

APR 08 2010

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

DARREN THOMAS; JESUS AVILA;
ERNESTO AVILA; TRACY BATTS;
AARON BREITIGAM; ANTONIO
CABALLERO; RUBEN CALDERON
individually and as Guardian Ad Litem for
Christina and David Calderon, minors;
CAROLINA CALDERON; LINDA
CALDERON; JORGE CALDERON;
DEMETRIO CARILLO; ELZIE
COLEMAN; DOLORES DALTON,
Guardian ad Litem for a minor Ron
Dalton; MARRIANNE ENGLISH,
individually and as parent and heir of
Lawrence Johnson; Deceased; SERGIO
GALINDO; RAUL GONZALES;
MARCELO GONZALEZ; RICHARD
HERNANDEZ; JEFFREY HOLLIMAN;
SOCORRO HUERTA, Guardian ad litem
for minor Fernandez Martinez; ERIC
JONES; SANDRA LEONARD, heir of
William Leonard; deceased; CANDI
LEONARD, heir of William Leonard;
deceased; YIDEFONZA LORENZANA;
ALFREDO MAYA, inidividually and as
Guardian ad litem for Irene Maya; RAUL
MAYA, individual and as Guardian ad
litem for Raul Maya Jr, a minor; CARLOS
MAYA; MARGUERITA MAYA;

No. 09-55297

D.C. No. 2:90-cv-05217-TJH

MEMORANDUM *

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

RUBEN MAYA; LUPE MAYA;
NATALIE MELENDREZ, Guardian ad
litem for a minor Jessie Melendrez;
GEORGE MENDIBLES; ESTELLA
MONTROYA, individually and as Guardian
ad litem for Rebecca Montoya a minor &
Crystal Trevino & Monique Trevino;
RAPHAEL OCHOA; JOSE ORTEGA;
DELIA OSITA; PATSY PEREZ Guardian
at litem for Adolpho Alejade a minor &
Brian Alejade a minor; RITA PRECIADO,
Guardian ad litem for Salvador Preciado a
minor; TERESA RODRIGUEZ,
individually and as Guardian ad litem
Alice Orejel a minor Maria Orejel a minor;
SERGIO SANCHEZ; JOSE SANCHEZ;
ALFREDO SANCHEZ; CHARLES
SCOTT; MICHAEL STERLING; KEVIN
MARSHALL; WILLIAM SCOTT;
ALVIN WASHINGTON; DANNY
WILLIAMS; JULIA POLK Administrator
for Estate of Lloyd Polk; ESTELA
SANCHEZ; ALFONSO SANCHEZ;
FRANCISCO TOVAR, individually and
as guardian ad litem for minors Francisco
Tovar Jr, Yesenia Tovar, Marcela Tovar,
Jaime Tovar, Jesus Tovar and Herman
Tovar; ELSA TOVAR; MARTA VELEZ,

Plaintiffs,

and

FREDDIE FUIAVA,

Plaintiff-Intervenor-Appellant,

v.

LOS ANGELES COUNTY, a public entity; LOS ANGELES SHERIFF'S DEPARTMENT, a public entity; CITY OF LYNWOOD, a public entity & a municipal corporation; SHERMAN BLOCK individually and as Sheriff of the County of Los Angeles; ROBERT EDMONDS, individually and as Undersheriff of the County of Los Angeles; JERRY HARPER, individually and as Assistant Sheriff of the County of Los Angeles; RICHARD FOREMAN, individually and as Assistant Sheriff of the County of Los Angeles; BERT J. CUEVA, individually and as Commander of the Los Angeles County Sheriff's Lynwood Station; PAUL ARCHAMBAULT, #213669; ANTHONY CAMPBELL, #013405; JAMES CORRIGAN, #213671; ROBERT DELGADILLO, #230237; MICHAEL J. GARCIA, #207136; KELLY MCMICHAEL, #260309; DOUGLAS GILLIES #244674; J. LESLIE, #223389; JASON MANN, #196175; GUY MATO #188894; JOHN MOSSOTTI, #232692; EDWARD M. NORDSKOG #241276; MICHAEL PIPPIN, #116212; DAN RAIMO, #207220; THOMAS ROSAS, #111632; J. SHEEHY, #207157; ELIZABETH NMI SMITH #222075; GREGORY THOMPSON, #196144; THOMAS ZAMPIELLO, #128 who is sued individually and in his official capacity; JUAN ALVARADO; UNKNOWN ANDERSON, Sgt #160080;

CHARLES BARTON; TIMOTHY E.
BENSON, #246380; GARY
BLACKWELL; STEVE BLAIR #236778;
ROBERT BLUME, #273451;
UNKNOWN BRANDENBURG #209523;
C. BRANTLEY, Lt.; TIMOTHY BROAD;
KATHERINE BROWN- VOYER,
#258489; T. BROWNELL; RICHARD
CALZADA; SCOTT CARTER #150582;
RICHARD L. CASTRO, Lt.; JOHN
CHAPMAN, #220837; JAVIER CLIFT;
JOHN NIM CORINA, #213435; DANIEL
COOPER; DANIELLE CORMIER;
UNKNOWN COSTLEIGH, #173151;
FRUSTINO DELVALLE; UNKNOWN
DEVINE, Sgt; ROBERT DILLARD;
CRAIG DITSCH; STEPHEN DOWNEY,
#219137; RAYMOND ESQUERRA,
#137451; LANCE FRALICK; RONALD
E. GILBERT, #207131; UNKNOWN
GIRON, #033144; NEILS GITTISARN,
#236616; TIMOTHY GLOVER; CURTIS
GOLDEN; FRANK NMI GONZALES;
KEVIN GORAN, #222021; RAYMOND
GOTT Captain; RUBEN GRACIA,
#213459; ALBERT GROTEFEND,
#034657; JOSEPH NMI GUZMAN;
ALLEN HARRIS; TOMMY HARRIS,
Sgt.; T. J. HARVEY, #038535; A.
HERRERA, Lt.; UNKNOWN
HOLBROOK, #209619; JOSEPH
HOLMES, #041885; ERIC HUBNER,
#37190; DALE HUFFMAN #265013;
KEVIN J. KIFF, #235151; LOY LUNA,
#201663; ALLYN LAWRENCE
MARTIN, #223374; SCOTT LEE
MCCORMICK, #248043; ABEL A.

MORENO, #195912; JACK NEIHOUSE;
UNKNOWN NELSON, #220245;
UNKNOWN NUNEZ, #067434;
RODOLFO O'DELL; UNKNOWN
O'HARA #183119; RICHARD OROSCO,
#068734; JAMES PACINA; ANDRE
PINESETT, #260171; UNKNOWN
RADELEFF, Lt.; JACK RAMIREZ
#211246; R. A. REED, #236792;
MICHAEL NMI REYNOLDS;
UNKNOWN RIFKIN, #207195; ALLEN
NMI RIPLEY; MARTIN RODRIGUEZ;
WILLIAM ROMAN, #077668; T.
RUNNING; MICHAEL SALVATORE,
#044852; MICHAEL SCHNEIDER,
#244092; LARRY SHULTZ; SAMUEL
SILVA; M. SPARKS, Lt.; BRIAN NMI
STEINWAND, #218524; JACK
TARASIUK #244912; GERALD
RICHARD THOMPSON, #238853;
GREG THURMAN; PATRICK VALDEZ;
MICHAEL VOGEL, #186761; BYRON
WAINIE #222015; K. WALL, #238868;
TODD LAWRENCE WALLACE,
#248150; JOHN A. WEST, #248032;
JAMES WHITTEN; MICHAEL NMI
WILBER; ROBERT WINDRIM; CHRIS
JAMES YOUNG, #248084, each of whom
is sued individually in his or her official
capacity as an agent or employee of the
County of Los Angeles,

Defendants - Appellees.

Appeal from the United States District Court

for the Central District of California
Terry J. Hatter, District Judge, Presiding

Argued and Submitted April 6, 2010**
Pasadena, California

Before: FERNANDEZ, SILVERMAN and GRABER, Circuit Judges.

Intervenor-Appellant Freddie Fuiava's petition for habeas corpus is currently pending in state court. The state court partially granted Fuiava's motion under California Penal Code § 1054.9 to take additional discovery in support of his petition. Fuiava then moved to intervene in this closed case in the Central District of California seeking modification of any protective order covering the discovery generated during the life of this case. After the district court denied his motion without stating a reason for its denial, a panel of this circuit remanded to give the district court an opportunity to state the reasons for its ruling. *See Thomas v. County of L.A.*, No. 06-56228, 275 Fed. Appx. 664 (9th Cir. 2008) (citing *Foltz v. State Farm Mut. Auto. Ins. Co.*, 331 F.3d 1122 (9th Cir. 2003)).

On remand, the district court again denied the motion to intervene, concluding that Fuiava had not articulated how access to the evidence he sought would be relevant to his collateral litigation. The district court further concluded

** The panel unanimously concludes this case is suitable for decision without oral argument. *See Fed. R. App. P. 34(a)(2)*.

that the reliance interest of the County in maintaining the protective order outweighed the policy of avoiding duplicative discovery. Fuiava appealed and we now vacate the district court's order because the motion to intervene to modify the protective order is moot.

In response to the panel's inquiries, neither party has identified a protective order that covers the discovery in this case. Fuiava's motion to intervene seeking modification of a protective order is therefore moot. No protective order prevents Fuiava from obtaining the discovery he seeks.

The district court's order denying Fuiava's renewed motion to intervene to modify the protective order is VACATED and the case is REMANDED with directions to dismiss the motion as moot.