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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

United States of America,

Plaintiff,

v.

Maricopa, County of, et al.,

Defendants.

No. CV-12-00981-PHX-ROS
ORDER

Before the Court is the parties’ joint motion to approve settlement. (Doc. 391). In response to the Court’s July 21, 2015 order, (Doc. 399), the parties have filed a supplemental brief in support of their joint motion to approve settlement. (Doc. 405). In addition, the parties have submitted a joint notice of intervention and proposal for resolution of the case, which the Court will also address. (Doc. 406).

I. Legal Standard for Consent Decree

Settlements subject to continued judicial policing, or consent decrees, are a “judicial act.” *United States v. Swift & Co.*, 286 U.S. 106, 115 (1932); *United States v. State of Or.*, 913 F.2d 576, 580 (9th Cir. 1990). These sorts of agreements “offer more security to the parties than a settlement agreement where ‘the only penalty for failure to abide by the agreement is another suit’ . . . [because they have] the force of res judicata, and [] may be enforced by judicial sanctions, including . . . citations for contempt.” *S.E.C. v. Randolph*, 736 F.2d 525, 528 (9th Cir. 1984).

In order to achieve court approval, such settlements must be “fundamentally fair,

1 adequate and reasonable” and “conform to applicable laws.” *State of Or.*, 913 F.2d at
2 580. Such an agreement “need not impose all the obligations authorized by law” but
3 rather must afford “rough justice.” *Id.* at 581 (quoting *Officers for Justice v. Civil Serv.*
4 *Comm’n of City & Cnty. of San Francisco*, 688 F.2d 615, 625 (9th Cir. 1982)) (internal
5 quotation marks omitted). Settlements negotiated and submitted by government agencies
6 are granted particular deference and, while the agreement must serve the public’s interest,
7 it need not serve “the public’s *best* interest.” *Randolph*, 736 F.2d at 529 (emphasis in
8 original).

9 **II. Settlement Process**

10 Over the past three years, the parties have engaged in hard fought litigation and
11 have often conferred to reach agreement on various disputes. *See* Docs. 287-8 (expressing
12 disagreement over documents requested in United States’ investigation, but stating goal
13 of cooperation and resolution), 287-11 (discussing contradictions between Maricopa
14 County Attorney’s statements in private meeting with United States and his statements at
15 a public press conference). Recent developments in another, related case involving
16 Sheriff Arpaio and Maricopa County (collectively, “Defendants”) prompted the parties to
17 engage in serious settlement negotiations. They estimate “hundreds of attorney hours
18 over dozens of days in negotiations, as well as many more hundreds of hours conferring
19 with their clients and crafting settlement proposals” were spent. (Doc. 405 at 4). What is
20 more, apparently the particular claims resolved through this settlement were subject to
21 “especially extensive factual development” through depositions and document discovery.
22 The Maricopa County Board of Supervisors, the governing body of Maricopa County,
23 voted unanimously to approve the settlement.

24 The very adversarial nature of this litigation and completion of massive discovery
25 presupposes the procedural fairness of the proposed settlement agreement. In addition, all
26 parties represent government bodies with no ambition but to serve the public interest and
27 do justice, which supports a finding that the terms of the settlement were evaluated on
28 equal, informed footing and in good faith. Finally, all of the parties were represented by

1 experienced and competent counsel.

2 Furthermore, the circumstances supply ample reason for the parties to settle rather
3 than litigate the claims in question. The case has been pending for more than three years.
4 The limited resources of the governments, particularly the local ones, have been strained,
5 the parties have completed comprehensive discovery and filed thorough dispositive
6 motions, and Defendants are involved in an ongoing, substantial parallel suit in which the
7 United States has been granted the right to intervene. For all of these reasons, as well as
8 those discussed below, the Court will accept the parties' reasonable compromise reached
9 in good faith.

10 **III. Settlement Terms**

11 The proposed settlement involves two of the United States' claims: Claims Two
12 and Six, and resolves the portions of those claims involving worksite operations and
13 retaliation, respectively.¹ The United States' second claim for relief was brought
14 pursuant to 42 U.S.C. § 14141 and the Fourth Amendment. The United States' sixth
15 claim for relief was likewise brought under § 14141 and the First Amendment. Section
16 14141 authorizes the Attorney General to sue a government engaged in a pattern or
17 practice of law enforcement which violates the Constitution in order to "obtain
18 appropriate equitable and declaratory relief to eliminate the pattern or practice." 42
19 U.S.C. § 14141(b).

20 **A. Fourth Amendment Violations**

21 The allegations of the United States regarding worksite operations and violations
22 of the Fourth Amendment include that Sheriff Arpaio and the Maricopa County Sheriff's
23 Office ("MCSO") used its Criminal Employment Squad ("CES") to target Latino workers
24 for enforcement of state identity theft laws in a way that resulted in the seizure of Latinos
25 at worksites without reasonable suspicion. (Doc. 1 at 12). MCSO has since disbanded
26 CES and announced it will no longer enforce state identity theft laws relating to obtaining

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28 ¹ The parties have also reached a settlement regarding Claim Four of the United States' complaint, but do not seek Court approval or an order memorializing that agreement.

1 or continuing employment.

2 The complaint also alleged Defendant Maricopa County, which is responsible for
3 funding and oversight of MCSO, failed to ensure that MCSO's programs and activities
4 complied with the Constitution and federal law. (Doc. 1 at 2).

5 The proposed settlement agreement focuses on potential future worksite identity
6 theft operations, which it defines as "any pre-planned MCSO law enforcement operation
7 at a place of business to execute a search warrant for evidence of or for persons suspected
8 of committing identity theft or crimes incident thereto, such as forgery." (Doc. 391-2 at
9 3). The proposed settlement provides, if such operations are ever re-initiated, "[Sheriff]
10 Arpaio shall cause the MCSO to first establish a set of written policies or protocols"
11 governing the operations and take suggestions on those policies from the United States.
12 (Doc. 391-2 at 3-4). MCSO must ensure the final policies are communicated to all
13 personnel participating in worksite identity theft operations. (Doc. 391-2 at 4). And
14 MCSO must take reasonable steps to "ensure that all MCSO personnel comply with such
15 policies, and protocols in carrying out any Worksite Identity Theft Operations." (Doc.
16 391-2 at 4). Following any of these operations, MCSO must timely comply with
17 reasonable requests for information from the United States. (Doc. 391-2 at 4). If the
18 United States discovers a violation of federal law in a post-settlement operation, it agrees
19 to confer with Sheriff Arpaio and Maricopa County to seek an agreement remedying the
20 violations before initiating any judicial action, which it may do after 60 days of
21 unsuccessful negotiation. (Doc. 391-2 at 5).

22 Given the United States' allegations and MCSO's current suspension of identity
23 theft enforcement related to obtaining and continuing employment, the proposed
24 contingencies for future operations are fundamentally fair, adequate, and reasonable with
25 regard to MCSO. The provisions serve the public's interest by providing federal
26 oversight and protection for potential future operations. The proposed agreement
27 addresses the need for clear, lawful directives from MCSO senior management for any
28 future operations, and requires enforcement of those directives, all of which will be
subject to the added protection of federal oversight. In lieu of a court-appointed monitor,

1 the proposed agreement creates a system for direct federal monitoring of the operations.
2 Furthermore, the agreement encourages out-of-court resolution, potentially saving
3 significant taxpayer funds, but does not hamstring the United States' ability to resort to
4 judicial action if necessary to protect the public.

5 **B. First Amendment Violations**

6 The United States' allegations regarding retaliation and violations of the First
7 Amendment include that deputies of MCSO, acting on behalf of Sheriff Arpaio and the
8 MCSO, filed unsubstantiated complaints with the Arizona State Bar and the Arizona
9 Commission on Judicial Conduct, and that through the Maricopa County Attorney,
10 Sheriff Arpaio and MCSO filed frivolous lawsuits against persons who had publicly
11 criticized MCSO. (Doc. 1 at 23). In addition, the United States claims Sheriff Arpaio and
12 MCSO conducted retaliatory arrests against critics of their practices. (Doc. 1 at 24-25).

13 The proposed settlement requires MCSO establish an official policy prohibiting
14 retaliation against any individual for a lawful expression under the First Amendment.
15 (Doc. 391-2 at 5).² The agreement also obligates MCSO to notify all of its personnel of
16 the policy. (Doc. 391-2 at 6). And in their supplemental briefing, the parties' state MCSO
17 employees will be subject to discipline for violating the anti-retaliation policy. (Doc. 405
18 at 7).

19 The parties' agreement to a specifically-worded anti-retaliation policy to take
20 effect at MCSO goes a long way towards addressing the concerns raised in the United
21 States' complaint. Like the provisions addressing worksite raid operations, the anti-
22 retaliation policy will represent a top-down directive from MCSO leadership which will
23 then be communicated to every present and future MCSO employee. Given the
24 deferential standard applied to government parties, the implementation of such a policy is
25 a fundamentally fair means of addressing the United States' claim for violations of the
26 First Amendment.

27 ² The policy shall read: "It is the policy of the Maricopa County Sheriff's Office to
28 respect the First Amendment rights of all individuals. MCSO personnel will not take
action against any individual in retaliation for any individual's lawful expression of
opinions in the exercise of the First Amendment right to the freedom of speech."

1 **C. Role of Maricopa County**

2 Although the proposed agreement does not provide for a clear and specific role for
3 Maricopa County in addressing the United States' claims, it provides the United States
4 will notify both Defendants of any perceived violation of the agreement and work with
5 both to attempt to resolve the issue outside of the Court before seeking judicial
6 resolution. (Doc. 391-2 at 6-7). Thus, the Court interprets the parties' agreement to mean
7 that Maricopa County will become actively involved if the United States notifies it of an
8 issue of non-compliance. This agreement represents a compromise sufficient to satisfy
9 the fairness requirement.

10 **IV. Resolution of the Case**

11 The United States requests the Court maintain the case on its docket under a stay
12 until the *Melendres* court finds Defendants have maintained full and effective compliance
13 with its injunction for three years. Defendants argue that request is inappropriate given
14 the United States' prior representations that it would terminate this case in the event
15 intervention in the *Melendres* case were to be granted. Defendants are correct.

16 Indeed, in its motion to stay this case pending resolution of its motion to intervene
17 in *Melendres*, the United States stated:

18 [S]hould the *Melendres* Court grant the United States intervention, the
19 United States would enforce the already-existing injunction in *Melendres*
20 rather than pursue additional remedies in this action for its discriminatory
21 policing claims. Further remedial proceedings in this case, beyond
22 enforcement of the Settlement Agreement reached by the parties, would not
23 be necessary.

24 (Doc. 395 at 4). The United States made a similar and specific representation in its
25 motion to intervene in *Melendres*. (*See* 07-CV-2513, Doc. 1177). Based on these
26 representations, Defendants did not oppose the United States' motion to intervene, which
27 the *Melendres* court granted. The United States cannot now renege on its promise.
28 Therefore, the Court will not retain jurisdiction over the United States' claims. The case
will be terminated, and the United States may pursue relief in *Melendres*, as it stated it
would.

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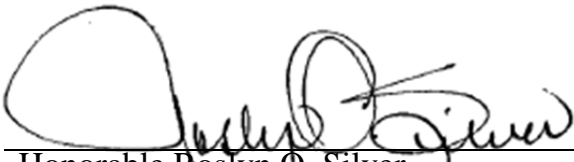
Accordingly,

IT IS ORDERED The parties' joint motion to approve settlement, (Doc. 391), is **GRANTED.**

IT IS FURTHER ORDERED the Settlement Agreement, attached to the parties' Joint Motion to Approve Settlement Agreement, concerning the United States' worksite operations and retaliation claims in the above captioned case hereby is approved and entered by the Court.

IT IS FURTHER ORDERED the Clerk of Court shall dismiss the United States' remaining claims, enter final judgment in favor of the United States on Claims One, Three, and Five, and terminate the case. Pursuant to the United States' representations, all injunctive relief on Claims One, Three, and Five will be pursued in *Melendres v. Arpaio*, No. 07-CV-2513-PHX-GMS.

Dated this 2nd day of September, 2015.


Honorable Roslyn O. Silver
Senior United States District Judge