

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

ISIAH MURRIETTA-GOLDING, et al.,

Plaintiffs,

v.

CITY OF FRESNO, et al.,

Defendants.

Case No. 1:18-cv-00314-AWI-SKO

Consolidated with case no. 1:18-cv-00332-AWI-SKO

**ORDER DENYING PARTIES'
REQUEST TO MODIFY MODEL
PROTECTIVE ORDER AND
DIRECTING PARTIES TO MEET AND
CONFER REGARDING PROTECTIVE
ORDER**

On August 20, 2018, the parties appeared telephonically for a conference to resolve certain discovery issues related to the parties' proposed protective order. Julia Sherwin, Esq., appeared on behalf of Plaintiff Christina Lopez; Stuart Chandler, Esq., appeared on behalf of Plaintiff Anthony Golding; and Bruce Praet, Esq., appeared on behalf of Defendants.

After reviewing the parties' submission and hearing the parties' arguments, the Court makes the following findings and orders:

1. Modification of Section 3 of the Protective Order.

The parties provided competing language for modifying Section 3 of the model protective order from the United States District Court for the Northern District of California (the "Model Protective Order"). According to the parties, the modification was necessary because Section 3 as currently written, is "inconsistent" with Section 5.2 of the Model Protective Order. Specifically, the parties contend the failure to designate information as "Protected Material" before the close of a deposition in accordance with Section 5.2(b), creates uncertainty in the minds of the parties. However, the Court finds the Model Protective Order adequately addresses the parties' perceived uncertainty and declines to adopt either party's proposed modification to Section 3 of the Model Protective Order.

1 “A protective order should be read in a reasonable and common sense manner so that its
 2 prohibitions are connected to its purpose.” *On Command Video Corp. v. LodgeNet Entm't Corp.*,
 3 976 F. Supp. 917, 921 (N.D. Cal. 1997) (citing *In re Dual-Deck Video Cassette Recorder Antitrust*
 4 *Litig.*, 10 F.3d 693, 695 (9th Cir. 1993)). “The purpose of a protective order under Rule 26(c) is to
 5 protect a party ‘from annoyance, embarrassment, oppression, or undue burden or expense.’” *Barnett*
 6 *v. Norman*, No. 1:05-cv-01022-SKO, 2010 WL 3220122, at *1 (E.D. Cal. Aug. 10, 2010) (quoting
 7 Rule 26(c) of the Federal Rules of Civil Procedure).

8 As discussed with the parties, the Model Protective Order anticipates the parties’ concern
 9 regarding uncertainty. Specifically, regardless of whether information is designated as “Protected
 10 Material” during a deposition in accordance with Section 5.2 and even if a party is uncertain whether
 11 deposition testimony summarizes, compiles, or otherwise might reveal “Protected Material”
 12 pursuant to Section 3, Section 5.3 of the Model Protective Order provides that the inadvertent failure
 13 to designate information as confidential during a deposition does not waive the right to timely
 14 correct that failure. Moreover, to the extent a party believes the designation of “Protected Material”
 15 is untimely or they will be unfairly prejudiced by the designation, Section 6 provides the procedure
 16 by which the designation can be challenged. Accordingly, consistent with a reasonable and
 17 commonsense reading of the Model Protective Order, the Court finds no ambiguity or inconsistency
 18 in the Model Protective Order and declines to add unnecessary provisions to the Northern District
 19 of California’s established and reliable Model Protective Order. The parties’ request is, therefore,
 20 DENIED.

21 **2. Definition of “Confidential Information or Items”**

22 The parties also seek what amounts to an advisory opinion regarding the scope of the parties’
 23 agreed-upon definition of “Confidential Information or Items.” As discussed with the parties, this
 24 issue is not ripe for the Court’s adjudication because there is not a specific document or information
 25 before the Court, from which the Court could determine whether it falls within (or outside) the
 26 parties’ definition of “Confidential Information or Items.” Moreover, the parties’ proposed
 27 definition of “Confidential Information or Items” lacks specificity and fails to comply with Rule
 28 141.1 of the Local Rules of the United States District Court for the Eastern District of California

1 (“Local Rule 141.1”).

2 In the Eastern District, protective orders must contain a “description of the types of
3 information eligible for protection under the order, with the description provided in general terms
4 sufficient to reveal the nature of the information (e.g., customer list, formula for soda, diary of a
5 troubled child).” Local Rule 141.1(c). The Court advised the parties that their proposed definition
6 of “Confidential Information or Items,” which covers “records and information of foundational facts
7 and investigation of the subject incident(s),” does not adequately “reveal the nature of the
8 information” that the parties intend to be covered by their protective order, as required by Local
9 Rule 141.1. Accordingly, the parties are ORDERED to meet and confer regarding the definition of
10 “Confidential Information or Items” in order to propose to the Court a protective order that complies
11 with Local Rule 141.1.

12
13 IT IS SO ORDERED.

14 Dated: August 21, 2018

/s/ Sheila K. Oberto
UNITED STATES MAGISTRATE JUDGE