IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF OREGON

EUGENE DIVISION

WYATT B. et al.

Plaintiffs,

v.

TINA KOTEK et al.,

Defendants.

Civ. No. 6:19-cv-00556-AA

OPINION & ORDER

AIKEN, District Judge.

This class action comes before the Court on Plaintiffs' request to modify the protective order in this case, submitted by letter on April 10, 2024. Defendants submitted their letter responding to Plaintiffs' request on April 16, 2024.

I. Amendments to Paragraph 1 of the Amended Stipulated Protective Order

Plaintiffs seek two substantive modifications to the Amended Stipulated Protective Order in this case. The first of the proposed amendments would modify Paragraph 1 of the Amended Stipulated Protective Order and would allow fact witnesses bound by state and federal confidentiality provisions to testify in this matter. The parties have reached a stipulated resolution of this issue and have presented language modifying Paragraph 1 in Exhibit 1 of the Plaintiff's letter. The

Court has reviewed the proposed amendments to Paragraph 1 and finds that they are reasonable and will authorize the proposed amendments.

Plaintiffs also seek clarification from the Court concerning public filings and testimony derived from documents marked "Confidential" and "Attorney Eyes' Only." Under the proposed amendment to Paragraph 1(b), the use of such information would be permitted with the use of pseudonyms and redactions, consistent with the Court's Opinion and Order of September 12, 2019, ECF No. 49. Defendants have proposed an additional amendment to Paragraph 1(b), which would add the following sentence to the end of the paragraph: "The parties must also file copies of the same pleadings under seal without pseudonyms or redactions so the opposing party receives the 'Confidential' or 'Attorneys' Eyes Only' information subject to this Protective Order." The Court concludes that this proposed insertion is reasonable and permissible under Fed. R. Civ. P. 5.2(f) and will be allowed.

II. Amendments to Paragraphs 2, 7(c), and 8 of the Amended Stipulated Protective Order

The second set of proposed amendments would alter Paragraphs 2, 7(c), and 8 of the Amended Stipulated Protective Order to allow state court dependency counsel for the children whose files have been produced in this case to have access to "Confidential" and "Attorneys' Eyes Only" information produced in discovery in this case. The proposed amendment to Paragraph 2 would also allow the dependency attorney to use that "Confidential" and "Attorneys' Eyes Only" information for

purposes unrelated to this litigation. Defendants object to these proposed amendments.

The Court declines to authorize the proposed amendments to Paragraphs 2, 7(c), and 8. Oregon state court dependency proceedings are overseen by judges who are empowered to made determinations concerning the disclosure of information in those cases. ORS 419B.881(2)(b), (7), (8). This Court will not allow the rulings or the authority of the dependency courts to be evaded by permitting dependency counsel, who are not before this Court, to use discovery in this case to gain access to information that they would not otherwise be entitled to receive. If dependency counsel needs or desires access to that information, they must seek it through the ordinary state court processes.

In addition, Defendants have presented evidence that the material subject to disclosure under Plaintiffs' proposed amendments would include sensitive information concerning individuals who are not represented by the dependency counsel who would gain access to the information. This would potentially include information about caregivers, confidential reporters, siblings, parents, and other family members of the children represented by dependency counsel. The proposed amendments to Paragraphs 2, 7(c), and 8 do not provide sufficient protections or limitations on the use of such sensitive information. The Court will therefore deny Plaintiffs' request to modify Paragraphs 2, 7(c), and 8 of the Amended Stipulated Protective Order.

CONCLUSION

The proposed amendments to Paragraph 1 of the Amended Stipulated Protective Order, including Defendants' proposed amendment concerning the filing of unredacted documents under seal, are granted. The proposal to amend Paragraphs 2, 7(c), and 8 is denied. The parties are to submit a proposed Second Amended Stipulated Protective Order conforming with this ruling within three (3) days of the date of this Order.

It is so ORDERED and DATED this 18th day of April 2024.

/s/Ann Aiken
ANN AIKEN
United States District Judge