



3. On August 28, 2008, defendants served the attached notice of intent to take deposition. Defendants' discovery request is objectionable because it notices plaintiff for a September 10, 2008, deposition which plaintiff cannot attend.

4. Plaintiff attempted to confer with defendants' counsel, Lars Hagen, in a good-faith effort to resolve the dispute without court action, as required by Federal Rule of Civil Procedure 26(c) and as shown in the attached certificate of conference. Because plaintiff was unable to confer with opposing counsel after several unreturned telephone calls, the dispute remains unresolved.

#### B. Argument

5. The court has broad discretion to issue a protective order on a showing of good cause. See Fed. R. Civ. P. 26(c); see also *Shingara v. Skiles*, 420 F.3d 301, 306 (3<sup>rd</sup> Cir. 2005) (listing factors court should consider in granting protective order for discovery).

6. There is good cause for the court to protect plaintiff with a protective order preventing the September 10, 2008, deposition of plaintiff. Plaintiff has a previously scheduled medical appointment on the morning of September 10<sup>th</sup> and in the afternoon he has a previously scheduled court hearing in the 150<sup>th</sup> District Court of Bexar County, Texas. In addition, plaintiff was never given any kind of notice or an opportunity to be heard with regards to defendants' previously filed motion to compel this deposition. Defendants never served plaintiff with a copy of their motion, nor was plaintiff ever notified about the court hearing. Lastly, defense counsel never once contacted plaintiff in

an effort to confer about the setting of this deposition. Therefore, plaintiff asks the court to exercise its discretion and grant a protective order.

C. Conclusion

7. For these reasons, plaintiff asks the court to set his motion for protective order for hearing and, after the hearing, to issue an order protecting plaintiff from defendants' notice of intent to take plaintiff's deposition by denying the requested discovery until such a time as the parties have conferred to discuss a reasonable setting for plaintiff's deposition.

Respectfully submitted,



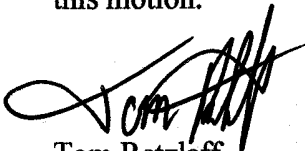
Tom Retzlaff  
PO Box 92  
San Antonio, Texas 78291-0092  
(210) 317-9800 OFFICE  
(210) 521-9146 FAX

PLAINTIFF, PRO SE

CERTIFICATE OF CONFERENCE

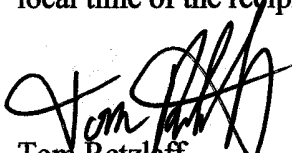
I certify that I attempted to confer with Lars Hagen by telephone on about four different occasions last week, but counsel has not responded to my attempts.

Accordingly, I cannot represent to the court whether counsel opposes or does not oppose this motion.

  
Tom Retzlaff

CERTIFICATE OF SERVICE

I certify that a copy of plaintiff's motion and notice of motion for protective order was served on defendants through their counsel of record, Lars Hagen, by telephonic document transfer to fax number (512) 320-0667, on September 8, 2008, before 5:00 p.m. local time of the recipient.

  
Tom Retzlaff

***EXHIBIT A***

(Notice of Deposition)

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF TEXAS  
SAN ANTONIO

TOM RETZLAFF  
Plaintiff,

v.

LYNDA YVONNE DE LA VINA,  
DIANE BAKER WALZ, KYLE  
MERLETTE SNYDER, KATHERINE ANNE  
POPE,  
Defendants.

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NO: 5:08-CV-00170-OLG

**NOTICE OF INTENTION TO TAKE ORAL VIDEO-RECORDED  
DEPOSITION OF PLAINTIFF TOM RETZLAFF**

TO: Tom Retzlaff through his attorney of record Louis D. Martinez, Law Office of Louis D. Martinez, 1004 S. St. Mary's Street, San Antonio, Texas 78205; and to Tom Retzlaff, P.O. Box 92, San Antonio TX 78291 0092.

Please take notice that Defendants Lynda de la Vina, Diane Walz, Kyle Snyder, and Katherine Pope (the Defendants), named in their personal capacities by Plaintiff Tom Retzlaff, and represented by the Office of the Attorney General, will depose Retzlaff by sworn oral examination beginning at 10:00 a.m. on September 10, 2008. This deposition notice is pursuant to the Court's July 2008 Order compelling Retzlaff's testimony. The answers and documentation obtained during this deposition may be read and used in evidence on the trial of this case on behalf of Defendants.

Retzlaff's deposition will occur at the Office of the Texas Attorney General, 3460 Northeast Parkway (Pride Hall - conference room), San Antonio, TX 78218, and will be recorded stenographically by a representative of Integrity Legal Support Solutions, 512-320-8690. In addition to the stenographic recording, the deposition may also be video-taped.

Respectfully submitted,

**GREG ABBOT**  
Attorney General of Texas

**KENT C. SULLIVAN**  
First Assistant Attorney General

**DAVID S. MORALES**  
Deputy Attorney General for Litigation

**ROBERT B. O'KEEFE**  
Chief, General Litigation Division



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**LARS HAGEN**  
Texas Bar No. 24034470  
Assistant Attorney General  
General Litigation Division  
P.O. Box 12548, Capitol Station  
Austin, Texas 78711-2548  
(512) 463-2120 (Telephone)  
(512) 320-0667 (Facsimile)

**ATTORNEYS FOR DEFENDANTS**

**CERTIFICATE OF SERVICE**

I certify that a true and correct copy of the foregoing document has been served by facsimile transmission and U.S. Postal Service Mail to Louis D. Martinez and likewise to Plaintiff Tom Retzlaff on August 28, 2008, as follows:

**Louis D. Martinez**  
Law Office of Louis D. Martinez  
1004 S. St. Mary's Street  
San Antonio, Texas 78205  
210-223-1263 (Fax)  
Counsel of Record for Plaintiff  
**Tom Retzlaff**  
P O Box 92  
San Antonio TX 78291 0092  
210-521-9146 (Fax)



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**LARS HAGEN**  
Assistant Attorney General

***EXHIBIT B***

**(Affidavit of Tom Retzlaff)**



IN THE UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF TEXAS  
SAN ANTONIO DIVISION

TOM RETZLAFF,  
Plaintiff,

Vs.

LYNDA YVONNE DE LA VINA, CIVIL ACTION NO. 5:08-CV-00170-OLG  
DIANE BAKER WALZ, KYLE  
MERLETTE SNYDER, KATHERINE ANNE  
POPE,  
Defendants.

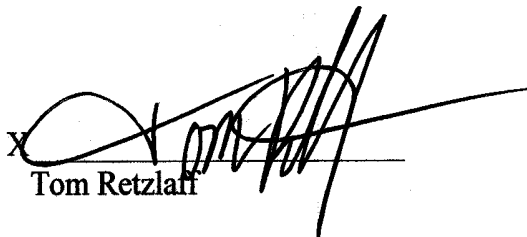
**AFFIDAVIT OF TOM RETZLAFF**

On this day, Tom Retzlaff appeared before me, the undersigned notary public.

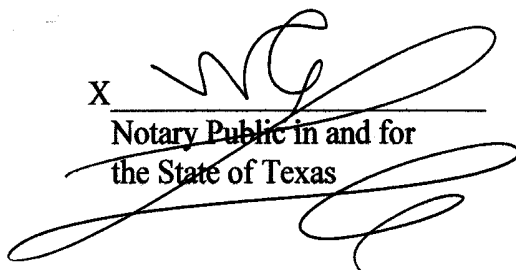
After I administered an oath to him, he said:

1. "My name is Tom Retzlaff. I am competent to make this affidavit. The facts stated in this affidavit are within my personal knowledge and are true and correct.
2. At no point did opposing counsel ever confer with me regarding his wanting to take my deposition. At no point did opposing counsel ever serve me with a copy of his motion to compel my deposition. At no point was I ever informed that there was going to be a court hearing on said motion. At no point did I ever participate in such a court hearing. At no point did I even receive a copy of the court's order from said hearing. The first I heard of the matter was when I received a fax from opposing counsel on

August 28, 2008, noticing me for a September 10<sup>th</sup> deposition. Upon receipt of this fax I made repeated attempts to contact Mr. Hagen, but he never once returned my phone calls.”

X   
Tom Retzlaff

SWORN TO and SUBSCRIBED before me by Tom Retzlaff on September 8,  
2008.

X   
Notary Public in and for  
the State of Texas

