served on the Defendant, thus Plaintiff asks the Court to deny as moot this instant motion. This request is supported by the following memorandum of points and authorities.

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

/s/ _____
Brian A. Wilkins
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. Authorization For Disclosure Has Already Taken Place**

3 Defendant Maricopa County allows that the Plaintiff has obviously authorized
4 disclosure of pertinent medical records regarding this case (see Exhibits, Defendants
5 Motion). The Defendant's counsel, however, continues this vexatious conduct, which is
6 detailed further in the Plaintiff's subsequent motion for sanctions, because counsel for
7 Maricopa County continues to believe she has the right to the Plaintiff's entire 35-year
8 medical history. The medical claims in this case involve the Plaintiff being denied a
9 splint for his broken hand and being denied his doctor prescribed blood pressure
10 medication, Benicar, and the Plaintiff has went beyond what is necessary for this case,
11 allowing five years of history pertaining to the aforementioned.

12 **II. Legal Argument**

13 When using or disclosing protected health information or when requesting protected
14 health information from another covered entity, a covered entity must make reasonable
15 efforts to limit protected health information to the minimum necessary to accomplish the
16 intended purpose of the use, disclosure, or request. *45 CFR 164.502(b)* and *164.514(d)*;
17 See also *36 A.R.S. § 509(7)*. Congress has...recognized the importance of privacy in
18 medical records in a variety of contexts, most prominently in the Health Insurance
19 Portability and Accountability Act of 1996 ("HIPAA"), Pub. L. No. 104-191, 110 Stat.
20 1936 (1996). *United States v. Comprehensive Drug Testing, Inc.*, 513 F.3d 1085 (9th
21 Cir. 2008). The U.S. Supreme Court has recognized at least two distinct kinds of
22 constitutionally-protected privacy interests: "One is the individual interest in avoiding
23 disclosure of personal matters, and another is the interest in independence in making
24 certain kinds of important decisions." *Doe v. Attorney General*, 941 F.2d 780, 795 (9th
25 Cir. 1991) (quoting *Whalen v. Roe*, 429 U.S. 589, 599-600 (1977)). The Ninth Circuit
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1 has long applied *Whalen* and its progeny in holding that "[i]ndividuals have a
2 constitutionally protected interest in avoiding 'disclosure of personal matters,' including
3 medical information." *Tucson Woman's Clinic v. Eden*, 379 F.3d 531, 551 (9th Cir.
4 2004); see also *Norman-Bloodsaw v. Lawrence Berkeley Laboratory*, 135 F.3d 1260,
5 1269 (9th Cir. 1998) ("The constitutionally protected privacy interest in avoiding
6 disclosure of personal matters clearly encompasses medical information and its
7 confidentiality.").

8
9 The *Comprehensive Drug Testing* (CDT) case is one that is familiar to the Plaintiff,
10 because of his previous work as a sports reporter. In said case, the U.S. government
11 had probable cause to obtain the medical records (urine tests) of eleven specific Major
12 League Baseball players from BALCO (Bay Area Lab Cooperative). All eleven players
13 were suspected of using steroids. The government, however, seized records involving
14 hundreds of other baseball players and athletes in other sports, and argued they had
15 the right to do so because said records were in "plain view." Several baseball players,
16 including Alex Rodriguez, and other athletes, such as track star Marion Jones, had the
17 privacy rights they expected from a covered entity (BALCO) blatantly violated by the
18 government. Judge Florence-Marie Cooper of the Central District of California, the
19 author of an order telling the government to return the records, characterized the
20 violations this way: "[t]he Government demonstrated a callous disregard for the rights of
21 those persons whose records were seized and searched outside the warrant."
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25 Though the *CDT* case involves the scope and depth of search warrants, the Ninth
26 Circuit ultimately made its ruling based on medical privacy rights. In the instant case,
27 Maricopa County continues its "callous disregard" to the Plaintiff's rights and has used
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1 several vexatious tactics to coerce the Plaintiff into signing over his entire 35-year
2 medical history, which would then become public record.

3
4 Regardless, even if the Plaintiff were naïve enough to sign over his lifetime medical
5 history, the medical providers, by law, could not disclose anything beyond the scope of
6 the lawsuit anyway. *45 CFR 164.502(b)* and *164.514(d)*; *36 A.R.S. § 509(7)*. All medical
7 providers who may testify and/or disclose the Plaintiff's records have been provided a
8 copy of the amended complaint and the orders of the Court, which clarify that the only
9 "necessary" medical information which can be disclosed by law for this case is
10 information about blood pressure medication and a broken hand.
11

12 **III. Conclusion**

13 Defendant Maricopa County's motion to compel, again, should be denied as moot,
14 and Plaintiff requests the Court, once this order is entered, consider the subsequent
15 motion for sanctions against Maricopa County, filed on this same day.
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18 Respectfully submitted on this 20th day of April, 2010.

19 /s/ _____

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25 **CERTIFICATE OF FILING AND SERVICE**

26 I hereby certify that on April 20, 2010, I electronically transmitted the
27 foregoing document to the Clerk's Office using the CM/ECF System for
28

1 filing, and thus electronically served the attorneys for Defendants, at the following
2 addresses:

3
4 Sherle Rubin Flaggman
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19 I further certify that one (1) copy of the foregoing document was mailed/delivered
20 on April 21, 2010 to:

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

26 /s/ _____
27 Brian A. Wilkins
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