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11 UNITED STATES DISTRICT COURT
12 DISTRICT OF ARIZONA

13 Maria M. Gonzalez, et al.,
14
15 Plaintiffs; and
16 Inter Tribal Council of Arizona, et al.,
17
18 Plaintiffs;
19 v.
20 State of Arizona, et al.,
21
22 Defendants.

No. CV-06-1268-PHX-ROS(Lead)
No. CV-06-1362-PCT-JAT(Cons.)

**PLAINTIFFS’ ADVISORY
REGARDING PROPOSED FINAL
JUDGMENT**

(ASSIGNED TO THE HON. ROSLYN O.
SILVER)

23
24 Plaintiffs Jesus Gonzalez, *et al.* (the “Gonzalez Plaintiffs”) and Plaintiffs Inter
25 Tribal Council of Arizona, *et al.* (the “ITCA Plaintiffs”) (collectively, “Plaintiffs”) file
26 the attached proposed final judgment on behalf of Plaintiffs (*see* Ex. 1) and advise the
27 Court as follows:
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1 Plaintiffs' proposed final judgment incorporates the terms of this Court's remedial
2 order of August 15, 2012. *See* Dkt. 1093. The Court's August 15, 2012 remedial order
3 responded to the mandate from the Ninth Circuit Court of Appeals and resolved different
4 remedial proposals offered by Plaintiffs and Defendants State of Arizona, *et al.*
5 ("Defendants"). Plaintiffs' proposed final judgment is also in line with the United States
6 Supreme Court's decision in *Arizona v. ITCA*, 133 S. Ct. 2247 (2013), and allows for
7 modification of the judgment in light of Arizona's renewed efforts to secure a change in
8 the Federal Form's Arizona state-specific instructions.
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11 A. Plaintiffs' Proposed Final Judgment Incorporates the Court's Previous
12 Language Requiring Defendants to Make the Federal Form Available on the Same Basis
13 as the Arizona State Registration Form
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15 In its August 15, 2012 remedial order, this Court ordered that: "Defendants shall
16 ensure widespread distribution of the Federal Form through all reasonable channels,
17 including channels the Secretary of State has identified as appropriate for distribution of
18 the State Form. Thus, no later than August 31, 2012 Defendants shall make the Federal
19 Form available where they make the State Form available, including websites." Dkt.
20 1093 at ¶ E.
21

22 Plaintiffs' proposed final judgment incorporates similar language. *See* Ex. 1 at ¶
23 3(b) ("Defendants shall make the Federal Form (and the applicable instructions) available
24 through all reasonable channels, including all channels Defendants use to make the State
25 registration form available (including websites).").
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1 B. Plaintiffs’ Proposed Final Judgment Incorporates the Court’s Previous
2 Language Requiring Defendants to Register Individuals who Submit a Properly-
3 Completed Federal Form
4

5 In its August 15, 2012 remedial order, this Court ordered that: “For each voter
6 registration applicant . . . who used a Federal Form that was rejected solely due to A.R.S.
7 § 16-166(F), Defendants shall determine whether the applicant was subsequently
8 registered to vote. If not, Defendants shall create a new record for a successful
9 registration of that individual and promptly notify that new registrant of his or her
10 eligibility to vote for candidates for state and federal office.” Dkt. 1093 at ¶ C.
11

12 The language offered in Plaintiffs’ proposed final judgment mirrors the relief
13 granted by this Court in its August 15, 2012 order. *See* Ex. 1 at ¶ 3(c) (“For each voter
14 registration applicant who submits a Federal Form that meets the requirements of the
15 Federal Form, but does not contain the information required by A.R.S. § 16-166(F),
16 Defendants shall create a record for a successful registration of that individual and
17 promptly notify that registrant of his or her eligibility to vote.”).
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20 C. Final Judgment Requiring Defendants to Register Individuals who Submit a
21 Properly Completed Federal Form is Necessary to Ensure Compliance with the NVRA
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23 Following the Court’s August 15, 2012 order, under which Defendants were
24 required to register individuals who had submitted properly-completed Federal Forms,
25 Maricopa County refused to register over 1,000 Federal Form registrants and sent the
26 registrants letters saying their Federal Forms would not be accepted until the registrants
27 provided additional documentation not required by the Federal Form.
28

1 In reliance on the Court’s August 15, 2012 order, many individuals used the
2 Federal Form to register to vote in Maricopa County in the weeks preceding the
3 November 2012 Presidential Election, including students who participated in a voter
4 registration drive at Arizona State University. Upon receiving properly-completed
5 Federal Forms, Maricopa County sent variously-worded letters informing the registrants
6 that they would not be added to the voter rolls unless they provided either an Arizona
7 drivers license number or other identification documents not required by the Federal
8 Form. *See, e.g.,* Ex. 2 (informing Federal Form registrants with properly-completed
9 forms that “the form does not contain the minimum information required by law . . .
10 Please contact the County Recorder’s office to provide proof of identification information
11 to establish that you are eligible to register to vote . . . Please provide your Driver’s
12 License number or Non-operating number in the space provided below”).

13 The Federal Form does not require registrants to provide an Arizona Driver’s
14 License number, or any other additional identification documents. The Federal Form
15 asks registrants to provide an identification number in one box on the form and
16 registrants using the Federal Form may provide their state driver’s license number or the
17 last four digits of their social security number. If the registrant has neither a state-issued
18 ID number nor a social security number, the registrant may write “none” in the box
19 provided on the form. *See* Ex. 3 (Federal Form and instructions).

20 Instead of accepting the information written by applicants in the Federal Form box
21 for “identification,” Maricopa County imposed its own documentation requirements, such
22 as requiring an Arizona Driver’s License pursuant to Prop 200, and refused to register
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1 Federal Form applicants. *See* Ex. 2 at 3. Although Maricopa County could have relied
2 upon the information provided on the Federal Form to verify information about the
3 registrant, it did not. For example, when a Federal Form contained the last four digits of
4 the registrant's social security number, Maricopa County did not verify the social security
5 number against the national Social Security database but instead sent the registrant a
6 letter insisting the registrant provide more and different information. *Id.*

7
8 Only in the week preceding the November 2012 General Election, and after
9 several discussions with Plaintiffs and other concerned individuals, did Maricopa County
10 attempt to re-train its poll workers, add the Federal Form registrants to the voter rolls and
11 notify the Federal Form registrants that they would be allowed to vote if they appeared at
12 the polls on Election Day. *See* Ex. 4.

13
14 By imposing a state-created requirement in November 2012 that all Federal Form
15 registrants provide an Arizona driver's license or additional documentation not required
16 by the Federal Form, Defendants did not adhere to this Court's remedial order, denied
17 voter registration to applicants who submitted properly-completed Federal Forms and
18 implemented a procedure inconsistent with the Ninth Circuit's en banc decision in the
19 case, which stated: "[r]ejecting the Federal Form because the applicant failed to include
20 information that is not required by that form is contrary to the form's intended use and
21 purpose." *See Gonzalez v. Arizona*, 677 F.3d 383, 399 (9th Cir. 2012); *see also* Ex. 2.

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24 D. The Parties Worked Diligently but Were Unable to Reach a Compromise on
25 the Proposed Final Judgment

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27 On August 9, 2013, this Court granted the Gonzalez Plaintiffs' unopposed joint
28

1 motion for an extension of time until August 23, 2013 to file a joint proposed final
2 judgment. The parties worked diligently to reach agreement on the wording of a joint
3 proposed final judgment that would be acceptable to both Plaintiffs and Defendants. The
4 parties have convened repeatedly over the past several weeks, communicating by email
5 on July 23-26, July 30, July 31, August 1, August 2, August 5-7, August 16, August 19,
6 August 21, and August 22. In addition, the parties discussed the contents of the joint
7 proposed final judgment in conference calls held on August 1, August 2, and August 21.
8 Unfortunately, the parties have not been able to reach an agreement, necessitating the
9 filing of separate proposed final judgments.

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11 E. Defendants' Effort to Re-Litigate or Exclude this Court's Relief is Not
12 Appropriate

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14 This Court issued its 2012 orders in order to implement the Ninth Circuit's
15 mandate, Dkt. 1066, and over the objections of Defendants. *See* Dkt. 1088 (Defendants'
16 motion for reconsideration); Dkt. 1093 at 2 (Court order denying Defendants' motion for
17 reconsideration and granting additional injunctive relief). The U.S. Supreme Court has
18 since affirmed the decision of the Ninth Circuit and declared that "42 U.S.C. § 1973gg-4
19 precludes Arizona from requiring a Federal Form applicant to submit information beyond
20 that required by the form itself." *Arizona v. ITCA*, 133 S. Ct. at 2260. Defendants may
21 not re-litigate here the propriety of the Court's previously-ordered relief, nor is it
22 appropriate to exclude the Court's remedy from final judgment.

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24 For the reasons set out above, Plaintiffs respectfully request that this Court adopt
25 the proposed final judgment attached as Ex. 1 hereto.

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Dated: August 23, 2013

Respectfully submitted,

s/ Nina Perales
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CERTIFICATE OF SERVICE

I hereby certify that on August 23, 2013, electronically transmitted the foregoing document to the Clerk's Office using the CM/ECF System for filing, and transmittal of a Notice of Electronic Filing to ECF registrants.

/s/ Nina Perales
Nina Perales