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8 UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
9 AT TACOMA

10 DEBORAH JOHNSON, a single person;  
11 SHELBY JOHNSON-ROWELL, a single  
person; and AFALLON PETTIJOHN and  
12 BENJAMIN PETTIJOHN, a marital  
community,

13 Plaintiffs,

14 v.

15 ALLSTATE PROPERTY AND  
CASUALTY INSURANCE COMPANY  
16 d/b/a ALLSTATE INSURANCE  
COMPANY, a foreign corporation,

17 Defendant.  
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CASE NO. C 14-5064 KLS

ORDER DENYING MOTION FOR  
PROTECTIVE ORDER

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20 Allstate filed a Motion for Protective Order (Dkt. 66) requesting an order “prohibiting  
21 depositions of, discovery to, and questions regarding Allstate employees named and/or  
22 mentioned subsequent to Plaintiffs’ filing of the IFCA notice on November 7, 2013” on the  
23 grounds that such discovery is irrelevant. The Plaintiffs oppose the motion.  
24

1 **LAW**

2 Fed. R. Civ. P. 26(c) permits any party or person **from whom discovery is sought** to  
3 move for a protective order.

4 **DISCUSSION**

5 The Defendant is seeking a protective order to prevent depositions or discovery from  
6 certain unidentified employees of Allstate and from whom no discovery is currently being  
7 sought.

8 While the parties raise several arguments in favor of and in opposition to the motion, the  
9 Court is focused on the fact that the Plaintiffs are not, at this time, seeking any discovery from  
10 the individuals for whom Allstate seeks protection. The Court interprets Rule 26(c) as having a  
11 threshold requirement that “discovery is sought” from the person or party seeking the protective  
12 order. That is currently not the case. It is only when discovery is being sought from a person or  
13 party that the court would then be in a position to assess whether there is good cause for the  
14 motion for protective order and what, if any, limitations on discovery should be imposed.

15 Due to the fact that discovery is not being sought from any of the unidentified  
16 individuals, the motion for protective order is **DENIED**.

17 **SANCTIONS**

18 Fed. R. Civ. P. 26(c)(3) references Rule 37(a)(5) for the determination as to whether an  
19 award of expenses should be made. Fed. R. Civ. P. 37(a)(5)(B) is applicable inasmuch as the  
20 Court denied the Defendant’s motion for a protective order:

21 If the motion is denied, the court . . . must, after giving an opportunity to be  
22 heard, require the movant, the attorney filing the motion, or both to pay the  
23 party or deponent who opposed the motion its reasonable expenses incurred  
24 in opposing the motion, including attorney’s fees. But the court must not  
order this payment if the motion was substantially justified or other  
circumstances make an award of expenses unjust.

1 In light of the Rule 37(a)(5)(B)'s directive, the Court is ordering the Defendant to file a  
2 brief setting forth its position as to why expenses and fees should not be imposed on or before  
3 November 7, 2014. Plaintiff may file its brief in support of an award of expenses and fees on or  
4 before November 14, 2014. The Plaintiff does not have to include any information regarding the  
5 amount of expenses and fees being requested at this time. The matter will be noted for decision  
6 on November 14, 2014.

7 **CONCLUSION**

8 The Defendant's Motion for Protective Order (Dkt. 66) is **DENIED**.

9 The Defendant shall file its brief as to why expenses and fees should not be imposed on  
10 or before November 7, 2014. The Plaintiff shall file its brief in support of expenses and fees on  
11 or before November 14, 2014. The Clerk shall note the matter of the Plaintiff's Motion for  
12 Expenses and Fees (Dkt. 81) on the calendar for November 14, 2014.

13 DATED this 27<sup>th</sup> day of October, 2014.

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16 Karen L. Strombom  
17 United States Magistrate Judge  
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