

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Magistrate Judge Boyd N. Boland

Civil Action No. 13-cv-01229-REB-BNB

CELESTE SHAW, and
JUDITH VERHEECKE, on behalf of herself and all others similarly situated,

Plaintiffs,

v.

INTERTHINX, INC., a California corporation,
VERISK ANALYTICS, INC., a Delaware corporation, and
JEFFREY MOYER, an individual,

Defendants.

ORDER

This matter arises on **Plaintiff Celeste Shaw's Motion for Reasonable Expenses** [Doc. # 139, filed 11/22/2013] (the "Motion for Expenses"), which is DENIED.

On November 1, 2013, the defendants filed a Motion for Protective Order, to Compel Return of Documents, and for Sanctions [Doc. # 128] (the "Motion for Sanctions"). Generally, the Motion for Sanctions argued that the plaintiffs took Interthinx's confidential documents and improperly disclosed them to plaintiffs' lawyers for use in this action. Interthinx characterized the conduct as "self-help" discovery and sought the imposition of severe sanctions.

I held a hearing on the Motion for Sanctions and found that the documents which Interthinx had identified as being improperly disclosed to the plaintiffs' counsel were neither confidential nor entitled to protection under any contract or the law. Consequently, I denied the Motion for Sanctions. I did not find that the Motion for Sanctions was meritless, however. To the contrary, although I did not grant the Motion for Sanctions, I find that it was substantially

justified.

An award of sanctions to the prevailing party under Rule 37 is required unless the court finds that the conduct of the party against which the award is sought was “substantially justified or other circumstances make an award of expenses unjust.” Fed. R. Civ. P. 37(a)(5)(B).

Because the positions taken by Interthinx in connection with the Motion for Sanctions, although ultimately unsuccessful, were substantially justified, the award of expenses in defending against that motion is not justified.

IT IS ORDERED that the Motion for Expenses [Doc. # 139] is DENIED

Dated January 17, 2014.

BY THE COURT:

s/ Boyd N. Boland
United States Magistrate Judge