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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

JOHN DOE #1, et al.,

Plaintiffs,

v.

SAM REED, et al.,

Defendants.

CASE NO. C09-5456BHS

ORDER DENYING
PLAINTIFFS' MOTION FOR
PROTECTIVE ORDER AND
GRANTING INTERVENOR
WASHINGTON FAMILIES
STANDING TOGETHER'S
MOTION TO SEAL

This matter comes before the Court on Plaintiffs' motion for a blanket protective order (Dkt. 125) and Intervenor Washington Families Standing Together's ("WFST") motion to seal (Dkt. 131). The Court has considered the pleadings filed in support of and in opposition to the motions and the remainder of the file and hereby denies Plaintiffs' motion (Dkt. 125) and grants WFST's motion (Dkt. 131) for the reasons stated herein.

I. PROCEDURAL HISTORY

On September 3, 2010, Plaintiffs filed the instant motion for a blanket protective order regarding the identities of certain witnesses. Dkt. 125. On September 15, 2010, WFST opposed the motion. Dkt. 129. On September 17, 2010, Plaintiffs replied. Dkt. 137.

1 On September 15, 2010, WFST moved the Court to seal two exhibits filed in
2 support of its opposition to the instant motion for protective order. Dkt. 131. This motion
3 is unopposed.

4 II. DISCUSSION

5 A. Meet and Confer Requirement

6 Absent from the record with respect to Plaintiffs' motion is "certification that [it]
7 has in good faith conferred or attempted to confer with other affected parties in an effort
8 to resolve the dispute without court action." *See* Fed. R. Civ. P. 26(c)(1). Although the
9 parties apparently did conduct a teleconference prior to the filing of this motion, WFST
10 maintains and Plaintiffs do not dispute that the instant motion is beyond the scope of what
11 was agreed to be the scope of the requested protective order. *Compare* Dkt. 129 at 4
12 (WFST's response in opposition) with Dkt. 137 (reply not addressing WFST's arguments
13 regarding the meet and confer requirement). This alone is a basis on which to deny
14 Plaintiffs' motion for protective order.
15

16 B. Protective Orders, Generally

17 Pursuant to Fed. R. Civ. P. 26(c), protective orders should be issued "for good
18 cause shown." This is a public court and its business should be conducted publicly unless
19 there is a specific reason to keep things confidential. As stated in Local Civil Rule 5(g),
20 "[t]here is a strong presumption of public access to the court's files and records which
21 may be overcome only on a compelling showing that the public's right of access is
22 outweighed by the interests of the public and the parties in protecting files, records, or
23 documents from public review." On the few occasions when protective orders are
24 appropriate, they should be narrowly drawn with a presumption in favor of open and
25 public litigation. The showing necessary to establish good cause has been described as
26 follows:
27
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1 To establish good cause for a protective order under Fed. R. Civ. P.
2 26(c), the courts have insisted on a *particular and specific factual*
3 *demonstration*, as distinguished from stereotyped and conclusory
4 statements, revealing some injustice, prejudice, or consequential harm that
5 unsubstantiated by specific examples of articulated reasoning, do not satisfy
6 the rule.

7 The party requesting a protective order must make a specific
8 demonstration of facts in support of the request as opposed to conclusory or
9 speculative statements about the need for a protective order and the harm
10 which will be suffered without one. Such a party must demonstrate that
11 failure to issue the order will work a clearly defined harm.

12 10A Fed. Proc. Law. Ed. § 26:282 (emphasis added); *see also Beckman Indus., Inc. v.*
13 *Int’l Ins. Co.*, 966 F.2d 470, 476 (9th Cir. 1992); In *Beckman*, the Court also stated that
14 “broad allegations of harm, unsubstantiated by specific examples or articulated reasoning,
15 do not satisfy the Rule 26(c) test.” 996 F.2d at 476 (quoting *Cipollone v. Liggett Group,*
16 *Inc.*, 785 F.2d 1108, 1121 (3rd Cir. 1986)).

17 Before this Court will entertain a motion for a protective order, the following is
18 required:

19 1. The party seeking a protective order, stipulated or otherwise, must make a
20 compelling showing that their interest in the various “confidential materials” described in
21 the proposed order outweighs the public’s right of access to Court documents.

22 2. The request must be narrow and the terms of the order may not give too
23 much discretion to the parties to designate documents subject to the protective order.
24 Any protective order entered by the Court must be narrowly drawn and clearly identify
25 the class or type of documents subject to the order.

26 3. The proposed order may not be modified by agreement of the parties
27 without the Court’s signature of approval.

28 4. The order cannot grant “complete immunity” from any liability related to
the disclosure of confidential, personal, or proprietary information as long as the
disclosure is made pursuant to the terms of the protective order. Whether a particular

1 disclosure violates federal, state, or local law, breaches contractual obligations, and/or
2 violates another court's order is not before the Court by virtue of entering a stipulated
3 protective order: a grant of "immunity" without due consideration of the facts and
4 circumstances surrounding the disclosure would be improper and unjustified.

5 5. Finally, the order must contain a provision that the Court may change the
6 terms of the protective order on its own motion after notice to the parties and an
7 opportunity to be heard.

8 The parties may, of course, enter into a confidentiality agreement amongst
9 themselves without the aid of the Court, but if and when parties request that the Court be
10 involved, they must make the requisite showing discussed above.

11 In the present matter, Plaintiffs' motion for a protective order is deficient given
12 these guidelines. Specifically, Plaintiffs seek a "blanket protective order to protect the
13 identities of traditional marriage supporters learned through the discovery process. This
14 would include a witness' name, address, occupation, employer, telephone number, email
15 address and personal and identifying information." Dkt. 137 at 6. Such a protective order
16 is not narrowly drawn. "[A] blanket order . . . is by nature overinclusive." *Beckman*, 966
17 F.2d at 476 (citing *Public Citizen v. Liggett Group, Inc.*, 858 F.2d at 775, 790 (1st Cir.
18 1988)).

19 Plaintiffs' motion does not provide adequate specificity as to what they seek to
20 protect. Plaintiffs do not provide sufficient specific facts directly related to the people
21 involved in this matter that would require such a blanket protective order in this case. It
22 may be that some of the information is able to be protected, but not under the guise of an
23 overly broad protective order.
24

25 **C. Conclusion**

26 Plaintiffs have not made an adequate showing of good cause or that they met and
27 conferred with WFST in regard to what was actually moved for herein. Should Plaintiffs
28

1 renew this motion, they are first required to meet and confer with opposing counsel and
2 attempt to resolve the discovery dispute without aid of the Court.


3 The documents currently under seal or those to be placed under seal with respect to
4 Plaintiffs' proposed protective order may remain or be placed under seal. However, to
5 keep these documents under seal or to place other documents under seal will require a
6 stipulated protective order or a renewed motion to be submitted on or before October 20,
7 2010. If no protective order is requested by that date, the documents will be unsealed.

8 **III. ORDER**

9 Therefore, it is hereby **ORDERED** that

- 10 (1) Plaintiffs' motion for protective order (Dkt. 125) is **DENIED** without
11 prejudice as discussed herein.
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13 (2) WFST's motion to seal Exhibits A and B to the Hamilton Declaration is
14 **GRANTED** as discussed herein.

15 DATED this 6th day of October, 2010.

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18 BENJAMIN H. SETTLE
19 United States District Judge
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