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14 **SUPERIOR COURT OF ARIZONA**
15 **MARICOPA COUNTY**

16 ANDREW P. THOMAS, in his official
17 capacity as Maricopa County Attorney;
18 JOSEPH ARPAIO, in his official capacity
19 as Sheriff of Maricopa County, Arizona,

20 Plaintiffs,

21 v.

22 MARICOPA COUNTY BOARD OF
23 SUPERVISORS; and its members:
24 FULTON BROCK; DON STAPLEY;
25 ANDREW KUNASEK; MAX WILSON;
26 and MARY ROSE WILCOX, in their
27 official capacities as Maricopa County
28 Supervisors; MARICOPA COUNTY,

Defendants.

No. _____

**COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF**

(Request for Speedy Hearing Pursuant to
A.R.C.P., Rule 57)

Plaintiffs Andrew P. Thomas, Maricopa County Attorney, and Joseph Arpaio,
Maricopa County Sheriff, by this Complaint for Declaratory Judgment, pursuant to
A.R.S. § 12-1831, *et seq.*, allege as follows:

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THE PARTIES

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2 1. Plaintiff Andrew P. Thomas (hereinafter the “County Attorney”) is the
3 duly elected County Attorney of Maricopa County, with powers and duties set forth in
4 A.R.S. § 11-532, *et seq.*, and other statutes of the State of Arizona.

5 2. Plaintiff Joseph Arpaio (hereinafter the “County Sheriff”) is the duly
6 elected Sheriff of Maricopa County, Arizona. The County Sheriff’s Office is
7 represented by the County Attorney, as well as outside legal counsel retained by the
8 County Attorney, in numerous civil claims and lawsuits.

9 3. Defendant Maricopa County Board of Supervisors (hereinafter the
10 “Board”) is a board established pursuant to A.R.S. § 11-201, *et seq.*, with powers
11 established by A.R.S. § 11-251.

12 4. At all times relevant to the Complaint, Defendants Fulton Brock, Andrew
13 Kunasek, Don Stapley, Mary Rose Wilcox and Max Wilson served as members of the
14 Board. They are sued in their official capacities as Supervisors for Maricopa County,
15 collectively comprising the Board, which has caused events to occur out of which this
16 Complaint arises.

JURISDICTION AND VENUE

17
18 5. This Court has jurisdiction to declare the respective rights and interests of
19 the parties as a matter of law and to provide additional relief pursuant to A.R.S. § 12-
20 1831, *et seq.*

21 6. The Board has caused events to occur in Maricopa County, Arizona, out of
22 which Plaintiffs’ request for declaratory and injunctive relief arises.

23 7. Jurisdiction and venue are proper in this Court.

FACTUAL ALLEGATIONS

The Powers and Duties of the County Attorney

24
25
26 8. Pursuant to the Arizona Constitution, the duties, powers and
27 responsibilities of the County Attorney and the Board “shall be as prescribed by law.”
28 Ariz. CONST. art. XII, § 4.

1 Fund, to the Board to conform to action item No. 1 (hereinafter collectively the “Agenda
2 Items”).

3 29. Prior to the December 23, 2008 meeting, the County Attorney hand-
4 delivered a letter to the Board cautioning that the Board’s proposed Agenda Items
5 violated A.R.S. § 11-532(A)(9) and were, therefore, unlawful.

6 30. The County Attorney’s letter further requested that the Board postpone the
7 meeting to allow time for reasonable and thoughtful review of the potential impact and
8 legality of the Board’s proposed Agenda Items, and to permit the County Attorney to
9 conduct further research and analysis to properly advise the Board.

10 31. Despite the County Attorney’s warnings and request to postpone the
11 meeting, the Board convened its Special Meeting on December 23, 2008.

12 32. During the meeting, the Board refused to allow the County Attorney’s
13 representative, to comment on the Agenda Items or otherwise provide legal advice to the
14 Board.

15 33. During the meeting, Mr. Irvine gave legal advice to the Board on the
16 Agenda Items.

17 34. At the December 23, 2008 meeting, the Board voted to approve the
18 Agenda Items.

19 35. Upon information and belief, the Board has hired former Maricopa County
20 Attorney Rick Romley as a consultant for the purpose of providing legal advice to the
21 Board.

22 36. The Board’s acts, as set forth in this Complaint, were taken without first
23 seeking the legal advice or the legal opinion of the County Attorney.

24 **The Board’s Acts Are *Ultra Vires* and Unlawful**

25 37. Public funds may not be expended for the purpose of performing the
26 powers and duties which are constitutionally and statutorily imposed upon the County
27 Attorney, and contracts of employment by which other attorneys are engaged to perform
28 duties with which the County Attorney is charged are *ultra vires* and void.

1 38. The Board cannot, either acting alone or through its agent(s), manage or
2 direct deputies of a constitutional officer.

3 39. While the Board statutorily may “direct and control the prosecution and
4 defense of all actions to which the county is a party, and compromise them” it cannot
5 interfere with County Attorney’s constitutional and statutory duties to provide legal
6 advice to the Board, defend actions brought against the County and oppose claims
7 against the County which the County Attorney deems unjust or illegal.

8 40. By its actions on December 23, 2008, the Board has unlawfully usurped
9 and/or delegated the powers and duties of the County Attorney to the County Manager,
10 Mr. Irvine, and the Shughart Firm.

11 41. The Board’s acts, as set forth in this Complaint, are not authorized by law.
12 The Board cannot retain independent legal counsel for the purpose of obtaining legal
13 advice if the County Attorney is available to provide such counsel.

14 42. The Board’s approval of the Agenda Items, including authorizing the
15 Board to directly hire and manage all legal counsel for all County civil legal actions and
16 litigation and to delegate such hiring and management to the County Manager, gives the
17 Board, through the County Manager, the power to access, review and control current
18 claims and litigation, as well as to reassign such matters from the County Attorney and
19 outside counsel to other counsel of the County Manager’s choosing.

20 43. Among other things, the Board’s actions will result in the disclosure of
21 attorney-client privileged, attorney work-product and other confidential information
22 related to the County Attorney’s and outside counsel’s representation of the County
23 Sheriff’s Office, and other county officers, offices and divisions.

24 44. Additionally, the Board’s actions will result in the waste of resources and
25 inefficiencies with respect to on-going legal matters, and the squandering of taxpayer
26 dollars in a time of fiscal and budgetary crisis.

27 45. The Board’s acts demonstrate an abuse of power, which will have the
28 effect of impeding and interfering with the powers and duties of the County Attorney.

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1 G. The County shall not reimburse Mr. Irvine, the Shughart Firm, Mr.
2 Romley or any other counsel for *ultra vires* acts.

3 H. The Board shall reimburse the County for any attorneys' fees paid to Mr.
4 Irvine, the Shughart Firm, Mr. Romley and/or any other counsel for *ultra vires* acts.

5 I. The Board shall reimburse the County for Plaintiffs' legal fees and costs
6 incurred in this declaratory judgment action.

7 DATED this 31st day of December 2008.

8 Ogletree, Deakins, Nash, Smoak & Stewart, P.C.

9
10 By _____
11 Joseph T. Clees
12 L. Eric Dowell
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17 6856408.3 (OGLETREE)

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