

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 TO PLAINTIFF'S MOTION AND  
MEMORANDUM IN SUPPORT OF MOTION FOR PROTECTIVE  
ORDER AND NOTICE OF DEPOSITION CANCELLATION**

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 *Notice of Intention to Take Oral Video-Recorded Deposition of Plaintiff Tom Retzlaff*. Defendants issued the notice on August 28 for a deposition to occur on September 10, 2008, after repeated, failed attempts to set Retzlaff's deposition and the resulting entry of an Order to compel his deposition. R. Item 4.

Defendants nevertheless declare and show that they:

1. hereby now **cancel** the deposition of Retzlaff set for September 10, 2008;
2. take this action in light of a letter transmitted on September 8, 2008, by Retzlaff's attorney to undersigned counsel for Defendants (See Exhibit A), requesting the cancellation; and

3. intend to promptly re-notice the deposition to occur later in September 2008. Defendants further notify Retzlaff and his counsel that any frustration of their next attempt to depose Retzlaff will cause Defendants to move to dismiss the case on the basis of this case history, including this Court's Order. R. Item 74.

Finally, Defendants highlight for the record that Retzlaff is and has been represented by attorney Louis D. Martinez in this case. Accordingly, undersigned counsel for Defendants intend to communicate only with attorney Martinez about the lawsuit, especially in light of Martinez's past complaint about contact with his client—see R. Item 3.7 (Ex. F)—and notwithstanding Retzlaff's apparent pro se advocacy in the case. See Re. Items 6-7.

### **CONCLUSION**

Upon request by Retzlaff's counsel, Defendants cancel the *Notice of Intention to Take Oral Video-Recorded Deposition of Plaintiff Tom Retzlaff*, scheduled to occur on September 10, 2008. Defendants will promptly re-notice a deposition to occur later in the month. Frustration of the next deposition setting will cause Defendants to move for the dismissal of Retzlaff's lawsuit on this basis and in light of the case's history.

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

/s/ Lars Hagen

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 hereby certify that a true and correct copy of the foregoing document and its exhibit attachment has been served via facsimile transmission and U.S. Postal Service mail, on September 9, 2008, to the following:

LOUIS D. MARTINEZ  
Law Office of Louis D. Martinez  
1004 S. St. Mary's Street  
San Antonio, Texas 78205  
210-521-9146 (fax)

/s/ Lars Hagen

LARS HAGEN  
Assistant Attorney General