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SUPERIOR COURT OF CALIFORNIA
COUNTY OF RIVERSIDE
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11 Attorneys for Defendant
12 David Alan Heslop

13 SUPERIOR COURT OF THE STATE OF CALIFORNIA
14 FOR THE COUNTY OF RIVERSIDE

15 TWENTY-NINE PALMS BAND OF
16 MISSION INDIANS OF CALIFORNIA;
17 TWENTY-NINE PALMS
18 ENTERPRISES CORPORAITON; and
19 ECHO TRAIL HOLDINGS, LLC, a
20 limited liability company,

21 Plaintiffs,

22 v.

23 DAVID ALAN HESLOP, an individual,
24 DIVERSIFICATION RESOURCES,
25 LLC, a limited liability company,
26 NATIONAL DEMOGRAPHICS, INC., a
27 corporation, PEGGY SHAMBAUGH, an
28 individual, BENNION & DEVILLE FINE
HOMES, INC., doing business as
WINDERMERE REAL ESTATE
COACHELLA VALLEY, a corporation,
and Does 1 through 100,

Defendants.

Case No. RIC 10006101

By Fax

**NOTICE OF MOTION AND MOTION FOR
PROTECTIVE ORDER RE DEPOSITION OF
DAVID ALAN HESLOP; MEMORANDUM
OF POINTS AND AUTHORITIES AND
DECLARATION OF PHILIP W. VINEYARD
IN SUPPORT THEREOF**

[[PROPOSED] ORDER FILED CONCURRENTLY
HEREWITH]

DATE: August 11, 2011
TIME: 8:30 a.m.
DEPT: 2

Judge: Honorable Jacqueline C. Jackson
Dept. 7 – Case Management Purposes
Dept. 2 – Law & Motion

Complaint Filed: November 7, 2009
Trial Date: None set

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on August 11, 2011 at 8:30 a.m., or as soon thereafter as the matter may be heard by the Discovery Referee and/or the Court, Defendant David Alan Heslop (“Heslop”) will move the Discovery Referee and/or the Court, pursuant to California

1 Code of Civil Procedure section 2025.420, for a Protective Order requiring Plaintiffs to
2 reasonably accommodate Heslop's and his counsel's schedules for purposes of taking Heslop's
3 deposition. This Motion is based on the following:

- 4 • Plaintiffs noticed Heslop's deposition for August 1, 2011, or anytime within a
5 week thereof, but Heslop is unavailable due to family obligations, as is his
6 criminal defense attorney, who plans on attending the deposition, but cannot do so
7 within Plaintiffs' demanded time;
- 8 • Heslop provided the first week of September 2011 for his appearance at
9 deposition, and his counsel communicated those dates to all other parties'
10 counsel;
- 11 • As widely published in this matter, a Grand Jury and FBI investigation have been
12 instituted to discover whether any criminal wrongdoing arose out of Plaintiffs'
13 allegations in this civil litigation. Due to this contingency, and as explained on
14 numerous occasions to all parties, Heslop currently intends to invoke his Fifth
15 Amendment Right in response to any substantive discovery, including deposition,
16 related to the matters asserted in this litigation.
- 17 • Notwithstanding Heslop's intention to invoke his Fifth Amendment rights at
18 deposition and his offer to appear in September, Plaintiffs' counsel insists the
19 deposition proceed on August 1, 2011; and
- 20 • No trial date has been set in this matter; therefore, Plaintiffs do not incur any
21 prejudice in taking Heslop's deposition at a date and time convenient to him and
22 his attorneys and only one month later than initially noticed.

23 Pursuant to California Code of Civil Procedure sections 2023.010, *et seq.*, and 2025.420,
24 Heslop also requests the Discovery Referee and/or the Court to impose upon Plaintiffs sanctions
25 in the amount of \$2,065 for failure to reasonably accommodate Heslop and his attorneys, as well
26 as to compensate Heslop for the time and costs expended in the preparation of this Motion and in
27 his good faith efforts to meet and confer on mutually agreeable deposition dates. Heslop also
28 requests that Plaintiffs be deemed responsible for the Discovery Referee's time and expense in

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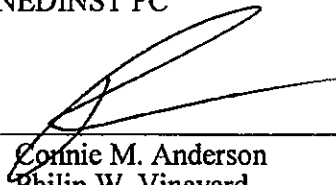
this matter.

This Motion is based upon this Notice of Motion and Motion, the attached Memorandum of Points and Authorities, and the Declaration of Philip W. Vineyard and all other papers filed in support of Heslop's Motion, and such further documentary evidence and oral argument that may be considered at the hearing of this Motion.

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DATED: July 11, 2011

By: _____


Connie M. Anderson
Philip W. Vineyard
Pouya B. Chami
Attorneys for Defendant
David Alan Heslop

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1 MEMORANDUM OF POINTS AND AUTHORITIES

2 I.

3 INTRODUCTION

4 Here we go again. And once again, it is Plaintiffs' continuing lack of reasonability that
5 got us here. On June 10, the Court loosed Plaintiffs from the discovery stay theretofore in place
6 as to David Alan Heslop. That stay had been instituted because the Court was informed a
7 criminal investigation had begun concerning Plaintiffs' allegations in this lawsuit. However,
8 because Department 7¹ of the Riverside Superior Court wanted to move toward a trial date, it had
9 to lift the stay so that the case could be transferred to a trial department, which is responsible for
10 scheduling trial. With the stay lifted, Plaintiffs noticed Heslop's deposition and wrote to his
11 counsel that they were willing to move the deposition within a week on either side of August 1,
12 but would budge no farther – this despite the fact that there is no trial date for this litigation.
13 (See Vineyard Decl., Exhs. A and D.)

14 On July 7, 2011, Heslop's counsel notified all parties that Heslop was unavailable for
15 deposition in the timeframe demanded by Plaintiffs. (See Vineyard Decl., Exh. B.) After a
16 recitation of why an early deposition of Heslop would likely be fruitless and a waste of
17 everyone's time and money (due to the impending invocation of Heslop's Fifth Amendment
18 rights), Heslop nonetheless offered to appear for deposition in the first week of September.
19 While true Heslop's counsel did not disclose why Heslop was unavailable (and need not given
20 the reason), suffice it to say that Heslop, who is elderly, has familial obligations to which to
21 attend. (Vineyard Decl., ¶5.) That is, however, immaterial. Heslop has offered to appear in
22 September. (Exh. B, *supra*.) What prejudice Plaintiffs suffer by waiting one month to depose
23 Heslop, especially in view that no trial date exists, is a mystery.

24 ///

25 ///

26 ///

27
28 ¹ Department 7 is charged with case management pending assignment of litigation to trial departments,

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II.
ARGUMENT

“A foundational purpose of the Civil Discovery Act is to avoid gamesmanship in litigation.” *Murillo v. Superior Court*, 143 Cal. App. 4th 730, 739 (2006)(citing *Emerson Electric Co. v. Superior Court*, 16 Cal.4th 1101, 1107 (1997)). Given Plaintiffs’ history in both the pleadings and discovery stages, “gamesmanship” seems to be the only strategy they intend to employ. California Code of Civil Procedure section 2025.420 permits the Court, upon a showing of good cause, to issue a protective order to ensure a party deponent is not the subject of unwarranted annoyance or undue burden or expense. Subsection (b) to section 2025.420 enumerates the possible forms of the protective order, the first two of which including an order that the deposition not be taken at all and the deposition be taken at a different time. See Cal. Code Civ. Proc. § 2025.420(b)(1) and (2).

Heslop is not trying to avoid a deposition; indeed, he has offered the first week of September to appear. His request to the Discovery Referee and/or the Court is to require Plaintiffs to notice the deposition in the provided timeframe, and to assist in the process, Heslop offers September 1, 6, and 9 for purposes of taking his deposition. If Plaintiffs are unable to work out a deposition in the first week of September, Heslop stands ready to cooperate on future dates. Since the parties have yet to receive notice of which trial department they are to be assigned, there is no need to force a deposition date on any party when that date might conflict with other calendared events. Simply, with no trial date set, Plaintiffs can show no prejudice in permitting Heslop to attend to his familial obligations. Furthermore, the prejudice falls on Heslop if he is forced to appear at an August deposition, without his criminal defense attorney, when the questions to be asked relate directly to the investigation now pending against the many defendants in this action. (Vineyard Decl., ¶16.)

Heslop is informed and believes that Plaintiffs precipitated the FBI and Grand Jury investigation into the various allegations made in Plaintiffs’ complaint. Indeed, when Heslop attempted to confirm this fact through Requests for Admissions, Plaintiffs purposely did not respond, instead relying on the mysterious and meritless objection of “invades the province of

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1 law enforcement.” Because there is an ongoing criminal investigation, Heslop has little choice
2 but to invoke his Fifth Amendment rights to any form of substantive discovery that could be used
3 against him in a criminal proceeding. Relevant to this Motion, Heslop’s counsel has explained to
4 all parties how wasteful it would be to proceed with Heslop’s deposition while the criminal
5 investigation continues, because an invocation of Heslop’s Fifth Amendment rights would be
6 forthcoming. (See Vineyard Decl., Exhibit C, p. 2.) Nonetheless, Plaintiffs continue to insist
7 that Heslop appear on the August 1 deposition date. Plaintiffs’ decision further highlights their
8 lack of reasonability in prosecuting this matter.

9 Plaintiffs will try to argue that the case is nearly two years old and that they must be able
10 to work up their case now that the discovery stay as to Heslop has been lifted. Again, this
11 argument might have more teeth if a trial date were pending in the instant action, but it is not, so
12 the delays of the past (e.g., Plaintiffs initially filing their lawsuit in the wrong venue, the
13 aforementioned stay as to Heslop due to the pending Grand Jury investigation, and Plaintiffs’
14 continuing efforts to avoid their own discovery responsibilities) are of no consequence in the
15 instant Motion. What is truly at work, and which Plaintiffs will be quiet about, is that the related
16 legal malpractice action² is proceeding toward trial, and they would like to use Heslop’s
17 testimony for the matters being pursued in Orange County. Had Plaintiffs not so vigorously
18 fought the Motion to Consolidate and Coordinate the Orange County action with the instant
19 action, they would not be in the bind in which they find themselves currently. Nonetheless, any
20 prejudice Plaintiffs might be facing in Orange County has no determinative value on the merits
21 of Heslop’s very reasonable request to move his deposition to the first week of September.

22 III.

23 CONCLUSION

24 For all of the forgoing reasons, Heslop respectfully requests the Discovery Referee and/or
25 the Court to order Plaintiffs to accommodate Heslop’s reasonable scheduling requests by
26

27 ² *Twenty-Nine Palms Band of Mission Indians of California, et al., v. Nada L. Edwards, et al.*, assigned
28 case number 30-2009 00311045 by the Superior Court for the State of California, County of Orange.
Very early in the Orange County proceeding, the parties attempted to consolidate the two actions, but
those efforts were denied by the then-presiding judge.

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1 noticing his deposition for the offered dates in September. If Plaintiffs are unable to appear on
2 the offered dates, Heslop requests the Discovery Referee and/or the Court to order Plaintiffs to
3 meet and confer with Heslop's counsel to arrive at a mutually agreeable deposition date. Finally,
4 Heslop respectfully requests the Discovery Referee and/or the Court to impose sanctions against
5 Plaintiffs and its counsel in the amount of \$2,065, to be paid to Heslop by a date deemed suitable
6 by this court. Plaintiffs should also be held responsible for the Discovery Referee's costs related
7 to his efforts in this Motion, and Heslop specifically requests that they be ordered to do so.
8
9

10 KLINEDINST PC

11
12 DATED: July 11, 2011

13 By: 

14 Connie M. Anderson
15 Philip W. Vineyard
16 Pouya B. Chami
17 Attorneys for Defendant
18 David Alan Heslop
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PROOF OF SERVICE

I declare that:

I am and was at the time of service of the papers herein, over the age of eighteen (18) years and am not a party to the action. I am employed in the County of Los Angeles, and my business address is 777 S. Figueroa St., 47th Floor, Los Angeles, California.

On July 11, 2011, I caused to be served the following documents:

NOTICE OF MOTION AND MOTION FOR PROTECTIVE ORDER RE DEPOSITION OF DAVID ALAN HESLOP; MEMORANDUM OF POINTS AND AUTHORITIES AND DECLARATION OF PHILIP W. VINEYARD IN SUPPORT THEREOF; PROPOSED ORDER

- VIA FACSIMILE TRANSMISSION:** (Code Civ. Proc. §§ 1013(e) and (f)): From fax number (213) 607-2116 to the fax numbers listed below and/or on the attached service list. The facsimile machine I used complied with Rule 2008 and no error was reported by the machine.
- VIA MAIL:** By placing a copy thereof for delivery in a separate envelope addressed to each addressee, respectively, as follows:
 - BY FIRST-CLASS MAIL** (Code of Civ. Proc. §§ 1013 and 1013(a))
 - BY OVERNIGHT DELIVERY** (Code Civ. Proc. §§ 1013(c) and (d))
 - BY CERTIFIED RETURN RECEIPT MAIL** (Code of Civ. Proc. §§ 1013 and 1013(a))

SEE ATTACHED SERVICE

I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice, it would be deposited with the United States Postal Service on that same day with postage thereon fully prepaid at Los Angeles, California, in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after the date of deposit for mailing in affidavit.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on July 11, 2011, at Los Angeles, California



Judi Chitls

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Service List
Twenty Nine Palms Band of Mission Indians of CA, et al. v. David Alan Heslop, et al.
3981-7002

<p>Gordon E. Bosserman, Esq. SPOLIN SILVERMAN COHEN & BOSSERMAN LLP 11601 Wilshire Boulevard, Suite 2410 Los Angeles, CA 90025</p>	<p>Attorneys for Plaintiffs:</p> <p>Twenty-Nine Palms Band of Mission Indians of California; Twenty-Nine Palms Enterprises Corporation; and Echo Trail Holdings, LLC, a limited liability company</p> <p>Telephone: (310) 586-2413</p> <p>Facsimile: (310) 586-2444</p> <p>E-mail: reception@sposilco.com</p>
<p>Cheryl Davidson, Esq. SUNDERLAND MCCUTCHAN LLP 11770 Bernardo Plaza Ct., Suite 250 San Diego, CA 92128</p>	<p>Defendants:</p> <p>Peggy Shambaugh; Bennion & Deville Fine Homes, Inc., dba Windermere Real Estate Coachella Valley, a corporation</p> <p>Telephone: (858) 618-1652</p> <p>Facsimile: (858) 675-7807</p>
<p>Todd E. Croutch, Esq. Daniel Dik, Esq. FONDA & FRASER LLP 100 West Broadway, Suite 650 Glendale, CA 91210-1201</p>	<p>Defendants:</p> <p>National Demographics, Inc., a corporation</p> <p>Telephone: (818) 543-1380</p> <p>Facsimile: (818) 543-1389</p>
<p>Diversification Resources LLC 74090 El Paseo, 2nd Floor Palm Desert, CA 92260</p>	