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10 **IN THE UNITED STATES DISTRICT COURT**
11 **FOR THE DISTRICT OF ARIZONA**

12 Mussalina Muhaymin as Personal
13 Representative of the Estate of
14 Muhammad Abdul Muhaymin Jr.,

15 Plaintiff,

16 vs.

17 City of Phoenix, an Arizona Municipal
18 Corporation; Antonio Tarango; Officer
19 Oswald Grenier; Officer Kevin
20 McGowan; Officer Jason Hobe; Officer
21 Ronaldo Canilao; Officer David Head;
22 Officer Susan Heimbinger; Officer James
23 Clark; Officer Dennis Lerous; Officer
24 Ryan Nielson; Officer Steven Wong; and
25 Doe Supervisors 1-5,

26 Defendants.

Case No.: 17-cv-04565-PHX-DLR

**DEFENDANTS' RESPONSE TO
PUTATIVE INTERVENOR MUSLIM
ADVOCATES' MOTION TO
INTERVENE**

Assigned to the
Honorable Douglas L. Rayes

Defendants City of Phoenix, Antonio Tarango, Officer Oswald Grenier, Officer Kevin McGowan, Officer Jason Hobel, Officer Ronaldo Canilao, Officer David Head, Officer Susan Heimbigner, Officer James Clark, Officer Dennis Leroux, Officer Ryan Nielsen, and Sgt. Steven Wong (collectively, the "Phoenix Defendants") submit their response to Putative Intervenor Muslim Advocates' Motion to Intervene (Doc. 356 and 357)

1 (the “Motion”). For reasons set forth herein, Phoenix Defendants respectfully submit that the
2 Motion should be denied.

3 **I. INTRODUCTION**

4 Muslim Advocates is seeking permissive intervention under Rule 24(b), Federal Rules
5 of Civil Procedure, for purposes of unsealing the briefs, exhibits and other documents that
6 were submitted by the parties, including Plaintiff, in connection with Defendants’ Motion for
7 Summary Judgment.

8 Although Plaintiff never once alleged any racial or religious discrimination in her
9 Complaint or proposed Amended Complaint, it appears that Muslim Advocates believes that
10 this case is somehow tied to Mr. Muhaymin’s religion. However, Mr. Muhaymin’s religion
11 or race has never had anything to do with any issue in this case. In fact, Plaintiff only pled a
12 single discrimination claim - pursuant to the Americans with Disability Act (the “ADA”) - on
13 grounds that Mr. Muhaymin was purportedly denied access to the Maryvale Community
14 Center because of his dog (which Plaintiff argued was a “service animal”).

15 **II. LEGAL ARGUMENT**

16 **A. Muslim Advocates Lacks Standing**

17 The purpose for which intervention is sought can be gleaned from the putative
18 intervenor’s interest in the case. If this case concerned an allegation of discrimination against
19 Muslims by the City of Phoenix or its police force, Muslim Advocates may have a legitimate
20 interest to lift the seal on certain court records. However, as noted above, that is not at all what
21 this case is about. It never has been (*See* Complaint, Doc. 16) and, in the interest of fairness,
22 the Court should ensure that it remains the case.

23 Muslim Advocates has not demonstrated standing to obtain court records placed under
24 seal. The cases cited by Muslim Advocates all involve news media or press organizations.
25 *See e.g., Globe Newspaper Co. v. Superior Court*, 457 U.S. 596 (1982); *San Jose Mercury*
26 *News, Inc. v. U.S. Dist. Court – N. Dist. (San Jose)*, 187 F. 3d 1096 (9th Cir. 1999); *Richmond*

1 *Newspapers, Inc. v. Virginia*, 448 U.S. 555 (1980); *Kamakana v. City and County of*
2 *Honolulu*, 447 F. 3d 1172 (9th Cir. 2006). Muslim Advocates’ role is not sufficient to confer
3 standing in a case where racial and/or religious discrimination is not at issue.

4 **B. The Motion is Untimely**

5 In determining whether a motion for intervention is timely, a court must consider three
6 factors: (1) the stage of the proceeding at which an applicant seeks to intervene; (2) the
7 prejudice to other parties; and (3) the reason for and length of delay. *San Jose Mercury News*,
8 187 F.3d at 1100-01. In measuring delay, the inquiry looks to when the intervenor first
9 became aware that its interests would no longer be protected by the parties. *Id.*, citing *Public*
10 *Citizen v. Liggett Group, Inc.*, 858 F.2d 775, 785 (1st Cir. 1988). In cases such as here, where
11 the parties agreed to the terms of a Stipulated Protective Order, thereby limiting what
12 materials and information were generally available to the public, the intervenor knew or
13 should have known that public access was restricted once that Order was entered. *Id.*

14 In this case, the Stipulated Protective Order was entered on May 8, 2019 (*See* Doc. 72)
15 – more than two (2) and a half years ago. Moreover, Defendants’ Motion for Summary
16 Judgment (Doc. 273) was filed in December 2020 – nearly one (1) year ago. Muslim
17 Advocates offers no reason for such lengthy period of delay. Furthermore, the “stage” of the
18 proceedings in this case is that trial begins on April 25, 2022. Discovery is closed, pleadings
19 are closed, motion practice is closed, except for motions *in limine*, and trial is less than seven
20 (7) months away. This case is far from a “preliminary” pre-trial posture and, again, there is
21 no just cause for Muslim Advocates’ delay in seeking intervention.

22 **C. Prejudice Exists**

23 The parties in this case, including Plaintiff, relied upon the terms of the Stipulated
24 Protective Order throughout discovery and briefing. Afterall, the purpose of Rule 26(c),
25 Federal Rules of Civil Procedure, and protective orders in general, is to facilitate the flow
26

1 of information throughout discovery and foster cooperation in discovery. *Foltz v. State*
2 *Farm Auto Ins. Co.*, 331 F. 3d 1122, 1137-38 (9th Cir. 2003).

3 The City of Phoenix acknowledges that the Court's analysis of sealed discovery
4 materials attached to dispositive motions are subject to review concerning whether the
5 public should have access to materials that form the basis for a Court's ruling. In this case,
6 however, it is important to understand that the materials Muslim Advocates seeks to
7 possess are **not** limited to the exhibits Defendants included in support of the Motion for
8 Summary Judgment. Most importantly, it includes materials that **Plaintiff** attached as
9 exhibits in Plaintiff's Controverting/Separate Statement of Facts [*See* Doc. 292].

10 Phoenix Defendants had no control over materials subject to the Protective Order
11 that were gratuitously included by Plaintiff in her responsive pleading. As the Court is
12 aware from Defendants' objections raised in the Reply brief (*See* Doc 298), and again
13 reiterated at oral argument on May 4, 2021 (*See* Doc. 332 and 355), Plaintiff attached **entire**
14 deposition transcripts and numerous other materials of no material consequence to the
15 issues before the Court. These materials should not be made available to the public.
16 Accordingly, if the Court is inclined to order that any of the pleadings and/or exhibits be
17 unsealed, Phoenix Defendants request a hearing to address the necessary opportunity to
18 redact any information that should still be withheld from public view, i.e., minor child
19 information and private/confidential information prohibited from public dissemination.

20 **III. CONCLUSION**

21 For reasons set forth above, Phoenix Defendants respectfully request that Muslim
22 Advocates' Motion to Intervene be denied. It was premature for Muslim Advocates to file
23 a Petition to Unseal Records (the "Petition") without first obtaining an Order allowing
24 intervention. Accordingly, the Petition should be summarily denied on grounds that
25 Muslim Advocates lacks standing to intervene in this matter and such other grounds set
26 forth in denying Muslim Advocates' Motion to Intervene.

1 In the event the Court permits intervention by Muslim Advocates, and despite the
2 premature filing of the Petition without an Order allowing intervention in this matter,
3 Phoenix Defendants have responded to Muslim Advocates’ Petition in a separately filed
4 response [Doc. 366], which is incorporated by this reference as if fully set forth herein.

5 RESPECTFULLY SUBMITTED this 1st day of October, 2021.

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7 **O’CONNOR & DYET, P.C.**

8
9 By: /s/ Travis B. Hill
10 Daniel J. O’Connor, Jr.
11 Travis B. Hill
12 *Attorneys for Defendants*

13 **CERTIFICATE OF SERVICE**

14 I hereby certify that on October 1, 2021, I electronically filed the foregoing with the
15 Clerk of the Court for the U.S. District Court, District of Arizona, using the CM/ECF
16 System. A Notice of Electronic Filing will be served to the following registered
17 participants:

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