

UNITED STATES DISTRICT COURT 205-4250

for the Judge Bolton: (602) 322-7570
District of Arizona

VALLE DEL SOL, ET AL.

Plaintiff

v.

MICHAEL B. WHITING, ET AL.

Defendant

Civil Action No. CV-10-01061-PHX-SRB

(If the action is pending in another district, state where:)

SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS OR TO PERMIT INSPECTION OF PREMISES IN A CIVIL ACTION

To: LAURA LEIGHTON
3332 E. PIMA ST., TUCSON, AZ 85716

Production: YOU ARE COMMANDED to produce at the time, date, and place set forth below the following documents, electronically stored information, or objects, and permit their inspection, copying, testing, or sampling of the material: SEE ATTACHED "EXHIBIT A"

Place: ACLU FOUNDATION
233 PEACHTREE STREET NE, SUITE 2150
ATLANTA, GA 30303
Date and Time: 01/30/2014 10:00 am

Inspection of Premises: YOU ARE COMMANDED to permit entry onto the designated premises, land, or other property possessed or controlled by you at the time, date, and location set forth below, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation on it.

Place:
Date and Time:

The provisions of Fed. R. Civ. P. 45(c), relating to your protection as a person subject to a subpoena, and Rule 45 (d) and (e), relating to your duty to respond to this subpoena and the potential consequences of not doing so, are attached.

Date: 12/26/2013

CLERK OF COURT

OR

Signature of Clerk or Deputy Clerk

Justin Cox
Attorney's signature

The name, address, e-mail, and telephone number of the attorney representing (name of party) VALLE DEL SOL, ET AL., who issues or requests this subpoena, are:

Justin Cox, ACLU Foundation, 233 Peachtree Street NE, Suite 2150, Atlanta GA 30303, jcox@aclu.org, (404) 221-5854

Federal Rule of Civil Procedure 45 (c), (d), and (e) (Effective 12/1/07)

(c) Protecting a Person Subject to a Subpoena.

(1) Avoiding Undue Burden or Expense; Sanctions. A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The issuing court must enforce this duty and impose an appropriate sanction — which may include lost earnings and reasonable attorney's fees — on a party or attorney who fails to comply.

(2) Command to Produce Materials or Permit Inspection.

(A) Appearance Not Required. A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) Objections. A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing or sampling any or all of the materials or to inspecting the premises — or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

(i) At any time, on notice to the commanded person, the serving party may move the issuing court for an order compelling production or inspection.

(ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) Quashing or Modifying a Subpoena.

(A) When Required. On timely motion, the issuing court must quash or modify a subpoena that:

(i) fails to allow a reasonable time to comply;

(ii) requires a person who is neither a party nor a party's officer to travel more than 100 miles from where that person resides, is employed, or regularly transacts business in person — except that, subject to Rule 45(c)(3)(B)(iii), the person may be commanded to attend a trial by traveling from any such place within the state where the trial is held;

(iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or

(iv) subjects a person to undue burden.

(B) When Permitted. To protect a person subject to or affected by a subpoena, the issuing court may, on motion, quash or modify the subpoena if it requires:

(i) disclosing a trade secret or other confidential research, development, or commercial information;

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party; or

(iii) a person who is neither a party nor a party's officer to incur substantial expense to travel more than 100 miles to attend trial.

(C) Specifying Conditions as an Alternative. In the circumstances described in Rule 45(c)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

(i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and

(ii) ensures that the subpoenaed person will be reasonably compensated.

(d) Duties in Responding to a Subpoena.

(1) Producing Documents or Electronically Stored Information. These procedures apply to producing documents or electronically stored information:

(A) Documents. A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) Form for Producing Electronically Stored Information Not Specified. If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) Electronically Stored Information Produced in Only One Form. The person responding need not produce the same electronically stored information in more than one form.

(D) Inaccessible Electronically Stored Information. The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) Claiming Privilege or Protection.

(A) Information Withheld. A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

(i) expressly make the claim; and

(ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) Information Produced. If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information to the court under seal for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(e) Contempt. The issuing court may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena. A nonparty's failure to obey must be excused if the subpoena purports to require the nonparty to attend or produce at a place outside the limits of Rule 45(c)(3)(A)(ii).

EXHIBIT A

Pursuant to Federal Rule of Civil Procedure 45, Plaintiffs Valle del Sol, Inc., et al (“Plaintiffs”), by and through their counsel of record, request that, on or before January 30, 2014 at 10:00 AM MT (Noon ET) produce in native format for inspection and copying, at the offices of the ACLU Foundation (233 Peachtree Street NE, Suite 2150, Atlanta GA 30303), all of the requested documents and things which are in his custody or control.

DEFINITIONS

1. “RELATE TO,” “RELATING TO” or “REGARDING” any given subject matter means, without limitation, anything that, in whole or in part, directly or indirectly, analyzes, comments upon, comprises, concerns, constitutes, contains, discusses, embodies, evidences, explains, identifies, manifests, mentions, reflects, refers to, relates to, states, summarizes, or is in any way relevant to the particular subject matter identified.

2. “COMMUNICATION” means any oral or written transmittal and/or receipt of words or information, whether by chance, pre-arranged, formal or informal, and specifically includes, without limitation, notes or notices of conversations in person or by telephone, faxes, telegrams, electronic mail (regardless of the email account used), text messages, social media postings, letters, reports, memoranda, formal statements, press releases, and media publications.

3. “DOCUMENT” and “DOCUMENTS” are defined to be synonymous in meaning and equal in scope to the usage of the terms in Federal Rule of Civil Procedure 34(a), in its broadest sense, and shall mean and include all written, printed, typed,

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PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)

This subpoena for *(name of individual and title, if any)* _____
was received by me on *(date)* _____

I served the subpoena by delivering a copy to the named person as follows: _____

_____ on *(date)* _____ ; or

I returned the subpoena unexecuted because: _____

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also
tendered to the witness fees for one day's attendance, and the mileage allowed by law, in the amount of
\$ _____

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ 0.00

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

recorded or graphic matter of every kind and description, both originals and copies, and all attachments, appendices, and metadata thereto, that are in your possession, custody or CONTROL, or in the possession, custody or CONTROL of your attorney(s) or agent(s). A draft of a non-identical copy is a separate DOCUMENT within the meaning of this term. Without limiting the term "CONTROL," a DOCUMENT is deemed to be within your CONTROL if you have ownership, possession or custody of the DOCUMENT, or the right to secure the DOCUMENT or copy thereof from any persons or public or private entity having physical control thereof.

4. "UNAUTHORIZED IMMIGRATION" means migrating to, entering, coming to, or remaining in the United States without permission or authorization from the federal government.

5. The term "ARIZONA STATE OFFICIAL" means any former or current elected member, staff member, employee, or agent of the Legislature or its component parts.

REQUEST FOR PRODUCTION

DOCUMENT REQUEST # 1:

All DOCUMENTS—including but not limited to COMMUNICATIONS with ARIZONA STATE OFFICIALS—RELATING TO the “Support Our Law Enforcement and Safe Neighborhoods Act” (also known as “S.B. 1070”), including any proposed or actual amendments made thereto. This request includes, but is not limited to, DOCUMENTS and COMMUNICATIONS related to the meaning, requirements, enforcement, motivation for and/or purpose of S.B. 1070 and/or its individual provisions, and/or the endorsement thereof by your organization or its members.

DOCUMENT REQUEST # 2:

All COMMUNICATIONS with ARIZONA STATE OFFICIALS created, modified, sent, or received since January 1, 2005 RELATING TO legislation and/or policies that were proposed, suggested, drafted, considered, debated, needed, or enacted, REGARDING immigration, UNAUTHORIZED IMMIGRATION, immigrants, aliens, day labor, day laborers, illegal aliens, non-citizens, Latinos, Hispanics, Mexicans, Mexico, or the English language.

DOCUMENT REQUEST # 3:

All COMMUNICATIONS with ARIZONA STATE OFFICIALS created, modified, sent, or received since January 1, 2005 that contain any of the following words or terms (including any plural form thereof): “alien,” “Aztlán,” “assimilate,” “assimilation,” “beaner,” “consular,” “day labor,” “day laborer,” “English,” “Hispanic,”

“illegals,” “immigrant,” “immigration,” “invasion,” “Kobach,” “Latin America,”
“Latino,” “matricula,” “MEChA,” “Mexican,” “Mexico,” “Oriental,” “profiling,” “raza,”
“Reconquista,” “sanctuary,” “Spanish,” “spic,” “undocumented,” or “wetback.”

DOCUMENT REQUEST # 4:

All DOCUMENTS—including but not limited to COMMUNICATIONS, letters, emails, mailers, brochures, pamphlets, cards, advertisements, commercials, flyers, signs, op-eds, speeches, talking points, solicitations for support or opposition, explanations of policy positions, press releases, etc.—created, modified, used, sent, or received since January 1, 2005, that RELATE TO to any Arizona campaign for local, state, or federal elected office and that make direct or indirect reference to any of the following topics: immigration (including UNAUTHORIZED IMMIGRATION); alleged fiscal and/or economic costs of immigration (including UNAUTHORIZED IMMIGRATION); immigrants and/or aliens, regardless of their immigration status; Hispanics; Latinos; Mexico; Mexicans; Spanish; “sanctuary” or other types of state or local policies of non-cooperation with DHS in the enforcement of immigration laws; state and/or local policies of enforcing immigration laws (including but not limited to 287(g) agreements); and/or policies, preferences, or requirements RELATING TO the use of the English language.