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13 **UNITED STATES DISTRICT COURT**
14 **FOR THE DISTRICT OF ARIZONA**

15 Manuel de Jesus Ortega Melendres, et al.,

16 Plaintiffs,

17 v.

18 Joseph M. Arpaio, et al.,

19 Defendants.

Case No. CV 07-02513-PHX-GMS

**NON-PARTIES MARICOPA
COUNTY ATTORNEY WILLIAM
MONTGOMERY AND MARICOPA
COUNT ATTORNEY'S OFFICE
OBJECTION TO DISCLOSURE OF
MCAO00640 AND MCAO00650**

20 Non-Parties Maricopa County Attorney William Montgomery, Esq., an Arizona
21 constitutional officer pursuant to the Arizona Constitution, Article 12, Section 3, and his
22 office, the Maricopa County Attorney's Office, (collectively "MCAO") object to the
23 disclosure of documents Bates numbered MCAO00640 and MCAO00650 (the
24 "Documents") pursuant to U.S. Magistrate Judge Boyle's September 16, 2015 Order.

25 These two Documents are protected/confidential information under the Attorney
26 Work Product Doctrine. The documents are intra-office email communications between
individuals within MCAO discussing attorney Tim Casey's November 6, 2014 email to
Steve Fax regarding the Preliminary Injunction with the subject line "RE: Melendres
Order On Summary Judgment". The Casey email has already been produced. The
remaining email "strings" within the Documents are Attorney Work Product as held by

1 Maricopa County Attorney William Montgomery and the MCAO and can only be
2 waived by Mr. Montgomery and he does not do so.

3 **I. LEGAL ARGUMENT**

4 **a. Mr. Montgomery and MCAO have not waived the Attorney Work**
5 **Product Doctrine and the Documents are protected.**

6 On May 14, 2015, this Court granted Plaintiffs' Motion for Discovery
7 ("Motion") and ordered that Defendants waived the Attorney Work Product doctrine
8 "*as to communications on the subject matter of the Preliminary Injunction necessary to*
9 *Plaintiffs' evaluation or refuting of this advice of counsel defense.*" Emphasis added.
10 Defendants responded to the Motion, but MCAO was not a party and had not appeared
11 in this as a party as of that Order. MCAO was not invited to submit a response or
12 position related to the Motion. In its Motion, Plaintiffs pointed to no testimony to
13 support its position that Defendants waived the Attorney Work Product doctrine as it
14 applies to MCAO. MCAO is not a party to this case and MCAO was not a party to the
15 Motions resulting in the May 14, 2015 Order.

16 MCAO objects to the disclosure of the Documents as privileged pursuant to the
17 Attorney Work Product Doctrine. The Attorney Work Product doctrine exists, at least
18 in part, to protect attorneys' product and mental impressions. Attorneys have an interest
19 in the privacy of their own work. E.g., *Fed. Land Bank v. Fed. Intermediate Credit*
20 *Bank*, 127 F.R.D. 473, 480 (S.D. Miss. 1989), rev'd in part on other grounds, 128
21 F.R.D. 182 (S.D. Miss. 1989) (holding that opinion work product belongs to the
22 attorney); *First Wisconsin Mortgage Trust v. First Wisconsin Corp.*, 86 F.R.D. 160,
23 1667 (E.D. Wis. 1980) ("The work product doctrine . . . is designed for the protection of
24 the lawyer and the standards of the legal profession, as well as for the protection of the
25 adversary process. Therefore, [the attorney] has some interest at least in the privacy of
26 its own work product." (citations omitted)). While understanding that the privilege has

1 been waived as it pertains to certain subject matters, MCAO seeks to protect and
2 preserve its work privacy and, accordingly, objects to providing the Documents for use
3 in this litigation.

4 **b. The Documents do not meet the standard for disclosure set forth in**
5 **the May 14, 2015 Order.**

6 The May 14, 2015 Order provides, “Work product, including uncommunicated
7 work product, may reveal communications between Defendants and their counsel and
8 would be highly probative of what information Defendants’ counsel considered, the
9 reasonableness of its advice, and whether Defendants relied on the advice in good
10 faith.” *See* Order at Page 7, line 16. The Order also provides, “In sum, Defendants’
11 advice of counsel defense waived attorney-client privilege and the work-product
12 doctrine...for all work product on the Preliminary Injunction which was used by
13 defense counsel in formulating the advice communicated to Defendants.” *See* Order at
14 Page 8, line 7. The Order did not address mental impressions and internal
15 communications or discussions within MCAO, which were not communicated to
16 Defendants and which were not used to formulate advice to Defendants. Such
17 communications would be outside of the scope of the Order.

18 Here, the Documents are uncommunicated work product between MCAO
19 personnel discussing internal strategy and mental impressions related to the case, but
20 not related to advice given to Defendants. There is nothing to suggest the content of the
21 Documents, the intra-office discussion, was ever shared with Defendants or was used to
22 formulate advice to Defendants. Therefore, the Documents are outside of the Court’s
23 circumscription.

24 MCAO00640 is an email between Thomas Liddy and Douglas Irish discussing
25 Tim Casey’s November 6, 2014 email to Steve Fax regarding the Preliminary
26 Injunction. Christine Stutz and Brandon Newton authored MCAO00650, another intra-

1 office email forwarding Tim Casey's November 6, 2014 email. It is limited to
2 discussion related to the MCAO internal workings of the case. Once again, the
3 information does not appear to be created in anticipation of providing legal advice to
4 Defendants and there is no record to suggest the communication was shared with
5 Defendants.

6 The content of both Documents is limited to Attorney Work Product, including
7 intra-office "thoughts out loud" and information, neither of which were ordered waived
8 by this Court's May 14, 2015 Order. Accordingly, the Attorney Work Product Doctrine
9 has not been waived as it pertains to the subject matter of the Documents.

10 **II. Conclusion**

11 The MCAO did not participate in the Court's process to determine the privilege
12 was waived. MCAO did not waive its rights to retain attorney thought processes and
13 internal email communications as confidential. For the aforementioned reasons,
14 MCAO objects to disclosure of the Documents because they are protected by the
15 Attorney Work Product Doctrine.

16 DATED this 18th day of September, 2015.

17 **RIDENOUR HIENTON, P.L.L.C.**

18 By s/ Ernest Calderón
19 Ernest Calderón
20 April M. Hamilton
21 Attorneys for Maricopa County
22 Attorney William Montgomery and
23 Maricopa County Attorney's Office
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CERTIFICATE OF SERVICE

I hereby certify that on this 18th day of September, 2015, I caused the foregoing document to be filed electronically with the Clerk of Court through the CM/ECF System for filing; and served on counsel of record via the Court's CM/ECF system.

s/ Lisa Hagy