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

JENNIFER ZAMORA,

Plaintiff,

No. CIV S-09-1292 JAM EFB

vs.

JANET NAPOLITANO, et al.,

Defendants.

ORDER

On April 29, 2010, the parties submitted a stipulation and proposed protective order. Dckt. No. 39. The proposed protective order seeks to limit the disclosure of certain requested information and 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. See Dckt. No. 39 at 4 (“Upon approval of this Stipulation and Protective Order, under the authority of the Court conferred by Rule 26(c) of the Federal Rules of Civil Procedure and 5 U.S.C. § 552a(b)(11), such production will not be contrary to the Privacy Act.”). Among the requested information sought to be covered by the protective order and the order under § 552a(b)(11) are documents contained within former defendant Loren Ishii’s personnel and disciplinary files and documents

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1 regarding former Transportation Security Administration (“TSA”) employee Christina Arellano.¹
2 *Id.* at 2-3.

3 On May 4, 2010, the undersigned held a hearing in chambers regarding the stipulation
4 and proposed protective order, and on May 5, 2010, issued an order addressing the matters
5 discussed at the hearing. Dckt. Nos. 41, 42. The May 5 order noted that § 552a(b) provides:
6 “No agency shall disclose any record which is contained in a system of records by any means of
7 communication to any person, or to another agency, except pursuant to a written request by, or
8 with the prior written consent of, the individual to whom the record pertains, unless disclosure of
9 the record would be – . . . (11) pursuant to the order of a court of competent jurisdiction”
10 The May 5 order further noted that although neither § 552a nor its legislative history specifies
11 the standards for issuance of a court order under § 552a(b)(11), courts issuing such orders
12 typically do so only upon a finding that the documents to be disclosed are relevant, that the need
13 for the relevant information outweighs the potential harm to the subject whose privacy is at
14 issue, and often also impose a requirement that the individual being affected by the disclosure be
15 given notice. Dckt. No. 42 (citing *Laxalt v. McClatchy*, 809 F.2d 885, 889, 890 (D.C. Cir. 1987)
16 (“Procedurally, then, when the District Court considers a request for a Privacy Act order in the
17 discovery context it must consider the use of protective orders and the possibility of in camera
18 inspection. It should also consider, in its discretion, the wisdom of notifying the affected
19 parties.”); *Hassan v. United States*, 2006 WL 681038, at *2 (W.D. Wash. Mar. 15, 2006) (“Even
20 where information is subject to the protections of the Privacy Act of 1974, ‘a party can invoke
21 discovery of materials protected by the Privacy Act through the normal discovery process and
22 according to the usual discovery standards, the test of discoverability is the relevance standard of
23 Rule 26(b)(1) of the [Federal Rules of Civil Procedure].’”); *Perry v. State Farm Fire & Cas. Co.*,

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25 ¹ The document requests addressed in the proposed protective order also seek information
26 from other “TSA employees.” However, at the May 4 hearing, defendants’ counsel indicated that
the responsive documents only implicate Privacy Act concerns regarding Ishii and Arellano.

1 734 F.2d 1441, 1447 (1984) (“Under 5 U.S.C.A. § 552a(b), government agencies can release
2 information about individuals only under certain circumstances. Release is allowed when a court
3 of competent jurisdiction so orders Requests for court orders under § 552a(b)(11) should be
4 evaluated by balancing the need for the disclosure against the potential harm to the subject of the
5 disclosure.”)).

6 The May 5 order therefore stated that the proposed order would not be signed until notice
7 was provided to Ishii and Arellano, and until a showing of relevance was made.² Specifically,
8 the order noted that although many of the document requests addressed in the proposed
9 protective order appeared relevant to plaintiff’s claims, because the proposed protective order
10 did not address the relevance of the requests at issue, it was impossible for the court to discern,
11 without further information, whether the documents that would be responsive to those requests
12 and that would be covered by the Privacy Act, are in fact relevant. The May 5 order also noted
13 that the proposed protective order did not indicate whether either Ishii or Arellano was provided
14 notice of the document requests at issue or the parties’ proposed protective order seeking an
15 order under § 552a(b)(11).³

16 Accordingly, the May 5 order directed plaintiff to serve, on or before May 24, 2010, a
17 copy of the parties’ proposed protective order, Dckt. No. 39, as well as a copy of the May 5
18 order, on both Ishii and Arellano. The order provided that if either Ishii or Arellano opposed the
19 court’s approval of the proposed protective order, including the order for disclosure of
20 documents under § 552a(b)(11), he or she could file an opposition to that proposed protective
21 order on or before June 7, 2010. The order further directed plaintiff to file a declaration

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23 ² At the May 4 hearing, the court indicated that it would consider issuing the protective order
24 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 at the
hearing that it would be more prudent for the court to address the matters at the same time.

25 ³ At the May 4 hearing, defendants’ counsel indicated that Ishii was aware of the proposed
26 protective order and the document requests at issue, but counsel for plaintiff and defendants both
acknowledged that Arellano had not received any notice in this action.

1 indicating her efforts to effect service on Ishii and Arellano and addressing the relevance of the
2 document requests covered by the proposed protective order.

3 Finally, the May 5 order stated that because plaintiff's counsel indicated at the May 4
4 hearing that plaintiff intended to withdraw her currently pending motion to compel defendants to
5 produce documents upon the court's approval of the proposed protective order, the hearing on
6 that motion to compel was continued to June 23, 2010. The May 5 order provided that if no
7 opposition was filed by Ishii or Arellano on or before June 7, 2010, the hearing on the motion
8 would be vacated and the matter would be submitted for decision together with the stipulated
9 request for a protective order.

10 On June 7, 2010, plaintiff filed a declaration indicating that plaintiff's process server
11 made several attempts to personally serve Ishii and Arellano with both the proposed protective
12 order and the May 5 order, using the last known addresses provided by defendants' counsel, and
13 that after a diligent effort, ultimately attached the documents to the front doors of each of those
14 residences and also mailed copies to both Ishii and Arellano. Dckt. No. 43. However, the
15 docket reveals that neither has filed an opposition to the proposed protective order.
16 Additionally, the June 7, 2010 declaration establishes that the documents sought are relevant to
17 plaintiff's claims in this action. Moreover, there is no evidence before the court to indicate that
18 their release would result in harm that would outweigh the need for the information.

19 Accordingly, the proposed protective order, which is attached as Exhibit 1 hereto, is approved.
20 Further, in light of plaintiff's counsel's representation at the May 4 hearing that she would
21 withdraw the motion to compel upon the court's approval of the protective order, the motion to
22 compel currently set for hearing on June 23, 2010 is deemed withdrawn and the hearing thereon
23 is vacated.

24 Accordingly, IT IS ORDERED that:

25 1. The parties' stipulated protective order, Dckt. No. 39, which is attached as Exhibit 1
26 hereto, is approved; and

1 2. Plaintiff's motion to compel defendants to produce documents, Dckt. No. 38, is
2 deemed withdrawn.

3 DATED: June 22, 2010.


4 EDMUND F. BRENNAN
5 UNITED STATES MAGISTRATE JUDGE
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EXHIBIT 1

- 1 vii. *Any and all DOCUMENTS relating to Loren Ishii's employment*
2 *history, both prior to and after his employment with TSA.*
- 3 viii. *All DOCUMENTS that refer to or otherwise relate to complaints*
4 *by any TSA employee which involves PLAINTIFF.*
- 5 ix. *All DOCUMENTS that refer to or otherwise relate to incidents of*
6 *sexual harassment reported by any TSA employee which involves*
7 *PLAINTIFF.*
- 8 x. *All DOCUMENTS that refer to or otherwise relate to incidents of*
9 *discrimination reported by any TSA employee which involves*
10 *PLAINTIFF.*
- 11 xi. *All DOCUMENTS that refer to or otherwise relate to incidents of*
12 *sexual harassment reported by any TSA employee which involves*
13 *Loren Ishii.*
- 14 xii. *All DOCUMENTS that refer to or otherwise relate to incidents of*
15 *discrimination reported by any TSA employee which involves*
16 *Loren Ishii.*
- 17 xiii. *All DOCUMENTS that refer to or otherwise relate to any*
18 *investigations conducted in response to any complaint and/or*
19 *report of incident(s) made against Loren Ishii.*
- 20 xiv. *All DOCUMENTS that refer to or otherwise relate to the*
21 *cessation of Loren Ishii's employment with TSA.*
- 22 xv. *All DOCUMENTS that refer to or otherwise relate to Loren*
23 *Ishii's work Schedule between November 2002 and August 2003.*
- 24 xvi. *All DOCUMENTS that refer to or otherwise relate to Loren*
25 *Ishii's attendance at work between November 2002 and August*
26 *2003.*

- 1 xvii. *Any and all DOCUMENTS relating to complaints made by*
2 *Christina Arellano against Loren Ishii.*
- 3 xviii. *All DOCUMENTS that refer to or otherwise relate to any and all*
4 *investigations conducted in response to complaints made by*
5 *Christina Arellano against and Loren Ishii.*
- 6 xix. *Any and all DOCUMENTS that reflect any communications,*
7 *whether written or oral, between any TSA employee and TSA*
8 *that is in any way related to Loren Ishii.*
- 9 xx. *Any and all DOCUMENTS, including hand written notes,*
10 *related to interviews of TSA employees conducted for the*
11 *investigation report authored by James Herbert, dated January*
12 *23, 2004.*

13 To the extent to which non-privileged documents responsive to the above requests exists
14 which may be subject to the Privacy Act, the documents will be labeled with a Bates No.
15 Designation “US PRIV *****.” Upon approval of this Stipulation and Protective Order,
16 under the authority of the Court conferred by Rule 26(c) of the Federal Rules of Civil Procedure
17 and 5 U.S.C. § 552a(b)(11), such production will not be contrary to the Privacy Act.

18 2) Documents labeled “US PRIV” and produced by the TSA to Plaintiff shall be
19 held in confidence by counsel for Ms. Zamora. Unless otherwise agreed by counsel or Ordered
20 by the Court such documents may be used only for the purpose of this litigation, and all copies
21 will be destroyed or returned at the termination of this case. Documents produced by the TSA to
22 Ms. Zamora shall be made available only to her counsel, member’s of counsel’s law firm, such
23 as paralegals and assistants, as well as consultants, experts and advisors of counsel, who are
24 assisting in the litigation, and Ms. Zamora herself.

EXHIBIT A:

ACKNOWLEDGMENT OF STIPULATION AND PROTECTIVE ORDER

I, _____, hereby acknowledge, under penalty of perjury, that I have read the above Stipulation and Protective Order. I am familiar with the specific terms of the Stipulation and Protective Order and agree to be bound by its terms. I further understand that I am subject to the contempt powers of this Court for violation of the Stipulation and Protective Order.

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