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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**

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9 Puente Arizona, et al.,

10 Plaintiffs,

11 v.

12 Joseph M. Arpaio, Sheriff of Maricopa
13 County, Arizona, in his official capacity, et
14 al.,

Defendants.

No. CV14-1356 PHX DGC

ORDER

15 On January 20, 2016, the Court held a three-hour hearing with the parties to
16 discuss a number of discovery issues. The Court previously required the parties to file
17 memoranda on these issues (Doc. 347), and reviewed the memoranda before the hearing
18 (Docs. 353, 355, 366, 369). This order will set forth several rulings on issues raised by
19 the parties. Although some rationale will be provided, a review of the transcript of the
20 hearing will provide a more complete understanding of the Court's decisions.

21 **I. Fifth Amendment Issues.**

22 Defendants disagree with assertions of the Fifth Amendment made during the
23 depositions of Sara Cervantes Arreola and Elia Estrada Fernandez (the "Expungement
24 Plaintiffs"). Because the Fifth Amendment must be invoked on a question-by-question
25 basis, the Court has directed the parties to prepare a matrix for the Court's consideration.
26 Each line of the matrix should address a question which was not answered on Fifth
27 Amendment grounds. The matrix will include four columns. The first column should set
28 forth the question asked; the second column should set forth the invocation of the Fifth

1 Amendment; the third column shall contain Defendants' argument as to why invocation
2 of the Fifth Amendment is improper; and the fourth column shall contain Plaintiffs'
3 argument as to why the Fifth Amendment was properly invoked. The parties shall file
4 the matrix with the Court by **January 29, 2016**.

5 **II. Sensitive Information.**

6 A. Plaintiffs ask the Court to preclude Defendants from inquiring into specific
7 sensitive information during the depositions of the Expungement Plaintiffs and Mr.
8 Garcia, the executive director of Puente. Plaintiffs' requested protective order (Doc. 355)
9 is granted with respect to the following categories: (1) information about other potential
10 unlawful conduct by family members; (2) the names or identifying information of
11 unauthorized immigrants who deponents know have worked or are working without
12 proper documentation, or the names or identifying information of the source of false
13 identification documents, except to the extent already known to Defendants through
14 pleadings, declarations, or discovery materials in this case; and (3) the identities or
15 employers of the Doe declarants.

16 B. Plaintiffs' request for a protective order (Doc. 355) is denied with respect to
17 the following categories of information and depositions of the Expungement Plaintiffs
18 and Mr. Garcia: (1) the names and immigration status of family members of deponents;
19 (2) the current address, landlord, telephone number, telephone provider, and financial
20 account information of the deponents; (3) with regard to the Expungement Plaintiffs,
21 information about efforts to seek or obtain employment other than employment which
22 was the subject of prior arrests or prosecutions under the challenged statutes; (4) with
23 respect to Puente members, information about efforts to seek or obtain employment, but
24 only with respect to Puente members already known to Defendants through pleadings,
25 declarations, or discovery materials in this case. Defendants may reopen the depositions
26 of the Expungement Plaintiffs on these subjects and ask reasonable follow-up questions.

27 C. Information disclosed pursuant to this order shall be subject to the
28 Protective Order previously entered in this case (Doc. 250), with the following

1 modifications: “Confidential Attorneys’ Eyes Only Information” may be shared only
2 with the following persons: (a) at Iafrate & Associates, Michelle Iafrate, Kate Nelson,
3 Cari Shehorn, and Jill Laforanara; (b) at the Maricopa County Attorney’s Office, Douglas
4 L. Irish, Thomas P. Liddy, J. Kenneth Mangum, Ann Thompson Uglietta, Sonja
5 Kautzman, Katerina Gagic, Grace Naranjo, and Jackie Garcia; and (c) at the Attorney
6 General’s Office, Brock Heathcotte, Keith Miller, Maureen Riorden, and Susan Peterson.
7 Defendants shall take all appropriate measures to ensure that such information is not
8 shared with any other person or entity, in any way, without order of this Court.

9 D. The Court reaches these conclusions after carefully considering the interests
10 of both parties. The Court finds that the information in section A(1) above is largely
11 irrelevant to this case, and that Plaintiffs have shown that its disclosure could create risk
12 of harm for family members. Defendants agreed at the hearing that the information in
13 section A(2) is not needed in this case. The information in A(3) is protected for reasons
14 explained in the next section of this order.

15 With respect to the information in section B above, the Court finds that disclosure
16 pursuant to the narrowed protective order is warranted. Although it is true that the
17 Expungement Plaintiffs and Mr. Garcia have some legitimate concerns about possible
18 disclosure of information that could lead to criminal prosecution or deportation, the
19 information is relevant to this case and the Court concludes that the concerns are largely
20 addressed by the existence of the protective order as narrowed in this order.

21 The Court finds this case distinguishable from *Rivera v. Nibco, Inc.*, 364 F.3d
22 1057 (9th Cir. 2004). *Rivera* was an employment discrimination case in which the
23 defendants sought to discover information about the immigration status of the plaintiffs,
24 potentially exposing the plaintiffs to criminal prosecution or deportation. The Ninth
25 Circuit expressed concern that allowing such discovery would chill the filing of
26 discrimination cases under Title VII because employers would “inquire into workers’
27 immigration status” and thereby “raise implicitly the threat of deportation and criminal
28 prosecution every time a worker, documented or undocumented, reports illegal practices

1 or files a Title VII action.” *Id.* at 1065. The Ninth Circuit was reluctant to “effectively
2 grant all future employers the right to discover the immigration status of any of their
3 employees who choose to assert a Title VII national origin claim.” *Id.* at 1065 n5.

4 This case is very different. The Expungement Plaintiffs and Puente brought this
5 lawsuit on the basis of their status as undocumented immigrants or an organization that
6 seeks to aid undocumented immigrants. Undocumented status is a foundational fact. In
7 addition, Plaintiffs affirmatively assert that they have been convicted of violating identity
8 theft laws or that Puente members are currently violating such laws and therefore may be
9 subject to prosecution. Given these affirmative assertions by Plaintiffs, the Court cannot
10 conclude that allowing discovery into the issues set forth in section B above is irrelevant
11 or otherwise inappropriate. And in light of the narrowed and restrictive protective order,
12 the Court concludes that concerns of the Plaintiffs are adequately addressed.¹

13 **III. Doe Declarants.**

14 Under Ninth Circuit law, plaintiffs in a lawsuit may proceed anonymously if a
15 district court finds anonymity appropriate after balancing five factors: (1) the severity of
16 the threatened harm to the plaintiffs, (2) the reasonableness of their fears, (3) their
17 vulnerability to retaliation, (4) prejudice to the opposing party, and (5) the public interest.
18 *Doe v. Kameha Schools*, 596 F.3d 1036, 1042 (9th Cir. 2010). The Doe declarants are
19 members of Puente who have submitted declarations in support of Puente’s standing in
20 this case. Doc. 130-1. The declarations were submitted anonymously on the basis of the
21 Court’s previous finding that anonymity was warranted. Doc. 129 at 3. The Doe
22 declarants seek to preserve their anonymity, while Defendants argue that they should be
23 required to disclose their identities and submit to full depositions regarding the facts and
24 issues in this case.

25
26 ¹ The Ninth Circuit in *Rivera* noted that, in some situations, “the existence of post
27 hoc legal remedies for retaliation do not necessarily provide adequate protection when
28 plaintiffs anticipate retaliation that would result in extraordinarily burdensome
consequences.” 364 F.2d at 1065 n.5. In this case, however, the Court is satisfied that
the narrowed protective order will adequately protect the Expungement Plaintiffs and
Puente from burdensome consequences.

1 Applying the Circuit’s five-factor test, the Court concludes that the Doe declarants
2 should remain anonymous. The initial three factors are quite clear: (1) because the Doe
3 declarants are asserting that they are in this country illegally and are using false
4 information to obtain employment, they face criminal conviction and deportation, both of
5 which qualify as serious consequences; (2) the Doe declarants reasonably fear such
6 consequences because they are admitting to criminal conduct; and (3) the facts admitted
7 by the Doe declarants make them vulnerable to prosecution and deportation.

8 The fourth factor concerns the prejudice Defendants will suffer if the identities of
9 the Doe declarants are not revealed. Two steps will minimize Defendants’ prejudice.

10 First, during the hearing on January 20, 2016, Plaintiffs’ counsel agreed to narrow
11 the factual assertions being made by the Doe declarants to four: the Doe declarants are
12 real people, they are members of Puente, they are using false identification to obtain
13 work, and they are doing so because they are undocumented immigrants who have no
14 Social Security numbers. The purpose of this narrowing, as discussed during the hearing,
15 is to limit the issues on which the Doe declarants will present evidence in this case and,
16 correspondingly, limit the evidence to which Defendants must respond.

17 Second, the Court will permit Defendants to conduct depositions of the Doe
18 declarants under the following conditions. The depositions shall occur by telephone, with
19 each Doe declarant present with counsel for Plaintiffs and a court reporter, and counsel
20 for Defendants participating by telephone. Counsel for Plaintiffs will avow, on the
21 record, that the Doe declarant is present with the court reporter and is one of the three
22 individuals identified in the previous declarations submitted to the Court as John Doe I,
23 John Doe II, or Jane Doe I. The court reporter shall place the declarant under oath to tell
24 the truth, without using the Doe declarant’s actual name. Defense counsel may then
25 inquire into the four areas on which the Doe declarant will be providing evidence in this
26 case. Defendants will be permitted to ask questions to confirm that the Doe declarant is a
27 real person, such as his or her age, date of birth, place of birth, and city or town of current
28 residence. Defendants will be permitted to inquire into the Doe declarant’s involvement

1 in Puente and whether he or she has received assistance from Puente. Defendants will be
2 permitted to inquire into the Doe declarant's use of false identification to obtain work,
3 including the kind of false identification used and the purposes to which it has been put in
4 obtaining work. Defendants will be permitted to inquire into the fact that the Doe
5 declarant is an undocumented immigrant with no Social Security number, including the
6 Doe declarant's country of citizenship, when the Doe declarant entered the United States,
7 and how long the Doe declarant has been present in the United States. With the subjects
8 on which the Doe declarants will provide evidence having been narrowed, and with
9 Defendants being permitted to conduct the depositions described above, the Court
10 concludes that prejudice to Defendants will be minimized.

11 The fifth factor identified by the Ninth Circuit – the public's interest in an open
12 and fair adjudication – is not seriously impaired. The Doe declarants are not Plaintiffs.
13 Each Plaintiff in this case is openly identified. In addition, proceedings in this case will
14 be public and the basis for the Court's ruling will be fully explained.

15 In sum, the Court finds that the potentially severe consequences faced by the Doe
16 declarants and their vulnerability to such consequences outweigh any minimal prejudice
17 suffered by Defendants from the anonymity of these non-parties. The Court also finds
18 that the public interest does not weigh strongly against anonymity. The Court will grant
19 Plaintiff's request for a protective order on the identities of the Doe declarants.²

20 **IV. Litigation Schedule.**

21 The Court's Case Management Order (Doc. 162) is modified as follows:

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23 ² When the Court weighed the protections afforded by the narrowed protective
24 order against the relevancy of the evidence to be obtained in section II.B above, it
25 declined to grant Plaintiffs' requested protection due to the relevancy of the information
26 sought, the fact that the Expungement Plaintiffs and Puente have affirmatively placed
27 their immigration status and use of false documents at issue in this case, and the fact that
28 Plaintiffs have already addressed many of the same issues in the allegations of their
complaint and other materials filed in this case. The Doe declarants are different. They
are not Plaintiffs. They provided information only to support the standing of Puente.
And the potential adverse consequences for them are severe. Thus, although the
narrowed protective order provides the same kind of protection for them as it does for the
Expungement Plaintiffs, the Court views them as differently situated given their more
limited role in this case and the narrowed categories of information they will provide.

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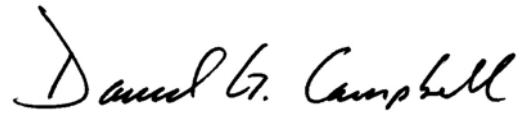
- A. The fact discovery deadline is extended to **February 19, 2016**. Defendants shall produce all emails currently under review by **February 12, 2016**.
- B. The deadline for Plaintiffs' full and complete expert disclosures is extended to **March 4, 2016**. Defendants' full and complete expert disclosures are due on **March 25, 2016**. Rebuttal disclosures are due on **April 15, 2016**. Expert depositions shall be completed by **May 6, 2016**.

All other terms of the Court's Case Management Order (Doc. 162) remain in effect, including the dispositive motions deadline of **May 20, 2016**.

IT IS ORDERED:

- 1. Plaintiffs' motion for protective order (Doc. 355) is **granted in part and denied in part** as set forth above.
- 2. The motions to seal filed by the parties at Docs. 354, 356, 367, and 368 are **granted**. The parties shall, within seven days of this order, file redacted copies of their memoranda in the public docket. These memoranda shall be filed with a notice of filing which makes clear that they have already been addressed in this order.
- 3. The motion for extension of time (Doc. 364) is **denied as moot** in light of the adjustments to the litigation schedule set forth above.

Dated this 21st day of January, 2016.



David G. Campbell
United States District Judge