

SUPERIOR COURT OF CALIFORNIA, COUNTY OF ORANGE

Central Justice Center
700 W. Civic Center Drive
Santa Ana, CA 92702

SHORT TITLE: Voice of Orange County.Org vs. County of Orange

CLERK'S CERTIFICATE OF MAILING/ELECTRONIC SERVICE

CASE NUMBER:
30-2016-00841766-CU-WM-CJC

I certify that I am not a party to this cause. I certify that a true copy of the above Minute Order dated 12/12/16 has been placed for collection and mailing so as to cause it to be mailed in a sealed envelope with postage fully prepaid pursuant to standard court practice and addressed as indicated below. This certification occurred at Santa Ana, California on 12/12/16. Following standard court practice the mailing will occur at Santa Ana, California on 12/12/16.

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I certify that I am not a party to this cause. I certify that the following document(s), Minute Order dated 12/12/16, have been transmitted electronically by Orange County Superior Court at Santa Ana, CA. The transmission originated from email address on December 12, 2016, at 2:55:15 PM PST. The electronically transmitted document(s) is in accordance with rule 2.251 of the California Rules of Court, addressed as shown above. The list of electronically served recipients are listed below:

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CLERK'S CERTIFICATE OF MAILING/ELECTRONIC SERVICE

SUPERIOR COURT OF CALIFORNIA,
COUNTY OF ORANGE
CENTRAL JUSTICE CENTER

MINUTE ORDER

DATE: 12/12/2016

TIME: 02:46:00 PM

DEPT: C19

JUDICIAL OFFICER PRESIDING: Walter Schwarm

CLERK: Kimberley Gray

REPORTER/ERM:

BAILIFF/COURT ATTENDANT:

CASE NO: **30-2016-00841766-CU-WM-CJC** CASE INIT.DATE: 03/18/2016

CASE TITLE: **Voice of Orange County.Org vs. County of Orange**

CASE CATEGORY: Civil - Unlimited CASE TYPE: Writ of Mandate

EVENT ID/DOCUMENT ID: 72498059

EVENT TYPE: Under Submission Ruling

APPEARANCES

There are no appearances by any party.

The Court, having taken the above-entitled matter under submission on 11/29/2016 and having fully considered the arguments of all parties, both written and oral, as well as the evidence presented, now rules as follows:

Intervenor and Cross-Petitioner's (Voice of Orange County.org and Norberto Santana; hereafter "VOC") Motion to Quash the Deposition Notice for Norberto Santana is **GRANTED** as follows:

Respondent and Defendant (County of Orange; hereafter "County") objects to the entire declaration of Mr. Santana as inadmissible hearsay. The Court overrules this objection. (Code Civ. Proc., § 2009, California Rules of Court, rule 3.1306(a); *Oiye v. Fox* (2012) 211 Cal.App.4th 1036, 1050.) The court's ruling addresses the first category of records "emails between Jean Pasco and Supervisor Todd Spitzer regarding Spitzer's citizen arrest of a man at Wahoo's Fish Tacos") designated in the CPRA request on 3-3-16 since, apparently, the second category of records is no longer at issue.

"As *Delaney* points out, 'It is hornbook law that a person claiming privilege bears the burden of proving he is entitled to the privilege. . . . Regardless of the label used (privilege or immunity), the shield law's purpose is the same - to protect a newsperson's ability to gather and report the news. *The newsperson seeking immunity must prove all the requirements of the shield law have been met.*' [Citation.]" (*Rancho Publications v. Superior Court* (1999) 68 Cal.App.4th 1538, 1546; italics in original.) "The shield law is, by its own terms, *absolute* rather than qualified in immunizing a newsperson from contempt for revealing unpublished information obtained in the newsgathering process. . . . 'We find nothing in the shield law's language or history to suggest the immunity from contempt is qualified such that it can be overcome by a

showing of need for unpublished information within the scope of the shield law.' [Citation.]" (*Miller v. Superior Court* (1999) 21 Cal. 4th 883, 890–91.)

Here, Respondent seeks to take the deposition of Mr. Santana who is the publisher of VOC. Mr. Santana declares that he is the publisher of VOC, that he obtained information regarding the Wahoo's incident from his "newsgathering activities or in [his] role as Publisher of" VOC, and that his communications with Supervisor Spitzer "were to further [his] newsgathering activities." (Declaration of Norberto Santana.) Thus, VOC has met its burden of proof and established that Mr. Santana is entitled to the protection of Cal. Const., art. I, § 2, subd. (b) and Evidence Code section 1070 as to any information Mr. Santana may possess, including any communications he may have had with Supervisor Spitzer, because the communications were "obtained or prepared in gathering, receiving or processing of information for communication to the public". This privilege is absolute.

In any event, even assuming the shield law does not apply, the court has weighed the factors in *Mitchell v. Superior Court (Mitchell)* (1984) 37 Cal.3d 268, 279-283 and concludes that the County has not provided a sufficient justification for Mr. Santana's deposition.

Mitchell discussed the following factors a court should apply in a civil case to determine whether "reporter, editor, or publisher has a qualified privilege to withhold disclosure of the identity of confidential sources and of unpublished information supplied by such sources." These factors include (1) "the nature of the litigation and whether the reporter is a party;" (2) "the relevance of the information sought to plaintiff's cause of action;" (3) whether "plaintiff has exhausted all alternative sources of obtaining the needed information;" (4) "the importance of protecting confidentiality in the case at hand;" and (5) ". . . a prima facie showing that the alleged defamatory statements are false before requiring disclosure." (*Ibid.*) "Although research has revealed no reported case treating a conflict between the protection of article I, section 2, and the fundamental interest of the state judicial system in promotion full discovery in civil litigation, the recent legislative history of the newspaper's protection reflects a strong interest in the Legislature and the people of this state to afford newspaper the highest possible level of protection from compelled disclosure of confidential sources and confidential information." (*Playboy Enterprises, Inc. v. Superior Court* (1984) 154 Cal.App.3d 14, 27.) "Separate and apart from the shield law, there is a nonstatutory qualified immunity, grounded in the free speech and privacy provisions of the United States and California Constitutions, that limits what courts can compel through civil discovery. [Citation.] (*Rancho Publications v. Superior Court* (1999) 68 Cal.App.4th 1538, 1547-1548.)

Both the VOC and the County apply the factors in *Mitchell* in determining whether Mr. Santana has a qualified privilege that prevents the Court from compelling his deposition as noticed by the County. "The scope of the privilege in each particular case will depend upon the consideration and weighing of" the factors specified in *Mitchell*. (*Mitchell, supra*, at p. 279.) First, the VOC has brought a writ of mandate seeking to enforce its right to inspect and receive public records pursuant to Government Code section 6258. This action is not a situation where assertion of the privilege will shield Mr. Santana from liability since it only asserts a request to inspect and receive public records.

As to the relevance of the deposition to the County's assertion that it is necessary to establish an exemption from disclosure under Government Code section 6255, the County has not sufficiently explained how Mr. Santana's deposition will tend to establish that exemption. As alleged in ¶ 7 of the County's Answer, the County's theory appears to be that Mr. Santana "coached" Supervisor Spitzer "to obtain a correction from the *Register*." Apparently, the County seeks to question Mr. Santana about his conversations with Supervisor Spitzer regarding the Wahoo's incident to show that the public has a negligible interest in the disclosure of the requested information as it pertains this incident. The VOC's motive in seeking these records is irrelevant. (*Los Angeles Unified School District v. Superior Court*

(2014) 228 Cal.App.4th 222, 242.) Mr. Santana's motive in speaking with Supervisor Spitzer is also irrelevant to a determining whether the Government Code section 6255 exemption applies. The County has not sufficiently shown how a deposition of Mr. Santana will tend to show a negligible public interest in this incident especially since the *Register* and VOC have published reports regarding this incident.

Third, the County has not shown that it has exhausted alternative sources regarding the communications between Supervisor Spitzer and Mr. Santana that may tend to show a negligible public interest. The County's Answer indicates that Supervisor Spitzer was present during these communications with Mr. Santana. (§ 7 of the County's Answer.) Therefore, Supervisor Spitzer appears to have information relevant to establishing the exemption under Government Code section 6255.

Fourth, under *Mitchell* as to protecting confidentiality, the public importance of the information is significant because it relates to Mr. Santana's newsgathering activities as to Supervisor Spitzer's alleged actions regarding the Orange County Register in relation to the Wahoo's incident. (*Mitchell, supra*, at p. 282-283.)

Mitchell's fifth factor does not apply since this is not a defamation case, or a case where the County is trying to impose some type of liability upon Mr. Santana requiring a prima facie showing as to the viability of the theory of liability.

Therefore, the Court **QUASHES** the Notice and Amended Notice of Taking Deposition of Norberto Santana served by Respondent. After considering the above factors, the court finds that the scope of the qualified privilege encompasses information that the County seeks at a deposition of Mr. Santana. VOC's request to prevent the deposition of any VOC employee in the future in relation to the case is overbroad. Therefore, the Court **DENIES**, without prejudice, VOC's request "for a protective order preventing the depositions of any VOICE OF OC employees in the future in this case."

The request for sanctions by both parties is **DENIED**. Both parties acted with substantial justification in making and opposing the motion. (Code Civ. Proc, §§ 2025.420, subd. (d), 2025.420, subd. (h), 2023.010.)

Moving Party (VOC) is to give notice.