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5 IN THE UNITED STATES DISTRICT COURT
6 FOR THE NORTHERN DISTRICT OF CALIFORNIA
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8 RONALD EL-MALIK CURTIS,

No. C 10-00358 SI

9 Plaintiff,

ORDER RE: DISCOVERY

10 v.

11 CITY OF OAKLAND, et al.,

12 Defendants.
13 _____/

14 This is an action brought by plaintiff Ronald Curtis, a firefighter paramedic in the Oakland Fire
15 Department (the “OFD”), against the City of Oakland and various OFD officials for racial
16 discrimination and retaliation in violation of California law and the U.S. Constitution. *See* First
17 Amended Complaint. The parties have submitted a discovery dispute to the Court.

18 On December 21, 2011, defendants submitted a letter brief requesting that the Court issue a
19 protective order excluding plaintiff Ronald Curtis from attending a deposition of defendant Justin Elliot,
20 pursuant to Fed. R. Civ. P. 26(c)(1). According to defendants, Mr. Elliot, an OFD firefighter, was
21 threatened by Mr. Curtis in January of 2009. *See* Dec. 21, 2011 Letter Brief, Elliot Decl., ¶ 2.¹
22 Following the alleged threat, Mr. Elliot transferred to another station for one shift, and seven months
23 later, took a three month leave of absence. Defendant states that Mr. Elliot “continues to be extremely
24 concerned for his safety in Mr. Curtis’ presence, and that this would likely have a severe effect on Mr.
25 Elliot’s mental health.”


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27 ¹According to Elliot’s declaration and attached report, on January 28, 2009, Curtis confronted
28 Mr. Elliot and stated “Don’t be trying to pull your bullshit anymore” and “try that shit again and see
what happens to you.”

1 Plaintiff has submitted a letter brief opposing defendants' request. In the brief, plaintiff states
2 that Mr. Curtis "denies even speaking to Mr. Elliot and certainly has never threatened him." Dec. 27,
3 2011 Letter Brief, at 1. According to plaintiff, defendants have failed to set forth sufficient facts that
4 warrant the "rare and extraordinary" remedy of denying a party the right to attend a deposition.

5 The Court DENIES defendants' request. The Federal Rules of Civil Procedure allow a court to
6 issue an order to protect a party from "annoyance, embarrassment, oppression, or undue burden or
7 expense," including designating the persons who may be present when discovery is conducted, for good
8 cause shown. Fed. R. Civ. P. 26(c)(1)(D). With respect to excluding a party from a deposition, courts
9 that have analyzed the issue have found that it should be ordered only rarely. *See Gallela v. Onassis*,
10 487 F.2d 986, 996 (2nd Cir. 1973) ("[I]t is clear that the court has the power to exclude even a party,
11 although such an exclusion should be ordered rarely indeed.") Reflecting this proposition, the cases
12 cited by defendants in support of their request present far more extreme circumstances. *See E.E.O.C.*
13 *v. ABM Industries*, 2008 WL 2872407, *2 (E.D.Cal. 2008) (protective order granted due to plaintiff's
14 fear about a defendant who had allegedly raped her); *Gallela*, 487 F.2d at 1006 (protective order upheld
15 where defendant already had a Temporary Restraining Order against plaintiff and plaintiff had been
16 charged with violating that order). The Court finds that the circumstances here do not warrant the
17 remedy sought. If threatening circumstances arise during the deposition, the parties may stop the
18 questioning and contact the Court..Defendants' request is therefore DENIED.

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20 **IT IS SO ORDERED.**

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22 Dated: January 17, 2012

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25 SUSAN ILLSTON
26 United States District Judge
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