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9
10 **UNITED STATES DISTRICT COURT**
11 **EASTERN DISTRICT OF CALIFORNIA**

12 **UNITED STATES OF AMERICA,**

13 **Plaintiff,**

14 **v.**

15 **FRANCISCO JAVIER VELASCO, AND**
16 **JOSE SALVADOR SANCHEZ PALOMINO,**

17 **Defendants.**

18 **CASE NO.: 2:09-CR-00094 MCE**

19 **COUNTY OF SHASTA'S MOTION FOR A**
20 **PROTECTIVE ORDER**

21 **DATE: March 11, 2010**

22 **TIME: 9:00 A.M.**

23
24 COMES NOW the County of Shasta, through its attorneys, respectfully requests this Honorable
25 Court to enter a protective order pursuant to Rule 16(d)(1) of the Federal Rules of Criminal Procedure.

26 The defendants have filed a discovery request, and will inspect, copy and receive materials,
27 pursuant to Fed. R. Crim. P. 16(A); *Brady v. Maryland*, 373 U.S. 83 (1963); *Giglio v. United States*, 405
28 U.S. 150 (1972); *United States v. Bagley*, 473 U.S. 667 (1985); and the Jencks Act, 18 U.S.C. § 3500.
Pursuant to Fed. R. Crim. P. 16(d)(1), the County of Shasta hereby moves the Court to limit the
disclosure of this material by ordering that:

1. Upon receiving the documents pursuant to its discovery request, the defendants and their
respective counsel are to treat such material, including copies of such material, as confidential and are to
make no further disclosure of such material, except as provided herein.

1 2. Said confidential material, including copies, may be utilized by the defendants and their
2 attorneys only to prepare for this case, impeach witnesses, refresh a witnesses' recollection as to matters
3 about which he or she formerly testified, or to test a witnesses' credibility;

4 3. Neither the defendants nor their attorneys may disclose, make copies of, or reveal the contents
5 of such materials for purposes other than the defense preparation in this case and efforts specified
6 herein. Nothing in this order, however, is intended to prohibit the attorneys for the defendants from
7 disclosing the materials to the defendants, the attorneys' legal assistants, experts, or other employees
8 assisting in case preparation for this case, or from characterizing the substance of the testimony or
9 evidence contained in such materials in discussions with prospective witnesses in this case;

10 4. Neither the defendants nor their attorneys may disclose or reveal the contents of such
11 materials to the parties or their respective attorneys in any other criminal or civil proceedings or any
12 third party.

13 5. All such materials turned over to the defendants and their attorneys, and any copies made
14 therefrom, shall be returned to the attorneys for the County of Shasta when the trial of this case is
15 concluded.

16 **MEMORANDUM OF LAW IN SUPPORT OF**
17 **SHASTA COUNTY'S MOTION FOR PROTECTIVE ORDER**

18 Pursuant to Fed. R. Crim. P. 16(d), the United States has filed with the Court a Motion for
19 Protective Order to limit the disclosure of certain materials that will be turned over to the defendant
20 under Fed. R. Crim P. 16, *Brady*, *Giglio*, *Bagley*, and the Jencks Act. A Protective Order is needed
21 because there are documents being sought by other defendants in other criminal proceedings. If a
22 protective order is not issued by this court, the documents in the other proceedings will circumvent the
23 discovery requirements and limitations which may be imposed by other courts.

24 **I**

25 **A PROTECTIVE ORDER IS NECESSARY AND APPROPRIATE**

26 The Court's power to issue a protective order in criminal discovery matters is recognized in Fed.
27 R. Crim. P. 16(d)(1), which provides that "[u]pon a sufficient showing the court may at any time order
28 that the discovery or inspection be denied, restricted, or deferred ..." The Supreme Court, in *Alderman*

1 v. *Unites States*, 394 U.S. 165, 185, 89 S.Ct. 961 (1969), explicitly recognized that a trial court "can and
2 should, where appropriate, place a defendant and his counsel under enforceable orders against
3 unwarranted disclosure of the materials which they may be entitled to inspect." Lower courts have
4 echoed this admonition in recognizing a protective order as the necessary way to protect government
5 files or to protect government witnesses from threats, bribery, and other corrupt influences. *See, e.g.*,
6 *United States v. Anderson*, 509 F.2d 724, 730 (9th Cir.), *cert. denied*, 420 U.S. 910, 95 S.Ct. 831 (1975);
7 *United States v. Dellinger*, 472 F.2d 340, 392 (7th Cir. 1972), *cert. denied*, 410 U.S. 970, 93 S.Ct. 1443
8 (1973); *United States v. Salsedo*, 477 F.Supp. 1235, 1244 (E.D. Cal. 1979), *vacated and remanded on*
9 *other grounds*, 622 F.2d 465 (9th Cir. 1980).

10 Premature disclosure of materials beyond the limited disclosure authorized by Rule 16, as well as
11 Shasta County's proposed Protective Order, will have an adverse effect on any future criminal cases and
12 possibly compromise them entirely. Witnesses may feel pressure from those designated as targets and
13 other putative defendants and may decline to cooperate. Evidence may be destroyed or otherwise
14 disappear.

15 Moreover, the County of Shasta believes that the defendants and other defendants of the criminal
16 investigations have entered into a joint defense agreement to share information.

17 II

18 SHASTA COUNTY'S PROPOSED ORDER IS NARROWLY DRAWN

19 The protective order sought by Shasta County in this case would not restrict the defendants'
20 rights to discovery under Rules 16 or Jencks, nor under the doctrines announced by *Brady*, *Giglio* or
21 *Bagley*. Rather, the order is narrowly drawn and merely would restrict any further dissemination of
22 materials beyond the defendant. It specifically prohibits dissemination to anyone else, yet allows the
23 defendants to disclose material to those persons assisting in case preparation, including outside experts.
24 Courts have upheld protective orders to protect third parties that deprived the defendants of evidence
25 relevant to the case. *See e.g.*, *United States v. Garcia*, 625 F.2d 162, 165 (7th Cir.), *cert. denied*, 449
26 U.S. 923, 101 S.Ct. 325 (1980) (protective order upheld where public's interest in protecting flow of
27 information to government and safety of defendant outweighs defendant's right to information); *United*
28 *States v. Caparros*, 800 F.2d 23, 25 (2d Cir. 1986) (protective order prohibiting dissemination of

1 discovered information does not infringe on defendant's First Amendment rights). The order, therefore,
2 would protect witnesses and preserve the efficacy of the criminal investigation and prevent unnecessary
3 disclosure of materials which might harm third parties. Because the proposed protective order in no way
4 limits the scope of the information the defendants will receive, and at the same time protect third parties
5 and the effectiveness of the ongoing investigation, the defendants cannot be unfairly prejudiced by it.

6 **CONCLUSION**

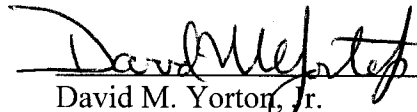
7 The foregoing discussion and authorities show that Shasta County's request for a protective order
8 providing for (1) the confidential treatment of disclosed materials; (2) the restriction of further
9 dissemination of such materials; and (3) the return to Shasta County of all transcripts and copies is
10 warranted given the continuing nature of other criminal prosecutors.

11 Shasta County requests the opportunity to present evidence and witnesses, if deemed necessary
12 by the Court, to establish the potential adverse impact resulting from public dissemination of the
13 documents produced pursuant to the defense subpoenas.

14 Therefore, Shasta County respectfully requests that the Court enter an order granting the Motion
15 for a Protective Order.

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18 Date: 3/4/10

Respectfully submitted,

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21 David M. Yorton, Jr.
22 Senior Deputy County Counsel

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27 coco\subpoenas\sheriff\Motion for Protective Order
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