

1 to each alleged policy violation “based on the facts of the investigation.” (Doc. 2881 at
2 MELC1306932.)

3 397. As noted above, Sheriff Arpaio designates to Chief Deputy Sheridan the
4 authority to make all findings in internal affairs investigations. (Doc. 1467 at Tr. 3150.)
5 Sheridan typically delegates that authority to others. (*Id.* at Tr. 3150.)

6 398. Findings concerning some violations, *i.e.*, truthfulness, are only made upon
7 the authorization of the Chief Deputy or his designee. (Ex. 2881 at MELC1306924.)

8 399. The PSB also investigates all allegations against MCSO officers that allege
9 a violation of state or federal criminal law. (Doc. 1389 at Tr. 1132–35.) All
10 constitutional rights apply to the officer being investigated in a criminal investigation.

11 400. By policy and practice, Chief Deputy Sheridan must authorize all criminal
12 investigations. (Doc. 1043 at Tr. 975–76; Doc. 1456 at Tr. 2215–16; *see also* Ex. 2881 at
13 MELC1306924–25, MELC1306920.)

14 **A. The MCSO’s Investigations Arising from Video Review Were Fundamentally**
15 **Flawed.**

16 401. On September 12 and September 19, 2014, the MCSO opened up numerous
17 investigations resulting from its initial review of problematic video clips.

18 402. Two of the investigations, IA #2014-543 and IA #2014-542, were
19 ultimately investigated by Special Investigator Vogel, an independent special investigator
20 appointed by the MCSO. The MCSO, however, designated Chief Olson of the MCSO to
21 make the disciplinary determination.

22 403. The PSB itself conducted five of the investigations that it also opened on
23 this date, IA #2014-544 through IA #2014-548, that resulted from the video review.¹⁸
24 (Doc. 786.)

25 404. The week after, on September 19, 2014, the MCSO opened 31

26 ¹⁸ Thereafter, the PSB has opened a few additional investigations resulting from the
27 video review, none of which were the subject of much evidence or testimony
28 presented to the Court.

1 investigations, IA #2014-562 through IA #2014-592, that were conducted by the various
2 divisions to which the subjects of the investigations were assigned. (*See* Doc. 786.)

3 **1. The Vogel/Olson Investigations (IA #2014-543 and IA #2014-542)**

4 405. The PSB initiated IA #2014-543 to investigate the MCSO command staff's
5 failure to implement the Court's preliminary injunction.

6 406. The PSB initiated IA #2014-542 to investigate the MCSO's supervisory
7 failures with respect to Deputy Armendariz.

8 407. Nevertheless, Captain Bailey, the new head of the PSB, had supervised
9 Deputy Armendariz for eight months while Bailey was the Captain of the Special
10 Investigations Division ("SID")—the Division in which the HSU was located.

11 408. Further, while Captain Bailey was head of the SID, members of the SID
12 were taking the personal property of detainees—such as drivers licenses—which would
13 subsequently be the subject of investigation. Bailey thus was a possible subject of the
14 investigation.

15 409. The Court noted this conflict at the October 28, 2014 hearing. (Doc. 776 at
16 Tr. 47–48; Doc. 780 at Tr. 92–94, 96; *see also* Doc. 1043 at Tr. 979–81.)

17 410. Accordingly, Chief Deputy Sheridan contacted Special Investigator Vogel
18 in late October 2014 and hired him as the MCSO's special investigator to assume the
19 investigation in IA #2014-542 that potentially involved Captain Bailey. (Doc. 1417 at Tr.
20 981; Doc. 1556 at Tr. 3291–93; Doc. 1389 at Tr. 1227–28; Ex. 2226.)

21 411. However, Special Investigator Vogel and Captain Bailey knew each other
22 well. On a full-time basis from 1998–2001, they had served together on a federal task
23 force. (Doc. 1467 at Tr. 3191; Ex. 2218 at MELC-IA011234.) Further, in 2013, Vogel,
24 as a private investigator, had been hired by the *Melendres* defense team to conduct other
25 investigations pertaining to this Court.

26 412. Shortly thereafter, it became apparent that Chief Deputy Sheridan and
27 others would themselves be the subject of investigation in IA #2014-543 for their failure
28 to implement this Court's preliminary injunction. (Doc. 1389 at Tr. 1226–27; Doc. 786

1 at 11.)

2 413. The MCSO thus reported to the Court on November 20 that it had also
3 asked Special Investigator Vogel to assume responsibility for IA #2014-543. (Doc. 804
4 at Tr. 68–69; *see also* Ex. 2226; Ex. 2219 at MELC209728.)

5 414. On December 18, 2014, Special Investigator Vogel requested and received
6 a retention letter from Lee Ann Bohn of the MCSO that specified that he was to “conduct
7 or complete” three specific administrative investigations on behalf of the MCSO “due to
8 potential conflicts of interest involving certain MCSO personnel.” (*See* Doc. 1556 at Tr.
9 3287–88, 3339–40; Ex. 2223.) Those investigations were IA #2014-542, IA #2014-543,
10 and IA #2014-874—an investigation into 44 driver’s licenses related to a 2013
11 undercover investigation that also involved Captain Bailey. (*See* Ex. 2223.)

12 415. In February 2014, Special Investigator Vogel further clarified his role with
13 Ms. Iafrate. She informed him that he would do the initial investigation but would not
14 make any final determinations regarding discipline. (Doc. 1556 at Tr. 3345–47; Ex. 2225
15 (“You are to conduct the investigation and make findings of the evidence. Neither
16 MCSO nor me should direct you or guide you in any way. Once you complete your
17 investigation, the final conclusion regarding whether policy violations exist will be up to
18 someone other than you.”).)

19 416. Special Investigator Vogel thus conducted factual investigations, and to the
20 extent it was warranted by his investigations, made generalized allegations of violations
21 against appropriate principals. (*See* Doc. 1495 at Tr. 3489, 3491–92, 3547–48.)

22 417. Special Investigator Vogel delivered his report on IA #2014-542 to the
23 MCSO on March 28, 2015. (Ex. 2218 at MELC-IA011214–303.)

24 418. He delivered his report to the MCSO on IA #2014-543 on April 6, 2015.
25 (Ex. 2237.)

26 419. He delivered his supplemental report on IA #2014-543 on April 8, 2015.
27 (Ex. 2239.)

28 420. Around the time Special Investigator Vogel submitted his reports, Sheriff

1 Arpaio told Chief Deputy Sheridan that he should name Chief Olson as Arpaio's
2 designated officer to make findings as to the existence of violations and to determine
3 discipline, if any, in IA #2014-542 and IA #2014-543. (Doc. 1495 at Tr. 3619–20, 3627.)
4 Sheridan did so.

5 421. Special Investigator Vogel was thereafter introduced to Chief Olson. (Doc.
6 1556 at Tr. 3342, 3369–71.) Olson and Tiffani Shaw identified MCSO policies which
7 may have been violated by the conduct identified in Vogel's allegations as supported by
8 his report. Vogel assisted them in this process. (Doc. 1495 at Tr. 3490, 3492, 3638; Doc.
9 1556 at Tr. 3296–98, 3349–51; Ex. 2240.)

10 422. Chief Olson then made his own preliminary findings of violations based on
11 Special Investigator Vogel's report. (Doc. 1495 at Tr. 3493–94.)

12 423. After providing the predetermination or name clearing hearings specified
13 by MCSO policy, Chief Olson also made the final determinations as to whether there
14 were any violations and whether to impose any final discipline. (Doc. 1495 at Tr. 3493;
15 Doc. 1556 at Tr. 3338–39.)

16
17 **a. The MCSO Did Not Appropriately Assist Special Investigator**
18 **Vogel's Investigation into IA #2014-543**

19 424. In January 2015, during the course of his investigation of IA #2014-543,
20 Special Investigator Vogel requested the metadata pertaining to the December 23, 2011
21 email sent by Mr. Casey to Chief Deputy Sheridan and others to determine whether the
22 email had been received and opened by the recipients. (Doc. 1556 at 3306–07.) The
23 metadata was not provided and was ultimately determined to be too expensive to provide
24 in a cost-effective manner because the files were corrupted. (*Id.* at Tr. 3307–09, 3368,
25 3390; Ex. 2221 at MELC210499–526.)

26 425. That same month, Special Investigator Vogel also asked to review Mr.
27 Casey's billing records related to this matter to determine if those records demonstrated
28 dissemination to and knowledge of the Court's order to MCSO personnel. (Doc. 1556 at
Tr. 3311–12, 3364–65.)

1 426. Special Investigator Vogel made numerous in-person and telephonic
2 requests without getting the records. (Doc. 1556 at Tr. 3364.)

3 427. Special Investigator Vogel did not receive Mr. Casey's billing records until
4 mid-March 2015. (Doc. 1556 at Tr. 3314.) And due to the compressed timeline in which
5 he had to complete his investigation, this was after he had conducted his interviews of
6 Sheriff Arpaio and Chief Deputy Sheridan. (*Id.* at Tr. 3315–16, 3330–31.)

7 428. On February 23, 2015, Special Investigator Vogel interviewed Chief
8 Deputy Sheridan and discovered, among other things, the existence of Sergeant Palmer's
9 training scenarios. (Doc. 1556 at Tr. 3308–09.)

10 429. On March 2, Special Investigator Vogel formally requested Sergeant
11 Palmer's training scenarios from Chief Deputy Sheridan. (Doc. 1556 at Tr. 3309; Ex.
12 2228.) Vogel made several follow-up email requests for the scenarios. (*See, e.g.*, Ex.
13 2232.)

14 430. Special Investigator Vogel received Sergeant Palmer's training scenarios on
15 March 23, 2015—again, too late to be of use in his interviews. (Doc. 1556 at Tr. 3310–
16 11, 3394–95.)

17 431. The inability to timely recover the metadata, Mr. Casey's billing records,
18 and Sergeant Palmer's training scenarios caused Special Investigator Vogel difficulty in
19 timely completing his investigations. (Doc. 1556 at Tr. 3309–11; *see also* Ex. 2237; Ex.
20 2239.)

21 432. Special Investigator Vogel also requested that Sheriff Arpaio be considered
22 when determining the existence of possible policy violations, but was told by Chief Olson
23 that he could not do so. (Doc. 1495 at Tr. 3579–80, 3640–41; Doc. 1556 at 3352–56; *see*
24 *also* Ex. 2242.) Arpaio, however, could have agreed to allow himself to be the subject of
25 the investigation.

26 433. Special Investigator Vogel's report in IA #2014-543 related to six persons:
27 Chief Deputy Sheridan, Chief Sousa, Chief MacIntyre, Lieutenant Jakowinicz,
28 Lieutenant Sousa, and Sergeant Trowbridge. Chief Olson did not identify any initial

1 allegations of violation against Jakowinicz. (Ex. 2219 at MELC209781.) Olson also did
2 not preliminarily sustain charges against Trowbridge, and found the charges against
3 MacIntyre to be unfounded.

4 434. Chief Olson preliminarily sustained allegations of misconduct against Chief
5 Deputy Sheridan, Chief Trombi, and Lieutenant Sousa.

6 **1) Chief Deputy Sheridan**

7 435. On April 21, 2015, the day that the evidentiary hearings began, Chief Olson
8 preliminarily sustained four allegations of misconduct against Chief Deputy Sheridan.
9 They included: (1) that Sheridan failed to have the appropriate oversight and control of
10 information affecting units under his command, (2) that Sheridan failed to ensure the
11 proper dissemination and interpretation of the December 23, 2011 Court order, (3) that
12 Sheridan failed to ensure the proper development of training regarding the December 23,
13 2011 Court order, and (4) that Sheridan failed to comply with the December 23, 2011
14 Court order, which is a lawful order. (Ex. 2219 at MELC209729–31, MELC209735–43.)

15 436. During his name clearing hearing, Chief Deputy Sheridan presented for an
16 hour and fifteen minutes to Chief Olson without Olson ever asking any substantive
17 questions. (Doc. 1389 at Tr. 1233–34; Ex. 2857A.)

18 437. After the name clearing hearing, on May 12, 2015, Chief Olson reversed
19 his finding on all four charges that he had preliminary sustained against Chief Deputy
20 Sheridan. (Ex. 2219 MELC209729–43.)

21 438. Chief Olson made no attempt to provide a written justification for changing
22 his decision, (Doc. 1495 at Tr. 3532), and no such explanation is required by MCSO
23 policy.

24 439. There are a number of problems with Chief Olson's decision with respect to
25 Chief Deputy Sheridan.

26 440. First, Sheriff Arpaio and Chief Deputy Sheridan created a structural
27 conflict of interest when they appointed Chief Olson, Chief Deputy Sheridan's direct
28 subordinate, to make a disciplinary ruling concerning him.

1 441. To avoid this structural impropriety, MCSO policy generally requires that
2 when investigations are conducted outside of the PSB the “investigation shall be
3 investigated by personnel of higher grade or rank than the involved employee” (Ex.
4 2881 at MELC1306919.)

5 442. Nevertheless, Chief Olson reports directly to Chief Deputy Sheridan and
6 has done so for many years. (Doc. 1495 at Tr. 3485–86, 3560–61.) Sheridan remained
7 Olson’s commanding officer both during and after his participation in these internal
8 affairs investigations. (*Id.* at Tr. 3575, 3630.)

9 443. Chief Olson acknowledged that not only is it important that a disciplinary
10 proceeding be unbiased, (Doc. 1495 at Tr. 3667), but it is equally important that there be
11 no appearance of bias in an internal affairs investigation. (Doc 1495 at Tr. 3488.)

12 444. Chief Olson testified that there is no impropriety or appearance of
13 impropriety in this case because, in the past, he imposed discipline on Chief
14 Henderschott, who was his superior, when Olson was assigned by Sheriff Arpaio to make
15 a disciplinary determination as to Henderschott.

16 445. An important distinction is that Chief Henderschott was on leave and/or
17 had already resigned when Chief Olson disciplined him.

18 446. At any event, simply because Sheriff Arpaio has before appointed a
19 subordinate to rule on the discipline of a direct superior does not somehow eradicate the
20 creation of a structural conflict when he does so again.

21 447. Second, Chief Olson actually was demonstrably biased and partial. Olson
22 testified that he based his determination to reverse his preliminary findings on his
23 personal opinion of Chief Deputy Sheridan, which he arrived at due to the years that they
24 had worked together. “I do know Jerry Sheridan very well. I know his character. I know
25 he -- I’ve worked for him for many years. I know he strives to do the right thing. I had a
26 decision to make, and I based it on everything that I knew. And one of the things I knew
27 is that Jerry Sheridan tries to do the right thing.” (Doc. 1495 at Tr. 3681; *see also* Doc.
28 1495 at Tr. 3663 (Olson believed Sheridan because he has worked with him on projects

1 for 20-plus years and Sheridan has never lied to him), 3557–58, 3635, 3662–64 (Olson
2 testified that: “[Sheridan] didn’t know about the [preliminary injunction]. I believe that.
3 I believe that in my heart. He did not know about that court order.”).)

4 448. Moreover, Chief Olson’s reliance on his personal relationship with Chief
5 Deputy Sheridan and/or his beliefs regarding Sheridan’s character in reaching a
6 disciplinary conclusion demonstrates actual partiality and otherwise violates MCSO
7 policy on internal investigations. (Ex. 2881 at MELC1306932 (“[F]indings for each
8 Policy Violation will be based on the facts of the investigation.”).)

9 449. Third, it is improper to assign an individual to make a disciplinary decision
10 as to his friend. Chief Olson considers Chief Deputy Sheridan a friend. (Doc. 1495 at
11 Tr. 3589, 3621.) They have socialized together. (*Id.* at Tr. 3630.) They have a very
12 good working relationship. (*See id.* at Tr. 3631.)¹⁹

13 450. Fourth, Chief Olson brought false factual predeterminations to the decision-
14 making process. Olson testified that “[a] lot of what [Sheridan] presented at that name
15 clearing hearing I knew to be fact because I was there.” (Doc. 1495 at Tr. 3670.) For
16 example, he notes “I attended the same staff meetings that the other executive chiefs sat
17 in on. For all those years, those court orders [preliminary injunction] weren’t talked
18 about at the staff meetings. I never heard of the 2011 order prior to getting involved in
19 this, and I sat in those executive staff meetings.” (*Id.* at Tr. 3663.) Yet, despite Chief
20 Olson’s testimony, Chief MacIntyre testified that it was at just such a meeting that he
21 explained the details of the preliminary injunction at length to make sure that Sheriff
22 Arpaio, Chief Deputy Sheridan, and the other chiefs understood them. (Doc. 1422 at Tr.
23 1878:23–25, 1879; Ex. 2219 at MELC209814–16.) He gave the explanation twice.
24 (Doc. 1422 at Tr. 1880; Ex. 2219 at MELC209815.) He said it slowly and enunciated it.

25
26 ¹⁹ Sheriff Arpaio testified that Chief Olson also completed a disciplinary
27 proceeding with respect to Chief Deputy Sheridan’s misconduct in disobeying this
28 Court’s order of May 14, 2014, which is the third count of contempt in this matter. (Doc.
1458 at Tr. 2559.) No discipline was imposed on Sheridan for this misconduct. (Doc
1027 at 635–36.) For the reasons set forth above, any such decision in this matter is void.
Further, to the extent that such a proceeding actually occurred, the MCSO has also
violated this Court’s order in not disclosing once it was undertaken.

1 (Doc. 1422 at Tr. 1879–81; Ex. 2219 at MELC209815.)

2 451. Fifth, Chief Olson was not able to consider the facts that subsequently
3 came out that discredit Chief Deputy Sheridan’s assertions to him. The MCSO failed to
4 timely provide Special Investigator Vogel the information he requested during his
5 investigation, causing that information to not be discussed in his report. Certain
6 information was discovered prior to the evidentiary hearing by Plaintiffs and not
7 necessarily presented to Chief Olson. Special Investigator Vogel never had a follow-up
8 opportunity to respond to matters raised in Chief Deputy Sheridan’s name clearing
9 hearing, since such opportunities are not provided.

10 452. Sixth, when Chief Olson did not sustain the charges against Chief Deputy
11 Sheridan, because he believed that Sheridan never knew about the injunction, he did not
12 take into account the nature of all the charges. For example, Olson preliminarily
13 sustained allegation number one, which averred that Sheridan failed to exercise the
14 appropriate oversight and control over information affecting units under his command.
15 The violation of this policy does not require that Sheridan knowingly violated the Court
16 order. A lack of appropriate knowledge pertaining to those under his command virtually
17 constitutes the charge of failing to have “appropriate . . . control of information affecting
18 units under his command.”

19 453. Chief Deputy Sheridan himself has consistently admitted that it was his
20 responsibility to know about the preliminary injunction and to train the deputies about it.
21 (*See* Ex. 2219 at MELC209815.)

22 454. Moreover, in the excerpts submitted at the name clearing hearing, Chief
23 Deputy Sheridan admitted under oath that it was his responsibility as the Chief Deputy to
24 communicate the requirements of the preliminary injunction to the MCSO. (Ex. 2219 at
25 MELC209933 (“Q: Do you know why the instructions from the preliminary injunction
26 were never communicated to the MCSO? . . . A: No. Q: Who should have
27 communicated those instructions? . . . A: It would have been my responsibility as Chief
28 Deputy.”).)

1 preliminary injunction. He imposed interpretations on the order that were consistent with
2 the MCSO's existing practices even though those practices violated the plain terms of the
3 preliminary injunction.

4 472. Further, as he himself testified, he thought training concerning the order
5 needed to be disseminated. Even given that he made some efforts to initiate training, he
6 undertook no efforts to see it through during the three and a half months that he remained
7 the lieutenant in charge of the HSU. He had the order and he did not disseminate it.

8 473. Chief Olson's reasons for exonerating Lieutenant Sousa are not sufficient.

9 **4) Lieutenant Jakowicz**

10 474. In making his determination to assert no violations against Lieutenant
11 Jakowicz, Chief Olson's understanding was that Jakowicz was not contacted in any
12 way about Sergeant Palmer's training scenarios. (Doc. 1495 at Tr. 3554-55.) This is
13 simply inaccurate. He did have such information.

14 475. Lieutenant Jakowicz received this email when he was still with the
15 training division in preparation for his transfer to the HSU. (Doc. 1051 at Tr. 373:8-22;
16 Ex. 189.)

17 476. Lieutenant Jakowicz replaced Lieutenant Sousa as head of the HSU in
18 April 2012. (Doc. 1051 at Tr. 362:24-25.) He remained with the HSU until May 2013,
19 when the unit was subsumed into the Special Investigations Division. (*Id.* at Tr. 363:10-
20 17.)

21 477. Lieutenant Jakowicz did not follow up with Sergeant Palmer, Mr. Casey,
22 or Chief Sands about finishing the training scenarios after he took over the HSU. (Doc.
23 1051 at Tr. 419:17-420:15.)

24 478. Lieutenant Jakowicz does not recall whether the training scenarios
25 developed by Sergeant Palmer and Lieutenant Sousa were ever conducted while he was
26 at the HSU. (Doc. 1051 at Tr. 374:1-375:6, 375:14-16.)

27 479. Chief Olson would have known this if Sergeant Palmer's scenarios would
28 have been timely provided to Special Investigator Vogel.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

5) Sergeant Trowbridge

480. Special Investigator Vogel alleged that “Sgt. Trowbridge admitted to reading and knowing about the December 23, 2011, Court order. He failed to discuss the order with Lt. Jakowicz when Lt. Jakowicz was transferred into HSU.” (Ex. 2219 at MELC209773.)

481. Although a policy was identified which this behavior violated, Chief Olson did not preliminarily sustain this allegation as to Sergeant Trowbridge. (Ex. 2219 at MELC209774.) It is not clear what basis Olson had for failing to do so.

6) The Investigation Into IA #2014-543 Is Insufficient.

482. Sheriff Arpaio acknowledged that “it’s a pretty big deal” to not comply with this Court’s preliminary injunction for 17 months. (Doc. 1027 at Tr. 628.) Arpaio’s failure in this respect has resulted in extensive injury to members of the Plaintiff class by the entire MCSO.

483. Yet, as a result of Chief Olson’s decisions, no internal discipline has resulted.

484. Sheriff Arpaio testified that when he designated Chief Olson to determine discipline in these two matters he knew that Chief Deputy Sheridan was Olson’s superior, but he did not think that there was a conflict. (Doc. 1455 at Tr. 2027–29.)

485. This testimony is not credible. Sheriff Arpaio was aware of the necessity of employing Special Investigator Vogel with respect to IA #2014-543 because at least two high ranking members of MCSO leadership, including Chief Deputy Sheridan, were principals in several investigations including this one.

486. Sheriff Arpaio himself was interviewed by Special Investigator Vogel, and Vogel filed a supplemental report indicating that Arpaio should also be included in the disciplinary proceeding.

487. To the extent that Sheriff Arpaio obtained any degree of impartiality in the investigation of his command staff by appointing Special Investigator Vogel to conduct the investigation in IA #2014-543, he scuttled that impartiality by appointing Chief Olson

1 to make the final disciplinary determination in this case.

2 488. The Court finds that as a matter of fact, Sheriff Arpaio achieved what he
3 desired in appointing Chief Olson to the position—a biased decision-maker who imposed
4 no discipline on anyone for the MCSO’s 17 month violation of this Court’s orders.

5 489. The assignment of Chief Olson to make the disciplinary decision in IA
6 #2014-543 in light of his partiality, his failure to acceptably perform that function, and
7 his dismissal of all of the charges without individually considering them, constitutes
8 unacceptable internal affairs practices. These practices both violate and threaten
9 continued violations of the rights of the Plaintiff class that this Court’s orders have sought
10 to vindicate.

11 490. IA #2014-543 is invalid.

12 **b. The MCSO Improperly Investigated IA #2014-542.**

13 491. On May 5, 2015, Chief Olson made preliminary findings of violations
14 against five officers for their failure to supervise Deputy Armendariz: Chief Trombi,
15 Lieutenant Sousa, Lieutenant Jakowinicz, Sergeant Trowbridge, and Sergeant Madrid.

16 **1) Chief Trombi**

17 492. Chief Olson ultimately sustained preliminary findings against Chief Trombi
18 on three separate charges. (*See* Ex. 2218 at MELC-IA011167.)

19 493. First, he preliminarily found that Chief Trombi was aware of a domestic
20 violence incident involving Deputy Armendariz which Trombi did not have investigated.
21 (Ex. 2218 at MELC-IA011170–72.)

22 494. Second, he preliminarily found that Chief Trombi was aware of: (1) a
23 pattern of citizen complaints against Deputy Armendariz, (2) that Armendariz became
24 “borderline insubordinate” with his sergeant and lieutenant (3) that Armendariz’s
25 sergeant and lieutenant recommended his transfer from the unit, and yet Trombi
26 exercised his discretion and did not transfer Armendariz, failed to recognize the need for
27 intervention, and took no action in the form of reassigning Armendariz or mandating
28 training. (Ex. 2218 at MELC-IA011173–75.)

1 495. Third, he preliminary sustained findings against Chief Trombi arising from
2 Sergeant Trowbridge's investigation of Deputy Armendariz in connection with the
3 ticketing of State Representative Mesnard in violation of MCSO policy. Trowbridge
4 investigated the matter and recommended that a written reprimand be issued to
5 Armendariz. The investigation and recommendation were forwarded on to Lieutenant
6 Jakowinicz and subsequently to Trombi, but no action was taken by Trombi.

7 496. Chief Olson's May 18, 2015 final determinations confirmed all of the
8 preliminary findings of violation against Chief Trombi. (Ex. 2218 at MELC-IA011170-
9 77.)

10 497. A week-long suspension was imposed on Chief Trombi that he apparently
11 did not appeal.

12 498. There are at least three problems with the disciplinary process as it relates
13 to Chief Trombi.

14 499. First, although Chief Trombi did accept the discipline of a week-long
15 suspension, he was also, during the course of the investigation, promoted by Sheriff
16 Arpaio and Chief Deputy Sheridan from Deputy Chief to Executive Chief. (Doc. 1017 at
17 87-89; Doc. 1389 at Tr. 1139; Doc. 1494 at Tr. 3503-04.) Chief Olson also determined
18 that Trombi's discipline did not make him ineligible for a pay increase, (Ex. 2219 at
19 MELC209915), and in fact, Trombi received a pay increase in conjunction with his
20 promotion. (Doc. 1495 at Tr. 3503-04.)

21 500. There is no policy preventing a promotion for someone under investigation
22 within the MCSO.

23 501. Further the discipline imposed on Chief Trombi was significantly less than
24 that mandated by the appropriate application of the disciplinary matrix.

25 502. The discipline mandated by the disciplinary matrix results from a
26 combination of the number of past offenses together with the level of seriousness of each
27 offense. (Ex. 2001 at MELC416243.) The matrix is used precisely so that it can take
28 into account repeated and separate instances of misconduct in assessing and arriving at a

1 uniform and appropriate level of progressive discipline. (Ex. 2001 at MELC416243–44
2 (“The number of times an employee has received prior discipline, regardless of the
3 Category, shall be considered when determining where an employee shall be placed
4 within the Matrixes.”).)

5 503. Although each of the three sustained allegations involved Chief Trombi’s
6 supervisory failures as they related to Deputy Armendariz, they did not all occur
7 simultaneously.

8 504. Allegation #1 involved Chief Trombi’s failure “to complete his supervisor
9 [sic] duty and ensure an investigation into the [domestic violence] matter” (Ex.
10 2218 at MELC-IA11170.) This failure is appropriately categorized as a Category 2
11 offense under the matrix: a “[f]ailure by a supervisor to identify or investigate . . . actual
12 or alleged incidents of misconduct, or violations of written instructions or rules.” (Ex.
13 2001 at MELC416255.)

14 505. Allegation #2 involved Chief Trombi’s failure “to recognize the need for
15 intervention” resulting in him taking no action “in the form or reassigning Deputy
16 Armendariz or mandating training.” This failure is appropriately categorized as a
17 Category 3 offense under the Matrix: a “[f]ailure to take corrective action when
18 warranted.”²⁰ (Ex. 2001 at MELC416256.)

19 506. Similarly, allegation #3 involved Chief Trombi’s failure “to take any
20 action” or to “notify his chain of command” with respect to the State Representative
21 Mesnard citation. (Ex. 2218 at MELC-IA011176.) This too is appropriately categorized
22 as a Category 3 offense. (Ex. 2001 at MELC416256.)

23 507. For a third violation of either a category two or three offense committed by
24 an exempt employee, the presumptive discipline specified by the disciplinary matrix is a
25 range between an 80-hour suspension and dismissal. (Ex. 2001 at MELC416253.) Chief
26 Trombi was only advised of a possible maximum punishment of one week without pay

27
28 ²⁰ Allegation #2 in and of itself involves the consolidation of several independent
acts of misconduct as it pertains to the supervision of Deputy Armendariz.

1 for several separate incidents that violated MCSO policies and/or civil law.

2 508. It is an inappropriate manipulation of the MCSO's disciplinary policy to
3 consolidate separate instances of misconduct and to treat them as a single instance for
4 purposes of applying the disciplinary matrix. (Ex. 2001 at MELC416243.)

5 509. Pursuant to MCSO policy, any departure from the presumptive ranges of
6 discipline set forth by the matrix "shall be justified in writing in the Pre-Determination
7 Hearing Notice and the Notice of Disciplinary Action letter as applicable." (Ex. 2001 at
8 MELC416243.) Further, "[d]iscipline which deviates from the Discipline Matrixes must
9 be approved by the Sheriff, or his designee." (*Id.* at MELC416244.)

10 510. Yet, this practice appears to be consistent with a special MCSO policy
11 promulgated by Sheriff Arpaio that applied only to investigations that arose out of the
12 *Melendres* case. According to this *Melendres*-only policy, investigators were not to
13 apply the MCSO disciplinary matrix. In all such investigations, multiple independent
14 violations of MCSO policies counted as only one violation for purposes of applying the
15 disciplinary matrix. (Doc. 1455 at Tr. 2135; Doc. 1556 at Tr. 3272-74; Ex. 2010 at
16 MELC288485.)

17 511. The standard disclaimer placed on disciplinary notice forms stated:

18 Please be advised that MCSO has ongoing investigations relating to
19 the *Melendres* litigation. If you become a principal in one of those
20 investigations, and you receive a sustained policy violation on any
21 such related matter, this reprimand shall be considered with that
22 misconduct as one offense for purposes of the disciplinary matrix
(not as a separate offense) and your discipline may be adjusted
accordingly.

23 (Ex. 2008 at MELC724587; Ex. 2010 at MELC288485.)

24 512. Of course, the *Melendres*-only policy categorically departs from the MCSO
25 policy of treating all types of misconduct uniformly. As is not surprising, a great number
26 of the investigations that arose out of the *Melendres* case involved misconduct that
27 harmed members of the Plaintiff class. As a result of this special policy, the MCSO
28 generally treated misconduct that harmed members of the Plaintiff class less seriously

1 than the uniform level of discipline that MCSO policy otherwise requires.

2 513. Pursuant to MCSO policy, such a deviation from the disciplinary matrix
3 required approval from Sheriff Arpaio or his designee. (Ex. 2001 at MELC416244.)

4 514. The MCSO offered no adequate rational reason at the hearing, and the
5 Court cannot devise any, to treat independent violations of the MCSO's policies as a
6 single act of misconduct.

7 515. This discriminatory policy violates the MCSO policy that requires fairness,
8 equity and uniformity in discipline in all such investigations.

9 516. Second, when Chief Olson made his disciplinary decisions, he believed that
10 Chief Sands, not Chief Trombi, was principally responsible for the supervisory
11 misconduct at the HSU, including the decision not to transfer Deputy Armendariz out of
12 the HSU. Because Sands was not a principal in IA #2014-542, Olson could not directly
13 address his culpability, but he did not believe others should be held responsible for what
14 he viewed as Sands's decisions. (Doc. 1495 at Tr. 3535–47.)

15 517. This assumption—at least as it relates to refusing the transfer of Deputy
16 Armendariz—was false. Chief Olson obtained that impression from what Chief Trombi
17 told Special Investigator Vogel during his interview.²¹ (See Doc. 1495 at Tr. 3537.)

18 518. According to Special Investigator Vogel's report, Chief Trombi told Vogel
19 that when he received the request to transfer Deputy Armendariz out of the HSU, he
20 asked Chief Sands whether Sands would give permission for him to do so. Trombi told
21 Vogel that Sands had supposedly stated "something to the effect of 'not now' or 'it's not
22 a good time,'" and that Trombi "felt that Chief Sands did not want to elaborate on why it
23 wasn't a good time to move [Armendariz]." (Ex. 2218 at MELC-IA011258–59) Trombi
24 told Vogel that Sands's input provided the basis for his decision not to transfer

25 ²¹ It is very important that employees subject to PSB investigations tell the truth. (Doc.
26 1505, at Tr. 4006.) The failure to do so in this case caused Chief Olson to make an
27 erroneous assumption in assessing discipline. It is also, of course, a violation of MCSO
28 policy to be untruthful. Violation of Office Policy, CP-5, *Truthfulness*, is a separate
category seven offense under the matrix. (Ex. 2881 at MELC1306932; Ex. 2001 at
MELC416258.)

1 will just be overturned on appeal.

2 576. As a result, he testified that “if an administrative investigation goes too
3 long you just don’t impose discipline. Or you don’t impose -- impose serious discipline”
4 because it will just be overturned on appeal.²⁴ (Doc. 1043 at Tr. 977–78.)

5 577. It is for this reason that Captain Bailey testified that the MCSO always kept
6 very aware in internal affairs investigations of the 180 day time limit. (Doc. 1505 at Tr.
7 3978.)

8 578. There was testimony during the hearing, however, that Chief Deputy
9 Sheridan has manipulated the timing on investigations so he has a self-created
10 justification for imposing no discipline, or only minor discipline. (*See* Doc. 1017 at Tr.
11 214–16.)

12 579. In that light, Chief Sheridan identified four major IA investigations in this
13 case: IA #2014-221, IA #2014-541, IA #2014-542, IA #2014-543. (Doc. 1389 at Tr.
14 1135–37.) In none of them, including IA #2015-543, in which he was a principal, was
15 the disciplinary decision timely completed.

16 580. IA #2014-542 was officially opened on September 12, 2014, as was IA
17 #2014-543. It is not clear when each principal was added to the investigation pursuant to
18 the terms of the statute.

19 581. Special Investigator Vogel delivered the report on IA #2014-542 on March
20 28, 2014. Yet, Chief Olson did not make his preliminary findings on the case until either
21 May 4 or May 5, 2015. He made his final findings with respect to all principals on either
22 May 17 or May 18. (Ex. 2218 at MELC-IA11170–213.) Nevertheless, the final findings
23 were not transmitted to each principal until a month later on June 17, 2015. (Ex. 2943a.)

24 582. Special Investigator Vogel delivered the report on IA #2014-543 on April
25 6, 2015. Chief Olson made his preliminary findings as to the various principals on the

26
27 ²⁴ Even if the Appeals Board were to overturn the discipline, both statute and
28 policy mandate that overturned discipline can still be considered in imposing future
discipline. Thus, despite the potential reversal of discipline, there is still some purpose in
imposing it.

1 case on either April 21 or April 22. He made his final findings as to all principals on
2 either May 12 or May 14. Nevertheless, the final findings did not become “final” until
3 June 6, 2015. (Ex. 2943a.)

4 583. These unexplained gaps in processing the cases, when the MCSO is
5 always very cognizant of the timing, demonstrate the MCSO’s manipulation of these
6 investigations to provide the principals with multiple defenses.

7 **2. Other PSB Investigations That Resulted from Video Review Were**
8 **Problematic.**

9 584. On September 12, 2014, the PSB opened IA #2014-544 through IA #2014-
10 548. The PSB conducted the investigations in these cases.

11 585. With the exception of one case,²⁵ each of these investigations involved
12 policy, conduct, or professionalism violations on the part of one or more MCSO officers
13 who were present during stops made by Deputy Armendariz. (*See, e.g.*, Doc. 1498 at Tr.
14 3824, 3828–30.)

15 586. The vehicle occupants in most of these stops appeared to be members of the
16 Plaintiff class. (*See, e.g.*, Doc. 1498 at Tr. 3815, 3830, 3835–36)

17 587. Plaintiffs assert that the investigations into the misconduct demonstrate a
18 lack of training or focus in the PSB investigations.

19 588. First, in several of the investigations, the PSB investigators used leading
20 exculpatory questions when interviewing their subjects. (Doc. 1556 at Tr. 3443–47; Ex.
21 2063 at MELC160145, MELC160147, MELC160149; Doc. 1498 at Tr. 3825–28; Ex.
22 2772 at MELC158616–23.)

23 589. Second, in one of the investigations, the discipline administered by the PSB
24 was insufficient in light of the subject’s previous discipline meted out in other *Melendres*
25 investigations. In IA #2014-545, Deputy Gonzalez was issued a written reprimand on
26

27 ²⁵ IA #2014-548 involved one case of excessive force by Deputy Armendariz and
28 was not significantly raised at hearing.

1 February 14, 2015, for his failure to provide a basis for a traffic stop. Nevertheless, the
2 previous week, on February 4, Gonzalez had received two written reprimands—one
3 documented in IA #2014-563 (failure to inform of reason for a stop) and another one in
4 IA #2014-575 (using profanity towards driver on a stop). Because of the previous
5 discipline, appropriate application of the disciplinary matrix would have resulted in more
6 serious discipline.

7 590. Third, in one of the investigations, PSB investigators assumed exonerating
8 facts in their conclusions that were unsupported by the video recordings. (Doc. 1556 at
9 Tr. 3439–40; Doc. 1498 at Tr. 3819; Ex. 2063 at MECL160124, MELC160135.) In IA
10 #2014-544, Deputy Armendariz reported that he stopped a vehicle and that both
11 passengers stated that they were in the United States illegally. Sergeant Fax assumed that
12 the detainees' statement was made spontaneously rather than as a result of being
13 questioned, but it is apparent from the report that Armendariz questioned them. (Doc.
14 1498 at Tr. 3819.)

15 591. Fourth, one of the investigations demonstrates an instance in which the PSB
16 investigated a lesser charge (inappropriate language) than the charge originally referred
17 to the PSB by the reviewing lieutenants (no basis for the stop). (Doc. 1498 at Tr. 3828–
18 32; *compare* Ex. 2104 at MELC160768 *with id.* at MELC160792 (Sergeant Bocchino's
19 investigation in IA #2014-547).)

20 **3. Investigations Handled by Divisions Demonstrate a Lack of Training** 21 **and Consistency**

22 592. Each division of the MCSO has officers—sometimes lieutenants—assigned
23 to conduct internal affairs investigations of complaints involving matters of minor
24 discipline. (Doc. 1467 at Tr. 3162, 3184.)

25 593. Those persons are selected at the discretion of the division commanders.
26 The PSB has no say in such selection and there are no criteria promulgated for purposes
27 of aiding in such selection. (Doc. 1467 at Tr. 3182.)

28 594. The PSB does not yet offer systematic training to division personnel

1 designated to conduct internal affairs investigations. (Doc. 1467 at Tr. 3182–83; Doc.
2 1505 at Tr. 4026.)

3 595. However, every month the PSB administrative staff generates a list of the
4 IA investigative numbers that are still active within each division or district. The
5 commander of each division or district is sent this list. (Doc. 1467 at Tr. 3988–89.) The
6 commander of the PSB is sent a similar list for open investigations assigned to the PSB.
7 (*Id.* at 4000.) Other than sending the list, however, the PSB does not oversee the
8 substance of investigations done on the division side. (*Id.* at Tr. 4027.)

9 596. Each division had different interpretations of policies and procedures
10 governing internal affairs investigations. (Doc. 1467 at Tr. 3166.)

11 597. On December 4, 2014, the MCSO notified the Court that it opened IA
12 #2014-451—a PSB investigation into the adequacy of a division investigation of a
13 different complaint (IA #2014-142, which involved Deputy Armendariz’s misconduct
14 during a traffic stop).

15 598. The incident at issue in IA #2014-142 occurred on March 12, 2014, but the
16 responsible division did not complete the investigation and submit it to the PSB until
17 August 1, 2014. (Ex. 2767 at MELC158128.)

18 599. Despite the fact that the investigating officer had spent some eight hours in
19 training to conduct such investigations, the investigation of Deputy Armendariz was
20 poorly conducted in that (1) it was untimely, (2) there was a failure to conduct necessary
21 interviews, (3) there was a failure to record interviews or otherwise document evidence,
22 and (4) there was a failure to give adequate notices or *Garrity* warnings. (Ex. 2767 at
23 MELC158128, MELC158130; Doc. 1556 at Tr. 3425–29.)

24 600. This division investigation initially resulted in a finding of “not sustained”
25 against Deputy Armendariz, whereas a finding of “sustained” should have been and
26 eventually was made. (Ex. 2767 at MELC158130–32.)

27 601. On January 26, 2015, the PSB issued a written reprimand to the two
28 officers responsible for the poorly conducted division investigation. (Ex. 2943a at

1 MELC1404203a.)

2 **B. MCSO Investigations Arising from Found Personal Property.**

3 602. In addition to the PSB investigations that began as the result of the
4 MCSO's videotape reviews, the PSB also began several investigations resulting from
5 items of personal property that were not accounted for and that were found in the custody
6 of the MCSO.

7 **1. The MCSO Carried Out a Bad Faith Criminal Investigation into the**
8 **Allegations Raised by Cisco Perez (IA #2014-295).**

9 603. Cisco Perez made the allegations, *see supra* ¶ 281, above in a state
10 unemployment hearing that the MCSO investigated as IA #2014-295.²⁶ (*See* Ex. 2748.)

11 604. Chief Deputy Sheridan and Captain Bailey agreed that there should be a
12 criminal investigation opened with respect to the Cisco Perez allegations. (*See* Doc. 1556
13 at Tr. 3236; Doc. 1505 at 4012-13; Doc. 1389 at Tr. 1128; Doc. 1456 at 2215.)

14 605. They also decided to suspend the ongoing Deputy Armendariz
15 administrative investigation pending the completion of the Cisco Perez criminal
16 investigation. (Doc. 1467 at Tr. 3119-20; Ex. 2004; Doc. 755 at 10; Doc. 795-1 at 30.)

17 **a. The MCSO Improperly Bifurcated the Cisco Perez Allegations**
18 **and the Armendariz Search.**

19 606. Cisco Perez alleged that HSU officers were taking property during HSU
20 operations in a manner that violated policy or law; the many items of property in Deputy
21 Armendariz's garage amply demonstrated as much. The Armendariz matter, therefore,
22 provided an abundance of evidence to support the Perez allegations, evidence that was
23 otherwise relatively sparse. Unlike the Armendariz search, which yielded existing and
24 potentially traceable evidence of misappropriation of items of value, the Cisco Perez

25
26 ²⁶During approximately the first week of June 2014, shortly before Cisco Perez
27 made these allegations of misconduct within the MCSO, Chief Deputy Sheridan
28 transferred Captain Bailey from the SID to head up the PSB. (Doc. 1467 at Tr. 3144; *see*
Ex. 2748 (memorandum from Deputy Knight to Captain Bailey raising the Cisco Perez
allegations dated June 12, 2014).) The Armendariz administrative investigation,
including an inquiry into all of the items found in Deputy Armendariz's garage, was
already underway when Captain Bailey became the head of the PSB.

1 allegations referenced no specific property other than a large screen TV.

2 607. The Armendariz matter should have been considered as part of the
3 evidence—indeed, the *bulk* of the evidence—when assessing the validity of the Cisco
4 Perez allegations.

5 608. By largely disregarding the Armendariz evidence in the Cisco Perez
6 criminal investigation, the PSB and the assigned criminal investigator, Sergeant
7 Tennyson, could investigate the otherwise largely unsupported Cisco Perez allegations
8 without taking into account the corroborating physical evidence of “pocketing” that the
9 items in Deputy Armendariz’s garage provided.²⁷

10 **b. Sergeant Tennyson’s Investigative Practices and Techniques**
11 **Undermine the Veracity of His Investigations and Reports.**

12 609. On August 28, 2014, Sergeant Tennyson wrote a report addressed to
13 Captain Bailey in which he closed out any criminal investigation relating to the Cisco
14 Perez allegations. (Doc. 1556 at Tr. 3237–39; Ex. 2006 at MELC011165.)

15 610. On November 20, 2014, three weeks after the Court held a hearing on the
16 August report, Sergeant Tennyson wrote a follow-up memorandum addressed directly to
17 Chief Deputy Sheridan that recommended closing any criminal investigation as it
18 pertained to the items of personal property found in Deputy Armendariz’s garage. (Ex.
19 1001.)

20 611. In addressing the November memorandum directly to Chief Deputy
21 Sheridan, Sergeant Tennyson skipped several levels of the normal chain of command.
22 (Doc. 1556 at Tr. 3249.)

23 612. Chief Deputy Sheridan does not think that this is odd because he had
24 frequent conversations with Sergeant Tennyson about this investigation. (Doc. 1389 at
25 Tr. 1181.) Further, he was in close contact with all PSB operations. (*Id.* at Tr. 1128.)

26 613. Sergeant Tennyson began his interviews in regard to the Cisco Perez
27

28 ²⁷ This bifurcation was especially problematic after it became clear that other surviving HSU members contributed to the contraband stored in Armendariz’s garage.

1 investigation on June 16, 2014. (Ex. 2006 at MELC011163.) He conducted 45
2 interviews in a three week period. (*Id.*) His plan was to “speak briefly with everybody at
3 HSU and get this thing done[.]” (Ex. 2031 at MELC227066.)

4 614. Chief Deputy Sheridan stayed very close to the investigation and had
5 frequent contact and communication with Sergeant Tennyson. (Doc. 1389 at Tr. 1180–
6 81.)

7 615. Aside from prioritizing the investigation into the Cisco Perez allegations,
8 which had no physical evidence, over the investigation into the Armendariz search, which
9 yielded a great deal of actual (often traceable) property, there were other considerable
10 deficiencies in Sergeant Tennyson’s investigations.

11 **1) Sergeant Tennyson Adopted the HSU’s False Assertion**
12 **that Deputies Used Identifications for Fraud Training**
13 **Purposes.**

14 616. Sergeant Tennyson notes in his August report that the deputies had
15 recovered “many different forms of identification[.]” (Ex. 2006 at MELC011163),
16 religious statuettes, “homemade booties,” and other items of little value for training
17 purposes. Further, he acknowledged that Sergeant Trowbridge indicated that he kept
18 license plates from load vehicles as trophies on his HSU office wall, with each license
19 plate representing a load vehicle arrest. (*Id.* at MELC011164.)

20 617. Nevertheless, Sergeant Tennyson concludes that “some identifications were
21 fraudulent and many were recovered without being able to identify its true owner.” (Ex.
22 2006 at MELC011163.)

23 618. In doing so, he apparently credited the false statements originally asserted
24 by HSU personnel right after the Deputy Armendariz administrative investigation began
25 that the recovered IDs were used in formal training courses in which participants had to
26 provide fraudulent IDs.

27
28

1 619. For example, as early as May 23, 2014, Detective Frei²⁸ authored a
2 memorandum sent to Captain Bailey when he was the Captain over the Special
3 Investigations Division which included the HSU. This was immediately prior to Bailey’s
4 transfer to the PSB. (Ex. 1000 at MELC028132.)

5 620. In the memo, Detective Frei requested that Captain Bailey direct him as to
6 what he should do with the numerous personal IDs he had gathered over the last five
7 years in the course of his law enforcement activities and the law enforcement activities of
8 other deputies.

9 621. The memorandum claimed that the IDs in his possession came from
10 detectives who had reason to believe that the identifications were fraudulent. He stated
11 that “[t]he identifications were used for training purposes only, as most of the Criminal
12 Employment Unit is certified in document examination or has had some training in
13 forged/fraudulent/questioned documents.” (Ex. 1000 at MELC028132.)

14 622. Despite Detective Frei’s representation that the IDs were fraudulent,
15 Captain Bailey could not recall that the MCSO had ever attempted to determine whether
16 this was accurate. (Doc. 1505 at Tr. 4048–49.)

17 623. Moreover, there is no reason to assume the identifications are fraudulent.
18 (Doc. 1505 at Tr. 4048–49.) Almost all of the identifications attached to Detective Frei’s
19 memorandum are issued to members of the Plaintiff class, (*see, e.g.*, Ex. 1000 at
20 MELC028133-59), and many of them were issued by foreign governments—
21 predominantly Mexico or its states. (*See id.*) Chief Deputy Sheridan, when asked about
22 these IDs, acknowledged that it would not make sense for someone asserting a legal right
23 to be in the United States to create a fraudulent Mexican identification. (Doc. 1043 at Tr.
24 985.)

25 624. Further, as the MCSO would later admit, contrary to the assertions of
26 Detective Frei, no one in the Criminal Employment Unit had formal training in

27
28 ²⁸ During the course of this litigation, the MCSO promoted Detective Frei to the
position of Sergeant.

1 forged/fraudulent/questioned documents. In fact, no one in the MCSO in general had
2 such training. (Doc. 1417 at Tr. 1546–47.)

3 625. Detective Frei submitted the memorandum and the attached IDs to Property
4 and Evidence for destruction. (Ex. 1000 at MELC028131.) At that time, the
5 memorandum came to the attention of the Monitor Team and was not destroyed. (Doc.
6 1043 at Tr. 985.)

7 626. The memorandum to Captain Bailey has apparently never been the subject
8 of an MCSO internal affairs investigation. (Doc. 1417 at Tr. 1546; Doc. 1505 at Tr.
9 4047.)

10 627. Nevertheless, as of May 2014, the same false explanation set forth by
11 Detective Frei seems to have been generally adopted by other HSU officers in an attempt
12 to offer a legitimate explanation for the many IDs in the possession of HSU deputies that
13 in fact had been taken as souvenirs of arrests. (Doc. 1417 at Tr. 1547.)

14 628. When in early June, the HSU returned to its former offices in the
15 Enforcement Support building, some of the things they found there were Mexican IDs
16 and a Mexican passport or passports.

17 629. These IDs belong to members of the Plaintiff class.

18 630. When Sergeant Powe questioned Deputy Cosme and Deputy Joya about the
19 presence of the identifications, they offered the same false explanation “that they
20 attended courses designed to help them identify fraudulent Mexican IDs and Fraudulent
21 Foreign Identifications.” (Ex. 43 at MELC104079.) They “explained . . . that they were
22 instructed to confiscate fraudulent IDs found during the course of their duties, but
23 because they were not Arizona State Identification, they were not able to use them to
24 charge the subject with a crime.” (*Id.*) However, as the MCSO now admits, contrary to
25 the statements of Detective Frei, Deputy Cosme, and Deputy Joya, HSU and CEU
26 members did not receive training to help them identify fraudulent Mexican IDs and
27 fraudulent foreign identifications. (Doc. 1417 at Tr. 1546–47.) Nor is there any evidence
28 that HSU or CEU members were “instructed to confiscate fraudulent IDs found during

1 the course of their duties” without submitting them to Property and Evidence.

2 631. Nor was any evidence offered at trial to establish that the IDs referred to by
3 Deputy Cosme and Deputy Joya are fraudulent.

4 632. Sergeant Powe, however, apparently accepted these statements at face
5 value. In a June 6 memorandum to Lieutenant Jakowinicz regarding the explanation of
6 Deputy Cosme and Deputy Joya, Sergeant Powe noted that this information might be
7 helpful to the HSU in responding to the ongoing internal affairs investigation into such
8 matters.²⁹ (Ex. 43 at MELC104079.)

9 633. How these identifications came to be left in the former HSU offices has not
10 been the subject of an internal affairs investigation identified to the Court, although the
11 documents have apparently been preserved in a departmental report.

12 634. In the Cisco Perez investigation, there is no reason why Sergeant Tennyson
13 would not have had access to the IDs to determine whether they were fraudulent.
14 Detective Frei presumably still had his 111 IDs that he subsequently turned in the
15 following November. Sergeant Powe had preserved in a Departmental report the
16 Mexican IDs found in the HSU’s initial return to its HSU offices in Enforcement
17 Support. (DR#14-013242; Ex. 43 at MELC104079.) Sergeant Tennyson also knew of,
18 and had access to, the approximately 500 identifications found in Deputy Armendariz’s
19 garage, although given their storage in the garage, Tennyson could not have reasonably
20 believed that they were being used for training purposes.

21 635. At any rate, the MCSO now acknowledges that many of those IDs are not
22 fraudulent. (Doc. 1505 at Tr. 4048.)

23 636. Although Sergeant Tennyson noted in his report that some of the IDs were
24 fraudulent, he never discussed those identifications that were *not* fraudulent, and what
25
26

27
28 ²⁹ This also demonstrates that HSU leaders were quite aware of the ongoing
Armendariz investigation and one of its topics before the Cisco Perez criminal
investigation even began.

1 basis the HSU members would have had for seizing/keeping them.³⁰

2 637. Additionally, the leading questions Sergeant Tennyson posed in his
3 interviews demonstrated that he had already concluded that the IDs were fraudulent and
4 that he was attempting to lead those he interviewed to the same conclusion. (*See, e.g.*,
5 Ex. 2028 at MELC226810 (“I was told by some of the guys that there’d be times when
6 fro-or fraudulent ID’s were, um—were acquired and used for training. Is—did you recall
7 anything like that?”); Ex. 2029 at MELC227806 (“As far as the um identification, I spoke
8 with a ton of guys and some mentioned that some of the IDs were taken and used as
9 training aids. Does that sound familiar to you?”).)

10 638. Third, he concluded that the MCSO deputies attended “training classes put
11 on by outside agencies, namely DPS, where students were asked to provide discarded
12 fraudulent identification for training aids.” (Ex. 2006 at MELC011164.) As has been
13 demonstrated above, although this was a popular explanation engineered by HSU staff,
14 there is no truth to it.

15 639. As to the seized license plates, even though there was no suggestion that
16 they were fraudulent, or that they were used in training, this did not prevent Sergeant
17 Tennyson from suggesting such a connection. (*See, e.g.*, Ex. 2028 at MELC226806 (“[I]t
18 seems to be a common theme that the license plates were taken and some of them were
19 posted on walls inside the – the, um – the offices – and keep in mind Cisco – Cisco
20 mentions that after he – he says – he – these items were pocketed, he does follow-up with
21 yeah, we used them for training. Now, uh, is that a pross – is that a, uh – a protocol or
22 something you guys did on a regular basis?”).)

23
24 ³⁰ In the conclusion of his November memorandum, Sergeant Tennyson does at
25 least implicitly acknowledge that HSU members are inappropriately taking some property
26 when he notes “it is not clear why the items did not remain with the arrestee or why the
27 items were not placed into Property and Evidence for either destruction or for evidentiary
28 purposes.” (Ex. 2841 at MELC1397012; *see also* Ex. 1001 at 3.) But he does nothing in
either the August or the November report to pursue these questions before terminating the
investigations.

1 640. Fourth, citing Deputy Gandara, Sergeant Tennyson concluded that when
2 IDs were kept for training aids, “first the cards were processed as found property.” (Ex.
3 2006 at MELC011164.) That is also not true. With the apparent exception of those IDs
4 involved in IA #2014-874 and those IDs collected by Sergeant Knapp, the Court is not
5 aware that any of the IDs subsequently located by the MCSO were checked into and
6 processed as property. It is notable that even Gandara was later disciplined for not
7 processing confiscated items as property. (*See, e.g.*, IA #2015-022.) Yet, in Sergeant
8 Tennyson’s rush to arrive at an exonerating conclusion, he apparently made no effort to
9 confirm the truth of Gandara’s statement before determining that it was accurate.

10 **2) Sergeant Tennyson Failed to Investigate or Follow Up on**
11 **Identifiable and Traceable Property Found in Deputy**
12 **Armendariz’s Garage.**

13 641. In his August report, Sergeant Tennyson did not discuss or disclose any of
14 the personal property found in Deputy Armendariz’s garage that had obvious value and
15 was traceable to victims, which casts a different light on the minimal items for which he
16 did account.

17 642. To the extent that he was, at the time, trying to assume that all of the
18 property in Deputy Armendariz’s garage came from Armendariz, he was disabused of
19 that notion before writing his November memorandum to Chief Deputy Sheridan.

20 643. In between receiving Mr. Manning’s email in early October, *see infra*
21 ¶¶ 679–83, and writing the November 20 memorandum to Chief Sheridan, Sergeant
22 Tennyson received further verification that Deputy Armendariz was not the only MCSO
23 source of seized property recovered from Armendariz’s home.

24 644. In October, Sergeant Tennyson received nine CDs containing information
25 demonstrating that the IDs of persons found in Deputy Armendariz’s garage were
26 attributable to law enforcement activity of MCSO officers other than Armendariz.³¹ (Ex.
27 1001 at 1 (“The identification cards associated with the information on the CDs
28 mentioned above were discovered to have been obtained during HSU operations by

³¹ This corroborated Deputy Armendariz’s May interview asserting that fact.

1 Detectives **other than Armendariz.**”) (emphasis in original); *see also* IA #2014-774
2 through IA #2014-783; Doc. 814 at 4–13.)

3 645. By that same time, Sergeant Tennyson was able to identify an additional
4 seven IDs from Deputy Armendariz’s garage belonging to persons who had encounters
5 with HSU officers other than Armendariz. (Ex. 2025; Ex. 2026.) Three of these persons
6 were identified as having encounters with “C. Perez S 1346.” (Ex. 2026.) To the extent
7 that “C. Perez” is Cisco Perez, this demonstrates that some of the property that Perez
8 “pocketed” found its way to Armendariz’s garage. This property thus provides
9 considerable support for the validity of Perez’s original allegation that HSU members
10 were in the habit of pocketing things. Armendariz’s garage served as a depository of the
11 pocketed property. This connection was never noted by Tennyson.

12 646. Sergeant Tennyson dropped any further investigations into the IDs once he
13 determined that they belonged to individuals who had been transferred to ICE. (Ex.
14 2025.) He did so because he concluded that it was impossible to locate persons who had
15 been deported. Tennyson admitted that no additional efforts were made to locate these
16 individuals. (Doc. 1466 at Tr. 2942–44; *see also* Ex. 2025.) He further testified that he is
17 not aware of any such efforts made by the MCSO. (*See* Doc. 1466 at Tr. 2893, 2904–05;
18 Doc. 1467 at Tr. 3135–36; *see also* Ex. 1001.) These IDs were not fraudulent. Tennyson
19 relied on the identities provided by them in confirming, through MCSO records, that the
20 persons identified by the cards were transferred to immigration authorities, and then
21 through immigration records that the persons were ultimately deported. (*See, e.g.*, Ex.
22 1001; *see also* Ex. 2025; Ex. 2026.) Further, based on their names and their deportations,
23 these persons are members of the Plaintiff class.

24 647. The fact that the victims of the MCSO’s misappropriations were deported
25 (or otherwise could not be located) does not negate the importance of at least
26 administrative investigations into the misappropriations. Where property could be
27 connected to deputies, the investigations should not have been dropped, regardless of
28 whether the owners of the property could be located.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

3) The MCSO Imposed No Discipline on HSU Members Who Seized Personal Property from Plaintiff Class Members and Stored It in Deputy Armendariz’s Garage.

648. In his November report, Sergeant Tennyson noted that Deputy Armendariz alleged, just prior to his suicide in May, that a female detention officer coworker in the HSU removed items from HSU offices and placed them in Armendariz’s garage once she “got word of an upcoming inspection by the Internal Affairs Division.” (Ex. 1001 at 3.)

649. Sergeant Tennyson’s memorandum dismissed this allegation because Tennyson had identified and interviewed the relevant detention officer, Raphaelita Montoya, and she “denied delivering anything to the Armendariz residence.” He further noted that Deputy Armendariz is a “pack rat.” (Ex. 1001 at 3.)

650. However, Officer Montoya subsequently admitted that she did in fact clear contraband from HSU offices and take it to Deputy Armendariz’s garage. (Ex. 2841 at MELC1396996 (“At a later date the same female Detention Officer admitted to Detectives during an audio/video taped post polygraph interview she did drop some items off at the Armendariz residence. She also helped Armendariz load several items which may have included the identification cards into his work vehicle when HSU was relocated to a new facility.”); see also Doc. 1556 at Tr. 246–47.)

651. Officer Montoya made this admission after declining to submit to a polygraph examination.³² (Doc. 1466 at Tr. 2901–03.) This is an independent violation of MCSO policy.

652. The MCSO now admits that there were items found in Deputy Armendariz’s garage that came from MCSO operations in which Armendariz took no part. (Doc. 1556 at Tr. 3246–47.)

653. Even after Officer Montoya confessed as much, there was no further

³² Officer Montoya apparently agreed to take a polygraph exam, had “some sort of a panic attack” before the exam, and was therefore never actually polygraphed. (Doc. 1466 at Tr. 2902:1-9.)

1 investigation or reassessment of her involvement, or that of anyone else, in the possible
2 mishandling or theft of property in either an administrative or a criminal investigation.
3 (Doc. 1466 at Tr. 2901–03.) By the time of her confession, Montoya had already
4 received findings of “not sustained” in two administrative cases: IA #2014-541 and IA
5 #2015-021. (Doc. 1389 at Tr. 1205; Doc. 1556 at Tr. 3270–71; see also Ex. 2010, Ex.
6 2887, Ex. 2943.)

7 654. Despite this, and despite Sergeant Tennyson’s acknowledgment in a
8 previous memorandum to Chief Deputy Sheridan that the loads Officer Montoya took
9 over to Deputy Armendariz’s home may have included IDs, (see, e.g., Ex. 2841 at
10 MELC1396996), Tennyson testified to this Court that no one at the PSB was yet able to
11 answer how the additional IDs in Armendariz’s garage deriving from stops that
12 Armendariz did not execute came to be there. (Doc. 1466 at Tr. 2890–91; Doc. 1556 at
13 Tr. 3246–47.) In light of the facts set forth above, Tennyson’s expressed mystification
14 (and that of anybody else at the MCSO) is neither genuine nor credible.

15
16 **4) The MCSO’s Defense of Sergeant Tennyson’s August**
17 **Report Is Not Persuasive.**

18 655. After Sergeant Tennyson presented his August report to the MCSO and the
19 Monitor, the Monitor filed with the Court its written evaluation of the MCSO’s
20 investigative efforts.

21 656. The Monitor was critical of a number of aspects of Sergeant Tennyson’s
22 investigation: the PSB’s lack of an investigation plan, Tennyson’s minimal interview
23 questions, his leading questions, his apologetic tone, and his failure to follow-up when
24 interview subjects mentioned topics pertinent to the investigation.³³

25 657. On October 21, 2014, Defendants filed their response to the Monitor’s

26
27 ³³ In Sergeant Tennyson’s initial interviews he only covered four basic questions
28 that mostly related to the meaning of the term “pocketing.” (Doc. 795, Ex. 1 at 31.)
Further, the interviews were very short. (See, e.g., Ex. 2030.) And he was apologetic to
those he interviewed. (See, e.g., *id.* at MELC227271 (To Gamboa: “I feel as though I’m
wasting your time ’cause I only had a few questions for you[.]”).)

1 report. (Doc. 755.)

2 658. The Court held a hearing on the Monitor's report on October 28, 2014. In
3 that hearing, at which Chief Deputy Sheridan was present, (Doc. 776 at Tr. 3), the Court
4 noted its concerns with Sergeant Tennyson's investigation. (*Id.* at Tr. 49–52; *see* IA
5 #2014-0295; *see also* Doc. 804 at Tr. 71–72; Doc. 795 at 6–7.)

6 659. The Court also noted, despite not being made aware of Mr. Manning's
7 email conclusions, *see infra* ¶¶ 679–83, that the materials found in Deputy Armendariz's
8 garage had value and in many cases—*e.g.*, credit cards—could be tracked to identifiable
9 victims. (Doc. 776 at Tr. 45; Doc. 780 at Tr. 86–90.) The Court reaffirmed that a
10 criminal investigation ought not to be foreclosed as to the personal property and items of
11 value found in there. (Doc. 776 at Tr. 45; Doc. 780 at 86–90.)

12 **i. At the Evidentiary Hearing, the MCSO Defended**
13 **Its Flawed Investigative Techniques**

14 660. In their testimony, Chief Deputy Sheridan, Captain Bailey, and to some
15 extent Sergeant Tennyson all sought to defend the probity, propriety, and competence of
16 Tennyson's investigation and his two resulting memoranda.

17 661. Chief Deputy Sheridan did not discuss the Monitor's criticisms of Sergeant
18 Tennyson's investigation with Tennyson because Sheridan does not agree with them.
19 (Doc. 1389 at Tr. 1198–99.)

20 662. Captain Bailey was aware of the Monitor's criticisms of Sergeant
21 Tennyson's investigation and for the most part disagreed with them. (Doc. 1556 at Tr.
22 3250; Doc. 1505 at Tr. 4013–14, 4038–39.) He had no problem with Tennyson's leading
23 questions, (Doc. 1556 at Tr. 3253), his lack of investigative plan, (*id.* at Tr. 3252), his
24 failure to prepare in advance a comprehensive set of questions, (Doc. 1498 at Tr. 3812),
25 or his failure to follow up on information pertinent to the investigation that emerged
26 during Tennyson's interviews. (Doc. 1556 at Tr. 3254–55.)

27 663. Captain Bailey did not agree with the Monitor's criticism that Sergeant
28 Tennyson was being controlled nor that he was investigating just enough to make the

1 investigation appear credible. (Doc. 1556 at Tr. 3254.)

2 664. Captain Bailey did agree with some of the Monitor's criticisms. For
3 example, he tacitly agreed with the Monitor's criticisms regarding Sergeant Tennyson's
4 failure to Mirandize people, so he talked to him about that. (Doc. 1556 at Tr. 3255-57.)
5 He talked to Tennyson about the need to use rooms in which the interviews could be
6 recorded. (*Id.* at Tr. 3258.) He also mentioned to Tennyson that he did not need to be
7 apologetic. (*Id.* at Tr. 3259.) Bailey further believed that the language in the November
8 memorandum's conclusion that lauds the HSU, the unit Tennyson was investigating, was
9 unnecessary.³⁴ (*Id.* at Tr. 3249-50.)

10 665. Nevertheless, Captain Bailey stands by Sergeant Tennyson's investigation
11 into the Cisco Perez allegations and does not believe that it raises any issues or concerns.
12 (Doc. 1556 at Tr. 3240.)

13 666. At the hearing, Sergeant Tennyson defended his leading questions by
14 testifying that such questions are a matter of his own style and were an effort to get more
15 information from the subjects of his interviews. (*See* Doc. 1467 at Tr. 3011-12.)

16 ³⁴ Chief Sheridan, on the other hand, does not think that the language is inappropriately
17 laudatory or inappropriate in tone. He does not believe that it denotes bias in any way.
18 (Doc. 1389 at Tr. 1184-85.) The relevant language states:

19 It is with great respect for those Deputies associated with the MCSO
20 Human Smuggling Unit the following be noted. Based on this inquiry as
21 well as the aforementioned criminal investigation HSU Detectives invested
22 much effort carrying out duties as they related to Human Smuggling
23 Operations. With every effort not to overshadow the tremendous work of
24 the Detectives and Supervisors in the Unit it at least appears based on
25 information provided some in the Unit may have not adhered to a
26 procedurally sound method of handling seized items. Per MCSO Property
and Evidence personnel written procedures are and have been in place
providing instructions for the forfeiture of items seized as a result of an
arrest or found property for the use of the training aids or other applicable
work related needs within the Office.

27 (Ex. 1001 at 3.)
28

1 opinion the results were reflective.”.)

2 671. According to Sergeant Tennyson, the reason for his “lack of vigor” is that
3 the Monitor Team insisted that the investigation be a criminal as opposed to an
4 administrative one, which allegedly crippled his investigation. Further, he testified that
5 the Monitor Team dictated every question that he asked which deprived him of the ability
6 to develop his own strategy. (Doc. 1466 at Tr. 2919.)

7 672. Neither one of these assertions is accurate or credible.

8 673. As stated above, Chief Deputy Sheridan and/or Captain Bailey decided that
9 the Cisco Perez investigation should be a criminal one; thus, regardless of which of the
10 two actually made the decision, it is clear that the Monitor did not make it.

11 674. Sergeant Tennyson’s testimony is also inaccurate when he asserts that the
12 Monitors directed every question that he asked. It is true that after observing his initial
13 cursory interviews, the Monitors did tell him that his interviews were insufficient and
14 suggested a list of baseline questions. (Doc. 1466 at Tr. 2919; *see also* Doc. 1498 at Tr.
15 3811–12; Doc. 795, Ex. 1 at 31–32; Ex. 2841 at MELC1396974–76.) Tennyson accepted
16 some of their suggestions and rejected others. In fact, Tennyson agreed that he received
17 the questions on June 23 and that he responded on June 24 with his own list of questions
18 which incorporated many but not all of the Monitor’s suggested questions. (Doc. 1467 at
19 Tr. 3130–33; Ex. 2841 at MELC1396974–76.)

20 675. The bottom line is, although the Monitor Team did make suggestions, it
21 did not make the decisions pertaining to the investigation. Those were left in the hands
22 of the MCSO, and the MCSO exercised its independence in making those decisions. It
23 now seeks to throw up dust to mask its own inadequacies by blaming the Monitor.

24 676. Sergeant Tennyson also defended MCSO practice by testifying that other
25 local police agencies also have collection bins in which they deposit fraudulent or invalid
26 identifications without the necessity of turning them in to their Property and Evidence
27 departments. (Doc. 1467 at Tr. 3070–72.) Nevertheless, those police agencies only do so
28 for expired or invalid IDs. Sergeant Tennyson never asked those police agencies whether

1 they deposited valid IDs into their collection bins as was the habit of the MCSO. (Doc.
2 1467 at Tr. 3105–06.)

3 677. Finally, Sergeant Tennyson defends his memorandum because, he states, he
4 could not establish that any HSU officer had the intent to steal. (Doc. 1466 at Tr. 2932–
5 33; Doc. 1467 at Tr. 3074–77.)

6 678. Even assuming that he in fact arrived at such a conclusion, he does not
7 mention it or explain it in the memorandum itself. And, if this was his conclusion, it
8 would require at least a minimal amount of explanation in light of Sergeant Trowbridge’s
9 honesty in avowing that he and others took license plates as “trophy” of their HSU
10 arrests and hung them on HSU office walls.

11 **iii. The MCSO Failed to Provide MCAO Attorney**
12 **Keith Manning with Sufficient Information, and**
13 **Therefore the MCSO Cannot Justifiably Rely on**
14 **His Advice.**

15 679. Shortly before the October hearing, but after the closure of the Cisco Perez
16 investigation, Sergeant Tennyson provided an attorney from the Maricopa County
17 Attorney’s Office (MCAO), Keith Manning, with his August 28 memorandum. Mr.
18 Manning opined, based on his reading of Tennyson’s memorandum, that criminal
19 prosecutions would not have been viable because the MCSO had not attributed any value
20 to the items involved in the investigation, and further, the investigation did not identify
21 any actual victims of such thefts. (Ex. 1001 at 3.)

22 680. In light of the minimal amount of property that Sergeant Tennyson
23 discussed in his August memorandum, the Court can understand how Mr. Manning
24 would have doubts about the practicability of bringing criminal charges. This is
25 especially true if he believed that the property was being innocently used by the MCSO
26 for training purposes, that the property had no value, and that no victims could be
27 identified.

28 681. It seems inconceivable to the Court, however, that Mr. Manning would
have engaged in the same analysis if he had been aware that the items included money,

1 drugs, credit cards, bank cards, cell phones, purses, wallets, weapons, memory cards, and
2 other items. Further, despite what was stated in Sergeant Tennyson's memo, the items
3 were not being used for formalized training purposes, and no effort was made to identify
4 victims who were no longer in the country.

5 682. Chief Deputy Sheridan was present in Court during the October hearing
6 when the Court, in expressing the view that the criminal investigations should remain
7 open as a possibility, emphasized the valuable nature of some of the property found in
8 Deputy Armendariz's garage as well as its traceability. (Doc. 776 at Tr. 45; Doc. 780 at
9 86–90.)

10 683. Thus, in applying Mr. Manning's analysis concerning the Cisco Perez
11 investigation property to the Armendariz investigation property, Chief Deputy Sheridan
12 was already aware of the relevant distinctions. Yet he made no attempt to account for
13 them, because Sergeant Tennyson's November memorandum provided the result
14 Sheridan had sought from the beginning.

15 **5) From the Outset, Chief Deputy Sheridan, Captain Bailey,
16 and Sergeant Tennyson Predetermined that Neither the
17 Cisco Perez Allegations nor the Property Found in Deputy
18 Armendariz's Garage Supported Pursuing a Criminal
Investigation.**

19 684. Even though Chief Deputy Sheridan ordered that the Cisco Perez
20 allegations be criminally investigated, he testified that from the beginning he did not
21 think that there was a basis to pursue a criminal investigation. He did not believe that the
22 word of a mentally-ill officer (Deputy Armendariz) or a discredited officer (Perez)
23 provided any probable cause to investigate HSU members for pocketing items. (Doc.
24 1389 at Tr. 1161–62, 1185–88; *see also* Ex. 1001 at 3.)

25 685. He felt compassion and empathy for the members of the HSU being
26 investigated for events that he did not believe had occurred. (Doc. 1389 at Tr. 1185–88.)

27 686. He initiated the investigation merely because he believed that if he did not,
28 Plaintiffs would try to suggest that he was not adequately conducting his internal

1 investigations. (Doc. 1389 at Tr. 1188.)

2 687. Although Captain Bailey recommended and subsequently ordered the
3 criminal investigation, and further ordered that every HSU and former HSU member be
4 interviewed, he also thought that innocent officers were being treated unfairly to the
5 extent that the allegations resulted in their treatment as suspects. (Doc. 1556 at Tr. 3250–
6 52.)

7 688. Like Chief Deputy Sheridan and Captain Bailey, Sergeant Tennyson
8 thought from the outset that there was no basis for a criminal investigation or for
9 interviewing all of the HSU deputies. (Doc. 1466 at Tr. 2815, 2907–08; Doc. 1467 at
10 3078–80.)

11 689. Therefore, upon his receipt of Sergeant Tennyson's November
12 memorandum, Chief Deputy Sheridan closed any further criminal investigation into the
13 materials located in Deputy Armendariz's garage based on faulty and insufficient
14 reasoning.

15 **6) IA #2014-295 Is Therefore Void**

16 690. In short, Sergeant Tennyson's investigation ended up being what he and
17 Chief Deputy Sheridan intended it to be: a perfunctory whitewash. His leading questions
18 further propagated a fiction invented by HSU officers in an attempt to explain the
19 unauthorized personal property in their possession, and he failed to adequately investigate
20 the allegation that HSU officers other than Deputy Armendariz contributed to the items
21 of personal property found at his home. Tennyson's failure to fairly investigate the
22 pervasive seizure of these items of personal property in the criminal investigation also
23 resulted in the MCSO not fairly addressing them in the following administrative
24 investigation.

25 691. As a result, although the property in Deputy Armendariz's garage *was not*
26 *taken into consideration* when determining the outcome of the criminal investigation into
27 the Cisco Perez allegations, that outcome was used to determine that no 'further' criminal
28 investigation into the property found in the Armendariz garage was necessary. Due to

1 this sleight-of-hand circumvention, the PSB never conducted a criminal investigation to
2 attempt to determine the source of the drugs, currency, weapons, credit cards, bank cards,
3 or other property in Armendariz’s home. (Doc. 1389 at Tr. 1171–72.)

4 692. The Court finds that Defendants engaged in a cursory and bad faith
5 investigation, and therefore IA #2014-295 is void.

6 **2. The MCSO’s Administrative Investigation into the Cisco Perez**
7 **Allegations (IA #2015-541) Ignores Admitted Wrongdoing and Is Void.**

8 693. IA #2015-541 was the administrative investigation that followed up on the
9 wrongfully held property revealed by the Cisco Perez criminal investigation. (Doc. 1556
10 at Tr. 3240–41; Doc. 852 at 2 (entry on IA #2014-295).)

11 694. There are several problems with this investigation.

12 695. First, the MCSO informed the Court that it would rely on the Cisco Perez
13 investigation in conducting IA #2014-541. (*See, e.g.*, Doc. 786 at 8–9 (“Based on the
14 fact that a criminal inquiry (IA2014-0295) has been conducted on this matter, the
15 majority of the PSB administrative investigation will rely on information from that
16 criminal inquiry.”) (emphasis in the original).) It appears to have done so.

17 696. Thus, the investigators apparently had little concern about whether the IDs,
18 license plates, and other “trophy” that were scattered around MCSO offices were
19 appropriately seized in the first place. They continued to accept and to represent to the
20 Court that all of the IDs seized were fraudulent and used for training purposes, (*see, e.g.*,
21 Doc. 803 at 49), or that they were all seized by Deputy Armendariz.

22 697. It would not be until much later, as IDs, license plates, and other property
23 kept proliferating, that the MCSO would finally admit that it had a pervasive problem
24 (not limited to the HSU) with department deputies taking IDs, license plates, and other
25 property when they had no good reason to do so. (Doc. 1043 at Tr. 992–93; Doc. 1417 at
26 Tr. 1546–47, 1554; Doc. 1505 at Tr. 4023–24.)

27 698. Nevertheless, during the investigation of IA #2014-541, principals were
28 only investigated for property management and/or evidence control issues and not

1 whether the deputies had a basis to seize property in the first place without returning it.
2 (Ex. 2520.)

3 699. At least two of the persons investigated demonstrate as much. One of the
4 nine principals against whom charges were brought, but no charges were ultimately
5 sustained, was Detective Frei. After the investigation began, Frei attempted to destroy
6 his memorandum to Captain Bailey and the attached IDs. The memorandum came to
7 light and was turned over to the Monitor. In his memorandum, Frei admitted that he had
8 been collecting IDs for five years and that they were “stored in a secure location in [his]
9 MCSO work station.” (Ex. 1000 at MELC028132.) The memorandum thus admits to at
10 least a property management violation.

11 700. Yet no misconduct was sustained against Detective Frei.³⁵ (Ex. 2520 at
12 MELC229078.)

13 701. Of greater concern to the Court is that Detective Frei made no attempt to
14 verify the statement in his memorandum that the IDs are all fraudulent. (*See, e.g.*, Doc.
15 1505 at 4049 (Bailey does not remember if they ever tried to determine whether the Frei
16 IDs were fraudulent); Doc. 1417 at Tr. 1551–52 (Sheridan has no recollection as to
17 whether any investigation was done with respect to the Frei IDs).) Frei further makes the
18 inaccurate statement that all of the IDs were used for training purposes, and the untruthful
19 statement that most of the Criminal Employment Unit is certified in document
20 examination “or has some training in forged/fraudulent/questioned documents.” (Ex.
21 1000 at MELC028132.) These statements strongly suggest that Frei is seeking to
22 manufacture a semi-legitimate reason that the IDs were taken in the first place when he
23 does not have one.

24 702. In fact, however, to the extent that the MCSO investigated only whether the

25
26 ³⁵ To the extent that the investigation only involved Detective Frei’s failure to turn
27 in property to the Property and Evidence room, and to the extent that Frei was a principal
28 in IA #2015-018 for these same IDs, the Court would not expect the imposition of double
discipline resulting from the two investigations. However, the Court would expect a
property violation in at least one of the investigations since Frei admitted to the conduct.
No discipline was imposed upon Frei in either investigation.

1 IDs had ever been turned into the Property and Evidence room, rather than the question
2 of whether a deputy had an appropriate reason to take the IDs, the PSB failed to
3 investigate whether harm was done to the interests of members of the Plaintiff class.

4 703. It is, of course, appropriate for the MCSO to conduct investigations for a
5 failure to impound property.³⁶ “Failure to impound property and evidence to a property
6 custodian” is a violation of MCSO policy. (Ex. 2001 at MELC416255.)

7 704. The matter of greater concern to the Court, however—a matter about which
8 the Court has expressed concern since it first heard of the property found in Deputy
9 Armendariz’s garage (*see, e.g.*, Doc. 1237 at Tr. 24–25)—is whether MCSO officers
10 routinely seize IDs and other property from members of the Plaintiff class without any
11 legitimate basis for the seizure. An unauthorized keeping of property amounts to a
12 separate violation of MCSO policy. (Ex. 2001 at MELC416255.) Moreover, seizing
13 property or failing to return it without a legitimate basis for doing so unjustly deprives
14 class members of their property, in violation of this Court’s orders and in violation of the
15 Constitution.

16 705. This problem exists throughout the IA property investigations arising in this
17 case.

18 706. Yet, no charges—even charges for failure to turn in property—were
19 sustained against Detective Frei.

20 707. What is at least as distressing is that Captain Bailey, the SID Captain to
21 whom Detective Frei wrote the memorandum requesting direction about what to do with
22 the IDs, is the PSB Captain who signed off on the decision to sustain no allegations
23 against Frei for the violations. (Ex. 2520 at MELC229078, *see also* Doc. 1505 at Tr.
24 4047.) Bailey had an obvious conflict in supervising this investigation—a conflict which
25 the Court pointed out as early as October 2014, and which Chief Deputy Sheridan

26
27 ³⁶ Defendants testified that an officer can seize property if it is needed in evidence
28 for a case, for safekeeping if it has been abandoned, or for other reasons specified by law.
In any event, however, the officer must deposit such property in Property and Evidence.
(Doc. 1465 at Tr. 1447; Doc. 1498 at Tr. 3925–29.)

1 acknowledged in his April 2015 hearing testimony. (Doc. 1043 at Tr. 985.)

2 708. Yet, as the evidence demonstrates, Captain Bailey continued to supervise
3 such investigations. (See Doc. 1417 at Tr. 1556.)

4 709. Moreover, Captain Bailey was himself the principal in such an
5 investigation in which the finding of misconduct was sustained. Captain Bailey received
6 a “coaching” for the violation.³⁷ (See Ex. 2943a at MELC1404207a (IA #2015-0357).)

7 710. Nonetheless, on June 1, 2015, Captain Bailey sent Detective Frei a
8 memorandum informing him that no discipline against him was sustained in this matter.

9 711. This same conflict pervades almost all of the property investigations on
10 which Captain Bailey signed off. The MCSO can make no claim that such investigations
11 were ‘impartially’ conducted. The Court advised the MCSO multiple times that such
12 investigations were improper. Yet the MCSO persisted in conflict-ridden investigative
13 staffing.

14 712. A further example of the investigation’s obvious flaws is that no charges
15 were sustained against Officer Montoya. Officer Montoya has since admitted to
16 transferring confiscated materials from HSU offices to Deputy Armendariz’s garage and,
17 on other occasions, helping him to do so. Even after she confessed to doing so, her
18 investigation was not re-opened.³⁸ (Doc. 1466 at Tr. 2901–03.)

19 713. Given her confession, it appears clear that the finding of “not sustained”
20 against Officer Montoya is indefensible.

21 714. Third, as was the case with IA #2014-542 and IA #2014-543, IA #2014-541
22 was not completed in a timely fashion.

23 _____
24 ³⁷ Pursuant to MCSO policy “coaching” can be used in appropriate circumstances
25 as an alternative to discipline. (See Ex. 2001 at MELC416245.)

26 ³⁸ Again, Officer Montoya was also noticed as a principal in IA #2015-018, but no
27 discipline was sustained against her in that investigation. Further, in light of the
28 testimony that she was responsible for cataloguing the property confiscated from persons
detained in connection with immigration enforcement operations, and in light of her illicit
transfer of such property to Deputy Armendariz’s garage, it seems likely that she was
responsible for failing to place into Property and Evidence much of the other material that
was the subject of IA #2015-018.

1 715. The investigation was opened on September 11, 2014. (Doc. 786 at 8.)

2 716. On June 1, 2015, nine principals of IA #2014-541 received notice from
3 Captain Bailey that any allegations asserted against them were “not sustained.” (Ex.
4 2520.) Final findings of violation were sustained against the remaining eleven principals
5 and all received the minor discipline of written reprimands. The reprimands were issued
6 on various dates ranging from June 3, 2015 to June 17, 2015. All were well past the time
7 requirement imposed by statute and MCSO policy.

8 717. As is discussed and amply demonstrated, Chief Deputy Sheridan
9 manipulates the timing on investigations to provide an additional basis for imposing no
10 discipline or only minor discipline. He has done so here. (*See* Doc. 1017 at Tr. 214–15.)

11 **3. Except for a Few Items, the MCSO Lumped All of the Property Found**
12 **in Deputy Armendariz’s Garage into a Single “Umbrella” Investigation**
13 **that Designated (Deceased) Deputy Armendariz as the Principal and**
14 **Delayed Completion of that Investigation to Avoid Accountability for**
Its Inadequate Execution.

15 718. The MCSO opened individual investigations for only a few items found in
16 Deputy Armendariz’s garage, and none of these resulted in discipline.

17 719. In his September 25, 2015 testimony, Chief Deputy Sheridan testified that
18 the MCSO could connect “all kinds of items” from Deputy Armendariz’s garage to other
19 deputies, and that they opened up a separate IA investigation as to each such item. (Doc.
20 1465 at Tr. 1440 (“[I]f in Charley’s garage we had a credit card or something—I know
21 there was a purse, there was all kinds of items—that we were able to attribute to another
22 deputy sheriff having possession of those, we would have a separate IA pulled for that.”);
23 *see also* Doc. 1465 at Tr. 1436.)

24 720. In reality, the MCSO initiated investigations into only 28 of over a
25 thousand items of personal property found at Deputy Armendariz’s house—26 driver’s
26 licenses (IA #2014-775 through IA #2014-783),³⁹ one credit card (IA #2014-774), and

27 _____
28 ³⁹ The surnames on 25 of the 26 drivers’ licenses suggest membership in the Plaintiff class.

1 one license plate (IA #2014-801).⁴⁰

2 721. The Court would expect, as Chief Deputy Sheridan's own testimony
3 indicated, that once a department's own incident reports verified the connection between
4 the property owner and the MCSO deputy, the preponderance of the evidence standard
5 would be met and discipline would be imposed. (*See* Doc. 1465 at Tr. 1452:3–10; *see*
6 *also* Ex. 2881 at MELC1306925; Ex. 2001 at MELC416243.) Yet no such discipline
7 was imposed in any such case arising from the property found in Deputy Armendariz's
8 home when a deputy was matched with an item of personal property found there.

9 722. Chief Deputy Sheridan acknowledged that there were no separate IA
10 investigations launched as to the various drugs found in Deputy Armendariz's house.
11 Because the drugs were never connected to any particular deputy, the only investigation
12 into these matters occurred in the context of the "catch-all" or "umbrella" Armendariz IA
13 investigation designated as IA# 2014-221. (Doc. 1465 at Tr. 1437:5–10.) Armendariz
14 was the only principal of that investigation.

15 723. Chief Sheridan further testified that the weapons, credit cards, bank cards,
16 and money were individually investigated—but he testified that those investigations too
17 may have been only in the context of the umbrella Armendariz investigation. (Doc. 1465
18 at Tr. 1439–40.)

19 724. In fact, the MCSO has never opened up any investigation with respect to
20 any of the weapons, credit cards, bank cards (with one exception), cell phones, or CDs
21 they found in Deputy Armendariz's home.

22 725. The MCSO asserts that they have set forth in IA #2014-221 their attempts
23 to connect these items of property to an MCSO deputy other than Deputy Armendariz.
24 (Doc. 1556 at Tr. 3421-22; Doc 1505 at 4017-18.)

25 _____
26 ⁴⁰ The license plate belonged to Maneula Ruiz Hernandez. Ms. Hernandez
27 reported that the plate was taken by a female deputy who asked her "if she was a citizen,
28 a Mexican, are you illegal, and are you a wetback?" (Doc. 814 at 13–14.) CAD reports
indicate that the stop in question was conducted by Deputy Amie Duong. (Doc. 1632 at
Tr. 13–14.) Inexplicably, on May 20, 2015, the MCSO determined that the allegations
were sustained as to Deputy Armendariz, who had been dead for a year, but not as to
Deputy Amie Duong. (Ex. 2943a at MELC1404206a.)

1 726. The Court finds that these efforts are inadequate because Defendants
2 manipulated the closure of the investigation to cover its deficiencies and avoid
3 accountability for it in the evidentiary hearing. Throughout the course of this evidentiary
4 proceeding, the Court repeatedly addressed Sheriff Arpaio's counsel regarding the
5 MCSO's failures to timely complete the investigations related to the Armendariz search
6 and the Cisco Perez allegations. (*See, e.g.*, Doc. 1017 at Tr. 15–20; Doc. 1051 at Tr.
7 427–28.)

8 727. During the April 23, 2015 hearing, the Court addressed Ms. Iafrate and
9 noted: “Initially we were going to have those MCSO internal investigations done in early
10 March. You indicated . . . in early March, . . . that you needed an extension until April
11 13. April 13 has come and gone. We don't have those investigations completed.
12 Obviously, in setting the supplemental hearing we will want to have them completed well
13 enough in time to do the [Monitor's evaluations]. I would request in the next day or so, if
14 you can, you provide me with an indication of when those investigations will be
15 completed. And I don't just mean 542 and 543. I mean the other investigations that
16 arose from the Armendariz and/or Cisco Perez and related allegations that are related to
17 the subject matter of this lawsuit.” (Doc. 1051 at 427–28.)

18 728. On May 7, 2015, Sheriff Arpaio informed the Court that there were 62
19 investigations arising from the Armendariz search and the Cisco Perez allegations, that
20 41 of them were completed, and that 21 remained incomplete. (Doc. 1052 at 2.) Arpaio
21 assured the Court that “[a]ll of the remaining investigations will be completed on or
22 before June 15, 2015.” (Doc. 1052 at 2.) On May 8, the Court entered an order requiring
23 Arpaio to specify by investigation number which of those 62 investigations had already
24 been actually closed. (Doc. 1064 at ¶ 9.)

25 729. On May 13, in compliance with the May 8 order, Sheriff Arpaio identified
26 IA #2014-221 as one of those investigations that was still open. (Doc. 1076-1 at 2.)
27 Thus, IA #2014-221 was one of those investigations that were to be completed on or
28 before June 15, 2015.

1 730. The following October, Captain Bailey testified that he had signed off on
2 the completed report of IA #2014-221 in August 2015, which was two months after
3 Sheriff Arpaio represented to the Court that it would be complete. (Doc. 1505 at Tr.
4 4045.)

5 731. In his September 25, 2015 testimony, Chief Deputy Sheridan testified that
6 he had reviewed the completed report of IA #2014-221 within the previous week and
7 “sent it back for some editing, not of content, but of grammar.” (Doc. 1465 at Tr.
8 1437:13–15.) Nevertheless, Sheridan did not sign off on this investigation until
9 November 5, after the hearings were virtually completed. (Doc. 1627, Ex. A.)

10 732. This delay deprived the Court and the Parties of the opportunity to evaluate
11 the report during the hearings. By November 2015, IA #2014-221 had been open for
12 approximately a year and a half. There is no reason why the MCSO could not have
13 completed the investigation in sufficient time to have its adequacy evaluated by the
14 Parties during the hearing.

15 733. The Court therefore finds that the completion of the umbrella Armendariz
16 investigation (IA #2014-221) was manipulated to avoid accountability in the evidentiary
17 hearings.

18 734. Of course, to the extent that the MCSO failed to adequately investigate
19 personal property seized from members of the Plaintiff class, such failure harms the
20 members of the Plaintiff class.

21 **4. The MCSO’s Other Administrative Investigations into Personal**
22 **Property Found Elsewhere Resulted in Minor Discipline, If Any**

23 735. The MCSO initiated a few more administrative investigations involving
24 personal property found elsewhere.

25 736. The MCSO opened four separate investigations—IA #2014-018, IA #2014-
26 019, IA #2014-020, and IA #2014-021—related to the property it found upon its second
27 inspection of the HSU’s former offices in the Enforcement Support Building.

28 737. The MCSO also opened up IA #2014-022, which resulted from property

1 handed to Sergeant Tennyson just prior to that second inspection.

2 **a. Although IA #2015-018 Resulted in Minor Discipline, the**
3 **MCSO's *Melendres-Only* Discipline Policy Clouded the Basis of**
4 **that Discipline and Ensured that Only Minimal Discipline**
5 **Would be Imposed; the Investigation Is Invalid.**

6 738. IA #2015-018 involved the discovery of 578 CDs, 462 departmental
7 reports, 35 license plates, 164 IDs, and a passport. In this investigation, the MCSO
8 sustained a finding of minor discipline resulting in a written reprimand to five officers.
9 (Ex. 2943a at MELC1404206a.)

10 739. With respect to at least some of that property, for example license plates
11 that were not returned to the Motor Vehicle Division, the PSB was able to connect the
12 property with MCSO deputies other than Deputy Armendariz. Of the 35 vehicle plates
13 found, an MCSO CAD database search revealed that 13 of the license plates had some
14 relation to Armendariz. The MCSO connected eight license plates to the law
15 enforcement activities of five other MCSO deputies. One deputy was associated with
16 two of the plates, another deputy, who testified at trial, was associated with three of the
17 plates, and three other HSU deputies were associated with one license plate each. The
18 MCSO was unable to connect any deputy to 14 of the license plates. (Doc. 803 at Tr. 51–
19 53.) There is no indication that a log scan or any similarly available search was
20 conducted to attribute these 14 plates to any particular MCSO deputy.

21 740. Contrary to the testimony of Chief Deputy Sheridan, no separate
22 investigation was launched as to the five deputies who were associated with the license
23 plates that were identified. Moreover, only five deputies in total received any discipline
24 at all for the various property that was investigated as a part of IA #2015-018.

25 741. Of the 164 IDs in IA #2015-018 that were not turned into Property and
26 Evidence, the MCSO found 53 in the bottom of a box that also contained reports. (Doc.
27 803 at Tr. 48–50.) These 53 IDs were turned in by one deputy, but had been retained by
28 another. Deputy Gandara apparently had some association with those IDs although it is
not apparent whether he found them, or whether he was the deputy who had kept them

1 without turning them in. (Doc. 803 at Tr. 48–50.) Another 111 IDs were apparently
2 those Detective Frei turned in to the property room for destruction together with his
3 memorandum to Captain Bailey seeking advice on what to do with them.

4 742. On November 20, 2014, Sergeant Fax informed this Court that the MCSO
5 intended to run these 164 IDs through their CAD and JWI databases and that MCSO
6 would potentially run them through log scans in the future. (Doc. 803 at Tr. 48.) While
7 Sergeant Fax continued to incorrectly assert that the 111 IDs were used for training
8 purposes, he frankly acknowledged that as to the 53 IDs, he did not yet know “what
9 reason they were kept, confiscated, and used for.” (Doc. 803 at Tr. 49.)

10 743. With respect to the 111 IDs, he asserted to the Court that the PSB intended
11 to determine in its investigation from “what investigations [Detective Frei] had those,
12 why he had those for so long, and why there were not put into the property room.” (Doc.
13 803 at Tr. 50.)

14 744. Nevertheless, as is discussed above, the IDs held by Detective Frei were not
15 investigated to determine who confiscated them and whether they were appropriately
16 seized. No discipline was imposed on Frei for inappropriately keeping such IDs without
17 turning them into property. The failure to even impose discipline on Frei for keeping
18 such IDs in his desk indicates that this investigation was not adequately pursued.

19 745. While Deputy Gandara did receive discipline in this investigation, it is not
20 apparent for which act or acts of violation he received the discipline. He may have
21 received the reprimand for the IDs, for his failure to turn the license plates over to Motor
22 Vehicles, or for leaving behind the other CDs and departmental reports that were found in
23 the offices and that were the subject of this investigation.

24 746. The failure to specify which acts of misconduct constituted the basis for an
25 officer’s discipline remains a problem with respect to every officer that received
26 discipline under IA #2015-018. And for reasons previously explained, the investigations
27 were inappropriate to the extent that the PSB lumped together multiple separate acts of
28 misconduct by an officer into one single sustained finding of discipline.

1 747. For example, as was the case in IA #2014-541 and IA #2014-542, some of
2 the officers who received discipline here also received discipline for separate acts of
3 misconduct in other investigations that arose out of the *Melendres* case. These various
4 separate acts of misconduct were lumped together and treated as a single violation. There
5 should be no discount in the amount of discipline imposed on officers who commit
6 separate acts of misconduct against members of the Plaintiff class.

7 **b. The MCSO Improperly Investigated IA #2014-021.**

8 748. In this administrative investigation, \$260 went missing and the MCSO
9 identified Deputy Cosme as the principal.

10 749. The money belonged to an apparent member of the Plaintiff class. (Ex.
11 2887.)

12 750. Although a criminal investigation was also undertaken in this matter, no
13 criminal charges were ever asserted. (*See* Ex. 2010; Ex. 2887.) The criminal
14 investigation in this case was undertaken by Sergeant Tennyson, who testified at the
15 hearing that he thought there was no crime he could identify prior to the start of the
16 investigation. Tennyson was sympathetic to Deputy Cosme and did not believe that
17 Cosme stole the \$260. (Doc. 1466 at Tr. 2935–42.) Tennyson testified that he
18 understood that \$260 went missing, yet he also testified that he could not identify a
19 possible crime at the start of the investigation. This inconsistency further undermines
20 Tennyson’s credibility.

21 751. During Sergeant Tennyson’s interview of Deputy Cosme, Tennyson asked
22 Cosme leading questions and made favorable comments during the interview designed to
23 exculpate Cosme and to provide Cosme with testimony with which he could seek to
24 exculpate himself.⁴¹ (*See, e.g.*, Ex. 2010 at MELC288264–65 (suggesting to Cosme that
25 the oversight with the money may have resulted from great demands on the HSU and
26 inadequate staffing); Ex. 2890 at MELC288285 (suggesting that Tennyson has known

27
28 ⁴¹ Sergeant Tennyson did the same when conducting interviews in IA #2015-295,
supra Part III.B.1.

1 Cosme for 15 years and that he could not imagine him giving money to somebody Cosme
2 did not trust.)

3 **c. The MCSO Misled the Court as to the Grievance Relief Granted**
4 **in IA #2015-022.**

5 752. On November 3, 2014, an MCSO sergeant handed Sergeant Tennyson a
6 steno pad, four identification cards issued by foreign governments, one empty CD case,
7 and one CD case that did contain a music CD. (Doc. 803 at Tr. 46.)

8 753. As a result, the MCSO sustained a finding of minor discipline in the form
9 of a written reprimand against both Deputy Gandara and Deputy Rangel on June 4, 2015.
10 (Ex. 2943a at MELC1404207a.) Neither deputy filed a grievance.

11 754. Deputy Hechavarria also received a written reprimand, but he filed a
12 grievance as to that reprimand.

13 755. Upon a second grievance review, Chief Deputy Sheridan reversed Deputy
14 Hechavarria's discipline.

15 756. In granting the grievance, Chief Deputy Sheridan directed that the
16 preliminary finding, which was originally sustained, be changed to reflect that it had
17 never been sustained. (Ex. 2062 at MELC680471.) While under MCSO policy, Sheridan
18 does have the relatively unfettered authority to rescind discipline, (*see, e.g.*, Ex. 2001 at
19 MELC416246), he does not have the authority to change history in doing so. This is
20 especially true when the Court had previously ordered that the Defendants
21 contemporaneously advise it of disciplinary decisions and of the results of those appeals.

22 757. As a result of Chief Deputy Sheridan's grievance resolution, the
23 information initially and repeatedly provided to this Court was that the charges against
24 Deputy Hechavarria were not even preliminarily sustained. (*See* Doc. 1420; Doc. 1613;
25 Ex. 2943; Ex. 2943a.) It was not until the Court ordered that Defendants provide it with a
26 detailed list of IA investigations and their outcomes that it became apparent that the
27 violation against Hechavarria in this investigation was both preliminarily and finally
28 sustained and subsequently reversed in a grievance proceeding by Chief Deputy

1 Sheridan. (Doc. 1627.)

2 758. The Court finds that in his order granting the grievance, Chief Deputy
3 Sheridan sought to conceal his grant of the grievance.

4 759. The Court further finds that to the extent that Chief Deputy Sheridan's
5 directive orders the MCSO to change the already established facts of the disciplinary
6 adjudication, it transcends the authority given to Sheriff Arpaio or his designee by MCSO
7 policy and is an abuse of that authority.

8 760. There is no requirement within MCSO policy for Sheriff Arpaio or his
9 designee to explain their grievance decisions. Here, in reversing the final discipline
10 imposed by Deputy Hechavarria's superiors, and in reversing an initial grievance brought
11 by Hechavarria, Chief Deputy Sheridan only observed: "I concur with your assessment
12 of the incident as outlined in your Grievance Response." (Ex. 2062 at MELC680471.)

13 761. The factual allegations, submitted by Deputy Hechavarria in his grievance,
14 and upon which Chief Deputy Sheridan ultimately relied in granting the appeal, may
15 nevertheless provide sufficient good faith basis for reversing the grievance.

16 762. In his grievance, Deputy Hechavarria alleges that he left the crime scene
17 and booked the defendant before the additional property was discovered and thus was
18 never told of the property. (Ex. 2062 at MELC680475.)

19 763. The only property identified to this Court as being the subject of the
20 grievance was "four ID cards that appeared to be foreign national cards, one CD case that
21 was empty, [and] one CD case that did contain a music CD." (Doc. 803 at Tr. 46.) If
22 Deputy Hechavarria's story is credited, such property could conceivably be property that
23 was uncovered on the scene after Hechavarria left to book the subject and process what
24 property he then had.

25 764. In his testimony on this point, however, Chief Deputy Sheridan does not
26 indicate that he undertook any factual inquiry to determine the accuracy of Deputy
27 Hechavarria's story, nor that he gave anyone from the PSB the opportunity to present any
28 evidence refuting Hechavarria's recitation of events before granting the grievance.

1
2 **5. Personal Property Attributable to the Plaintiff Class in the Possession**
3 **of the MCSO Continues to Come to Light.**

4 765. Many ID investigations remain open. Identification cards and license
5 plates located in MCSO facilities—but not placed in Property and Evidence—continue to
6 come to light.

7 **C. The MCSO Executed a Fundamentally Flawed Investigation Into the**
8 **Allegations Raised by Maryann McKessy Regarding Detective Mackiewicz.**

9 **1. Ms. McKessy Raised Multiple Allegations, Both Civil and Criminal in**
10 **Nature, with the MCSO Regarding Detective Mackiewicz.**

11 766. Disclosed materials related to the Seattle investigation, together with the
12 subsequent testimony, demonstrated that in August 2014, Ms. McKessy registered a
13 complaint with the MCSO about Detective Mackiewicz. She had been, for a period of
14 time, one of Mackiewicz’s girlfriends—although, apparently unbeknownst to her,
15 Mackiewicz had also been living with a separate girlfriend—a Ms. W.

16 767. When Ms. McKessy found out about Ms. W., and Detective Mackiewicz’s
17 other relationships, she informed Ms. W. of them. Ms. W. had access to Mackiewicz’s
18 payroll information and she apparently reviewed it with McKessy. McKessy took screen
19 shots of some of that information with her cell phone.

20 768. Ms. McKessy charged that Detective Mackiewicz was wrongfully profiting
21 from his work in Seattle including billing the County for overtime work not performed
22 and having Mr. Montgomery, a confidential informant to the MCSO, build a computer
23 for Mackiewicz’s personal use. McKessy also alleged that Mackiewicz had an
24 inappropriate intimate relationship with a victim of a domestic violence incident that he
25 had investigated. She also alleged that he was a steroid user. (Doc. 1456 at Tr. 2180–
26 81.)

27 **2. In Addition to Ignoring His Own Conflicts of Interest, Chief Deputy**
28 **Sheridan Designated the Investigation of Ms. McKessy’s Allegations as**
 Criminal and Assigned It to Sergeant Tennyson, Who Is Supervised by
 Captain Bailey—Both of Whom Are Friends of Detective Mackiewicz.

1 769. Ms. McKessy made these allegations to Chief Lopez. She also told Lopez
2 that Detective Mackiewicz was protected within the MCSO by his close relationship with
3 Chief Deputy Sheridan and Captain Bailey. (Ex. 2015 at MELC186197.)

4 770. Chief Lopez sent a memorandum to Chief Deputy Sheridan in which he
5 reported Ms. McKessy's charges along with her concern that Detective Mackiewicz was
6 protected by Sheridan and Captain Bailey. (Ex. 2015.)

7 771. In fact, Chief Deputy Sheridan and his wife were friends with Detective
8 Mackiewicz and his girlfriend Ms. W. The Sheridans saw them socially. (Doc 1417 at
9 Tr. 1598.)

10 772. Chief Deputy Sheridan's wife was also involved in business relations with
11 Detective Mackiewicz and with Ms. W. (Doc. 1417 at Tr. 1598, 1604.) The Sheridans
12 received commissions from the real estate purchases Ms. Sheridan coordinated with
13 Mackiewicz and Ms. W. (*Id.* at Tr. 1598; Doc. 1456 at Tr. 2195–96). Ms. Sheridan
14 stood to make \$100,000 in commission from home sales she made to Ms. W earlier in
15 2015. (Doc. 1417 at Tr. 1604.)

16 773. Chief Deputy Sheridan nevertheless testified that he supervised both the
17 criminal and the administrative investigations that resulted from Ms. McKessy's
18 allegations. (Doc. 1417 at Tr. 1597–98.) In fact, Sheridan must approve all initiations of
19 PSB criminal investigations. (Doc. 1043 at Tr. 975–77; Doc. 1389 at Tr. 1128–29; Doc.
20 1456 at Tr. 2215–16; *see also* Ex. 2881 at MELC1306925, MELC1306920.)

21 774. Within a day or so of Chief Lopez's memorandum to Chief Deputy
22 Sheridan, the matter was designated as a criminal investigation and assigned to Sergeant
23 Tennyson. (Doc. 1456 at Tr. 2183; Doc. 1466 at Tr. 2948.) Captain Bailey, as head of
24 the PSB, supervises Tennyson's criminal investigations.

25 775. Detective Mackiewicz had a personal relationship with each person
26 involved in 'investigating' him or supervising his investigators. Mackiewicz "was very
27 important" to Sheriff Arpaio and his wife for the work he had done in protecting them.
28 (Doc. 1455 at Tr. 2059.) Chief Deputy Bailey and Mackiewicz were friends. Captain

1 Bailey and Detective Mackiewicz were friends. (Doc. 1498 at Tr. 3877.) Sergeant
2 Tennyson and Detective Mackiewicz were also friends. (Doc. 1467 at Tr. 2978–79; Ex.
3 2842 at MELC1397034 (“[Y]ou and I have been friends and I think you’ve seen you
4 know you’ve seen me go through my hives and knows whatever else.”); Ex. 2842 at
5 MELC1397042; *see also* Ex. 2894 (Tennyson gives Mackiewicz advice as a friend
6 concerning the McKessy allegations.))

7 **3. Sergeant Tennyson and Detective Zebro Subverted the Investigation.**

8 **a. Sergeant Tennyson Failed to Investigate or Follow Up on Any of**
9 **Ms. McKessy’s Allegations.**

10 776. Sergeant Tennyson and Detective Zebro met with Ms. McKessy on August
11 22, 2014. (Ex. 2016 at MELC186198.)

12 777. Sergeant Tennyson and Detective Zebro approached the interview
13 assuming that they were dealing with a woman “scorned.” (Doc. 1456 at Tr. 2184; Doc.
14 1467 at Tr. 3099–100.)

15 778. Ms. McKessy made the same allegations to Sergeant Tennyson and
16 Detective Zebro that she had made to Chief Lopez. (*See* Ex. 2893; *see also* Doc. 1456 at
17 Tr. 2180–85.)

18 779. She brought her cell phone to her meeting with Sergeant Tennyson to show
19 him Detective Mackiewicz’s payroll records of which she had taken a screen shot, but her
20 cell phone died. She also told Tennyson that the information verifying the excessive
21 overtime came from Ms. W. (*See* Ex. 2893.)

22 780. Sergeant Tennyson did not attempt to retrieve the documents on Ms.
23 McKessy’s cell phone because he found the documents to be of no evidentiary value,
24 even though he had never seen them. (Doc. 1466 at Tr. 2953–54; *see also* Doc. 1456 at
25 Tr. 2184.)

26 781. Ms. McKessy explained to Sergeant Tennyson that Detective Mackiewicz
27 was protected by Chief Deputy Sheridan, (Ex. 2893 at MELC186212–15), and that he
28 had a good relationship with Captain Bailey; however, Tennyson did not investigate

1 either statement. (Doc. 1466 at Tr. 2954–55.)

2 782. Sergeant Tennyson testified that he did not do so because the allegation did
3 not amount to a criminal allegation worth evaluating. (Doc. 1466 at Tr. 2955.)

4 783. While a personal and/or professional relationship may not in and of itself be
5 criminal, it does in this instance give rise to a conflict. To the extent that Sergeant
6 Tennyson professes that it bore no relationship to Tennyson’s criminal investigation of
7 Mackiewicz, which was being supervised by Chief Deputy Sheridan, the Court finds that
8 his testimony lacks credibility. His lack of concern demonstrates his own conflict of
9 interest in the investigation of Detective Mackiewicz.

10 784. Ms. McKessy told Sergeant Tennyson that Detective Mackiewicz had
11 inappropriately accessed some of her text messages through Cathy Woods Enriquez; yet,
12 Tennyson never looked into it. (Doc. 1467 at Tr. 2972–75.)

13 785. Sergeant Tennyson agreed with Ms. McKessy that what she brought forth
14 did not constitute a sufficient basis on which to go forward with a criminal investigation.
15 In fact, McKessy stated that she did not wish to see Detective Mackiewicz criminally
16 charged. (Ex. 2893 at MELC186259, MELC186261, MELC186264.)

17 **b. Captain Bailey, Sergeant Tennyson, and Detective Zebro**
18 **Obstructed the Investigation by Divulging Ms. McKessy’s**
19 **Allegations to Detective Mackiewicz.**

20 786. Ms. McKessy requested that Sergeant Tennyson and Detective Zebro not
21 inform Detective Mackiewicz about her complaint. Tennyson told her that “We . . . will
22 not divulge anything that’s been said today.” (Doc. 1456 at Tr. 2184–85; Ex. 2893 at
23 MELC186211, MELC186262–63.) They did say however that they were required to
24 document their investigation and interview with her, and even though it would not result
25 in criminal charges, it would be looked at on the administrative side of the PSB. She was
26 told that if an administrative investigation were pursued, Mackiewicz might eventually be
27 informed of her complaint. (Ex. 2893 at MELC186261–64.)

28 787. Despite this representation to Ms. McKessy, Sergeant Tennyson called
Detective Mackiewicz that same day. (Doc. 1456 at Tr. 2185–87.) Mackiewicz was on a

1 plane returning from Seattle. When he arrived in Phoenix, Mackiewicz had Posseman
2 Zullo's wife take him directly to the MCSO's offices to meet with Tennyson, Captain
3 Bailey, and Detective Zebro. (Ex. 2842 at MELC1397036.)

4 788. In that meeting, they discussed Ms. McKessy's allegations, (Doc. 1467 at
5 Tr. 2975), and the possibility that she was the snitch Sheriff Arpaio wished to identify
6 who had disclosed the substance of the Seattle investigation to *The New Times*. (*Id.* at Tr.
7 2987–89; Ex. 2842 at MELC1397035.)

8 789. They in fact apparently initiated some sort of surveillance on Ms. McKessy
9 to determine if she was in contact with Steve Lemons, the columnist for *The New Times*,
10 who wrote the story about the Seattle investigation. In their phone conversation the next
11 day, in which Sergeant Tennyson continued to discuss with Detective Mackiewicz the
12 details of McKessy's allegations against him, Mackiewicz comments to Tennyson that
13 “[i]f Maryann [McKessy] goes to Lemons we’ll know it’s her,” to which Tennyson
14 responds, “exactly.” (Ex. 2894.)

15 790. Detective Mackiewicz did not know that Ms. McKessy had asserted a
16 complaint against him with the PSB until he heard it in the meeting with Captain Bailey,
17 Sergeant Tennyson, and Detective Zebro. (Ex. 2842 at MELC1397037 (“I didn’t know
18 that Maryann pressed the issue with the Office until . . . you guys called me down and
19 said hey, we just met with Maryann. And I’m like what the fuck? Why did you guys
20 meet with Maryann?”).)

21 791. In that meeting, Captain Bailey advised Detective Mackiewicz not to
22 attempt to contact Ms. W. to learn about her cooperation with Ms. McKessy.
23 Mackiewicz ignored that advice. He reminded Sergeant Tennyson of that in a recorded
24 conversation that occurred a year later: “So against your advice ‘cause remember in that
25 meeting I was like I’m gonna confront [Ms. W.] and I wanna find out what fucking [Ms.
26 W.] told her. . . . And Bailey was like Brian, don’t do that. It’s not worth it. Let’s not
27 stir it up. Well, the first thing I did when I got in the car is I fucking got in [Ms. W.’s] ass
28 and I said I’m about ready to fucking get in trouble here. I wanna know what the fuck is

1 goin' on. And she's like Brian, she called me like two weeks ago telling me that she
2 wanted me to go to Internal affairs together so we could stick it up your ass and I said
3 absolutely not. I'm done. I'm over this. I don't wanna do anything with this. Nothing's
4 going on." (Ex. 2842 at MELC1397037.)

5 792. The day after Sergeant Tennyson's initial interview with Ms. McKessy, he
6 recorded a telephone exchange with Detective Mackiewicz concerning the matter.

7 793. In that interview, recorded on August 24, Detective Mackiewicz states to
8 Sergeant Tennyson that Ms. W. had spoken with Chief Deputy Sheridan about the
9 matter—apparently the day before Tennyson had his initial interview with Ms. McKessy.
10 (Ex. 2894).⁴²

11 794. In the recorded conversation, Detective Mackiewicz further asserted that
12 Ms. W. had confessed to him that Ms. McKessy had come to her about six-weeks earlier
13 and told her of Mackiewicz's concurrent relationship with McKessy and possibly others.
14 According to Mackiewicz, when McKessy told Ms. W. this, Ms. W. concluded that even
15 though she and Mackiewicz had been living together, she had no right to believe that they
16 had an exclusive relationship. Thus she was not angry and did not throw Mackiewicz's
17 stuff out on the lawn as McKessy had hoped or expected.

18 795. Rather, according to Detective Mackiewicz, Ms. W. confessed to giving
19 Ms. McKessy some of his financial information after she learned of Mackiewicz's
20 multiple relationships. Ms. W. further told Mackiewicz that she had cut off
21 communication with McKessy because she felt that McKessy was trying to drive a wedge
22 in their relationship. (Ex. 2016 at MELC186199.)

23 796. In that interview, Sergeant Tennyson told Detective Mackiewicz that the
24 matter had only to do with Mackiewicz's personal life and that the MCSO did not want
25 anything to do with it and he should just let the matter go. (Ex. 2894.)

26 797. Despite Sergeant Tennyson and Detective Zebro's representation to Ms.
27

28 ⁴² The Court does not consider this allegation for the truth of the matter asserted,
but merely for the fact that it was made to Sergeant Tennyson by Detective Mackiewicz.

1 McKessy that they would document their investigation and it would be referred to the
2 administrative side of the PSB, they shelved their investigation without writing a report.

3 **4. Lieutenant Seagraves Was Removed from the Case After Finding the**
4 **Investigation into Ms. McKessy's Allegations Deficient.**

5 798. Six months later, in February 2015, Lieutenant Seagraves became the
6 supervisor for Sergeant Tennyson and Detective Zebro.

7 799. Lieutenant Seagraves required that a report of the investigation into the
8 allegations against Detective Mackiewicz be prepared. (Doc. 1467 at Tr. 2981.)

9 800. Instead of writing the report himself, Sergeant Tennyson assigned the task
10 to Jennifer Johnson, a criminal analyst working within the PSB but not an investigator.
11 (Doc. 1467 at Tr. 2979–80; Ex. 2016.)

12 801. Ms. Johnson's report summarizes the August 22, 2014 interview of Ms.
13 McKessy by Sergeant Tennyson and Detective Zebro, and Tennyson's recorded
14 interview with Detective Mackiewicz the following day. (Ex. 2016.) The report states
15 that Ms. W. refused to cooperate with the investigation and that any information provided
16 by McKessy was not first-hand knowledge.

17 802. Lieutenant Seagraves refused to sign-off on the investigation because she
18 did not think that the allegations were appropriately investigated. (Doc. 1456 at Tr.
19 2187–88, 2193.)

20 803. Her criticisms included that:

21 a. After the initial investigation, Sergeant Tennyson and Detective
22 Zebro did not attempt to collect the documents brought in by Ms. McKessy
23 on her dead cell phone to support her charges against Detective
24 Mackiewicz. (Doc. 1466 at Tr. 2953–54; Doc. 1456 at Tr. 2184.)

25 b. Their disclosure of Ms. McKessy's complaint to Detective
26 Mackiewicz was not appropriate even assuming, as Sergeant Tennyson had
27 represented to her, that at some earlier point Ms. W. herself told
28 Mackiewicz that McKessy had approached her. (Doc. 1456 at Tr. 2184–85,

1 2187.)

2 c. The report's statement that Ms. W. would not cooperate was an
3 inappropriate statement since Ms. W. herself had never been contacted to
4 confirm as much. (Doc. 1456 at Tr. 2190–91.)

5 d. The overtime allegation had not been investigated. (Doc. 1456 at
6 Tr. 2191–92.) Captain Bailey told Lieutenant Seagraves that the overtime
7 allegation had been looked into because Chief Deputy Sheridan had told
8 him so. Seagraves confirmed this with Sheridan in a meeting, but there was
9 still no documentation in the file that the overtime allegation had in fact
10 been investigated. (*Id.* at Tr. 2191–93.) In fact, it had not been
11 investigated.

12 e. It was inappropriate for Sergeant Tennyson to request Jennifer
13 Johnson to draft the report. (Doc. 1456 at Tr. 2190, 2192–93.)

14 804. Lieutenant Seagraves took over the direction of the investigation because it
15 had not been adequately conducted. (Doc. 1456 at Tr. 2193, 2218–19.)

16 805. In that renewed investigation, Sergeant Tennyson tried to interview Sheriff
17 Arpaio to understand Detective Mackiewicz's work parameters because Mackiewicz was
18 working exclusively with Arpaio at that point. All such requests were denied. (Doc.
19 1466 at Tr. 2957–59, 2982–85; Ex. 2843.)

20 806. Lieutenant Seagraves opened additional investigations regarding Detective
21 Mackiewicz that had been disclosed by Ms. McKessy's initial allegations and that had
22 apparently been previously reported to the PSB.

23 807. Chief Deputy Sheridan signed off on initiating such investigations. For
24 example, on March 30, 2015, he approved a new criminal investigation into Detective
25 Mackiewicz's alleged steroid use. (Doc. 1498 at Tr. 3893–94; Ex. 2799.)

26 808. Sometime thereafter, Captain Bailey removed the investigation from
27 Lieutenant Seagraves because she was "hypersensitive." (Doc. 1456 at Tr. 2195.)

28

1 **5. Chief Deputy Sheridan Ensured that Detective Mackiewicz Received**
2 **No Discipline.**

3 809. Detective Mackiewicz was placed on administrative leave on August 4,
4 2015 without receiving notice as to why. (Ex. 2842 at MELC1397033.) He called
5 Sergeant Tennyson and left a message. On August 5, 2015, Tennyson returned
6 Mackiewicz's phone call and at Lieutenant Seagraves direction he recorded part of that
7 telephone call. According to Tennyson, he was unable to record the entire telephone call
8 because the batteries on his device ran out.

9 810. In that call, in addition to making the statements described above, Detective
10 Mackiewicz referenced the meeting in Captain Bailey's office that took place on the
11 same night that Ms. McKessy had her interview with Sergeant Tennyson. Mackiewicz
12 further referenced an additional communication he had allegedly received from "Jerry"
13 informing him that the investigation of him that had been closed needed be reopened, but
14 he should not worry about it. Mackiewicz stated:

15 I'm gonna speak frank with you 'cause I can trust you. But you know
16 when, when I got back and I sat in your when I sat in Bailey's office and
17 you, you, Bailey and Zebro were there, I was under the impression because
18 of not, not because of how it was handled but, um, it was what it was. You,
19 you were, obviously, the Sheriff wanted to find out who the snitch was.
20 We didn't know if it was McKessie [sic] or not blah, blah, blah. Makes all
21 those allegations. And then you investigate it. Basically, hey you know
22 what, there's nothin' here. You go ahead and close it out and the next thing
23 you know, I'm getting a call from Jerry saying hey, you know what don't
24 worry about it but we gotta open it back up again. And we're giving it to
25 Sparman because you know we just wanna make sure that everything looks
26 transparent and obviously they don't like Dave. And they're gonna say that
27 you know Dave just (unintel 6:06) it up you know what I mean. And they
28 didn't want that to happen.

(Ex. 2842 at MELC1397035.)⁴³

811. During the October hearing, the Court asked Chief Deputy Sheridan
whether he ever considered that he should assign out the oversight of the investigations of
Detective Mackiewicz since Mackiewicz was a scheduled witness in the contempt

⁴³ The Court does not consider Mackiewicz's statements about his conversations
with Jerry Sheridan for the truth of the matter asserted. It considers them merely for the
fact that the allegations were made to Sergeant Tennyson.

1 proceeding against Sheridan. (Doc. 1417 at Tr. 1597–98.)

2 812. Chief Deputy Sheridan answered that when he heard, a week prior to his
3 testimony, that Detective Mackiewicz had made some comments that would result in an
4 administrative investigation into Sheridan, he then assigned the responsibility to
5 supervise the investigation into Mackiewicz over to Chief Trombi; yet, no written record
6 exists of such an assignment. (Doc. 1417 at Tr. 1597–98.)

7 813. The investigation was subsequently turned over by the MCSO to the
8 Arizona Attorney General and the State Department of Public Safety.

9 **6. The Court Finds that Conflicts, Untruthfulness, Manipulation, and**
10 **Malfeasance Pervade the MCSO’s Investigation of Ms. McKessy’s**
11 **Allegations.**

12 814. In his April 24, 2015 testimony, Chief Deputy Sheridan testified that he did
13 not believe there were any matters referred to the PSB for investigation related to the
14 Seattle investigation. On the resumption of the hearing in the fall, after the MCSO
15 disclosed the investigation into Detective Mackiewicz’s overtime records, he
16 acknowledged that his earlier testimony had been incorrect. Nevertheless, based on the
17 evidence, the Court finds that he had intentionally concealed in his April 24 testimony the
18 existence of such investigation.

19 815. To have not “believed” that there were such investigations on April 24,
20 2015 would have required Chief Deputy Sheridan to forget that: (1) he had authorized a
21 criminal investigation arising from the Seattle investigation of (2) a social friend from
22 whom (3) he and his wife had financially benefited. Sheridan would also have to forget
23 that (4) he knew that Ms. McKessy alleged that Sheridan’s relationship with Detective
24 Mackiewicz would result in Mackiewicz’s protection, and (5) after the resumption of the
25 investigation by Lieutenant Seagraves, Sheridan himself had authorized the investigation
26 of additional criminal charges against Mackiewicz, and (6) Sheridan had authorized such
27 an investigation just three-weeks before he offered his April testimony.

28 816. The Court thus finds that Chief Deputy Sheridan’s testimony in this respect
is untruthful.

1 817. Further when Chief Deputy Sheridan testified that he had, a week earlier,
2 turned the management of the investigations into Detective Mackiewicz over to Chief
3 Trombi, his testimony was not credible.

4 818. Immediately prior to this testimony, Chief Deputy Sheridan testified that he
5 continued to oversee all of the criminal and administrative investigations into Detective
6 Mackiewicz. Only when he was confronted with questions regarding his conflicts in
7 maintaining oversight of the Mackiewicz investigation did he state that he had actually
8 turned it over to Chief Trombi. Furthermore, he acknowledged that there was no record
9 that he had, in fact, reassigned oversight of the investigations to Trombi.

10 819. Even if it were true that Chief Deputy Sheridan had turned over oversight
11 of the investigation to Chief Trombi a week earlier, Sheridan should have removed
12 himself from all oversight of any investigation into Detective Mackiewicz at its very
13 initial stages. Wholly aside from Ms. McKessy's allegations that Mackiewicz's
14 relationships with Sheridan and Captain Bailey would protect him, Mackiewicz did
15 indeed have such relationships. Moreover, Sheridan knew that Mackiewicz was going to
16 be testifying in his noticed evidentiary hearing. Sheridan also presumably knew for at
17 least a year that Mackiewicz had asserted to Tennyson that Sheridan had discussed the
18 McKessy allegations, even before the McKessy interview itself, with Ms. W.

19 820. Chief Deputy Sheridan maintained control of the investigations into
20 Detective Mackiewicz precisely because he wanted to insure that nothing came of them,
21 both because of his personal and professional relationship with Mackiewicz and because
22 he wished to keep secret the Seattle operation in which Mackiewicz had been working.

23 821. Thus, Chief Deputy Sheridan designated the investigation as a criminal one
24 and assigned the investigation to Sergeant Tennyson—Detective Mackiewicz's friend.
25 Tennyson was under the supervision of Captain Bailey—also Mackiewicz's friend.

26 822. Sergeant Tennyson, Captain Bailey, and Detective Zebro subverted any
27 criminal investigation, and demonstrated that they had no intent of performing any
28 legitimate investigation by immediately informing Detective Mackiewicz of Ms.

1 McKessy's allegations.

2 823. Chief Deputy Sheridan also made an intentional misstatement of fact to
3 Lieutenant Seagraves when he told her that an investigation into the overtime allegations
4 had already been completed when it had not been.

5 824. Captain Bailey further took steps to subvert any legitimate criminal
6 investigation by removing Lieutenant Seagraves from the investigation

7 825. At the least, in their management and conduct of the investigations into
8 Detective Mackiewicz, Chief Deputy Sheridan, Captain Bailey, Sergeant Tennyson,
9 Detective Zebro, and Mackiewicz himself violated multiple MCSO policies.⁴⁴ (Ex. 2001
10 at MELC416255–58.)

11 **D. Structural Inadequacies Pervade the MCSO's Internal Investigations.**

12 **1. The MCSO Did Not Provide Adequate Training On How to Conduct**
13 **an Internal Investigation.**

14 826. There is no requirement or practice that the MCSO train PSB officers on
15 conducting internal affairs investigations. (Doc. 1467 at Tr. 3189–90.)

16 827. Captain Bailey had no training in internal affairs at the time that he took
17 charge of the PSB. (Doc. 1467 at Tr. 3148.) And he never did receive training on IA
18 investigations even while he was in charge of the PSB. (*Id.* at Tr. 3148–49.) He
19 acknowledges that it would have been helpful.

20 828. Chief Deputy Sheridan has never been trained in IA investigations. (Doc.
21 1417 at Tr. 1539.)

22 829. Chief Olson does not appear to have an appropriate understanding of the
23 application of the MCSO disciplinary matrix. (Doc. 1495 at Tr. 3511.)

24 830. Lieutenant Seagraves received some external training in how to conduct
25 internal investigations in 2004. Yet she received no such training on her return to the

26 _____
27 ⁴⁴ There are also allegations of additional acts that would constitute misconduct if
28 they are correct. They include Detective Mackiewicz's allegations that Chief Deputy
Sheridan was in contact with both him and his girlfriend throughout the time when he
maintained supervision over the investigation.

1 PSB. (Doc. 1455 at Tr. 2083–84.)

2 831. Captain Bailey never had time to discuss things like interview technique
3 with his sergeants. (Doc. 1467 at Tr. 3148.)

4 832. The failure of such training can be discerned by the way that PSB officers
5 conduct some of their investigations.

6 833. The MCSO does not contest that PSB officers sometimes used leading
7 questions in their interviews and further acknowledges that, generally speaking, the use
8 of leading questions is not a good interview technique for obtaining unrehearsed
9 responses from an interview subject. (Doc. 1498 at Tr. 3822–23; Doc. 1556 at Tr. 3445–
10 47; *see also* Doc. 1498 at Tr. 3822, 3825–27; Ex. 2063 at MELC160147; Ex. 2772 at 17
11 of 22.) PSB officers also make assumptions that exonerate MCSO officers. (Doc. 1556
12 at Tr. 3439–40; Ex. 2063 at MECL160124.)

13 834. The training of division personnel in the conduct of PSB investigations was
14 not in place at the time that Captain Bailey left the PSB. (Doc. 1467 at Tr. 3182–83.) As
15 discussed above, many internal affairs cases are not investigated by the PSB. They are,
16 in fact, investigated in the districts or divisions of the MCSO. (*See* Doc. 1505 at Tr.
17 4029–30; Doc. 1467 at Tr. 3148.) Division sergeants, for example, conduct
18 investigations of complaints within the division, but sergeants are not required to go
19 through any training. (Doc. 1417 at Tr. 1539.) Further, as the MCSO admits, the idea of
20 having division lieutenants accomplish IA investigations has not yet been fully or
21 successfully implemented. (*Id.* at Tr. 1538–39.)

22 835. There is no guidance on interview techniques in the operations manual.
23 Captain Bailey desired to implement core training classes so that all personnel had the
24 opportunity to learn appropriate investigative skills and techniques; yet, this was never
25 accomplished. (Doc. 1467 at Tr. 3189–90.)

26 836. Before he left, Captain Bailey was preparing a one-day instruction course
27 for the PSB, district, and division investigators to try and establish some consistency
28 throughout the office and to foster similar expectations between the districts, divisions,

1 and the PSB on how cases should be handled. (Doc. 1505 at Tr. 3983.)

2 837. His training was not implemented when he left, and he does not know if it
3 has been implemented since. (Doc. 1505 at Tr. 3983–84.)

4 **2. The MCSO Did Not Adequately Train Its Leaders on How to**
5 **Supervise Subordinates.**

6 838. The MCSO has no policy in place that requires supervisory personnel such
7 as sergeants, lieutenants, captains, and chiefs to be adequately trained to supervise their
8 staff.

9 839. There were systemic failures in the quality of supervision and discipline in
10 the Deputy Armendariz chain of command. (Doc. 1467 at Tr. 3192–93.) These failures
11 were not limited to the HSU, but extended to other divisions within the MCSO. (*Id.* at
12 3193–94.) While some of these failures result directly from the orders of Sheriff Arpaio,
13 and the structures of his administration, others are attributable to a lack of training and a
14 lack of adequate staffing.

15 840. Lieutenant Sousa, who was the head of the HSU during much of the
16 relevant period, reported to two chiefs—Chief Sands and Chief Trombi—but no captain.
17 This violates the goals of efficient and direct reporting and accountability, and by all
18 accounts was an unusual administrative structure, which was inadequate while it existed.

19 841. Further, Lieutenant Sousa repeatedly asserted in his predetermination
20 submittals and his grievances that the political pressure brought upon him by Sheriff
21 Arpaio, Chief Sands, and Chief Trombi caused his own supervisory failures. (Ex. 2898 at
22 MELC-IA013693 (“This situation is an institutional failure that is identifying and
23 punishing lower level supervisors for the failures of leadership at the uppermost levels of
24 command in this Office to include Sheriff Arpaio and his need for media attention at all
25 costs.”); *see also* Ex. 2898 at MELC-IA013693 (“The root cause of all the issues in
26 Human Smuggling was the lack of sergeants and my Chiefs failures to assign me more
27 supervisors to adequately address the demands that were directly placed on me from the
28 Sheriff’s drive to enforce the illegal immigration issue that was giving him so much

1 media attention.”); Ex. 2559B at MELC-IA013646 (“The working environment in the
2 Human Smuggling Division for me and my two sergeants was dysfunctional at times, and
3 lacked proper supervision, but not because of the lack of good leaders or supervisors; it
4 was because we had three squads that were extremely busy, but only two had sergeants
5 and one lieutenant and command staff that was only concerned with press releases.”); Ex.
6 2559B at MELC-IA013648 (“They had a duty to provide more supervisors to manage the
7 Division and assist with all the legal issues and constant requests for information, but I
8 was always told the same thing, the Human Smuggling grant would not cover additional
9 sergeants.”); Ex. 2559B at MELCIA0132648 (“The root cause of all the issues in Human
10 Smuggling was the Sheriff’s drive to enforce the illegal immigration issues that was
11 giving him so much media attention. In addition, the lack of sergeants and the Chief’s
12 failures to assign more supervisors to adequately address all the demands on this unit by
13 the Sheriff.”).

14 842. Chief Olson acknowledged that it was “the responsibility of the office to
15 make sure that we have some sort of training in place” (Doc. 1495 at Tr. 3500.)

16 843. Yet, Chief Trombi, Chief Olson’s equivalent on the enforcement side of the
17 MCSO, and the commander in charge of the entire patrol division, has never received any
18 training on how to supervise deputies. (Doc. 1017 at Tr. 142.) Nor has he ever received
19 any training as to the instances in which it might be appropriate to refer someone in his
20 command to internal affairs for an investigation. (Doc. 1017 at 142, 144; *see also* Ex.
21 2218 at MELC-IA011256.)

22 844. Chief Deputy Sheridan acknowledged to Special Investigator Vogel a
23 breakdown in the agency’s training of supervisors. (See Ex. 2218 at MELC-IA011245.)
24 Ultimately, many key supervisory personnel have no training in supervising, which, as is
25 evidenced by the supervisory failures of Chief Trombi, resulted in damage to class
26 members. (*See, e.g.*, Ex. 2218 at MELC-IA011228 (“He [Chief Lopez] said he didn’t
27 receive any training upon promotion to Sergeant. . . . When he was promoted to
28 lieutenant, he did not receive any additional training.”); Ex. 2218 at MELC-IA011248

1 (Lieutenant Jakowinicz received no supervisory training when he became a sergeant or
2 lieutenant except for a POST class in which he enrolled on his own initiative.); Ex. 2218
3 at MELC-IA011225–26 (No training given to Sergeant Scott); Doc. 1017 at Tr. 212
4 (Sergeant Palmer likewise received no such supervisory training.)

5 845. The MCSO did introduce evidence as to the potential functionality of the
6 Early Intervention System (EIS) and other ameliorative measures which the MCSO is
7 starting to implement as a result of the initial injunctive order entered in this case. (See,
8 e.g., Doc. 1505 at Tr. 4007–08.)

9 846. Certainly, while the EIS will hopefully be an aid to effective supervision, it
10 is not designed to cure a lack of training in supervision.

11 847. Nor is there the evidence to suggest that the supervisory training measures
12 required by the Court's previous injunctive order have yet been implemented.

13 848. Further, it is unclear whether the measures previously recommended by this
14 Court, once implemented, will be adequate to address the supervisory deficiencies that
15 have been identified as a result of the late-disclosed evidence and the resulting
16 investigations.

17 849. Finally, the apparently uncontested testimony at the hearing was that, in
18 light of the increased workload on sergeants necessary to engage in appropriate
19 supervision and the use of the EIS, the ratio of sergeants to deputies authorized in the
20 Court's previous injunctive order was too permissive. Although circumstances vary,
21 Captain Skinner generally testified that the ratio incorporated in many consent decrees
22 which he had researched suggest one to six or one to eight—upwards of one to ten. This
23 is well below the ratio of one to twelve that this Court had previously authorized. (Doc.
24 1544 at Tr. 4274-75.)

25 **3. The MCSO's Complaint-Intake Process Is Inadequate**

26 850. Although the MCSO has made some positive policy changes since the
27 *Melendres* order was entered, there remain significant deficiencies in the complaint
28 intake processes.

1 851. At trial, several witnesses testified that they had filed complaints against the
2 MCSO or left such complaints on recordings, but never received any response.
3 Nevertheless, the Court initially concluded that the evidence was not sufficient for the
4 Court to find that there was a system-wide problem within the MCSO that pertained to
5 complaint intake and processing.

6 852. At this point, however, the MCSO has admitted that a significant number of
7 its deputies seized IDs and other personal property as “trophy” and has further admitted
8 that it destroyed much of that property. The admission that the MCSO has destroyed
9 personal property gives rise to the reasonable inference that at least some of the owners
10 of such property would have registered complaints with the MCSO. The absence of
11 complaints relating to the loss of such property in MCSO records gives rise to the
12 reasonable inference that such complaints were not properly transmitted, processed, or
13 investigated.

14 853. This finding is bolstered by the MCSO’s admission that it had no system in
15 place to track these kinds of complaints. (Doc. 1495 at Tr. 3652.) The lack of such a
16 system was offered as a reason why a finding of supervisory failures on the part of
17 Lieutenant Sousa was vacated when it was grieved. (*See* IA #2014-542 (Chief Trombi’s
18 failure to take action with respect to the Mesnard complaint).)

19 854. Further, in his timeline of incidents that related to Deputy Armendariz,
20 Sergeant Fax noted a large number of citizen complaints filed against Armendariz from
21 May 2011 to August 2013 for which no internal affairs number was issued. (Ex. 2760 at
22 MELC011633–46; *see also* Doc. 1467 at Tr. 3198.)

23 855. MCSO policy, last revised on September 5, 2014, requires that an IA
24 number be issued for any external or internal complaint that is received. (Ex. 2881 at
25 MELC1306918.) It is not apparent whether previous MCSO policy required this, or
26 whether the MCSO has only attempted to follow this policy since the last revision.

27 856. While, if it is followed it will likely provide some improvements, as
28 Captain Bailey and Chief Deputy Sheridan both acknowledge, the policy has no “fail-

1 safe” that ensures that the officer receiving a complaint will enter it. (Doc. 1556 at Tr.
2 3268; Doc. 1389 at Tr. 1159–60.)

3 857. Nor does the MCSO use “testers” to audit the complaint intake system by
4 “putting in a call and posing . . . as a civilian [making a] complaint to see what happens”
5 in order to determine whether officers routinely enter complaints into the system and
6 assign them IA numbers. (Doc. 1467 at Tr. 3156; Doc. 1505 at Tr. 4028–29.)

7 858. Despite its policy, therefore, the MCSO has yet to implement a means of
8 detecting officers who do not adequately report complaints of misconduct in which they
9 are implicated. (Doc. 1467 at Tr. 3161–62.)

10 859. Nor does the PSB have any mechanism to ensure that a complaint is not
11 miscategorized. (Doc. 1467 at Tr. 3177.) The policy itself does not define certain key
12 terms—for example there is no definition of “racial or bias-based profiling.” According
13 to the testimony of Captain Bailey, when a civilian calls in a complaint, the MCSO relies
14 upon the officer receiving the complaint to categorize the complaint and determine
15 whether the complaint could involve the imposition of major discipline against an MCSO
16 employee. (*Id.* at Tr. 3151–52.)

17 860. If the complaint could involve major discipline, the matter is normally
18 transferred to the PSB for investigation. (Doc. 1467 at Tr. 3152.)

19 861. On the other hand, if the complaint likely involves the imposition of only
20 minor discipline, the matter remains within the district or division receiving the
21 complaint for a division investigation of the misconduct. (Doc. 1505 at Tr. 3986.)

22 862. The division commander or lieutenant charged with investigating internal
23 matters can confer with the PSB captain to determine whether a matter should be referred
24 to the PSB. (Doc. 1505 at Tr. 3987; *see also* Doc. 1467 at Tr. 3151–52.)

25 863. In making this determination, presumably, the MCSO officers rely on the
26 disciplinary matrix. Such a prediction, of course, depends upon the appropriate
27 application of that matrix.⁴⁵

28 ⁴⁵ Chief Deputy Sheridan testified that the disciplinary matrix is very strict,

1 864. Chief Olson’s testimony calls into question the ability of MCSO division
2 personnel to appropriately apply the disciplinary matrix. As the head of the custody side
3 of the MCSO, Olson testified that he had been the disciplinary decision maker in
4 “thousands or hundreds” of internal affairs investigations. (Doc. 1495 at Tr. 3573.) Yet
5 he testified that alleged misconduct can be made to fit in whatever offense category he
6 deems appropriate. Olson stated that “[y]ou can make [an offense] fit however—
7 however you want to. It’s my decision where they fit.” (*Id.* at Tr. 3511.) Such arbitrary
8 application of the disciplinary matrix would frustrate the ability of MCSO division
9 personnel, and even the PSB, to accurately determine whether a matter likely involves
10 minor or major discipline.

11 865. Moreover, appropriate application of the disciplinary matrix is further
12 compromised by the MCSO’s *Melendres*-only policy.

13 866. MCSO policy also does not indicate what should be done when a deputy
14 who is the subject of a complaint is also the deputy who receives the complaint. (Doc.
15 1467 at Tr. 3178.)

16 867. The hearing testimony thus demonstrates flaws that remain in MCSO
17 complaint intake and categorization policies and practices. That evidence further
18 demonstrates a lack of training, consistency, and accountability.

19 **4. The MCSO’s IA Policies Fail to Address Numerous Issues that Arose**
20 **in this Case.**

21 868. There is no MCSO policy regarding what to do in the event that Sheriff
22 Arpaio or his designee have a conflict, an appearance of bias, or an interest in an ongoing
23 IA investigation. There is no policy regarding what to do in the event that a PSB staff
24 member has a conflict of interest or the appearance of impropriety in an ongoing IA
25 investigation. (Doc. 1467 at Tr. 3159–61.) There is finally no MCSO policy concerning
26 conflicts in internal investigations conducted by the districts or divisions of the MCSO.
27 (Doc. 1505 at Tr. 4029.) Sheriff Arpaio has taken advantage of this lack of policy in

28 meaning “there’s not much leeway in the system.” (Doc. 1465 at Tr. 1419.) There is to
be no favoritism or deviation.

1 subverting the appropriate discipline that should be imposed in this case.

2 869. Captain Bailey testified that despite the absence of any formal policy, when
3 a conflict situation presents itself, Bailey discusses it with Chief Deputy Sheridan and
4 they determine whether another division or another agency should do the investigation.
5 (Doc. 1505 at Tr. 4000–01.) The facts here demonstrate that if they ever did so, they did
6 not do so when they should have.

7 870. MCSO policies and practices do not provide the MCSO investigating
8 officer with the chance to address matters raised for the first-time by the investigative
9 principal in the predetermination or name-hearing clearing. That is a flaw in the MCSO
10 IA policy that has been exploited in this case and which needs correction.

11 871. Pursuant to MCSO policy, no officer needs to provide an explanation in
12 writing for any of his decisions relating to discipline or grievances.

13 872. Sheriff Arpaio, or his designee, may rescind disciplinary action imposed at
14 the district, division, or the PSB level at his or her own discretion. He or she need not
15 offer any reason for doing so. (Doc. 1556 at Tr. 3233–34; Ex. 2001 at MELC416246.)

16 873. There is no MCSO policy prohibiting the promotion of an officer who is
17 under investigation for misconduct.

18 874. Chief Deputy Sheridan, in granting a grievance, has directed that the
19 historical adjudicatory facts of an underlying IA investigation be changed. This led to
20 misleading statements being filed with the Court. To the extent that the MCSO claims
21 such grievance authority pursuant to policy, that policy is flawed.

22 875. All of these policies and practices were used by the Defendants to avoid
23 appropriate accountability for their treatment of members of the Plaintiff class.

24 **IV.**

25 **POTENTIAL REMEDIES**

26 876. The Court makes the following additional findings relating to appropriate
27 remedies:

28 **A. Count One**

1 877. The purpose of civil contempt is to coerce compliance with a court order or
2 to compensate another party for the harm caused by the contemnor. *Local 28 of Sheet*
3 *Metal Workers' Int'l Ass'n v. EEOC*, 478 U.S. 421, 443 (1986).

4 878. Plaintiffs do not assert that Defendants remain in violation of the Court's
5 preliminary injunction through the continued engagement in unlawful detention practices
6 against members of the Plaintiff class. There is, therefore, no need to use the Court's
7 contempt power to coerce Defendants to comply with the preliminary injunction.

8 879. As is noted above, however, there are at least hundreds of members of the
9 Plaintiff class who have been injured by the Contemnors' past failures to take reasonable
10 steps to implement this Court's preliminary injunction.

11 880. Although the Parties had previously indicated that they would provide the
12 Court with a proposed method for compensating members of the Plaintiff class who were
13 willing to surrender their individual claims months ago, they have not done so.

14 881. The Court welcomes the Parties' input on proposed remedies designed to
15 compensate members of the Plaintiff class who have suffered harm as a result of the
16 Defendants' violation of the Court's preliminary injunction. While the Court will
17 consider class-wide remedies as to which the Parties have substantial agreement, it
18 reminds the Parties of the concerns it has previously expressed in this regard to the extent
19 that such matters may better be raised in a separate procedure or procedures.

20 **B. Count Two**

21 882. When the Court ruled for the Plaintiffs after the trial in this case, the parties
22 resolved between themselves many of the issues pertaining to the appropriate measure of
23 injunctive relief to be entered by this Court. (*See, e.g.*, Doc. 592.) The Court held a
24 hearing to make decisions about the issues that the Parties could not resolve.

25 883. Among the matters in dispute were provisions, proposed by Plaintiffs,
26 "revising the internal affairs division of the MCSO and the investigation and resolution of
27 complaints." (*See, e.g.*, Doc. 603 at Tr. 7.) At the hearing, the Court questioned
28 Plaintiffs on the sufficiency of the evidence presented at trial to support such relief.

1 (Doc. 603 at Tr. 89–91.) After such questioning, the Court denied much of the relief
2 sought by the Plaintiffs. (*Compare* Doc. 592-1 with Doc. 606.)

3 884. Unknown at the time to the Plaintiffs and to this Court, the MCSO had
4 deprived the Plaintiffs of considerable evidence of misconduct towards members of the
5 Plaintiff class.

6 885. Had the Defendants disclosed such evidence in a timely manner, as was
7 their duty, the Plaintiffs would have been able to evaluate that evidence and pursue
8 additional discovery concerning it. Plaintiffs would have been able to demonstrate that,
9 among other things, the MCSO routinely confiscated the personal property of members
10 of the Plaintiff class without justification. They would have also been able to
11 demonstrate the MCSO’s inadequate, bad faith, and discriminatory internal investigation
12 policies and practices as well as additional harms. The Court would have been able to
13 timely evaluate that evidence in fashioning the appropriate injunctive relief for the
14 Plaintiffs.

15 886. As it pertains to the adequacy of the MCSO’s investigations into its own
16 misconduct, the Court need not speculate about what that evidence might have been. The
17 MCSO convened IA investigations resulting from the late-revealed evidence after it was
18 disclosed. When the MCSO did so, the Defendants and several non-party contemnors
19 were fully advised and aware that the adequacy and good faith of their investigations
20 would be subject to evaluation by the Parties and the Court. (Doc. 700 at Tr. 93–94; Doc.
21 1027 at Tr. 636–37; Doc. 1043 at Tr. 863, 972, 978–79.) That evidence was the focus of
22 a lion’s share of the evidentiary hearings, and is explained in detail in these findings.

23 887. These after-the-fact investigations serve to adequately demonstrate the
24 flawed disciplinary course that the MCSO would have pursued had it timely investigated
25 the acts of misconduct revealed by the late-disclosed evidence. Yet, even more tellingly,
26 they also demonstrate the Defendants’ ongoing, unfair, and inequitable treatment of
27 members of the Plaintiff class.

28

1 888. Members of the Plaintiff class constitute the overwhelming majority of the
2 victims of the multiple acts of misconduct that were the subjects of virtually all the
3 flawed investigations. For example, those who suffered due to Sheriff Arpaio’s failure to
4 implement the preliminary injunction were all members of the Plaintiff class. The great
5 majority of the identifiable confiscated personal property found in Deputy Armendariz’s
6 garage, attached to Detective Frei’s memorandum, and elsewhere within the HSU and the
7 MCSO, for which adequate discipline was never imposed, came from members of the
8 Plaintiff class. The supervisory failures within the HSU disproportionately affected
9 members of the Plaintiff class. The *Melendres*-only policy, by definition, applies only to
10 investigations arising from this lawsuit which was brought to vindicate the rights of
11 members of the Plaintiff class. When new evidence came forth of 1459 seized IDs, Chief
12 Deputy Sheridan and Captain Bailey attempted to conceal them because a large number
13 of them belonged to members of the Plaintiff class.

14 889. An effective and honest internal affairs policy is a necessary element of the
15 MCSO’s self-regulation. Thus, MCSO disciplinary policy calls for the administration of
16 “fair and impartial” investigations and the imposition of “fair and equitable”
17 discipline. The Plaintiffs brought this suit for the vindication of their constitutional
18 rights. Although the Defendants are no longer detaining members of the Plaintiff class
19 without authorization, they are manipulating the operation of their disciplinary processes
20 to minimize or altogether avoid imposing fair and equitable internal discipline for
21 misconduct committed against members of the Plaintiff class. As is demonstrated above,
22 the internal affairs and PSB operations of the MCSO are under the control of Sheriff
23 Arpaio and his designees including Chief Deputy Sheridan. They have directed this
24 manipulation to avoid accountability for themselves, their protégés, and those who have
25 implemented their flawed policies at the cost of fairness to members of the Plaintiff
26 class. Further, they continue to attempt to conceal additional past mistreatment of the
27 Plaintiff class as it comes to light in order to avoid responsibility for it.⁴⁶

28 ⁴⁶ To the extent that the Defendants committed additional acts of dishonesty and

1 890. Had the Court withheld evidence and the information to which it led been
2 presented at trial, the Court would have entered injunctive relief much broader in scope.

3 891. When evidence is discovered after trial, Federal Rules of Civil Procedure
4 59 and/or 60 authorize various, *but not exclusive*, remedies. The Court has recourse to
5 inherent and other authority when it is necessary to provide an adequate remedy. *See*,
6 *e.g.*, *Chambers v. NASCO, Inc.*, 501 U.S. 32, 44 (1991).

7 892. However, because Plaintiffs had already sought an Order to Show Cause on
8 what became Counts One and Three, the Parties agreed, as a matter of expediency, to
9 pursue any relief for the withholding of discovery in the same evidentiary hearings that
10 would be necessitated by the Order to Show Cause. (*See, e.g.*, Doc. 858 at 14–20.)

11 893. The Court subsequently included the withholding of discovery as a separate
12 count in the Order to Show Cause but indicated in that order that its ability to provide a
13 remedy for Plaintiffs might also spring from its inherent powers. (Doc. 880 at 18.) It had
14 so advised the Parties prior to the issuance of the Order to Show Cause and throughout
15 this hearing. (*See, e.g.*, Doc. 858 at Tr. 18–19; Doc. 1575 at Tr. 14.) The Parties have
16 previously acknowledged that the Court has the inherent authority both to make Plaintiffs
17 whole for Defendants’ failure to provide requested discovery and to enforce its own
18 orders. (Doc. 1027 at Tr. 626–27; Doc. 1097 at Tr. 55.)

19 894. The Court wishes to explore with the Parties several elements that may
20 make up any part of the appropriate relief to which the Plaintiff class may be entitled for
21 the deficiencies identified above.

22 895. First, the Court must determine whether Plaintiffs are entitled to the entry
23 of relief designed to correct the Defendants’ misconduct revealed by the disclosure of the
24 additional discovery after trial. Such relief would include the revision or creation of
25 policies and practices that would prevent future misconduct or administrative deficits
26 discussed in these findings. These topics include but are not limited to the areas of
27 personnel supervision, supervisory structure, staffing and training, IA investigations,

28

obstruction during the hearings, they were advised that such acts would be relevant to
assessing relief in this case.

1 MCSO disciplinary policies, MCSO policies related to complaint intake, tracking, and
2 accountability, and any necessary training and staffing measures designed to implement
3 these corrective measures.

4 896. Second, the Court must determine whether the Plaintiffs are entitled to
5 revisions to or the creation of new IA policies and practices that would prevent IA abuses
6 of the type discussed in this Order as well as any necessary training and staffing measures
7 designed to implement such corrective measures. Such needed policies or specifications
8 include, but are not limited to, policies regarding: conflicts, bias and appearance of
9 impropriety, hearing procedures that are fair to the principal and the MCSO, the
10 requirement of some explanation when overturning initial or final sustained discipline,
11 and specification of the extent of grievance authority.

12 897. With respect to necessary remedial changes in MCSO policy, the Court
13 invites the Parties comments about proceeding in the following way:

14 898. The Court has found various flaws in MCSO policies—*e.g.*, the failure of
15 the disciplinary policy to contain any provisions concerning conflicts of interest or the
16 inability of the PSB to address evidence first presented by the principal at a name-
17 clearing hearing. As a result, MCSO grievance policy will likely have to be revised.

18 899. Yet, it has also found flaws the MCSO has exploited in this action that,
19 while requiring correction, may not require the re-writing of MCSO policy. The Court
20 may find expert testimony to be helpful in these areas.

21 900. To the extent that the Parties wish to provide expert testimony on such
22 questions, the Court is not persuaded that such testimony should prevent it from issuing
23 its order that certain policies in general be revised (with an effective date for their
24 revision) so as to avoid further delay in the implementation of other necessary remedial
25 relief. The Court proposes that during the period prior to the deadline set by the Court for
26 the promulgation of new policies, the Plaintiffs' expert could prepare and present to the
27 Defendants what (s)he believes to be the indicated policy changes in light of the
28 deficiencies discussed in this Order. To the extent Defendants could not agree to such

1 proposed changes, they can provide contrary expert testimony. As to the issues on which
2 the Parties could not agree, the Court could then hold a hearing in which it could review
3 the specific contested provisions and make its rulings regarding which policy changes
4 must be implemented in light of the facts it has found above. That would prevent the
5 balance of the Court's remedial orders from being postponed pending the implementation
6 of necessary policy changes.

7 901. Although again the Court does not wish to foreclose the Parties from
8 suggesting additional or different remedies based on the factual findings on or prior to the
9 May 31, 2016 hearing, the Court would like to further explore possible remedies that
10 would include the following elements:

11 902. Relief that would ensure that the Plaintiff class has appropriate access to
12 information that has been sought pursuant to applicable law.

13 903. The invalidation of past investigations, disciplinary decisions, and/or
14 grievance decisions found to be insufficient, invalid, or void in these findings, and the
15 initiation of new investigations and/or disciplinary processes for some or all of those
16 decisions. The vesting in an independent authority to conduct such investigations and to
17 impose such discipline where appropriate.

18 904. The initiation of additional IA investigations into new or previously
19 uninvestigated violations, or alleged violations that are identified in these findings of fact
20 that relate to: harm or potential harm to members of the Plaintiff class, the integrity of
21 MCSO IA investigations, the untruthfulness of MCSO command staff, the witnesses in
22 this lawsuit or evidentiary hearings, and the MCSO's compliance with its own policies.
23 The vesting in an independent authority to conduct such investigations and to impose
24 such discipline where appropriate.

25 905. With respect to IA investigations that arise hereafter which relate to the
26 interests of the Plaintiff class, the vesting of final approval of MCSO internal
27 investigations and disciplinary decisions with the Monitor or other appropriate authority,
28 and ultimately, where appropriate, with the Court.

1 906. The suspension of any authority of Sheriff Arpaio, or his designee(s), to
2 invalidate in any way the discipline imposed by the independent authority designated by
3 the Court to make disciplinary decisions with respect to any of the investigations and/or
4 disciplinary decisions listed above.

5 907. If such authority is imposed, the Court invites the Parties to suggest what
6 investigations should be reopened, what new investigations should be initiated, and how
7 those investigations should proceed. It further invites the Parties to address the condition
8 or conditions that would result in the return of all investigative and disciplinary authority
9 to Sheriff Arpaio and/or his designee.

10 908. The Court must determine whether an award of attorney's fees is merited.

11 **C. Count Three**

12 909. In this count of contempt, Sheriff Arpaio and Chief Deputy Sheridan
13 disobeyed an order of the Court. As it pertains to the relief to which the Parties are
14 entitled, this conduct is only one of a number of acts described above in which Arpaio
15 and Sheridan have demonstrated their disregard for the interests of the Plaintiff class, and
16 their disrespect for the orders of this Court that are designed to protect those interests.

17 910. Although the Court again invites the Parties to comment on what relief they
18 deem appropriate for this act of contempt, the Court does not view this act as giving rise
19 to any relief separate from that which would be appropriate for the other misconduct set
20 forth herein.

21 911. The Court has set a hearing for May 31, 2016, in which the Parties will be
22 able to discuss with the Court the above matters pertaining to relief.

23 912. Prior to the hearing, the Parties are invited, if they wish to do so, to file a
24 brief addressing the matters set forth above, their views of the appropriate relief, or any
25 other matters which they desire to bring to the attention of the Court. The briefs shall be
26 filed **no later than noon on May 27, 2016**. The Court will then hold the hearing with
27 the Parties having exchanged such memoranda if they wish to file any.

28 ///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

IT IS HEREBY ORDERED THAT:

1. Sheriff Arpaio, Chief Deputy Sheridan, Chief Sands, and Lieutenant Sousa are in civil contempt on Count One of the Order to Show Cause.

2. Sheriff Arpaio is in civil contempt on Count Two of the Order to Show Cause.

3. Sheriff Arpaio and Chief Deputy Sheridan are in civil contempt on Count Three of the Order to Show Cause.

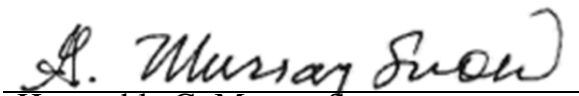
4. Counsel for Plaintiff class and counsel for Defendants may each file a 30-page memorandum, if they wish to do so, no later than **noon on May 27, 2016**.

5. Counsel for Chief Sands and counsel for the County may each file a 10-page memorandum, if they wish to do so, no later than **noon on May 27, 2016**.

6. The Department of Justice may file a 20-page memorandum, if they wish to do so, no later than **noon on May 27, 2016**.

7. The Court will further discuss the appropriate relief to be entered in a hearing set for **May 31, 2016 at 9:00 a.m.** in Courtroom 602, Sandra Day O'Connor U.S. Federal Courthouse, 401 W. Washington St., Phoenix, Arizona 85003-2151. It will shortly thereafter enter any applicable orders and determine if it will refer any matters for criminal contempt.

Dated this 13th day of May, 2016.



Honorable G. Murray Snow
United States District Judge