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6 IN THE UNITED STATES DISTRICT COURT
7 FOR THE DISTRICT OF ARIZONA

8 Manuel de Jesus Ortega Melendres, on
9 behalf of himself and all others similarly
situated; et al.

10 Plaintiffs,

11 and

12 United States of America,

13 Plaintiff-Intervenor,

14 v.

15 Paul Penzone, in his official capacity as
16 Sheriff of Maricopa County, Arizona; et al.

17 Defendants.
18

No. CV-07-2513-PHX-GMS

ORDER

19 Pending before the Court is Defendant Paul Penzone's Amended Motion for Relief
20 from Retroactive Change in Monitor's Methodology. (Doc. 2574). For the reasons stated
21 below, the Motion is denied *sua sponte*.

22 Defendant Penzone asserts that the Monitor has changed his methodology without
23 notice in violation of Paragraph 135 of this Court's supplemental order. (Doc. 606.) He
24 asserts that the Monitor's rejection in his latest completed audit of the Sheriff's self-
25 authorization of an extension for complying with the terms of ¶ 204 (Doc. 1765) was a
26 change in the Monitor's methodology for conducting the audit. As a result, the Sheriff
27 asserts that the Monitor's finding that the Sheriff is out of compliance with the
28 requirements of the Supplemental Permanent Injunction, as it pertains to the timely and

1 quality completion requirements of Professional Standard Bureau (“PSB”) investigations,
2 is invalid at least for the second quarter audit of this year.

3 The specific provision of the Court’s order requires that Maricopa County Sheriff’s
4 Office (“MCSO”) complete quality administrative investigations within 85 calendar days
5 if the investigation is handled by the PSB or 60 days if handled within the Division of the
6 subject of the investigation. *Id.* ¶ 204. That paragraph of the Order also specifies, however,
7 that “[a]ny request for an extension of time must be approved in writing by the Commander
8 of the Professional Standards Bureau. Reasonable requests for extensions of time may be
9 granted.” *Id.*

10 In 2014, the year after the Court entered its Supplemental Permanent
11 Injunction/Judgment Order, 717 investigative complaints were filed. The number of such
12 complaints has apparently consistently, but not monumentally, increased. In 2019, 1,072
13 such cases were filed. In the first half of 2020, 585 cases have been filed. Yet, the MCSO
14 currently has a backlog of 1,954 open cases. At this time, the average time to close a case
15 has risen to 501 days—approximately six times greater than the longest time period
16 provided in the order. Pursuant to the terms of the Order, the extensions at issue were
17 granted by the Commander of the PSB—not the Monitor. Nonetheless, the Monitor found
18 a significant number of extensions to be not reasonable. Such time frames do appear to
19 have the tendency to deny justice both to the complainant and the subject of the complaint
20 as the matter remains unresolved, memories fade, and witnesses become unavailable.

21 Rather than taking the necessary substantive steps to resolve the backlog and
22 process the complaints within the time periods specified by the Order, however, the MCSO
23 has repeatedly granted itself written extensions pursuant to ¶ 204 while the backlogs
24 continued to increase. As was stated, none of the extension requests were granted by the
25 Monitor.

26 Paragraph 135 of the Court’s supplemental order requires that 30 days prior to a
27 quarterly audit “the Monitor shall submit a proposed methodology to the Parties.” The
28 parties then have the opportunity to submit comments to the Monitor concerning his

1 proposed audit methodology prior to the audit for his evaluation. He must then respond to
2 those comments.

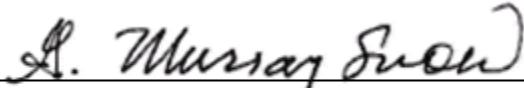
3 The Sheriff bases his assertion that the Monitor's rejection of the extension as not
4 being reasonable was a change in methodology since the Monitor had not rejected previous
5 such extensions. However, determinations of non-compliance as a result of an audit, are
6 not changes in methodology of an audit, they are determinations made by the audit.
7 Certainly, the Monitor in proposing the methodology of an audit cannot prefigure its
8 results. The Sheriff does not suggest how in rejecting the audit, the Monitor violated the
9 methodology he proposed for the audit. The Sheriff does not contest that the Monitor in
10 an audit retains the authority under the Order to make the determination that the
11 Commander's self-grant of such requests to the MCSO was not "reasonable" and hence the
12 MCSO was not in compliance with the Court's order. And, of course, the MCSO could
13 appeal any such determination to this Court. Apparently, the Monitor did not cite any of
14 these written extension authorizations to be not "reasonable" until the last audit. This does
15 not make that determination inconsistent with the methodology proposed for the audit by
16 the Monitor. Unlike the proverbial frog that was boiled to death by being first placed in a
17 lukewarm pot whose temperature was then imperceptibly raised to the boiling point by
18 degrees, the Monitor is not obliged to sanction what it deems to be unreasonable actions
19 by the MCSO because he had not found previous such requests to be unreasonable,
20 especially when such actions are repeated and, in the Monitor's assessment become
21 unreasonable in the aggregate.

22 The determination by the Monitor was not the promulgation of a new audit
23 methodology pursuant to ¶ 135 of the Court's Order. (Doc. 606.) Rather it was a
24 determination by the Monitor that the MCSO was out of compliance with ¶ 204 by granting
25 itself an extension to comply with the Court's Order that was not reasonable.

26 Of course, if the MCSO wishes to appeal to this Court the Monitor's determination
27 that the PSB Commander's grant of an extension was not reasonable, it may do so. That,
28 however, is not the substance of the argument raised in this motion.

1 **IT IS THEREFORE ORDERED** that Defendant Penzone's Motion for Relief
2 from Retroactive Change In Monitor's Methodology (Doc. 2574) is **DENIED**.

3 Dated this 18th day of December, 2020.

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6 G. Murray Snow
7 Chief United States District Judge
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