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17 **UNITED STATES DISTRICT COURT**
18 **DISTRICT OF ARIZONA**

19 Manuel de Jesus Ortega Melendres, et al.,

20 Plaintiff,

21 v.

22 Joseph M. Arpaio, et al.,

23 Defendant.
24

NO. CV 07-02513-PHX-GMS

**Motion for Recusal or
Disqualification of District Court
Judge G. Murray Snow**

25 **I. INTRODUCTION**

26 No doubt, moving for the recusal or disqualification of any sitting judge is a
27 serious matter. Under statute, case law, and judicial canons, the perception of judicial bias
28

1 and the appearance of impropriety, punctuated by the material witness status of the
2 presiding judge's spouse, mandate the recusal and disqualification of the Honorable G.
3 Murray Snow. Accordingly, Defendant Arpaio and Chief Deputy Gerard Sheridan have
4 no other choice but to file this Motion.

5 Pursuant to 28 U.S.C. § 144 and § 455, Defendant Arpaio and Chief Deputy
6 Gerard Sheridan respectfully move for recusal and/or disqualification of the Honorable G.
7 Murray Snow. (Affidavit of Sheriff Joseph M. Arpaio, attached as Exhibit 1). Defendant
8 Arpaio Chief Deputy Gerard Sheridan present this Memorandum and file the attached
9 affidavit and corresponding Certificates of Filing in Good Faith by Counsel. Defendant
10 Arpaio and Chief Deputy Gerard Sheridan respectfully request the transfer of this case to
11 a different judge, immediately, as provided by 28 U.S. Code § 144, and the
12 disqualification or recusal of Judge Snow in further related proceedings concerning
13 Defendant Arpaio and Chief Deputy Gerard Sheridan.¹

14 By his own official inquiry, statements, and questions in open court on the
15 record, one of the investigations into which Judge Snow unexpectedly inquired during
16 recent contempt proceedings concerns his spouse, Sheri Snow. No reasonable person with
17 knowledge of the facts can deny that Judge Snow is now investigating and presiding over
18 issues involving his own family. This alone is sufficient to mandate recusal and
19 disqualification. Furthermore, the fact that Judge Snow's wife is now a material witness,
20 while dispositive, is not the only appearance of bias and impropriety requiring recusal.

21 Defendant Arpaio and Chief Deputy Gerard Sheridan therefore move: (1)
22 for Judge Snow to recuse himself based upon the facts and law stated in the Motion for
23 Change of Judge for Cause; or (2) if Judge Snow declines to recuse himself, Defendant
24 Arpaio and Chief Deputy Gerard Sheridan move that this Motion for Change of Judge for

25 ¹ The legal opinion of Professor Ronald Rotunda, a renowned expert on
26 Professional Responsibility and Constitutional Law, is attached and incorporated in
27 support of this Court's disqualification. (Exhibit 10). As Professor Rotunda explains in his
28 declaration, Judge Snow now has- by his own admission- "an incurable personal interest
entirely new." *Id.*

1 Cause be assigned to another United States District Court judge.

2 **II. STATEMENT OF FACTS RELEVANT TO MOTION**

3 **A. Melendres Preliminary and Permanent Injunction**

4 In December 2007, Latino motorists brought a class action under 42 U.S.C.
5 § 1983 against the Maricopa County Sheriff's Office ("MCSO") and Sheriff Joseph
6 Arpaio, in his official capacity only, alleging that Defendants engaged in a custom, policy,
7 and practice of racially profiling Latinos, and a policy of unconstitutionally stopping
8 persons without reasonable suspicion that criminal activity was afoot, in violation of
9 Plaintiffs' Fourth and Fourteenth Amendment rights.² [Doc. 1, amended by Doc. 26.] The
10 Plaintiffs sought declaratory and injunctive relief to prevent Defendants from engaging in
11 racial profiling and exceeding the limits of their authority to enforce federal immigration
12 law. [Doc. 1 at 19–20.]

13 After pre-trial discovery was closed, the parties filed competing motions for
14 summary judgment; Plaintiffs' motion included a request for the entry of a preliminary
15 injunction. [Docs. 413, 421.] Judge Snow granted the Plaintiffs' motion in part, and
16 entered a preliminary injunction on December 23, 2011. [Doc. 494.] The injunction
17 prohibited MCSO from "detaining individuals in order to investigate civil violations of
18 federal immigration law," and from "detaining any person based on actual knowledge,
19 without more, that the person is not a legal resident of the United States." [*Id.* at 39.] The
20 injunction further stated that, absent probable cause, officers may only detain individuals
21 based on reasonable suspicion that "criminal activity may be afoot." [*Id.* at 5.]

22 Seventeen months later, approximately nine months following a bench trial,
23 and one week before the recall petition for Sheriff Arpaio was due, Judge Snow issued his
24 Findings of Fact and Conclusions of Law in May 2013, in which he found MCSO liable
25 for a number of constitutional violations in its operations and procedures. [Doc. 579 at
26 115–31.] The timing of the decision was curious and problematic, as it resulted in

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28 ² MCSO, a non-jural entity, is no longer a named defendant in this action. Maricopa County has recently become a defendant in this action.

1 immediate marches and protests against Defendant Arpaio at a crucial point in his
2 political career.

3 After allowing the Parties, at their request, to attempt to negotiate the terms
4 of a consent decree, in October 2013 Judge Snow ordered supplemental injunctive relief
5 to remedy the violations outlined in his Findings and Conclusions and defined
6 enforcement mechanisms for such remedies. [Doc. 606.]

7 **B. Judge Snow’s Determination that a Civil Contempt Hearing was**
8 **Necessary.**

9 On May 14, 2014, Defendants, on their own initiative, informed Judge
10 Snow and Plaintiffs’ counsel that a former member of the Human Smuggling Unit,
11 Deputy Charley Armendariz, was found to be in possession of hundreds of personal items,
12 many of which appeared to have been appropriated from members of the Plaintiff class.
13 [See Doc. 700 at 12–13.] Deputy Armendariz was a regular participant in the HSU’s
14 saturation patrols, both large and small scale. He also testified at trial and was personally
15 implicated by the allegations of two representatives of the Plaintiff class regarding his
16 involvement in a 2008 immigration sweep in which two Hispanic American citizens were
17 allegedly profiled and illegally detained on the basis of their suspected undocumented
18 status. [Doc. 576.] After his apparent suicide, in addition to the numerous personal items
19 apparently seized from persons he had stopped, MCSO also discovered numerous video
20 recordings of traffic stops that Armendariz had conducted, apparently going back several
21 years. [Doc. 700 at 11.] Some of those videos revealed what MCSO characterized as
22 “problematic activity” on the part of Deputy Armendariz during the stops. [*Id.* at 35, 57.]
23 Other officers, and at least one supervisor of Armendariz who also testified at the trial in
24 this action, were depicted on these recordings during one or more problematic stops. [*Id.*
25 at 35.]

26 In light of the inappropriate activity observable on Deputy Armendariz’s
27 videotapes and the questions surrounding other officers’ use of video and audio recording
28 devices during the time period in which pre-trial discovery in this case was occurring,

1 Judge Snow ordered Defendants to immediately formulate and obtain the Monitor’s
2 approval of a plan designed to retrieve all recordings made by officers that might still be
3 in existence. [*Id.* at 25–27.] The ensuing investigations unearthed documents apparently
4 requiring officers to make such recordings during the period of time relevant to Plaintiffs’
5 claims, and that those here-to-fore unknown documents and recordings were never
6 disclosed.

7 Moreover, the Armendariz videotapes resulted in administrative interviews
8 with MCSO personnel. Those interviews have apparently revealed that, for at least
9 seventeen months after Judge Snow issued his preliminary injunction, Defendants, as a
10 matter of regular practice and operation, continued to enforce federal immigration law by
11 conducting immigration interdiction operations, and detaining persons after officers
12 concluded that there was no criminal law basis for such detention,.

13 Accordingly, Judge Snow determined that civil contempt proceedings were
14 necessary to determine if MCSO, Sheriff Joseph Arpaio, Chief Deputy Gerald Sheridan
15 and other MCSO leadership acted in contempt of this Court’s “lawful writs, processes,
16 orders, rules, decrees, or commands” by “(1) failing to implement and comply with the
17 preliminary injunction; (2) violating their discovery obligations; and (3) acting in
18 derogation of this Court’s May 14, 2014 Orders.” [Doc. 880 at 26.] Moreover, Judge
19 Snow noted that the development of the evidentiary record in the contempt proceedings
20 would permit him to evaluate whether civil remedies can vindicate the rights of the
21 Plaintiff class, or if criminal remedies are necessary.

22 **C. Pre-Civil Contempt Hearing Events**

23 On March 17, 2015, Defendants Sheriff Arpaio and the MCSO filed an
24 Expedited Motion to Vacate Hearing and Request for Entry of Judgment. [Doc. 948.]
25 The purpose of that Motion was to “convey to the Court and to Plaintiffs that Defendants
26 Joseph M. Arpaio and Maricopa County Sheriff’s Office, and identified nonparty Chief
27 Deputy Gerard Sheridan (collectively, “Defendants”) consent[ed] to a finding of civil
28 contempt against them and the imposition of remedies designed to address their conduct.”

1 [Id. at 1.] Defendants expressed their most sincere remorse to the Court and to Plaintiffs
2 and explicitly acknowledged that they had violated the Court's Preliminary Injunction.

3 [Id. at 2.] Accordingly, Defendants adopted and stipulated to the facts as stated in the
4 Court's Order to Show Cause, [Doc. 880] as well as to the entry of an order finding them
5 in civil contempt of court. [Doc. 948 at 3.]

6 Judge Snow demanded, before accepting the proposal, that Arpaio have
7 "skin in the game", specifically that Defendant Arpaio pay a sanction from his personal
8 funds and not from any defense funds supporting Defendant Arpaio. It is noteworthy that
9 Defendant Arpaio is only named as a defendant in his official capacity in this lawsuit. To
10 this end, Defendants attached a proposed list of stipulated remedial measures that
11 Defendants had agreed to implement, including the payment of \$100,000 from Defendant
12 Arpaio's *personal funds* to a civil rights organization and that a fund would be created to
13 compensate victims of the Defendants' violation of the Court's December 2011
14 injunction.³ In light of these remedial measures, Defendants requested that Judge Snow
15 vacate the evidentiary hearing to determine the existence of the admitted contempt. [Doc.
16 948 at 4.]

17 Despite the *admitted* violation of this Court's preliminary injunction and the
18 remedial measures Defendants sought to implement, including Defendants agreeing to
19 Plaintiffs' settlement terms that also would have mooted the need for contempt
20 proceedings, Judge Snow refused to vacate the contempt proceedings. [Doc. 1007.] In
21 fact, he requested that the United States Attorney for the District of Arizona attend the
22 proceedings to determine whether sufficient evidence would be presented to justify
23

24 ³ The remedies proposed by Arpaio included: (1) acknowledging in a public forum
25 the violations of this Court's orders; (2) Sheriff Arpaio and MCSO will seek from
26 Maricopa County the creation and initial funding of a reserve to compensate victims of
27 MCSO's violation of the Court's December 2011 injunction; (3) develop and implement a
28 plan to identify victims of the Court's December 2011 order; (4) permit the Monitor to
investigate any matter that relates to Defendants' violation of the Court's preliminary
injunction; (5) move to dismiss the then pending appeal in the Ninth Circuit Court of
Appeals; and (6) pay for Plaintiffs' reasonable attorneys' fees that were necessary to
ensure compliance with this Court's Orders. [Doc. 748, Ex. B].

1 criminal contempt proceedings. In essence, Judge Snow requested that the U.S. Attorney
2 function as his investigator to determine whether criminal contempt of his Preliminary
3 Injunction had occurred. The U.S. Attorney appropriately declined Judge Snow's
4 invitation to participate in this capacity by letter and subsequently in open court.

5 **D. Judge Snow's Surprise Examination of Unexpected, Irrelevant Subjects**
6 **During Contempt Proceedings.**

7 On April 23, 2015, Judge Snow embarked on his own inquiries during the
8 testimony of Sheriff Arpaio. Those inquiries were entirely unrelated to the three grounds
9 that were the defined and noticed subjects of the contempt proceeding.⁴ Judge Snow
10 continued these inquiries when he examined Chief Deputy Sheridan following Sheriff
11 Arpaio's testimony. These lines of questioning were based on Judge Snow's reading of,
12 reference to, and reliance on hearsay statements contained in a Phoenix New Times blog
13 post by Stephen Lemons. [Phoenix New Times Blog Post, attached as Exhibit 2; *see also*
14 4/23/15 Transcript at 648-649, attached as Exhibit 3]. Importantly, this article had never
15 been disclosed and no advance notice was provided to any of the Defendants or their
16 counsel in the contempt proceeding that the article would be discussed or relied upon by
17 Judge Snow.

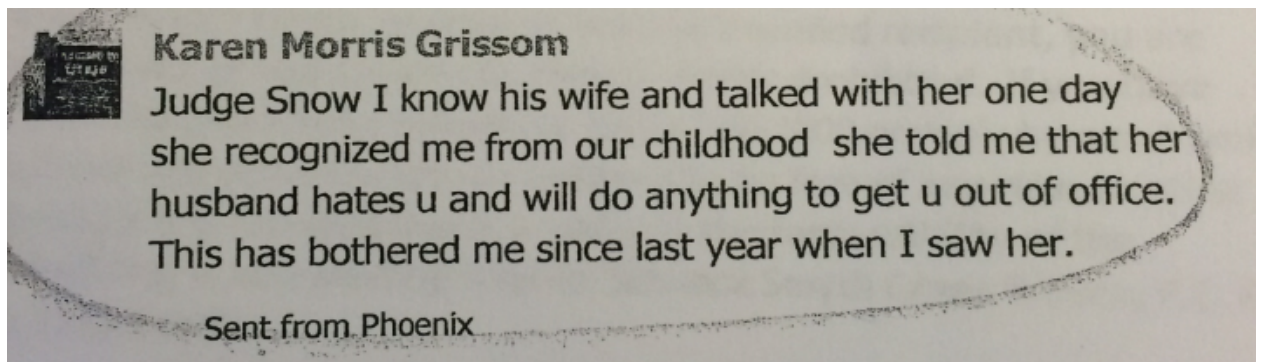
18 **1. The "Grissom Investigation"**

19 Specifically, Judge Snow questioned Sheriff Arpaio regarding a blog
20 posting by Stephen Lemons in the Phoenix New Times that detailed an alleged
21 investigation by Sheriff Arpaio regarding comments made by Judge Snow's wife
22 ("Grissom Investigation"). [4/23/15 Transcript at 643-644]. During this line of
23 questioning, Judge Snow questioned Sheriff Arpaio regarding whether he was aware if
24 Judge Snow or any of his family members had ever been investigated by anyone. [*Id.* at
25 647:8-17]. In response, Sheriff Arpaio testified that he had received a communication in

26 _____
27 ⁴ Again, the issues of the contempt proceeding were clearly defined: "(1) failing to
28 implement and comply with the preliminary injunction; (2) violating [] discovery
obligations; and (3) acting in derogation of this Court's May 14, 2014 Orders." (Doc. 880
at 26.)

1 August 2013 from Karen Grissom regarding comments that Judge Snow's spouse had
2 made to her in a restaurant about Judge Snow's hatred for Sheriff Arpaio and his desire to
3 do anything to get Sheriff Arpaio out of office. [*Id.* at 654-55; 4/24/15 Transcript at
4 962:14-16]. It was ultimately revealed that a private investigator hired by the Sheriff's
5 counsel had interviewed three individuals: Karen Grissom, her husband Dale Grissom,
6 and their adult son Scott Grissom, regarding the reliability of Mrs. Grissom's report.
7 [4/23/15 Transcript at 655].

8 The private investigator's interviews of these individuals determined that
9 Mrs. Grissom was credible in the following statement:



11 [Facebook Message, attached as Exhibit 5; 4/23/15 Transcript at 655]. The Grissoms
12 have been unwavering in their recollection of the comments Judge Snow's wife made
13 regarding Judge Snow's hatred toward Sheriff Arpaio and his desire to do anything to get
14 him out of office. *See* 10/26/13 Transcript of Karen Grissom at 12:18-21, 14:18-20, 19,
15 28:10-18 attached as Exhibit 6; 10/28/13 Transcript of Dale Grissom at 13:21-25, 16:5-12,
16 22:19-23:9, attached as Exhibit 7; 5/20/15 Arizona Republic Article, attached as Exhibit
17 8].

18 Although the interviews of these individuals were deemed credible, in that
19 they corroborated Judge Snow's spouse had made these statements, Sheriff Arpaio never
20 "went any further than just verifying that [a] conversation [between Karen Grissom and
21 Sheri Snow] . . . occurred." [4/24/15 Transcript at 966:11-16]. Moreover, to date, neither
22 Judge Snow nor Mrs. Snow have denied that Mrs. Snow made the statements attributed to
23 her.

2. The “Montgomery Investigation”

In addition, Judge Snow questioned Sheriff Arpaio and Chief Deputy Sheridan regarding a second investigation, also unrelated to the three clearly defined subjects of the contempt proceedings. Judge Snow inquired regarding the unrelated investigation and MCSO’s use of a confidential informant, Dennis Montgomery, involving e-mail breaches, including the e-mails of certain attorneys representing the Sheriff, wiretaps of the Sheriff and judges, and computer hacking of 50,000 bank accounts of Maricopa County citizens. [4/23/15 Transcript at 647:1-3, 649; 4/24/15 Transcript at 1003:9-11; 1006:6-10].

Neither the Grissom investigation nor the Montgomery investigation involved any investigation of Judge Snow or his family. [4/23/15 Transcript at 649].

E. Post Contempt Proceeding Expansion of Monitor’s Duties by Judge Snow

As the sole arbiter of the matters relevant to the contempt proceedings, Judge Snow has also utilized the *Melendres* Monitor to expand his investigation into these unrelated issues. In an attempt to justify this expansion of power, Judge Snow is trying to create a connection between the Grissom and Montgomery investigations and a speculative pattern of “knowing defiance” rather than “inadvertence” of Judge Snow’s Orders and necessary remedies for members of the Plaintiff class. [5/14/15 Transcript at 49:15-21, attached as Ex. 9]. In doing so, he has granted the Monitor “broad leeway” in determining what matters are pertinent to the current contempt proceedings. [*Id.* at 51].

When Defendant Arpaio’s counsel requested clarification regarding the Monitor’s investigatory powers, Judge Snow refused. Instead, Judge Snow stated that he is “not going to limit the Monitor’s authority and [he’s] not going to require [the Monitor] to provide [Defendant Arpaio’s counsel] with advance notice of what [the Monitor] wants to inquire into.” [*Id.* at 53:15-21]. Defendant Arpaio’s counsel objected to the Court’s morphing of the OSC hearing into something quite different than the three subjects that were a part of the original OSC Order and the expansion of the Monitor’s powers as a

1 violation of her client's Due Process rights. Judge Snow overruled her objection and
2 refused to "unduly shackle [the Monitor]." [*Id.* at 56:20]. Thus, the Monitor now has
3 court ordered unlimited investigatory power.

4 Accordingly, despite the Ninth Circuit's recent Order, Judge Snow has
5 improperly expanded the authority and investigatory powers of the Monitor into matters
6 completely immaterial and irrelevant to the contempt proceedings and issues, as framed
7 by Judge Snow's Order to Show Cause (*e.g.*, the Grissom and Montgomery investigations,
8 and most recently MCSO's long past investigation into the authenticity of President
9 Obama's birth certificate).⁵

10 **III. JUDGE SNOW MUST RECUSE HIMSELF FROM THIS ACTION.**

11 The right to a neutral and detached judge in any proceeding is protected by
12 the Constitution and is an integral part of maintaining the public's confidence in the
13 judicial system. *Ward v. City of Monroeville*, 409 U.S. 57, 61-62 (1972). Accordingly, in
14 order to preserve the integrity of the judiciary, and to ensure that justice is carried out in
15 each individual case, judges must adhere to high standards of conduct. *York v. United*
16 *States*, 785 A.2d 651, 655 (D.C. 2001).

17 Cannon 2 of the Code of Conduct for United States Judges provides that
18 "[a] judge should avoid impropriety and the appearance of impropriety in all activities."
19 Avoidance of the *appearance* of impropriety in all judicial activities is important because:

20 Public confidence in the judiciary is eroded by irresponsible or
21 improper conduct by judges. A judge must avoid all
22 impropriety and appearance of impropriety. This prohibition
23 applies to both professional and personal conduct. A judge
24 must expect to be the subject of constant public scrutiny and
25 accept freely and willingly restrictions that might be viewed as
26 burdensome by the ordinary citizen.

25 ⁵ The Ninth Circuit has advised Judge Snow against extending the Monitor's
26 powers into areas not narrowly tailored to address the violations of federal law at issue in
27 this case. *Id.* (holding that the injunction improperly requires the Monitor to consider the
28 "disciplinary outcomes for any violations of departmental policy" and to assess whether
Deputies are subject to "civil suits or criminal charges ... for off-duty conduct."). Judge
Snow now seeks to expand the authority of the Monitor without regard to the Ninth
Circuit's Order.

1 Comment 2A to Canon 2.

2 Cannon 3 requires that “[a] judge shall disqualify himself or herself in a
3 proceeding in which the judge’s impartiality might reasonable be questioned, including
4 but not limited to instances in which:

5 (a) the judge has a personal bias or prejudice concerning a
6 party, or personal knowledge of disputed evidentiary facts
concerning the proceeding;

7 . . .

8 (c) the judge knows that the judge ... [has an] interest that
9 could be affected substantially by the outcome of the
proceeding;⁶

10 (d) the judge or the judge’s spouse, or a person related to
11 either within the third degree of relationship, or the spouse of
such a person is:

12 ...

13 (iii) known by the judge to have an interest that could
14 be substantially affected by the outcome of the
proceeding; or

15 (iv) to the judge’s knowledge likely to be a material
16 witness in the proceeding;

17 Cannon 3 is, in essence, codified by 28 U.S.C. § 455. “Section 455(a)
18 covers circumstances that appear to create a conflict of interest, whether or not there is
19 actual bias.” *Preston v. United States*, 923 F.2d 731, 734 (9th Cir.1991) (citation omitted)
20 (emphasis in original). In contrast, “[s]ection 455(b) covers situations in which an actual
21 conflict of interest exists, even if there is no appearance of one.” *Id.* (citation omitted).
22 Given the developments in this case, both provisions require recusal.

23
24
25
26 _____
27 ⁶ “Proceeding” includes pretrial, trial, appellate review, or other stages of
28 litigation.” Canon 3(C)(3)(d).

1 A. **28 U.S.C. § 455(b) Requires Mandatory Disqualification of Judge Snow.**⁷

2 Section (b) of 28 U.S.C. § 455 provides for *mandatory* recusal without
3 investigation into the appearance of partiality by a judge. *Preston*, 923 F.2d at 734 (9th
4 Cir. 1991) (“We need not explore whether an appearance of partiality existed in this case.
5 The drafters of section 455 have accomplished this task for us.”).

6 Section 455(b) “requires disqualification under Section 455(a), even absent
7 any evidence of actual bias.” *Mangini v. United States*, 314 F.3d 1158, 1161 (9th Cir.)
8 opinion amended on denial of reh'g, 319 F.3d 1079 (9th Cir. 2003); *see also Preston*, 923
9 F.2d at 734 (addressing Section 455(b)(2), which requires disqualification when the judge
10 either served as a lawyer or a lawyer with whom he previously practiced law served as a
11 lawyer during such association in the matter in controversy). “[I]t is sufficient to state that
12 section 455(b) provides us with a concrete example where the appearance of partiality
13 suffices to establish a ground for recusal under section 455(a) *even absent actual bias.*”
14 *Preston*, 923 F.2d at 734 (emphasis added).

15 **1. 28 U.S.C. § 455(b)(5) Requires Disqualification of Judge Snow**
16 **Due to Spousal Relationship.**

17 Under 28 U.S.C. § 455(b)(5), a judge shall disqualify himself in the
18 following circumstances:

19 (5) He or **his spouse**, or a person within the **third degree of**
20 **relationship** to either of them, or the spouse of such a person:

21 ...

22 (ii) Is acting as a lawyer in the proceeding;

23 (iii) Is known by the judge to have an interest that could be
24 substantially affected by the outcome of the proceeding; or

25 (iv) Is to the judge’s knowledge likely to be a **material**

26 ⁷ As a matter of style, most courts look first to Section 455(b), “which provides that
27 a judge is automatically recused upon the existence of certain familial and/or financial
28 relationships, and then to the more general terms of § 455(a).”

In re Aetna Cas. & Sur. Co., 919 F.2d 1136, 1143 (6th Cir. 1990). Accordingly,
this Motion is organized in accordance with this principle.

1 **witness** in the proceeding.

2 (Emphasis added).

3 ***This requirement is strictly imposed.*** *Preston*, 923 F.2d at 734 (9th Cir.
4 1991). For example, a judge was required to recuse himself when it was learned that his
5 daughter had participated in certain early depositions in a case, even though the daughter's
6 role in the depositions was minimal and the firm she was working for was no longer
7 involved in the case. *See In re Aetna Cas. & Sur. Co.*, 919 F.2d 1136 (6th Cir. 1990).
8 Here, Judge Snow's recusal is required for three reasons:

9 First, a person within the third degree of relationship to Judge Snow is
10 affiliated with Plaintiffs' Counsel. Judge Snow's brother-in-law is an attorney with
11 Covington Burling. Early in this action, Defendant Arpaio's former counsel waived this
12 conflict. However, in light of recent events, reconsideration of this previously waived
13 conflict is necessary.

14 Second, the interests of Judge Snow and his spouse are substantially
15 affected by the outcome of this proceeding. Judge Snow himself has recognized that the
16 documents involved in the Montgomery investigation "appear to allege or suggest that this
17 Court had contact with the Department of Justice about this case before the Court was
18 ever assigned to it." [5/14/15 Transcript at 45:17-19]. Moreover, Judge Snow stated on
19 the record that the Montgomery Investigation appears to allege that the random selection
20 process of this Court was subverted so that the case was deliberately assigned to him and
21 that he had conversations with Eric Holder and Lanny Breuer about this case. [*Id.* at
22 45:19-25]. Judge Snow, therefore, has an interest that could be substantially affected by
23 the outcome of the proceeding because his reputation is squarely at stake. [*Id.* at 46:23-
24 47:7 (recognizing the potential of a "bogus" conspiracy theory to discredit the court)]; *see*
25 *also* 28 U.S.C. § 455(b)(4) (requiring disqualification when a Judge "knows that he ...
26 [has] any other interest that could be substantially affected by the outcome of the
27 proceeding.").

28

1 Finally, and most importantly, the fact that the Judge himself believes that
2 the Grissom investigation is relevant to the contempt proceeding establishes his spouse as
3 a material witness. In fact, Mrs. Snow is undoubtedly a material witness in this
4 proceeding (i.e., whether she made the statement at issue and/or what she meant by it and
5 the context in how it was made). Moreover, regardless of the irrelevance of the Grissom
6 and Montgomery investigations to the issue of whether the admitted contempt of the
7 Preliminary Injunction occurred, Judge Snow infused himself and the materiality of his
8 wife as a witness and her uncontradicted statement into the contempt proceeding.
9 Whether a sitting judge is admittedly biased toward a defendant in his Court and will do
10 anything to ensure he is not re-elected is – without question – a conflict that creates
11 grounds for recusal.⁸ Accordingly, even if at some point there is a denial that Mrs. Snow
12 made the statements at issue, the conflict that is created is unwaivable under § 455(b). *See*
13 28 U.S.C. § 455(e) (“No justice, judge, or magistrate judge shall accept from the parties to
14 the proceeding a waiver of any ground for disqualification enumerated in subsection
15 (b).”). Judge Snow is solely responsible for making his spouse a material witness to this
16 proceeding.⁹

17 **2. 28 U.S.C. § 455(b)(1) Requires Disqualification of Judge Snow**
18 **Due To His Personal Bias.**

19 Under 28 U.S.C. § 455(b)(1), a judge shall disqualify himself “[w]here he
20 has a personal bias or prejudice concerning a party, or personal knowledge of disputed
21 evidentiary facts concerning the proceeding.” Under Section 455(b), Judge Snow has
22 made comments that indicate he has a personal bias or prejudice concerning a party,
23 namely Sheriff Arpaio.

24 As revealed during the contempt proceeding, Judge Snow has engaged in

25
26 ⁸ Implicitly, Judge Snow has complete and unfettered access to a material witness
in this case, his wife.

27 ⁹ For the same reasons, Judge Snow’s wife has an interest that could be
28 substantially affected by the outcome of the proceeding because her reputation is also
squarely at stake under 42 U.S.C. § 455(b)(5).

1 outside investigations with regard to matters that he thought to be relevant and that he
2 infused into the proceeding. [Rotunda Declaration ¶ 20, attached as Ex. 10]. What's
3 more, he apparently took evidence outside of court. [*Id.*]. Although Judge Snow did not
4 disclose the identity of the individual with whom he spoke regarding this matter, he
5 clearly stated that he engaged in an investigation outside the courtroom during a lunch
6 break. [*Id.*]. In addition, Judge Snow also asked leading questions on irrelevant matters
7 during the contempt proceeding. [*Id.* at ¶¶ 19, 21]. In addition, he gave his own
8 testimony during the proceeding. [*Id.* at ¶¶ 22-23]. Furthermore, Judge Snow was
9 argumentative with witness Chief Deputy Sheridan when he was on the stand. He
10 interrupted Chief Deputy Sheridan and challenged his decision to make an informant,
11 Dennis Montgomery, a confidential informant in an investigation unrelated to the
12 contempt proceeding. [*Id.* at ¶ 24]. Judge Snow has also ordered the production of
13 documents that may be protected by the work product doctrine or attorney client privilege.
14 Those documents pertain to an attorney, Larry Klayman, and his client, Dennis
15 Montgomery. Mr. Klayman is not an attorney who has appeared in this case and Mr.
16 Montgomery is not a party to this action. [*Id.* at ¶ 25].

17 Moreover, Judge Snow's inquiry into matters unrelated to the contempt
18 proceeding deprived Sheriff Arpaio of his due process constitutional rights. At a
19 minimum, a Court must provide an alleged contemnor with notice and an opportunity to
20 be heard. *Int'l Union, United Mine Workers of America v. Bagwell*, 512 U.S. 821, 827
21 (1994). The concept of notice includes prior disclosure and provision of documents used
22 at trial and prior identification of areas of examination. *See generally, Stuart v. United*
23 *States*, 813 F.2d 243, 251 (9th Cir.1987), rev'd on other grounds, 489 U.S. 353 (1989); *DP*
24 *Aviation v. Smiths Indus. Aerospace & Def. Sys. Ltd.*, 268 F.3d 829, 846-47 (9th Cir.
25 2001). Such advance notice is consistent with an alleged contemnor's right to present a
26 defense. *See United States v. Powers*, 629 F.2d 619, 625 (9th Cir. 1980). Further, the law
27 requires progressively greater procedural protections for indirect contempts of complex
28 injunctions that necessitate more elaborate and in-depth fact-finding, as in this case. *See*

1 *Int'l Union, United Mine Workers of America v. Bagwell*, 512 U.S. 821 at 833-34. Here,
2 although Defendant Arpaio testified that he previously read the Phoenix New Times blog
3 Judge Snow utilized to justify his unauthorized line of questioning (Transcript, 643:23-
4 24), neither the Court nor any other party previously provided it to Defendants nor gave
5 notice that Defendant Arpaio or Chief Deputy Sheridan would be questioned about it. It
6 was not identified as an exhibit. Neither was Defendant Arpaio nor Chief Deputy Sheridan
7 provided notice that this subject area would be addressed. In contempt proceedings,
8 procedural protections such as prior notice are crucial “in view of the heightened potential
9 for abuse posed by the contempt power.” *Taylor v. Hayes*, 418 U.S. 488, 498 (1974).
10 Judge Snow’s failure to abide by these fundamental and basic constitutional requirements,
11 demonstrates further evidence of the perception of an unwaivable bias towards Sheriff
12 Arpaio.

13 Finally, Judge Snow has improperly expanded the authority and
14 investigatory powers of the Monitor into matters completely immaterial and irrelevant to
15 the contempt proceedings and issues, as framed by his own Order to Show Cause (*e.g.*, the
16 Grissom and Montgomery investigations, and most recently MCSO’s long past
17 investigation into the authenticity of President Obama’s birth certificate). Judge Snow’s
18 willingness to ignore Defendant Arpaio’s and Chief Deputy Sheridan’s constitutional
19 rights in favor of granting the Monitor “unfettered access” to further his own
20 investigational curiosities or agenda further demonstrates a perception of bias.¹⁰

21 **B. 28 U.S.C. § 455(a) Requires Disqualification of Judge Snow Because His**
22 **Impartiality is Questionable.**

23 Under 28 U.S.C. § 455(a), a judge shall disqualify himself “in any

24 _____
25 ¹⁰ Additionally, the procedure outlined by the Court in its Order (Doc. 1032) places
26 Defendants in an untenable position in which they must immediately provide documents
27 pursuant to the Court’s Order in such a way that sacrifices the attorney-client and work
28 product privileges. The two Deputy County Attorneys who quickly reviewed documents
on April 23, 2015 made random selections throughout the documents to discern what the
documents were and made a cursory check for any privileged documents. They did not
view any privileged documents; however, time did not allow for a careful or thorough
review. It is probable that privileged documents were given to the monitors.

1 proceeding in which his impartiality might reasonably be questioned.” A violation of
2 section 455(a) occurs even if the judge is unaware of the circumstances that created the
3 appearance of impropriety. *Lifjeberg v. Health Services Acquisition Corp.*, 486 U.S. 8847
4 (1988). In determining whether disqualification is proper, courts apply an objective test:
5 “whether a reasonable person with knowledge of all the facts would conclude that the
6 judge's impartiality might reasonably be questioned.” *Clemens v. U.S. Dist. Ct. for*
7 *Central Dist. of California*, 428 F.3d 1175, 1178 (9th Cir. 2005) (citations omitted). “The
8 ‘reasonable person’ in this context means a ‘well-informed, thoughtful observer,’ as
9 opposed to a ‘hypersensitive or unduly suspicious person.’” *Id.* (citations omitted).
10 Further, the grounds for disqualification must arise from “extrajudicial” factors, namely,
11 factors not related to the judicial proceeding at hand. *Id.*

12 Under Arizona Judicial Canon Rule 2.11, the standard for disqualification is
13 identical to the disqualification standard under 28 U.S.C. § 455(a). Rule 2.11 states that
14 the “Judge shall disqualify himself in any proceeding in which his impartiality might
15 reasonably be questioned. For instance, a Judge shall disqualify himself if his spouse or a
16 person within the third degree of relationship to either of them is a person who has more
17 than a de minimis interest that could be substantially affected by the proceeding or is
18 likely to be a material witness in the proceeding.” *See* Rule 2.11(A)(2)(c)(d). In addition,
19 the comments under Rule 2.11 provide guidance. For instance, comment 2 specifically
20 states that: “A Judge’s obligation not to hear or decide matters in which disqualification is
21 required, applies regardless of whether a Motion to Disqualify is filed.” Additionally,
22 Comment 5 to Rule 2.11 requires the Judge to disclose on the record information that he
23 believes the parties or their lawyers might reasonably consider relevant to a possible
24 Motion for Disqualification, even if the Judge believes there is no basis for
25 disqualification.

26 Finally, even in cases of a close question of judicial impartiality, this Court
27 should decide in favor of recusal. The U.S. Courts of Appeals for the First, Fifth, Tenth,
28 and Eleventh Circuits have said that close questions of judicial impartiality should be

1 decided in favor of recusal. *See Republic of Pan v. American Tobacco Co.*, 217 F.3d 343,
2 347 (5th Cir. 2000) (citing *In re Chevron*, 121 F.3d 163, 165 5th Cir. 1997)); *In re United*
3 *States*, 158 F.3d 26, 30 (1st Cir. 1998); *Nichols v. Alley*, 71 F.3d 347, 352 (10th Cir.
4 1995); *United States v. Dandy*, 998 F.2d 1344, 1349 (6th Cir. 1993); *United States v.*
5 *Kelly*, 888 F.2d 732, 744 (11th Cir. 1989).

6 For all of the reasons stated above, Judge Snow's recusal is required
7 because his impartiality might reasonably be questioned. Even presuming this Court does
8 not find that the aforementioned actions by Judge Snow demonstrate evidence of *actual*
9 bias, *see supra* § III(B), a reasonable person with knowledge of all the facts would
10 certainly question Judge Snow's impartiality. Recusal is therefore required because of the
11 bedrock notion and importance of public confidence in the judiciary and that confidence
12 in the judiciary is severely eroded by even the appearance of irresponsible, improper or
13 biased conduct by judges.

14 **IV. CONCLUSION**

15 For the aforementioned reasons Defendant Arpaio and Chief Deputy Gerard
16 Sheridan respectfully request that (1) Judge Snow recuse himself from these proceedings
17 and (2) if Judge Snow declines to recuse himself, Defendant Arpaio and Chief Deputy
18 Gerard Sheridan move that this Motion for Change of Judge for Cause be assigned to a
19 another United States District Court judge for immediate consideration.

20
21
22 DATED this 22nd day of May, 2015.

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DATED this 22nd day of May, 2015.

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CERTIFICATE OF SERVICE

I hereby certify that on this 22nd day of May, 2015, I caused the foregoing document to be filed electronically with the Clerk of Court through the CM/ECF System for filing; and served on counsel of record via the Court's CM/ECF system.

s/ Mance Caroll