

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 06-cv-01958-WYD-MJW

JOEL LEDBETTER, et al.,

Plaintiff,

v.

WAL-MART STORES, INC., et al.,

Defendants.

**ORDER REGARDING
PLAINTIFFS' MOTION FOR PROTECTIVE ORDER PURSUANT TO FED. R. CIV. P.
26(C) REGARDING SUBPOENAS ISSUED TO FACEBOOK, MY SPACE, INC.,
AND MEETUP.COM (DOCKET NO. 175)**

Entered by Magistrate Judge Michael J. Watanabe

This matter is before the court on Plaintiffs' Motion for Protective Order Pursuant to Fed. R. Civ. P. 26(c) Regarding Subpoenas Issued to Facebook, My Space, Inc., and Meetup.Com (docket no. 175). The court has reviewed the subject motion (docket no. 175) and the response (docket no. 178) thereto. In addition, the court has taken judicial notice of the court's file and has considered applicable Federal Rules of Civil Procedure and case law. The court now being fully informed makes the following findings of fact, conclusions of law, and order.

FINDING OF FACT AND CONCLUSIONS OF LAW

The court finds:

1. That I have jurisdiction over the subject matter and over the parties

to this lawsuit;

2. That venue is proper in the state and District of Colorado;
3. That each party has been given a fair and adequate opportunity to be heard;
4. That both Plaintiffs Joel Ledbetter and Heath Powell allege that they have suffered permanent physical and psychological injuries that will require life-long treatment;
5. That Plaintiff Heath Powell's expert has diagnosed him with Amnestic Disorder, due to electrical shock; situational type specific phobia; bilateral hearing impairment; ongoing and likely permanent physical pain caused by skin burns, sleep disturbance and anxiety. See diagnosis section of Neuropsychological Re-evaluation of Heath Powell attached as Exhibit A at page 20 to Defendant Wal-Mart's Response (docket no. 178);
6. That Plaintiff Joel Ledbetter has been diagnosed with Major Depressive Disorder/Mild to Moderate; Post Traumatic Stress Disorder; persisting and chronic neck and left wrist pain; headaches; fatigue, cognitive inefficiencies and depression. See diagnosis section of Neuropsychological Re-evaluation of Joel Ledbetter attached as Exhibit B at page 17 to Defendant Wal-Mart's Response (docket no. 178);
7. That Plaintiffs Heath Powell and Joel Ledbetter request that this court review, *in camera*, the information requested per the

subpoenas served upon Facebook, My Space, Inc., and Meetup.Com claiming physician-patient privilege and Plaintiff Heath Powell further claims spousal (marital) privilege;

8. That both Plaintiffs Heath Powell and Joel Ledbetter have waived the physician-patient privilege when they filed this lawsuit to recover for both physical and mental injuries allegedly caused by the electrical accident. Samms v. District Court, 908 P.2d 520, 524 (Colo. 1995);
9. That Co-Plaintiff Disa Powell, who is Plaintiff Heath Powell's wife, has brought a loss of right of consortium claim in this lawsuit. By doing so, she has injected the issue of the relationship between her and Plaintiff Heath Powell into this case, and their relationship is at issue. Accordingly, the Co-Plaintiff Disa Powell has waived her spousal (marital) privilege. Burlington Northern R.R. Co. v. Hood, 802 P.2d 458, 465 (Colo. 1990) (citing Cummings v. People, 785 P.2d 920, 926 (Colo. 1990) ("The rule of waiver applies equally to marital privilege");
10. That the Stipulated Protective Order (docket no. 72) entered by this court on May 30, 2007 (docket no. 71), protects the information sought from the subpoenas issued to Facebook, My Space, Inc., and Meetup.Com. Such information falls within the definition of "confidential information" in the Stipulated Protective Order (docket no. 72), and accordingly no further protective order is necessary to

protect privacy interests; and,

11. That the information sought within the four corners of the subpoenas issued to Facebook, My Space, Inc., and Meetup.Com is reasonably calculated to lead to the discovery of admissible evidence as is relevant to the issues in this case.

ORDER

WHEREFORE, based upon these findings of fact and conclusions of law this court **ORDERS**:

1. That Plaintiffs' Motion for Protective Order Pursuant to Fed. R. Civ. P. 26(c) Regarding Subpoenas Issued to Facebook, My Space, Inc., and Meetup.Com (docket no. 175) is **DENIED**;
2. That each party shall pay their own attorney fees and costs for this motion.

Done this 21st day April, 2009.

BY THE COURT

s/ Michael J. Watanabe
MICHAEL J. WATANABE
U.S. MAGISTRATE JUDGE