

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO

TOM RETZLAFF	§	
Plaintiff,	§	
	§	
v.	§	
	§	NO: 5:08-CV-00170-OLG
LYNDA YVONNE DE LA VINA,	§	
DIANE BAKER WALZ, KYLE	§	
MERLETTE SNYDER, KATHERINE ANNE	§	
POPE,	§	
Defendants.	§	

DEFENDANTS' RESPONSE IN OPPOSITION TO PLAINTIFF'S SECOND MOTION AND NOTICE OF MOTION FOR PROTECTIVE ORDER

TO THE HONORABLE U.S. DISTRICT JUDGE ORLANDO L. GARCIA:

Defendants Lynda de la Vina, Diane Walz, Kyle Snyder, and Katherine Pope (the Defendants), named in their personal capacities by Plaintiff Tom Retzlaff, respond to Retzlaff's request for protection from the *First Amended Notice of Intention to Take Oral Video-Recorded Deposition of Plaintiff Tom Retzlaff*. Retzlaff, acting pro se, provides no factual basis—no scheduling conflict or other cause—for seeking to thwart this legitimate and agreed-upon discovery. Defendants prepared and issued the deposition notice to occur on September 24 in precise conformity with his attorney's September 8 written request. And an Order compelling this proper deposition discovery is already entered in this case. R. Item 4.

Undersigned counsel for Defendants intends to travel from Austin and to appear September 24 in order to perform this necessary case discovery. Defendants again now notify Retzlaff and his counsel that improper frustration of

this legitimate and agreed-upon attempt to depose Retzlaff will cause Defendants to request dismissal of the case on this basis.

BACKGROUND AND RELEVANT FACTS

1. Early in this case, Defendants repeatedly attempted to confer with Plaintiff's counsel-of-record (Louis Martinez) to set Retzlaff's deposition. R. Item 3.5. These efforts failed, causing Defendants to successfully move to compel Retzlaff's deposition. R. Items 3-4.
2. On August 28, 2008, Defendants noticed Retzlaff's deposition to occur on September 10, 2008. By letter dated September 8, Retzlaff's counsel wrote to Defendants that:

My client will not be available on Wednesday September 10, 2008 for the deposition hearing set for that morning. Mr. Retzlaff has a doctor's appointment that same morning that he must attend. We are asking that you please consider moving this deposition hearing for two weeks.

R. Item 8.2.¹

3. Accordingly, Defendants canceled the September 10 deposition and promptly re-noticed it to occur precisely two weeks later, on September 24, 2008. R. Item 8; and see Exhibit A (attached).

¹ By pro se filing in which he sought protection from the September 10 deposition, Retzlaff also argued that he was scheduled to appear in state court in the afternoon of September 10, 2008. R. Item 7 at 2 ¶ 6. Through litigation unrelated to UTSA and its officials, the Bexar County Court at Law has designated Retzlaff a **vexatious litigant**. R. Item 3.4. This restriction echoes a decision imposed on Retzlaff by at least one criminal court at an earlier time. See R. Item 3 at 3 ¶ 3.

4. Retzlaff now files *Plaintiff's Second Motion and Notice for Protective Order* accompanied by a memorandum. R. Item 10-11. But nothing in these filings articulate any scheduling or other conflict in relation to the agreed September 24 deposition notice prepared and timely dispatched by Defendants to Retzlaff and his counsel.
5. By way of other background, Retzlaff has pursued a course of (admittedly improperly-motived)² litigation against UTSA and its officials since November 2007. In relation to UTSA and its officials, Retzlaff has filed six lawsuits since November 2007, most recently in August 2008 in the form of a *Petition for Writ of Mandamus*, which he filed in state court.³ His pro se advocacy has caused nine (9) court hearings in 2008 associated with these cases, seven (7) of which Defendants describe in a pleading already before this Court. See R. Item 3 at 2-3 ¶ 1.
6. Since these seven appearances, Retzlaff has twice more appeared pro se in courts in Bexar County to advocate against UTSA officials for relief, including on:
 - August 11, 2008. *In re. Tom Retzlaff*, No. 2008CI12347 (150th Dist. Ct. Bexar County, Tex.) Hearing where Retzlaff sought to compel by writ of

² By (Exhibit B, attached) letter dated in April 2008, Retzlaff says this about his lawsuits against UTSA and its officials: “. . . my filing lawsuits and dragging their asses into court and into depositions is a kind of therapy for me. It lets me work off my extreme hate that I have for these people in a manner that is both productive and beneficial to me.”

³ This petition violated a June 2008 court Order barring Retzlaff from filing any new litigation without the permission of the Bexar County Court at Law. R. Item 3.4 at 2.

mandamus additional administrative review of a UTSA hearing officer's ruling to expel Retzlaff from the school for committing offense(s) subject to this discipline. (The district court denied Retzlaff's application.); and

- August 22, 2008. *Retzlaff v. Romo*, No. 338313 (Co. Ct. At Law No. 3, Bexar County, Tex.). Retzlaff sought an injunction to bar UTSA from enforcing its disciplinary expulsion ruling; alternatively, Retzlaff asked the court to compel further administrative review of the expulsion decision. (The Bexar County Court at Law denied Retzlaff's request.)
7. Improper frustration of Defendants' agreed-upon and properly-noticed September 24 deposition of Plaintiff will cause them to move to dismiss the case on the basis of this case history. See supra.

CONCLUSION

For the foregoing reasons, Defendants ask the Court to deny *Plaintiff's Second Motion and Notice for Protective Order*.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document and its exhibit attachments have been served via facsimile transmission and U.S. Postal Service mail, on September 23, 2008, to the following:

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