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8 **SUPERIOR COURT OF ARIZONA**

9 **COUNTY OF MARICOPA**

10 GARY DONAHOE and)
CHERIE DONAHOE, husband and)
11 wife,)

12 Plaintiffs,)

13 v.)

14 SHERIFF JOSEPH ARPAIO and)
AVA ARPAIO, husband and wife;)
15 ANDREW THOMAS and ANNE)
THOMAS, husband and wife, LISA)
16 AUBUCHON and PETER R.)
PESTALOZZI, wife and husband,)
17 DEPUTY CHIEF DAVID)
HENDERSHOTT and ANNA)
18 HENDERSHOTT, husband and wife,)
WILLIAM MONTGOMERY only in)
19 his official capacity as MARICOPA)
COUNTY ATTORNEY, MARICOPA)
20 COUNTY, a municipal entity; and)
JOHN DOES I-X; JANE DOES I-X;)
21 BLACK CORPORATIONS I-V; and)
WHITE PARTNERSHIPS, I-V,)

22 Defendants.)
23)
24)
25)
26)

No.

COMPLAINT

(Jury Trial Requested)

TABLE OF CONTENTS

1

2 JURISDICTIONAL ALLEGATIONS 3

3 FACTUAL BASIS FOR CLAIMS FOR RELIEF 7

4 Judge Donahoe’s Background 7

5 The Genesis of the Attack On Judge Donahoe 8

6 The RICO Complaint 11

7 The Criminal Complaint 12

8 Their Own Grand Jury Rejected the Defendants’ “Case” 13

9 Sheriff Arpaio’s Additional Motives for Assaulting Judge Donahoe Without
10 Probable Cause..... 14

11 MCAO’s Independent Personnel Investigation of Aubuchon 16

12 Unfounded Complaint Filed With The Commission on Judicial Conduct 19

13 Independent Federal and State Prosecutors Find The Thomas/Arpaio Court
14 Tower - Public Corruption Investigations “Nearly Incomprehensible” 20

15 Thomas Continued His Defamatory Assault After Leaving Office 21

16 Aubuchon Continued Her Defamatory Conduct After Leaving MCAO 23

17 Other Defamatory Conduct (In Official Capacity) 23

18 Defendants Have a Pattern, Custom, and Practice of Misusing Their Power by
19 Investigating, Arresting, and Prosecuting Individuals Without Probable Cause
20 for Improper and Unlawful Selfish Purposes, Including Political and Financial
21 Gain 25

22 Judge Donahoe and His Wife Have Suffered Damages as a Result
23 of This Assault on His Reputation 27

24 COUNT I 28

25 Violations of 42 U.S.C. § 1983: Free Speech and Free Press, Law
26 Enforcement Retaliatory Conduct, Abuse of Process, and Abuse of Power (All
 Defendants) 28

 COUNT II 29

 Violations of 42 U.S.C. § 1983: Unconstitutional Policies, Customs, and
 Failure to Train (Arpaio, Hendershott, Thomas, Aubuchon, and Maricopa
 County)..... 29

 COUNT III 32

 Violation of 42 U.S.C. § 1983—Substantive Due Process (All Defendants)..... 32

 COUNT IV 34

 Violation of 42 U.S.C. § 1983—Equal Protection (All Defendants) 34

 COUNT V 36

 Conspiracy to Commit Violations of 42 U.S.C. § 1983 (Arpaio, Hendershott,
 Aubuchon, and Thomas) 36

1	COUNT VI.....	37
	Violations of Arizona Law: Abuse of Process (All Defendants).....	37
2	Violation of Arizona Law: Infliction of Emotional Distress (Negligent and	
3	Intentional) (All Defendants).....	38
	COUNT VIII.....	39
4	Defamation, Libel, and/or False Light Invasion of Privacy (Arpaio,	
5	Hendershott, Thomas, and Aubuchon)	39
	COUNT IX.....	40
6	Racketeering Violations under 18 U.S.C. § 1961, <i>et seq.</i> & A.R.S. § 13- 2301,	
7	<i>et seq.</i> (All Defendants)	40
	COUNT X.....	41
8	Negligence (All Defendants)	41
9	COUNT XI.....	43
	Gross Negligence (All Defendants)	43
10	COUNT XII	44
11	Intrusion of Seclusion/Invasion of Privacy (All Defendants).....	44
12	JURY TRIAL.....	45
13	PRAYER FOR RELIEF.....	45

13
14
15
16
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Plaintiffs Gary Donahoe and Cherie Donahoe, for their Complaint against Defendants, hereby allege as follows:

JURISDICTIONAL ALLEGATIONS

1. Plaintiffs have satisfied all the provisions of A.R.S. § 12-821.01 by timely serving a Notice of Claim more than sixty (60) days prior to the date of the filing of this Complaint. Defendants denied the Notice of Claim by failing to respond.

2. Plaintiffs bring this action pursuant to 42 U.S.C. § 1983, the United States Constitution, the First, Fourth, Fifth, and Fourteenth Amendments to the United States Constitution, and other pendent statutory and state common laws.

3. This Court has jurisdiction of Plaintiffs’ federal law claims pursuant to 28 U.S.C. § 1331 and 42 U.S.C. § 1988. Additionally, this Court has jurisdiction over Plaintiffs’ state and federal claims pursuant to Article 6, Section 14 of the Arizona Constitution.

4. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b), as the parties are residents of Maricopa County, Arizona, and the events underlying this lawsuit occurred in Maricopa County.

GENERAL ALLEGATIONS

5. At all times material herein, Plaintiffs Gary Donahoe and Cherie Donahoe were a married couple residing in Maricopa County, Arizona (collectively “Plaintiffs,” or “Judge Donahoe” or “Cherie” in the singular).

6. At all times material herein, Defendant Joseph Arpaio (“Arpaio” or “Sheriff Arpaio”) was the duly-elected Sheriff of Maricopa County and the head of the Maricopa County Sheriff’s Office (“MCSO”), with ultimate authority and responsibility for the MCSO and the actions of its officers and agents, and with the authority and responsibility to establish policy, practices, customs, procedures, protocols, and training

1 for the MCSO as the official and final policymaker for the County. His actions and/or
2 inactions constitute actions of Maricopa County, and the County is vicariously and
3 directly liable for his wrongful conduct, as alleged herein. Sheriff Arpaio is named in
4 both his official and individual capacities. As the elected Sheriff, Arpaio has official,
5 vicarious, direct, individual, and/or supervisory liability for the MCSO, the County, and
6 its officers, agents, and employees.

7 7. Ava Arpaio is the spouse of Defendant Joe Arpaio and is so designated
8 because the wrongful conduct of Defendant Arpaio was engaged in for the benefit of
9 their marital community, thereby rendering his spouse and marital community liable for
10 such conduct.

11 8. With the exception of the times specifically referenced herein, at all times
12 material herein, Defendant Andrew Thomas (“Thomas” or “County Attorney Thomas”)
13 was the duly-elected County Attorney of Maricopa County and the head of the
14 Maricopa County Attorney’s Office (“MCAO”), with Thomas having the ultimate
15 authority and responsibility for the MCAO and the actions of its officers and agents, and
16 with the authority and responsibility to establish policy, practices, customs, procedures,
17 protocols, and training for the MCAO as the official and final policymaker for the
18 County. His actions and/or inactions constitute actions of Maricopa County, and the
19 County is vicariously and directly liable for his wrongful conduct, as alleged herein.
20 County Attorney Thomas is named in both his official and individual capacities. As the
21 elected County Attorney, Thomas had official, vicarious, direct, individual, and/or
22 supervisory liability for the MCAO, the County, and its deputy and assistant attorneys,
23 agents, and employees.

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1 9. Andrew Thomas is also named as a private citizen Defendant for conduct
2 he engaged in after he left the office of County Attorney. Thomas is a resident of
3 Maricopa County.

4 10. Anne Thomas is the spouse of Defendant Andrew Thomas and is so
5 designated because the wrongful conduct of Defendant Thomas both before and after he
6 left office was engaged in for the benefit of their marital community, thereby rendering
7 his spouse and marital community liable for such conduct.

8 11. With the exception of the times specifically referenced herein, at all times
9 material herein, Defendant Lisa Aubuchon (“Aubuchon” or “Deputy County Attorney
10 Aubuchon”) was a Deputy County Attorney of Maricopa County. Her actions and/or
11 inactions constitute actions of Maricopa County, and the County is vicariously and
12 directly liable for her wrongful conduct, as alleged herein. Deputy County Attorney
13 Aubuchon is named in both her official and individual capacities.

14 12. Lisa Aubuchon is also named as a private citizen Defendant for conduct
15 she engaged in after leaving the employ of the MCAO. Aubuchon is a resident of
16 Maricopa County.

17 13. Peter R. Pestalozzi is the spouse of Defendant Lisa Aubuchon and is so
18 designated because the wrongful conduct of Defendant Aubuchon, both during and after
19 her employment with the County, was engaged in for the benefit of their marital
20 community, thereby rendering her spouse and marital community liable for such
21 conduct.

22 14. At all times material herein, Defendant David Hendershott (“Hendershott”
23 or “Deputy Chief Hendershott”) was the Deputy Chief of Maricopa County Sheriff’s
24 Office, with the authority and responsibility to establish policy, practices, customs,
25 procedures, protocols, and training for the MCSO as an official policymaker for the
26

1 County. His actions and/or inactions constitute actions of Maricopa County, and the
2 County is vicariously and directly liable for his wrongful conduct, as alleged herein.
3 Deputy County Attorney Hendershott is named in both his official and individual
4 capacities. As the Deputy Chief, Hendershott has official, vicarious, direct, individual,
5 and/or supervisory liability for the MCSO, the County, and its officers, agents, and
6 employees.

7 15. Anna Hendershott is the spouse of Defendant David Hendershott and is so
8 designated because the wrongful conduct of Defendant Hendershott was engaged in for
9 the benefit of their marital community, thereby rendering his spouse and marital
10 community liable for such conduct.

11 16. Defendant William Montgomery (“Montgomery” or “County Attorney
12 Montgomery”) took office on November 22, 2010, succeeding interim County Attorney
13 Richard Romley who was appointed when Thomas resigned as County Attorney.
14 County Attorney Montgomery is named only in his official capacity.

15 17. Defendant Maricopa County (the “County”) is a public entity, formed and
16 designated as such pursuant to Title 11, of the Arizona Revised Statutes, and (as such) it
17 and its officers and divisions are subject to civil suit and may be held independently or
18 vicariously liable for the wrongful conduct of its divisions, agents, officers, and
19 employees, including (*inter alia*), Sheriff Joseph Arpaio, former County Attorney
20 Andrew Thomas, former Deputy County Attorney Lisa Aubuchon, and Deputy Chief
21 David Hendershott.

22 18. At all times material herein, Defendants John Does I-X and Jane Does I-X
23 (collectively “John Does”) were officers, agents, and employees of Sheriff Arpaio,
24 Thomas, and/or Maricopa County, acting within the scope of their employment and
25 under color of law. These Defendants engaged in wrongful conduct that allowed,
26

1 caused, and/or contributed to cause the violations of Judge Donahoe's rights. Their
2 actions and/or inactions constitute actions of Sheriff Arpaio, Thomas, and/or Maricopa
3 County. Sheriff Arpaio, MCSO, Thomas, MCAO, and/or Maricopa County are
4 vicariously and directly liable for their wrongful conduct.

5 19. The true names, capacities, and relationships, whether individual,
6 corporate, partnership, or otherwise of all John and Jane Doe Defendants, Black
7 Corporations, and White Partnerships are unknown at the time of the filing of this
8 Complaint, and are being designated pursuant to applicable law. Plaintiffs further allege
9 that all of the fictitiously named Defendants were jointly responsible for the actions,
10 events, and circumstances underlying this lawsuit, and that they proximately caused the
11 damages stated in this Complaint. Plaintiffs will amend the Complaint to name the
12 unidentified individuals once they have identified, through discovery, the identities and
13 acts, omissions, roles, and/or responsibilities of such Defendants sufficient for Plaintiffs
14 to discover the claims against them.

15 **FACTUAL BASIS FOR CLAIMS FOR RELIEF**

16 **Judge Donahoe's Background**

17 20. At the time of the events complained of herein, Judge Donahoe served as
18 Presiding Criminal Judge of the Maricopa County Superior Court.

19 21. In 1989, Judge Donahoe was appointed a Commissioner of the Maricopa
20 County Superior Court and served in both the civil and probate/mental health
21 departments before he served as the Presiding Commissioner from 1992 to 1995.

22 22. In 2000, Judge Donahoe was appointed a Judge of the Superior Court,
23 where he has handled civil, probate, mental health, family court, criminal calendars, and
24 a special assignment criminal calendar to assist with capital cases.

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1 28. Together, Thomas and Arpaio targeted a County project – they urged the
2 County management to scrap plans for the long-planned and saved-for downtown
3 Criminal Court Tower (“Court Tower Project”).

4 29. The Court Tower Project was simply the Trojan Horse for Arpaio and
5 Thomas’s assault on their political enemies, *du jour*. Both Thomas and Arpaio had
6 previously endorsed and helped plan this project!

7 30. The Court Tower Project had been in the planning stages for 12 years,
8 money had been put aside for its construction over that time, and the Board refused to
9 scrap the project.

10 31. Thomas and Arpaio responded by launching a “criminal investigation”
11 into the Board’s approval of the Court Tower and Thomas issued an astoundingly broad
12 Grand Jury Subpoena Duces Tecum seeking years worth of information about the
13 project from the County.

14 32. The Board hired Tom Irvine to represent its interests and he moved to
15 quash the subpoena largely on the grounds that Thomas had conflicts in investigating
16 the Board regarding the Court Tower after he had given it advice on the same topic.

17 33. Thomas then announced that Irvine, too, was now part of their “criminal
18 investigation.”

19 34. The hearing on Irvine’s motion to quash the Grand Jury Subpoena was
20 heard by Judge Donahoe, as Presiding Criminal Judge, and in February 2009 Judge
21 Donahoe ruled that Thomas had a conflict in his dealings with the County in that he was
22 now criminally investigating a client (the County and Board) that he had previously
23 given legal advice to on the same topic.

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1 35. Judge Donahoe disqualified Thomas, quashed the Grand Jury Subpoena,
2 denied Thomas's Motion to Disqualify Irvine, and his motion to assign the matter to an
3 out-of-county judge.

4 36. One month later, Judge Donahoe denied Thomas's request that Supervisor
5 Stapley be held in criminal contempt of court for disclosing information relating to a
6 Grand Jury by sharing the Judge's February 2009 ruling (which he learned of through
7 his position as Supervisor) with his criminal defense attorney in the case brought against
8 him by Thomas.

9 37. Judge Donahoe declined to hold Supervisor Stapley in contempt, finding
10 that his right to counsel in the criminal matter trumped any secrecy that should be
11 accorded that ruling.

12 38. Judge Donahoe also granted the Board's request to allow the ruling
13 regarding Supervisor Stapley to be made public.

14 39. In a desperate Motion for Reconsideration, Thomas alleged, for the first
15 time, that a conflict existed that required Judge Donahoe to disqualify himself: he
16 claimed that the Board's lawyers, Tom Irvine and Ed Novak, also represented the
17 Superior Court in matters involving the Court Tower and that Judge Donahoe should
18 have disclosed that conflict and disqualified himself.

19 40. Judge Donahoe rightly denied the Motion for a number of reasons: as an
20 employee of the State, he had no conflict with the County's project; he did not know,
21 before the Motion for Reconsideration, that Mr. Irvine and Mr. Novak had any
22 involvement with the Court Tower; he knew that Mr. Irvine did not represent him or his
23 employer in the Court Tower matter; he had and has no interest in or involvement with
24 the Court Tower project and played no role in its design, construction, or funding, nor
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1 had he ever discussed any aspect of the project with Mr. Irvine or Mr. Novak outside
2 any court hearing.

3 41. Thomas challenged Judge Donahoe's ruling at the Court of Appeals and
4 later before the Supreme Court. Both courts summarily declined to review the ruling.

5 42. Having been disqualified, Thomas then sought to have appointed two
6 Washington D.C. lawyers as Special Deputy County Attorneys for Maricopa County to
7 pursue the Court Tower investigation against the Board.

8 43. The Board objected, claiming that only it could authorize the
9 appointments and the expenditure of County funds to pay the Special Prosecutors.

10 44. Judge Donahoe was to hear this and other related motions the afternoon of
11 December 9, 2009.

12 The RICO Complaint

13 45. On December 1, 2009, Thomas and Arpaio, as plaintiffs, brought a federal
14 civil racketeering suit ("RICO Action") against all members of the Board, Judge
15 Donahoe, three other judges, County managers and private attorneys ("RICO Action").

16 46. Though the RICO Action was ineptly drafted and largely
17 incomprehensible, it alleged a broad-based conspiracy on the part of defendants to
18 illegally block criminal investigations and prosecutions of themselves, particularly with
19 respect to the Court Tower Project and the Supervisor Stapley investigation.

20 47. Arpaio alleged he had been corruptly deprived of civil legal services from
21 the County Attorney's Office; Thomas claimed he had been deprived of the ability to
22 practice law.

23 48. Thomas and Arpaio did not act alone in filing the RICO Action: MCAO
24 Attorney Aubuchon was integrally involved and was assigned to prosecute it.
25 Hendershott also assisted in the RICO Action design and preparation.
26

1 56. MCAO’s press release issued on the day the Criminal Complaint was filed
2 confirms that the Criminal Complaint was filed to stop the hearing scheduled for that
3 afternoon.

4 57. Then, in a press conference later that day, while trying to explain how,
5 under Arizona’s bribery laws, the new courthouse project could be considered an
6 inducement to judges, who, like Donahoe, were allegedly hampering his
7 “investigation,” Thomas embarrassingly sputtered: “If I’m not explaining this well, I
8 hope you’ll help me.”

9 58. In truth, the criminal charges were brought only to retaliate against Judge
10 Donahoe for past rulings and to prevent him from issuing rulings that would displease
11 Thomas, Aubuchon, Arpaio, and Hendershott.

12 59. After Judge Leonardo’s scathing indictment of Defendants’ conduct in
13 *State v. Wilcox*, Defendants filed a motion to voluntarily dismiss the Criminal
14 Complaint on February 24, 2010, which was granted by the Court on March 11, 2010.
15 On March 11, 2010, they voluntarily dismissed the RICO action.

16 **Their Own Grand Jury Rejected the Defendants’ “Case”**

17 60. In January of 2010, Thomas and Aubuchon empanelled a grand jury to
18 use as one of their tools of intimidation. Aubuchon and Hendershott “threw the book”
19 at their political targets, including Judge Donahoe and others. But, their “case” was,
20 even to these lay grand jurors, muddled, political, and as “incomprehensible” as it was
21 to the independent prosecutors that later reviewed their “case.” On March 3, 2010, at
22 the conclusion of the presentations by Hendershott and Aubuchon, the grand jury
23 rejected their “case” and voted to “end the inquiry.”

24 61. It is highly unusual for grand jurors to so summarily reject a prosecutor’s
25 presentation of evidence and urgings that the grand jurors indict their targets.

1 62. Defendants knew that they had utterly failed to make out a criminal case
2 against Judge Donahoe to these lay grand jurors – even though the Defendants
3 controlled that grand jury and even though their “targets” were unrepresented,
4 defenseless, and not allowed to appear before the grand jury.

5 63. Defendants knew their grand jury’s instruction to them to “end the
6 inquiry” meant that their failure to obtain an indictment should have ended their crusade
7 to assault Judge Donahoe and others.

8 64. But, of course, the Defendants continued, even after the grand jury voted
9 to terminate their crusade, to publically portray Judge Donahoe as a criminal still under
10 “criminal investigation.”

11 **Sheriff Arpaio’s Additional Motives for Assaulting Judge**
12 **Donahoe Without Probable Cause**

13 65. The Sheriff had other, more personal reasons, for waging war against
14 Judge Donahoe.

15 66. Some months before filing civil and criminal charges against Judge
16 Donahoe, a violent sex offender who was in court for a hearing escaped from the
17 Sheriff’s custody during a lunch recess.

18 67. Soon after the escape, the Sheriff allegedly implemented new security
19 procedures, but failed to provide adequate staff to carry out these procedures in a timely
20 fashion.

21 68. The upshot was that criminal defendants in the Sheriff’s custody were
22 either perpetually being brought to court late for various hearings or were not appearing
23 at all. These delays affected attorneys, judges, jurors, and defendants.

24 69. When the judges with criminal calendars complained, they were told there
25 was no one available to bring the defendant to the courtroom.
26

1 70. It fell to Judge Donahoe, as Presiding Criminal Judge, to try to resolve the
2 problem.

3 71. Judge Donahoe met repeatedly with MCSO personnel in an attempt to
4 improve the inmate delivery system.

5 72. The court administration made significant operational changes:
6 consolidating divisions, reducing courtrooms, and limiting hearings to only certain days
7 – all in an effort to assist the Sheriff in getting inmates to court on time.

8 73. Nothing worked. The MCSO continued to bring them late, if it brought
9 them at all.

10 74. The Sheriff has a statutory obligation to “attend all courts” and “obey
11 lawful orders and directions issued by the judge.” A.R.S. § 11-441(A)(4).

12 75. The Sheriff previously was directly ordered by Judge Anna Baca, former
13 Criminal Department Presiding Judge, to adhere to the requirements of that statute.

14 76. When the Sheriff failed to improve his inmate delivery performance, the
15 criminal judges began issuing Orders to Show Cause why the Sheriff should not be held
16 in contempt for his repeated refusals to bring the inmates to court on time.

17 77. As Presiding Criminal Judge, Judge Donahoe held a hearing on the
18 various OSCs and entered a contempt order against MCSO Deputy Chief Trombi (who
19 admitted responsibility for getting inmates to court), along with monetary sanctions, for
20 the repeated failures to deliver inmates to court.

21 78. Of course, Judge Donahoe’s Order was an affront to Arpaio, who is not
22 comfortable abiding by any rule of law that is not his own, or is not declared as his own
23 in a press appearance.

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1 79. Judge Donahoe also handled the contempt charge brought against MCSO
2 Deputy Stoddard – a courtroom deputy who sneakily and unethically read and removed
3 papers from a defense attorney’s file in open court and had them copied.

4 80. Judge Donahoe found MCSO Deputy Stoddard in contempt and ordered
5 him to apologize to the defense attorney.

6 81. Both the Trombi and Stoddard contempt findings were upheld on appeal,
7 though some of the sanctions were overturned.

8 82. Both of these actions by Judge Donahoe added fuel to the fire of enmity
9 that had been raging between and among the Sheriff, County Attorney, the BOS, and
10 finally the Superior Court. That enmity soon engulfed Judge Donahoe.

11 83. When he was served with the Criminal Complaint, Judge Donahoe
12 stopped hearing all cases in which the State was represented by the County Attorney
13 because of the possible conflict. As a result, his job as Presiding Criminal Judge was
14 adversely affected and the load on the other judges was increased. Because of this,
15 Judge Donahoe stepped down as Presiding Judge – a position he thoroughly enjoyed
16 and at which he excelled.

17 **MCAO’s Independent Personnel Investigation of Aubuchon**

18 84. Richard Romley, who was appointed Interim County Attorney when
19 Thomas resigned, authorized an independent personnel investigation of Aubuchon,
20 which was conducted by Katherine Baker, Esq., of Green & Baker.

21 85. The findings of that investigation led to Aubuchon’s termination from the
22 MCAO. In the letter of termination, Paul Ahler, MCAO Chief Deputy, concluded that:
23 “[T]he Federal RICO Complaint was nothing more than a vehicle to intimidate, retaliate
24 and besmirch the reputations of judges, public officials and attorneys who had
25 previously opposed positions taken by the Maricopa County Attorney’s Office.”
26

1 86. Chief Deputy Ahler also concluded that the Complaint filed by Aubuchon
2 did not meet the requirements to state a RICO claim, that it was devoid of facts and that
3 there was no competent evidence to support its filing.

4 87. In the Baker investigation, Aubuchon admitted that not a single witness
5 was interviewed in any investigation for the RICO Action.

6 88. Aubuchon filed the RICO Action, without evidentiary support, against the
7 recommendation of experienced Maricopa County Attorneys and outside legal counsel,
8 in contravention of Judge Donahoe's ruling prohibiting the MCAO from working on the
9 Court Tower Project, and despite her inexperience in RICO matters.

10 89. In doing so, Aubuchon was found to have violated MCAO Procedures 1.2,
11 5.29, and 5.3, Merit Rule Section 15, Rule 9.03, ER 1.1, ER 1.4, and ER 3.1 relating to
12 incompetency, inefficiency, discourteous treatment of the public or fellow employees,
13 violation of policies/procedures, and violation of Code of Ethics.

14 90. The Baker Report found that Aubuchon's and MCAO's continued
15 involvement in the Court Tower Project (particularly the RICO Action), after Judge
16 Donahoe ruled that the MCAO had a conflict of interest, was a clear violation of Judge
17 Donahoe's Order and a violation of MCAO Procedures 1.2, 5.29, 11.02 and 5.3, Merit
18 Rule Section 15, Rule 9.03, Rule 42, and ER 8.4, relating to incompetency, inefficiency,
19 neglect of duty, violation of policies/procedures, and violation of Code of Ethics.

20 91. The Baker Report also concluded that the Criminal Complaint filed
21 against Judge Donahoe as well as the RICO action, lacked evidence and were filed
22 merely to further the vindictive impulses of Arpaio and Thomas.

23 92. During her personnel investigation, Aubuchon admitted that her goal in
24 filing the Criminal Complaint was to force Judge Donahoe to vacate the December 9
25 hearing.

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1 93. Yavapai County Attorney Sheila Polk reviewed the Criminal Complaint
2 and the scant evidence produced which purported to support it, and concluded that
3 moving forward with the Criminal Complaint would be improper and that charging a
4 judge with crimes for ruling on motions “is beyond the realm...”

5 94. Ms. Polk had never seen a criminal complaint based upon a report that
6 was as lacking in evidence and meritless as in the Criminal Complaint filed by
7 Aubuchon against Judge Donahoe.

8 95. And, as the Baker Report concludes, “A reasonable prosecutor [in
9 Aubuchon’s position] would have stepped back and attempted to obtain an unbiased
10 view of the matter before proceeding with criminal charges, and would have demanded
11 some competent and compelling evidence.” (p. 94)

12 96. Although MCAO practice is to have high-profile cases (such as the
13 Criminal Action) reviewed by experienced, senior managing attorneys, Aubuchon, of
14 course and of necessity, bypassed this procedure.

15 97. The Baker Report concluded that the filing of the Criminal Complaint
16 violated MCAO Procedures 1.3, 6.1, MCAO Employee Procedure 1.2, 5.29, 11.02, 5.3,
17 Merit Rule Section 15, and Rule 9.03, Rule 11, SCR 42, ER 3.1 and ER 3.5 relating to
18 incompetency, inefficiency, neglect of duty, violation of policies/procedures, and
19 violation of Code of Ethics.

20 98. During the time Aubuchon was committing these infractions, Thomas, her
21 supervisor, was encouraging, approving, and ratifying her behavior.

22 99. As her supervisor and employer at the time, when concerns began to arise
23 regarding Aubuchon’s prosecutorial judgment, Thomas and the County had the
24 professional and ethical obligation to review her performance, but they failed to do so.

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1 107. The system of checks and balances between and among branches of
2 government had broken down in the ugliest way: no one was safe from the unbridled,
3 unrestrained, and unprincipled power of Arpaio and MCSO to launch criminal
4 investigations and the County Attorney to turn those investigations into political
5 prosecutions; it was a cruel combination of tyranny with badges.

6 **Independent Federal and State Prosecutors Find The Thomas/Arpaio Court**
7 **Tower - Public Corruption Investigations “Nearly Incomprehensible”**

8 108. On March 10, 2010, Thomas and Arpaio referred the Supervisor Stapley
9 matter and other related public corruption investigations regarding the Court Tower
10 Project to the Public Integrity Section of the Department of Justice.

11 109. This referral was done with great fanfare and bluster. The referral was
12 also the contrived basis offered by Arpaio and Thomas for voluntarily dismissing the
13 RICO Action, the criminal matter, and other alleged “corruption cases.”

14 110. Of course, the Public Integrity Section never agreed to act as the lackey
15 for Arpaio and Thomas so it sent them to Dennis K. Burke, United States Attorney for
16 the District of Arizona, for review.

17 111. On October 22, 2010, U.S. Attorney Burke advised County Attorney
18 Romley that he determined that “there is a total lack of evidence of the commission of
19 any federal crimes by the individuals” in the nine matters, including the Court Tower
20 out of which the RICO and criminal complaint against Judge Donahoe arose.

21 112. U.S. Attorney Burke concluded that “in several instances, the evidence
22 was so lacking as to make the theory of any liability nearly incomprehensible.”

23 113. Despite the lack of any evidence of any federal violations, U.S. Attorney
24 Burke recommended that the nine matters be reviewed for violations of state statutes.

1 114. Because of Maricopa County's conflict of interest in the matters, on
2 October 27, 2010, County Attorney Romley requested Navajo County Attorney, Brad
3 Carlyon, review the matters.

4 115. On November 16, 2010, Navajo County Attorney Carlyon advised County
5 Attorney Romley that he found no basis for any state law violations involving the nine
6 matters, including the actions involving the Court Tower and Judge Donahoe.

7 **Thomas Continued His Defamatory Assault After Leaving Office**

8 116. After leaving office for his unsuccessful run for Arizona Attorney
9 General, Thomas, acting solely in his individual capacity and as a private citizen, made
10 and/or released to the media several defamatory statements about Judge Donahoe and
11 others.

12 117. Among other things, Thomas issued several press releases and made
13 various public comments reasserting the defamatory assault of the criminal and RICO
14 charges against Judge Donahoe.

15 118. As an example, on June 5, 2010, Thomas and Arpaio's representatives,
16 made numerous statements on their behalf denigrating the Notices of Claim filed by
17 County officials and employees, including Judge Donahoe: "Not only are these...claims
18 not valid, they represent a preplanned, calculated effort to mock the Sheriff's Office."

19 119. Further, on or about June 30, 2010, Thomas disseminated the first of a
20 four-part article followed by a news release which was published by various media
21 outlets throughout Arizona, in which he reiterated that all the allegations contained in
22 the RICO Action and the Criminal Complaint had merit and announced that he, along
23 with Arpaio, had recently released "new evidence" in support of the claims against
24 Judge Donahoe.

1 120. Thomas also accused various County officials, including Judge Donahoe,
2 and County employees of “rigging the system so they can avoid going to court like
3 anyone else and testifying under oath.”

4 121. In the second news release issued July 14, 2010, Thomas publicly referred
5 to the Notices of Claim filed by Judge Donahoe and others as requests for “greedy,
6 undeserved payouts” by judges and others who knowingly permit “blatant, self-dealing
7 by government officials”!

8 122. In this same news release, Thomas characterized the Notices of Claim
9 filed by four Maricopa County Judges, including Judge Donahoe, as requests for County
10 taxpayers “to reward them for their misbehavior as judges.”

11 123. He further alleged: “Even more disturbing, the four judges who have filed
12 claims ask to be rewarded financially for misconduct that led them to be properly sued
13 and, in one case, prosecuted.”

14 124. More specifically, Thomas stated that Judge Donahoe issued decisions
15 from the bench “to protect himself.”

16 125. Additionally, on July 21, 2010, Thomas released campaign literature that
17 was published in a least one media outlet, the *American Post-Gazette*, wherein Thomas
18 touted that in his “fight against public corruption” he would address the County Board’s
19 efforts to pay Judge Donahoe, and others, millions “in bailouts after being investigated
20 and/or prosecuted for alleged public corruption.” Again, Thomas accused County
21 officials and employees of filing “bogus claims and lawsuits” and pronounced that he
22 and Arpaio “want to take these matters to trial to get to the bottom of the alleged
23 corruption in Maricopa County government.” He knew better.

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1 131. On December 4, 2009, in a press release orchestrated by Hendershott and
2 issued by MCSO, Arpaio falsely tried to portray Judge Donahoe as “soft on crime.”

3 132. Three days later, the *Phoenix New Times* exposed the falsity of Arpaio’s
4 accusations in its article titled “Arpaio’s Office Blows Its Smear of Judge Gary
5 Donahoe; Analysis of Sentencings Flawed.”

6 133. MCSO spokesperson, Lisa Allen, divulged to the *Phoenix New Times* that
7 Thomas conducted the false and defamatory sentencing research.

8 134. On June 22, 2010, in a press release issued by MCSO, Arpaio and Thomas
9 (in Thomas’ capacity as a private citizen) blustered that the Notices of Claim filed by
10 the County officials, employees, and judges were “bogus” and “absurd” and that he
11 looked forward to “proving their corruption case in civil court.”

12 135. At that same time, Arpaio and Thomas stated that “some of these same
13 individuals abused the powers of their public offices to shut down criminal
14 investigations and prosecutions and/or otherwise improperly deny us such an
15 opportunity for examination under oath. That abuse of power will now be remedied in
16 another forum.”

17 136. Further, Arpaio announced in his release that he was tired “...of the false
18 rhetoric claiming that evidence did not exist to justify the Court Tower investigation and
19 the filing of criminal charges against Retired Judge Gary Donahoe,” and that new
20 details concerning these matters would be revealed to the public. He knew better.

21 137. On or about July 10, 2010, Hendershott, Arpaio, Thomas (in Thomas’
22 capacity as a private citizen) and MCSO caused to be published in the *American Post-
23 Gazette* an email between Hendershott and County Risk Manager Peter Crowley
24 wherein Hendershott bombastically accused the County of recklessly considering
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1 settlement of “frivolous” claims filed by various County officials and employees. They
2 all knew better.

3 138. On August 13, 2010, in statements to the *Arizona Republic*, Hendershott
4 continued to maintain that their “nearly incomprehensible” rants of the Criminal
5 Complaint and the RICO Actions had “merit.” He knew better, too.

6 **Defendants Have a Pattern, Custom, and Practice of Misusing Their Power by**
7 **Investigating, Arresting, and Prosecuting Individuals Without Probable Cause for**
8 **Improper and Unlawful Selfish Purposes, Including Political and Financial Gain**

9 139. This is far from the first time these Defendants have abused their authority
10 for unconstitutional and improper motives and to obtain financial, political, and other
11 gain or to retaliate against those that dared to disagree or disappoint them. They have a
12 custom, pattern, and practice of targeting, investigating, arresting, and/or prosecuting
13 individuals without probable cause and for purely political or retributive motives.

14 140. Last Spring, Tucson judge, John Leonardo, disqualified Thomas from
15 prosecuting Supervisor Wilcox in *State v. Wilcox*, because of obvious conflicts of
16 interest and then dismissed the indictment against her.

17 141. In that ruling, Judge Leonardo noted that Thomas acted unethically,
18 retaliated against those who disagreed with him, sought political advantage by
19 prosecuting those who oppose him politically, and allied himself with Sheriff Arpaio,
20 who “misused the power of his office” by targeting opponents with criminal
21 investigations.

22 142. These damning findings by Judge Leonardo memorialized what most
23 people knew: that Thomas and Arpaio had mounted their destructive assault on Judge
24 Donahoe (and others) to retaliate, intimidate, and punish him for disappointing them.

25 143. Arpaio and Thomas brought a RICO Action in early December 2009
26 against Supervisor Stapley, Wilcox, Judge Donahoe, and other members of the

1 judiciary, County management and others arising out of the Court Tower Project. The
2 RICO Complaint was a sophomoric rant. All but its vindictive purpose was
3 incomprehensible. This case, too, was voluntarily dismissed after Judge Leonardo
4 exposed the meritlessness of their mischief.

5 144. Days after filing their RICO Complaint, Thomas and Aubuchon filed the
6 criminal complaint against Judge Gary Donahoe discussed herein—again based on
7 groundless allegations involving the Court Tower Project. It too, was later voluntarily
8 dismissed.

9 145. In October 2007, Arpaio and the MCSO arrested Michael Lacey and Jim
10 Larkin, the Executive Editor and Chief Executive Officer, respectively, of *The Phoenix*
11 *New Times* on meritless misdemeanor charges, in violation of the constitutional rights of
12 Mr. Lacey and Mr. Larkin, for the sole and improper purpose of Arpaio's and the
13 MCSO's own personal and political gain, and in an attempt to silence *The Phoenix New*
14 *Times* as a critic.

15 146. Then, one month later, in November 2007, the legal director of the
16 American Civil Liberties Union of Arizona ("ACLU"), Daniel Pochoda, was arrested by
17 the MCSO after identifying himself as being with the ACLU. Arpaio disapproved of
18 the ACLU because it had filed lawsuits against him. Mr. Pochoda was attending a
19 demonstration as a legal observer in front of a Phoenix furniture store. Mr. Pochoda
20 was arrested that day on a misdemeanor charge of trespassing, which rarely leads to
21 anything more than a simple summons or "ticket" to appear in court. Mr. Pochoda, a
22 constitutional law expert with more than 35 years experience, was hauled off to jail and
23 detained for nearly 12 hours! A Maricopa County Justice of the Peace later ruled that
24 that Mr. Pochoda did not engage in any unlawful behavior prior to his arrest by MCSO
25 deputies.

1 147. In 2007, Arpaio arrested Chandler Police Sergeant Thomas Lovejoy,
2 without probable cause, for animal cruelty, and insisted that a reluctant MCAO
3 prosecute the case after Sgt. Lovejoy's K-9 partner, Bandit, died from heat exhaustion
4 in the back of his SUV. He was quickly acquitted on the charge after a bench trial.

5 148. These and other instances of targeting, investigating, arresting, and
6 prosecuting individuals without probable cause and in violation of the Constitution
7 demonstrate the Defendants' pattern and practice of investigating, arresting, and
8 prosecuting individuals solely for the improper purposes of achieving personal and
9 political gain or political retaliation and retribution.

10 **Judge Donahoe and His Wife Have Suffered Damages as a Result**
11 **of This Assault on His Reputation**

12 149. As the result of Defendants' conduct as alleged herein, including the
13 publication of his home address, Judge Donahoe fears greatly for the safety of his
14 family and himself. As a judge, he has sentenced hundreds of people to prison. With
15 his home address made public by the Sheriff, and his office, Judge Donahoe now fears
16 that one of these people may seek revenge against him and his family. He is seriously
17 considering a move from his home of 23 years.

18 150. As a further result of Defendants' conduct as alleged herein, Judge
19 Donahoe's reputation has been tarnished and he has lost professional/judicial
20 opportunities.

21 151. In addition to the damage to his reputation, Judge Donahoe has suffered
22 emotional distress and adverse physical maladies and manifestations. He has also
23 incurred over \$220,000 in attorneys' fees to defend against criminal charges.

24 152. As a result of the investigation, arrest, and prosecution of Judge Donahoe,
25 his wife, Cherie Donahoe, has suffered humiliation, anguish, mental and physical
26 maladies and manifestations.

COUNT I

Violations of 42 U.S.C. § 1983: Free Speech and Free Press, Law Enforcement Retaliatory Conduct, Abuse of Process, and Abuse of Power (All Defendants)

153. Plaintiffs reallege and incorporate by reference the allegations set forth in each of the preceding paragraphs of the Complaint as if set forth fully herein.

154. At all times material hereto, all Defendants were acting under color of law and in their capacity as officials and agents of Maricopa County.

155. The wrongful conduct of Defendants alleged in this Complaint constitutes violations of the United States Constitution, including, but not limited to, Amendments I, IV, V, and XIV, in that Judge Donahoe was deprived of privileges and immunities guaranteed to all citizens of the United States, was subjected to law enforcement retaliatory conduct, invasion of privacy, malicious and selective prosecution, and was criminally and civilly charged without proper cause, with an unconstitutional motive and malice, and without equal protection or due process in an attempt to chill his free speech, prohibit anticipated judicial rulings, and to intimidate, harass, and exact revenge for prior judicial conduct.

156. As a direct and proximate result of Defendants' wrongful conduct as alleged herein, Judge Donahoe's constitutional rights were violated and he has suffered harm and has been injured.

157. The wrongful conduct of these Defendants as alleged in this Complaint was undertaken with malice and/or with improper and unconstitutional motives in an attempt to interfere with conduct protected by the Constitution. Judge Donahoe was investigated, prosecuted, intimidated, harassed, and retaliated against by or at the behest of Defendants for improper unconstitutional motives, was treated differently than others similarly situated, and was subjected to improper abuse of process and power for improper motives, without proper or probable cause, and with malice.

1 158. Judge Donahoe was subjected to Defendants' wrongful and
2 unconstitutional conduct as alleged herein in a particularly egregious, and conscience-
3 shocking manner.

4 159. The acts and omissions of Sheriff Arpaio, Hendershott, Thomas, and
5 Aubuchon acting in their individual capacities and under color of law as alleged herein,
6 were malicious, punitive, and in reckless disregard of Judge Donahoe's rights.

7 160. As a result, punitive damages in an amount to be determined by a jury
8 should be awarded against Arpaio, Hendershott, Thomas, and Aubuchon to punish them
9 for wrongdoing and to prevent them and others from acting in a similar manner in the
10 future.

11 COUNT II

12 Violations of 42 U.S.C. § 1983: Unconstitutional Policies, Customs, and Failure to 13 Train (Arpaio, Hendershott, Thomas, Aubuchon, and Maricopa County)

14 161. Plaintiffs reallege and incorporate by reference the allegations set forth in
15 each of the preceding paragraphs of the Complaint as if set forth fully herein.

16 162. Sheriff Arpaio is an official policymaker for the MCSO and Maricopa
17 County. Sheriff Arpaio has the authority and responsibility to establish policy for the
18 MCSO and Maricopa County, and to properly supervise and train the officers, agents,
19 and employees of the MCSO. His actions are the actions of the County.

20 163. Chief Deputy Hendershott is an official policymaker for the MCSO and
21 Maricopa County. Sheriff Arpaio has delegated to him the authority and responsibility
22 to establish policy for the MCSO and Maricopa County, and to properly supervise and
23 train the officers, agents, and employees of the MCSO. His actions are the actions of
24 the County.

25 164. Former County Attorney Thomas was a policymaker for the MCAO and
26 Maricopa County. At all material times he had the authority and responsibility to

1 establish policy for the MCAO and Maricopa County, and to properly supervise and
2 train the attorneys, agents, and employees of the MCAO. His actions were the actions
3 of the Maricopa County.

4 165. At all times material hereto, all Defendants were acting under color of law
5 and in their capacity as officials and agents of Maricopa County.

6 166. Sheriff Arpaio, Hendershott, Thomas, and Aubuchon are named in their
7 official capacity, as well as their individual capacity, pursuant to 42 U.S.C. § 1983
8 supervisory and direct liability, for their conduct as alleged herein.

9 167. At all material times, Defendants Sheriff Arpaio, Hendershott, Thomas,
10 Aubuchon, and Maricopa County have oversight and supervisory responsibility over
11 the investigation, processing, handling, and management of civil and/or criminal
12 investigations and prosecutions in their control, and the proper screening, hiring,
13 training, retaining, and supervision of the officers, employees, and agents investigating,
14 processing, handling, and managing such criminal investigations and prosecutions.

15 168. As alleged herein, Sheriff Arpaio, Hendershott, Thomas, Aubuchon, and
16 Maricopa County, independently and in concert with one another and through their
17 official policymakers, violated Judge Donahoe's constitutional rights and were
18 deliberately and callously indifferent to Judge Donahoe in training (or failing to train)
19 their officers, agents, and employees in (among other things and without limitation):
20 The appropriate, lawful and constitutional policies, procedures, and protocols for
21 investigating, processing, handling, and managing civil and/or criminal investigations
22 and prosecutions in their control; and for adopting policies and procedures to ensure due
23 process and equal protection for those subject to investigation and prosecution.

24 169. As alleged herein, Sheriff Arpaio, Hendershott, Thomas, Aubuchon, and
25 Maricopa County, independently and in concert with one another and through their
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1 official policymakers, were deliberately and callously indifferent to Judge Donahoe
2 through fostering, encouraging and knowingly accepting formal and informal policies,
3 procedures, practices, or customs condoning indifference to the rights of the subjects of
4 civil and/or criminal investigations and prosecutions under their control.

5 170. As alleged herein, Sheriff Arpaio, Hendershott, Thomas, Aubuchon, and
6 Maricopa County, independently and in concert with one another and through their
7 official policymakers, knew and should have known that unconstitutional policies,
8 practices, customs, and training existed with respect to the screening, hiring, training,
9 retaining, and supervision of officers, employees, and agents who have responsibility
10 for the investigation, processing, handling, and management of civil and/or criminal
11 investigations and prosecutions in their control, yet failed to properly address them
12 and/or failed to establish and implement appropriate policies, procedures, protocols, and
13 training to remedy them.

14 171. As alleged herein, Sheriff Arpaio, Hendershott, Thomas, Aubuchon, and
15 Maricopa County, independently and in concert with one another and through their
16 official policymakers, permitted the implementation of inappropriate, unconstitutional,
17 *de facto* policies which: Authorized, approved, condoned, and/or ratified
18 unconstitutional civil and/or criminal investigatory and prosecutory practices, and failed
19 to adequately train and supervise their personnel in these and other relevant areas.

20 172. The wrongful conduct of these Defendants as alleged in this Complaint
21 constitutes violations of Title 42 U.S.C. § 1983, in that they deprived Judge Donahoe of
22 the rights, privileges, and immunities secured to him by the Constitution and laws of the
23 United States and their wrongful conduct was the moving force behind the violations of
24 Judge Donahoe's rights by their agents, employees, officers, and personnel.

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1 173. The wrongful conduct of Defendants alleged herein constitutes violations
2 of the United States Constitution, including but not limited to Amendments I, IV, V, and
3 XIV, in that Judge Donahoe was subjected to retaliatory conduct by law enforcement,
4 invasion of privacy, and was sued civilly and criminally with no evidence to support the
5 charges, with an unconstitutional motive, and without probable cause, equal protection
6 or due process in an attempt to chill Plaintiff's free speech, prohibit anticipated judicial
7 rulings, and to intimidate, harass, and exact revenge for prior judicial conduct.

8 174. As the direct and proximate result of Defendants' wrongful conduct,
9 Judge Donahoe's constitutional rights were violated and he has suffered harm and has
10 been injured.

11 175. The acts and omissions of Sheriff Arpaio, Hendershott, Thomas and
12 Aubuchon acting in their individual capacity and under color of law as alleged herein,
13 were malicious, punitive, and in reckless disregard of Judge Donahoe's rights.

14 176. As a result, punitive damages in an amount to be determined by a jury
15 should be awarded against Sheriff Arpaio, Hendershott, Thomas, and Aubuchon to
16 punish them for wrongdoing and to prevent them and others from acting in a similar
17 manner in the future.

18 **COUNT III**

19 **Violation of 42 U.S.C. § 1983—Substantive Due Process (All Defendants)**

20 177. Plaintiffs reallege and incorporate by reference the allegations set forth in
21 each of the preceding paragraphs of the Complaint as if set forth fully herein.

22 178. Defendants' conduct as alleged herein violates the laws of the United
23 States and the State of Arizona:

24 179. Among other things, Defendants' conduct constitutes:

25 a. Obstruction, in violation of A.R.S. § 13-2402

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- 1 b. Conspiracy against Rights, in violation of 18 U.S.C. § 241
- 2 c. Deprivation of Rights Under Color of Law, in violation of 18
- 3 U.S.C. § 242

4 180. At all times material hereto, all Defendants were acting under color of law
5 and in their capacity as officials and agents of Maricopa County.

6 181. The wrongful conduct of Defendants alleged herein also constitutes
7 violations of the United States Constitution, including but not limited to Amendments I,
8 IV, V, and XIV, in that Judge Donahoe was deprived of privileges and immunities
9 guaranteed to all citizens of the United States, was subjected to retaliatory conduct,
10 invasion of privacy, malicious and selective prosecution, and was sue civilly and
11 criminally without proper cause, with an unconstitutional motive and malice, and
12 without equal protection or due process in an attempt to chill Plaintiff's free speech,
13 prohibit anticipated judicial rulings, and to intimidate, harass, and exact revenge for
14 prior judicial conduct.

15 182. As a direct and proximate result of Defendants' wrongful conduct as
16 alleged herein, Judge Donahoe's constitutional rights were violated and he has suffered
17 harm and has been injured.

18 183. The wrongful conduct of these Defendants as alleged herein was
19 undertaken with malice and/or with improper and unconstitutional motives.

20 184. In its totality, Defendants' entire course of conduct against Judge
21 Donahoe, as set forth in the preceding allegations of the Complaint was arbitrary,
22 irrational, extreme, outrageous, unjustified by any governmental interest, beyond all
23 possible realms of decency; it also shocks the conscience and constitutes a gross abuse
24 of governmental authority.

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1 191. Upon information and belief, no other Maricopa County Judge has ever
2 been treated in such a manner.

3 192. There is no rational basis for the difference in Defendants' treatment of
4 Judge Donahoe from others similarly situated.

5 193. Defendants' engaged in their conduct for an impermissible motive and
6 with malice due to the Defendants' animus of Judge Donahoe.

7 194. Defendants acted with bad faith intent to injure Judge Donahoe.

8 195. Defendants singled out Judge Donahoe with the impermissible motive of
9 attempting to chill his free speech, prohibit anticipated judicial rulings, and to
10 intimidate, harass, and exact revenge for prior judicial conduct.

11 196. As a direct and proximate result of Defendants' wrongful conduct as
12 alleged herein, Judge Donahoe's constitutional rights were violated and he has suffered
13 harm and has been injured.

14 197. The wrongful conduct of these Defendants as alleged herein was
15 undertaken with malice and/or with improper and unconstitutional motives in an attempt
16 to interfere with conduct protected by the Constitution. Judge Donahoe was
17 investigated, prosecuted civilly and criminally, intimidated, harassed, and coerced by or
18 at the behest of Defendants for improper unconstitutional motives, was treated
19 differently than others similarly situated, and was subjected to improper abuse of
20 process and power for improper motives, without proper or probable cause, and with
21 malice.

22 198. Judge Donahoe was subjected to Defendants' wrongful and
23 unconstitutional conduct as alleged herein in a particularly egregious, conscience-
24 shocking manner.

1 COUNT VII

2 Violation of Arizona Law: Infliction of Emotional Distress (Negligent and
3 Intentional) (All Defendants)

4 212. Plaintiffs reallege and incorporate by reference the allegations set forth in
5 each of the preceding paragraphs of the Complaint as if set forth fully herein.

6 213. Defendants' acts and/or omissions, including such things as (among others
7 and without limitation) their vindictive, retaliatory, extortionate, threatening,
8 intimidating under the color of state law, and invasive conduct, constituted extreme and
9 outrageous conduct that inflicted emotional distress and physical injury and/or harm
10 upon Judge Donahoe and his wife.

11 214. Defendants' acts and omissions were extreme, outrageous, and beyond all
12 possible realms of decency and shock the conscience.

13 215. Defendants' acts and omissions were intentionally aimed at causing Judge
14 Donahoe and his wife extreme emotional distress and/or physical injury and/or harm
15 and were done in reckless disregard of the near certainty that emotional distress and
16 physical injury and/or harm would result from their conduct.

17 216. Defendants' acts and omissions constitute negligent, reckless, and/or
18 intentional infliction of emotional distress.

19 217. As a direct and proximate cause of Defendants' intentional, reckless,
20 and/or negligent infliction of emotional distress, Judge Donahoe and his wife have
21 suffered severe emotional distress, adverse physical maladies and manifestations, and
22 physical injury and/or harm in an amount to be determined by trial.

23 218. The acts and omissions of Sheriff Arpaio, Hendershott, Thomas, and
24 Aubuchon acting in their individual capacity and under color of law as alleged herein,
25 were malicious, punitive, and in reckless disregard of Plaintiffs' rights.
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COUNT VIII

**Defamation, Libel, and/or False Light Invasion of Privacy (Arpaio, Hendershott,
Thomas, and Aubuchon)**

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3 219. Plaintiffs reallege and incorporate by reference the allegations set forth in
4 each of the preceding paragraphs of the Complaint as if set forth fully herein.

5 220. As alleged herein, Defendants made and/or released statements to the
6 press regarding Judge Donahoe and the merits of criminal and RICO investigations and
7 charges even after their voluntary dismissal of the actions. And, in the case of Thomas
8 and Aubuchon, certain statements were made after leaving office and/or County
9 employment.

10 221. Defendants' statements made and/or released to the media as alleged
11 herein were knowingly false, defamatory, and disparaging.

12 222. Defendants are responsible for the publication of the false and misleading
13 statements in various media outlets throughout Arizona.

14 223. Defendants caused the false and defamatory statements to be published to
15 Arizona citizens with knowledge of their falsity and/or with reckless disregard as to
16 their truth or falsity.

17 224. Defendants' false and defamatory statements were directed to the honesty,
18 integrity, and reputation of Judge Donahoe constituting defamation *per se*.

19 225. As a direct and approximate result of Defendants' false and defamatory
20 statements, Judge Donahoe has been damaged in an amount to be proven at trial.

21 226. As a direct and proximate result of the conduct described in this
22 Complaint, Judge Donahoe suffered irreparable harm, including damage to his
23 reputation and good name, suffered severe emotional distress, adverse physical maladies
24 and manifestations, and physical injury and/or harm.

1 Judge Donahoe and others, assertions of patently false claims, fraudulent schemes,
2 practices, and artifices, and extortions under color of official right, which have occurred
3 over at least the last several years and may still be ongoing.

4 234. Defendants undertook such unlawful activity as an association-in-fact
5 and/or an enterprise with a common purpose. Each of the Defendants conducted or
6 participated, directly and/or indirectly, in the conduct of the association-in-fact and/or
7 enterprise.

8 235. As a direct and proximate result of Defendants' pattern of unlawful
9 activity as alleged herein, Judge Donahoe has been injured and sustained monetary
10 damages in an amount to be proven at trial.

11 236. Defendants' acts and omissions as alleged herein constitute violations of
12 18 U.S.C. § 1861, *et seq.* and A.R.S. § 12-2301, *et seq.*

13 237. Pursuant to 18 U.S.C. § 1964(c) and A.R.S. § 12-2314.01, Judge Donahoe
14 is entitled to an award of treble damages.

15 238. Pursuant to 18 U.S.C. § 1964(c) and A.R.S. § 13-2314.01, Judge Donahoe
16 is entitled to an award of his reasonable attorneys' fees and costs.

17 **COUNT X**

18 **Negligence (All Defendants)**

19 239. Plaintiffs reallege and fully incorporate the allegations set forth in each of
20 the preceding paragraphs of this Complaint.

21 240. Defendants have both statutory and common law duties of care to Judge
22 Donahoe and all citizens when performing the functions of their positions. Defendants
23 owe a duty of care to Judge Donahoe with respect to conducting criminal and/or civil
24 investigations and prosecutions.

1 241. Defendants are legally responsible for the management of the civil and/or
2 criminal investigation system in Maricopa County, and the establishment and
3 implementation of policies, procedures, and protocols that govern the investigation,
4 processing, handling, and management of civil and/or criminal investigations and
5 prosecutions in their control. Their responsibility includes making certain that such
6 policies, procedures, and protocols satisfy all federal and state standards.

7 242. Defendants are legally responsible for the screening, hiring, training,
8 retaining, and supervision of all employees and agents who have responsibility for the
9 investigation, processing, handling, and management of civil and/or criminal
10 investigations and prosecutions in their control. This responsibility includes making
11 certain that such screening, hiring, training, retaining, and supervision of such
12 employees and agents satisfy all federal and state standards.

13 243. Defendants breached their duties owed to Judge Donahoe, as alleged in
14 this Complaint, by (*inter alia*), failing to conduct the duties of their positions with
15 reasonable care; failing to establish and implement proper policies, procedures, and
16 protocols governing the investigation, processing, handling, and management of civil
17 and/or criminal investigations and prosecutions in their control; and failing to properly
18 screen, hire, train, retain, and supervise employees and agents who have responsibility
19 for the investigation, processing, handling, and management of criminal investigations
20 and prosecutions in their control.

21 244. Defendants' breaches of their duties owed to Judge Donahoe directly and
22 proximately caused Plaintiffs to suffer emotional and physical damages in an amount to
23 be proven at trial.

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1 their positions with reasonable care; failing to establish and implement proper policies,
2 procedures, and protocols governing the investigation, processing, handling, and
3 management of civil and/or criminal investigations and prosecutions in their control;
4 and failing to properly screen, hire, train, retain, and supervise employees and agents
5 who have responsibility for the investigation, processing, handling, and management of
6 civil and/or criminal investigations and prosecutions in their control.

7 251. Defendants' breached their duties with actual or constructive knowledge,
8 or with reckless disregard that their acts and/or omissions would result in harm to Judge
9 Donahoe.

10 252. Defendants' gross negligence directly and proximately caused Plaintiffs
11 physical and emotional harm in an amount to be proven at trial.

12 253. The acts and omissions of Sheriff Arpaio, Hendershott, Aubuchon, and
13 Thomas acting in their individual capacity and under color of law as alleged herein,
14 were malicious, punitive, and in reckless disregard of Plaintiffs' rights.

15 COUNT XII

16 Intrusion of Seclusion/Invasion of Privacy (All Defendants)

17 254. Plaintiffs reallege and incorporate by reference the allegations set forth in
18 each of the preceding paragraphs of the Complaint as if set forth fully herein.

19 255. As alleged herein, Defendants intentionally released the address of Judge
20 Donahoe's personal residence on the internet and to a process server who had been
21 previously prosecuted for threatening to kill Judge Donahoe.


22 256. By their reprehensible conduct, Defendants intended to cause emotional
23 distress and physical injury and harm to Judge Donahoe and his family, without
24 justification.

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- (f) All remedies provided by 42 U.S.C. § 1983, 18 U.S.C. § 1961, *et seq.*, and A.R.S. § 13-2301, *et seq.*; and
- (g) Such other and further relief which may seem just and reasonable under the circumstances.

RESPECTFULLY SUBMITTED this 29th day of November, 2010.

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