

1 LUIS LI (State Bar No. 156081)
Luis.Li@wsgr.com
2 ERIC P. TUTTLE (State Bar No. 248440)
Eric.Tuttle@wsgr.com
3 WILSON SONSINI GOODRICH & ROSATI
633 West Fifth Street, Suite 1550
4 Los Angeles, California 90071
Telephone: (323) 210-2900
5 Facsimile: (866) 974-7329

6 CRAIG JENNINGS LAVOIE (State Bar No. 293079)
Craig.Lavoie@mto.com
7 JENNIFER L. BRYANT (State Bar No. 293371)
Jennifer.Bryant@mto.com
8 MUNGER, TOLLES & OLSON LLP
350 South Grand Avenue, Fiftieth Floor
9 Los Angeles, California 90071-3426
Telephone: (213) 683-9100
10 Facsimile: (213) 687-3702

11 Attorneys for Plaintiff Vanessa Bryant

12 UNITED STATES DISTRICT COURT
13 CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION
14

15 VANESSA BRYANT,
16 Plaintiff,
17 vs.
18 COUNTY OF LOS ANGELES, et al.,
19 Defendants.
20

Case No. 2:20-cv-09582-JFW-E

**PLAINTIFF’S OPPOSITION TO
BRIAN JORDAN’S RENEWED *EX
PARTE* APPLICATION**

Pretrial Conference: None Set

Trial Date: None Set

The Honorable John F. Walter
Magistrate Judge Charles F. Eick

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1 Brian Jordan's renewed *ex parte* application to file documents under seal and
2 to shorten the time on his motion for a protective order should be stricken or denied
3 for once again failing to comply with the Court's rules. Plaintiff is not opposed to
4 Mr. Jordan filing confidential medical information under seal. And Plaintiff is
5 certainly amenable to an appropriate briefing schedule that allows Mr. Jordan's
6 underlying motion to be decided in advance of trial. As such, this application may
7 well have been avoided had counsel for Mr. Jordan complied with the obligation to
8 meet and confer with counsel for all parties before filing it. But Mr. Jordan's
9 counsel refused to meet and confer. As a result, Mr. Jordan's renewed application
10 fails to specify any proposed schedule for shortened briefing on the motion for
11 protective order, leaving it to the Court to select one. And Mr. Jordan's requested
12 sealing relief remains unclear for the same reasons that the Court denied Mr.
13 Jordan's last application. (See [ECF No. 312](#).)

14 **A. Background**

15 In October 2021, Mr. Jordan filed a motion for a protective order to prevent
16 his deposition from going forward on very similar grounds. That motion and its
17 supporting papers and evidence were filed publicly on the court docket; they have
18 been public ever since. (See [ECF No. 117](#).) Magistrate Judge Eick denied the
19 motion. ([ECF No. 131](#)). Mr. Jordan then filed objections to Judge Eick's ruling,
20 which this Court denied for failure to comply with the Court's standing order and
21 the local rules. (ECF No. 152 (text only entry).)

22 On July 1, 2022, Mr. Jordan filed an *ex parte* application requesting leave to
23 file under seal a new motion for a protective order, this time to prevent his having to
24 testify at trial. Plaintiff opposed the application, noting that she did not oppose the
25 sealing of confidential medical information but that Mr. Jordan's application was
26 unclear in the relief it sought and, to the extent it sought sealing of the entirety of the
27 motion and all exhibits, or non-confidential argument, that was inappropriate.
28 Plaintiff also noted that Mr. Jordan's underlying motion for a protective order,

1 which did *not* seek to shorten time but set a hearing date less than four weeks out,
2 was noticed in violation of the local rules. (See [ECF No. 308](#).)

3 On July 6, the Court denied Mr. Jordan’s application without prejudice “for
4 the reasons stated in Plaintiff’s Opposition,” noting that the application was “unclear
5 regarding the relief Jordan is seeking and is riddled with errors.” ([ECF No. 312](#).)

6 On July 14, Mr. Jordan’s counsel sent a letter stating that he intended to file
7 the next day a renewed *ex parte* application to file documents under seal and to
8 shorten the time for hearing his motion for a protective order. (Declaration of Eric
9 P. Tuttle (“Tuttle Decl.”), Ex. A.) Plaintiff’s counsel responded thirty minutes later,
10 asking Mr. Jordan’s counsel’s availability to meet and confer on the application,
11 “including what you propose to file under seal and what schedule you propose on
12 the underlying motion.” (*Id.*, Ex. B at 7.) The next day, Mr. Jordan’s counsel stated
13 that he did not see the purpose of meeting and conferring because the parties had
14 already spoken in connection with Mr. Jordan’s prior *ex parte* application. (*Id.* at 6.)
15 Plaintiff’s counsel responded that the parties needed to meet and confer on a
16 shortened briefing schedule because they had never previously discussed one, and
17 also needed to discuss sealing because it was still unclear what exactly Mr. Jordan
18 was seeking to seal. (*Id.*) Mr. Jordan’s counsel did not respond to this last email,
19 and instead filed the renewed *ex parte* application on July 15 without meeting and
20 conferring. (Tuttle Decl. ¶ 4.)

21 The renewed *ex parte* application asks for a shortened briefing schedule, but it
22 does not propose any particular schedule. Instead, the proposed order leaves blanks
23 for the Court to fill in. ([ECF No. 322-1](#) at 2.) The renewed *ex parte* application
24 does not specify what exactly Mr. Jordan is seeking to seal. With regard to the
25 meet-and-confer requirement, it states: “During the meet and confer process,
26 Opposing Counsel for Plaintiffs in both the Bryant case and the Chester case, as
27 well as counsel for the Defendant County of Los Angeles, all indicated that they
28 opposed this Ex Parte Application for Leave to File Documents Under Seal.” ([ECF](#)

1 [No. 322](#) at 2-3.) No such meet and confer occurred.¹

2 **B. Argument**

3 [Local Rule 7-19.1](#) requires that, before any *ex parte* application is filed,
4 counsel for the applying party must (a) “make reasonable, good faith efforts *orally*
5 to advise counsel for all other parties, if known, of the date and substance of the
6 proposed *ex parte* application” and (b) “advise the Court in writing and under oath
7 of efforts to contact other counsel and whether any other counsel, after such advice,
8 opposes the application.” [Local Rule 7-3](#) likewise requires meeting and conferring
9 before filing motions and applications. The Court’s Standing Order emphasizes the
10 need for litigants to meet and confer by “realtime communication,” and that failure
11 to strictly comply with the [Local Rules](#) or the Court’s requirements “will result in
12 the striking and/or denial of the motion.” ([ECF No. 18](#) at 7-9.)

13 Mr. Jordan’s counsel failed to comply with these rules. The application
14 should therefore be stricken or denied.

15 Meeting and conferring is not a formality; it may have obviated the need for
16 this *ex parte* application. Plaintiff is willing to agree to a reasonable, shortened
17 schedule to have Mr. Jordan’s motion for protective order decided in advance of
18 trial. But that requires Mr. Jordan’s counsel to discuss a schedule, not simply to
19 rush an *ex parte* filing asking this Court to figure out what the schedule should be.
20 Plaintiff also does not oppose the filing of Mr. Jordan’s confidential medical
21 information under seal; she opposes the sealing of other, non-confidential
22 information. But because Plaintiff still does not know what Mr. Jordan is trying to
23 seal, Plaintiff does not know whether she opposes that part of the application.

24 In particular, Mr. Jordan’s application remains unclear concerning whether it
25 seeks to seal the entirety of all documents associated with the motion or just certain

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27 ¹ The application also refers to the “impending trial date of July 26, 2022” ([ECF No.](#)
28 [322](#) at 2), but that trial date has been vacated—something Plaintiff could have
explained if Mr. Jordan’s counsel had met and conferred. (*See also id.* at 7.)

1 portions, and if the latter, which portions. This is the same issue that Plaintiff
2 pointed out in opposing the prior application, and that the Court pointed to in
3 denying it. The caption of the proposed order for the application refers to “Entire
4 Documents to Be Filed Under Seal.” ([ECF No. 322-1](#) at 1.) But the text of the
5 proposed order and the application are vague and do not comply with the local rules.
6 The proposed order is not “narrowly tailored to seal only the sealable material” and
7 does not “list[] in table form each document or portion thereof to be filed under
8 seal.” [Civ. L.R. 79-5.2.2\(a\)\(ii\)](#). The memorandum refers to filing “the privileged
9 matter” under seal ([ECF No. 322](#) at 5:8) and generally makes reference to the need
10 to protect “private, personal and HIPPA-protected medical records” (e.g., [id.](#) at 7:5-
11 6). But the application is not accompanied by conspicuously-labeled redacted and
12 unredacted versions. *See* [Civ. L.R. 79-5.2.2\(a\)\(iii\)-\(iv\)](#). The copy of the underlying
13 motion that Mr. Jordan served on Plaintiff contains what appears to be grey
14 highlighting around certain passages. It is unclear whether Mr. Jordan intends for
15 just those portions to be sealed and redacted, but that highlighting, too, is overbroad
16 as noted in Plaintiff’s prior opposition. (*See* [ECF No. 308](#) at 4.)

17 To the extent Mr. Jordan broadly seeks to seal all or most of his motion and
18 supporting papers, the Court should deny that request for the reasons explained in
19 Plaintiff’s opposition to Mr. Jordan’s prior *ex parte* application. (*See* [ECF No. 308](#)
20 at 3-5.) Such a request is further undermined by the fact that Mr. Jordan publicly
21 filed the papers supporting his original motion for a protective order in connection
22 with his deposition subpoena, which include much of the same information as the
23 present motion and which have remained public since last October. (*See* [ECF No.](#)
24 [117.](#)) Counsel for Plaintiff notified counsel for Mr. Jordan of this issue back in
25 October ([ECF No. 129](#) at 2), and raised it again in requesting a meet and confer on
26 this application (Tuttle Decl., Ex. B at 6), but received no response.

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