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6 *Attorneys for Defendant Pima County*
7

8 **UNITED STATES DISTRICT COURT**
9 **DISTRICT OF ARIZONA**

10 Louis Taylor,

11 Plaintiff,

12 v.

13 County of Pima, et al.,

14 Defendants.
15

No. CV-15-00152-TUC-RM

**DEFENDANT PIMA COUNTY'S
RESPONSE TO PLAINTIFF'S
REQUEST FOR AN ORDER TO
SHOW CAUSE**

16 Plaintiff's Request for an Order to Show Cause is a baseless smear against Pima
17 County and an attempt to influence the Court while several significant motions are pending.
18 Pima County's selection of its counsel—and the reasons for that selection—are not subject
19 to judicial scrutiny or Plaintiff's satisfaction. The Request should be summarily denied.

20 The Court ordered the parties to file a "Joint Settlement Status Report" that contained
21 "no specific settlement terms or offers" by February 5, 2021. (Dkt. 113 at 4.) Plaintiff
22 refused to submit a joint report, claiming that the Court's Order modifying other scheduling
23 deadlines (Dkt. 158 at 2) provided a good faith basis to file his own status report (Ex. 1).
24 Because he refused, the parties filed separate reports. (Dkt. 162, 163.)

25 Pima County and the City of Tucson reported that the parties "are not engaged in
26 settlement discussions" and that "mediation will not be fruitful considering the parties'
27 divergent views on liability and damages." (Dkt. 162.) Plaintiff asserted that (1) beginning
28

1 in “early January 2021,” his attorneys began settlement negotiations with a purported
2 representative from the Pima County Attorney’s Office (“PCAO”), and that the matter was
3 “moving toward settlement,” but (2) on “the weekend of Jan. 30, 2021,” the representative
4 ceased negotiations, citing a conflict of interest concerning the new Pima County Attorney
5 that precluded him from further involvement.¹ (Dkt. 163.) Plaintiff attached a letter
6 authored by his counsel outlining the negotiations and accusing the former Pima County
7 Attorney of manufacturing the conflict of interest to preclude the new County Attorney
8 from settling the matter and to “cover[] up the malfeasance and unconstitutional behavior
9 that led to [Plaintiff’s] conviction.” (Dkt. 163-2.)

10 Plaintiff’s Settlement Status Report is improper for many reasons:

- 11 • Plaintiff’s counsel engaged in settlement discussions with a representative of
12 PCAO who was not counsel of record for Pima County, and knowing that:
13 (1) undersigned counsel is the *only* counsel of record for Pima County; and
14 (2) the only two PCAO attorneys who made an appearance as counsel of
15 record for Pima County asserted a conflict of interest on December 29, 2020
16 (Dkt. 160) and were withdrawn as counsel because of that conflict on
17 January 7, 2021 (Dkt. 161).² Plaintiff’s counsel vaguely states that the PCAO
18 representative was asked “to assist in handling the pending and ongoing
19 matters” in the case (Dkt. 163-2), but does not state that the representative
20 asserted he was acting as counsel for Pima County.
- 21 • Plaintiff’s counsel never informed undersigned counsel, Pima County’s only
22 attorneys of record, about their negotiations with the PCAO representative.

23
24 ¹ The new County Attorney took office on January 1, 2021.

25 ² Plaintiff’s assertion that the “Pima County Attorney’s office has not formally
26 withdrawn” from the case is frivolous. Individual attorneys represent parties and make
27 appearances, not entities or law firms. *See* LRCiv 83.3. Only two PCAO attorneys have
28 appeared as counsel for Pima County in this case, and the Court granted their withdrawal
on January 7, 2021. (Dkt. 161.) Plaintiff has not told either the Court or counsel for Pima
County when precisely the negotiations with the PCAO representative began, and Plaintiff
ignored Pima County’s request for documentation of their communications with the PCAO
representative so that Pima County could figure that out.

1 Any settlement negotiations involving Pima County *must*—and can *only*—go
2 through undersigned counsel.

- 3 • Neither Pima County Finance and Risk Management nor undersigned counsel
4 knew anything about Plaintiff’s counsel’s negotiations with the PCAO
5 representative until Plaintiff filed his Settlement Status Report.
- 6 • Even if Plaintiff’s counsel’s settlement negotiations had been procedurally
7 appropriate, Plaintiff improperly disclosed the content of those negotiations
8 to the Court and the public, in violation of the Court’s order. (Dkt. 113 at 4.)
9 *See also E.E. O.C. v. ABM Indus., Inc.*, No. 1:07–cv–01428 LJO JLT, 2010
10 WL 582049, at *1 (E.D. Cal. Feb.12, 2010) (“[T]he need for confidentiality
11 of settlement negotiations is without dispute.”).
- 12 • Plaintiff accuses Pima County of wrongfully securing his 1972 conviction and
13 2013 plea, allegations that have yet to be proven and are strongly disputed.
14 (Dkt. 163, 163-2.)
- 15 • Without any evidence, Plaintiff accuses Pima County and its former counsel
16 of “cover[ing] up the sins of” his prosecution, stonewalling any settlement
17 negotiations, and manufacturing a “ghost” conflict of interest to prevent the
18 new County Attorney from settling the case. These accusations are assuredly
19 false.
- 20 • Plaintiff makes these accusations under the guise of a settlement status report,
21 while the Court is considering his Motion for Leave to File Third Amended
22 Complaint (to add a declaratory challenge to his 2013 plea) (Dkt. 103) and
23 Defendants’ Motion for Protective Order (to delineate the scope of Plaintiff’s
24 existing claims and relevant evidence) (Dkt. 147).

25 As for Plaintiff’s request for this Court to determine whether the new County
26 Attorney in fact has a conflict of interest, this Court is without legal authority. Pima County
27 has a right to retain outside counsel for any reason whatsoever, including if the PCAO has
28 a conflict of interest. That sacrosanct determination is one that only Pima County gets to

1 make. It is not subject to inquiry and verification by Plaintiff or review and approval by the
2 Court. The legal authority Plaintiff cites for the proposition that courts can address whether
3 a conflict of interest exists are inapposite. Those cases—all criminal cases—involved a
4 court’s authority to decline a conflict waiver to ensure that a criminal defendant receives
5 competent counsel in accordance with the Sixth Amendment.³ This is not a criminal case,
6 and the Sixth Amendment does not apply. *S.M. v. J.K.*, 262 F.3d 914, 919 n.2 (9th Cir.
7 2001). Moreover, Plaintiff is not seeking to invalidate a conflict waiver. Plaintiff does not
8 cite any authority allowing a Court to conduct the invasive inquisition he is demanding in
9 this case, and undersigned counsel have found none.

10 The Court should deny Plaintiff’s Request for an Order to Show Cause.

11 DATED this 12th day of February, 2021.

12 STRUCK LOVE BOJANOWSKI & ACEDO, PLC

13
14 By /s/ Nicholas D. Acedo
15 Daniel P. Struck
16 Nicholas D. Acedo
17 Jacob B. Lee
3100 West Ray Road, Suite 300
Chandler, Arizona 85226

18 *Attorneys for Defendant Pima County*

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³ See *United States v. Gonzalez-Lopez*, 548 U.S. 140, 152 (2006); *Wheat v. United States*, 486 U.S. 153, 158–63 (1988); *Bradley v. Henry*, 510 F.3d 1093, 1102 (9th Cir. 2007) (Clifton, J., concurring); *United States v. Messino*, 181 F.3d 826, 830 (7th Cir. 1999); *United States v. Bermudez*, 922 F.2d 843 (7th Cir. 1991) (unpublished).

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CERTIFICATE OF SERVICE

I hereby certify that on February 12, 2021, I electronically transmitted the attached document to the Clerk’s Office using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing to the following CM/ECF registrants:

- John P. Leader john@leaderlawaz.com
- Peter T. Limperis plimperis@mpfmlaw.com
- Stanley G. Feldman sfeldman@mpfmlaw.com
- Timothy P. Stackhouse tstackhouse@hmpmlaw.com
- Michelle R. Saavedra michelle.saavedra@tucsonaz.gov
- Dennis P. McLaughlin Dennis.McLaughlin@tucsonaz.gov

I hereby certify that on this same date, I served the attached document by U.S. Mail, postage prepaid, on the following, who is not a registered participant of the CM/ECF System:

N/A

/s/ Nicholas D. Acedo

EXHIBIT 1

EXHIBIT 1

From: John Leader <john@leaderlawaz.com>
Sent: Thursday, February 4, 2021 3:49 PM
To: Nick Acedo; Stanley Feldman; Peter T. Limperis; Tim Stackhouse; Yvonne Moreno; Kimberly Flaherty; Maria Barr
Cc: Dan Struck; Jacob Lee; Lindsey Piasecki; Sherri Wolford; Allen Rowley; Michelle Saavedra; Dennis McLaughlin; Echo Acosta; Brenda Sanchez
Subject: RE: Taylor v. Pima County/City of Tucson - Deadlines Extension & Joint Settlement Status Report

Nick:

The Court's original March 21, 2017 order calls for "settlement status reports." (DOC 65 at 5). The most recent November 30, 2020 order says that a settlement status report is due February 5 – no mention of joint. (DOC 158 at 2).

You're right about the 5/19/20 order; we still believe there is good cause to file a separate report.

Thanks.

John

John P. Leader, Esq.
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"If you don't know where you're going, any road will take you there..."
George Harrison, 2001

From: Nick Acedo <NAcedo@strucklove.com>
Sent: Thursday, February 4, 2021 3:40 PM
To: John Leader <john@leaderlawaz.com>; Stanley Feldman <sfeldman@mpfmlaw.com>; Peter T. Limperis <plimperis@mpfmlaw.com>; Tim Stackhouse <tstackhouse@mpfmlaw.com>; Yvonne Moreno <yvonne@leaderlawaz.com>; Kimberly Flaherty <kflaherty@mpfmlaw.com>; Maria Barr <mbarr@leaderlawaz.com>
Cc: Dan Struck <DStruck@strucklove.com>; Jacob Lee <JLee@strucklove.com>; Lindsey Piasecki

<LPiasecki@strucklove.com>; Sherri Wolford <SWolford@strucklove.com>; Allen Rowley <ARowley@strucklove.com>; Michelle Saavedra <Michelle.Saavedra@tucsonaz.gov>; Dennis McLaughlin <Dennis.McLaughlin@tucsonaz.gov>; Echo Acosta <Echo.Acosta@tucsonaz.gov>; Brenda Sanchez <Brenda.Sanchez@tucsonaz.gov>

Subject: RE: Taylor v. Pima County/City of Tucson - Deadlines Extension & Joint Settlement Status Report

John,

[REDACTED] As for the status report due tomorrow, the Scheduling Order states: "Counsel shall file a brief Joint Settlement Status Report (containing no specific settlement terms or offers) on or before February 5, 2021, and every 60 days thereafter." (Dkt. 113 at 4, emphasis added.) Am I missing something? If you reconsider, please let us know by the end of today, otherwise we will prepare our own out of necessity.

Nick

From: John Leader <john@leaderlawaz.com>

Sent: Thursday, February 4, 2021 3:24 PM

To: Nick Acedo <NAcedo@strucklove.com>; Stanley Feldman <sfeldman@mpfmlaw.com>; Peter T. Limperis <plimperis@mpfmlaw.com>; Tim Stackhouse <tstackhouse@mpfmlaw.com>; Yvonne Moreno <yvonne@leaderlawaz.com>; Kimberly Flaherty <kflaherty@mpfmlaw.com>

Cc: Dan Struck <DStruck@strucklove.com>; Jacob Lee <JLee@strucklove.com>; Lindsey Piasecki <LPiasecki@strucklove.com>; Sherri Wolford <SWolford@strucklove.com>; Allen Rowley <ARowley@strucklove.com>; Michelle Saavedra <Michelle.Saavedra@tucsonaz.gov>; Dennis McLaughlin <Dennis.McLaughlin@tucsonaz.gov>; Echo Acosta <Echo.Acosta@tucsonaz.gov>; Brenda Sanchez <Brenda.Sanchez@tucsonaz.gov>

Subject: RE: Taylor v. Pima County/City of Tucson - Deadlines Extension & Joint Settlement Status Report

Hi, Nick.

[REDACTED]

Also, we don't believe the reports due tomorrow are joint – we'll be filing our own. We will copy you.

Thanks.

John

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George Harrison, 2001

From: Nick Acedo <NAcedo@strucklove.com>

Sent: Thursday, February 4, 2021 3:11 PM

To: John Leader <john@leaderlawaz.com>; Stanley Feldman <sfeldman@mpfmlaw.com>; Peter T. Limperis <plimperis@mpfmlaw.com>; Tim Stackhouse <tstackhouse@mpfmlaw.com>; Yvonne Moreno <yvonne@leaderlawaz.com>; Kimberly Flaherty <kflaherty@mpfmlaw.com>

Cc: Dan Struck <DStruck@strucklove.com>; Jacob Lee <JLee@strucklove.com>; Lindsey Piasecki <LPiasecki@strucklove.com>; Sherri Wolford <SWolford@strucklove.com>; Allen Rowley <ARowley@strucklove.com>; Michelle Saavedra <Michelle.Saavedra@tucsonaz.gov>; Dennis McLaughlin <Dennis.McLaughlin@tucsonaz.gov>; Echo Acosta <Echo.Acosta@tucsonaz.gov>; Brenda Sanchez <Brenda.Sanchez@tucsonaz.gov>

Subject: RE: Taylor v. Pima County/City of Tucson - Deadlines Extension & Joint Settlement Status Report

Hi John,

I'm circling back to this inquiry. The Joint Settlement Status Report is due tomorrow.

Thanks,

Nick

From: John Leader <john@leaderlawaz.com>

Sent: Monday, February 1, 2021 9:10 AM

To: Nick Acedo <NAcedo@strucklove.com>; Stanley Feldman <sfeldman@mpfmlaw.com>; Peter T. Limperis <plimperis@mpfmlaw.com>; Tim Stackhouse <tstackhouse@mpfmlaw.com>; Yvonne Moreno <yvonne@leaderlawaz.com>; Kimberly Flaherty <kflaherty@mpfmlaw.com>

Cc: Dan Struck <DStruck@strucklove.com>; Jacob Lee <JLee@strucklove.com>; Lindsey Piasecki <LPiasecki@strucklove.com>; Sherri Wolford <SWolford@strucklove.com>; Allen Rowley <ARowley@strucklove.com>; Michelle Saavedra <Michelle.Saavedra@tucsonaz.gov>; Dennis McLaughlin <Dennis.McLaughlin@tucsonaz.gov>; Echo Acosta <Echo.Acosta@tucsonaz.gov>; Brenda Sanchez <Brenda.Sanchez@tucsonaz.gov>

Subject: RE: Taylor v. Pima County/City of Tucson - Deadlines Extension & Joint Settlement Status Report

Hi, Nick.

I'll discuss with Stanley and Peter and get back with you.

Thank you.

John

John P. Leader, Esq.

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"If you don't know where you're going, any road will take you there..."
George Harrison, 2001

From: Nick Acedo <NAcedo@strucklove.com>
Sent: Monday, February 1, 2021 8:52 AM
To: Stanley Feldman <sfeldman@mpfmlaw.com>; Peter T. Limperis <plimperis@mpfmlaw.com>; Tim Stackhouse <tstackhouse@mpfmlaw.com>; John Leader <john@leaderlawaz.com>; Yvonne Moreno <yvonne@leaderlawaz.com>; Kimberly Flaherty <kflaherty@mpfmlaw.com>
Cc: Dan Struck <DStruck@strucklove.com>; Jacob Lee <JLee@strucklove.com>; Lindsey Piasecki <LPiasecki@strucklove.com>; Sherri Wolford <SWolford@strucklove.com>; Allen Rowley <ARowley@strucklove.com>; Michelle Saavedra <Michelle.Saavedra@tucsonaz.gov>; Dennis McLaughlin <Dennis.McLaughlin@tucsonaz.gov>; Echo Acosta <Echo.Acosta@tucsonaz.gov>; Brenda Sanchez <Brenda.Sanchez@tucsonaz.gov>
Subject: Taylor v. Pima County/City of Tucson - Deadlines Extension & Joint Settlement Status Report

Counsel,

[REDACTED]

In addition, the Joint Settlement Status Report is due February 5, 2021. Were you going to send us a draft for review?

Thanks

Nick



Nicholas D. Acedo
Partner

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