



1 of Title VII of the Civil Rights Act of 1964 and Title I of the  
2 Civil Rights Act of 1991. A stipulated protective order governing  
3 release of confidential information was previously filed on March  
4 21, 2002.

5 On May 1, 2002, Plaintiff EEOC moved for a protective order  
6 pursuant to Fed. R. Civ. P. 26 and 37 and Local Rule 37-251 to  
7 prevent further contact of claimants by owners of the Defendant  
8 corporation. The alleged contacts included 1) a visit on April  
9 12, 2002, by owner Rena Rutledge to the place of work of claimant  
10 Antoinette Medina at which Rutledge asked Medina to explain her  
11 actions with respect to the lawsuit; 2) a brief telephone call on  
12 or about April 15, 2002, by owner Rena Rutledge to claimant  
13 Mariel Howesepian. By letter dated April 17, 2002, counsel for  
14 the EEOC informed Defendants' counsel of the contacts and  
15 requested cessation of all contact. In a responsive letter of  
16 April 17, 2002, counsel for Defendant explained that he had not  
17 directed his clients to make the contacts and that the contacts  
18 were not inappropriate because counsel had not directed them.  
19 Counsel stated that he would not tell his clients not to speak  
20 with the claimants if they happened to run into them. In a  
21 responsive letter of April 19, 2002, EEOC counsel informed  
22 Defendant's counsel that the contacts were harassing and  
23 embarrassing. Telephone contacts resulted in a failure to reach  
24 an agreement or stipulation.

25 At the hearing on the motion, counsel for Defendant conceded  
26 that repeated attempts of a party to contact an opposing party  
27 might be considered to be harassment or intimidation; however,  
28 counsel distinguished a mere greeting during a chance meeting in

1 a public place from a situation where there had been repeated  
2 contacts made with the purpose of discussing matters involved in  
3 the lawsuit. Counsel for the EEOC explained that contact with the  
4 owners was awkward for many of the claimants because the  
5 individuals involved liked each other and meant no harm to the  
6 individuals involved. However, it now clearly appears that the  
7 claimants feel that the contacts are harassing or intimidating,  
8 and that they desire that the contacts be stopped. Counsel for  
9 Defendant gave his word to the Court that he would write to his  
10 clients and instruct them not to contact the charging party or  
11 claimants for the purpose of discussing matters involved in the  
12 lawsuit.

13 II. Discussion

14 Fed. R. Civ. P. 26(c) provides:

15 Upon motion by a party or by the person from whom  
16 discovery is sought, accompanied by a certification  
17 that the movant has in good faith conferred or attempted  
18 to confer with other affected parties in an effort  
19 to resolve the dispute without court action, and  
20 for good cause shown, the court in which the action is  
21 pending or alternatively, on matters relating to a  
22 deposition, the court in the district where the  
23 deposition is to be taken may make any order which  
24 justice requires to protect a party or person from  
25 annoyance, embarrassment, oppression, or undue  
26 burden or expense....

27 . . . .  
28 The provisions of Rule 37(a)(4) apply to the award of  
expenses incurred in relation to the motion.

29 There is a heavy burden on the moving party to demonstrate good  
30 cause for a protective order. Blankenship v. Hearst Corp., 519  
31 F.2d 418, 429 (9<sup>th</sup> Cir. 1975). The movant must demonstrate a  
32 particular and specific need for the order. General Dynamics  
33 Corp. v. Selb Mfg. Co., 481 F.2d 1204, 1212 (8<sup>th</sup> Cir. 1973). Rule  
34 26(c) is to be construed to secure the just, speedy, and

1 inexpensive determination of every action; it implements the  
2 inherent power of the courts to exercise appropriate control over  
3 the discovery process. Hatchette Distribution, Inc. v. Hudson,  
4 County, 136 F.R.D. 356, 357 (E.D.N.Y. 1991).

5       The Court understands that the persons involved may  
6 encounter each other occasionally in their daily lives,  
7 and the Court acknowledges the concern of Defendant's counsel for  
8 the appropriate scope and enforcement of any protective order. An  
9 unplanned encounter and brief greeting at a sporting event or  
10 other public place should not, considering the present  
11 circumstances, be considered improper. However, at the same time,  
12 the Court is concerned with the integrity of the judicial process  
13 and the need to prevent annoyance or harassment of parties and  
14 witnesses in the case before it. Much of the parties' argument  
15 was devoted to California Rule of Professional Conduct 2-100,  
16 which prohibits counsel from contacting an unrepresented party.  
17 Although Rule of Professional Conduct 2-100 and its analogues do  
18 not by their terms prohibit parties themselves from communicating  
19 with respect to the subject matter of the representation, Rule 2-  
20 100 does in part function to protect the attorney-client  
21 relationship of the represented party who is approached. United  
22 States v. Lopez, 765 F.Supp. 1433, 1448-49 (N.D.Cal. 1991), rev'd  
23 on other grounds, 4 F.3d 1455, 1463 (9th Cir. 1993).

24       This matter falls squarely within the scope of Rule 26(c).  
25 Because Defendant's owners' contacts are inquiries directed to  
26 parties about matters that could be used as evidence against the  
27 Plaintiffs, they constitute "discovery" within the meaning of  
28 Rule 26(b)(1). Bernal v. Southern Pacific Transportation Co., 196

1 F.R.D. 371, 373 n. 2 (E.D.Cal. 2000). Although the conduct of the  
2 owners of Defendant here was not extreme, it appears to have been  
3 repeated. Repeated contact known to be considered annoying,  
4 harassing or intimidating could justify a protective order.  
5 Bernal v. Southern Pacific Transportation Co., 196 F.R.D. 371,  
6 373. However, considering all the circumstances, including  
7 Defendant's counsel's acknowledgment that repeated contacts  
8 regarding the merits of the action would be considered  
9 undesirable to the claimants and their counsel, the Court  
10 concludes that the contacts in the present case that occurred  
11 prior to the hearing on the motion were not sufficiently  
12 repetitive or known by the owners or counsel to be offensive to  
13 the claimants to necessitate granting a protective order here.  
14 Because Defendant's counsel promised the Court to instruct his  
15 clients in writing to cease contacting the charging party and  
16 claimants by telephone and to cease making personal contact with  
17 them at their places of work or at any other location for the  
18 purpose of discussing the subject matter of this action, it has  
19 not been shown that a protective order is necessary. Thus, the  
20 Court will deny the motion.

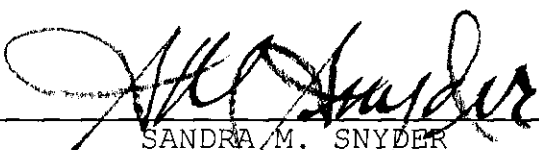
21       However, in denying the motion, the Court reiterates its  
22 concern for the integrity of the proceedings before it. Defendant  
23 and Defendant's counsel are now on notice that the contact is  
24 undesirable to the charging party and claimants. The denial of  
25 the motion is without prejudice to the bringing of a renewed  
26 motion for a protective order should Defendant, its agents,  
27 successors and assigns, and any in active concert or  
28 participation with them make any further telephone or personal

1 contacts with the charging party Karla Burgueno or with claimants  
2 Gia Badaracco, Mariel Howesepian, Antoinette Medina, Shiree  
3 Oberthier, or Sylvia Reyes for the purpose of discussing the  
4 subject matter of this action.

5 Accordingly, Plaintiff's motion for a protective order IS  
6 DENIED.

7 IT IS SO ORDERED.

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9 DATED: May 20, 2002

  
SANDRA M. SNYDER  
UNITED STATES MAGISTRATE JUDGE

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United States District Court  
for the  
Eastern District of California  
May 21, 2002

\* \* CERTIFICATE OF SERVICE \* \*

1:01-cv-06252

EEOC

v.

Uncle Harry's

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I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Eastern District of California.

That on May 21, 2002, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office, or, pursuant to prior authorization by counsel, via facsimile.

OWW SMS

Linda Susan Ordonio-Dixon  
Equal Employment Opportunity Commission  
San Francisco District Office  
901 Market Street  
Suite 500  
San Francisco, CA 94103

David R McNamara  
McCormick Barstow Sheppard Wayte and Carruth  
PO Box 28912  
Five River Park Place East  
Fresno, CA 93720-1501

Jack L. Wagner, Clerk

BY:   
Deputy Clerk