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

JENNIFER ZAMORA,

Plaintiff,

vs.

JANET NAPOLITANO, et al.,

Defendants.

No. CIV S-09-1292 JAM EFB

ORDER

On May 4, 2010, the undersigned held a hearing in chambers regarding the stipulation and proposed protective order filed by the parties on April 29, 2010. Dckt. No. 39. Jennifer Gregory appeared at the hearing on behalf of plaintiff; Jason Ehrlinspiel appeared on behalf of defendants.

As discussed at the May 4, 2010 hearing, the parties' proposed protective order will not be signed at this time. The proposed protective order seeks to limit the disclosure of certain requested information to specific, identified persons, and also seeks a court order pursuant to 5 U.S.C. § 552a(b)(11) authorizing the disclosure of information that may be protected by the Privacy Act.<sup>1</sup> See Dckt. No. 39 at 4 ("Upon approval of this Stipulation and Protective Order,

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<sup>1</sup> At the hearing, the undersigned indicated that he would consider signing the protective order portion of the parties' filing at this time, and address the § 552a(b)(11) portion of the filing once the relevance and notice issues discussed below are addressed. However, the parties indicated

1 under the authority of the Court conferred by Rule 26(c) of the Federal Rules of Civil Procedure  
2 and 5 U.S.C. § 552a(b)(11), such production will not be contrary to the Privacy Act.”). Among  
3 the requested information sought to be covered by the protective order and the order under  
4 § 552a(b)(11) are documents contained within former defendant Loren Ishii’s personnel and  
5 disciplinary files and documents regarding former Transportation Security Administration  
6 (“TSA”) employee Christina Arellano.<sup>2</sup> Dckt. No. 39 at 2-3.

7 Section 552a(b) provides: “No agency shall disclose any record which is contained in a  
8 system of records by any means of communication to any person, or to another agency, except  
9 pursuant to a written request by, or with the prior written consent of, the individual to whom the  
10 record pertains, unless disclosure of the record would be – . . . (11) pursuant to the order of a  
11 court of competent jurisdiction . . . .” Although neither § 552a nor its legislative history  
12 specifies the standards for issuance of a court order under § 552a(b)(11), courts issuing such  
13 orders typically do so only upon a finding that the documents to be disclosed are relevant, and  
14 often also impose a requirement that the individual being affected by the disclosure be given  
15 notice. *See Laxalt v. McClatchy*, 809 F.2d 885, 889, 890 (D.C. Cir. 1987) (“Procedurally, then,  
16 when the District Court considers a request for a Privacy Act order in the discovery context it  
17 must consider the use of protective orders and the possibility of in camera inspection. It should  
18 also consider, in its discretion, the wisdom of notifying the affected parties.”); *Hassan v. United*  
19 *States*, 2006 WL 681038, at \*2 (W.D. Wash. Mar. 15, 2006) (“Even where information is subject  
20 to the protections of the Privacy Act of 1974, ‘a party can invoke discovery of materials  
21 protected by the Privacy Act through the normal discovery process and according to the usual  
22 discovery standards, the test of discoverability is the relevance standard of Rule 26(b)(1) of the

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25 at the hearing that it would be more prudent for the court to address the matters at the same time.

26 <sup>2</sup> The document requests addressed in the proposed protective order also seek information from other “TSA employees.” However, at the May 4, 2010 hearing, defendants’ counsel indicated that the responsive documents only implicate Privacy Act concerns regarding Ishii and Arellano.

1 [Federal Rules of Civil Procedure].”); *Perry v. State Farm Fire & Cas. Co.*, 734 F.2d 1441,  
2 1447 (1984) (“Under 5 U.S.C.A. § 552a(b), government agencies can release information about  
3 individuals only under certain circumstances. Release is allowed when a court of competent  
4 jurisdiction so orders. . . . Requests for court orders under § 552a(b)(11) should be evaluated by  
5 balancing the need for the disclosure against the potential harm to the subject of the  
6 disclosure.”).

7 Here, although many of the document requests addressed in the proposed protective order  
8 appear relevant to plaintiff’s claims, the proposed protective order does not address the relevance  
9 of the requests at issue, and it is impossible for the court to discern, without further information,  
10 whether the documents that would be responsive to those requests and that would be covered by  
11 the Privacy Act, are in fact relevant. Additionally, the proposed protective order does not  
12 indicate whether either Ishii or Arellano was provided notice of the document requests at issue or  
13 the parties’ proposed protective order seeking an order under § 552a(b)(11). Defendants’  
14 counsel indicated at the May 4, 2010 hearing that Ishii was aware of the proposed protective  
15 order and the document requests at issue, but counsel for plaintiff and defendants both  
16 acknowledged that Arellano had not received any notice in this action.<sup>3</sup>

17 Accordingly, plaintiff will be directed to serve, on or before May 24, 2010, a copy of the  
18 parties’ proposed protective order, Dckt. No. 39, as well as a copy of this order, on both Ishii and  
19 Arellano. If either Ishii or Arellano opposes the court’s approval of the proposed protective  
20 order, including the order for disclosure of documents under § 552a(b)(11), he or she may file an  
21 opposition to that proposed protective order on or before June 7, 2010. Also by June 7, 2010,  
22 plaintiff shall file a declaration indicating her efforts to effect service on Ishii and Arellano and  
23 addressing the relevance of the document requests covered by the proposed protective order.

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25 <sup>3</sup> Plaintiff’s counsel indicated that she has been unable to provide notice to Arellano because  
26 plaintiff does not have Arellano’s contact information, and defendants’ counsel agreed to attempt  
to locate that information and, if such attempts are successful, to provide the information to plaintiff.

1           Additionally, plaintiff's counsel indicated at the May 4, 2010 hearing that plaintiff  
2 intended to withdraw her currently pending motion to compel defendants to produce documents,  
3 Dckt. No. 38, upon the court's approval of the proposed protective order. Therefore, the hearing  
4 on that motion to compel, which is currently scheduled for May 19, 2010, will be continued to  
5 June 23, 2010. If no opposition is filed by Ishii or Arellano on or before June 7, 2010, the  
6 hearing on the motion will be vacated and the matter submitted for decision together with the  
7 stipulated request for a protective order.

8           Accordingly, IT IS ORDERED that:

9           1. Plaintiff shall serve, on or before May 24, 2010, a copy of the parties' proposed  
10 protective order, Dckt. No. 39, as well as a copy of this order, on both Ishii and Arellano.

11           2. On or before June 7, 2010, either Ishii or Arellano may file an opposition to the  
12 court's approval of the proposed protective order, including the order for disclosure of  
13 documents under 5 U.S.C. § 552a(b)(11).

14           3. On or before June 7, 2010, plaintiff shall file a declaration indicating her efforts to  
15 effect service on Ishii and Arellano and addressing the relevance of the document requests  
16 covered by the proposed protective order.

17           4. If either Ishii or Arellano files an opposition to the proposed protective order, either  
18 plaintiff or defendants may file a response thereto on or before June 14, 2010.

19           5. Plaintiff's motion to compel defendants to produce documents, Dckt. No. 38, is  
20 continued to June 23, 2010 at 10:00 a.m. in Courtroom No. 24.

21 DATED: May 4, 2010.

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23 EDMUND F. BRENNAN  
24 UNITED STATES MAGISTRATE JUDGE  
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