

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

JOSE EDUARDO ARELLANO; et al.,
Plaintiffs,

vs.

CITY OF SANTA ANA; et al.,
Defendants.

J.M., etc.,
Plaintiff,

vs.

CITY OF SANTA ANA; et al.,
Defendants.

Consolidated Case Nos. SACV 14-1886
JVS (RNBx) and SACV15-432 JVS
(RNBx)

DISCOVERY MATTER

**[PROPOSED] PROTECTIVE
ORDER REGARDING
PRODUCTION OF RECORDS BY
ORANGE COUNTY DISTRICT
ATTORNEY PURSUANT TO
THIRD-PARTY SUBPOENA**

PROTECTIVE ORDER

Having reviewed the Stipulation by and between Plaintiff J.M. in *J.M. v. City of Santa Ana*, Case No. SACV 14-1886 JVS (RNBx), Plaintiffs JOSE EDUARDO ARELLANO, et al. in *Arellano v. City of Santa Ana*, Case No. SACV15-432 JVS (RNBx) (collectively, the “Arellano Actions”), Defendants CITY OF SANTA ANA, et al. (“Defendants”) (collectively, “the Parties”), and the Orange County District

1 Attorney's Office ("OC DA"), and their attorneys of record, and GOOD CAUSE
2 APPEARING, the Court ORDERS the following:

3 1. The attorneys for Plaintiff J.M. issued a subpoena duces tecum by
4 serving the OC DA with a subpoena for the production, inspection and copying of
5 all DA records and files related to a July 30, 2013 incident involving decedent Hans
6 Kevin Arellano in Santa Ana, California.

7 2. The OC DA will produce documents, in the OC DA's possession,
8 custody or control, in compliance with the subpoena duces tecum issued as noted in
9 paragraph 1 above. Specifically, the OC DA will produce, subject to the Protective
10 Order as set forth below, all non-privileged documents in its possession, custody or
11 control, responsive to the subpoenas duces tecum.

12 3. The OC DA maintains and asserts through this stipulation and its
13 objections to the subpoena, that it has a legitimate need to limit access of
14 information on the grounds that disclosure of information in the materials requested
15 would (a) implicate the subjects' rights to privacy, (b) endanger the personal safety
16 of the subjects, (c) disclose confidential official information, (d) disclose attorney
17 work product, (e) harm and interfere with other criminal prosecutions, (f) disclose
18 information protected by the deliberative processes privilege. The OC DA
19 maintains and asserts that it has a legitimate need to limit access to information
20 about internal decision making for the conduct and course of prosecutions. The OC
21 DA maintains and asserts that it has a legitimate need to meet its obligations to
22 maintain confidentiality and/or privacy of information as required by statute and
23 judicial decision, and to assure personal safety of potential witnesses in its
24 prosecutions.

25 4. Plaintiff and the OC DA have met and conferred pursuant to Local
26 Rule 37-1 and are desirous of resolving the disputes about disclosure and use of
27 information acquired by Plaintiff from the OC DA and its personnel.
28

1 5. To comply with Plaintiffs’ subpoena duces tecum expeditiously, to
2 regulate the disclosure and use of information from the OC DA, and to meet the
3 above identified needs of OC DA, the following procedures and limitations shall
4 govern the use, disclosure, distribution or dissemination of all documents and other
5 tangible things, and the information contained therein (collectively referred
6 hereinafter as “The PROTECTED DOCUMENTS”), either previously or henceforth
7 produced by the OC DA to Plaintiffs and to their counsel:

8 a. The PROTECTED DOCUMENTS shall be used solely in
9 connection with the preparation and trial of the Arellano Actions, or any related
10 appellate proceeding, and not for any other purpose, including any other litigation.
11 This paragraph shall not preclude the Parties’ attorneys of record in this case from
12 indicating, in connection with discovery or a discovery motion in another action, an
13 awareness of responsive documents. In indicating such awareness in any other
14 action, the Parties’ attorneys of record shall not disclose the substance of the
15 Confidential Information.

16 b. The PROTECTED DOCUMENTS shall be treated as
17 confidential by the Parties and their counsel and shall not be further disclosed,
18 disseminated or otherwise distributed except as provided in this Protective Order.

19 c. The PROTECTED DOCUMENTS, or any portion thereof, may
20 not be disclosed, distributed or disseminated except as provided in subparagraph (d)
21 below.

22 d. The PROTECTED DOCUMENTS, or any portion thereof, may
23 only be disclosed to the following persons:

24 (1) The Parties (including any and all officers, employees,
25 agents, representatives of Defendant City of Santa Ana) and their counsel;

26 (2) All members of the Parties’ legal teams, including, but not
27 limited to, paralegal, investigative, support, stenographic, clerical and secretarial and
28

1 related personnel regularly employed by counsel referred to in subparagraph (1)
2 above.

3 (3) The Court and Court personnel, including stenographic
4 reporters engaged in such proceedings as are necessarily incidental to preparation
5 for the trial of this action; and

6 (4) Expert witnesses retained by the Parties' counsel solely for
7 the purpose of this litigation.

8 e. Furthermore, each person (except Court personnel) to whom
9 disclosure of The PROTECTED DOCUMENTS, or any portion thereof, is made,
10 with the exception of those identified in subparagraph d. above who are presumed to
11 know the contents of this Protective Order, shall, prior to the time of disclosure, be
12 provided a copy of this Protective Order by the person furnishing him/her such
13 material, and shall agree on the record or in writing that he/she has read the
14 Protective Order, and that he/she understands the provisions of the Protective Order,
15 and that he/she agrees to be bound by the provisions of this Protective Order. Such
16 person (except Court personnel) also must consent in writing to be subject to the
17 jurisdiction of the United States District Court, Central District of California, with
18 respect to any proceeding relating to enforcement of this Order, including without
19 limitation, any proceeding for contempt. Unless made on the record in this
20 litigation, counsel making the disclosure to any person described above shall retain
21 the original executed copy of said agreement until final termination of this litigation.

22 f. In accordance with Local Rule 79-5.1, if any papers to be filed
23 with the Court contain "Protected Documents" or any portion thereof, the proposed
24 filing shall be accompanied by an application to file the papers or the portion thereof
25 containing "Protected Documents" (or any portion thereof), if such portion is
26 segregable, under seal; and the application shall be directed to the judge to whom
27 the papers are directed. For motions, the parties shall publicly file a redacted
28 version of the motion and supporting papers.

1 6. Nothing in paragraph 5 is intended to prevent officials or employees of
2 the County of Orange or other authorized governmental officials from having access
3 to the PROTECTED DOCUMENTS if they would have had access in the normal
4 course of their job duties. Further, nothing in this Protective Order prevents
5 subsequent attorneys representing the Parties in a re-trial or other post-trial
6 proceedings from gaining access to the PROTECTED DOCUMENTS to the extent
7 they are otherwise available through ordinary discovery procedures or similar
8 means. Finally, nothing in this order precludes a witness from disclosing events or
9 activities personal to him or her; that is, a witness can disclose to others information
10 previously given to the County of Orange with respect to what he or she saw, heard
11 or otherwise sensed.

12 7. In the event this matter proceeds to trial, to the extent that the
13 PROTECTED DOCUMENTS are offered into evidence, the PROTECTED
14 DOCUMENTS will become public, unless sufficient cause is shown in advance of
15 trial to proceed otherwise.

16 8. The foregoing is without prejudice to the right of the Parties and the
17 OC DA:

18 a. To apply to the Court for a further protective order relating to
19 confidential material or relating to discovery in this litigation; and

20 b. To apply to the Court for an order compelling production of
21 documents or modification of this protective order or for any order permitting
22 disclosure of documents or the information contained therein the terms of this
23 protective order.

24 c. The Parties do not waive any right to assert, inter alia, that the
25 OC DA does not have a legitimate interest or need to limit access to documents
26 reflecting and/or related to its internal decision making process regarding this
27 INCIDENT and do not waive their rights seeking discovery of these documents.
28 The Parties do not waive their rights to seek disclosure of any and all documents in

1 the possession of the OC DA relating to the District Attorney files for the cases
2 subpoenaed and identified above on any and all applicable grounds, including but
3 not limited to his rights and guarantees afforded under the Fifth, Sixth, Eighth and
4 Fourteenth Amendments to the United States Constitution.

5 9. Once the Protective Order issues, the following schedule will take
6 effect, subject to extraordinary circumstances or by mutual agreement of the Parties
7 and the OC DA:

8 a. Within Fifteen (15) days of the notice to counsel for the OC DA,
9 of the Court's entry of the Protective Order, the OC DA will make available, for
10 inspection and/or photocopying all subpoenaed documents including all electronic
11 documents in its custody or control, which are responsive to the above-referenced
12 subpoenas duces tecum. The Parties will bear the cost of duplicating the materials.

13 b. The Parties shall place a stamp on each PROTECTED
14 DOCUMENT marked "Confidential-Subject to Protective Order" on only the hard
15 (paper) copies of documents printed and used from the electronic disk or obtained
16 via hard copy and used in the course of this litigation. If through its inadvertence,
17 surprise or neglect, the Parties do not label a PROTECTED DOCUMENT as
18 indicated, counsel for the Parties shall so notify the OC DA and shall place the
19 phrase "Confidential-subject to Protective Order," on the PROTECTED
20 DOCUMENT.

21 c. Within Thirty (30) days after the date that an Order terminating
22 this litigation becomes no longer subject to judicial review, counsel for the Parties
23 shall promptly return to the OC DA all copies of the PROTECTED DOCUMENTS
24 and shall certify it has not retained any such documents, or portions thereof except
25 as required by the Court.

26 10. This Protective Order, when entered into by the Court, shall be
27 retroactive to the date of the initial disclosure of any documents made by the OC
28 DA in this matter.

1 11. This Protective Order is entered into without prejudice to the right of
2 any party and/or the OC DA to file any motion for relief from the Court from any
3 restriction hereof or for any other or further restriction on the production, exchange,
4 or use of any documents, testimony, or other information produced, given, or
5 exchanged in the course of discovery in this action. This Order may be modified,
6 amended, or vacated by further Order of the Court. The OC DA will not file a
7 motion to quash/modify the subpoenas at issue.

8 12. This Protective Order shall survive the final determination for this
9 action and shall remain in full force and effect after conclusion of all proceedings
10 herein, and the court shall have continuing jurisdiction to enforce its terms.

11 13. If a party to whom the PROTECTED DOCUMENTS has been
12 produced is subpoenaed or ordered by another court or administrative agency to
13 produce information that is subject to this protective order, such party shall, within
14 10 days, notify the party who produced the material of the pending subpoena or
15 order. It is the producing party's responsibility to take whatever action it deems
16 appropriate to challenge the subpoena or order in the issuing court or agency. The
17 party subject to the subpoena or order shall not produce any information subject to
18 this protective order in advance of the date required by the subpoena or order.
19 Nothing herein shall be construed as relieving anyone subject to this order from any
20 obligation to comply with a validly issued subpoena or order.

21 **IT IS SO ORDERED.**

22 DATED: July 09, 2015



23
24
25 _____
Hon. Robert N. Block
United States Magistrate Judge