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8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA
10 SAN JOSE DIVISION
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12 SHARON HODGES,

13 Plaintiff,

14 v.

15 AKEENA SOLAR, INC., et al.,

16 Defendants.
17

Case No.: CV 09-02147 JW (PSG)

**ORDER DENYING PLAINTIFF
SHARON HODGES' MOTION FOR A
PROTECTIVE ORDER**

(Re: Docket No. 92 and 104)

18 On November 15, 2010, Plaintiff Sharon Hodges ("Hodges") filed a Motion for a Protective
19 Order to preclude Defendants from taking any further discovery. This court heard oral argument on
20 the Motion for a Protective Order on February 8, 2011. Based on the briefs and arguments presented,
21 IT IS HEREBY ORDERED that Hodge's motion is DENIED.

22 Hodges filed this putative securities fraud class action based on alleged misrepresentations
23 made by Defendants Akeena Solar, Inc., Barry Cinnamon, and Gary Effren. On October 21, 2009,
24 the Court appointed Hodges, Joel Gentleman, and David H. Gordon as co-lead Plaintiffs. On October
25 22, 2010, co-lead Plaintiffs filed a Motion for Class Certification in which they requested that they
26 be appointed class representatives. On or before November 3, 2010, Hodges responded to requests
27 to produce documents, requests for admissions and interrogatories. She also was deposed. No
28 subsequent discovery requests, however, have been served on Hodges. On November 15, 2010,
Hodges moved to withdraw as a lead plaintiff. Hodges argues that upon her withdrawal as a lead

1 plaintiff she will be an absent class member and therefore any further discovery sought from her will
2 not be relevant and any requests for further discovery will be designed to annoy, harass, and
3 intimidate her. Hodges' argument relies heavily on a 2006 Northern District of Texas case that
4 granted a blanket protective order for a party that withdrew as a named plaintiff, with the caveat that
5 the protective order could be reconsidered at the end of litigation with regard to its Rule 11 findings.¹

6 Rule 26(c) provides that "[t]he court may, for good cause, issue an order to protect a party
7 or person from annoyance, embarrassment, oppression or undue burden, or expense . . . [by]
8 forbidding the disclosure or discovery."² "For good cause to exist, the party seeking protection bears
9 the burden of showing specific prejudice or harm will result if no protective order is granted."³

10 The court finds that Hodges' motion is premature. First, Hodge predicates her motion on her
11 withdrawal as a lead plaintiff. Yet Judge Ware will not hear Hodges' motion to withdraw as a lead
12 plaintiff until February 28, 2011. As a result, any protective order based on Hodges' withdrawal
13 would be purely advisory. Second, Hodges and Defendants agree that there are no pending discovery
14 requests of Hodges. As a result, at this point in time Hodges cannot identify any specific prejudice
15 or harm that will result if the requested protective order is not granted. Under such circumstances,
16 a blanket protective order is simply not warranted.

17 Dated: February 8, 2011

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19 PAUL S. GREWAL
20 United States Magistrate Judge
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24 ¹ See *Ryan v. Flowserve Corp.*, No. 3:03-CV-1769 (N.D. Tex. Aug. 3, 2006) ECF No. 332,
filed in this case as Blasy Decl. Ex. B at 3 (Docket No. 93-2)).

25 ² Fed. R. Civ. P. 26(c)(1)(A); see also *Rivera v. NIBCO, Inc.*, 364 F.3d 1057, 1063 (9th Cir.
26 2004) ("After a showing of good cause, the district court may issue any protective order . . . to protect
27 a party or person from annoyance, embarrassment, oppression, or undue burden or expense,' including
any order prohibiting the requested discovery altogether, limiting the scope of discovery, or fixing the
terms of disclosure.").

28 ³ *Phillips v. Gen. Motors Corp.*, 307 F.3d 1206, 1210-11 (9th Cir. 2002); *Rivera*, 364 F.3d at
1063.