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**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA**

THE REV. DR. MICHAEL A. NEWDOW
IN PRO PER, JAN DOE AND PAT DOE,
PARENTS; DOECHILD, A MINOR
CHILD; JAN POE; PARENT; POECHILD,
A MINOR CHILD; JAN ROE; PARENT;
ROECHILD-1 AND ROECHILD-2, MINOR
CHILDREN,

Plaintiffs,

vs.

THE CONGRESS OF THE UNITED
STATES OF AMERICA; THE UNITED
STATES OF AMERICA; THE STATE OF
CALIFORNIA; THE ELK GROVE
UNIFIED SCHOOL DISTRICT
("EGUSD"); DR. STEVEN LADD,
SUPERINTENDENT, EGUSD; THE
LINCOLN UNIFIED SCHOOL DISTRICT
("LUSD"); JANET PETSCH,
ASSOCIATE SUPERINTENDENT, LUSD;
THE SACRAMENTO CITY UNIFIED
SCHOOL DISTRICT ("SCUSD"); DR. M.
MAGDALENA CARRILLO MEJIA,
SUPERINTENDENT, SCUSD; THE
ELVERTA JOINT ELEMENTARY
SCHOOL DISTRICT ("EJESD"); DR.
DIANNA MANGERICH,
SUPERINTENDENT, EJESD; THE RIO
LINDA UNION SCHOOL DISTRICT

Case No.: CIV 05-0017 LKK DAD

**DEFENDANTS' OPPOSITION TO
MOTION FOR PROTECTIVE ORDER**

DATE: March 7, 2005
TIME: 10:00 a.m.
CTRM: 4

1 ("RLUSD"); FRANK S. PORTER,
2 SUPERINTENDENT, RLUSD;

3 Defendants.
4 _____/

5 Defendants EGUSD, DR. STEVEN LADD, LUSD, JANET PETSCHKE, SCUSD, DR.
6 M. MAGDALENA CARRILLO MEJIA, EJESD, DR. DIANA MANGERICH, RLUSD, and
7 FRANK S. PORTER (hereinafter "School District Defendants") hereby submit the following
8 Opposition to Plaintiffs' Motion for Protective Order.

9 **I.**

10 **INTRODUCTION**

11 Plaintiffs' seek a Protective Order to conceal the true identities of Plaintiffs except
12 as necessary to "ascertain the residency status, taxpayer status, or school enrollment status
13 of the Plaintiffs." Such disclosure is to be made only to defense counsel, but may be
14 disclosed beyond counsel only when "absolutely necessary" to make those ascertainments.
15 In addition, Plaintiffs propose that they (with the exception of Plaintiff Newdow) not be
16 required to be present in open court hearings and that all testimony to be presented by
17 Plaintiffs be limited to the form of deposition testimony. At this time, the School District
18 Defendants oppose Plaintiffs' Motion to the extent that counsel for Plaintiffs wishes to
19 impose his own restrictions on the use of Plaintiffs' identification information. Additionally,
20 the School District Defendants suggest that the issue of whether Plaintiffs should be required
21 to testify in open court be deferred to a later date to allow for further factual development
22 of the case.

23 **II.**

24 **ARGUMENT**

25 A court may, for good cause shown, "make any order which justice requires to protect
26 a party or person from annoyance, embarrassment, oppression, undue burden or expense."
27 F.R.Civ.P. 26(c). Also, Federal Rule of Civil Procedure 10(a) expresses a presumption that
28 a plaintiff file a complaint in her own name. As noted by Plaintiffs, however, this
presumption may be rebutted in "special circumstances" when the moving party establishes

1 that the “need for anonymity outweighs prejudice to the opposing party and the public’s
2 interest in knowing the party’s identity.” Does v. Advanced Textile Corp., 214 F.3d 1058,
3 1068 (9th Cir. 2000). In making this determination, the court considers three factors: (1) the
4 severity of the threatened harm; (2) the reasonableness of the anonymous party’s fears; and
5 (3) the anonymous party’s vulnerability to such retaliation. Id.

6 The School District Defendants do not oppose the allowance of *some* level of
7 anonymity of Plaintiffs’ identities. This is particularly true as to disclosure of the
8 information to unrelated third parties. However, even if good cause for a protective order
9 is shown, the court must still balance the interests in allowing discovery against the relative
10 burdens to the parties. Wood v. McEwen, 644 F.2d797, 801-02 (9th Cir. 1981). Such
11 extreme restrictions limiting use of the identification information to the three particular
12 purposes set by Plaintiffs places an undue burden on the School District Defendants’ ability
13 to defend the case. The School District Defendants should be entitled to use the Plaintiffs’
14 identities to develop information regarding issues relative to legal defenses which may be
15 asserted in this proceeding. For example, the School District Defendants must be able to
16 fully investigate issues of standing and participation in and/or exhaustion of administrative
17 remedies. Information regarding Plaintiffs’ marital status, applicable custody orders,
18 property ownership and the Plaintiff children’s participation or lack thereof in recitation of
19 the Pledge may also be needed to assess the applicability of certain defenses. Such inquiries
20 will likely require disclosure beyond defense counsel to parties such as teachers, principals
21 and administrators of the School District Defendants. Overall, the School District
22 Defendants are willing to restrict disclosure of the Plaintiffs’ identification information to
23 defense counsel, Defendants, employees or agents of Defendants and such other parties as
24 become necessary to complete a full investigation of the case. Per Plaintiff’s Proposed
25 Protective Order, all persons to whom the Plaintiffs’ identities are disclosed shall receive a
26 copy of the final protective order. Also, any filings with the Court where the true identities
27 of Plaintiffs may be ascertained shall be filed under seal. Third parties not involved in this
28 litigation will not be privy to the Plaintiff’s identification information, thereby minimizing

1 the risk of harm to Plaintiffs.

2 Plaintiffs' cite to Doe v. Stegall, 653 F.2d 180 (5th Cir. 1981) and Doe v. Porter, 370
3 F.3d 558 (6th Cir. 2004) to support their Proposed Protective Order. While in both cases the
4 courts granted the plaintiffs anonymity, tests different from that prescribed in Advanced
5 Textile were applied in reaching the court's conclusions. Additionally, in Doe v. Porter, the
6 plaintiffs "merely sought to bar disclosure to the general public." 370 F.3d at 183. Similar
7 to Defendants' suggestion in the present matter, both the defendants and the court had full
8 access to the identification information. Id.

9 Plaintiffs also rely on Advanced Textile for the premise that anonymity of Plaintiffs
10 in this matter is warranted. (See Plaintiffs' Motion for Protective Order). In Advanced
11 Textile, the plaintiffs filed a class action complaint for violation of the Fair Labor Standards
12 Act and sought to maintain their anonymity. Id. at 1062. The court granted the plaintiffs'
13 request as the case was early in the litigation stages and the parties were in the process of
14 contacting potential class members. Id. The court noted that no prejudice had yet befallen
15 the defendants, and therefore, anonymity was permissible. Id. at 1072. However, the court
16 suggested that reconsideration of its decision would be necessary upon completion of the
17 joinder process, when defendants were likely to be prejudiced. Id. This decision reflects the
18 court's awareness that at some point, disclosure of the plaintiffs' true identity would become
19 necessary.

20 In the present case, the School District Defendants will be immediately prejudiced by
21 Plaintiffs' proposed "three purpose" restriction on the use of the identification information.
22 Such information is necessary to fully ascertain and assert legal defenses, including lack of
23 standing. Therefore, as the School Districts and its Superintendents will be immediately
24 prejudiced by the strict limitations contained in the Plaintiffs' Proposed Protective Order,
25 Defendants respectfully request that this court modify the Order to preclude Plaintiffs'
26 counsel from imposing his own restrictions on the use of the identification information. A
27 more reasonable restriction would preclude third parties unrelated to this lawsuit from having
28 access to Plaintiffs' identities.

1 In addition, Plaintiffs' request an Order that Plaintiffs not be required to appear in
2 open court. The School District Defendants are not prepared to acquiesce to such a severe
3 restriction at this early stage of litigation and suggest that the District Court defer any
4 determination on that issue until there can be full development of the facts as necessary to
5 decide that issue.

6 **III.**

7 **CONCLUSION**

8 The School District Defendants agree that protection of Plaintiffs' identities is
9 necessary to prevent them from suffering harm. However, as currently proposed, Plaintiffs'
10 Protective Order unreasonably burdens Defendants in defending this lawsuit. Therefore, the
11 School District Defendants object to the extent Plaintiffs' counsel seeks to impose his own
12 restrictions on the use of the Plaintiffs' identification information and also respectfully
13 request that the District Court defer determination of whether Plaintiffs should be required
14 to testify in open court to a later date.

15 Dated: February 18, 2005

Respectfully Submitted,

16 PORTER, SCOTT, WEIBERG & DELEHANT
17 A Professional Corporation

18 By 
19

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Attorney for Defendants
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DISTRICT, DR. STEVEN LADD,
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MAGDALENA CARRILLO MEJIA, EL
VERTA JOINT ELEMENTARY SCHOOL
DISTRICT, DR. DIANNA MANGERICH,
RIO LINDA UNION SCHOOL DISTRICT
and FRANK S. PORTER