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15 IN THE UNITED STATES DISTRICT COURT
16 FOR THE DISTRICT OF ARIZONA

17	Maria M. Gonzalez, et al.,)	No. CV-06-1268-PHX-ROS(Lead)
)	No. CV-06-1362-PCT-JAT(Cons.)
18	Plaintiffs,)	No. CV-06-1575-PHX-EHC(Cons.)
)	
19	vs.)	GONZALEZ PLAINTIFFS'
)	MOTION FOR
20	State of Arizona, et al,)	RECONSIDERATION OF
)	PORTION OF ORDER
21	Defendants.)	EXCLUDING TRIAL WITNESSES
22)	

23 (Assigned to the
Honorable Roslyn O. Silver)

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1 **I.**
2 **INTRODUCTION**

3 NOW COME Gonzalez Plaintiffs and respectfully request that the Court
4 reconsider a portion of its ruling excluding certain of Plaintiffs' witnesses.

5 As explained below, Gonzalez Plaintiffs seek reconsideration of this ruling
6 because Plaintiffs informed Defendants of the existence of certain excluded witnesses
7 before the close of discovery January 18, 2008 and because Plaintiffs were unable to
8 discover the identity of certain other witnesses before the close of discovery when
9 Defendants refused to disclose documents requested in discovery.
10

11 **II.**
12 **GONZALEZ PLAINTIFFS INFORMED DEFENDANTS OF USCIS**
13 **WITNESSES BEFORE THE CLOSE OF DISCOVERY**

14 Gonzalez request the Court reconsider its order and permit the USCIS witnesses
15 to testify because Defendants were made aware of the USCIS witnesses before the close
16 of discovery in January 2008. These witnesses are: Michael Quinn and Gerri Ratliff.
17 The Court today denied Defendants' Motion in Limine which sought to exclude the
18 testimony of USCIS witness Michael Quinn as untimely. *See* Doc. 928 (denying Doc.
19 823).

20 Defendants were aware in December 2007 of Gonzalez Plaintiffs' attempts to
21 depose USCIS and the failure of USCIS to appear in response to multiple subpoenas.
22 *See* Ex. C to Doc. 865 (correspondence with Defendants and subpoenas related to
23 USCIS deposition).
24

25 On December 21, 2007, Gonzalez Plaintiffs filed their Notice of Third Party
26

1 Deposition of USCIS in this case and served the notice on Defendants. *See* Dkt. 510. In
2 late December, Defendants communicated with Gonzalez Plaintiffs following their
3 receipt of the notice and requested information regarding how to contact the attorney for
4 USCIS and the availability of telephone conferencing for the deposition. When USCIS
5 requested a postponement of the deposition, Gonzalez Plaintiffs informed Defendants of
6 the rescheduled deposition and again made plans for Defendants to attend
7 telephonically.

9 When USCIS failed to comply with the subpoena requiring its appearance at the
10 rescheduled January deposition, Gonzalez Plaintiffs again communicated with
11 Defendants regarding their inability to secure USCIS for deposition.

12 Finally, USCIS agreed to appear at a deposition in April, 2008. Gonzalez
13 Plaintiffs again timely notified Defendants of the deposition and the availability of
14 teleconferencing. Defendants declined by letter to attend the deposition. Upon learning
15 of the letter, Gonzalez Plaintiffs repeated their offer of teleconferencing for the
16 deposition.

18 Because they were informed at every step of Gonzalez Plaintiffs' attempts
19 to secure the USCIS deposition, and they were offered the opportunity to participate in
20 the deposition either in person or by telephone, Defendants are not prejudiced by the
21 inclusion of the USCIS witnesses on Gonzalez Plaintiffs' witness list.

23 Other than claiming that the names of the USCIS witnesses were added to the
24 witness list on the June 4, 2006 deadline for supplemental disclosures, Defendants
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1 present no argument for prejudice and cannot argue that they were previously unaware
2 of these witnesses.

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4 **III.**

5 **GONZALEZ PLAINTIFFS DID NOT LEARN OF THE EXISTENCE OF**
6 **CERTAIN WITNESSES UNTIL AFTER THE CLOSE OF DISCOVERY**
7 **BECAUSE DEFENDANTS REFUSED TO PRODUCE CRITICAL DISCOVERY**
8 **DOCUMENTS**

9 Gonzalez Plaintiffs seek to present the testimony of several individuals whom
10 they discovered after receiving uncounted ballot envelopes and rejected voter
11 registration forms following this Court's repeated orders that Defendants disclose the
12 documents.

13 These witnesses include: Martha Higuera and Herta Weber, both of whom are
14 naturalized citizens who were rejected for voter registration after using their certificate
15 of naturalization number as proof of citizenship on their voter registration forms; and
16 Barbara Corke, who lacks any documents proving her U.S. citizenship.

17 These witnesses also include: Steve and Donna Fulton, Karen Lewsader and
18 Brenda Rogers whose ballots were not counted after their ID was rejected at the polls on
19 Election Day.

20 Gonzalez Plaintiffs discovered the identify of these individuals only after
21 receiving the uncounted ballot envelopes and rejected voter registration forms following
22 this Court's repeated orders that Defendants disclose the documents.¹

23
24 ¹ On three separate occasions, the Court ordered County Defendants and other
25 county officials to turn over documents sought by Gonzalez Plaintiffs in discovery. *See*
26 8/30/07 Hr'g Tr. At 25:20 – 26:24 (ordering County Defendants to produce unredacted
rejected voter registration forms); Doc. 554 (ordering County Defendants to produce

1 Following production of these documents, the Court adjusted the Scheduling
2 Order to permit Plaintiffs to analyze the discovery and produce expert reports. Plaintiffs
3 also relied on these documents to contact voters affected by Proposition 200.

4 The production of uncounted provisional and conditional provisional ballot
5 envelopes by the County Defendants was delayed through two rounds of briefing until
6 the Court ordered the County Treasurers to produce these documents on February 21,
7 2008. *See* Doc. 661. Gonzalez Plaintiffs received the last batches of uncounted
8 conditional provisional ballot envelopes in mid-March 2008. *See, e.g.* Doc. 683 - 695
9 (Notices of Service by Counties regarding production of uncounted conditional
10 provisional ballots).

11 It was not possible for Gonzalez Plaintiffs to learn the identity of voters whose
12 ID was rejected until Gonzalez Plaintiffs received these uncounted ballots *almost two*
13 *months after the fact discovery deadline* on January 18, 2008. Similarly, Gonzalez
14 Plaintiffs did not learn the identity of the witnesses who were rejected for voter
15 registration until after receiving the rejected voter registration forms produced by
16 County Defendants in late 2007 and after those witnesses responded to letters sent by
17 Gonzalez Plaintiffs in early 2008.

18 The exclusion of these witnesses, whom Gonzalez Plaintiffs disclosed after the
19 close of fact discovery only because of late disclosures by Defendants, would reward
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24 copies of uncounted conditional provisional ballot envelopes); Doc. 661 (denying
25 motions to quash or objections filed by Graham, Pima, Pinal, Yavapai, Greenlee,
26 Maricopa, La Paz, and Santa Cruz County Treasurers [Docs. 614, 619, 620, 631, 634,
637, 644, 646] and ordering them to produce copies of uncounted conditional
provisional ballot envelopes).

1 Defendants for their delay of over one year in the production of rejected voter
2 registration forms and for their delay, through two unnecessary rounds of briefing, in
3 the production of uncounted ballot envelopes. Gonzalez Plaintiffs urge the Court not to
4 allow Defendants to ‘run out the clock’ on Plaintiffs’ ability to identify witnesses by
5 first refusing to disclose information sought in discovery and then claiming later they
6 are prejudiced by witnesses identified after their delayed disclosures.
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9 **IV.**
10 **GONZALEZ PLAINTIFFS SEEK TO PRESENT THE TESTIMONY OF**
11 **REPRESENTATIVES OF ORGANIZATIONAL PLAINTIFFS WHO WERE**
12 **KNOWN TO DEFENDANTS**

13 Gonzalez Plaintiffs seek to present the testimony of two official representatives
14 of plaintiff organizations: Luz Sarmina Gutierrez of Valle Del Sol and Sal Martinez of
15 Chicanos Por La Causa. Valle Del Sol and Chicanos Por La Causa have been plaintiffs
16 in this case since it was filed on May 9, 2006. Defendants have never sought to take the
17 deposition of any representative of Valle Del Sol or Chicanos Por La Causa.

18 On August 8th, 2007 Gonzalez Plaintiffs disclosed Anita F. Luera as the
19 designated representative of organizational plaintiff Valle del Sol. Since that time Ms.
20 Luera has left her post at the organization. Because Ms. Luera can no longer testify for
21 Valle Del Sol, Gonzalez Plaintiffs replaced her on their witness list with Valle del Sol's
22 Chief Executive Officer Luz Sarmina and notified Defendants of this replacement in
23 Gonzalez Plaintiffs’ First Supplement to Initial Disclosures Pursuant to Fed. R. Civ. P.
24 26(a)(1).
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