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U.S. DIST. COURT WESTERN DIST. OF OKLA.
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**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA**

Capitol Records, Inc., et al.,)
Plaintiffs,)
vs.)
)
Debbie Foster and Amanda Foster,)
Defendants.)

Case No. Civ. 04-1569-W

ORDER

Before the Court is the Plaintiffs' Motion for Entry of Protective Order (docket no. 187). The matter has been fully briefed and after careful consideration of the parties' submissions and the applicable authorities, the Court makes its determination.

On March 15, 2007, the Court ordered the plaintiffs to produce their attorneys' billing records and related documents as requested by the defendant pursuant to Rule 34 of the Federal Rules of Civil Procedure, and ordered that the defendant treat those documents as confidential until ordered otherwise. The plaintiffs now collectively move for entry of a protective order requiring that such documents, designated by the plaintiffs as confidential, shall be "used only for purposes of this litigation and shall not be disclosed to anyone except the parties, counsel to the parties in this litigation, their employees and support staff, the parties' experts, if any, concerning Defendant's fee application, and court personnel and court reporters." The plaintiffs contend they will suffer significant harm if their attorney billing records and related materials are disclosed publicly. They argue that this case presents an unusual situation where their billing records themselves reveal a carefully developed strategy for fighting widespread copyright infringement. They note that this particular case represents but one small chapter of their voluminous, nationwide litigation.

In his declaration offered in support of the plaintiffs' motion, Kenneth L. Doroshov, Senior Vice President of Legal Affairs for the Recording Industry Association of America ("RIAA"), states that the plaintiffs, "through and in conjunction with the RIAA" have "spent thousands of man hours developing the litigation procedures, strategies, and methods they use to combat online piracy and

to protect their copyrights.” Mr. Doroshow further states that counsel’s billing records in this case are maintained in strict confidentiality. He contends that public disclosure of the records would provide defendants in other cases with a road map of the plaintiffs’ litigation strategies and practices. Such a disclosure, he asserts, would be extremely damaging to the plaintiffs.

The defendant counters on three grounds. First, she alleges that the plaintiffs have waived any objection based upon their alleged trade secrets or the confidentiality of “commercial information.” Second, she contends that the plaintiffs have already redacted any and all information protected by the attorney work product privilege and the attorney client privilege. Finally, she argues that entry of the requested protective order would unfairly burden her by requiring her to file documents related to her fee application under seal.

It is well established that trial courts have broad discretion in issuing protective orders and determining what degree of protection is required. Seattle Times Co. v. Rhinehart, 467 U.S. 20 (1984). Before a protective order may issue, however, the plaintiffs must meet their burden of establishing “some” showing of good cause. See Seattle Times Co., at 31, 37. “Good cause” includes protecting a party from annoyance, embarrassment, oppression, or undue burden or expense. See In re Independent service Organizations Antitrust Litigation (aka CSU Holdings, Inc., et al.), 162 F.R.D. 355, 356 (D. Kan. 1995). As noted above, the Court has already ordered the plaintiffs to produce their attorneys’ billing records and they have done so. Thus, this is not a situation where the plaintiffs’ requested protective order would interfere with the defendant’s preparation and defense of her application for attorneys’ fees.

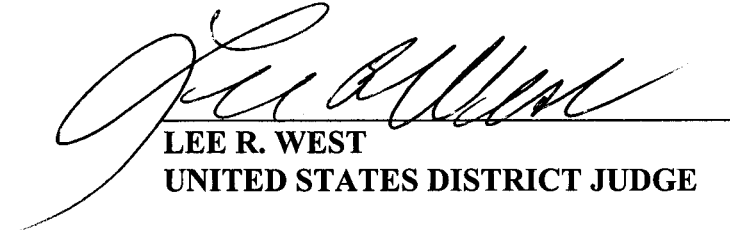
As the plaintiffs are simply seeking to an order requiring the defendant to preserve the confidentiality of the records the plaintiffs have already produced, their burden is lighter than it would be if they were seeking to prevent disclosure to the defendant. The plaintiffs have shown that they consider and have treated their attorneys’ billing records as confidential. In addition, they have shown that the subject records reveal not only the hours and dollars spent on this particular case, but also a comprehensive national litigation strategy designed to combat widespread copyright infringement. Finally, they have demonstrated that they will suffer significant harm if their litigation

strategy is revealed publicly. Therefore, although attorneys' billing records are not ordinarily considered confidential, the Court finds that the plaintiffs have met their burden of establishing good cause for entry of a protective order under the unusual circumstances of this case.

The Court finds no basis for the defendant's suggestion that the plaintiffs have waived the confidentiality of their attorneys' billing records. Furthermore, the defendant's argument that the plaintiffs have already redacted any and all privileged information misapprehends the plaintiffs' contention that they cannot adequately redact their records so as to obscure from the public their over-arching litigation strategy. Finally, any harm that the defendant may suffer as a result of the Court's entry of the plaintiffs' proposed protective order is minimal. Because the defendant already possesses the plaintiff's attorney's billing records, she cannot reasonably argue that her ability to defend her fee application is compromised. The only harm she suggests she will experience as a result of the entry of the plaintiffs' proposed protective order is the inconvenience and expense of being required to file documents under seal. While conventional filing may indeed present an inconvenience, it is minor when balanced against the harm the plaintiffs will suffer in the absence of the protective order.

For the foregoing reasons, the Plaintiffs' Motion for Entry of Protective Order is GRANTED and said protective order shall issue forthwith.

ENTERED this 10th day of April 2007.



LEE R. WEST
UNITED STATES DISTRICT JUDGE